

EXHIBIT A

ARTICLE 2 CABLE SYSTEMS AND OPEN VIDEO SYSTEMS

Sec. G-II 2.1 Definitions

For the purposes of this Article, the following terms, phrases, words, and abbreviations shall have the meanings given herein. 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; and the masculine gender includes the feminine gender. The words “shall” and “will” are mandatory, and “may” is permissive. Words not defined in this Article shall have the same meaning as in Title 47 of the United States Code [§§ 521 et seq.], and if not defined therein, the California Public Utilities Code (CPUC) Sections 5800-5970, and if not defined therein, their common and ordinary meaning.

References to governmental entities or officials, whether persons or entities, refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

- ~~A.~~
- A. “Access,” “PEG access,” or “PEG use” refers to the availability of a Cable system or open video system for public, education or government use (including Institutional Network use) by various agencies, institutions, organizations, groups, and individuals, including Nevada County and its designated Access providers, to acquire, create, and distribute programming not under a Franchisee’s editorial control, including, but not limited to:
- ~~1.~~
1. “Public Access” or “Public Use” means access where organizations, groups, or individual members of the general public, on a non-discriminatory basis, are the primary or designated programmers or users having editorial control over their communications;
- ~~2.~~
2. “Education Access” or “Education Use” means access where accredited educational institutions are the primary or designated programmers or Users having editorial control over their communications;
- ~~3.~~
3. “Government Access” or “Government Use” means access where government institutions or their designees are the primary or designated programmers or Users having editorial control over their communications;
- ~~B.~~
- B. “Affiliate” means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person.
- ~~C.~~
- C. “Basic Service” means any service tier regularly provided to all subscribers which includes the retransmission of local television broadcast signals.
- ~~D.~~
- D. “Cable Act” means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, as further amended from time to time.
- ~~E.~~
- E. “Cable Communications System” refers to ~~open-video-systems (OVS) and~~ Cable systems.

~~F. “Cable system” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include: (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves subscribers without using, or connecting to a facility that uses, any public right-of-way within Nevada County; (C) a facility of a common carrier which is subject, in whole or in part, to the~~

~~provisions of Title II (Common Carriers) of the Communications Act of 1934, as amended, except that such facility shall be considered a Cable system to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) any facilities of any electric utility used solely for operating its electric utility systems; or (E) an OVS that is certified by the FCC. Any reference to a Cable system includes the Cable system as a whole, or any part thereof, including all facilities, pedestals, equipment cabinets, electronic equipment and devices appurtenant to the system.~~

~~G. —~~

~~F. “Cable system” is defined as set forth in Section 522(7) of Title 47 of the United States Code.~~

~~F.G. “Cable Service” means: as defined in California Public Utility Code section 5830(c) means:~~

~~1. — the~~

~~1. The one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and~~

~~2. —~~

~~2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.~~

~~H. —~~

~~G.H. “Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable system or OVS and which is capable of delivering a television signal whether in an analog or digital format. The definition does not restrict the use of any Channel to the transmission of analog television signals or one way transmission.~~

~~I. —~~

~~H.I. “County” means the County of Nevada and all departments, divisions, and agencies established by state law or by the Nevada County General Code.~~

~~J. —~~

~~I.J. “Construction, Operation or Repair” and similar formulations of that term means the named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement of components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, and excavation.~~

~~K. —~~

~~J.K. “Downstream Channel” means a Channel designed and activated to carry a transmission from the headend to other points on a Cable communications system, including interconnections.~~

~~L. —~~

~~K.L. “FCC” means the Federal Communications Commission.~~

~~M. “Franchise” refers to an authorization granted by Nevada County to the operator of a Cable Communications System giving the operator the non-exclusive right to occupy the space, or use facilities upon, across, beneath, or over public rights-of-way in Nevada County, and to provide specified services within a Franchise Area.~~

~~N. —~~

~~M. “Franchise” means an initial authorization, or renewal of an authorization, issued by a franchising entity, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction and operation of any network in the right-of-way capable of providing video service to subscribers, as defined in CPUC 5830(f).~~

~~L.N. “Franchise Area” means the area of Nevada County that a Franchisee is authorized to serve by the terms of its Franchise or by operation of law.~~

~~O. —~~

~~M.O. “Franchisee” refers to a person holding a Cable Communications System Franchise granted by Nevada County.~~

~~P. —~~

~~N. “Franchise Fee”~~

~~O.P. a. — In consideration of the grant and exercise of a Franchise to construct, install, operate, or provide services using, facilities in the Public Rights of Way, a Cable communications systems operator shall pay to Nevada County a Franchise Fee expressed as a percentage of Gross Revenues or some other measure. The Franchise~~

~~shall specify means the fee to be paid, and the Gross Revenues to be included in the fee calculation. If a Franchise granted adopted pursuant to this Article specifies a Franchise Fee established as the result of limiting applicable law, Nevada County shall have the option to renegotiate the amount of the Franchise Fee upon a change in applicable law. Nothing herein requires a Person to pay amounts in excess of any limits that may be established by state or federal law CPUC Section 5840.~~

~~b.—UVPP Fees. A UVPP that provides services using a Cable System for which charges are assessed to Subscribers, but are not received by the Cable system franchisee, shall pay a fee in lieu of a Franchise Fee on such service pursuant to the Franchise Fee calculation contained in the Cable system franchise.~~

~~Q.—“Gross Revenues” means all cash, credits, property, or other consideration of any kind or nature received directly or indirectly by a Franchisee, its Affiliates, from any source whatsoever arising from, attributable to, or in any way derived from a Franchisee’s operation of a Cable system within the Franchise Area. Gross revenues include, but are not limited to, fees charged to subscribers for basic service; fees charged to subscribers for any optional, premium, per channel, or per program service; monthly fees charged to subscribers for any tier of service other than basic service; installation, disconnection, re-connection, and change-in-service fees; leased channel fees; fees, payments, or other payment received as consideration from programmers for carriage of programming on the cable system; converter rentals or sales; studio rental, production equipment, and personnel fees; advertising revenues, including a per capita share of advertising revenues for advertising carried on more than one cable System; revenues from home shopping channels; sales of programming guides; and such other revenue sources as may now exist or hereafter develop.~~

~~Q. “Gross Revenues” means all revenue actually received by the holder of a state franchise as defined in CPUC 5860(d).~~

~~The definition shall be interpreted in a manner that permits Nevada County to collect the maximum franchise fee permitted by law, irrespective of the source of revenue. Gross revenues, however, shall not include any bad debt (defined as unpaid subscriber or advertiser accounts), any taxes on services furnished to a Franchisee and imposed directly upon any subscriber or user by the state, City, or other governmental unit and collected by a Franchisee on behalf of said governmental unit. The amount paid as a franchise fee shall not be deducted from gross revenues unless required to be deducted under federal law.~~

~~P.R. R.—“License” refers to the legal authorization, terminable at will, to use a particular, discrete, and limited portion of the public rights-of-way to construct, operate, or repair a cable system.~~

~~S.—~~

~~Q.S.—“Nevada County Administrator” means the Nevada County Executive Officer or his/her designee.~~

~~T.—~~

~~R.T.—“Operator” when used with reference to a system, refers to a person:~~

~~a.—~~

~~1. who directly or through one or more Affiliates provides service over a Cable Communications System and directly or through one or more affiliates owns a significant interest in such facility; or~~

~~b.—~~

~~2. who otherwise controls or is responsible for, through any arrangement, the management and operation of such a facility.~~

~~U.—~~

~~S.U.—“OVS” means an open video system. A reference to an OVS includes pedestals, equipment enclosures (such as equipment cabinets), amplifiers, power guards, nodes, cables, fiber optics and other equipment necessary to operate the OVS, or installed in conjunction with the OVS.~~

~~V.—~~

~~F.V.—“Person” includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not Nevada County.~~

~~W.—~~

~~U.W.—“Public Rights-of-Way” means the surface of and the space above and below any street, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, drive, or right-of-way or easement primarily dedicated to travel, now or hereafter~~

existing within Nevada County which may be properly used for the purpose of installing, maintaining, and operating a cable communications system; and any other property that a Franchisee is entitled by state or federal law to use by virtue of the grant of a franchise.

~~X.~~_____

~~V.X.~~_____ “Public property” means any property that is owned or under the control of Nevada County that is not a public rights-of-way, including, for purposes of this Article, but not limited to, buildings, parks, poles, structures in the public rights-of-way such as utility poles and light poles, or similar facilities or property owned by or leased to Nevada County.

~~Y.~~_____

~~W.Y.~~_____ “Revocation” means Nevada County’s affirmative act of terminating a franchise.

~~Z.~~_____

~~X.Z.~~_____ “School” means any accredited primary school, secondary school, college, and university.

~~AA.~~_____

~~Y.AA.~~_____ “Subscriber” means Nevada County or any person who is lawfully receiving, for any purpose or reason, any cable service via a cable communications system with Franchisee’s express permission, whether or not a fee is paid for such service.

~~BB.~~_____

~~Z.BB.~~_____ “Termination” means the conclusion of a franchise by any means, including, but not limited to, by expiration of its term, abandonment, or revocation.

~~CC.~~_____

~~AA.CC.~~_____ “Transfer” means any transaction in which:

~~1.~~_____ ~~All~~

1. ~~all~~ or a portion of any facilities or any rights to use or operate facilities located in the public rights-of-way are sold, conveyed, transferred, assigned, encumbered (~~except as set forth herein~~) or leased, in whole or in part, directly or indirectly, by one or more transactions to another person, whether voluntarily or by operation of law or otherwise; or

~~2.~~_____

2. there is any change, acquisition, or transfer in the identity of the person in control of the Franchisee, or any person that controls Franchisee, including, without limitation, forced or voluntary sale, merger, consolidation, or receivership; or

~~3.~~_____

3. the rights or obligations under the franchise are sold, conveyed, transferred, assigned, encumbered (~~except as set forth herein~~) or leased, in whole or in part, directly or indirectly, by one or more transactions to another person, whether voluntarily or by operation of law or otherwise. ~~It will be presumed, for purposes of clause (2) above, that any transfer or cumulative transfer of a voting interest by a person or group of persons acting in concert of ten percent (10%) or more of Franchisee, or person that controls Franchisee, or any change in the managing general partners of a Franchisee is a change of control. “Transfer” does not include:~~

~~a.~~_____ ~~A lease to a UVPP pursuant to 47 U.S.C. §§ 532 or 573;~~

~~b.~~_____ ~~The transmission of a commodity or electronic signal using facilities on a common carrier basis;~~

~~c.~~_____ ~~A lease or other right to use facilities mandated pursuant to 47 U.S.C. §224, or~~

~~d.~~_____ ~~A pledge in trust, mortgage or other encumbrance against the facilities, or any portion thereof, given to a bona fide institutional lender in connection with a loan or other financing required to secure the construction, operation, or repair of the facilities (“Loan”) provided that such Loan is subject to the rights and powers of Nevada County pursuant to the Franchise and applicable law, including, without limitation, the right of Nevada County to approve any transfer upon foreclosure. “Transferring” and “Transferee” shall have correlative meanings.~~

~~DD.~~_____

~~BB.DD.~~_____ “Unaffiliated Video Programming Provider” or “UVPP” means any person who uses capacity on a franchised cable system to deliver cable service or other

communications service (as that term is used in 47 U.S.C. §542(h)) to subscribers and who is not an affiliate of the Franchisee.

~~EE.~~—

~~CC-EE.~~ “Upstream Channel” means a channel designed and activated to carry transmissions from a point on the cable system, other than the headend, to the headend or another point on the cable system.

~~FF.~~—

~~DD-FF.~~ “User” means a person or Nevada County utilizing a channel, capacity or equipment and facilities for purposes of producing or transmitting video, voice and data materials contrasted with receiving it in the capacity of a subscriber.

Sec. G-II 2.2 Franchise Required

No person may construct or operate a Cable Communications System in Nevada County without first obtaining a ~~Nevada County~~ Franchise; provided that the following shall not be required to obtain a Franchise under this Article:

~~A.~~—

A. Nevada County; or

~~B.~~—

B. A UVPP that is only delivering Cable service or other communications service (as that term is used in 47 U.S.C. §542(h)) to subscribers.

Sec. G-II 2.3 Possessory Interest of Public Property

A. A Franchise granted pursuant to this Article shall notify the Franchisee of potential tax liability for property taxes pursuant to Cal. Rev. and Tax Code §107.6.

Sec. G-II 2.4 Failure to Obtain a Franchise

Consistent with the requirements of due process, a person’s failure to obtain a Franchise as required by this Article may, in the County’s discretion, result in:

~~A.~~—

A. Forfeiture, by operation of law, of the person’s facilities located in the public Rights-of-Way that are not authorized by an existing Franchise; and/or

~~B.~~—

B. A County order and/or court order that the facilities be removed, and that penalties and damages be paid as set forth in the County Code or in state law.

Sec. G-II 2.5 Existing Franchises

Franchisees existing as of the effective date of this Article shall, in addition to all the obligations and duties prescribed by the terms of their existing Franchises, be subject to the substantive and procedural requirements herein, except as prohibited by applicable law. Nothing herein is intended to invalidate a lawful, existing Franchise or to waive any obligations imposed by such a Franchise.

~~Notwithstanding the foregoing, provisions of this Article that expressly refer to a “Franchise granted pursuant to this Article” shall not apply to Franchises initially granted prior to the effective date of this Article.~~

Sec. G-II 2.6 Form of Franchise

Sec. G-II 2.6 Administration of Ordinance; Adoption of Regulations

~~Any Franchise shall be issued in the form of a Resolution, and must be accepted in writing by the Franchisee to become effective.~~

Sec. G-II 2.7 Filing an Application

Any person seeking to:

1. Obtain a Franchise;
2. Transfer a Franchise;
3. Extend the term of an existing Franchise;
4. Renew a Franchise; or
5. Modify an existing Franchise to add new services that are required to be authorized by a Franchise pursuant to this Article, shall submit a signed original of its application and six (6) copies to the Clerk of the Board. The Clerk of the Board shall make a Proposal available for public inspection.

The application must conform to all of the requirements of this Article. Requests for other types of Franchise modifications may be processed by Nevada County without an application, and submitted for approval. However, nothing herein shall prevent Nevada County from requiring an application in the event Nevada County determines, based on the nature of the requested modification, that the public interest would best be served by the submission of an application pursuant to this Article.

Sec. G-II 2.8 Application Fee

A. Reasonable Costs. An applicant shall pay all reasonable costs incurred by Nevada County related to the processing of any application. Processing costs shall include, but not be limited to, the costs of services rendered by any County employee, agent or representative, including consultants and attorneys.

B. The initial deposit of the application fee for the consideration of an application for issuance, renewal, transfer, or modification of a Franchise shall be in the amount of \$5,000.00, or for a License in the amount of \$1,000.00, which deposit shall be submitted with the application. Nevada County may, as costs are incurred, draw upon the deposit to recover its administrative costs, including, but not limited to, the reasonable cost of outside consultants retained by Nevada County related to the County's review and processing of a Franchise or License. The Nevada County Administrator, at any time, may require the applicant to deposit additional sums if it appears that the initial deposit or subsequent deposits will be exhausted prior to the final action by Nevada County relating to the consideration by the County of an application for issuance, renewal, transfer, or modification of a Franchise or License. The application will not be subject to further review and processing until such time as the additional deposit required by the Nevada County Administrator has been deposited with the County.

In the event the amount of the deposit of an applicant is in excess of the amount of the administrative expenses of the County related to the action requested, then the applicant shall be entitled to a return of any such excess amount. In addition, an applicant that is awarded a franchise or a license shall pay Nevada County a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting of a franchise or license. Such payment shall be made to the Nevada County Administrator within thirty (30) days after Nevada County furnishes the Franchisee or Licensee with a statement of such expenses.

Sec. G-II 2.9 Nature of Franchise

A. Scope. A franchise granted pursuant to this Article shall authorize and permit a Franchisee to construct, operate, maintain and repair a cable system, or an OVS (as applicable) to provide cable service in Nevada County, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain facilities appurtenant to such system in, on, over, under, upon, across, and along those public rights-of-way that Nevada County may authorize a Franchisee to use.

B. Nothing Passes by Implication. A Franchise shall not convey rights other than as specified in this ordinance, or in a Franchise agreement; no rights shall pass by implication.

C. Franchise Not in Lieu of Other Authorizations. A Franchise shall not include, or be a substitute for:

~~1.—Complying with requirements for the privilege of transacting and carrying on a business within Nevada County, including but not limited to complying with the conditions Nevada County may establish before constructing facilities for, or providing, non-cable services;~~

~~2.—Any permit, agreement or authorization required in connection with operations on or in public rights-of-way or public property, including by way of example and not limitation, street-cut permits;~~

~~3.—Any permits or agreements for occupying any other property of Nevada County or private entities to which access is not specifically granted by the franchise.~~

~~D.—Franchisee Must Comply With Other Laws. A franchise does not relieve a Franchisee of its duty to comply with all Nevada County Ordinances and regulations, and every Franchisee must comply with the same. Likewise, the rights granted under a franchise are subject to the exercise of police and other powers Nevada County now has or may later obtain, including but not limited to the power of eminent domain. Every Franchise shall be deemed to incorporate all the requirements of the Nevada County Charter.~~

~~E.—Franchise Not a Grant of Property Rights. A franchise does not convey title, equitable or legal, in the public rights-of-way. Rights granted may not be subdivided or subleased.~~

~~F.—Franchise Non-Exclusive. No franchise shall be exclusive, or prevent Nevada County from issuing other franchises or authorizations, or prevent Nevada County from itself constructing, operating, or repairing its own cable communications system, with or without a franchise.~~

~~G.—Franchise Term. Every franchise shall be for a term of years that shall be specified in the franchise.~~

~~H.—Costs Borne by Franchisee. Unless otherwise specifically stated in a franchise or required by law, all acts which a Franchisee is required to perform under the franchise or applicable law must be performed at the Franchisee's expense.~~

~~I.—Failures to Perform. If a cable communications systems operator fails to perform work that it is required to perform within the time provided for performance, Nevada County may perform the work and bill the operator therefor. The operator shall pay the amounts billed within thirty (30) days.~~

Sec. G-II 2.10 Administration of Ordinance; Adoption of Regulations

~~A.~~ **A.**—Adoption of Regulations. Nevada County may from time to time adopt regulations to implement the provisions of this ordinance.

~~B.~~ **B.**—Delegation. The Nevada County Administrator or its designees are hereby authorized to administer the provisions of this ordinance and any franchise issued pursuant thereto, and to provide any notices (including non-compliance notices) and to take any action on Nevada County's behalf that may be required hereunder or under applicable law.

~~C.~~ **C.**—No Waiver. The failure of Nevada County, upon one or more occasions, to exercise a right or to require compliance or performance under a franchise or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing.

~~D.~~ **D.**—Administration of Public, Educational and Government Access. Nevada County may designate one or more entities, including itself, to control and manage the use of Public, Educational and Government Access Channels, facilities and equipment.

Sec. G-II 2.11 Transfers

~~A.—— Prior Approval Required. Every franchise shall be deemed to be held in trust, and to be personal to the Franchisee. Any transfer that is made without the prior approval of Nevada County shall be deemed to impair that trust. A transfer is any transaction pursuant to which:~~

- ~~1.— A cable communications system is sold or assigned (except the term does not include sale of portions of the cable system that are removed).~~
- ~~2.— There is any change, acquisition, or transfer of control of the Franchisee or its direct or indirect parents, whether voluntary or by operation of law; or by merger, consolidation, voluntary or involuntary forced sale of assets or ownership interests, or by any other means. A transfer will be deemed to have occurred whenever there is a change, acquisition or transfer of control of more than a ten (10) percent ownership in the Franchisee or its direct or indirect parents by any entity, or a group of entities acting in concert. However, a transfer also occurs whenever there is a change in actual working control, in whatever manner exercised, over the affairs of a Franchisee or its direct or indirect parents. Without limiting the above, any change in the general partners of a Franchisee will be presumed a change in control.~~
- ~~3.— The rights and/or obligations held by the Franchisee under the franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another party.~~

~~B. Exception for Mortgages. Notwithstanding any other provision of this Article, pledges in trust or mortgages of the assets of a cable communications system to secure the construction, operation, or repair of the system may be made without application and without Nevada County's prior consent. However, no such arrangement may be made if it would in any respect under any condition: (A) prevent the cable communications systems operator or any successor from complying with the franchise or applicable law; or (B) permit a third party to succeed to the interest of the operator, or to own or control the system, without the prior consent of Nevada County. Any mortgage, pledge or lease shall be subject to and subordinate to the rights of Nevada County under any franchise, this Article, or other applicable law.~~

~~Sec. G-II 2.12 General Conditions Upon Construction, Operation and Repair~~

~~A.——~~

Sec. G-II 2.7 General Conditions Upon Construction, Operation and Repair

A. Franchisee Must Follow Local Rules. The construction, operation, and repair of cable communications systems shall be performed in compliance with all laws, ordinances, departmental rules, regulations, and practices affecting such system. By way of example, and not limitation, this includes zoning and safety codes, construction standards, regulations for providing notice to persons that may be affected by system construction, and directives governing the time, place and manner in which facilities may be installed in the rights-of-way. Persons engaged in the construction, operation, or repair of communications facilities shall exercise reasonable care in the performance of all their activities and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.

~~B.——~~

B. No Permit Without Franchise. A franchise is required before a permit may be issued for work associated with the construction of a cable communications system. Any permit issued for such work to a person that does not hold a franchise shall vest no rights in the permittee; the permit may be revoked at will, and the permittee shall remove all facilities installed under the permit upon Nevada County's demand.

~~C.——~~

C. Permits Must Be Obtained. Construction, operation, or repair of a cable communications system shall not commence until all required permits have been obtained from the proper Nevada County officials and all required fees have been paid. All work performed will be performed in strict accordance with the conditions of the permit. Upon order of Nevada County, any work and/or construction undertaken that is not completed in compliance with Nevada County's requirements, or which is installed without obtaining necessary permits and approvals shall be removed.

~~D.~~

D. No Interference. Interference with the use of the public rights-of-way by others, including others that may be installing cable communications systems, must be minimized. Nevada County may require a person using the rights-of-way to cooperate with others through joint trenching and other arrangements to minimize adverse impacts on the rights-of-way.

~~E.~~

E. Plans for and Publicizing Work. Work shall be publicized as Nevada County may direct from time to time. The publication of work may be used to notify the public and operators of other communications systems, of the impending work, in order to minimize inconvenience and disruption to the public.

~~1.~~

1. Each Franchisee shall provide Nevada County a plan for any initial system construction, or for any substantial rebuild, upgrade or extension of its facility, which shall show its timetable for construction of each phase of the project, and the areas of the County that will be affected.

~~2.~~

2. The Nevada County Administrator may from time to time, when the County receives application for a permit to use a particular route, or upon the Nevada County Administrator's own initiative, designate by published order a route or proposed route for installation of communications facilities and may (1) require all persons who wish to emplace underground facilities along that route or any part thereof to install them during a specified period provided all costs are shared equitably and (2) otherwise prohibit initial emplacement of such facilities along the route or any part thereof for twenty-four (24) months or after such other, longer period as is necessary to protect the public interest.

~~F.~~

F. Existing Poles to Be Used. To the extent possible, operators of cable communications systems shall use existing poles and conduit. Additional poles may not be installed in the right-of-way, nor may pole capacity be increased by vertical or horizontal extenders, without the permission of the Nevada County Administrator.

~~1.~~

1. To minimize disruption of public passage or infrastructure, to forestall or relieve exhaustion of rights of way capacity, or to protect environmentally sensitive areas, the Nevada County Administrator may require as a condition of issuing any rights of way permit for erection of new poles or construction of underground conduit, the installation of which requires excavation of or along any traveled way that the Franchisee, Licensee, or holder of the rights of way permit provide pole space or empty conduits in excess of its own present and reasonably foreseeable requirements for the purpose of accommodating the County and/or other franchisees and licensees.

~~G.~~

G. Undergrounding

~~1.~~

1. Whenever all existing utilities are located underground in an area in Nevada County, every cable communications systems operator in the same area must locate its cable communications system underground.

~~2.~~

2. Whenever the owner of a pole locates or relocates underground within an area of Nevada County, every cable communications systems operator in the same area shall concurrently relocate its facilities underground.

~~3.~~

3. The Nevada County Administrator may, for good cause shown, exempt a particular system or facility or group of facilities from the obligation to locate or relocate facilities underground, where relocation is impractical, or where the County and the subscriber's interest can be protected in another manner. Nothing in Sec. G-II 2.12.G prevents Nevada County from ordering communications facilities to be located or relocated underground except for Franchisee's ordinary engineering practice making undergrounding impracticable or infeasible under other provisions of the Nevada County Code.

~~H.~~

H. Prompt Repairs. Any and all public rights-of-way, other public property, or private property that is disturbed or damaged during the construction, operation, maintenance or repair of a cable communications system shall be promptly repaired by the operator. Public property and public rights-of-way must be restored to the satisfaction of Nevada County or to a condition as good or better than before the disturbance or damage occurred.

~~I.~~

I. Movement of Facilities for Government

~~1.~~

1. A cable communications systems operator shall, by a time specified by Nevada County, protect, support, temporarily disconnect, relocate, or remove any of its property when required by Nevada County by reason of traffic conditions; public safety; public right-of-way construction and repair (including regrading, resurfacing or widening); public right-of-way vacation; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned system or utility, public work, public facility, or improvement; or for any other purpose where the work involved would be aided by the removal or relocation of the cable communications system. Collectively, such matters are referred to below as the "public work."

~~2.~~

2. Except in the case of emergency, Nevada County shall provide written notice describing where the public work is to be performed at least one week prior to the deadline by which a cable communications systems operator must protect, support, temporarily disconnect, relocate or remove its facilities. However, in an emergency, or where a cable communications system creates or is contributing to an imminent danger to health, safety, or property, Nevada County may protect, support, temporarily disconnect, remove, or relocate any or all parts of the cable communications system without prior notice, and charge the cable communications systems operator for costs incurred.

~~J.~~

J. Movement for Others

~~1.~~

1. To accommodate the construction, operation, or repair of the facilities of another person authorized to use the streets or public property, a Franchisee shall, by a time specified by such person, protect, support, temporarily disconnect, relocate or remove its facilities. The Franchisee must be given written notice describing where the construction, operation or repair is to be performed at least fifteen (15) days prior to the time by which its work must be completed. Nevada County may resolve disputes as to responsibility for costs associated with removal, relaying, or relocation of facilities among entities authorized to install facilities in the streets or on public property if such entities are unable to do so themselves.

~~2.~~

2. A cable communications systems operator shall, on the request of any person holding a valid permit issued by a governmental authority, temporarily raise or lower its wires by a time specified to permit the moving of buildings or other objects. A cable communications systems operator shall be given not less than seven (7) days advance notice to arrange for such temporary wire changes. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same.

~~K.~~

K. Abandonment in Place

~~1.~~

1. A cable communications systems operator may abandon any property in place in the public rights-of-way upon written notice to Nevada County. However, if, within ninety (90) days of the receipt of written notice of abandonment, Nevada County determines, that the safety, appearance, functioning or use of the public rights-of-way and facilities in the public rights-of-way will be adversely affected, the property must be removed by a date specified by Nevada County.

~~2.~~

2. A cable communications systems operator that abandons its property must, upon request, transfer ownership of the properties to Nevada County at no cost, and execute necessary quitclaim deeds and indemnify Nevada County against future costs associated with mitigating or eliminating any environmental hazard associated with the abandoned property.

~~L.~~

- L. System Subject to Inspection. Every cable communications system shall be subject to inspection and testing by Nevada County. Each operator must respond to requests for information regarding its system and plans for the system as Nevada County may from time to time issue, including requests for information regarding its plans for construction, operation and repair and the purposes for which the plant is being constructed, operated, or repaired.

~~M.~~

- M. Underground Services Alert. Each operator of a cable communications system that places facilities underground shall be a member of the regional notification center for subsurface installations (Underground Services Alert) and shall field mark the locations of its underground communications facilities upon request. The operator shall locate its facilities for Nevada County at no charge.

~~N.~~

- N. Plan for construction. Every franchise shall specify for Nevada County a construction schedule that will apply to any required construction, upgrade, or rebuild of the cable communications system. The schedule shall provide for the prompt completion of the project, shall show its timetable for construction of each phase of the project, with benchmarks for deliverables and the areas of Nevada County that will be affected. Nevada County shall have the right to impose penalties on the operator for a failure to meet the accepted timetable and benchmarks.

~~O.~~

- O. Use of Facilities by Nevada County. Nevada County shall have the right to install and maintain, free of charge upon any poles or in any conduit owned by a Franchisee any wire and pole fixtures that do not unreasonably interfere with the cable service operations of the Franchisee.

EXHIBIT B

ARTICLE 2.A ~~SPECIAL RULES APPLICABLE TO CABLE SYSTEMS STATE VIDEO SERVICE FRANCHISES~~

Sec. G-II.2.A.1 Findings

The ~~Sec. G-II.2.A.1 Applications – Generally~~

- A. ~~A. — Application Required. An application must be filed for an initial County encourages and renewal supports community, public, educational and government video and cable system programming throughout Nevada County.~~
- B. ~~In 2006, the State of California adopted the “Digital Infrastructure and Video Competition Act” (DIVCA), embodied in California Public Utilities Code section 5800 et seq., which transferred the authority for issuing franchises to cable television providers from local entities to the Public Utilities Commission. DIVCA authorized the County of Nevada to continue regulating franchise, or for approval of a transfer. A request agreements directly with cable television providers through its existing agreements until the expiration of those agreements.~~
- C. ~~DIVCA establishes that local entities are responsible for administration and implementation of certain provisions of DIVCA, but they are preempted from regulating most other provisions governing state-issued cable television franchises.~~
- D. ~~DIVCA authorizes that the County establish, by ordinance, financial support provisions for renewal filed Public, Education and Government Access (PEG) channel facilities.~~
- E. ~~The intent of this Article is to ensure that the County will continue to have the financial resources to maintain quality PEG programming. A video service provider PEG fee is needed to support such continued public, educational and government programming consistent with the provisions in state and federal law governing the use of such fees.~~
- F. ~~The County’s existing franchise agreements expired on June 27, 2016. In order to ensure that the County continues to receive PEG fees, the County desires to adopt a new General Code Section consistent with the DIVCA provisions and replace existing code sections pertaining to local franchise agreements that no longer apply.~~
- G. ~~It is the intent of the Board of Supervisors in adopting this Article to facilitate the implementation of DIVCA by setting forth regulations for the provision of video service by State Franchise Holders within the County of Nevada, in accordance with the requirements set forth in DIVCA.~~
- H. ~~This action furthers the Board of Supervisors’ goals and objectives for improved government transparency, public engagement, investment in technology, and fiscal sustainability.~~

Sec. G-II.2.A.2 General Provisions

- A. ~~Purpose. This Section is applicable to video service providers who have been awarded a state video franchise under 47 U.S.C. §546(h) need the California Public Utilities Code section 5800 et seq. (the Digital Infrastructure and Video Competition Act of 2006 [“DIVCA”]), to provide cable or video services in any location(s) within the unincorporated boundaries of the County. It is the purpose of this Section to implement within the unincorporated boundaries of the County the provisions of DIVCA and the rules of the California Public Utilities Commission promulgated thereunder that are applicable to a “local franchising entity” or a “local entity” as defined in DIVCA.~~
- B. ~~Rights Reserved.~~

1. The rights reserved to the County under this Article are in addition to all other rights of the County, whether reserved by this Article or authorized by law, and no action, proceeding or exercise of a right shall affect any other rights which may be held by the County.
2. Except as otherwise provided by DIVCA, a state franchise shall ~~not contain the information include~~, or be a substitute for:
 - i. compliance with applicable requirements for the privilege of transacting and carrying on a business within the County, including, but not limited to, compliance with the conditions that the County may establish before facilities may be constructed for, or providing, non-video services;
 - ~~i.~~ii. any permit or authorization required by in connection with operations on or in public rights-of-way or public property, including, but not limited to, encroachment permits, street work permits, pole attachment permits and street cut permits; and ~~Sec. G-II 2.A.1.B.~~
 - iii. any permit, agreement or authorization for occupying any other property of the County or any private person to which access is not specifically granted by the state franchise.
3. No permit issued by the County to a State Franchise Holder is itself a franchise, nor shall any permit create a vested right that would prohibit the County from revoking or amending the permit.

C. Compliance with County Ordinances. Nothing contained in this Article shall be construed so as to exempt a State Franchise Holder from compliance with all ordinances, rules or regulations of the County now in effect or which may be hereafter adopted which are consistent with this Article or California Public Utilities Code section 5800 et seq., or any obligations under any franchise issued by the County insofar as those obligations may continue to be enforced under California Public Utilities Code section 5800 et seq.

D. Compliance with DIVCA. When a video service provider holding a state franchise provides notice to the County pursuant to 5840(m) of DIVCA that it is commencing to provide video service to the County, a holder of a local franchise is entitled to seek a state franchise pursuant to 5930(c) and upon issuance of a state franchise by the California Public Utilities Commission for the franchise area the local franchise shall terminate.

Sec. G-II.2.A.3 Definitions

Definitions Generally -- Interpretation of Language. For purposes of this Article the following terms, phrases, words, and their derivations shall have the meaning as set forth in this Section. Words not defined in this Section, shall have the same meaning as established in: (1) DIVCA, and if not defined therein, (2) California Public Utilities Commission rules implementing DIVCA, and if not defined therein, (3) Title VI of Title 47 of the Communications Act of 1934, as amended, 47 USC § 521 et. seq., and if not defined therein (4) their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and "including" and "include" are not limiting. The words "shall" and "will" are always mandatory, but the use of those terms grants no private rights to any person with respect to the County. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

- A. “Gross Revenues” defined in DIVCA section 5860(d) means all revenues actually received by the holder of a state franchise or its affiliates that are derived from the operation of the holder's network to provide cable service or video service within the unincorporated areas of the County.
- B. “PEG Access,” or “PEG” means the availability of a cable or State Franchise Holder’s system for public, educational, or governmental use by various agencies, institutions, organizations, groups, and individuals, including organizations, groups, or individual members of the general public, educational institutions, and the County and its designated access providers, to acquire, create, and distribute programming not under a State Franchise Holder's editorial control.
- C. “State Franchise Holder” means a cable operator or video service provider that has been issued a franchise by the California Public Utilities Commission to provide cable service or video service, as those terms are defined in California Public Utilities Code section 5830, within any portion of the unincorporated limits of the County.
- D. “Incumbent Cable Operator,” as defined in DIVCA 5830(i), means a cable operator or OVS serving subscribers under a franchise in a particular city, county or city and county franchise area on January 1, 2007.
- E. “Material Breach,” as defined in DIVCA 5900(j), means any substantial and repeated failure of a video service provider to comply with service quality and other standards specified in Public Utilities Code section 5900(a).

Sec. G-II.2.A.4 Franchise Fees

- A. Franchise Fees. Any State Franchise Holder operating within the unincorporated areas of the County shall pay to the County a franchise fee equal to five percent (5%) of gross revenues that may be subject to a franchise fee under California Public Utilities Code section 5860.
- B. Payment of Franchise Fees. The franchise fee required pursuant to this Article shall be paid quarterly, in a manner consistent with California Public Utilities Code section 5860. The State Franchise Holder shall deliver to the County, by check or other means, which shall be agreed to by the County, a separate payment for the state franchise fee not later than forty-five (45) days after the end of each calendar quarter. Each payment made shall be accompanied by a report, detailing how the payment was calculated, and shall include such additional information on the appropriate form as designated by the County.
- C. Examination of Business Records. The County may examine the business records of the holder of a state franchise in a manner consistent with California Public Utilities Code section 5860(i).
- D. Late Payments. In the event a State Franchise Holder fails to make payments required by this Article on or before the due dates specified herein, the County shall impose, pursuant to DIVCA section 5860(h), a late charge at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%).
- E. Lease of County-Owned Network. In the event a State Franchise Holder leases access or spectrum to a fiber network owned by the County, the County may set a franchise fee for access to the County-owned network separate and apart from the franchise fee charged to State Franchise Holders pursuant to this Article which fee shall otherwise be payable in accordance with the procedures established by this subsection.

Sec. G-II.2.A.5 Customer Service

- A. Customer Service Standards. A State Franchise Holder shall comply with Sections 53055, 53055.1, 53055.2 and 53088.2 of the California Government Code; the FCC customer service and notice standards set forth in Sections 76.309, 76.1602, 76.1603,

and 76.1619 of Title 47 of the Code of Federal Regulations; Section 637.5 of the California Penal Code; the privacy standards of Section 551 of Title 47 of the United States Code; and, to the extent consistent with DIVCA, all other applicable state and federal customer service and consumer protection standards pertaining to the provision of video service, including any such federal or state standards hereafter adopted. In case of a conflict, the stricter standard shall apply. All customer service and consumer protection standards under this paragraph shall be interpreted and applied to accommodate newer or different technologies while meeting or exceeding the goals of the standards.

B. Penalties for Violations of Standards. The County shall enforce the compliance of State Franchise Holders with respect to the state and federal customer service and consumer protection standards set forth in this Article. The County will provide a State Franchise Holder with a written notice of any alleged Material Breaches, as defined in California Public Utilities Code section 5900 and in this Article, of applicable customer service or consumer protection standards, and will allow the State Franchise Holder 30 days from the receipt of the notice to remedy the specified Material Breach. Material Breaches not remedied by a State Franchise Holder within the 30-day time period, irrespective of the number of customers affected, will be subject to the following penalties to be imposed by the County:

1. For the first occurrence of a Material Breach, a fine of \$500 may be imposed for each day the violation remains in effect, not to exceed \$1,500 for each violation.
2. For a second Material Breach of the same nature within 12 months, a fine of \$1,000 may be imposed for each day the violation remains in effect, not to exceed \$3,000 for each violation.
3. For a third Material Breach of the same nature within 12 months, a fine of \$2,500 may be imposed for each day the violation remains in effect, not to exceed \$7,500 for each violation.
4. Any penalties imposed by the County shall be imposed in a manner consistent with California Public Utilities Code section 5900.

Sec. G-II.2.A.6 Permits and Construction

A. Except as expressly provided in this Article, all provisions of Nevada County Code Title III, the Nevada County Land Use and Development Code, and all County administrative rules and regulations developed to any of these provisions, as now existing or as hereafter amended, shall apply to all work performed by or on behalf of a State Franchise Holder on any County public rights-of-way, public property, or County easement.

B. Permits. Prior to commencing any work for which a permit is required by the Nevada County Land Use and Development Code, a State Franchise Holder shall apply for and obtain a permit in accordance with the provisions of Title 3, Chapter II of the Land Use and Development Code and shall comply with all other applicable laws and regulations, including but not limited to all applicable requirements of Division 13 of the California Public Resources Code, section 21000, *et seq.* (the California Environmental Quality Act). Any work requiring County Land Use permits, building permits and/or grading permits, other than encroachment permits described below, shall be applied for and approved or denied in accordance with the provisions of Title 3, Chapter II of the Land Use and Development Code including the appeal process of such an approval or denial outlined in Section L-II 5.12 of Chapter II of the Land Use and Development Code.

C. The Community Development Director or designee shall either approve or deny State Franchise Holder's application for an encroachment permit, as defined in DIVCA

5885(c)(1), required under the Land Use and Development Code within sixty (60) days of receiving a completed permit application from the State Franchise Holder.

- D. If the Community Development Director denies a State Franchise Holder's application for an encroachment permit, the Community Development Director shall, at the time of notifying the applicant of denial, furnish to the applicant a detailed explanation of the reason or reasons for the denial.
- E. A State Franchise Holder that has been denied an encroachment permit by final decision of the Community Development Director may appeal the denial to the County Board of Supervisors. Upon receiving a notice of appeal, the Board of Supervisors shall take one of the following actions:
1. Affirm the action of the Community Development Director without any further hearing; or
 2. Refer the matter back to the Community Development Director for further review with or without instructions; or
 3. Set the matter for a *de novo* hearing before the Board of Supervisors.
- F. In rendering its decision on the appeal, the Board of Supervisors shall not hear or consider any argument or evidence of any kind other than the record of the matter received from the Community Development Director unless the Board of Supervisors is itself conducting a public hearing on the matter.
- G. The issuance of an encroachment permit is not a franchise, and does not grant any vested rights in any location in the public rights-of-way, or in any particular manner of placement within the rights-of-way. Without limitation, a permit to place cabinets and similar appurtenances aboveground may be revoked and the permittee required to place facilities underground, in accordance with applicable law.

Sec. B.—Application Contents.

1.—The Nevada County Administrator may specify the information that must be provided in connection with an application, and the form in which the information is to be provided. At a minimum each application must identify the applicant, show that the applicant is financially, technically and legally qualified to construct, maintain and operate the cable system, contain a pro forma showing capital expenditures and expected income and expenses for the first five (5) years the applicant is to hold the franchise, and show that the applicant is willing to comply unconditionally with its franchise obligations. In addition, any application for an initial or renewal franchise or rebuild of the cable system and/or facilities, must describe in detail the cable system that the applicant proposes to build, show where it will be located, set out the system construction schedule, and show that the applicant will provide adequate Channels, facilities and other support for public, educational and government use (including institutional network use) of the cable system. A detailed description of the physical facilities proposed, which shall include at least the following:

- a.—A description of the channel capacity, technical design, performance characteristics, headend, access (and institutional network, if required) facilities and equipment;
- b.—The location of proposed facility and facility design, including a description of the miles of plant to be installed, and a description of the size of equipment cabinets, shielding and electronics that will be installed along the plant route, the power sources that will be used and a description of the noise, exhaust and pollutants, if any, that will be generated by the operation of the same; provided, however, that, if some of the descriptive data is not available at the time of application, the franchise may issue subject to conditions that the data be filed and approved by Nevada County before construction begins and that the franchise will be deemed to be forfeited if the data is not supplied and approved; provided, further, that the foregoing proviso does not

authorize the grant of a franchise where there is not sufficient information to appraise the impact of the applicant's proposal;

e. — A map of the general route the facility will follow; a designation of the portions of the system that will be placed above ground and the portions that will be placed underground, and the construction techniques that the applicant proposes to use in installing the system above ground and underground; a schedule for construction of the facility, describing when and where construction will begin, how it will proceed, benchmarks indicating the schedule completion of portions of the system and when construction will be completed; and the expected effect on right-of-way usage, including information on the ability of the public rights-of-way to accommodate the proposed system, including, as appropriate given the system proposed, an estimate of the availability of space in conduits and an estimate of the cost of any necessary rearrangement of existing facilities;

d. — A description, where appropriate, of how services will be converted from existing facilities to new facilities, and what will be done with existing facilities.

e. — A demonstration of how the applicant will reasonably meet the future cable-related needs and interests of the community, including descriptions of the capacity, facilities and support for public, educational, and governmental use of the system (including institutional networks) applicant proposes to provide and why applicant believes that the proposal is adequate to meet the future cable-related needs and interests of the community. A demonstration of the financial qualifications of the applicant, including at least the following:

f. — The proposed rate structure, including projected charges for each service tier, installation, converters, and all other proposed equipment or services;

g. — A statement regarding the applicant's financial ability to complete the construction to meet the time frame proposed and to operate the cable system proposed certified by the applicant's chief financial officer; and

h. — A demonstration of the applicant's technical ability to construct and/or operate the proposed cable system;

i. — A demonstration that the applicant is legally qualified, which proof must include a demonstration that the applicant:

(1) — Has received, or is in a position to receive, necessary authorizations from state and federal authorities;

(2) — Has not engaged in conduct (fraud, racketeering, violation of antitrust laws, consumer protection laws, or similar laws) that allows Nevada County to conclude the applicant cannot be relied upon to comply with requirements of franchise, or provisions of this title;

(3) — Is willing to enter into a franchise, to pay required compensation and to abide by the provisions of applicable law, including those relating to the construction, operation or repair of its facilities; and has not entered into any agreement that would prevent it from doing so; and

j. — The applicant must not have submitted an application for an initial or renewal franchise to Nevada County, which was denied on the ground that the applicant failed to propose a cable system meeting the cable related needs and interests of the community, or as to which any challenges to such franchising decision were finally resolved (including any appeals) adversely to the applicant, within three (3) years preceding the submission of the application.

An applicant may show that it would be inappropriate to deny it a franchise by virtue of: the particular circumstances surrounding the acts or omissions at issue; the steps taken by the applicant to cure all harms flowing therefrom and to prevent their recurrence; and the lack of involvement of the applicant's principals, or the remoteness of the acts or omissions from the operation of communications systems.

k. — The extent that the applicant is in any respect relying on the financial or technical resources of another person, including another affiliate, proofs should be provided for that person.

l. — A description of the applicant's prior experience in cable system ownership, construction, and operation, and identification of cities and counties in California in

~~which the applicant or any of its principals have a cable franchise or any interest therein, provided that an applicant that holds a franchise for Nevada County and is seeking renewal of that franchise need only provide this information for other cities and counties in California where its franchise is scheduled to expire during the twelve (12) month period prior to the date its application is submitted to Nevada County and for other cities and counties in California where its franchise had been scheduled to expire during the twelve (12) month period after the date its application is submitted to Nevada County. If an applicant has no other franchise in California, it shall provide the information for its operations in other states.~~

~~m. — An affidavit or declaration of the applicant or authorized officer thereof certifying the truth and accuracy of the information in the application, and certifying that the application meets all requirements of applicable law.~~

~~2. — To be accepted for filing, an original and six (6) copies of a complete application must be submitted. All applications shall include the names and addresses of persons authorized to act on behalf of the applicant with respect to the application.~~

~~3. — An applicant (and the transferor and transferee, in the case of a transfer) shall respond to any request for information from Nevada County, by the time specified by Nevada County.~~

~~C. Incomplete Applications. An application may be rejected if it is incomplete, or if the response to requests for information is not timely and complete.~~

Sec. G-II 2.A.2 Application for an Initial Franchise or Renewal Franchise

~~A. — Scope. This section establishes additional provisions that apply to an application for an initial franchise, or a renewal franchise application that is not governed by 47 U.S.C. §546(a)-(h).~~

~~B. Process. Any person may apply for an initial or renewal franchise by submitting an application therefore on that person's own initiative, or in response to a request for proposals issued by Nevada County. If Nevada County receives an unsolicited application, it may choose to issue a request for additional proposals, and require the applicant to amend its proposal to respond thereto. Nevada County shall promptly conduct such investigations as are necessary to act on an application.~~

~~C. Consideration of Application. In determining whether to grant a franchise, Nevada County may consider:~~

~~1. — The extent to which an applicant for renewal has substantially complied with the applicable law and the material terms of any existing cable franchise;~~

~~2. — Whether an applicant for renewal's quality of service under its existing franchise, including signal quality, response to customer complaints, billing practices, and the like has been reasonable in light of the needs of the community;~~

~~3. — Where the applicant has not previously held a cable system franchise in Nevada County, whether the applicant's record in other communities indicates that it can be relied upon to provide high quality service throughout any franchise term;~~

~~4. — Whether the applicant has the financial, legal, and technical ability to provide the services, facilities, and equipment set forth in an application, and to satisfy any minimum requirements established by Nevada County;~~

~~5. — Whether the applicant's application is reasonable to meet the future cable-related needs and interests of Nevada County, taking into account the cost of meeting such needs and interests;~~

~~6. — Whether issuance of a franchise is warranted in the public interest considering the immediate and future effect on streets, public property, and private property that will be used by the applicant's cable system;~~

~~7. — Whether issuance of the franchise would reduce competition in the provision of cable service in Nevada County;~~

~~8. — Such other matters as Nevada County is authorized or required to consider.~~

~~D. — Issuance of Franchise. If Nevada County determines that issuance of a franchise would be in the public interest considering the factors described above, it may proffer a franchise agreement to the applicant. No franchise shall become effective until the franchise is unconditionally accepted by the applicant, and the franchise agreement is signed.~~

~~Sec. G-II 2.A.3 Application for Renewal Franchise Filed Pursuant to 47 U.S.C. §546~~

~~A. — Scope. This section establishes additional provisions that apply to applications for renewal governed by 47 U.S.C. §546(a) (g).~~

~~B. Process. A Franchisee that intends to exercise rights under 47 U.S.C. §546(a) (g) shall submit a notice in writing to Nevada County in a timely manner clearly stating that it is activating the procedures set forth in those sections. Nevada County shall thereafter commence any proceedings that may be required under federal law, and upon completion of those proceedings, Nevada County may issue a request for proposals and an application may be submitted for renewal. Nevada County may preliminarily deny the application by resolution, and if the application is preliminarily denied, Nevada County may conduct such proceedings and by resolution establish such procedures and appoint such individuals as may be necessary to conduct any proceedings to review the application.~~

~~Sec. G-II 2.A.4 Application for Transfer~~

~~A. — Scope. This section establishes additional provisions that apply to applications for transfer approval.~~

~~B. Information. An application for transfer must contain all the information required by Nevada County Administrator, by Sec. G-II 2.1, and all information required by any FCC Transfer form.~~

~~C. Consideration of Application. In determining whether a transfer application should be granted, denied, or granted subject to conditions, Nevada County may consider the legal, financial, and technical qualifications of the transferee to operate the cable system; any potential impact of the transfer on subscriber rates or services; whether the incumbent is in compliance with its franchise; whether the transferee owns or controls any other cable system in Nevada County, whether operation by the transferee may eliminate or reduce competition in the delivery of cable service in Nevada County; and whether operation by the transferee or approval of the transfer would otherwise adversely affect subscribers, the public, or Nevada County's interest under this Article, the franchise, or other applicable law. The proposed transferee shall pay all reasonable costs incurred by Nevada County in reviewing and evaluating the applications.~~

~~D. — Minimum Conditions. In order to obtain approval of a transfer, an applicant must show, at a minimum that: the transferee is qualified; the transfer will not adversely affect the interests of subscribers, the public, or Nevada County; and that non-compliance issues have been resolved. No application shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this title and the franchise, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous franchisee for all purposes.~~

~~Sec. G-II 2.A.5 Legal Qualifications~~

~~A. — Standards.~~

~~1. — The applicant must be willing to comply with the provisions of this Article and applicable laws; and to comply with such requirements of a franchise as Nevada County may lawfully require.~~

~~2. — The applicant must not have had any cable system or OVS franchise validly revoked, (including any appeals) by Nevada County within three (3) years preceding the submission of the application.~~

~~3.—The applicant may not have had an application to Nevada County for an initial or renewal cable system franchise denied on the ground that the applicant failed to propose a cable system meeting the cable-related needs and interests of the community, or as to which any challenges to such franchising decision were finally resolved (including any appeals) adversely to the applicant, within three (3) years preceding the submission of the application; and may not have had an application for an initial or renewal OVS franchise denied on any ground within three years of the application.~~

~~4.—The applicant shall not be issued a franchise if, at any time during the ten (10) years preceding the submission of the application, applicant was convicted of fraud, racketeering, anticompetitive actions, unfair trade practices or other conduct of such character that the applicant cannot be relied upon to deal truthfully with Nevada County and the subscribers, or to substantially comply with its obligations.~~

~~5.—Applicant must have the necessary authority under California and federal law to operate a cable system, or show that it is in a position to obtain that authority.~~

~~6.—The Applicant shall not be issued a franchise if it files materially misleading information in its application or intentionally withholds information that the applicant lawfully is required to provide.~~

~~7.—For purposes Sec. G II 2.A.5.A.2-4, the term applicant includes any affiliate of applicant.~~

~~B.Exception. Notwithstanding Sec. G II 2.A.5.A, an applicant shall be provided a reasonable opportunity to show that a Franchise should issue even if the requirements of Sec. G II 2.A.5.A.3-4 are not satisfied, by virtue of the circumstances surrounding the matter and the steps taken by the applicant to cure all harms flowing therefrom and prevent their recurrence, the lack of involvement of the applicant's principals, or the remoteness of the matter from the operation of a Cable system.~~

Sec. G-II 2.A.6 Franchise Fee

~~A cable communications systems operator shall pay to Nevada County a franchise fee in an amount equal to five (5) percent of gross revenues, or such other amount as may be specified in the franchise; provided, however, that if the franchise specifies a legal maximum amount, that amount shall be subject to increase should federal limits on fee payments be eliminated or changed and other cable system operators are subject to a higher fee.~~

~~A. —“Bundled services.” In the event that the cable communications system operator shall offer bundled, tied, or combined cable services (which are subject to the franchise fee) with non-cable services (which may not be subject to the franchise fee) to individual subscribers, the combined revenues from such bundled services shall be allocated consistent with the rates or prices advertised by the cable communications systems operator through its marketing materials or on its published rate card. In the event the cable communications systems operator does not advertise or publish separate prices for the combined services, the percentage that the price for the combined services is discounted from the regular retail rates of the individual services shall be pro-rated across all the services in the bundled package; provided, however, that the net revenues derived from services subject to mandatory tariff rates imposed by the California Public Utilities Commission (or other governmental entity having such authority) shall be deducted from the combined revenue to determine the revenue subject to the franchise fee. As an example, a cable communications systems operator may offer a “bundle” of video, voice and data services for a flat fee of \$75.00 where the retail rate for the services purchased on an individual basis would equal \$100.00. Assuming that there is no service subject to the mandated tariff rate, the cable communications systems operator would apply a twenty five percent (25%) discount to each service. Thus, if the retail rate for the cable service in the bundle were \$50.00, the cable communications systems operator would recognize cable service revenue in the amount of \$37.50 and pay a franchise fee on that revenue.~~

~~B.The definition of gross revenue is to be as inclusive as possible consistent with existing applicable law. If a change in federal law occurs subsequent to the effective date of this ordinance, such change shall not impact the gross revenues definition in such a way to reduce gross revenues—unless the change specifically preempts the affected portion of the definition above.~~

Sec. G-II 2.A.7 No Exclusivity

A Franchisee may not require a subscriber or a building owner or manager to enter into an exclusive contract as a condition of providing or continuing service. However, nothing herein prevents a Franchisee from entering into an otherwise lawful, mutually desired exclusive arrangement with a building owner or manager of a multiple dwelling unit or commercial subscriber.

Sec. G-II 2.A.8 Minimum Franchise Conditions

In addition to satisfying such additional or stricter conditions as Nevada County finds necessary based on its investigations, the following elements shall be required in every franchise serving more than 1,000 subscribers. A Franchisee who provides service in an area which is defined as "isolated rural" maybe exempted from the minimum franchise requirements for that area.

A. ~~System Design. Each Franchisee shall provide a Cable system that uses at least 750MHz equipment of high quality and reliability. Each Franchisee shall install and activate the return portion of the cable system in the sub low frequency spectrum of MHz to 30 MHz.~~

B. ~~Public, Educational and Government Use of the System.~~

~~1. A Franchisee shall provide a minimum of three (3) channels for PEG Access to each subscriber.~~

~~2. Each Franchisee shall install, maintain, and replace as necessary, a dedicated, bi-directional fiber optic link between its headend and a location designated by Nevada County as the primary access center.~~

~~3. Each Franchisee shall install, maintain, and replace activated two-way cable plant and all headend, cable plant, and node equipment required to make it operable so that Nevada County, Schools, and all designated PEG access centers and access facilities located within the franchise area will be able to send and receive signals (video, audio, and data) using the activated two-way cable plant.~~

~~4. Each Franchisee shall ensure that technically adequate signal quality, routing systems, and switching and/or processing equipment are initially and continuously provided for all access interconnections both within Franchisee's cable system and with other cable systems throughout the duration of its franchise.~~

~~5. In the event a Franchisee makes any change in the cable system and related equipment and facilities or in the Franchisee's signal delivery technology which directly or indirectly substantially affects the signal quality or transmission of access programming, the Franchisee shall at its expense take necessary steps or provide necessary technical assistance, including the acquisition of all necessary equipment, to ensure that the capabilities of access programmers are not diminished or adversely affected by such change.~~

~~6. A Franchisee shall maintain all access channels (both upstream channels and downstream channels) and all interconnections of access channels at the same level of technical quality and reliability as the best commercial channels carried on the Franchisee's system.~~

C. ~~Service to Franchise Area. It is the policy of Nevada County to ensure that every cable system provide service in its franchise area upon request to any person or any government building. Each Franchisee shall extend service upon request within its franchise area, provided that, a franchise may permit a Franchisee to require a potential subscriber to contribute a fair share of the capital costs of installation or extension as a condition of extension or installation in cases where such extension or installation may be unduly expensive. Service must be provided within time limits specified in Sec. G-II 2.A.8.D.~~

D. ~~Time for Extension. Except as a franchise otherwise provides, service must be extended upon request to any person or to any government building in a Franchisee's franchise area (i) within seven (7) days of the request, where service can be provided by activating or installing a drop; (ii) within ninety (90) days of the request where an extension of one half mile or less is required; or (iii) within six (6) months where an extension of one half mile or more is required.~~

~~E. Technical Standards. A cable system within Nevada County shall meet or exceed the technical standards set forth in 47 C.F.R. §76.601 and any applicable state and federal technical standards.~~

~~F. Testing. Each cable communications systems operator shall perform at its expense such tests as may be necessary to show whether or not the Franchisee is in compliance with its obligations under applicable FCC standards, this Article or a franchise.~~

~~G. Interconnection. Upon request of Nevada County, every cable system shall be required to interconnect with every other cable system within Nevada County, or adjacent to Nevada County, on fair and reasonable terms for purposes of providing PEG and I Net services.~~

~~H. Continuity of Service. Each Franchisee shall, during the term of the franchise, ensure that subscribers are able to receive continuous service. In the event the Franchise is revoked or terminated, the Franchisee may be required to continue to provide service for a reasonable period to assure an orderly transition of service from the Franchisee to another entity. A franchise may establish more particular requirements under which these obligations will be satisfied.~~

Sec. G-II 2.A.9 Rate Regulation and Consumer Protection

~~A. All Rates Subject to Regulation. Nevada County may regulate any of the cable communications systems operator's rates and charges, except to the extent it is prohibited from doing so by law. Nevada County will regulate rates in accordance with FCC rules and regulations, where applicable. Except to the extent FCC rules provide otherwise, all rates and charges that are subject to regulation, and changes in those rates or charges must be approved in advance. The Nevada County Administrator may take any required steps to file complaints, toll rates, issue accounting orders or take any other steps required to comply with FCC regulations. The Nevada County Board of Supervisors shall be responsible for issuing rate orders that establish rates or order refunds.~~

~~B. No Rate Discrimination. To the extent Nevada County lawfully may enforce such a requirement, a cable communications systems operator is prohibited from discriminating in its rates or charges or from granting undue preferences to any subscriber, potential subscriber, or group of subscribers or potential subscribers; provided, however, that a Franchisee may offer temporary, bona fide promotional discounts in order to attract or maintain subscribers, so long as such discounts are offered on a non-discriminatory basis to similar classes of subscribers; and a Franchisee may offer discounts for the elderly, the disabled, or the economically disadvantaged; and such other discounts as it is expressly entitled to provide under federal law, if such discounts are applied in a uniform and consistent manner.~~

~~C. Redlining Prohibited. A cable communications systems operator shall not deny access or charge different rates to any group of subscribers or potential subscribers because of the income of the residents of the local area in which such group resides.~~

~~D. Customer Service.~~

~~1. Each cable communications systems operator must satisfy FCC, state and Nevada County cable customer service standards and consumer protection standards. Nevada County cable customer service standards may be adopted by resolution. In the case of a conflict among standards, the stricter standard shall apply.~~

~~2. For violation of cable customer service standards, penalties will be imposed as follows:~~

~~a. Two hundred dollars (\$200) for each day of each material breach, not to exceed six hundred dollars (\$600) for each occurrence of material breach;~~

~~b. If there is a subsequent material breach of the same provision within twelve (12) months, four hundred (\$400) for each day of each material breach, not to exceed twelve hundred (\$1200) for each occurrence of the material breach;~~

~~c. If there is a third or additional material breach of the same provision within twelve (12) months of the first, one thousand dollars (\$1000) for each day of each material breach, not to exceed three thousand dollars (\$3,000) for each occurrence of the material breach.~~

~~3.—Any penalty assessed under this section will be reduced dollar for dollar to the extent any liquidated damage provision of a franchise imposes a monetary obligation on a Franchisee for the same customer service failures, and no other monetary damages may be assessed. Nevada County will provide notice, and impose penalties, under this section pursuant to the procedures established by California Government Code §53088.2(r).~~

ARTICLE 2.B OPEN VIDEO SYSTEMS

Sec. G-II 2.B.1 Additional Definitions

A. ~~“OVS Agreement” means a contract entered into in accordance with the provisions of this Article between Nevada County and an OVS Franchisee setting forth the terms and conditions under which the franchise will be exercised.~~

Sec. G-II 2.B.2 Applications for Grant or Renewal of Franchises

A. ~~Initial and Renewal Franchise: Application~~

1. ~~A written application shall be filed with Nevada County for grant of an initial or renewal Franchise.~~

2. ~~To be acceptable for filing, a signed original of the application shall be submitted together with six (6) copies. The application must conform to any applicable request for proposals, and contain all information required under Sec. G-II 3.B.2.B. All applications shall include the names and addresses of persons authorized to act on behalf of the applicant with respect to the application.~~

B. Contents of Applications. ~~The Nevada County Administrator may specify the information that must be provided in connection with a request for proposals or an application for an initial or renewal franchise. At a minimum, each application must: identify the applicant, where it plans to construct its system, and the system construction schedule; show that the applicant will provide adequate channels, facilities and other support for public, educational and government use (including institutional network use) of the OVS; and show that the applicant is financially, technically and legally qualified to construct and operate the OVS. The application must contain the following information;~~

1. ~~Identity of the applicant; the persons who exercise working control over the applicant; and the persons who control those persons, to the ultimate parent.~~

2. ~~A proposal for construction of the open video system that includes at least the following:~~

a. ~~A description of the services that are to be provided over the facility;~~

b. ~~Identification of the area of Nevada County to be served by the proposed system, including a description of the proposed franchise area's boundaries;~~

c. ~~The location of proposed facility and facility design, including a description of the miles of plant to be installed, and a description of the size of equipment cabinets, shielding and electronics that will be installed along the plant route, the power sources that will be used and a description of the noise, exhaust and pollutants, if any, that will be generated by the operation of the same.~~

d. ~~A map of the route the facility will follow; a designation of the portions of the system that will be placed aboveground and the portions that will be placed underground, and the construction techniques that the applicant proposes to use in installing the system aboveground and underground; a schedule for construction of the facility, describing when and where construction will begin, how it will proceed, benchmarks for completion of phases, and when it will be completed; and the expected effect on right-of-way usage, including information on the ability of the public rights-of-way to accommodate the proposed system including, as appropriate given the system proposed, an estimate of the availability of space in conduits and an estimate of the cost of any necessary rearrangement of existing facilities.~~

e. ~~A description, where appropriate, of how services will be converted from existing facilities to new facilities, and what will be done with existing facilities.~~

f. ~~Evidence satisfactory to Nevada County that the applicant has the financial resources to complete the proposed project, and to construct, operate and repair the proposed facility over the franchise term. It is not the intent of Nevada County to require an applicant to prove that the services it proposed to offer will succeed in the marketplace.~~

~~g. — Evidence satisfactory to Nevada County that applicant is technically qualified to construct, operate and repair the proposed facility. At a minimum, the applicant must show that it has experience or resources to ensure that work is to be performed adequately, and can respond to emergencies during and after construction is complete.~~

~~h. — Evidence satisfactory to Nevada County that the applicant is legally qualified, which proof must include a demonstration that the applicant:~~

~~(1) — Has received, or is in a position to receive, necessary authorizations from state and federal authorities;~~

~~(2) — Has not engaged in conduct (fraud, racketeering, violation of antitrust laws, consumer protection laws, or similar laws) that allows County to conclude the applicant cannot be relied upon to comply with requirements of franchise, or provisions of this title;~~

~~(3) — Is willing to enter into a franchise, to pay required compensation and to abide by the provisions of applicable law, including those relating to the construction, operation or maintenance of its facilities, and has not entered into any agreement that would prevent it from doing so;~~

~~i. — An affidavit or declaration of the applicant or authorized officer thereof certifying the truth and accuracy of the information in the application, and certifying that the application meets all requirements of applicable law.~~

~~j. — An applicant may show that it would be inappropriate to deny it a Franchise by virtue of: the particular circumstances surrounding the acts or omissions at issue; the steps taken by the applicant to cure all harms flowing therefrom and to prevent their recurrence; and the lack of involvement of the applicant's principals, or the remoteness of the acts or omissions from the operation of open video system facilities.~~

~~k. — To the extent that the applicant is in any respect relying on the financial or technical resources of another person, including another affiliate, the proofs should be provided for that person. An applicant will be presumed to have the requisite financial, or technical or legal qualifications to the extent such qualifications have been reviewed and approved by a state agency of competent jurisdiction; or if applicant is a holder of a franchise in Nevada County for a cable system or open video system, and conduct under such other franchise provides no basis for additional investigation.~~

~~C. Procedure for Applying for Grant of a Franchise.~~

~~1. — A person may apply for an initial or renewal franchise on its own initiative or in response to a request for proposals. Upon receipt of an application Nevada County shall promptly proffer the applicant a proposed OVS agreement, which shall be mailed to the person requesting its issuance and made available to any other interested party. Nevada County may request such additional information as it deems appropriate.~~

~~2. — An applicant shall respond to requests for information completely, and within the time directed by Nevada County, and must strictly comply with procedures, instructions, and requirements Nevada County may establish.~~

~~3. — An application may be rejected if it is incomplete or the applicant fails to follow procedures or respond fully to information requests.~~

~~D. — Evaluation. In evaluating a franchise application, Nevada County may consider the following:~~

~~1. — The extent to which the applicant has substantially complied with the applicable law and the material terms of any existing Nevada County OVS franchise;~~

~~2. — Whether the applicant has the financial, technical, and legal qualifications to hold an OVS franchise;~~

~~3. — Whether the application satisfies any minimum requirements established by Nevada County for, or will otherwise provide adequate public, educational, and governmental use capacity, facilities, or financial support (including with respect to institutional networks);~~

~~4. — Whether issuance of a franchise would require replacement of property or involve disruption of property, public services, or use of the public rights-of-way;~~

~~5. — Whether the approval of the application may eliminate or reduce competition in the delivery of cable service in Nevada County.~~

~~E. Issuance. If Nevada County finds that it is in the public interest to issue a franchise considering the factors above, and such other matters as it is required or entitled to consider, and subject to the applicant's entry into an appropriate OVS agreement, it shall issue a franchise. Prior to deciding whether or not to issue a franchise, Nevada County may hold one or more public hearings or implement other procedures under which comments from the public on an application may be received.~~

~~F. Legal Qualifications. In order to be legally qualified:~~

- ~~1. The applicant must be willing to comply with the provisions of this Article and applicable laws, and to comply with such requirements of an OVS agreement as Nevada County may lawfully require.~~
- ~~2. The applicant must not hold a cable system franchise, or have pending an application for a cable system franchise.~~
- ~~3. The applicant must not have had any cable system or OVS Franchise validly revoked, by Nevada County within three (3) years preceding the submission of the application.~~
- ~~4. The applicant may not have had an application for an initial or renewal Cable system franchise to Nevada County denied on the ground that the applicant failed to propose a cable system meeting the cable related needs and interests of the community, or as to which any challenges to such franchising decision were finally resolved (including any appeals) adversely to the applicant, within three (3) years preceding the submission of the application, and;~~
- ~~5. The applicant may not have had an application for an initial or renewal OVS Franchise denied on any grounds within three (3) years of the applications.~~
- ~~6. The applicant shall not be issued a franchise if, at any time during the ten (10) years preceding the submission of the application, applicant was convicted of fraud, racketeering, anticompetitive actions, unfair trade practices or other conduct of such character that the applicant cannot be relied upon to deal truthfully with the County and the subscribers, or to substantially comply with its obligations.~~
- ~~7. Applicant must have the necessary authority under California and federal law to operate an OVS, and must be certified by the FCC under §653 of the Cable Act.~~
- ~~8. The Applicant shall not be issued a franchise if it files materially misleading information in its application or intentionally withholds information that the applicant lawfully is required to provide.~~
- ~~9. For purposes of Sec. G II 2.B.2.2 5, the term applicant includes any affiliate of applicant.~~

~~G. Exception. Notwithstanding Sec. G II 2.B.2, an applicant shall be provided a reasonable opportunity to show that, a franchise should issue even if the requirements of Sec. G II 2.B.2.4 5 are not satisfied, by virtue of the circumstances surrounding the matter and the steps taken by the applicant to cure all harms flowing therefrom and prevent their recurrence, the lack of involvement of the applicant's principals, or the remoteness of the matter from the operation of a cable system.~~

Sec. G-II 2.B.3 Transfers

~~A. Nevada County Approval Required. No transfer shall occur without prior written notice to and approval of Nevada County.~~

~~B. Application.~~

- ~~1. A Franchisee shall promptly notify Nevada County of any proposed transfer, and submit an application for its approval.~~
- ~~2. The Nevada County Administrator may specify information that must be provided in connection with a transfer application. At a minimum, an application must: describe the entities involved in the transaction and the entity that will hold the franchise; describe the chain of ownership before and after the proposed transaction; show that the entity that will hold the franchise will be legally, financially, and technically qualified to do so; attach complete information on the proposed transaction, including the contracts or other documents that relate to the proposed transaction, and all documents, schedules, exhibits;~~

or the like referred to therein; and attach any shareholder reports or filings with the Securities and Exchange Commission (“SEC”) that discuss the transaction.

3.—For the purposes of determining whether it shall consent to a transfer, Nevada County or its agents may inquire into all qualifications of the prospective transferee and such other matters as Nevada County may deem necessary to determine whether the transfer is in the public interest and should be approved, denied, or conditioned. If the transferee or Franchisee refuse to provide information, or provide incomplete information, the request for transfer may be denied.

~~C. Determination by Nevada County:~~

1.—In deciding whether a transfer application should be granted, denied or granted subject to conditions, Nevada County may consider the legal, financial, and technical qualifications of the transferee to operate the OVS; whether the incumbent OVS Operator is in compliance with its OVS agreement and this Article and, if not, the proposed transferee’s commitment to cure such noncompliance; whether the transferee owns or controls any other OVS or Cable system in Nevada County, and whether operation by the transferee may eliminate or reduce competition in the delivery of Cable service in Nevada County; and whether operation by the transferee or approval of the transfer would adversely affect subscribers, the public, or Nevada County’s interest under this Article, the OVS agreement, or other applicable law.

2.—In order to obtain approval of a transfer, an applicant must show, at a minimum, that: the transferee is qualified; the transfer will not adversely affect the interests of subscribers, the public, or Nevada County; and that non-compliance issues have been resolved. No application shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this title and the franchise, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous Franchisee for all purposes. The proposed transferee shall pay all reasonable costs incurred by Nevada County in reviewing and evaluating the applications.

~~Sec. G-II 2.B.4 Minimum Requirements~~

A.—PEG Access. No OVS Operator shall be issued a franchise, or may commence construction of an OVS system, until (A) it agrees to match in all respects the highest PEG obligations borne by any Cable communications systems operator in Nevada County; or (B) it agrees to PEG obligations acceptable to Nevada County.

B. Institutional Network. Any OVS Operator that constructs an I-Net must match in all respects the highest I-Net obligations borne by any cable communications systems operator in Nevada County, unless it agrees to alternative I-Net obligations acceptable to Nevada County.

C. Construction Provisions. Every OVS agreement shall specify the construction schedule that will apply to any required construction, upgrade, or rebuild of the OVS. The schedule shall provide for prompt completion of the project, considering the amount and type of construction required.

D.—Testing. Each OVS Operator shall perform at its expense such tests as may be necessary to show whether or not the Franchisee is in compliance with its obligations under this Article or a franchise.

E. Consumer Protection Provisions. Every Franchisee must satisfy customer service and consumer protection requirements established from time to time under state or local law and applicable to OVS.

~~Sec. G-II 2.B.5 Special Termination Rules~~

If a Franchisee’s FCC certification is revoked or otherwise terminates as a result of the passage of time or as a matter of law, Nevada County may revoke the OVS franchise after a hearing. The OVS Franchise may also be revoked if federal regulations or statutory provisions governing OVS are declared invalid or unenforceable, or are repealed.

Sec. G-II 2.B.6 Rate Regulation

Nevada County may regulate a Franchisee's rates and charges except as prohibited by law, and may do so by amendment to this Article, separate Ordinance, by amendment to an OVS Agreement, or in any other lawful manner.

Sec. G-II 2.B.7 Fee in Lieu of Franchise Fee

A. ~~—OVS Operators. In lieu of the franchise fee required by Sec. G-II 2.B.6, an OVS Franchisee shall pay a fee of five (5%) percent of the gross revenues of the Franchisee, its affiliates or any OVS Operator of the OVS.~~

B. ~~Persons Leasing OVS Capacity:~~

1. ~~A person leasing capacity from an OVS Operator, other than a person whose revenues are included in the payment made under Sec. G-II 2.B.7, shall pay Nevada County a fee in lieu of the franchise fee required by Sec. G-II 2 of five percent (5%) of the gross revenues of such person.~~

2. ~~Notwithstanding the foregoing, where Franchisee charges a person, other than an affiliate, to use its OVS (the "use payments"); and that person recovers those use payments through charges to its subscribers that are included in that person's gross revenues; and that person fully recovers the use payments through the charges to its subscribers and pays a fee on those charges pursuant to Sec. G-II 3.7.1; then Franchisee may deduct from its gross revenues the use payments it receives from that person.~~

Sec. G-II 2.B.8 Exclusive Contracts

~~A Franchisee may not require a subscriber or a building owner or manager to enter into an exclusive contract as a condition of providing or continuing service, nor may a Franchisee enter into any arrangement that would effectively prevent other persons from using the OVS to compete in the delivery of cable services with a Franchisee or its affiliates.~~

G-II.2.A.7 Emergency Alert System

Each State Franchise Holder shall comply with the emergency alert system requirements of the Federal Communications Commission in order that emergency messages may be distributed over the State Franchise Holder's network. To the extent consistent with Public Utilities Code section 5880, each State Franchise Holder shall install and maintain an audio override on all channels for transmission of emergency messages and alerts, and shall provide for character generated information to be superimposed on all channels for the hearing impaired.

Sec. G-II.2.A.8 Public, Educational, and Government Access Channel Capacity, Support, Interconnection, and Signal Carriage

A. PEG Channel Capacity.

1. There are currently four (4) PEG access channels activated. A State Franchise Holder shall designate a sufficient amount of capacity on its network to allow the provision of four (4) PEG channels to satisfy the requirement of Section 5870 of the California Public Utilities Code, within the time limits specified therein.
2. A State Franchise Holder shall provide an additional PEG channel when the County satisfies the standards set forth in Section 5870(d) of the California Public Utilities Code or any entity designated by the County to manage one or more of the PEG channels.

3. All State Franchise Holders shall comply with the provision of DIVCA related to PEG channels. Without limiting the foregoing, the PEG channels shall be carried on the basic service tier. To the extent feasible, the PEG channels shall not be separated from other channels carried on the basic service tier and channel numbers for the PEG channels shall be the same channel numbers used by the Incumbent Cable Operator, as defined in DIVCA section 5830(i), unless prohibited by Federal Law and shall provide picture and sound quality, channel accessibility, and location equal to, or substantially equal to, that provided by incumbent cable providers. After the initial designation of PEG channel numbers, the channel numbers shall not be changed without the agreement of the local entity unless the change is required by federal law.

B. PEG Support.

1. Amount of PEG support fee. Any State Franchise Holder shall pay to the County or if directed by the County, to the County's designated PEG provider a PEG fee equal to one and four tenths percent (1.4%) of gross revenues, an amount equivalent to the level of PEG funding remitted by the Incumbent Cable Operator to the County's designated PEG provider during the period of January 1, 2006 to December 30, 2006.
2. The PEG support fee shall be used in a manner that is consistent with state and federal law.
3. A State Franchise Holder shall remit the PEG support fee quarterly, within forty-five days after the end of each calendar quarter. Each payment made shall be accompanied by a summary, detailing how the PEG support fee was calculated.
4. In the event that a State Franchise Holder fails to pay the PEG support fee when due, or underpays the proper amount due, the State Franchise Holder shall pay interest, pursuant to DIVCA section 5860(h), at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%), or the maximum rate specified by state law.

C. Interconnection.

Each State Franchise Holder and each Incumbent Cable Operator shall negotiate in good faith to interconnect their networks for the purpose of providing PEG programming. Interconnection may be accomplished by any means authorized under Public Utilities Code section 5870(h). Each State Franchise Holder and Incumbent Cable Operator shall provide interconnection of PEG channels on reasonable terms and conditions and may not withhold the interconnection. If a State Franchise Holder and an Incumbent Cable Operator cannot reach a mutually acceptable interconnection agreement for PEG carriage, the County may require the Incumbent Cable Operator to allow each State Franchise Holder to interconnect its network with the Incumbent Cable Operator's network at a technically feasible point on the State Franchise Holder's network as identified by the State Franchise Holder. If no technically feasible point of interconnection is available, each State Franchise Holder shall make interconnection available to each PEG channel originator programming a channel in the County and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by each State Franchise Holder unless otherwise agreed to by the parties.

Sec. G-II.2.A.9 Notices

- A. Each State Franchise Holder or applicant for a state franchise shall file with the County a copy of all applications or notices that the State Franchise Holder or applicant are required to file with the California Public Utilities Commission.

B. Unless otherwise specified in this Section, all notices or other documentation that a State Franchise Holder is required to provide to the County under this Section or the California Public Utilities Code shall be provided to both the County Manager and the County staff person in charge of cable and telecommunications, or their successors or designees.

EXHIBIT C

ARTICLE 2.B MISCELLANEOUS

Sec. G-II 2.B.1 Captions

The captions to sections throughout this Article are intended solely to facilitate reading and reference to the sections and provisions of this Article. Such captions shall not affect the meaning or interpretation of this Article.

Sec. G-II 2.B.2 Calculation of Time

Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this Article or any franchise, and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time.

Sec. G-II 2.B.3 Severability

If any term, condition, or provision of this Article shall, to any extent, be held to be invalid or unenforceable by a valid order of any court or regulatory agency, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by Nevada County and shall thereafter be binding on the Franchisee and Nevada County.

Sec. G-II 2.B.4 Connections to Cable System; Use of Antennae

- A. Subscriber Right to Attach. To the extent consistent with federal law, subscribers shall have the right to attach VCR's, receivers, and other terminal equipment to a Franchisee's cable system. Subscribers also shall have the right to use their own remote control devices and converters, and other similar equipment.
- B. Removal of Existing Antennae. A Franchisee shall not, as a condition of providing service, require a subscriber or potential subscriber to remove any existing antenna, or disconnect an antenna except at the express direction of the subscriber or potential subscriber, or prohibit installation of a new antenna, provided that such antenna is connected with an appropriate device and complies with applicable law.

Sec. G-II 2.B.5 Discrimination Prohibited

- A. No Retaliatory Actions. A cable communications systems operator shall not discriminate among persons or Nevada County or take any retaliatory action against a person or Nevada County because of that entity's exercise of any right it may have under federal, state, or local law, nor may the cable communications systems operator require a person or Nevada County to waive such rights as a condition of taking service.
- B. Employment and Hiring Practices. A cable communications systems operator shall not refuse to employ, discharge from employment, or discriminate against any person in compensation or in terms, conditions, or privileges of employment because of race, color, creed, national origin, sex, sexual orientation, age, disability, religion, ethnic background, or marital status. A cable communications systems operator shall comply with all federal, state, and local laws and regulations governing equal employment opportunities, and hiring practices, as the same may be amended from time to time.

Sec. G-II 2.B.6 Transitional Provisions

- A. Persons Operating Without a Franchise. The cable communications systems operator of any facility installed as of the effective date of this Article, for which a franchise is required under this Article, shall have three (3) months from the effective date of this Article to file one or more applications for a franchise. Any cable communications systems operator timely filing such an application under this Sec. G-II 2.C.6 shall not be subject to a penalty for failure to have such a franchise so long as said application remains pending; provided, however, nothing herein shall relieve any cable communications systems operator of any liability for its failure to obtain any permit or other authorization required under other provisions of Nevada County Code, and nothing herein shall prevent Nevada County from requiring removal of any facilities installed in violation of Nevada County Code.
- B. Persons Holding Franchises. Any person holding an existing franchise for a cable communications system may continue to operate under the existing County Code provisions to the conclusion of its present term (but not any renewal or extension thereof) with respect to those activities expressly authorized by the franchise; and provided further that, such person shall be subject to the other provisions of this Article to the extent permitted by law.
- C. Persons with Pending Applications. Pending applications shall be subject to this Article. A person with a pending application shall have thirty (30) days from the effective date of this Article to submit additional information to comply with the requirements of this Article governing applications.