

TITLE 9

BUSINESSES, PEDDLERS, SOLICITORS, ETC.¹

CHAPTER

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CHAPTER 1

MISCELLANEOUS

SECTION

9-101. "Going out of business" sales.

9-101. "Going out of business" sales. It shall be unlawful for any person to falsely represent a sale as being a "going out of business" sale. A "going out of business" sale, for the purposes of this section, shall be a "fire sale," "bankrupt sale," "loss of lease sale," or any other sale made in anticipation of the termination of a business at its present location. When any person after advertising a "going out of business" sale adds to his stock or fails to go out of business within ninety (90) days he shall prima facie be deemed to have violated this section. (1974 Code, § 5-102)

¹Municipal code references

Building, plumbing, wiring and housing regulations: title 12.

Junkyards: title 13.

Liquor and beer regulations: title 8.

Noise reductions: title 11.

Zoning: title 14.

CHAPTER 2

PEDDLERS, ETC.¹

SECTION

- 9-201. Permit required.
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9-201. Permit required. It shall be unlawful for any peddler, canvasser, or solicitor, or transient merchant to ply his trade within the corporate limits without first obtaining a permit therefor in compliance with the provisions of this chapter. No permit shall be used at any time by any person other than the one to whom it is issued. (1974 Code, § 5-201)

9-202. Exemptions. The terms of this chapter shall not be applicable to persons selling at wholesale to dealers, nor to newsboys, nor to bona fide merchants who merely deliver goods in the regular course of business, nor to bona fide charitable, religious, patriotic, or philanthropic organizations. (1974 Code, § 5-202)

9-203. Application for permit. Applicants for a permit under this chapter must file with the city clerk a sworn written application containing the following:

- (1) Name and physical description of applicant.
- (2) Complete permanent home address and local address of the applicant and, in the case of transient merchants, the local address from which proposed sales will be made.

¹Municipal code reference
Privilege taxes: title 5.

(3) A brief description of the nature of the business and the goods to be sold.

(4) If employed, the name and address of the employer, together with credentials therefrom establishing the exact relationship.

(5) The length of time for which the right to do business is desired.

(6) A recent clear photograph approximately two (2) inches square showing the head and shoulders of the applicant.

(7) The names of at least two (2) reputable local property owners who will certify as to the applicant's good moral reputation and business responsibility, or in lieu of the names of references, such other available evidence as will enable an investigator to properly evaluate the applicant's moral reputation and business responsibility.

(8) A statement as to whether or not the applicant has been convicted of any crime or misdemeanor or for violating any municipal ordinance; the nature of the offense; and, the punishment or penalty assessed therefor.

(9) The last three (3) cities or towns, if that many, where applicant carried on business immediately preceding the date of application and, in the case of transient merchants, the addresses from which such business was conducted in those municipalities.

(10) At the time of filing the application, a fee of five dollars (\$5.00) shall be paid to the municipality to cover the cost of investigating the facts stated therein. (1974 Code, § 5-203)

9-204. Issuance or refusal of permit. (1) Each application shall be referred to the chief of police for investigation. The chief shall report his findings to the city clerk within seventy-two (72) hours.

(2) If as a result of such investigation the chief reports the applicant's moral reputation and/or business responsibility to be unsatisfactory the city clerk shall notify the applicant that his application is disapproved and that no permit will be issued.

(3) If, on the other hand, the chief's report indicates that the moral reputation and business responsibility of the applicant are satisfactory the city clerk shall issue a permit upon the payment of all applicable privilege taxes and the filing of the bond required by section 9-206. The city clerk shall keep a permanent record of all permits issued. (1974 Code, § 5-204)

9-205. Appeal. Any person aggrieved by the action of the chief of police and/or the city clerk in the denial of a permit shall have the right to appeal to the governing body. Such appeal shall be taken by filing with the mayor within fourteen (14) days after notice of the action complained of, a written statement setting forth fully the grounds for the appeal. The mayor shall set a time and place for a hearing on such appeal and notice of the time and place of such

hearing shall be given to the appellant. The notice shall be in writing and shall be mailed, postage prepaid, to the applicant at his last known address at least five (5) days prior to the date set for hearing, or shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing. (1974 Code, § 5-205)

9-206. Bond. Every permittee shall file with the city clerk a surety bond running to the municipality in the amount of one thousand dollars (\$1,000.00). The bond shall be conditioned that the permittee shall comply fully with all the provisions of the ordinances of this municipality and the statutes of the state regulating peddlers, canvassers, solicitors, transient merchants, itinerant merchants, or itinerant vendors, as the case may be, and shall guarantee to any citizen of the municipality that all money paid as a down payment will be accounted for and applied according to the representations of the permittee, and further guaranteeing to any citizen of the municipality doing business with said permittee that the property purchased will be delivered according to the representations of the permittee. Action on such bond may be brought by any person aggrieved and for whose benefit, among others, the bond is given, but the surety may, by paying, pursuant to order of the court, the face amount of the bond to the city clerk of the court in which the suit is commenced, be relieved without costs of all further liability. (1974 Code, § 5-206)

9-207. Loud noises and speaking devices. No permittee, nor any person in his behalf, shall shout, cry out, blow a horn, ring a bell, or use any sound amplifying device upon any of the sidewalks, streets, alleys, parks, or other public places of the municipality or upon private premises where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the adjacent sidewalks, streets, alleys, parks, or other public places, for the purpose of attracting attention to any goods, wares, or merchandise which such permittee proposes to sell. (1974 Code, § 5-207)

9-208. Use of streets. No permittee shall have any exclusive right to any location in the public streets, nor shall any be permitted a stationary location thereon, nor shall any be permitted to operate in a congested area where such operation might impede or inconvenience the public use of such streets. For the purpose of this chapter, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested and the public impeded or inconvenienced. (1974 Code, § 5-208)

9-209. Exhibition of permit. Permittees are required to exhibit their permits at the request of any policeman or citizen. (1974 Code, § 5-209)

9-210. Policemen to enforce. It shall be the duty of all policemen to see that the provisions of this chapter are enforced. (1974 Code, § 5-210)

9-211. Revocation or suspension of permit. (1) Permits issued under the provisions of this chapter may be revoked by the governing body after notice and hearing, for any of the following causes:

(a) Fraud, misrepresentation, or incorrect statement contained in the application for permit or made in the course of carrying on the business of solicitor, canvasser, peddler, transient merchant, itinerant merchant, or itinerant vendor.

(b) Any violation of this chapter.

(c) Conviction of any crime or misdemeanor.

(d) Conducting the business of peddler, canvasser, solicitor, transient merchant, itinerant merchant, or itinerant vendor, as the case may be, in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public.

(2) Notice of the hearing for revocation of a permit shall be given by the city clerk in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed to the permittee at his last known address at least five (5) days prior to the date set for hearing or it shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing.

(3) When reasonably necessary in the public interest the mayor may suspend a permit pending the revocation hearing. (1974 Code, § 5-211)

9-212. Reapplication. No permittee whose permit has been revoked shall make further application until a period of at least six (6) months has elapsed since the last revocation. (1974 Code, § 5-212)

9-213. Expiration and renewal of permit. Permits issued under the provisions of this chapter shall expire on the same date that the permittee's privilege license expires and shall be renewed without cost if the permittee applies for and obtains a new privilege license within thirty (30) days thereafter. Permits issued to permittees who are not subject to a privilege tax shall be issued for one (1) year. An application for a renewal shall be made substantially in the same form as an original application. However, only so much of the application shall be completed as is necessary to reflect conditions which have changed since the last application was filed. (1974 Code, § 5-213)

CHAPTER 3

CHARITABLE SOLICITORS

SECTION

- 9-301. Permit required.
- 9-302. Prerequisites for a permit.
- 9-303. Denial of a permit.
- 9-304. Exhibition of permit.

9-301. Permit required. No person shall solicit contributions or anything else of value for any real or alleged charitable or religious purpose without a permit from the city clerk authorizing such solicitation. Provided, however, that this section shall not apply to any locally established organization or church operated exclusively for charitable or religious purposes if the solicitations are conducted exclusively among the members thereof, voluntarily and without remuneration for making such solicitations, or if the solicitations are in the form of collections or contributions at the regular assemblies of any such established organization or church. (1974 Code, § 5-301)

9-302. Prerequisites for a permit. The city clerk shall, upon application, issue a permit authorizing charitable or religious solicitations when, after a reasonable investigation, he finds the following facts to exist:

(1) The applicant has a good character and reputation for honesty and integrity, or if the applicant is not an individual person, that every member, managing officer, or agent of the applicant has a good character or reputation for honesty and integrity.

(2) The control and supervision of the solicitation will be under responsible and reliable persons.

(3) The applicant has not engaged in any fraudulent transaction or enterprise.

(4) The solicitation will not be a fraud on the public but will be for a bona fide charitable or religious purpose.

(5) The solicitation is prompted solely by a desire to finance the charitable cause described by the applicant. (1974 Code, § 5-302)

9-303. Denial of a permit. Any applicant for a permit to make charitable or religious solicitations may appeal to the governing body if he has not been granted a permit within fifteen (15) days after he makes application therefor. (1974 Code, § 5-303)

9-304. Exhibition of permit. Any solicitor required by this chapter to have a permit shall exhibit such permit at the request of any policeman or person solicited. (1974 Code, § 5-304)

CHAPTER 4

POOL ROOMS

SECTION

9-401. Prohibited in residential areas.

9-402. Hours of operation regulated.

9-403. Minors to be kept out; exception.

9-401. Prohibited in residential areas. It shall be unlawful for any person to open, maintain, conduct, or operate any place where pool tables or billiard tables are kept for public use or hire on any premises located in any block where fifty per cent (50%) or more of the land is used or zoned for residential purposes. (1974 Code, § 5-501)

9-402. Hours of operation regulated. It shall be unlawful for any person to open, maintain, conduct, or operate any place where pool tables or billiard tables are kept for public use or hire at any time on Sunday or between the hours of 11:00 p.m. and 6:00 a.m. on other days. (1974 Code, § 5-502)

9-403. Minors to be kept out; exception. It shall be unlawful for any person engaged regularly, or otherwise, in keeping billiard, bagatelle, or pool rooms or tables, their employees, agents, servants, or other persons for them, knowingly to permit any person under the age of eighteen (18) years to play on said tables at any game of billiards, bagatelle, pool, or other games requiring the use of cue and balls, without first having obtained the written consent of the father and mother of such minor, if living; if the father is dead, then the mother, guardian, or other person having legal control of such minor; or if the minor be in attendance as a student at some literary institution, then the written consent of the principal or person in charge of such school; provided that this section shall not apply to the use of billiards, bagatelle, and pool tables in private residences. (1974 Code, § 5-503)

CHAPTER 5

BROADBAND COMMUNICATION NETWORKS

SECTION

- 9-501. Purpose.
- 9-502. Definitions.
- 9-503. License requirement; authority granted by a license.
- 9-504. Terms and conditions for each license.
- 9-505. Selection of grantees.
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9-501. Purpose. The purpose of this chapter is to provide for the granting of non-exclusive licenses to construct, operate and maintain broadband communication networks in the public ways of the City of Charlotte; to provide for the specifications, procedures and standards for the same; to provide for the regulation of such networks; and to provide for the payment to the city for the privilege of exercising the rights granted by such licenses. (Ord. #83-1, Feb. 1983)

9-502. Definitions. The following terms, phrases and words and their derivatives shall have the meaning specified herein.

(1) "Annual gross revenues" shall mean all revenues received by the grantee, its affiliates, and/or subsidiaries from and in connection with the operation of the Broadband Telecommunications Network in the City of Charlotte and which may lawfully be included in the base on which the city may calculate the license fee herein, provided that sales taxes or other taxes or fees which are separately billed to subscribers for remittance to a governmental agency or other third party are excluded from the term "Annual Gross Revenues".

(2) "Basic service" shall mean the service package offered by the grantee to subscribers which includes (but which is not necessarily limited to) the signals referred to in § 9-509(1) and at least one channel for municipal access, for educational access, and public access. If more than one service package meets the foregoing conditions, then the service package which is offered at the lowest rate shall constitute the basic service.

(3) "Board or "city council" shall mean the city council of the City of Charlotte.

(4) "Broadband Telecommunications Network" (BTN) shall mean all of the component physical operational and programming elements of any network of cables, optical, electrical or electronic equipment, including cable television, used for the purpose of transmission of electrical impulses of television, radio and other intelligences, either analog or digital for sale or use by the inhabitants of the city.

(5) "Commence operations" shall mean that time and date when operation of the BTN is considered to have commenced, which shall be when sufficient distribution facilities have been installed so as to permit the offering of full network service to at least twenty percent (20%) of the dwelling units located within the city.

(6) "Expanded service" shall mean a service package offered by the grantee to subscribers other than the basic service, pay service, and two-way service.

(7) "FCC" shall mean the Federal Communications Commission and any legally appointed or elected successor.

(8) "License" shall mean the non-exclusive rights granted pursuant to this chapter to construct and operate a broadband telecommunications network along the public ways within all or a specified area in the city. Any such authorization, in whatever form granted, shall not mean and include any license or permit required for the privilege of transacting and carrying on a business within the city as required by other ordinances and laws of the city.

(9) "Full network service" shall mean basic service and expanded service and all pay services. The term does not include two-way service.

(10) "Grantee" shall mean any person receiving a license pursuant to this chapter and under the granting license ordinance, and its lawful successor, transferee or assignee.

(11) "May" is permissive.

(12) "Pay service" shall mean any service package which consists of not more than two channels and for which a monthly or other service charge is made.

(13) "Person" shall mean an individual, partnership, association, organization, corporation or any lawful successor, transferee or assignee of said individual, partnership, association, organization or corporation.

(14) "Public school" shall mean any school at any educational level operated within the city by any public, private, or parochial school system, but limited to elementary, junior high school, and high school.

(15) "Reasonable notice" shall be written notice addressed to the grantee at its office, which notice shall be certified and postmarked not less than four (4) days prior to the day in which the party giving such notice shall commence any action which requires the giving of notice. In computing said four (4) days, Saturdays, Sundays and holidays recognized by the city shall be excluded.

(16) "Sale" shall include any sale, exchange, barter or offer for sale.

(17) "Service package" shall mean one or more communications channels which are offered as a unit by the grantee to subscribers and for which a separately identifiable charge is made.

(18) "Shall" and "Must", each is mandatory and not merely directory.

(19) "Street" shall include each of the following which have been dedicated to the public or is hereafter dedicated to the public and maintained under public authority or by others and located within the city limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way, and similar public ways and extensions and additions thereto, together with each other public property and areas that the city shall permit to be included within the definition of street from time to time.

(20) "Subscriber" shall mean any person receiving a legal service package.

(21) "Substantially completed" shall occur when sufficient distribution facilities have been installed by the grantee so as to permit the offering of full network service to at least ninety percent (90%) of the potential subscribers in the city.

(22) "Two-way service" shall mean any service which involves the transmission of a signal from a subscriber to a facility maintained by the grantee as part of the BTN. This term includes, (but is not limited to) fire, security and medical alert, systems.

(23) "City" shall mean the City of Charlotte, a municipal corporation of the State of Tennessee. (Ord. #83-1, Feb. 1983)

9-503. License requirement; authority granted by a license. (1) License required. No person shall construct, install, maintain operate on or within any street, any equipment or facilities for the distribution of television signals or radio signals or other intelligences, either analog or digital, over a BTN to any subscriber unless a license authorizing the use of the streets has first been obtained pursuant to the provisions of this chapter; and thereafter only while said person is legally operating under the terms and provisions of said license.

(2) Authority granted. Any license granted hereunder shall give to the grantee, subject to the provisions of this chapter, the right and privilege at its own expense, to construct, erect, operate, modify and maintain in, upon, along, above, over and under the streets, such towers, antennas, cables, electronic equipment, and other network appurtenances necessary for the operation of a BTN in the city. (Ord. #83-1, Feb. 1983)

9-504. Terms and conditions for each license. (1) License non-exclusive. Any license granted hereunder shall not be exclusive. The city reserves the right to grant other licenses to other persons at any time or times.

(2) Term of license. Each license granted under this chapter shall take effect and be in force as provided herein for a term of fifteen (15) years from the date of acceptance by licensee, subject, however, to the right of the city to terminate said license as provided herein.

(3) Non-interference with use of streets. The right and privilege granted by a license shall be exercised so as not to interfere with the use of the streets by the city and such others as may be designated by the city to use such streets, and the city may demand the removal of any cables or equipment as have been constructed by the grantee when the city believes that such is interfering with the use of the streets.

(4) Transfer of license. (a) No license granted hereunder may be sold, transferred, leased, assigned or disposed of, whether by way of sale, merger, consolidation, or otherwise, without in each case the prior written consent of the city, and then only under such conditions as the city may establish. Such consent shall not be unreasonably withheld.

(b) Notwithstanding the provisions of § 9-504(4)(a), a license may be mortgaged, pledged or assigned as security for the financing of the related BTN. Such mortgage, pledge or assignment may be made without the consent of the city, but any such mortgage, pledge or assignment shall be subject to the terms and conditions of the license and the related license agreement and to the rights of the city under this chapter.

(c) Reference is made to § 9-504(9)(a) for the effect of changes in ownership or control of the grantee and to § 9-504(9)(b) for rules covering control of a BTN by a financial institution.

(d) Reference is made to § 9-517 for transfers in connection with insolvency proceedings.

(5) License territory. Each license granted hereunder shall relate to the territorial limits of the city, or such lesser area as may be designated by the board, and to any area henceforth added thereto during the term of the license.

(6) Privileges must be specified. No privilege or exemption shall be granted or conferred by any license granted except those specifically prescribed herein.

(7) Obligations of grantee to obtain other permits. Any license granted hereunder shall not relieve the grantee of any obligations involved in obtaining pole or conduit space from any department of the city, utility company, or from others maintaining utilities in streets.

(8) License binding. Any license granted hereunder shall be binding upon the grantee, and all successors, lessees, or assignees as may be approved by the city.

(9) Transactions affecting ownership or control. (a) Express approval of the board, which shall not be unreasonably withheld, shall be required where ownership or control of more than ten percent (10%) of the right of control of or interest in the license is acquired by a person or group of persons acting in concert, none of whom already own or control ten percent (10%) or more of such right of control of interest, singularly or collectively. Transfer from a subsidiary to a parent corporation or vice versa shall not be considered change of control.

(b) Any financial institution having a pledge of, or other form of security interest in a license, or in the assets of a grantee, for the advancement of money for the construction and/or operation of the BTN, shall have the right to notify the city that it or its designee satisfactory to the city will take control and operate the BTN. However, such financial institution shall also submit a plan for such operation that will insure continued service and compliance with all license obligations during the term the financial institution exercises control over the BTN. The financial institution shall not exercise control over the BTN for a period exceeding one year unless extended by the board in its discretion and during said period of time it shall have the right to petition the city to transfer said license to another grantee. If the city finds that any transfer after considering the legal, financial, character, technical and other public interest qualities of the applicant is satisfactory, the city will transfer and assign the rights and obligations of such license as in the

public interest. The consent of the city to such transfer shall not be unreasonably withheld. (Ord. #83-1, Feb. 1983)

9-505. Selection of grantees. (1) Applications for a license. Applications for an original license grant hereunder shall be filed with the mayor and if the applicant is awarded a license pursuant to this chapter that it agrees to pay reasonable attorney's fees. Such applications shall contain written information which is responsive to requirements established from time to time by the board.

(2) Acceptance of certain applications. Applications for a license which were submitted to and accepted by the city prior to November 23, 1982 shall be deemed to be in compliance with § 9-505(1).

(3) Criteria for evaluation of applications. Applications for a BTN license will be evaluated under the following criteria:

(a) Experience. Preference may be given to applicants that can give evidence of providing dependable and complete service to other communities and who have established a record of excellent construction practices, ability to meet deadlines, and good planning and marketing practices.

(b) Financial stability. Preference may be given to applicants that present evidence of financial resources which will assure that the applicant will have the ability to complete the entire BTN In the license area within the time period set forth in § 9-510(1).

(c) System design. Preference may be given to a system which contains the flexibility to adjust to new technological development and which indicates that high quality equipment will be used and high quality maintenance practices will be followed.

(d) Services. Preference may be given to the applicant that proposes to provide superior programming. In determining what constitutes superior programming, particular consideration will be given to local origination, and the resources which an applicant proposes to devote to local origination in order to make it interesting, innovative, and financially feasible.

(e) Local studio facilities. Preference may be given to applicants that propose to maintain studio facilities within the city.

(f) Rate schedules. Preference may be given to applicants with the most reasonable installation and subscriberrate schedules. However, such schedules must be justified in financial pro forma statements by the use of realistic levels of penetration.

(g) Local ownership and control. The degree of local ownership and control of an applicant will be taken into account.

The foregoing criteria are not listed in any order of priority.

(4) Evaluation process. The board shall hold at least one public hearing in connection with each application duly filed pursuant to § 9-505(1) at which the applicant and all other interested parties shall be given the opportunity to be heard. The board, or such committee or committees of the board, or such special committees as the board may designate, shall conduct such further hearings or investigation as the board deems necessary. At the conclusion of such hearings and investigation, the board may determine that no license should be granted or, alternatively, the board may select that application which the board considers has presented a proposal which satisfies the interests of the city in the light of the criteria set forth in § 9-505(3). The decision of the board concerning grantee selection shall be final.

(5) Procedures for granting a license. If the board determines that a license should be granted hereunder, the board will then proceed as follows:

(a) The board shall, by resolution, make a tentative selection of the applicant. Such action shall not constitute the award of a license and shall not confer any rights upon the applicant except to proceed in accordance with this § 9-505(5).

(b) The proper officers of the city and the applicant shall discuss the terms of the license agreement described in § 9-506 of this chapter.

(c) If the city and the applicant reach agreement as to the terms and conditions of the license agreement, the agreement shall be presented to the board for approval and authorization for execution by the mayor.

(d) The board shall then, by ordinance, grant a license to the applicant.

(6) Effective date of license. The effective date of a license shall be the date on which the ordinance referred to in paragraph (d) of § 9-505(5) is adopted by the board. (Ord. #83-1, Feb. 1983)

9-506. License agreement. (1) Agreement required. No license shall be granted hereunder unless the applicant and the city have executed a license agreement which shall set forth the terms and provisions of the license.

(2) Contents of agreement. (a) Each license agreement shall contain the following express representations by the grantee:

(1) The grantee has carefully read the terms and conditions of this chapter and the license agreement and accepts all of such terms and conditions and agrees to abide by the same.

(2) The grantee acknowledges that it has carefully read the terms and conditions of this chapter and expressly waives any claims that any provisions thereof are unreasonable or arbitrary or void.

(3) The grantee acknowledges that it has not been induced to accept the license by any promise, verbal or written, by or on behalf of the city or by any third person, regarding any term or condition of this chapter or the license agreement not expressed therein.

(4) The grantee represents that no promise or inducement, oral or written, has been made to any city employee or official regarding receipt of the license.

(b) In addition to those matters required to be included in the license agreement by virtue of this chapter, the license agreement shall contain such further conditions or provisions as may be included in the grantee's proposal and/or negotiated between the city and the grantee except that no such conditions or provisions shall be such as to conflict with any provisions of this chapter or other law. In case of such conflict, or in case of any ambiguity between any terms or provisions of the license agreement and this chapter, the words of this chapter shall control. (Ord. #83-1, Feb. 1983)

9-507. License fee. (1) Annual license payment. Each grantee of a license hereunder shall pay to the city an annual fee in an amount equal to not more than 3% (three percent) of the annual gross revenues allowed by the FCC. Such payment shall be in addition to any other payment, charge, permit fee or bond owed to the city by the grantee and shall not be construed as payment in lieu of personal or real property taxes levied by state, county or local authorities.

(2) Method of computation. The fee payable under § 9-507(1) shall be computed on the basis of the grantee's fiscal year.

(3) Partial payments. (a) Within 30 days after the end of the first six months of each fiscal year of the grantee, the grantee shall make a partial payment of the annual fee due for that year. Such partial payment shall be equal to one-half ($\frac{1}{2}$) of the negotiated percentage of the grantee's gross revenues for such six-month period. "Gross revenues" for this purpose shall be determined in the same manner as annual gross revenues.

(b) The city and the grantee may agree to a greater number of partial payments in each fiscal year by a provision therefore in the license agreement.

(4) Time of annual payment. The payment of the amount required under § 9-507(1) shall be due not later than ninety days (90) after the end of the fiscal year for which such payment is computed. Such payment shall equal the amount determined under § 9-507(1), minus all partial payments theretofore made under § 9-507(3).

(5) Place of payment. All payments made under this section shall be made at the office of the city treasurer during normal business hours.

(6) Certificates. Each payment made pursuant to this section shall be accompanied by a certificate of an executive officer of the grantee to the effect that the amount of the payment has been correctly determined in accordance with the provisions of this chapter.

(7) Audit rights. The city may cause an audit to be made of the grantee's books and records for the purpose of verifying the correct amount of any payment required under this section. If such an audit discloses a deficiency in the amount paid of 10% or more of the amount which should have been paid, the grantee shall pay forthwith to the city upon demand the cost of such audit, subject, however to the provisions of § 9-525 of this chapter concerning disputes.

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

(9) Failure to make required payment. In the event that any license payment or recomputed amount is not made on or before the dates specified herein, grantee shall pay an interest charge, computed from such due date, at the annual rate of twelve percent (12%) per annum. (Ord. #83-1, Feb. 1983)

9-508. Nature of the system: technical standards. (1) General requirements. Each BTN for which a license is granted hereunder shall be designed, installed and operated so as to meet the following general requirements:

(a) The system shall be operationally capable of relaying to subscriber terminals those television and radio broadcast signals for the carriage of which the grantee is now or hereafter authorized by the FCC.

(b) The system shall consist of a cable network having a minimum initial forward bandwidth in compliance with the technical standards and rules of the FCC; provided that if a reverse or feedback circuit is routed through a subscriber's premises, it shall be connected so as to permit subscriber notification and deactivation.

(c) The system shall be capable of continuous twenty-four (24) hour daily operation.

(d) The system shall be operated in such a manner as to avoid causing interference with reception of off-the-air signals by non-subscribers to the network, and if any problems arise in non-subscriber interference, it will be the grantee's duty to resolve the problem at no charge to the non-subscriber.

(e) The system shall be designed, installed and operated so as to comply with all applicable technical standards and regulations promulgated by the FCC.

(f) The system shall be designed, installed and operated so as to assure the delivery to all subscribers of standard color and monochrome signals on the FCC-designated Class I television channels without noticeable picture degradation or visible evidence of color distortion or other forms of interference directly attributable to the performance of the BTN.

(2) Performance monitoring. (a) The performance of each BTN for which a license is granted hereunder with respect to the standards set forth in § 9-508(1) shall be monitored in accordance with this section.

(b) Test procedures used in verification of the performance criteria set forth herein, if not as set forth in paragraph 76.609, Subpart K, of the FCC Rules and Regulations, shall be in accordance with good engineering practice and shall be fully described in an attachment to the annual certificate filed with the city.

(c) To the extent that the report of measurements as required above may be combined with any reports of measurement required by the FCC or other regulatory agencies, the city shall accept such combined reports, provided that all standards and measurements herein or hereafter established by the city are satisfied.

(d) Not later than ninety (90) days after any new or substantially rebuilt portion of the system is made available for service to subscribers, technical performance tests shall be conducted by the grantee to demonstrate full compliance with the Technical Standards of the FCC. Such tests shall be performed by, or under the supervision of, a qualified registered professional engineer or an engineer with proper training and experience. A copy of the report shall be submitted to the city describing test results, instrumentation, calibration, and test procedures, and the qualifications of the engineer responsible for the tests.

(e) At any time after commencement of service to subscribers, the city may require additional tests, full or partial repeat tests, different test procedures, or tests involving a specific subscriber's terminal. Requests for such additional tests will be made on the basis of complaints received or other evidence indicating an unresolved controversy or significant non-compliance, and such tests will be limited to the particular matter in controversy. The city will endeavor to so arrange its requests for such special tests so as to minimize hardship or inconvenience to grantee or the subscriber.

(3) Interconnections. (a) Whenever it is financially and technically feasible, the grantee shall so construct and operate the network so that the network can be interconnected into all other networks within the city.

(b) Wherever it is financially and technically feasible, the grantee shall so construct and operate the network so that the network can be interconnected into all other networks adjacent to the city. (Ord. #83-1, Feb. 1983)

9-509. Nature of the system: services. (1) Carriage of area television stations. Whether or not required by rules and regulations of the FCC, each BTN for which a license is granted hereunder shall carry the signals of all television broadcast stations whose specified zone includes the City of Charlotte.

(2) Other channel requirements. Whether or not required by the rules and regulations of the FCC, each BTN for which a license is granted hereunder shall:

- (a) have a minimum capacity of thirty (30) channels;
- (b) have the capacity for two-way active communications;

(3) Service packages. Subject to the provisions of § 9-509(4), a grantee may offer service packages to subscribers or potential subscribers in such number, description and content as the grantee shall determine, provided that all service packages shall be offered on a non-discriminatory basis as provided in § 9-510(1).

(4) Basic service. Each grantee shall offer the basic service as defined in this chapter. The basic service need not be offered by that name, insofar as subscribers are concerned, but for the purposes of this chapter the service shall be known as the basic service. The grantee shall not be required to provide the basic service to a subscriber as a condition to the provision of other service packages. The provisions of this section shall not be construed as any effort by the city to regulate the program content of the basic service; the only purpose of this section is to insure that the basic service will be offered to subscribers as one of the grantee's service packages.

(5) Public installations and service thereto. (a) The grantee shall connect the BTN to each public school, public library, and such municipal buildings as the city may designate, without charge for installation and maintenance of such connections. Such installations shall be made within sixty (60) days of completion of the cable trunk line that would serve those buildings.

(b) Any service granted pursuant to subsection (a) above may be extended by the persons receiving such service to as many areas within the building where the service is granted or its adjacent buildings which are a part of the total complex receiving such service. The person

receiving such service shall pay all expenses for any such extension and shall complete such extension so as not to interfere with the operation of the BTN. All extensions must be made either by the grantee or in accordance with the same material and installation specifications required by the grantee.

(c) The grantee shall provide, without charge, the full basic service to each installation made pursuant to § 9-508(3)(a), except that a grantee shall be excused from the foregoing requirement if and to the extent that compliance would conflict with contractual provisions between the grantee and the grantee's program suppliers.

(6) Emergency alert override. Each grantee shall incorporate in to its facilities the capability for a remotely activated emergency override alert system whereby a designee of the city, in times of emergency, may introduce an audio and/or visual message on all BTN channels simultaneously. The city shall hold grantee harmless and indemnify grantee for liability resulting from the emergency use of the BTN by the city. (Ord. #83-1, Feb. 1983)

9-510. Construction of the system. (1) Construction schedule. (a) Permits. Within ninety (90) days after the effective date of its license, the grantee shall file with the appropriate governmental authorities and with the necessary utility companies, all initial papers, applications, contracts and other documents necessary to permit the commencement of construction and operation of the BTN, and shall thereafter make diligent efforts to obtain the proper execution and delivery of such documents. The grantee shall report to the city every ninety (90) days on its progress in obtaining necessary permits, contracts and other necessary documents as contemplated above.

(b) Target dates. Within ninety (90) days after the effective date of its license, the grantee shall furnish the city a construction schedule and map setting forth target dates by areas for commencement of service to subscribers. The schedule and map shall be updated whenever substantial changes become necessary.

(c) Commencement of operation. Within six (6) months after the date on which the grantee has received all necessary utility company permits, the grantee shall commence operation.

(d) Substantial completion of construction. Within twelve (12) months after the date on which the grantee has received all necessary utility company licenses, the grantee shall have substantially completed the BTN.

(2) Construction standards. (a) Compliance with safety codes. All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970 and any amendments thereto as well as all state and local codes where applicable.

(b) Compliance with electrical codes. All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the provisions of the city building codes.

(c) Antennas and towers. Antenna supporting structures (towers) shall be designed for the proper loading zone as specified in Electronics Industry Association's R.S. - 22A Specifications.

(d) Construction standards and requirements. All of the grantee's plant and equipment, (including but not limited to the antenna site, head-end and distribution system, towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances, if and to the extent located within the city, shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, and such work shall be performed by experienced maintenance and construction personnel so as not to endanger or interfere with improvements the municipality may deem proper to make, or to interfere in any manner with the rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic on municipal properties.

(e) Safety, nuisance, requirements. The grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

(3) Street occupancy. (a) Grantee shall utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install new, different, or additional poles, conduits, or other facilities on public property until the written approval of the city is obtained, which approval shall not be unreasonably withheld. Grantee shall not acquire any vested interest in any location for any pole or wire-holding structure, and such poles or structures shall be removed or modified by the grantee at its own expense whenever the city determines that the public convenience would be enhanced thereby.

(b) The facilities of the grantee shall be installed underground in those areas of the city where existing telephone and electric services are both underground at the time of network construction. In areas where either telephone or electric utility facilities are installed aerially at the time of network construction, the grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the city, the grantee shall likewise place its facilities underground.

(c) A grantee shall notify the city at least ten (10) days prior to the intention of the grantee to commence any construction in any streets.

The city shall cooperate with the grantee in granting any permits required, providing such grant and subsequent construction by the grantee shall not unduly interfere with the use of such streets and that the proposed construction shall be done in accordance with the provisions of the city code.

(d) All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition and in good order and repair. The grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares, or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by the grantee shall be placed in such manner as not to interfere with the usual travel on such public way.

(e) Grantee shall, at its own expense and in a manner approved by the city, restore to city standards and specifications any damage or disturbance caused to the public way as a result of its operations or construction on its behalf. Grantee shall guarantee and maintain such restoration for a period of one year against defective materials or workmanship.

(f) Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the mayor, the director of public works, the fire chief, or the police chief, to remove or damage any of the grantee's facilities, no charge shall be made by the grantee against the city for restoration and repair, unless such acts amount to gross negligence by the city.

(g) Grantee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities, subject to the supervision and direction of the city.

(h) The grantee, at its expense, shall protect, support, temporarily disconnect, relocate, or remove any property of the grantee when, in the opinion of the mayor, the same is required by reason of traffic conditions, public safety, street vacation, street construction, change or establishment of street grade, installation of sewers, drains, waterpipes, power lines, signal lines, transportation facilities, tracks, or any other type of structure or improvement by governmental agencies, whether acting in a governmental or a proprietary capacity, or any other structure or public improvement, including (but not limited to) movement

of buildings, renewal of areas within the city, and any general program under which the city shall undertake to cause all such properties to be located beneath the surface of the ground. The grantee shall in all cases have the privilege, subject to the corresponding obligation, to abandon any property of grantee in place, nothing hereunder shall be deemed a taking of the property of grantee, and grantee shall be entitled to no surcharge by reason of anything hereunder.

(i) Upon failure of grantee to commence, pursue or complete any work required by law or by the provisions of this chapter to be done in any street, within the time prescribed and to the satisfaction of the mayor, the mayor may, at his option, cause such work to be done and the grantee shall pay to the city the cost thereof in the itemized amounts reported by the mayor to grantee, within thirty (30) days after receipt of such itemized report.

(j) The grantee shall make no paving cuts or curb cuts unless absolutely necessary, and then only after written permission has been given by the mayor.

(k) The grantee shall install in conduit, all cable passing under the roadway.

(l) A charge may be made to grantee for use of any existing poles.

(4) Performance bond. The grantee shall maintain throughout the period of network construction a faithful performance bond in favor of the city, with a surety approved by the city, in the penal sum total of five thousand dollars (\$5,000.00), conditioned upon the faithful performance by the grantee of its obligations under this chapter and the license. When the BTN has been substantially completed as defined herein, the penal sum total of the performance bond shall be reduced to two thousand five hundred dollars (\$2,500.00) through the remainder of the term of the license, or any renewal or extension thereof and upon the further condition that in the event the grantee shall fail to comply with any law, ordinance, or regulation governing the license, there shall be recoverable, jointly or severally from the principal and surety of the bond, any damages or a loss suffered by the city as a result, including the full amount of any compensation indemnification or cost of removal or abandonment of any property of the grantee, plus a reasonable allowance for attorney's fees and costs, up to the full amount of the bond. The city, at its sole discretion, may at any time subsequent to completion of construction, waive (subject to later reinstatement) the requirement of the grantee to maintain said bond. The bond shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be cancelled nor the intention not to renew stated until thirty (30) days after receipt

by the city by registered mail of a written notice of such intent to cancel or not to renew." (Ord. #83-1, Feb. 1983)

9-511. Operation and maintenance of the system. (1) Repair. Any damage caused by the grantee's negligence shall be repaired fully by the grantee.

(2) Office and phone for service. The grantee shall maintain an office in Dickson County, Tennessee which shall be open during all usual business hours, shall have a locally listed telephone and shall be so operated that complaints and requests for repairs or adjustments may be received at any time. Alternatively, the licensee may designate an agent, who has an office in the city, who is authorized to receive complaints and requests for repairs or adjustments. In addition, the grantee shall maintain a convenient service in the city during normal business hours for the receipt of sums due by its subscribers and shall provide for regular billing of accounts.

(3) Notification of service procedures. The grantee shall furnish each subscriber at the time service is installed written instructions that clearly set forth procedures for placing a service call, or requesting an adjustment.

(4) Service response time. The grantee shall use its best efforts to provide prompt service response for all complaints and requests for repairs or adjustments. In no event shall response time exceed twenty-four (24) hours except in circumstances beyond the reasonable control of the grantee.

(5) Service interruptions and notification. The grantee shall interrupt system service after 7:00 a.m. and before 1:00 a.m. only with good cause and for the shortest time possible, and except in emergency situations, only after publishing notice of service interruption at least twenty-four (24) hours in advance of the service interruption. Service may be interrupted between 1:00 a.m. and 7:00 a.m. for routine testing, maintenance, and repair, without notifications, any night except Friday, Saturday or Sunday, or the night preceding a holiday.

(6) Request for removal or change. (a) The grantee shall, on the request of any person holding a building moving permit issued under the provisions of Section __, Chapter __ of the city code, temporarily raise or lower its wires to permit the moving of said building. The expense of such temporary removal, raising or lowering of wires, shall be paid by the person requesting the same, and the grantee shall have the authority to require such payment in advance. The grantee shall be given not less than fifteen (15) days advance notice of any move contemplated to arrange for temporary wire changes.

(b) The city shall notify the grantee at least ten (10) days prior to the intention of the city to commence any construction in the streets

that requires the relocation of grantee's lines, wires or other network appurtenances so as not to interfere with such construction.

(c) In the event that continued use of a street is denied to the grantee by the city for any valid reason, the grantee shall provide service to affected subscribers over alternate routes within a reasonable period of time.

(7) Subscriber's right to cancel service. (a) Any subscriber shall have the right to cancel any or all service packages upon thirty (30) days written notice to the grantee.

(b) Upon termination of service to any subscriber, the grantee shall promptly remove all of its facilities and equipment from the subscriber's premises upon his request.

(8) Abandonment of service. (a) After grantee has established service pursuant to this chapter in the license area, such service shall not be suspended or abandoned in the whole or any part of the license area unless the suspension or abandonment is authorized by the board.

(b) Whenever grantee shall file with the board a written application alleging that the public interest no longer requires that grantee furnish service pursuant to this chapter in the whole or in any part of the license area, the board, at a public hearing, shall take evidence upon that question and shall make a finding with respect to it. Notice of the hearing shall be given by the grantee in writing to each subscriber in the part of the license area in question at least fifteen (15) days prior to the date scheduled for the hearing. If the city board shall find that the public interest no longer requires that the grantee furnish service, the board, after hearing as provided herein, shall authorize suspension or abandonment of service upon such reasonable terms and conditions as may be prescribed by the board. (Ord. #83-1, Feb. 1983)

9-512. Rates and charges. (1) Rates and service schedules. The grantee shall at all times maintain on file with the city a complete and current schedule showing all services being provided under the grantee's license, the fees and charges for each of such services, the charges for connections or disconnections, and any other charges which may be made by the grantee in connection with the BTN. Such schedule shall also show the components of the basic service, the expanded service, and the pay service, each on a channel-by-channel basis, the monthly charge for each service package, and reasonably complete descriptions of each service package.

(2) Initial rates. The rates and charges initially charged by a grantee for each of its service packages, as shown in the first schedule filed under § 9-512(1), shall be the same as proposed in the grantee's application for a

license. Such rates and charges shall not be increased until the second anniversary of the date on which the BTN was substantially completed.

(3) Modification of rates. After the second anniversary of the date on which the BTN was substantially completed, the grantee may modify its rates from time to time by filing a revised schedule in accordance with § 9-512(1). Each rate adjustment shall become effective on the date designated by the grantee in the schedule, provided, that such date may not be less than sixty (60) days from the date on which the schedule was filed, and provided, further, that this section is subject to the provisions of § 9-512(4).

(4) Regulation of rates. It is the policy of the city not to regulate rates charged by a grantee for any of its services. However, the city expressly reserves the right to regulate the grantee's rates to the extent permitted by law. At the time of each hearing conducted pursuant to § 9-515(1), the city shall consider whether to regulate rates. If the city determines at any of such times to regulate rates, this chapter shall be amended to provide for appropriate standards and hearings in order that such rates, may be fairly and equitably determined. Each license granted hereunder shall be subject to the city's right to amend this chapter for the purpose stated in this section. Such right shall be exercised at the sole discretion of the city.

(5) Disconnections. No charge may be made for disconnection from the BTN. However, if a subscriber has failed to pay properly due monthly fees, or if a subscriber disconnects for seasonal periods, the grantee may require, in addition to full payment of any delinquent amounts, a reasonable fee for reconnection to the system.

(6) No consideration beyond schedule. A grantee shall not receive any consideration whatsoever for or in connection with its provision of service to its subscribers other than as set forth in this section or in the schedule then on file with the city. (Ord. #83-1, Feb. 1983)

9-513. Records and reports. (1) Records required. Each grantee shall at all times maintain:

(a) A record of all complaints received and interruptions or degradation of service experienced for the preceding three (3) years.

(b) A full and complete set of plans, records, and "asbuilt" maps showing the exact location of all BTN equipment installed or in use in the city, exclusive of subscriber service drops.

(2) Reports required. Each grantee shall file with the city the following reports:

(a) Reports to be filed within sixty (60) days after the end of each fiscal year of the grantee:

(i) An "Annual Report of Cable Television Systems" (FCC Form 325, Schedules 1, 2, 3 and 4).

(ii) An ownership report indicating all persons who at any time during the preceding year controlled or benefited from an interest in the license of ten (10%) per cent or more. This report shall also include all creditors secured by pledges or other form of security interest in the BTN and all unsecured creditors whose claims in respect to the operation of the license in the city exceed \$50,000.00.

(iii) A summary list of all complaints and BTN "down time" received or experienced during the year.

(iv) A report showing or containing:

(A) the total number of hours of utilization of each of the channels described in items (3), (4) and (5) of § 9-509(2).

(B) the number of persons subscribing to two-way service, and

(C) a brief statement indicating whether grantee is planning any new services for the ensuing years as a result of technological development in the cable television industry.

(b) Reports or certificates to be filed promptly after the indicated event occurs:

(i) Written evidence of each payment of the premium for the performance bond required hereunder.

(ii) Written evidence of the payment of each premium for each policy of insurance required hereunder.

(3) Documents required. Each grantee shall file with the city a true copy of the most current form of each of the following documents:

(a) The performance bond required hereunder.

(b) All policies of insurance required hereunder.

(c) All rules, regulations, and policy statements adopted by the grantee in operating the BTN.

(4) Filing. When not otherwise prescribed herein, all matters required to be filed with the city shall be filed with the mayor.

(5) Inspection of property and records. At all reasonable times, grantee shall permit examination by any duly authorized representative of the city, of all license property, together with any appurtenant property of grantee situated within or without the city. The grantee shall also permit any duly authorized representative of the city to examine and transcribe any and all maps and other records kept or maintained by grantee or under its control concerning the operations, affairs, transactions or property of grantee. If any of such maps or records are not kept in the city, or upon reasonable request made available in the city, and if the mayor shall determine that an

examination of such maps or records is necessary or appropriate to the performance of any of his duties, then all travel and maintenance expense necessarily incurred in making such examination shall be paid by the grantee. (Ord. #83-1, Feb. 1983)

9-514. Indemnification and insurance. (1) Indemnification agreement. The grantee shall indemnify, and hold harmless the city, its officers, boards, commissions, agents and employees against and from any and all claims, demands, causes of action, actions, suits, proceedings, damages (including but not limited to damages to city property and damages arising out of copyright infringements and damages arising out of any failure by the grantee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by grantee's BTN), costs or liabilities (including costs or liabilities of the city with respect to its employees), of every kind and nature whatsoever, including but not limited to damages for injury or death or damage to person or property, and regardless of the merit of any of the same, and against all liability to others, and against any loss, cost, and expense resulting or arising out of any of the same, including any attorney fees, accountant fees, expert witness or consultant fees, court costs, per diem expense, traveling and transportation expense, or other costs or expense arising out of or pertaining to the exercise of or the enjoyment of any license hereunder by grantee, or the granting thereof by the city; provided, that the grantee shall not be liable for any such damages, fees or expense where any lawsuit is based on the actions or omissions of the city but not on any act or omission by the grantee.

(2) Insurance. The grantee shall maintain a general comprehensive liability insurance policy naming as an additional insured, the city, its officers, boards, commissions, agents and employees. Such policy shall be issued by a company mutually acceptable to the grantee and the city in a form satisfactory to the city and protecting the city and all persons against liability for loss or damage, for personal injury, death or property damage, occasioned by the operations of the grantee under any license granted hereunder to grantee in the amount of:

(a) \$500,000 for bodily injury or death to any one person, within the limit, however, of \$1,000,000 for bodily injury or death resulting from any one accident.

(b) \$500,000 for property damage resulting from any one accident.

(c) Workmen's compensation insurance in such coverage as may be required by the workmen's compensation insurance and safety laws.

(3) Notice of cancellation or reduction of coverage. The insurance policies referred to above shall contain an endorsement stating that the policies

are extended to cover the liability assumed by the grantee under the terms of this chapter and shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be cancelled nor the amount of coverage thereof reduced until thirty (30) days after receipt by the city by registered mail of written notice of such intent to cancel or reduce the coverage." (Ord. #83-1, Feb. 1983)

9-515. Reviews, modifications, and renewal of the license.

(1) Three-year reviews. On or about the third, sixth, ninth, and twelfth anniversaries of the effective date of the license grant, the board shall schedule and hold a public meeting or meetings with the grantee to review the performance by the grantee under the license, including future plans of the grantee regarding operation and performance. In particular, the city may inquire whether the grantee is supplying a level and variety of services equivalent to those being generally offered at that time in the industry in comparable market situations. At such meeting, the board shall consider whether the rates of the grantee should be regulated. The grantee shall make available to the city, if requested by the city, such records, documents and information which are relevant to such meeting and inquiry.

(2) Modifications necessitated by FCC regulations. Any changes in the license agreement necessitated by modifications in the FCC's regulations shall be incorporated into the license agreement within the time limit, provided for in the Rules and Regulations of the FCC then in force and effect.

(3) License renewal. At least six (6) months prior to the expiration of a license, the city shall schedule and hold a public meeting or meetings with the grantee to review and discuss the performance of the grantee under the license, including the results following previous license reviews. In particular, the city may inquire whether the grantee is supplying a level and variety of services equivalent to those being generally offered at that time in the industry in comparable market situations. The grantee shall make available, if requested by the city, such records, information and documents which are relevant to such meeting and inquiry. Any interested person shall have the opportunity to be heard. The purpose of such meeting or meetings shall be to consider the question of whether the license granted to the grantee should be renewed.

(4) No obligation to reissue. Irrespective of the type and quality of the performance of the grantee, the city is under no obligation whatsoever to reissue a license to the grantee. At least five (5) months prior to the expiration of the license, however, the city shall advise the grantee whether or not the license reissuance shall be based solely upon negotiations by and between the grantee and the city. The failure to reissue a license shall not prohibit the grantee from applying for a new license in competition with other applicants for a license in

the event that the city decides to consider proposals from new applicants for the license. (Ord. #83-1, Feb. 1983)

9-516. Termination of the license by reason of default. (1) Grounds for revocation. The city reserves the right to revoke any license granted hereunder and to rescind all rights and privileges associated with the license in the following circumstances, each of which shall represent a default and breach under this chapter and the license agreement:

(a) A default by the grantee in the performance of any of its material obligations under this chapter or under the license agreement or under such documents, contracts, and other terms and provisions entered into by and between the city and the grantee.

(b) A failure by the grantee to provide or maintain in full force and effect the liability and indemnification coverages or the performance bond as required herein.

(c) Frequent violations by the grantee of any orders or rulings of any regulatory body having jurisdiction over the grantee relative to this license.

(d) The grantee's cessation of services for any reason within the control of the grantee over the BTN. However, the grantee shall not be declared at fault or subject to any sanction under any provision of this chapter in any case in which performance of any such provision is prevented for reasons beyond the grantee's control. Fault shall not be deemed to be beyond the grantee's control if committed by a corporation or other business entity in which the grantee holds a controlling interest, whether held directly or indirectly.

(e) Attempts by the grantee to evade any of the provisions of this chapter or of the license agreement, or the practice of any fraud or deceit upon the city.

(2) Procedures prior to revocation. If it appears to the mayor that one or more grounds exist for revoking a grantee's license, the following procedures shall then be followed:

(a) The mayor may make a written demand that the grantee comply with the requirement, limitation, term, condition, rule or regulation, which the mayor believes to be applicable.

(b) If the failure, refusal or neglect of the grantee continues for a period of thirty (30) days following such written demand, the mayor may place a request for termination of the license upon the next regular board meeting agenda.

(c) The mayor shall cause to be served upon the grantee, at least ten (10) days prior to the date of such board meeting, a written notice of his intent to request a revocation of grantee's license. Such

notice shall state the time and place of the board meeting and notice of such request shall be published by the city clerk at least once during the ten-day period preceding the board meeting in a newspaper of general circulation within the city.

(d) The board shall consider the request of the mayor and shall hear any persons interested therein, and shall determine, in its discretion, whether or not any failure, refusal, or neglect by the grantee was with just cause.

(e) If the failure, refusal or neglect by the grantee was with just cause, the board shall direct the grantee to comply within such time and manner, and upon such terms and conditions, as are reasonable.

(f) If the board shall determine that such failure, refusal or neglect by the grantee was without just cause, then the board may, by resolution, declare that the license of the grantee shall be revoked and terminated and the bond forfeited, unless there is compliance by the grantee within such period as the board may fix. (Ord. #83-1, Feb. 1983)

9-517. Insolvency proceedings. (1) Right to terminate license in case of insolvency proceedings. The license herein granted shall, at the option of the board, cease and terminate one hundred twenty (120) days after the appointment of a receiver or receivers or trustee or trustees, designated to take over and conduct the business of the grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120-day period, or unless both of the following conditions are satisfied:

(a) Such receivers or trustees shall have, within sixty (60) days after their election or appointment, fully complied with all the terms and provisions of this chapter and the license granted pursuant hereto, and the receivers or trustees within said 120 days shall have remedied all defaults under the license; and

(b) Such receivers or trustees shall, within said 60 days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the license granted herein.

(2) Right to terminate license in case of foreclosure or judicial sale. In the case of a foreclosure or other judicial sale of the plant, property and equipment of the grantee, or any part thereof, including or excluding the license granted to grantee, the board may serve notice of termination upon the grantee and the successful bidder at such sale. In such event, the license shall cease and terminate thirty (30) days after service of such notice, unless:

- (a) The board shall have approved the transfer of the license as and in the manner in this chapter provided; and
- (b) Such successful bidder shall have covenanted and agreed with the city to assume and be bound by all the terms and conditions of the license. (Ord. #83-1, Feb. 1983)

9-518. Procedures following revocation or expiration of license.

(1) Disposition of facilities. If a license expires, is revoked, or is otherwise terminated, the city may order the removal of the network facilities from the city within a period of time, as determined by the city.

(2) Restoration of property. In removing its plant, structures and equipment, the grantee shall refill, at its own expense, any excavation that has been made by it and shall leave all public ways and places in as good condition as prevailed prior to the grantee's removal of its equipment and appliances, without affecting the electrical or telephone cable wires, or attachments. The city shall inspect and approve the condition of the public ways and public places, and cables, wires, attachments and poles after removal. The liability indemnity and insurance as provided herein, and the performance bond provided herein, shall continue in full force and effect during the period of removal and until full compliance by the grantee with the terms and conditions of this section and this chapter.

(3) Restoration by the city; reimbursement of costs. In the event of a failure by the grantee to complete any work required by § 9-518(1) and/or § 9-518(2), or any other work required by the city ordinances within the time as may be established and to the satisfaction of the city, the city may cause such work to be done and the grantee shall then reimburse the city for the costs thereof within thirty (30) days after receipt of an itemized list of such costs; or the city may recover such costs through the performance bond provided by the grantee. The city shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

(4) Extended operation. Upon either the expiration or revocation of a license, the city may (i) permit the grantee to continue to operate the network for an extended period of time not to exceed six (6) months from the date of such expiration or revocation; (ii) operate the network itself for such period; or (iii) engage a third party to operate the network for such period. Said person (hereinafter called the "interim operator") shall, as trustee for grantee's successor in interest, use its best efforts to continue to operate the cable television system under the terms and conditions of this chapter and the license and to provide services that may be provided at that time. During such interim period, the interim operator shall not sell any of the system assets nor shall the interim operator make any physical, material, administrative or operational changes that would tend to degrade the quality of service to the subscribers, or

tend to decrease income, or tend materially to increase expenses, without, in each case, express permission in writing of the city. The city shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

(5) City's rights not affected. The termination and forfeiture of any license shall in no way affect any of the rights of the city under the license or any provision of the law. (Ord. #83-1, Feb. 1983)

9-519. Hiring and employment practices. (1) Discrimination prohibited. In the carrying out of the construction, maintenance and operation of the BTN, the grantee shall not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. (Ord. #83-1, Feb. 1983)

9-520. Prohibition of preferential practices: other business activities.

(1) Services to be equally available. The grantee shall not, as to rates, charges, service, rules, regulations, or in any other respect, make or grant any preference or advantage to any person nor subject any person to any prejudice or disadvantage. This provision shall not be deemed to prohibit promotional campaigns to stimulate subscription to the network or other legitimate uses thereof, nor shall it be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classifications shall be entitled, provided, such schedules have been filed with the city as provided in § 9-512; nor shall it be deemed to prohibit the furnishing of service without charge or at a reduced charge to the locations specified in § 9-509(5).

(2) Fairness of accessibility. The entire network of the grantee shall be operated in a manner consistent with the principles of fairness and equal accessibility of its facilities, equipment, channels, studios and other services to all citizens, businesses, public agencies or other entities having a legitimate use for the network; and no one shall be arbitrarily excluded from its use. Allocation of the use of said facilities shall be made according to the rules or decisions of the grantee and any regulatory agencies affecting the same.

(3) Subscribers' antennas. Grantee is expressly prohibited from requiring the removal or from offering to remove or to provide any inducements for removal of any potential or existing subscribers' antenna as a condition for provision of service by the grantee.

(4) Sale or service of TV receivers. During the period of the license, neither the grantee nor any of its affiliated subsidiary or parent organizations, officer, or directors or stockholders holding ten percent (10%) or more of the outstanding stock of the grantee shall, within the corporate limits of the city or within ten miles in any direction, directly or indirectly, engage in the retail sale, rental or repair of radio or television receivers, nor require, encourage or

recommend to any subscriber to purchase, rent, or lease radios or television sets at any specific business which rents, leases or sells radios or television sets, or to utilize the services of any special television or radio service business, for the repair or maintenance of the subscriber's receivers, either radio or television, wherever located. (Ord. #83-1, Feb. 1983)

9-521. Subscriber privacy. (1) Use of data from subscriber. A grantee shall not initiate or use any form, procedure or device for procuring information or data from subscribers' terminals by use of the BTN without prior authorization from each subscriber so affected.

(2) Subscriber lists. The grantee shall not, without prior authorization from each subscriber so affected, provide any list designating subscribers' names or addresses to the city or to any other party.

(3) Subscriber transmissions. Grantee shall not permit the installation of any special terminal equipment in any subscriber's premises that will permit transmission from subscriber's premises of two-way service without first obtaining written permission of the subscriber. (Ord. #83-1, Feb. 1983)

9-522. Sanctions. (1) Lesser sanctions. Nothing shall prohibit the city in enforcing its rules and regulations to impose lesser sanctions or censures for violations of provisions of this chapter rather than revocation. (Ord. #83-1, Feb. 1983)

9-523. Rights reserved to the city. (1) Eminent domain. Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, the right of the city 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; and nothing herein contained shall be construed to contract away or to modify or abridge, whether for a term or in perpetuity the city's right of eminent domain.

(2) All legal rights and powers. There is hereby reserved to the city every right or power which is required to be herein reserved or provided by law, and the grantee, by its acceptance of the license, agrees to be bound thereby and to comply with any action or requirement, of the city in its exercise of such rights or powers, whether heretofore or hereafter enacted or established.

(3) No waiver. Neither the granting of any license nor provision hereof shall constitute a waiver or bar to the exercise of any governmental rights or powers of the city, subject to the rights of a grantee under its license and the license agreement.

(4) FCC jurisdiction. If the FCC or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of any license granted under this chapter, then to the extent such

jurisdiction preempts or precludes the exercise of like jurisdiction by the city, the jurisdiction of the city shall terminate.

(5) City's contract rights. The preemption or preclusion of the exercise by the city of any of its police powers shall not diminish, impair, alter, or affect any contractual benefit to the city or grantee nor any contractual obligation of the grantee under any license issued hereunder. Any and all rights, powers, privileges and authorizations arising under this chapter or any license agreement are each and all hereby declared by the city and any grantee accepting any license hereunder to be contractual in nature and to be for the benefit of city.

(6) Right to make rules and regulations. There is hereby reserved to the city the right to impose rules and regulations, reasonably required, in order to better carry out the purpose and intent of this chapter. Before any such rules and regulations are adopted, the city shall give notice to the grantee and afford the grantee an opportunity to be heard. (Ord. #83-1, Feb. 1983)

9-524. Continuing regulation and administration by the city.

(1) Continuing supervision by city board. The city board shall have continuing supervision over the operation of any license granted hereunder. Routine responsibilities in the administration of this chapter and any license agreement hereunder shall be performed by the mayor.

(2) Responsibilities of the mayor. The mayor shall have the following responsibilities and duties, together with such other responsibilities and duties that the city board may assign to him:

(a) Review and audit all reports and filings submitted to the city as required hereunder and such other correspondence as may be submitted to the city concerning the operation of the BTN and review the rules and regulations established by each grantee.

(b) Assure that all rate schedules and rules pertinent to the operation of the BTN are made available for inspection by the public at reasonable hours.

(c) Confer and coordinate with each grantee on the interconnection of the BTN with other similar networks.

(d) Advise the board on matters which might constitute grounds for revocation of the license.

(e) Submit a budget request to the city board to cover expenses incurred with respect to the performance of functions required by the city under this chapter. This request may include funds to be used for the development of the use of access channels, including production grants to users and the purchase and maintenance of equipment not required to be provided by a grantee, and funds to be used for expenses and such salaries as may be authorized from time to time by ordinance.

- (f) Conduct evaluations of the BTN at least every three years.
- (g) Make recommendations to the city board for amendments to this chapter. (Ord. #83-1, Feb. 1983)

9-525. Disputes. A grantee may be required to submit any matter in controversy or dispute with the city to arbitration in all cases where the judgment of a court of law could be sought. The city may exercise this right at any time before a grantee brings legal action, and in case of legal action, at any time before responsive pleadings are due from the city under applicable court rules. This right shall be exercised by serving written notice upon the grantee. Such arbitration shall be conducted in accordance with the rules of the American Arbitration Association. (Ord. #83-1, Feb. 1983)

9-526. Unlawful acts. (1) Unlawful interception of communications. It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a grantee's BTN for the purpose of enabling such person or any other party to receive any signal, information or intelligence transmitted over the BTN without payment to the grantee of full amount properly due for such signal, information or intelligence.

(2) Unlawful tampering with equipment. It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove, or injure any cable, wires or other equipment used for the distribution of signals, information or intelligence over a grantee's BTN.

(3) Penalties. it shall be a misdemeanor punishable by a fine of not more than Five Hundred Dollars (\$500), or by imprisonment for a term not to exceed six (6) months, or both, for any person to violate any of the provisions of this section. (Ord. #83-1, Feb. 1983)

9-527. Miscellaneous. (1) Compliance with applicable laws and regulations. Each grantee, at its expense, shall comply with all laws, orders and regulations of federal, state and municipal authorities and with any directive of any public officer pursuant to law who shall legally impose any regulation, order or duty upon the grantee with respect to the license.

(2) Diligence by grantee. Each grantee shall diligently apply for all necessary permits and authorizations required in the conduct of its business, and shall diligently pursue the acquisition thereof, including necessary pole attachment agreements, and necessary authorizations from the Federal Aviation Agency to construct such receiving antenna towers as may be required, and any necessary authorizations or waivers from the FCC.

(3) Notification to city of certain FCC communications. Each grantee shall not apply for any waivers, exceptions or declaratory rulings from the FCC

or from any other federal or state regulatory agency without the written notification to the mayor.

(4) Transfer of city's rights, powers or duties. Any right or power in, or duty impressed upon, any officer, employee, department, or board of the city shall be subject to transfer by the city to any other officer, employee, department or board of the city.

(5) City's right of intervention. A grantee shall, at the sole risk and expense of the grantee, upon demand of the city made by the corporation counsel, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative, or otherwise, brought or instituted or had by third persons or duly constituted authorities against or affecting the city, its officers, boards, commissions, agents, or employees, and which arise out of or pertain to the exercise or the enjoyment of the grantee's license or the granting thereof by the city; provided, that neither grantee nor the city shall make or enter into any compromise or settlement of any claim, demand, cause of action, action, suit, or other proceeding, without first obtaining the written consent of the other.

(6) No waivers by city. A grantee shall not be excused from complying with any of the terms and conditions of this chapter or the license agreement by any failure of the city, upon any one or more occasions, to insist upon the grantee's performance or to seek grantee's compliance with any one or more of such terms or conditions.

(7) No recourse against city. Except in the case of gross negligence, grantee shall have no recourse whatsoever against the city for any loss, cost, expense or damage arising out of any provision or requirement of this chapter or the license agreement or the regulation thereof.

(8) New developments. The city board may amend this chapter or the license agreement whenever necessary to enable the grantee to take advantage of any developments in the field of transmission of communication signals which will afford it an opportunity to more effectively, efficiently or economically serve its customers; provided, however, that this section shall not be construed to require the city to make any such amendment. (Ord. #83-1, Feb. 1983)

CHAPTER 6

CABLE TELEVISION REGULATIONS

SECTION

9-601. Federal regulations.

9-602. Franchising authority.

9-601. Federal regulations. Pursuant to authority granted by the Cable Television and Consumer Protection Act of 1992 at 47 U.S.C. 543, and Federal Communications Commission action under the authority of said Act certifying the (City/Town) to regulate basic cable television service within the boundaries of the (City/Town); and for the purposes of regulating the rates charged to customers of any cable television operator franchised by the (City/Town), the regulations contained in Title 47 of the Code of Federal Regulations, Part 76, Subpart N, sections 76.900 through 76.985, are hereby adopted and incorporated by reference as a part of this code. (Ord. #94-10-05, May 1994)

9-602. Franchising authority. Whenever the regulations cited in § 9-601 refer to "franchising authority", it shall be deemed to be a reference to the (Governing Body) of the (City/Town). (Ord. #94-10-05, May 1994)

CHAPTER 7

CABLE TELEVISION

SECTION

9-701. To be furnished under franchise.

9-701. To be furnished under franchise. Cable television shall be furnished to the City of Charlotte and its inhabitants under franchise granted to Volunteer Cable by the board of mayor and aldermen of the City of Charlotte, Tennessee. The rights, powers, duties and obligations of the City of Charlotte and its inhabitants are clearly stated in the franchise agreement executed by, and which shall be binding upon the parties concerned.¹

¹For complete details relating to the cable television franchise agreement see the franchise agreements, and any amendments, in the office of the city recorder.