

## Chapter 5.12 COMMUNITY ANTENNA TELEVISION FRANCHISES\*

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\* For statutory provisions on community antenna television systems, see Gov. Code § 53066.

### **5.12.010 Definitions.**

For the purposes of this chapter, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given in this section. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

- A. "Board" means the present governing body of the county or any future board constituting the legislative body of the county.
- B. "CATV" means a community antenna television system as defined in this section.
- C. "Community antenna television system" means a system of antennas, coaxial cables, wires, wave guides or other conductors, equipment or facilities designed, constructed or used for the purpose of providing television or FM radio service by cable or through its facilities as contemplated in this chapter. "CATV" does not mean or include the transmission of any special program or event for which a separate and distinct charge is made to the subscriber in the manner commonly known and referred to as "pay television."
- D. "Franchise" means and includes any nonexclusive authorization granted under this chapter in terms of a franchise, privilege, permit, license or otherwise to construct, operate and maintain a CATV system in the unincorporated area of the county.
- E. "Franchise area" means the territory within the county throughout which the grantee is authorized under this chapter to construct, maintain and operate its system and includes any enlargements thereof and additions thereto.
- F. "Grantee" means the person, firm or corporation to whom or which a franchise, as defined in this section is granted by the board under this chapter, and the lawful successor, transferee or assignee of the person, firm or corporation.

G. "Gross annual receipts" means any and all compensation and other consideration in any form whatever, including installation and line extension charges, and any contributing grant or subsidy received directly or indirectly by a grantee from subscribers or users in payment for television or FM radio signals, or service received within the county. "Gross annual receipts" does not include any taxes on services furnished by the grantee imposed directly on any subscriber or user by any city, state or other governmental unit and collected by the grantee for such governmental unit.

H. "Property of grantee" means all property owned, installed or used by a grantee in the conduct of a CATV business in the county under the authority of a nonexclusive franchise granted pursuant to this chapter.

I. "Street" means the surface of and the space above and below any public street, road, highway, freeway, land, path, alley, court, sidewalk, parkway or drive, now or hereafter existing as such within the county.

J. "Subscriber" means any person or entity receiving, for any purpose, the CATV service of a grantee.

K. "Basic service" means VHF numerical channels 2 through 13. All CATV charges for basic services are regulated by this chapter.

(Ord. 1410 § 3, 1981; Ord. 525 § 11.01.010, 1969)

#### **5.12.020 Granting authority.**

A. A nonexclusive franchise to construct, operate and maintain a CATV system within a franchise area may be granted by the board to any person, firm or corporation, whether operating under an existing franchise or not, who or which offers to furnish and provide such system under and pursuant to the terms and provisions.

B. No provision of this chapter may be deemed or construed as to require granting of a franchise when in the opinion of the board it is in the public interest not to do so or to restrict the number of grantees.

C. The board shall designate and delineate by resolution franchise areas in which nonexclusive franchises may be granted pursuant to this chapter.

(Ord. 525 § 11.01.030, 1969)

#### **5.12.030 Uses authorized.**

A. Any franchise granted pursuant to the provisions of this chapter shall authorize and permit the grantee to engage in the business of operating and providing a CATV system in the county, and for the purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any public street such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, attachments and other property as may be necessary and appurtenant to the CATV system; and, in addition, to so use, operate and provide similar facilities or properties rented, or leased from other persons, firms or corporations, including but not limited to any public utility or other grantee franchised or permitted to do business in the county.

B. The granting of a franchise pursuant to this chapter shall not be construed as permission or authority to enter on, occupy or otherwise utilize private property without the express consent of the owner or agent in possession thereof.

C. No franchise granted under this chapter shall be construed as a franchise, permit or license to transmit any special program or event for which a separate and distinct charge is made to the subscriber in the manner commonly known and referred to as "pay television," and no grantee shall directly or indirectly install, maintain or operate on any television set a coin box or any other device or means for collection of money for individual programs.

(Ord. 2048 § 1, 1989; Ord. 525 § 11.01.040, 1969)

#### **5.12.040 Duration--Termination.**

A. No franchise granted by the board under this chapter shall be for a term longer than twenty years following the date of acceptance of such franchise by the grantee or the renewal thereof.

B. Any such franchise granted under this chapter may be terminated prior to its date of expiration by the board in the event that the board finds, after thirty days' notice of any proposed termination and public hearing:

1. That the grantee has failed to comply with any provision of this chapter or has, by act or omission, violated any term or condition of any franchise or permit issued under this chapter; or
2. That any provision of this chapter has become invalid or unenforceable and the board further finds that such provision constitutes a consideration material to the grant of such franchise; or
3. The county requires the CATV system property of the grantee.

(Ord. 525 § 11.01.050, 1969)

#### **5.12.050 Payments.**

A. Any grantee granted a franchise under this chapter shall pay to the county, during the life of such franchise, a sum equal to five percent of the gross annual receipts of the grantee and, in addition thereto, such other sums as may be provided for in the grantee's franchise. Such payment by the grantee to the county shall be made each fiscal year, or as otherwise provided in the grantee's franchise, by delivery of the same to the county auditor. Franchise payments required under this chapter shall be in lieu of any business license, occupation tax or similar levy over which the board has control.

B. The grantee shall file with the auditor, within sixty days after the expiration of any fiscal (July 1st to June 30th) year or portion thereof during which such franchise is in force, a financial statement prepared by a certified public accountant, or person otherwise satisfactory to the board, showing in detail the gross annual receipts, as defined in Section 5.12.010, of the grantee during the fiscal calendar year or portion thereof. It is the duty of the grantee to pay to the county, within fifteen days after the time for filing such statements, the sum prescribed by this section or any unpaid balance thereof for the fiscal year or portion thereof covered by such statements.

C. Commencing with the first full year of service under a franchise during which payments under this section amount to less than six hundred dollars per year, the grantee shall pay the county an amount equal to five percent of the gross annual receipts of the grantee, not to exceed six hundred dollars per year.

D. The county has the right to inspect the grantee's records showing the gross receipts from which its franchise payments are computed and the right to audit and recomputations of any and all amounts paid under this chapter. No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the county may have for further or additional sums payable under this chapter or for the performance of any other obligation under this chapter.

E. In the event of any holding over after expiration or other termination of any franchise granted under this chapter without the consent of the county, the grantee shall pay to the county reasonable compensation and damages, of not less than one hundred percent of its total gross during the period.

(Ord. 2048 § 2, 1989; Ord. 1672 §§ 1 and 2, 1984; Ord. 1045 § 18(a), 1978; Ord. 525 § 11.01.060, 1969)

#### **5.12.060 Limitations.**

A. Any franchise granted under this chapter shall be nonexclusive.

B. No privilege or exemption shall be granted or conferred by any franchise granted under this chapter except those specifically prescribed in this chapter.

C. Any privilege claimed under such franchise by the grantee in any street or other public property shall be subordinate to any prior lawful occupancy of the streets or other public property.

D. Any franchise shall be a privilege to be held in personal trust by the original grantee. It cannot in any event be sold, transferred, leased, assigned or disposed of, in whole or in part, either by forced or involuntary sale, or by voluntary sale, merger, consolidation, change in control of a corporation or company, stock transfer, transfer in trust, mortgage, or other hypothecation, or otherwise, without the prior consent of the board, expressed by resolution, and then only under such conditions as may be prescribed in such resolution. Any such transfer or assignment shall be made only by an instrument in writing, a duly executed copy of which shall be filed with the board within thirty days after any such transfer or assignment. The consent of the board may not be arbitrarily refused; provided, however, the proposed assignee must show financial responsibility and must agree to comply with all provisions of this chapter; and provided further, that no such consent shall be required for a transfer in trust, mortgage or other hypothecation as a whole, to secure an indebtedness.

E. Time shall be of the essence of any franchise granted under this chapter. The grantee shall not be relieved of his obligation to comply promptly with any of the provisions of this chapter or by any failure of the county to enforce prompt compliance.

F. Any right or power in, or duty impressed upon, any officer, employee, department or board of the county shall be subject to transfer by the county to any other officer, employee, department or board of the county.

G. The grantee shall have no recourse whatsoever against the county for any loss, cost, expense or damage arising out of any provision or requirement of this chapter or of any franchise issued under this chapter or because of its enforcement.

H. The grantee shall be subject to all provisions, rules, regulations and conditions prescribed by federal, state, county and local law heretofore or hereafter enacted or established during the term of any franchise granted under this chapter. Copies of all petitions, applications and communications submitted by the grantee to the Federal Communications Commission, Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting CATV operations authorized pursuant to this franchise shall also be submitted simultaneously to the board.

I. Any such franchise granted shall not relieve the grantee of any obligation involved in obtaining pole space from any department of the county, utility company or from others maintaining poles in streets.

J. Any franchise granted under this chapter shall be in lieu of any and all other rights, privileges, powers, immunities and authorities owned, possessed, controlled or exercisable by the grantee, or any successor to any interest of the grantee, of or pertaining to the construction, operation or maintenance of any CATV system in the county, and the acceptance of any franchise under this chapter shall operate, as between the grantee and the county, as an abandonment of any and all such rights, privileges, powers, immunities and authorities within the county, to the effect that as between grantee and the county, any and all construction, operation and maintenance by any grantee of any CATV system in the county shall be, and shall be deemed and construed in all instances and respects to be, under and pursuant to the franchise, and not under or pursuant to any other right, privilege, power, immunity or authority whatsoever.

(Ord. 525 § 11.01.070, 1969).

#### **5.12.070 Rights reserved to county.**

A. Nothing in this chapter shall be deemed or construed to impair or affect, in any way, to any extent, the right of the county to acquire the property of the grantee, either by purchase or through the exercise of the right of eminent domain, at a fair and just value, which shall not include any amount for the franchise itself or for any of the rights or privileges granted, and nothing contained in this chapter shall be construed to contract away or to modify or abridge, either for a term or in perpetuity, the county's right of eminent domain.

B. There is reserved to the county every right and power which is required to be reserved or provided by ordinance, code or resolution of the county, and the grantee, by its acceptance of any franchise, agrees to be bound thereby and to comply with any action or requirements of the county in its exercise of such rights or power heretofore or hereafter enacted or established.

C. Neither the granting of any franchise under this chapter nor any of the provisions contained in this chapter shall be construed to prevent the county from granting any identical or similar franchise to any other person, firm or corporation, within all or any portion of the county.

D. There is reserved to the county the power to amend any section or part of this chapter so as to require additional bonding, insurance or greater standards of construction, operation, maintenance or otherwise on the part of the grantee.

E. Neither the granting of any franchise nor any provision of this chapter shall constitute a waiver or bar to the exercise of any governmental right or power of the county.

F. The board may do all things which are necessary and convenient in the exercise of its jurisdiction under this chapter and may determine any question of fact which may arise during the existence of any franchise granted under this chapter. The administrative officer is

authorized and empowered to adjust, settle or compromise any controversy or charge arising from the operations of any grantee under this chapter, on behalf of either the county, the grantee or any subscriber, in the best interest of the public. Either the grantee or any member of the public who may be dissatisfied with the decision of the administrative officer may appeal the matter to the board for hearing and determination. The board may accept, reject or modify the decision of the administrative officer, and the board may adjust, settle or compromise any controversy or cancel any charge arising from the operations of any grantee or from any provision of this chapter.

(Ord. 525 § 11.01.080, 1969).

### **5.12.080 Application--Fee--Contents.**

A. Application for a franchise under this chapter shall be in writing, shall be accompanied by an application fee of one hundred fifty dollars, shall be filed with the board and shall contain the following information:

1. The name and address of the applicant. If the applicant is a partnership, the name and address of each partner shall also be set forth. If the applicant is a corporation, the application shall also state the names and addresses of its directors, main offices, major stockholders and associates, and the names and addresses of parent and subsidiary companies;
2. A statement and description of the CATV system proposed to be constructed, installed, maintained or operated by the applicant; the proposed location of such system and its various components; the manner in which applicant proposes to construct, install, maintain and operate the same; and, particularly, the extent and manner in which existing or future poles or other facilities of other public utilities will be used for such system;
3. A description, in detail, of the equipment or facilities proposed to be constructed, installed and maintained;
4. A map specifically showing and delineating the proposed service area or areas within which applicant proposes to provide CATV services and for which a franchise is requested if said area is less than the entire county;
5. A statement or schedule setting forth the number of channels and all of the television or radio stations proposed to be received, transmitted, conducted, relayed or otherwise conveyed over its system;
6. A cable operator shall designate a minimum of three channels for public, educational or governmental use. Cable operator shall retain control of the designated public channel, and shall adopt reasonable and equitable rules for scheduling and access to the channel;
7. A copy of any contract, if existing, between the applicant and any public utility providing for the use of facilities of such public utility, such as poles, lines or conduits;
8. A statement setting forth all agreements and understandings, whether written, oral or implied, existing between the applicant and any person, firm or corporation with respect to the proposed franchise or the proposed CATV operation. If a franchise is granted to a person, firm or corporation posing as a front or as the representative of another person, firm or corporation and such information is not disclosed in the original application, such franchise shall be deemed void and of no force and effect whatsoever;

9. A financial statement prepared by a certified public accountant, or person otherwise satisfactory to the board showing applicant's financial status and his financial ability to complete the construction and installation of the proposed CATV system.

B. The board may, at any time, demand, and the applicant shall provide, such supplementary, additional or other information as the board may deem reasonably necessary to determine whether the requested franchise should be granted.

(Ord. 2048 § 3, 1989; Ord. 525 § 11.01.200, 1969)

#### **5.12.090 Hearing--Notice.**

A. Upon receipt of an application for a franchise under this chapter, the board, if it desires to consider the granting of the franchise, shall pass a resolution declaring its intention to consider the application, setting forth a notice of the day, hour and place when and where any and all persons may appear before the board and be heard thereon, and directing the clerk of the board to publish the notice in the official newspaper at least once within ten days after the passage of the resolution. The time fixed for such hearing shall be not fewer than fifteen days nor more than sixty days after the date of the passage of the resolution.

B. The notice shall state the name of the applicant, the terms of the franchise, any amounts or percentages grantee shall pay to the county during the life of such franchise, any limitations as to time, place or type of service proposed, together with a general statement of the other major provisions of the proposed franchise, and that copies of the proposed franchise may be obtained at the office of the clerk of the board.

(Ord. 525 § 11.01.210, 1969)

#### **5.12.100 Hearing--Written protest.**

At any time not later than the hour set for the hearing, any person interested may make written protest stating objections against the granting of the franchise. Such protests must be signed by the protestant and delivered to the clerk of the board.

(Ord. 525 § 11.01.220, 1969)

#### **5.12.110 Hearing--Procedure.**

At the time set for the hearing, the board shall proceed to hear the matter and all persons shall be given opportunity to present their arguments. The board may adjourn the hearing from time to time.

(Ord. 525 § 11.01.230, 1969)

#### **5.12.120 Advertisement for competitive bids.**



The board may, in its discretion, in lieu of considering applications for franchises under this chapter, advertise for competitive bids for the purchase of a franchise under this chapter.

(Ord. 525 § 11.01.240, 1969)

#### **5.12.130 Granting or refusal.**

Upon consideration of an application or bids for a franchise, the board may refuse to grant the requested franchise or the board may by ordinance grant a franchise for a CATV system to any applicant or bidder as may appear from said application or bids to be in its opinion best qualified to render proper and efficient CATV service to television viewers and subscribers in the county. The board's decision in the matter shall be final.

(Ord. 525 § 11.01.250, 1969)

#### **5.12.140 Certain condition required to be included.**

A. Any franchise granted pursuant to this chapter shall include the following condition:

"The CATV system herein franchised shall be used and operated solely and exclusively for the purpose expressly authorized by this ordinance and no other purpose whatsoever."

B. Inclusion of the statement set forth in subsection A of this section in any such franchise shall not be deemed to limit the authority of the county to include any other reasonable condition, limitation or restriction which it may deem necessary to impose in connection with such franchise pursuant to the authority conferred by this chapter.

(Ord. 525 § 11.01.260, 1969)

#### **5.12.150 Renewal.**

Any franchise granted under this chapter is renewable at the application of the grantee, in the same manner as required in this chapter for obtaining the original franchise, except those which are by their terms expressly inapplicable; provided, however, that the board may at its option waive compliance with any or all of the requirements of Section 5.12.180.

(Ord. 525 § 11.01.270, 1969)

#### **5.12.160 Effective date--Written acceptance.**

A. No franchise granted pursuant to the provisions of this chapter shall become effective unless and until the resolution granting the same has become effective and, in addition, unless and until all things required in this section and Section 5.12.250 are done and completed, all of such things being declared to be conditions precedent to the effectiveness of any such franchise granted under this chapter. In the event any of such things are not done and completed in the time and manner required, the board may declare the franchise null and void.

B. Within thirty days after the effective date of the ordinance awarding a franchise, or within such extended period of time as the board in its discretion may authorize, the grantee shall file with the board his written acceptance, in form satisfactory to the county counsel, of the franchise, together with the bond and insurance policies required by Sections 5.12.240 and 5.12.250, respectively, and his agreement to be bound by and to comply with and to do all things required of him by the provisions of this chapter and the franchise. Such acceptance and agreement shall be acknowledged by the grantee before a notary public, and shall in form and content be satisfactory to and approved by the county counsel.

(Ord. 2048 § 4, 1989; Ord. 525 § 11.01.280, 1969)

#### **5.12.170 Use of utility poles and facilities.**

When any portion of the CATV system is to be installed on public utility poles and facilities, certified copies of the agreements for such joint use of poles and facilities shall be filed with the board.

(Ord. 525 § 11.01.190, 1969)

#### **5.12.180 Exclusive use of telephone facilities.**

When and in the event that the grantee of any franchise granted under this chapter constructs, operates and maintains a CATV system exclusively through telephone company facilities constructed, operated and maintained pursuant to a state-granted telephone franchise and offers proof satisfactory to the board of supervisors that in no event during the life of such franchise shall the grantee make any use of the streets independently of such telephone company facilities, the grantee shall be required to comply with all of the provisions of this chapter as a "licensee" and, in such event, whenever the term "grantee" is used in this chapter, it shall be deemed to mean and include "licensee."

(Ord. 525 § 11.01.020, 1969)

#### **5.12.190 Time limits on obtaining permits, installing system and commencing service.**

A. Within sixty days after acceptance of any franchise, the grantee shall make application for and diligently pursue the obtaining of all necessary permits and authorizations which are required in the conduct of its business, including, but not limited to, any utility joint use attachment agreements, microwave carrier licenses, and any other permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of CATV systems, their associated microwave transmission facilities, or any other associated facility.

B. The grantee shall commence construction and installation of the CATV system either within ninety days after obtaining all necessary permits, licenses and authorizations or within ninety days after not fewer than nine VHF and/or UHF stations provide predicted Grade B or better signal level to any portion of the county, whichever occurs first.

C. Within one hundred eighty days after the commencement of construction and installation of the system, the grantee shall proceed to render service to subscribers, and the completion

of the construction and installation shall be pursued with reasonable diligence thereafter, so that service to all of the developed streets and areas within the county as designated on the map accompanying the application for franchise, as provided in Section 5.12.080, service was first provided. Within a franchise area, service shall be extended to any future dwelling, contiguous to the existing cable system, in areas with a density of forty homes per street mile. Service shall also be extended to any future dwelling where there are five or more dwelling units within eight hundred feet, measured from the system as it then exists. However, the licensee shall not be required to provide service to any subscriber who does not pay the applicable connection fee or monthly service charge.

D. Failure on the part of the grantee to commence and diligently pursue each of the foregoing requirements and to complete each of the matters set forth in this section shall be grounds for termination of such franchise, under and pursuant to the terms of Section 5.12.040; provided, however, that the board, in its discretion, may extend the time for obtaining of permits and authorizations and for the commencement and completion of construction and installation for additional periods in the event the grantee, acting in good faith, experiences delays by reason of circumstances beyond his control.

(Ord. 1479 § 1, 1982; Ord. 525 § 11.01.090, 1969).

#### **5.12.200 Location of property of grantee.**

A. Any poles, wires, cable lines, conduits or other properties of the grantee to be constructed or installed in streets shall be constructed or installed only at such locations and in such manner as approved by the director of public works, acting in the exercise of his reasonable discretion.

B. The grantee shall not install or erect any facilities or apparatus in or on other public property, places or rights-of-way, or within any privately owned area within the county which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the county, except those installed or erected upon public utility facilities now existing, without obtaining the prior written approval of the director of public works.

C. In those areas and portions of the county where the transmission or distribution facilities of both the public utility providing telephone service and those of the utility providing electric service are underground or hereafter may be placed underground, then the grantee shall likewise construct, operate and maintain all of its transmissions and distribution facilities underground. For the purposes of this subsection, "underground" includes a partial underground system, e.g., streamlining. Amplifiers in the grantee's transmission and distribution lines may be in appropriate housings upon the surface of the ground as approved by the director of public works. The county shall not in any manner be responsible for any costs incurred by the grantee in placing the grantee's facilities underground.

(Ord. 525 § 11.01.100, 1969).

#### **5.12.210 Removal and abandonment of property of grantee.**

A. In the event that the use of any part of the CATV system is discontinued, for any reason, for a continuous period of twelve months, or in the event such system or property has been installed in any street or public place without complying with the requirements of the grantee's franchise or this chapter, or the franchise has been terminated or cancelled or has expired,

the grantee shall promptly, upon being given ten days' notice, remove from the streets or public places all such property and poles of such system, other than any which the director of public works may permit to be abandoned in place. In the event of such removal, the grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the director of public works.

B. Any property of the grantee remaining in place sixty days after the termination or expiration of the franchise shall be considered permanently abandoned. The director of public works may extend such time not to exceed an additional thirty days.

C. Any property of the grantee to be abandoned in place shall be abandoned in such manner as the director of public works prescribes. Subject to the provisions of any utility joint use attachment agreement, upon permanent abandonment of the property of the grantee in place, the property shall become that of the county, and the grantee shall submit to the board an instrument in writing, to be approved by the county counsel, transferring to the county the ownership of such property.

(Ord. 525 § 11.01.110, 1969).

#### **5.12.220 Changes required by public improvements.**

The grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of the grantee when required by the director of public works by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines and tracks or any other type of structures or improvements by public agencies; provided, however, that the grantee shall in all such cases have the privileges and be subject to the obligations to abandon any property of the grantee in place, as provided in Section 5.12.210.

(Ord. 525 § 11.01.120, 1969).

#### **5.12.230 Failure to perform required street work.**

Upon failure of the grantee to commence, pursue or complete any work required by law or by the provisions of this chapter or by its franchise to be done in any street or other public place, within the time prescribed and to the satisfaction of the director of public works, the director of public works may, at his option, cause such work to be done and the grantee shall pay to the county the cost thereof in the itemized amounts reported by the director of public works to the grantee within thirty days after receipt of such itemized report.

(Ord. 525 § 11.01.130, 1969).

#### **5.12.240 Faithful performance bond.**

A. Concurrently with the filing of and acceptance of award of any franchise granted under this chapter, the grantee shall file with the board, and at all times thereafter maintain in full force and effect for the term of such franchise or any renewal thereof, at the grantee's sole expense, a corporate surety bond in a company authorized to do business in the state and in

a form approved by the county counsel, in the amount of twenty-five thousand dollars, renewable annually, and conditioned upon the faithful performance of the grantee and upon the further condition that in the event grantee fails to comply with any one or more of the provisions of this chapter, or of any franchise issued to the grantee under this chapter, there shall be recoverable jointly and severally from the principal and surety of such bond any damages or loss suffered by the county as a result thereof, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the grantee as prescribed by this chapter which may be in default, plus a reasonable allowance for attorney's fees and costs, up to the full amount the bond. The condition shall be a continuing obligation for the duration of the franchise and any renewal thereof and thereafter until the grantee has liquidated all of its obligations with the county that may have arisen from its exercise of any privilege granted in such franchise. The bond shall provide that thirty days' prior written notice of intention not to renew, cancel or materially change be given to the county.

B. Neither the provisions of this section, nor any bond accepted by the county pursuant to this section, nor any damages recovered by the county under such bond, shall be construed to excuse faithful performance by the grantee or limit the liability of the grantee under any franchise issued under this chapter or for damages either to the full amount of the bond or otherwise.

(Ord. 525 § 11.01.140, 1969)

#### **5.12.250 Indemnification of county.**

A. The grantee shall indemnify and save harmless the county, its officers and employees from and against any and all claims, demand, actions, suits and proceedings by others, against all liability to others, including but not limited to any liability for damages by reason of or arising out of any failure by the grantee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by the grantee's CATV system, and against any loss, cost, expense and damages resulting therefrom, including reasonable attorney's fees, arising out of the exercise or enjoyment of its franchise.

B. The grantee shall indemnify and save harmless the county, its officers, boards, commissions, agents and employees from and against any and all liability claims, demands, actions, suits and proceedings by others, for loss or damage, for personal injury, death and property damage, occasioned by the operations of the grantee under this chapter and any franchise granted under this chapter; and the grantee shall, at all times during the existence of any franchise granted under this chapter, maintain in full force and effect, at its own cost and expense, a general comprehensive liability insurance policy protecting the county and all persons against liability for loss or damage or for personal injury, death and property damage, occasioned by the operations of the grantee under this chapter and any franchise granted under this chapter, with minimum liability limits of five hundred thousand dollars for personal injury to or death of any one person and seven hundred fifty thousand dollars for personal injury to or death of two or more persons in any one occurrence, and three hundred thousand dollars for damage to property resulting from one any occurrence. The grantee shall, concurrently with the filing of an acceptance of award of any franchise granted under this chapter, file with the board either a copy of such policy or a certificate of insurance evidencing the same, shall contain a contractual liability endorsement specifically extending the policy to cover the liability assumed by the grantee under this subsection, and shall also contain a provision that such policy may not be cancelled except after ten days' notice in writing to be given to the board.

(Ord. 2048 § 5, 1989; Ord. 525 § 11.01.150, 1969)

### 5.12.260 Operational standards.

A. The CATV system shall be installed and maintained in accordance with the highest and best accepted standards of the CATV industry, to the effect that subscribers shall receive the highest quality service technically possible.

B. In determining the satisfactory extent of such standards, the following, among others, shall be considered as minimum requirements.

1. The CATV system shall be installed using all band equipment capable of passing the entire VHF television and FM broadcast spectrum (i.e., no less than 50 to 220 megahertz, including the so-called "mid-band" region) and, further, it shall have the capability of converting the UHF television broadcasting range to channels between 50 and 220 megahertz for distribution to subscribers.

2. Signals shall be transmitted from the antenna origination point to all subscribers tap-off points, regardless of location on the distribution portion of the system, without the introduction of any noticeable degradation of color fidelity, picture intelligence or audio distortion.

3. Color phase shift introduced by system components between the off-the-air receiving antennas and the customer tap-off point shall not exceed two degrees under any circumstances, on a cumulative basis.

4. The system and all equipment in the system shall be rated for continuous twenty-four hour per day operation.

5. The system shall provide a signal level of not less than two thousand microvolts, as measured across seventy-two ohms at the subscriber's television receiver, on the highest channel (by frequency) carried on the system to all color television receivers connected to the system. No channel shall exceed the highest and lowest values for the highest and lowest channels by more than .5 decibels for more than fifty percent of the time.

6. The system shall provide equivalent service levels of not less than one thousand five hundred microvolts on the highest channel and not less than one thousand microvolts on the lowest channel, both as measured across the seventy-two-ohm drop cable, to all black and white receivers connected to the system.

7. The system shall provide a minimum signal of not less two hundred microvolts on the lowest intensity FM channel (as measured at the customer service drop termination point) delivered, and a maximum signal intensity of not more than three decibels greater level than the lowest intensity FM channel delivered by the cable (i.e., all FM channels carried by the system shall be flat to within three decibels of the lowest and highest FM channels carried, and the lowest of these shall be not lower than two hundred microvolts across seventy-two ohms).

8. The system design and operation shall exhibit a signal plus noise to noise ratio of not less than forty decibels, as measured at the extremities of all trunk and customer distribution lines covering the franchise area.

9. Hum modulation of the picture (video) carrier shall not exceed five percent at any point in the system.

10. All active components in the system shall have a VSWR not to exceed 1.5 to 1; all passive devices in the system shall have input, output and return losses of not less than twenty decibels.

11. The system shall maintain a minimum video carrier to aural carrier ratio of fifteen decibels and a maximum video carrier to aural carrier ratio of eighteen decibels for all television channels. This video carrier to aural carrier relationship shall be established in such a manner that the color subcarrier, if present, to video carrier relationship shall not be degraded below its as-received off-the-air ratio by more than .25 decibels.

12. Carriage of so-called local channels shall be accomplished in such a way that these channels, as delivered to the system subscribers, if delivered on-channel, shall be at least forty decibels stronger, as measured at the customer receiver tuner input terminals, than any stray direct pickup from these channels. If this is not possible, channel conversion of these stations shall be made to utilize other regular VHF channels, mid-band or octave channels for the delivery of these stations to the customers' receivers.

13. The system shall be designed in such a way that twelve-channel operation is possible at the outset, and that all parts replaced after March 31, 1982, shall have the capability of carrying twenty or more channels, utilizing either mid-band or super-band frequencies or octave frequency groupings.

a. If so-called mid-band or super-band frequencies for cable carriage of one or more channels are utilized, it shall be demonstrated that such carriage is possible in the county without introduction into the cable transmission lines of direct pick from radio services operating in the mid-band or super-band region, which would tend to interfere with the carriage of one or more proposed television channels in this frequency range.

b. If the octave-frequency grouping method of providing spectrum space for additional channels (more than twelve regular VHF channels) is utilized, it shall be demonstrated to the satisfaction of the chief administrative officer that such equipment is operational and available for delivery.

(Ord. 1479 § 2, 1982; Ord. 525 § 11.01.170, 1969).

#### **5.12.270 Matters to be filed with board.**

When not otherwise prescribed in this chapter, all matters required by this chapter to be filed with the county shall be filed with the board.

(Ord. 525 § 11.01.180(a), 1969).

#### **5.12.280 Service to be provided without charge to county-owned buildings.**

The grantee shall, without charge, provide all subscriber services of its system, including multiple connection services, to all public and nonprofit private schools, sheriff's office and fire protection district stations, county recreation centers, and such other buildings owned or controlled by the county, which shall from time to time be designated by the administrative officer, provided that such buildings shall be located within the franchise area. The grantee shall install, without charge to the county or such public or private schools up to two hundred feet of service connection from the transmission cable otherwise maintained or required to be maintained by the grantee for the service of paying subscribers of the grantee. The county or any such public or private schools shall pay to the grantee the costs of all labor and materials supplied by the grantee for the installation of any service connection in excess of the initial two hundred feet.

(Ord. 525 § 11.01.180(b), 1969).

#### **5.12.290 Services to be made available during emergency or disaster.**

In the case of any emergency or disaster, the grantee shall, upon request of the administrative officer, make available its facilities to the county for emergency use during the emergency or disaster period.

(Ord. 525 § 11.01.180(c), 1969).

#### **5.12.300 Prohibitions upon grantee.**

The grantee shall not engage directly or indirectly in the business of selling, leasing, renting, furnishing, providing, repairing or servicing any television, radio or any component part thereof within the county; and such prohibition extends and applies to the officers and directors of the grantee, to all general and limited partners of the grantee, to any person or combination of persons owning, holding, or controlling five percent or more of any corporate stock or other ownership interest of the grantee, or any affiliated or subsidiary entity owned or controlled by the grantee, or in which any officer, director, stockholder, general or limited partner, or person or group of persons holding, or controlling any ownership interest in the grantee, owns, holds or controls five percent or more of any corporate stock or other ownership interest; and such prohibition likewise applies to any person, firm or corporation acting or serving in the capacity of a holding or controlling company of the grantee.

(Ord. 1410 § 1, 1981: Ord. 525 § 11.01.180(d), 1969)

#### **5.12.310 Deletion, alteration or substitution of programming.**

The grantee is prohibited from deleting, revising, adding to or substituting any program of any television broadcast included in the twelve channels of basic service (VHF numerical channels 2 to 13) without prior written approval of the county counsel. Grantee may appeal any disapproval by the county counsel to the county board of supervisors.

(Ord. 1410 § 2, 1981: Ord. 525 § 11.01.180(e), 1969)

#### **5.12.312 Regulation of rates--Basic service.**

The grantee may offer additional channels to subscribers. The charges for such additional channels shall be set by grantee, but such charges must be uniformly imposed. Subscriber may elect to subscribe to such additional channels at his sole option.

(Ord. 2048 § 6, 1989: Ord. 1410 § 4, 1981)

#### **5.12.320 Office within county or toll-free telephone service required.**



The grantee shall maintain an office within the county, or at a location which subscribers may call without incurring added message or toll charges, so that CATV maintenance service shall be promptly available to subscribers.

(Ord. 525 § 11.01.180(f), 1969)

#### **5.12.330 Refusal of service.**

No person, firm or corporation in the existing service area of the grantee shall be arbitrarily refused service; provided, however, that the grantee shall not be required to provide service to any subscriber who does not pay the applicable connection fee or monthly service charge.

(Ord. 525 § 11.01.180(g), 1969)

#### **5.12.340 Contract required to contain certain provision.**

A. Before the grantee provides service to any subscriber, the grantee shall obtain a signed contract from the subscriber containing a provision substantially as follows:

Subscriber understands that in providing service, grantee is making use of public rights-of-way within the County of Calaveras, and that the continued use of the public rights-of-way is in no way guaranteed. In the event the continued use of such rights-of-way is denied to grantee for any reason, grantee will make every reasonable effort to provide service over alternate routes. Subscriber agrees he will make no claim nor undertake any action against the County of Calaveras, its officers, its employees, or grantee if a service to be provided by grantee hereunder is interrupted or discontinued because the continued use of such rights-of-way is denied to grantee for any reason.

B. The form of grantee's contract with its subscribers shall be subject to approval of the county counsel with respect to the inclusion of this provision.

(Ord. 525 § 11.01.180(h), 1969)

#### **5.12.350 Inspection of property and records.**

A. At all reasonable times, the grantee shall permit any duly authorized representative of the county to examine all property of the grantee, together with any appurtenant property of the grantee situated within or without the county, and to examine and transcribe any and all maps and other records kept or maintained by the grantee or under its control which deal with the operations, affairs, transactions or property of the grantee with respect to its franchise. If any such maps or records are not kept in the county, or upon reasonable request made available in the county, and if the board determines that an examination thereof is necessary or appropriate, then all travel and maintenance expense necessarily incurred in making such examination shall be paid by the grantee.

B. The grantee shall prepare and furnish to the director of public works and the auditor, at the times and in the form prescribed by either of said officers, such reports with respect to its operations, affairs, transactions or property as may be reasonably necessary or appropriate to the performance of any of the rights, functions or duties of the county or any of its officers in connection with the franchise.

C. The grantee shall, at all times, make and keep in his local office full and complete plans and records showing the exact location of all CATV system equipment installed or in use in streets and other public places in the county.

D. The grantee shall file with the director of public works, on or before the last day in June of each year, a current map or set of maps drawn to scale, showing all CATV system equipment installed and in place in streets and other public places in the county on base maps provided by county.

(Ord. 525 § 11.01.160, 1969).

#### **5.12.360 Prohibited acts designated.**

A. It is unlawful for any person to establish, operate or to carry on the business of distributing to any person in the county any television signals or radio signals by means of a CATV system unless a franchise therefor has first been obtained pursuant to the provisions of this chapter, and unless such franchise is in full force and effect.

B. It is unlawful for any person to construct, install or maintain within any public street in the county, or within any other public property of the county, or within any privately owned area within the county which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision or parcel map approved by the county, any equipment or facilities or distributing any television signals or radio signals through a CATV system, unless a franchise authorizing such use of such street or property or area has first been obtained pursuant to the provisions of this chapter, and unless such franchise is in full force and effect.

C. It is unlawful for any person, without the consent of the owner, to wilfully tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, programs or sound.

(Ord. 525 § 11.01.290, 1969).

#### **5.12.370 Penalty for violation.**

Anyone convicted of violating any of the provisions of this chapter shall, upon conviction, be punished by a fine not to exceed the sum of five hundred dollars, or by imprisonment in the county jail for not to exceed six months, or by both such fine and imprisonment.

(Ord. 525 § 11.01.300, 1969).

#### **5.12.380 Commission created.**

There is established a public, educational and governmental (PEG) television commission.

(Ord. 2169 (part), 1991).

**5.12.381 Membership.**

The commission shall consist of five members appointed by the board of supervisors. One member shall be appointed to represent each board member.

(Ord. 2169 (part), 1991).

**5.12.382 Terms of office.**

Commission members shall serve staggered two-year terms except as provided in Section 5.12.383. Two members of the initial commission shall serve one-year terms as designated by the board of supervisors.

(Ord. 2169 (part), 1991).

**5.12.383 Removal.**

The board of supervisors may remove any member of the commission without cause at any time.

(Ord. 2169 (part), 1991).

**5.12.384 Duties of the commission.**

A. The commission shall be responsible for the issuance of requests for proposal (RFP), for evaluation of proposals and for recommendations to the board of supervisors for expenditure of PEG funds received by the county from various cable television franchisees. These funds shall be expended in accordance with the 1984 Cable Communications Act for PEG services, facilities and equipment.

B. The commission shall work on other PEG related matters as assigned by the board of supervisors.

(Ord. 2169 (part), 1991).