



PLANNING COMMISSION

AGENDA REPORT

VIII. 1

MEETING DATE: SEPTEMBER 12, 2011

ITEM NUMBER:

SUBJECT: TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

DATE: SEPTEMBER 1, 2011

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DESCRIPTION

This item relates to concerns with telecommunications facilities located in the public right-of-way.

RECOMMENDATION

Direct staff to seek Council authorization for this work activity.

ANALYSIS

Although the Planning Commission's purview is limited to Title 13 (Zoning Code) and Title 20 (Property Maintenance), Commission may raise issues which will then be addressed by the appropriate City staff, as applicable. In this case, the telecommunications regulatory ordinance can be found in Title 19, Chapter I, Article 7 of the Costa Mesa Municipal Code.

Concerns have been raised regarding the T-Mobile telecommunications antenna at 396 E. 20th Street. The equipment vault is located underground and the pole structure is 18" in diameter and 108" high. The concerns related to aesthetics, height, public noticing, and the overall approval process for permitting these types of facilities in the public right-of-way.

Utility applications for work in the public right of way are submitted and processed by the Public Services Department as stipulated by the City's municipal code. This section is also ruled by the Federal Communications Commission (FCC) rules and regulations. If applicable, these permit applications are routed to other departments for review and conditioning. Public Services staff compile the comments from other departments and add additional conditions/requirements to the permit. Other than the fees allowed to be charged to offset the encroachment permit and inspection costs, no additional revenue is derived from these types of facilities in the public right-of-way.

CONCLUSION

The City Engineer will be available to respond to specific questions regarding the permitting process for the T-Mobile antenna at the meeting. Planning Commission may provide direction to staff to specify regulations and a public review process for these telecom facilities in the future. The new regulations, design guidelines, and requirements may be adopted by City Council resolution or codified in the Municipal Code by ordinance.



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File

TITLE 19 - FRANCHISES
CHAPTER I. - TELECOMMUNICATIONS REGULATORY ORDINANCE
ARTICLE 7. - VIOLATIONS; SEVERABILITY

CHAPTER I. - TELECOMMUNICATIONS REGULATORY ORDINANCE ^[85]

⁽⁸⁵⁾ **Editor's note**— Ord. No. 98-18, § 1, adopted June 15, 1998, amended Tit. 19, Ch. I, in its entirety to read as herein set out. Prior to amendment. Ch. I, §§ 19-05—19-300 pertained to the cable communications systems and derived from Ord. No. 83-2, adopted Feb. 22, 1983; Ord. No. 84-6, § 2, adopted March 5, 1984; and Ord. No. 93-15, §§ 2—11, adopted Sept. 7, 1993.

ARTICLE 1. - GENERAL PROVISIONS
ARTICLE 2. - CABLE TELEVISION SYSTEMS
ARTICLE 3. - OPEN VIDEO SYSTEMS
ARTICLE 4. - OTHER TELECOMMUNICATIONS SERVICES AND SYSTEMS
ARTICLE 5. - DEFINITIONS
ARTICLE 6. - PUBLIC, EDUCATIONAL AND GOVERNMENTAL (PEG) ACCESS CHANNEL FEE
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ARTICLE 1. - GENERAL PROVISIONS

Sec. 19-01. - Title.

Sec. 19-02. - Purpose and intent.

Sec. 19-03. - Defined terms and phrases.

Sec. 19-01. - Title.

This chapter is known and may be cited as the "telecommunications regulatory ordinance" of the City of Costa Mesa.

(Ord. No. 98-18, § 1, 6-15-98)

Sec. 19-02. - Purpose and intent.

(A) The city council finds and determines as follows:

(1) The development of cable television and other telecommunications systems may provide significant benefits for, and have substantial impacts upon, the residents and the business community of the city.

(2) Because of the complex and rapidly changing technology associated with telecommunications services and systems, the public convenience, safety, and general welfare can best be served by establishing regulatory powers to be exercised by the city.

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(3) This chapter is intended to establish regulatory provisions that authorize the city to regulate cable television and telecommunications services and systems to the extent authorized by federal and state law, including but not limited to the federal Cable Communications Policy Act of 1984 (47 U.S.C. §§ 151, et seq.), as amended by the federal Cable Television Consumer and Competition Act of 1992 and the federal Telecommunications Act of 1996, applicable regulations of the Federal Communications Commission, and applicable California statutes and regulations.

(B) The purpose and intent of the ordinance codified in this chapter is to provide for the attainment of the following objectives:

(1) To enable the city to discharge its public trust in a manner consistent with rapidly evolving federal and state regulatory policies, industry competition, and technological development.

(2) To authorize and to manage reasonable access to the city's public rights-of-way and public property for telecommunications purposes on a competitively neutral and nondiscriminatory basis.

(3) To obtain fair and reasonable compensation for the city and its residents for authorizing the private use of the public rights-of-way and public property, which are recognized to be valuable public assets held in trust by the city.

(4) To foster and to promote competition in cable television and telecommunications services, minimize unnecessary local regulation of cable television and telecommunications service providers, and encourage the delivery of advanced and competitive cable television and telecommunications services on the broadest possible basis to local government and to the businesses, institutions, and residents of the city.

(5) To establish clear local guidelines, standards, and time frames for the exercise of local authority with respect to the regulation of cable television and telecommunications service providers, including the establishment and enforcement of customer service standards and technical standards.

(6) To encourage the profitable deployment of advanced telecommunications infrastructures that satisfy local needs, deliver enhanced government services, and provide informed consumer choices in an evolving telecommunications market.

(Ord. No. 98-18, § 1, 6-15-98)

Sec. 19-03. - Defined terms and phrases.

Various terms and phrases used in this chapter are defined below in Article 5, section 19-16.

(Ord. No. 98-18, § 1, 6-15-98)

ARTICLE 2. - CABLE TELEVISION SYSTEMS

Sec. 19-04. - Authority and findings.

Sec. 19-05. - Franchise terms and conditions.

Sec. 19-06. - Franchise applications and renewal.

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Sec. 19-07. - Contents of cable television franchise agreements.

Sec. 19-04. - Authority and findings.

(A) In accordance with applicable federal and state law, the city is authorized to grant one (1) or more nonexclusive franchises to construct, reconstruct, operate, and maintain cable television systems within the city limits.

(B) The city council finds that the development of cable television and related telecommunications services may provide significant benefits for, and substantial impacts upon, the residents and the business community of the city. Because of the complex and rapidly changing technology associated with cable services, the city council further finds that the public convenience, safety, and general welfare can best be served by establishing regulatory powers to be exercised by the city. This Article 2 is intended to specify the means for providing to the public the best possible cable television and related telecommunications services, and every franchise issued in accordance with this Article 2 is intended to achieve this primary objective. It is the further intent of this Article 2 to adopt regulatory provisions that will enable the city to regulate cable television and related telecommunications services to the maximum extent authorized by federal and state law.

(Ord. No. 98-18, § 1, 6-15-98)

Sec. 19-05. - Franchise terms and conditions.

(A) *Franchise purposes.* A franchise granted by the city under the provisions of this article may authorize the grantee to do the following:

(1) To engage in the business of providing cable service and such other telecommunications services as may be authorized by law and which grantee elects to provide to its subscribers within the designated franchise service area.

(2) To maintain and operate the franchise properties for the origination, reception, transmission, amplification, and distribution of television and radio signals, and for the delivery of cable services and such other services as may be authorized by law.

(3) To erect, install, construct, repair, rebuild, reconstruct, replace, maintain, and retain, cable lines, related electronic equipment, supporting structures, appurtenances, and other property in connection with the operation of the cable system in, on, over, under, upon, along and across streets or other public places within the designated franchise service area.

(B) *Franchise required.* It is unlawful for any person to construct, install, or operate a cable television system or any video system within any street or public way in the city without first obtaining either a franchise with the State of California pursuant to the Digital Infrastructure and Video Competition Act of 2006 or a franchise under the provisions of this article.

(C) *Term of the franchise.*

(1) A franchise granted under this article will be for the term specified in the franchise agreement, commencing upon the effective date of the ordinance or resolution adopted by the city council that authorizes the franchise.

(2) A franchise granted under this article may be renewed upon application by the grantee in

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accordance with the then-applicable provisions of state and federal law and of this article.

(D) *Franchise territory.* A franchise is effective within the territorial limits of the city, and within any area added to the city during the term of the franchise, unless otherwise specified in the ordinance or resolution granting the franchise or in the franchise agreement.

(E) *Federal or state jurisdiction.* This article will be construed in a manner consistent with all applicable federal and state laws, and it applies to all franchises granted or renewed after the effective date of this article, to the extent authorized by applicable law.

(F) *Franchise non-transferable.*

(1) Grantee may not sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation, or otherwise, the franchise or any of the rights or privileges therein granted, without the prior consent of the city council and then only upon such terms and conditions as may be prescribed by the city council, which consent may not be unreasonably denied or delayed. Any attempt to sell, transfer, lease, assign, or otherwise dispose of the franchise without the consent of the city council is null and void. The granting of a security interest in any assets of the grantee, or any mortgage or other hypothecation, will not be deemed a transfer for the purposes of this subsection.

(2) The requirements of subsection (1) apply to any change in control of grantee. The word "control" as used herein is not limited to the ownership of major stockholder or partnership interests, but includes actual working control in whatever manner exercised. If grantee is a corporation, prior authorization of the city council is required where ownership or control of fifty (50) per cent or more of the voting stock of grantee is acquired by a person or a group of persons acting in concert, none of whom, singularly or collectively, owns or controls the voting stock of the grantee as of the effective date of the franchise.

(3) Grantee must notify the city in writing of any foreclosure or judicial sale of all or a substantial part of the grantee's franchise property. That notification will be considered by the city as notice that a change in control of ownership of the franchise has taken place, and the provisions of this paragraph that require the prior consent of the city council to that change in control of ownership will apply.

(4) For the purpose of determining whether it will consent to an acquisition, transfer, or change in control, the city may inquire as to the qualifications of the prospective transferee or controlling party, and grantee must assist the city in that inquiry. In seeking the city's consent to any change of ownership or control, grantee or the proposed transferee, or both, must complete Federal Communications Commission Form 394 or its equivalent. This application must be submitted to the city not less than one hundred twenty (120) days prior to the proposed date of transfer. The transferee must establish that it possesses the legal, financial, and technical capability to operate and maintain the cable system and to comply with all franchise requirements during the remaining term of the franchise. If the legal, financial, and technical qualifications of the applicant are satisfactory, the city will consent to the transfer of the franchise. The consent of the city to that transfer will not be unreasonably denied or delayed.

(5) Any financial institution holding a pledge of the grantee's assets to secure the advance of money for the construction or operation of the franchise property has the right to notify the city that it, or a designee satisfactory to the city, will take control of and operate the cable television system upon grantee's default in its financial obligations. Further, that financial institution must also submit

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a plan for such operation within ninety (90) days after assuming control. The plan must insure continued service and compliance with all franchise requirements during the period that the financial institution will exercise control over the system. The financial institution may not exercise control over the system for a period exceeding one (1) year unless authorized by the city, in its sole discretion, and during that period of time it will have the right to petition the city to transfer the franchise to another grantee.

(6) Grantee must reimburse the city for the city's reasonable review and processing expenses incurred in connection with any transfer or change in control of the franchise. These expenses may include, without limitation, costs of administrative review, financial, legal, and technical evaluation of the proposed transferee, consultants (including technical and legal experts and all costs incurred by these experts), notice and publication costs, and document preparation expenses. The total amount of these reimbursable expenses may be subject to maximum limits that are specified in the franchise agreement between the city and the grantee. No reimbursement may be offset against any franchise fee payable to the city during the remaining term of the franchise.

(G) *Geographical coverage.*

(1) Grantee must design, construct, and maintain the cable television system so as to have the capability to pass every dwelling unit in the city, subject to any service-area line extension requirements of the franchise agreement; provided, however, that if additional territory is annexed to the city after the effective date of a cable television franchise agreement, and an incumbent cable operator is then serving that annexed territory, the grantee will not be required to overbuild in order to provide cable service to dwelling units in that territory.

(2) After service has been established by activating trunk or distribution cables for any service area, grantee must provide service to any requesting subscriber in that service area within thirty (30) days from the date of request, provided that the grantee is able to secure on reasonable terms and conditions all rights-of-way necessary to extend service to that subscriber within that thirty (30) day period. Service to prospective subscribers residing in multiple dwelling units need only be provided if, after evaluating terms and conditions for access that may be imposed by an owner or manager of such multiple dwelling units, a grantee determines that those terms and conditions are reasonably acceptable.

(H) *Nonexclusive franchise.* Every franchise granted is nonexclusive. The city specifically reserves the right to grant, at any time, such additional franchises for a cable television system, or any component thereof, as it deems appropriate, subject to applicable state and federal law. If an additional franchise is proposed to be granted to a subsequent grantee, a noticed public hearing must first be held in accordance with the provisions of Government Code § 53066.3.

(I) *Multiple franchises.*

(1) The city may grant any number of franchises, subject to applicable state and federal law. The city may limit the number of franchises granted, based upon, but not necessarily limited to, the requirements of applicable law and specific local considerations, such as:

(a) The capacity of the public rights-of-way to accommodate multiple cables in addition to the cables, conduits, and pipes of the existing utility systems, such as electrical power, telephone, gas, and sewerage.

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(b) The benefits that may accrue to subscribers as a result of cable system competition, such as lower rates and improved service.

(c) The disadvantages that may result from cable system competition, such as the requirement for multiple pedestals on residents' property, and the disruption arising from numerous excavations within the public rights-of-way.

(2) The city may require that any new grantee be responsible for its own underground trenching and the associated costs if, in the city's opinion, the rights-of-way in any particular area cannot reasonably accommodate additional cables.

(Ord. No. 98-18, § 1, 6-15-98; Ord. No. 07-20, § 1, 12-4-07)

Sec. 19-06. - Franchise applications and renewal.

(A) *Filing of applications.* Any person desiring an initial franchise for a cable television system must file an application with the city. A reasonable nonrefundable application fee in an amount established by resolution of the city council must accompany the application. That application fee will cover all costs associated with reviewing and processing the application, including without limitation costs of administrative review, financial, legal, and technical evaluation of the applicant, consultants (including technical and legal experts and all costs incurred by those experts), notice and publication requirements, and document preparation expenses. If those costs exceed the application fee, the applicant must pay the difference to the city within thirty (30) days following receipt of an itemized statement of those costs.

(B) *Applications—Contents.* An application for an initial franchise for a cable television system must contain, as applicable:

- (1) A statement as to the proposed franchise service area.
- (2) A resume of the applicant's prior history, including the experience and expertise of the applicant in the cable television and telecommunications industry.
- (3) A list of the partners, general and limited, of the applicant, if a partnership, or the percentage of stock owned or controlled by each stockholder, if a closely-held corporation. If the applicant is a publicly-owned corporation, each owner of ten (10) per cent or more of the issued and outstanding capital stock must be identified.
- (4) A list of officers, directors, and managing employees of the applicant, together with a description of the background of each person on that list.
- (5) The names and addresses of any parent or subsidiary of the applicant, or any other business entity owning or controlling applicant in whole or in part, or that is owned or controlled in whole or in part by the applicant.
- (6) A current financial statement of the applicant verified by a certified public accountant or otherwise certified to be true, complete, and correct to the reasonable satisfaction of the city.
- (7) The proposed construction and service schedule, the proposed rate structure for cable services, and the proposed commitment to provide public, educational, and governmental access channel capacity, services, facilities, and equipment.

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(8) Any additional information that the city deems to be reasonably necessary.

(C) *Consideration of initial applications.*

(1) Upon receipt of an application for an initial franchise, the city manager or the city manager's designee must prepare a report and make recommendations to the city council concerning that application, including without limitation the applicant's legal, financial, and technical qualifications.

(2) A public hearing will be noticed prior to any initial franchise grant, at a time and date approved by the city council. Within thirty (30) days after the close of the hearing, the city council will make a decision based upon the evidence received at the hearing as to whether the franchise should be granted, and, if granted, subject to what conditions. The city council may grant one (1) or more franchises, or may decline to grant any franchise.

(D) *Franchise renewal.* Franchise renewals will be processed in accordance with then-applicable law. The city and grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise.

(Ord. No. 98-18, § 1, 6-15-98)

Sec. 19-07. - Contents of cable television franchise agreements.

(A) The terms and provisions of a franchise agreement for the operation of a cable television or related telecommunications services may relate to or include, without limitation, the following subject matters:

(1) The nature, scope, geographical area, and duration of the franchise.

(2) The applicable franchise fee to be paid to the city, including the percentage amount, the method of computation, and the time for payment.

(3) Requirements relating to compliance with and implementation of state and federal laws and regulations pertaining to the operation of the cable television system.

(4) Requirements relating to the construction, upgrade, or rebuild of the cable television system, as well as the provision of special services, such as outlets for public buildings, emergency alert capability, and parental control devices.

(5) Requirements relating to the maintenance of a performance bond, a security fund, a letter of credit, or similar assurances to secure the performance of the grantee's obligations under the franchise agreement.

(6) Requirements relating to comprehensive liability insurance, workers' compensation insurance, and indemnification.

(7) Requirements relating to consumer protection and customer service standards, including the resolution of subscriber complaints and disputes and the protection of subscribers' privacy rights.

(8) Requirements relating to the grantee's support of local cable usage, including the provision of public, educational, and governmental access channels, the coverage of public meetings and special events, and financial or technical support for public, educational, and governmental access channels.

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(9) Requirements relating to construction, operation, and maintenance of the cable television system within the public rights-of-way, including compliance with all applicable building codes and permit requirements of the city, the abandonment, removal, or relocation of facilities, and compliance with FCC technical standards.

(10) Requirements relating to recordkeeping, accounting procedures, reporting, periodic audits, and performance reviews, and the inspection of grantee's books and records.

(11) Acts or omissions constituting material breaches of or defaults under the franchise agreement, and the applicable penalties or remedies for such breaches or defaults, including fines, penalties, liquidated damages, suspension, revocation, and termination.

(12) Requirements relating to the sale, assignment, or other transfer or change in control of the franchise.

(13) The grantee's obligation to maintain continuity of service and to authorize, under certain specified circumstances, the city's operation and management of the cable system.

(14) Such additional requirements, conditions, policies, and procedures as may be mutually agreed upon by the parties to the franchise agreement and that will, in the judgment of city staff and the city council, best serve the public interest and protect the public health, welfare, and safety.

(B) If there is any conflict or inconsistency between the provisions of a franchise agreement authorized by the city council and provisions of this Article 2, the provisions of the franchise agreement will control.

(Ord. No. 98-18, § 1, 6-15-98)

ARTICLE 3. - OPEN VIDEO SYSTEMS

Sec. 19-08. - Applicability.

Sec. 19-09. - Application required.

Sec. 19-10. - Review of the application.

Sec. 19-11. - Agreement required.

Sec. 19-08. - Applicability.

The provisions of this Article 3 are applicable to an open video system operator, as defined below in Article 5, that intends to deliver video programming to consumers in the city over an open video system, as authorized by 47 CFR Part 76.

(Ord. No. 98-18, § 1, 6-15-98)

Sec. 19-09. - Application required.

(A) Before commencing the delivery of video programming services to consumers in the city over any

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video system, the video system operator must either possess a state issued franchise pursuant to the Digital Infrastructure and Video Competition Act of 2006 or file an application with the city. That application must include or be accompanied by the following, as applicable:

- (1) The identity of the applicant, including all affiliates of the applicant.
- (2) Copies of FCC Form 1275, all "Notices of Intent" filed under 47 CFR § 76.1503(b)(1), and the Order of the FCC, all of which relate to certification of the applicant to operate an open video system in accordance with Section 653(a)(1) of the Communications Act and the FCC's rules.
- (3) The area or areas of the city that the applicant desires to serve.
- (4) A description of the open video system services that will be offered by the applicant over its existing or proposed facilities.
- (5) A description of the transmission medium that will be used by the applicant to deliver the open video system services.
- (6) Information in sufficient detail to establish the applicant's technical qualifications, experience, and expertise regarding the ownership and operation of the open video system described in the application.
- (7) Financial statements prepared in accordance with generally accepted accounting principles that demonstrate the applicant's financial ability to:
 - (a) Construct, operate, maintain and remove any new physical plant that is proposed to be constructed in the city.
 - (b) Comply with the city's public, educational, and governmental access requirements as specified below in section 19-11(B)(4).
 - (c) Comply with the city's requirement that gross revenue fees be paid in the sum of five (5) per cent, as specified below in section 19-11(B)(2).
- (8) An accurate map showing the location of any existing telecommunications facilities in the city that the applicant intends to use, to purchase, or to lease.
- (9) If the applicant's operation of the open video system will require the construction of new physical plant and facilities in the city, the following additional information must be provided:
 - (a) A preliminary construction schedule and completion dates.
 - (b) Preliminary engineering plans, specifications, and a network map of any new facilities to be constructed in the city, in sufficient detail to identify:
 - (i) The location and route requested for the applicant's proposed facilities.
 - (ii) The locations, if any, for interconnection with the facilities of other telecommunications service providers.
 - (iii) The specific structures, improvements, facilities, and obstructions, if any, that the applicant proposes to remove or relocate on a temporary or permanent basis.

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(c) The applicant's statement that, in constructing any new physical plant, the applicant will comply with all applicable ordinances, rules, and regulations of the city, including the payment of all required permit and processing fees.

(10) The information and documentation that is required to be submitted to the city by a video provider, as specified below in paragraph (B) of section 19-13

(11) Such additional information as may be requested by the city manager.

(12) A nonrefundable filing fee in an amount established by resolution of the city council.

(B) If any item of information specified above in paragraph (A) is determined under paramount federal or state law to be unlawful, the city manager is authorized to waive the requirement that such information be included in the application.

(Ord. No. 98-18, § 1, 6-15-98; Ord. No. 07-20, § 1, 12-4-07)

Sec. 19-10. - Review of the application.

Within thirty (30) days after receipt of an application filed under section 19-09 that is deemed to be complete, the city manager will give written notice to the applicant of the city's intent to negotiate an agreement setting forth the terms and conditions under which the operation of the proposed open video system will be authorized by the city. The commencement of those negotiations will be on a date that is mutually acceptable to the city and to the applicant.

(Ord. No. 98-18, § 1, 6-15-98)

Sec. 19-11. - Agreement required.

(A) No video programming services may be provided in the city by a video system operator unless the operator has obtained a state issued franchise pursuant to the Digital Infrastructure and Video Competition Act of 2006 or the operator and the city have executed a written agreement setting forth the terms and conditions under which the operation of the proposed open video system will be authorized by the city.

(B) The agreement between the city and the open video system operator may contain terms and conditions that relate to the following subject matters, to the extent that such terms, conditions, and subject matters are not preempted by federal statute or regulations:

(1) The nature, scope, and duration of the agreement, including provisions for its renewal or extension.

(2) The obligation of the open video system operator to pay to the city, at specified times, fees on the gross revenues received by the operator, as authorized by 47 CFR § 76.1511, in accordance with the following standards and procedures:

(a) The amount of the fees on the gross revenues will be five (5) per cent, and will be paid in lieu of the franchise fees permitted under Section 622 of the Communications Act.

(b) The term "gross revenues" means (i) all gross revenues received by an open video system operator or its affiliates, including all revenues received from subscribers and all carriage revenues received from unaffiliated video programming providers; and (ii) all

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advertising revenues received by the operator or its affiliates in connection with the provision of video programming, where these revenues are included in the calculation of the cable franchise fee paid to the city by the franchised cable operator. The term "gross revenues" does not include revenues, such as subscriber or advertising revenues, collected by unaffiliated video programming providers.

(3) The obligation of the open video system operator to comply with requirements relating to information collection and recordkeeping, accounting procedures, reporting, periodic audits, and inspection of records in order to ensure the accuracy of the fees on the gross revenues that are required to be paid as specified above in paragraph (B)(2).

(4) The obligation of the open video system operator to meet the city's requirements with respect to public, educational, and governmental access channel capacity, services, facilities, and equipment, as provided for in 47 CFR § 76.1505. In this regard, the following standards and procedures are applicable:

(a) The open video system operator is subject to the same public, educational, and governmental access requirements that apply within the cable television franchise service area with which its system overlaps.

(b) The open video system operator must ensure that all subscribers receive all public, educational, and governmental access channels within the franchise service area in which the city's subscribers are located.

(c) The open video system operator may negotiate with the city to establish the operator's obligations with respect to public, educational, and governmental access channel capacity, services, facilities, and equipment. These negotiations may include the city's franchised cable operator if the city, the open video system operator, and the franchised cable operator so desire.

(d) If the open video system operator and the city are unable to reach an agreement regarding the operator's obligations with respect to public, educational, and governmental access channel capacity, services, facilities, and equipment within the city's jurisdiction, then the following obligations will be imposed:

(i) The open video system operator must satisfy the same public, educational, and governmental access obligations as the city's franchised cable operator by providing the same amount of channel capacity for public, educational, and governmental access and by matching the city's franchised cable operator's annual financial contributions in support of public, educational, and governmental access services, facilities, and equipment that are actually used by the city. For in-kind contributions, such as cameras or production studios, the open video system operator may satisfy its statutory obligation by negotiating mutually agreeable terms with the city's franchised cable operator, so that public, educational, and governmental access services to the city are improved or increased. If these terms cannot be agreed upon, the open video system operator must pay to the city the monetary equivalent of the franchised cable operator's depreciated in-kind contribution, or, in the case of facilities, the annual amortization value. Any matching contributions provided by the open video system operator must be used to fund activities arising under Section 611 of the Communications Act.

(ii) The city will impose upon the open video system operator the same rules and

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procedures that it imposes upon the franchised cable operator with regard to the open video system operator's use of channel capacity designated for public, educational, and governmental access use when that capacity is not being used for these purposes.

(e) The city's franchised cable operator is required under federal law to permit the open video system operator to connect with its public, educational, and governmental access channel feeds. The open video system operator and the franchised cable operator may decide how to accomplish this connection, taking into consideration the physical and technical characteristics of the cable and the open video systems involved. If the franchised cable operator and the open video system operator cannot agree on how to accomplish the connection, the city has the right to decide. The city may require that the connection occur on city-owned property or on public rights-of-way.

(f) All costs of connection to the franchised cable operator's public, educational, and governmental access channel feed must be borne by the open video system operator. These costs will be counted towards the open video system operator's matching financial contributions set forth above in subparagraph (d)(i).

(g) The city will not impose upon the open video system operator any public, educational, or governmental access obligations that are greater than those imposed upon the franchised cable operator.

(h) If there is no existing franchised cable operator, the provisions of 47 CFR § 76.1505(d)(6) will be applicable in determining the obligations of the open video system operator.

(i) The open video system operator must adjust its system to comply with new public, educational, and access obligations imposed on the city's franchised cable operator following a renewal of the cable television franchise; provided, however, that the open video system operator will not be required to displace other programmers using its open video system to accommodate public, educational, and governmental access channels. The open video system operator must comply with these new public, educational, and governmental access obligations whenever additional capacity is or becomes available, whether it is due to increased channel capacity or to decreased demand for channel capacity.

(5) If the city and the open video system operator cannot agree as to the application of the FCC's rules regarding the open video system operator's obligations to provide public, educational, and governmental access under the provisions of subsection (4) set forth above, then either party may file a complaint with the FCC in accordance with the dispute resolution procedures set forth in 47 CFR § 76.1514. No agreement under this section 19-11 authorizing an applicant to provide services over an open video system will be executed by the city until the dispute has been finally resolved.

(6) If the open video system operator intends to maintain an institutional network, as defined in Section 611 (f) of the Communications Act, the city will require that educational and governmental access channels be designated on that institutional network to the same extent that those channels are designated on the institutional network of the city's franchised cable operator.

(7) The authority of an open video system provider to exercise editorial control over any public, educational, or governmental use of channel capacity will be restricted in accordance with the

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provisions of 47 CFR § 76.1505(f).

(8) The obligation of the open video system operator to comply with all applicable federal and state statutes and regulations relating to customer service standards, including the Cable Television and Video Customer Service and Information Act (Government Code §§ 53054, et seq.), and the Video Customer Service Act (Government Code §§ 53088, et seq.)

(9) If new physical plant is proposed to be constructed within the city, the obligation of the open video system operator to comply with the following rights-of-way use and management responsibilities that are also imposed by the city upon other telecommunications service providers in a nondiscriminatory and competitively neutral manner:

(a) Compliance with all applicable city building and zoning codes, including applications for excavation, encroachment, and construction permits and the payment of all required permit and inspection fees.

(b) The coordination of construction requirements.

(c) Compliance with established standards and procedures for constructing lines across private property.

(d) Compliance with all applicable insurance and indemnification requirements imposed by the city.

(e) The repair and resurfacing of construction-damaged streets.

(f) Compliance with all public safety requirements that are applicable to telecommunications service providers using public property or public rights-of-way.

(10) Acts or omissions constituting breaches or defaults of the agreement, and the applicable penalties, liquidated damages, and other remedies, including fines or the suspension, revocation, or termination of the agreement.

(11) Requirements relating to the sale, assignment, or transfer of the open video system.

(12) Requirements relating to the open video system operator's compliance with and implementation of state and federal laws, rules, and regulations pertaining to the operation of the open video system.

(13) Such additional requirements, conditions, terms, policies, and procedures as may be mutually agreed upon by the city and the open video system operator and that will, in the judgment of the city council, best serve the public interest and protect the public health, welfare, and safety.

(Ord. No. 07-20, § 1, 12-4-07)

ARTICLE 4. - OTHER TELECOMMUNICATIONS SERVICES AND SYSTEMS

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Sec. 19-12. - Other multichannel video programming distributors.

Sec. 19-13. - Video providers; registration, customer service standards.

Sec. 19-14. - Antennas for telecommunications services.

Sec. 19-15. - Telecommunications service provided by telephone corporations.

Sec. 19-12. - Other multichannel video programming distributors.

The term "cable system," as defined in federal law and as set forth in Article 5 below, does not include a facility that serves subscribers without using any public rights-of-way. Consequently, the categories of multichannel video programming distributors identified below are not deemed to be "cable systems" and are therefore exempt under federal law from the city's franchise requirements and from certain other local regulatory provisions authorized by federal law, provided that their distribution or transmission facilities do not involve the use of the city's public rights-of-way.

(A) Multichannel multipoint distribution service ("MMDS"), also known as "wireless cable," which typically involves the transmission by an FCC-licensed operator of numerous broadcast stations from a central location using line-of-sight technology.

(B) Local multipoint distribution service ("LMDS"), another form of over-the-air wireless video service for which licenses are auctioned by the FCC, and which offers video programming, telephony, and data networking services.

(C) Direct broadcast satellite ("DBS"), also referred to as "direct-to-home satellite services," which involves the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite. Local regulation of direct-to-home satellite services is further proscribed by the following federal statutory provisions:

(1) 47 U.S.C. § 303 (v) confers upon the FCC exclusive jurisdiction to regulate the provision of direct-to-home satellite services.

(2) Section 602 of the Communications Act states that a provider of direct-to-home satellite service is exempt from the collection or remittance, or both, of any tax or fee imposed by any local taxing jurisdiction on direct-to-home satellite service. The terms "tax" and "fee" are defined by federal statute to mean any local sales tax, local use tax, local intangible tax, local income tax, business license tax, utility tax, privilege tax, gross receipts tax, excise tax, franchise fees, local telecommunications tax, or any other tax, license, or fee that is imposed for the privilege of doing business, regulating, or raising revenue for a local taxing jurisdiction.

(Ord. No. 98-18, § 1, 6-15-98)

Sec. 19-13. - Video providers; registration, customer service standards.

(A) Unless the customer protection and customer service obligations of a video provider, as that term is defined in Article 5, are specified in a franchise, license, lease, or similar written agreement with the city, a video provider must comply with all applicable provisions of the following state statutes:

(1) The Cable Television and Video Customer Service and Information Act (Government Code §§ 53054, et seq.)

(2) The Video Customer Service Act (Government Code §§ 53088, et seq.)

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(B) All video providers that are operating in the city on the effective date of this chapter, or that intend to operate in the city after the effective date of this chapter, must register with the city; provided, however, that this registration requirement is not applicable to any video provider that has executed a franchise, license, lease or similar written agreement with the city. The registration form must include or be accompanied by the following:

(1) The video provider's name, address, and local telephone numbers, including a 24-hour telephone number for emergency service.

(2) The names of the officers, the general manager, and principal technical staff members of the video provider.

(3) A copy of the video provider's written policies and procedures relating to customer service standards and the handling of customer complaints, as required by Government Code §§ 53054, et seq. These customer service standards must include, without limitation, standards regarding the following:

(a) Installation, disconnection, service and repair obligations, employee identification, and service call response time and scheduling.

(b) Customer service telephone and office hours.

(c) Procedures for billing, charges, refunds, and credits.

(d) Procedures for termination of service.

(e) Notice of the deletion of a programming service, the changing of channel assignments, or an increase in rates.

(f) Complaint procedures and procedures for bill dispute resolution.

(g) The video provider's written commitment to distribute annually to the city, and to the provider's employees and customers, a notice describing the customer service standards specified above in subparagraphs (a) through (f). This annual notice must include the report of the video provider on its performance in meeting its customer service standards, as required by Government Code § 53055.2.

(4) Unless a video provider is exempt under federal law from its payment, a registration fee in an amount established by resolution of the city council to cover the reasonable costs incurred by the city in reviewing and processing the registration form.

(5) In addition to the registration fee specified above in subsection (4), the written commitment of the video provider to pay to the city, when due, all costs and expenses reasonably incurred by the city in resolving any disputes between the video provider and its subscribers, which dispute resolution is mandated by Government Code § 53088.2(o).

(C) The city council may establish by ordinance a schedule of monetary penalties for the material breach by a video provider of its obligations under subparagraphs (a) through (n) of Government Code § 53088.2. As used herein, the term "material breach" means any substantial and repeated failure to comply with the consumer service standards set forth in Government Code § 53088.2. The provisions of that ordinance must be consistent with the provisions of Government Code § 53088.2. The schedule of monetary penalties may also impose a penalty, as authorized by Government Code § 53056(a), for

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the failure of a video provider to distribute the annual notice required by Government Code § 53055.1, which penalty may not exceed five hundred dollars (\$500.00) for each year in which the notice is not distributed as required by state statute.

(Ord. No. 98-18, § 1, 6-15-98)

Sec. 19-14. - Antennas for telecommunications services.

The city's zoning code sets forth the city's regulatory requirements relating to the siting and construction of various types of antennas that are commonly used in providing or receiving telecommunications services.

(Ord. No. 98-18, § 1, 6-15-98)

Sec. 19-15. - Telecommunications service provided by telephone corporations.

(A) The city council finds and determines as follows:

(1) The federal Telecommunications Act of 1996 preempts and declares invalid all state rules that restrict entry or limit competition in both local and long-distance telephone service.

(2) The California Public Utilities Commission ("CPUC") is primarily responsible for the implementation of local telephone competition, and it issues certificates of public convenience and necessity to new entrants that are qualified to provide competitive local telephone exchange services and related telecommunications service, whether using their own facilities or the facilities or services provided by other authorized telephone corporations.

(3) Section 234 (a) of the California Public Utilities Code defines a "telephone corporation" as "every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state."

(4) Section 616 of the California Public Utilities Code provides that a telephone corporation "may condemn any property necessary for the construction and maintenance of its telephone line."

(5) Section 2902 of the California Public Utilities Code authorizes municipal corporations to retain their powers of control to supervise and regulate the relationships between a public utility and the general public in matters affecting the health, convenience, and safety of the general public, including matters such as the use and repair of public streets by any public utility and the location of the poles, wires, mains, or conduits of any public utility on, under, or above any public streets.

(6) Section 7901 of the California Public Utilities Code authorizes telephone and telegraph corporations to construct telephone or telegraph lines along and upon any public road or highway, along or across any of the waters or lands within this state, and to erect poles, posts, piers, or abatements for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters.

(7) Section 7901.1 of the California Public Utilities Code confirms the right of municipalities to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed, which control must be applied to all entities in an equivalent manner, and may involve the imposition of fees.

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(8) Section 50030 of the California Government Code provides that any permit fee imposed by a city for the placement, installation, repair, or upgrading of telecommunications facilities, such as lines, poles, or antennas, by a telephone corporation that has obtained all required authorizations from the CPUC and the FCC to provide telecommunications services, must not exceed the reasonable costs of providing the service for which the fee is charged, and must not be levied for general revenue purposes.

(B) In recognition of and in compliance with the statutory authorizations and requirements set forth above in paragraph (A), the following regulatory provisions are applicable to a telephone corporation that desires to provide telecommunications service by means of facilities that are proposed to be constructed within the city's public rights-of-way:

(1) The telephone corporation must apply for and obtain, as may be applicable, an excavation permit, an encroachment permit, or a building permit ("ministerial permit.")

(2) In addition to the information required by this Code in connection with an application for a ministerial permit, a telephone corporation must submit to the city the following supplemental information:

(a) A copy of the certificate of public convenience and necessity issued by the CPUC to the applicant, and a copy of the CPUC decision that authorizes the applicant to provide the telecommunications service for which the facilities are proposed to be constructed in the city's public rights-of-way; provided, however, that these requirements may be waived by the city where the applicant has submitted these documents in connection with a prior application, and there have been no amendments or supplements to these documents.

(b) If the applicant has obtained from the CPUC a certificate of public convenience to operate as a "competitive local carrier," the following additional requirements are applicable:

(i) As required by Decision No. 95-12-057 of the CPUC, the applicant must establish that it has timely filed with the city a quarterly report that describes the type of construction and the location of each construction project proposed to be undertaken in the city during the calendar quarter in which the application is filed, which information is sufficient to enable the city to coordinate multiple projects, as may be necessary.

(ii) If the applicant's proposed construction project will extend beyond the utility rights-of-way into undisturbed areas or other rights-of-way, the applicant must establish that it has filed a petition with the CPUC to amend its certificate of public convenience and necessity and that the proposed construction project has been subjected to a full-scale environmental analysis by the CPUC, as required by Decision No. 95-12-057 of the CPUC.

(iii) The applicant must inform the city whether its proposed construction project will be subject to any of the mitigation measures specified in the Negative Declaration ["Competitive Local Carriers (CLCs) Projects for Local Exchange Communication Service throughout California"] or to the Mitigation Monitoring Plan adopted in connection with Decision No. 95-12-057 of the CPUC. The city's issuance of a ministerial permit will be conditioned upon the applicant's compliance with all applicable mitigation measures and monitoring requirements imposed by the CPUC upon telephone corporations that are designated as "competitive local carriers."

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(C) In recognition of the fact that numerous excavations in the public rights-of-way diminish the useful life of the surface pavement, and for the purpose of mitigating the adverse impacts of numerous excavations on the quality and longevity of public street maintenance within the city, the following policies and procedures are adopted:

(1) The city manager is directed to ensure that all public utilities, including telephone corporations, comply with all local design, construction, maintenance and safety standards that are contained within, or are related to, a ministerial permit that authorizes the construction of facilities within the public rights-of-way.

(2) The city manager is directed to coordinate the construction and installation of facilities by public utilities, including telephone corporations, in order to minimize the number of excavations in the public rights-of-way. In this regard, based upon projected plans for street construction or renovation projects, the city manager is authorized to establish on a quarterly basis one (1) or more construction time periods or "windows" for the installation of facilities within the public rights-of-way. Telephone corporations and other public utilities that submit applications for ministerial permits to construct facilities after a predetermined date may be required to delay that construction until the next quarterly "window" that is established by the city.

(D) The city reserves all rights that it now possesses or may later acquire with respect to the regulation of any cable or telecommunications service that is provided, or proposed to be provided, by a telephone corporation. These reserved rights may relate, without limitation, to the imposition of reasonable conditions in addition to or different from those set forth in this section, the exaction of a fee or other form of consideration or compensation for use of public rights-of-way, and related matters; provided, however, that such regulatory rights and authority must be consistent with federal and state law that is applicable to cable or telecommunications services provided by telephone corporations.

(Ord. No. 98-18, § 1, 6-15-98)

ARTICLE 5. - DEFINITIONS

Sec. 19-16. - Defined terms and phrases.

Sec. 19-16. - Defined terms and phrases.

(A) For the purposes of this chapter, the words, terms, phrases, and their derivations set forth in this Article 5 have the meanings set forth below. Words used in the present tense include the future tense, and words in the singular include the plural number.

"Cable service" means the one-way transmission to subscribers of video programming, or other programming services, and subscriber interaction, if any, that is required for the selection or use of that video programming or other programming service. For the purposes of this definition, "video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station; and "other programming service" means information that a cable system operator makes available to all subscribers generally.

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"Cable system," or "cable communications system" or "cable television system," means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service that includes video programming and that is provided to multiple subscribers within a community. The term "cable system" does not include:

- (i) A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
- (ii) A facility that serves subscribers without using any public right-of-way;
- (iii) A facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Telecommunications Act of 1996, except that such facility will be considered a cable system (other than for purposes specified in Section 621(c) of the 1984 Cable Act) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- (iv) An open video system that complies with Section 653 of Title VI of the Telecommunications Act of 1996; or
- (v) Any facilities of an electric utility that are used solely for operating its electric utility system.

"Cable system operator" means any person or group of persons:

- (i) Who provides cable service over a cable system and directly or through one (1) or more affiliates owns a significant interest in that cable system; or
- (ii) Who otherwise controls or is responsible for, through any arrangement, the management and operation of that cable system.

"City" means the City of Costa Mesa as represented by its City Council or by any delegate acting within the scope of its delegated authority.

"_____ CFR § _____" means the Code of Federal Regulations. Thus, the citation of "47 CFR 80.1" refers to Title 47, part 80, section 1, of the Code of Federal Regulations. "Communications Act" means the Communications Act of 1934 (48 Stat. 1064, enacted June 19, 1934), as amended by the Cable Communications Policy Act of 1984 (Public Law No. 98-549, enacted October 30, 1984), the Cable Television Consumer Protection and Competition Act of 1992 (Public Law No. 102-385, enacted October 5, 1992), and the Telecommunications Act of 1996 (Public Law No. 104-104, enacted February 8, 1996). The Communications Act is codified at 47 U.S.C. §§ 151-613.

"FCC" or "Federal Communications Commission" means the federal administrative agency, or any lawful successor, that is authorized to regulate telecommunications services and telecommunications service providers on a national level.

"Franchise" means an initial authorization, or the renewal of an initial authorization, issued by the city council, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction or operation of a cable system.

"Franchise fee" means any fee or assessment of any kind that is authorized by state or federal law to be imposed by the city on a grantee as compensation in the nature of rent for the grantee's use of the public rights-of-way. The term "franchise fee" does not include:

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- (i) Any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services);
- (ii) Capital costs that are required by the franchise to be incurred by grantee for public, educational, or governmental access facilities;
- (iii) Costs or charges that are incidental to the award or enforcement of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or
- (iv) Any fee imposed under Title 17, United States Code.

"Franchise service area" or "service area" means the entire geographic area of the city as it is now constituted, or may in the future be constituted, unless otherwise specified in the ordinance or resolution granting a franchise, or in a franchise agreement.

"Grantee" means any person that is awarded a franchise in accordance with this chapter, and that person's lawful successor, transferee, or assignee.

"Gross annual cable service revenues" means the annual gross revenues derived from the grantee's operations of its cable television system to provide cable services within the city, excluding uncollected bad debt, refundable deposits, rebates or credits, and further excluding any sales, excise, or other taxes or charges that are required to be collected for direct pass-through to the local, state or federal government. Revenues identified and collected from subscribers as franchise fees may not be excluded from a grantee's gross annual cable service revenues.

"Gross annual telecommunications service revenues" means the annual revenues received by a grantee from the operation of a cable system to provide telecommunications services other than cable services.

"Multichannel video programming distributor" or "video programming distributor" means a person such as, but not limited to, a cable system operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available multiple channels of video programming for purchase by subscribers or customers.

"Open video system" means a facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service, including video programming, and that is provided to multiple subscribers within the city, provided that the FCC has certified that such system complies with 47 CFR § 1500 et seq., entitled "Open Video Systems."

"Open video system operator" means any person or group of persons who provides cable service over an open video system and directly or through one (1) or more affiliates owns a significant interest in that open video system, or otherwise controls or is responsible for the management and operation of that open video system.

"Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

"Public, educational or government access facilities" or "PEG access facilities," means the total of the following:

- (i) Channel capacity designated for noncommercial public, educational, or government use; and

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(ii) Facilities and equipment for the use of that channel capacity.

"Subscriber" or "customer" or "consumer" means any person who, for any purpose, subscribes to the services provided by a multichannel video programming distributor and who pays the charges for those services.

"Street" or "public way" means each of the following that has been dedicated to the public and maintained under public authority or by others and is located within the city limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way, and similar public property that the city from time to time authorizes to be included within the definition of a street.

"Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

"Telecommunications equipment" means equipment, other than customer premises equipment, used by a telecommunications service provider to provide telecommunications service, including software that is integral to that equipment.

"Telecommunications service" means the offering of telecommunications directly to the public for a fee, or to such classes of users as to be effectively available directly to the public, regardless of the equipment or facilities that are used.

"Telecommunications service provider" means any provider of telecommunications service.

"_____ U.S.C. § _____" means the United States Code. Thus, the citation of "47 U.S.C. § 153" refers to Title 47, section 153, of the United States Code.

"Video programming provider" means any person or group of persons who has the right under the federal copyright laws to select and to contract for the carriage of specific video programming on any cable or video system.

"Video provider" means any person, company, or service that provides one (1) or more channels of video programming to a residence, including a home, condominium, apartment, or mobilehome, where some fee is paid for that service, whether directly or as included in dues or rental charges, and whether or not public rights-of-way are used in the delivery of that video programming. A "video provider" includes, without limitation, providers of cable television service, master antenna television, satellite master antenna television, direct broadcast satellite, multipoint distribution services, and other providers of video programming, whatever their technology.

(B) Unless otherwise expressly stated, words, terms, and phrases not defined in this Article 5 will be given their meaning as used in Title 47 of the United States Code, as now existing or hereafter amended, and, if not defined in that Code, their meaning as used in Title 47 of the Code of Federal Regulations.

(Ord. No. 98-18, § 1, 6-15-98; Ord. No. 07-20, § 1, 12-4-07)

ARTICLE 6. - PUBLIC, EDUCATIONAL AND GOVERNMENTAL (PEG) ACCESS CHANNEL FEE

Sec. 19-17. - Public, educational and governmental (PEG) access channel fee.

Sec. 19-17. - Public, educational and governmental (PEG) access channel fee.

Any video service provider, cable service or video system service provider holding a state issued franchise pursuant to the Digital Infrastructure and Video Competition Act of 2006 (the "Act," Public Utilities Code 5 5800 et seq.) or a City of Costa Mesa franchise shall be subject to a fee, which shall not exceed one (1) percent of the holder's gross revenues as defined in Public Utilities Code section 5860 or any subsequent amendment thereof. The fee shall be used to support public, educational and governmental (PEG) channel activities.

The PEG fee required to be paid by this section shall be remitted to the city within forty-five (45) days after the end of the fiscal year for which the fee is being paid, regardless of when during the fiscal year video services commenced being offered in the city. Each payment shall be accompanied by a summary explaining the basis for the calculation of the PEG fee. If the video service provider does not pay the PEG fee when due, the video service provider shall pay a late payment charge at a rate per year equal to the highest prime lending rate during the period of delinquency, plus one (1) percent. If the video service provider has overpaid its PEG fee, it may deduct the overpayment from its next annual payment.

(Ord. No. 07-20, § 1, 12-4-07)

ARTICLE 7. - VIOLATIONS; SEVERABILITY

Sec. 19-18. - Violations; enforcement.

Sec. 19-19. - Severability.

Secs. 19-20—19-300. - Reserved.

Sec. 19-18. - Violations; enforcement.

(A) Any person who willfully violates any provision of this chapter is guilty of a misdemeanor and is punishable as provided for in Chapter 1-33 of Title 1 of this Code.

(B) The misdemeanor penalty specified above in paragraph (A) is not applicable to a violation of any provision of this chapter for which another sanction or penalty may be imposed under any franchise, license, lease, or similar written agreement between the city and a multichannel video programming distributor or other telecommunications service provider.

(C) The city may initiate a civil action in any court of competent jurisdiction to enjoin any violation of this chapter.

(Ord. No. 98-18, § 1, 6-15-98)

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Sec. 19-19. - Severability.

If any provision of this chapter is rendered invalid by any court of competent jurisdiction, or by any federal or state agency having jurisdiction over its subject matter, or is determined by that court or agency to require modification in order to conform to the requirements of any paramount law or regulation, then that provision will be deemed a separate, distinct, and independent part of this chapter, and such invalidity will not affect the validity and enforceability of any other provisions. If any paramount federal or state law or regulation is subsequently repealed or amended so that the provision of this chapter that is rendered invalid or subject to modification is no longer in conflict with that law or regulation, then that provision will again become effective and will thereafter be binding on the city and any affected cable operator or telecommunications service provider; provided, however, that the city must give the affected cable operator or telecommunications service provider thirty (30) days written notice of that change before requiring compliance with that provision, or such longer period of time as may be reasonably required for the cable operator or telecommunications service provider to comply with that provision.

(Ord. No. 98-18, § 1, 6-15-98)

Secs. 19-20—19-300. - Reserved.