

Chapter 4.02

GENERAL

Sections:

- 4.02.010 Definitions
- 4.02.020 Franchise Required
- 4.02.030 Failure to Obtain a Franchise
- 4.02.040 Existing Franchise
- 4.02.050 Form of Franchise
- 4.02.060 Filing an Application
- 4.02.070 Application Fee
- 4.02.080 Nature of Franchise
- 4.02.090 Administration of Ordinance; Adoption of Regulations
- 4.02.100 Transfers
- 4.02.110 General Conditions upon Construction, Operation and Repair
- 4.02.120 Protection of Tuolumne County and Residents
- 4.02.130 Enforcement Remedies
- 4.02.140 Books and Records
- 4.02.150 Reports
- 4.20.160 Maps Required
- 4.02.170 Other Records Required
- 4.02.180 Exemptions
- 4.02.190 Privacy
- 4.02.200 Procedures for Paying Franchise Fees and in Lieu of Franchise

4.02.010 Definitions. For the purposes of this Title, the following terms, phrases, words, and abbreviations shall have the meanings given herein. Words not defined in this Title shall have the same meaning as in Title 47 of the United States Code [§§ 521 et seq.], 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. "Access," "PEG access," or "PEG use" refers to the availability of a cable system for public, education or government use (including Institutional Network use) by various agencies, institutions, organizations, groups, and individuals, including Tuolumne 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) "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) "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) "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. "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person.

C. "Basic service" means any service tier regularly provided to all subscribers which includes the retransmission of local television broadcast signals.

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.

F. "Cable System or Cable Communications 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. 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. Such terms do not include:

(1) a facility that serves only to retransmit the television signals of one or more television broadcast stations;

(2) a facility that serves subscribers without using, or connecting to a facility that uses, any public right-of-way within Tuolumne County;

(3) 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;

(4) any facilities of any electric utility used solely for operating its electric utility systems; or

G. "Cable Service" means:

(1) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, any

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

H. "Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system 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. County means the County of Tuolumne and all departments, divisions, and agencies established by state law or by the Tuolumne County Ordinance Code.

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. "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. "FCC" means the Federal Communications Commission.

M "Franchise" refers to an authorization granted by Tuolumne 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 Tuolumne County, and to provide specified services within a Franchise area.

N. "Franchise Area" means the area of Tuolumne County that a Franchisee is authorized to serve by the terms of its Franchise or by operation of law.

O. "Franchisee" refers to a Person holding a cable communications system franchise granted by Tuolumne County.

P. "Franchise Fee." 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 Franchisee shall pay to Tuolumne County a Franchise Fee expressed as a percentage of Gross Revenues or some other measure. The Franchise shall specify the fee to be paid, and the Gross Revenues to be included in the fee calculation. If a Franchise granted pursuant to this Title specifies a Franchise Fee established as the result of limiting applicable law, Tuolumne 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.

For an Unaffiliated Video Program Provider ("UVPP") as defined herein: 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. The definition shall be interpreted in a manner that permits Tuolumne 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.

R. "Tuolumne County Administrator" means the Tuolumne County Administrator or his/her designee.

S. "Operator" when used with reference to a system, refers to a person (a) 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) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a facility.

U. "Person" includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not Tuolumne County.

V. "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 Tuolumne 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.

W. "Public Property" means any property that is owned or under the control of Tuolumne County that is not a public rights-of-way, including, for purposes of this Title, 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 Tuolumne County.

X. "Revocation" means Tuolumne County's affirmative act of terminating a Franchise.

Y. "School" means any accredited primary school, secondary school, college, and university

Z. "Subscriber" means Tuolumne 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.

AA. "Termination" means the conclusion of a Franchise by any means, including, but not limited to, by expiration of its term, abandonment, or Revocation.

BB. "Transfer" means any transaction in which: (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) 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) 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: (1) a lease to a UVPP pursuant to 47 U.S.C. Sections 532 or 573; (2) the transmission of a commodity or electronic signal using facilities on a common carrier basis; (3) a lease or other right to use facilities mandated pursuant to 47 U.S.C. Section 224, or (4) 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 Tuolumne County pursuant to the Franchise and applicable law, including, without limitation, the right of Tuolumne County to approve any transfer upon foreclosure. "Transferring" and "Transferee" shall have correlative meanings.

CC. "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. Section 542(h)) to subscribers and who is not an Affiliate of the Franchisee.

DD. "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.

EE. "User" means a person or Tuolumne 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. (Ord. 2628 § 1, 2005)

4.02.020 Franchise required. No person may construct or operate a cable communications system in Tuolumne County without first obtaining a Tuolumne County Franchise; provided that the following shall not be required to obtain a Franchise under this Title:

A UVPP that is only delivering cable service or other communications service (as that term is used in 47 U.S.C. Section 542(h)) to subscribers. (Ord. 2628 § 1, 2005)

4.02.030 Failure to obtain a Franchise. Consistent with the requirements of due process, a person's failure to obtain a Franchise as required by this Title may, in the County's discretion, result in:

(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) A County order and/or court order that the facilities are removed, and that penalties and damages is paid as set forth in the County Code or in state law. (Ord. 2628 § 1, 2005)

4.020.040 Existing franchises. Franchisees existing as of the effective date of this Title 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 Title that expressly refer to a "Franchise granted pursuant to this Title" shall not apply to Franchises initially granted prior to the effective date of this Title.

4.020.050 Form of Franchise. Any Franchise shall be issued in the form of a resolution, and must be accepted in writing by the Franchisee to become effective. (Ord. 2628 § 1, 2005)

4.020.060 Filing an Application Any person seeking to (1) obtain a Franchise, (2) extend the term of an existing Franchise, (3) renew a Franchise, or (4) modify an existing Franchise to add new services that are required to be authorized by a Franchise pursuant to this Title, 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 the application available for public inspection. The application must conform to all of the requirements of this Title. Requests for other types of Franchise modifications may be processed by Tuolumne County without an application, and submitted for approval. However, nothing herein shall prevent Tuolumne County from requiring an application in the event Tuolumne 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 Title. (Ord. 2628 § 1, 2005)

4.020.070 Application fee.

A. Reasonable Costs. An applicant shall pay all reasonable costs incurred by Tuolumne 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, or modification of a Franchise shall be in the amount of \$5,000.00, which deposit shall be submitted with the application. Tuolumne 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 Tuolumne County related to the County's review and processing of a Franchise. The Tuolumne 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 Tuolumne County relating to the consideration by the County of an application for issuance, renewal, or modification of a Franchise. The application will not be subject to further review and processing until such time as the additional deposit required by the Tuolumne 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 shall pay Tuolumne County a sum of money sufficient

to reimburse it for all publication expenses incurred by it in connection with the granting of a Franchise. Such payment shall be made to the Tuolumne County Administrator within 30 days after Tuolumne County furnishes the Franchisee with a statement of such expenses (Ord. 2628 § 1, 2005)

4.02.080 Nature of Franchise.

A. Scope. A Franchise granted pursuant to this Title shall authorize and permit a Franchisee to construct, operate, maintain and repair a cable system to provide cable service in Tuolumne 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 Tuolumne 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 Tuolumne County, including but not limited to complying with the conditions the 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 Tuolumne 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 Tuolumne 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 Tuolumne 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 Tuolumne County Ordinance Code.

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 Tuolumne County from issuing other franchises or authorizations, or prevent Tuolumne 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 Franchisee fails to perform work that it is required to perform within the time provided for performance, Tuolumne County may perform the work and bill the operator therefor. The operator shall pay the amounts billed within 30 days. (Ord. 2628 § 1, 2005)

4.02.090 Administration of ordinance; adoption of regulations.

A. Adoption of regulations. Tuolumne County may from time to time adopt regulations to implement the provisions of this ordinance.

B. Delegation. The Tuolumne County Administrator is hereby authorized to administer the provisions of this ordinance and any Franchise issued pursuant thereto, and to provide any notices (including noncompliance notices) and to take any action on Tuolumne County's behalf that may be required hereunder or under applicable law.

C. No waiver. The failure of Tuolumne County 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. Administration of Public, Educational and Government Access. Tuolumne 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. (Ord. 2628 § 1, 2005)

4.02.100 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 Tuolumne County shall be deemed invalid. A transfer is defined in Section 4.02.010.

B. Transfer Application Fee. The initial deposit of the application fee for the consideration of a transfer application shall be in the amount of \$5,000.00, which deposit shall be submitted with the application. The City may, as costs are incurred, draw upon the deposit or required the applicant to deposit additional funds in the same manner as described herein at Section 4.04.070 (Application Fee).

C. Transfer Application. In addition to any Federally-required information required to be filed with the City (e.g., FCC Form 394), the City Manager may specify additional information that must be provided in connection with an transfer, and the form in which the information is to be provided. Any proposed transferee's application must include the following:

(1) Identification of the applicant showing that the applicant is financially, technically and legally qualified to construct, maintain and operate the cable system;

(2) A pro forma financial statement showing capital expenditures, expected income, and expenses for the first five years the applicant is to hold the Franchise, and show that the applicant is willing to comply unconditionally with its Franchise obligations;

(3) A demonstration of how the applicant will reasonably meet the future cable-related needs and interests of the community, including descriptions of any changes to capacity, facilities and support for public, educational, and governmental use of the system (including institutional networks) the applicant proposes to provide and why the applicant believes that the proposal is adequate to meet the future cable-related needs and interests of the community.

(4) A demonstration of the financial qualifications of the applicant, including at least the following:

(a) The proposed rate structure, including projected charges for each

service tier, installation, converters, and all other proposed equipment or services;

(b) A statement regarding the applicant's financial ability to complete any required construction and to operate the Cable system proposed certified by the applicant's chief financial officer; and

(5) A demonstration of the applicant's technical ability to construct and/or operate the proposed cable system.

(6) A demonstration that the applicant is legally qualified, which proof must include a demonstration that the applicant:

(a) Has received, or is in a position to receive, necessary authorizations from State and Federal authorities;

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

(c) 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.

(7) 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.

(8) To the extent to which the applicant is in any respect relying on the financial or technical resources of another person, including another affiliate, all relevant information must be provided for that person.

(9) 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. 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.

D. To be accepted for filing, an original and six 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.

E. The transferor and transferee shall respond to any request for information from the City, by the time specified by the City.

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

G. Consideration of application. In determining whether a transfer application should be granted, denied, or granted subject to conditions, the City may consider all of the application material. The proposed transferee shall pay all reasonable costs incurred by the City in reviewing and evaluating the applications. The City may consider a resolution either approving or denying a transfer application within a reasonable period of time, or within the timeframes provided by Federal Law, whichever is longer. The City and the Parties to the transfer may agree in writing to extend any Federal timeframe.

H. 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. (Ord. 2628 § 1, 2005)

4.02.110 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 public 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. 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 Tuolumne County's demand.

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 Tuolumne 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 the County, any work and/or construction undertaken that is not completed in compliance with the County's requirements, or which is installed without obtaining necessary permits and approvals shall be removed.

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. Tuolumne County may require a person using the public rights-of-way to cooperate with others through joint trenching and other arrangements to minimize adverse impacts on the rights-of-way.

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

(1) Each Franchisee shall provide Tuolumne County a plan for any initial system construction or for any substantial rebuilds, 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) The Tuolumne County Public Works Director may from time to time, when the

County receives an application for a permit to use a particular route, or upon the Director'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 24 months or after such other, longer period as is necessary to protect the public interest.

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 Tuolumne County Public Works Director.

(1) To minimize disruption of public passage or infrastructure, to forestall or relieve exhaustion of public rights-of-way capacity, or to protect environmentally sensitive areas, the Tuolumne County Public Works Director 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 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.

G. Undergrounding.

(1) Whenever all existing utilities are located underground in an area in Tuolumne County, every Franchisee in the same area must locate its cable communications system underground.

(2) Whenever the owner of a pole locates or relocates underground within an area of Tuolumne County, every Franchisee in the same area shall concurrently relocate its facilities underground.

(3) The Tuolumne 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 this section prevents Tuolumne County from ordering communications facilities to be located or relocated underground unless Franchisee demonstrates to the County Administrator's satisfaction that Franchisee's ordinary engineering practice would make undergrounding impracticable or infeasible.

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 Tuolumne County or to a condition as good as or better than before the disturbance or damage occurred.

I. Movement of facilities for government.

(1). A Franchisee shall, by a time specified by Tuolumne County, protect, support, temporarily disconnect, relocate, or remove any of its property when required by Tuolumne 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). Except in the case of emergency, Tuolumne 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 Franchisee 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, the County may protect, support, temporarily disconnect, remove, or relocate any or all parts of the cable communications system without prior notice, and charge the Franchisee for costs incurred.

J, Movement for others.

(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. Tuolumne 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) A Franchisee 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. Such an 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. Abandonment in place.

(1) A Franchisee may abandon any property in place in the public rights-of-way upon written notice to Tuolumne County. However, if, within 90 days of the receipt of written notice of abandonment, Tuolumne 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 Tuolumne County.

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

L. System subject to inspection. Every cable communications system shall be subject to inspection and testing by Tuolumne County. Each operator must respond to requests for information regarding its system and plans for the system as the 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. Underground services alert. Each Franchisee 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 Tuolumne County at no charge

N. Plan for construction. Every Franchise shall specify for Tuolumne 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 Tuolumne County that will be affected. Tuolumne County shall have the right to impose penalties on the operator for a failure to meet the accepted timetable and benchmarks

O. Use of facilities by Tuolumne County. Tuolumne 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. (Ord. 2628 § 1, 2005)

4.02.120 Protection of Tuolumne County and Residents.

A. Indemnity required. No Franchise shall be valid or effective until and unless Tuolumne County obtains an adequate indemnity from the Franchisee. The indemnity must:

(1) Release Tuolumne County from and against any and all liability and responsibility in or arising out of the construction, operation or maintenance of the cable communications system. Each Franchisee must further agree not to sue or seek any money or damages from Tuolumne County in connection with the above mentioned matters.

(2) Indemnify and hold harmless Tuolumne County, its trustees, elected and appointed officers, agents, and employees, from and against any and all claims, demands, or causes of action of any kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees sustained by the County or any third party arising out of, or by reason of, or resulting from or of the acts, errors, or

omissions of the Franchisee, or its agents, independent contractors or employees related to or in any way arising out of the construction, operation or repair of the system.

(3). Provide that the covenant and representations relating to the indemnification provision shall survive the term of the Franchise or other authorization and continue in full force and effect as to the party's responsibility to indemnify.

B. Insurance required. A Franchisee (or those acting on its behalf) shall not commence construction or operation of the system without obtaining insurance in amounts and of a type satisfactory to Tuolumne County. The required insurance must be obtained and maintained for the entire period the Franchisee has facilities in the public rights-of-way. If the Franchisee, its contractors, or subcontractors do not have the required insurance, Tuolumne County may order such entities to stop operations until the insurance is obtained and approved.

C. Proof. Certificates and endorsements of insurance, reflecting evidence of the required insurance and naming Tuolumne County as an additional insured, and other proofs as the County may find necessary, shall be issued to the County. For persons issued Franchises after the effective date of this ordinance, certificates and other required proofs shall be filed within 30 days of the issuance of a Franchise, prior to the commencement of construction, at policy renewal, and whenever there is any change in coverage. For entities that have facilities in the public rights-of-way as of the effective date of this Title, the certificate and endorsements shall be issued within 60 days of the effective date of this Title, at policy renewal, and whenever there is any change in coverage, unless a pre-existing Franchise provides for filing of certificates in a different manner. In the event that the insurance will terminate or lapse during the term of the Franchise, the Franchisee shall furnish, at least 30 days prior to the expiration of such insurance, a new or renewed certificate of insurance as proof that the required coverage has been obtained.

D. Certificate contents. Certificates and/or endorsements shall contain a provision that coverages afforded under these policies will not be canceled until at least 30 days' prior written notice has been given to Tuolumne County. Policies shall be issued by companies authorized to do business under the laws of the

State of California. Financial Ratings must be no less than "A" VII in the latest edition of "Bests Key Rating Guide", published by A.M. Best Guide.

E. Insurance amounts. A Franchisee (and those acting on its behalf to construct or operate the system) shall maintain the following minimum insurance. Tuolumne County shall be named as an additional insured on the general liability and automotive policies; those insurance policies shall be primary and contain a cross-liability clause.

(1) Comprehensive General Liability insurance to cover bodily injury, death, and property damage. Exposures to be covered are: premises, operations, products/completed operations, and certain contracts. Coverage must be written on an occurrence basis, with the following limits of liability:

Bodily Injury

- 1. Each Occurrence \$1,000,000
- 2. Annual Aggregate \$3,000,000

Property Damage

- 1. Each Occurrence \$1,000,000
- 2. Annual Aggregate \$3,000,000

Personal Injury

- 1. Annual Aggregate \$3,000,000

Completed Operations and Products Liability shall be maintained for two years after the termination of the Franchise (in the case of the cable communications system owner or operator) or completion of the work for the cable communications system owner or operator (in the case of a contractor or subcontractor).

Property Damage Liability Insurance shall include Coverage for the following hazards: X - explosion, C - Collapse, U-underground.

(2) Workers Compensation insurance shall be maintained during the life of this contract to comply with statutory limits for all employees, and in the case any work is sublet, each Franchisee shall require the subcontractors similarly to provide workers' compensation insurance for all the latter's employees unless such employees are covered by the protection afforded by each Franchisee. Each Franchisee and its contractors and subcontractors shall maintain during the life of this policy employers liability insurance. The following minimum limits must be maintained:

Workers' Compensation: Statutory Limits

- Employer's Liability \$1,000,000 per occurrence
- 3. Comprehensive Auto Liability

Bodily Injury

- 1. Each Occurrence \$1,000,000
- 2. Annual Aggregate \$3,000,000

Property Damage

- 1. Each Occurrence \$1,000,000
- 2. Annual Aggregate \$3,000,000

Coverage shall include owned, hired, and non-owned vehicles. In every Franchise, Tuolumne County shall reserve the right to require any other insurance coverage it deems necessary depending upon exposures.

F. Construction Bonds. Every Franchisee shall obtain and maintain bonds during periods of rebuild or upgrade of the cable communications system to ensure the faithful performance of its responsibilities under this Title and any Franchise. The amount of the performance and payment bonds shall be set by the Tuolumne County Administrator, but shall not be less than 10 per cent of the estimated cost of constructing or (in the case of existing systems) upgrading the system, and including a sufficient amount to cover the removal of facilities and/or restoration of County facilities within the right-of-way. The bond is not in lieu of any additional bonds that may be required through the permitting process. The bond shall be in a form acceptable to the County Counsel. Bonds must be obtained prior to the effective date of any Franchise, transfer or Franchise renewal, unless the Tuolumne County Administrator specifically provides otherwise.

G. Security fund. Every Franchisee shall establish and maintain an irrevocable letter of credit in the amount of \$100,000 to secure the payment of fees owed, to secure any other performance promised in a Franchise, and to pay any taxes, fees or liens owed to Tuolumne County. The letter of credit shall be in a form and with an institution acceptable to Tuolumne County's Treasurer and in a form acceptable to the County Counsel. Should Tuolumne County draw upon the letter of credit, the Franchisee shall, within 14 days, restore the fund or the letter of credit to the full required amount. This

letter of credit may be waived or reduced by Tuolumne County for a Franchisee where the County determines in its discretion that a particular Franchisee's operations are sufficiently limited that a letter of credit is not necessary to secure the required performance. Tuolumne County may from time to time require a Franchisee to change the amount of the required letter of credit to reflect changed risks to Tuolumne County and to the public, including delinquencies in taxes or other payments to the County. The letter of credit must be obtained prior to the effective date of any Franchise, transfer or Franchise renewal, unless a Franchise specifically provides otherwise. (Ord. 2628 § 1, 2005)

4.02.130 Enforcement and remedies.

A. Franchise Violation-Notice and Procedures. Before revoking a Franchise or issuing an order to assess liquidated damages, the County shall follow the procedures set forth below:

(1) The County shall notify a Franchisee in writing of any alleged violation ("Violation Notice") of a Franchise or this Title. The Violation Notice shall: (a) identify the violation; (b) direct the Franchisee (hereinafter: "operator") to cure the violation or show cause why the violation cannot or should not be cured; and (c) state the time for the operator's response, which shall be at minimum thirty (30) days from the date of issuance of the Violation Notice, except for violations that present a danger to public health, safety or welfare, in which case the time for response may be shortened.

(2) Within the time period designated for response, the operator shall respond in writing to the County indicating that: (a) the operator intends to contest the Violation Notice and describing all facts relevant to its claim; or (b) the operator has completely cured the violation, in which case the operator shall provide documentation demonstrating that the violation has been completely cured; or (c) the operator has begun to correct the violation, however, the violation cannot be corrected immediately despite the operator's continued due diligence, in which case the operator shall describe in detail the steps already taken and operator's proposed plan and time schedule for completely curing the violation. Correction of

the violation is not complete until all damages and penalties owed are paid in full.

(3) If the operator contests the Violation Notice or the County determines that the operator has failed to completely cure the violation, to submit an acceptable plan to cure the violation, or to work diligently to cure the violation, the County shall schedule a hearing ("Violation Hearing") before the Board of Supervisors. The County shall provide the operator written notice ("Hearing Notice") of the Violation Hearing at least twenty (20) days prior to the hearing.

(4) The Hearing Notice shall indicate: (a) the time and place of the Violation Hearing; (b) the nature of the violation; and (c) the operator's right to present oral and written testimony at an open and public meeting.

(5) At the Violation Hearing, the Board of Supervisors shall hear and consider evidence from the operator, County staff and members of the public regarding the alleged violation. The operator shall be given an opportunity to present any and all evidence relating to the alleged violation.

(6) If, based upon the evidence presented at the Violation Hearing, the Board of Supervisors finds that the operator has violated a Franchise, this Title or any applicable state or federal law, the Board of Supervisors may issue an order assessing liquidated damages if provided for by the operator's franchise, or, subject to Section 4.02.140B of this Chapter and the terms of the operator's Franchise, revoke or shorten the Franchise.

B. Revocation and termination. The County Board of Supervisors may revoke a Franchise or reduce the term of a Franchise if it finds, after complying with procedures set forth above, that an operator has violated this Title or its Franchise; has defrauded or attempted to defraud the County or subscribers; or has attempted to evade the requirements of this Title or its Franchise. Except as to violations that are impossible to cure, and as provided in Sections 4.02.130 (C) and (D), the Franchise may only be revoked if the Franchisee (1) was given notice of the default; and (2) 30 days to cure the default; and (3) the Franchisee failed to cure the default, or to propose a schedule for curing the default acceptable to the County where it is impossible to cure the default in 30 days.

C. Exception for certain acts. No opportunity to cure is required for repeated

violations, and fraud and attempted fraud shall be deemed incurable. Further, Tuolumne County may declare a Franchise forfeited without opportunity to cure where a Franchisee:

- (1) voluntarily stops providing service it is required to provide; or
- (2) transfers its Franchise without the prior consent of the County.

D. Exception for bankruptcy. A Franchise will terminate automatically by force of law 120 calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding. However, the Franchise may be reinstated within that 120 day period, if:

- (1) such assignment, receivership or trusteeship has been vacated; or
- (2) such assignee, receiver or trustee has fully complied with the terms and conditions of this Title and the Franchise, and has executed an agreement, approved by any court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of this Title and the Franchise. In the event of foreclosure or other judicial sale of any of the facilities, equipment or property of a Franchisee, Tuolumne County may revoke the Franchise following a public hearing before the County Board of Supervisors by serving notice upon the Franchisee and the successful bidder at the sale, in which event the Franchise and all rights and privileges thereunder will be revoked and will terminate 30 calendar days after serving such notice, unless:

(a) Tuolumne County has approved the Transfer of the Franchise to the successful bidder; and

(b) the successful bidder has covenanted and agreed with the County to assume and be bound by the terms and conditions of the Franchise and this Title.

E. Effect of termination or forfeiture. Upon termination or forfeiture of a Franchise, whether by action of Tuolumne County as provided above, or by passage of time, the Franchisee must stop using the cable communications system for the purposes authorized by the Franchise. The County may take possession of some or all of Franchisee's facilities, or require the Franchisee or its bonding company to remove some or all of the

Franchisee's facilities from the County, and restore affected property to its same or better, condition. This provision does not permit the County to remove facilities that are used to provide another service for which the Franchisee holds a valid Franchise issued by the County.

F. Remedies cumulative. Remedies provided for under this Title, or under a Franchise shall be cumulative. Recovery by the County of any amounts under insurance, the performance bond, or the security fund, does not limit a Franchisee's duty to indemnify the County; or relieve a Franchisee of its Franchise obligations or limit the amounts owed to the County.

G. Liquidated Damages Required in Franchise: A Franchise granted pursuant to this Title shall require liquidated damages, in an amount to be specified in the Franchise, for specified breaches of the Franchise including but not limited to, failure to commence construction, failure to meet construction plan benchmarks, failure to comply with rebuild plan benchmarks, failure to commence service, and material breach of Franchise obligation(s). The Franchise shall also provide that the County may withdraw liquidated damages owed from the Franchisee's security fund, after complying with the procedures set forth in Section 4.02.130 A. Liquidated damages shall commence on that date that performance was due and/or failed, and continue until the Franchisee demonstrates to the satisfaction of the County that the Franchisee has fully performed its obligations giving rise to the payment of liquidated damages. Any obligation to pay liquidated damages does not in any way affect the Franchisee's obligation to pay Franchise Fees or perform other obligations in the Franchise and such liquidated damages do not constitute Franchise Fees and are not subject to any limitations on Franchise Fees contained in 47 U.S.C. § 542(b). Any obligation to pay liquidated damages are not costs of satisfying Franchise requirements as provided in 47 C.F.R § 76.925. Franchisee agrees it will not pass the cost of any liquidated damages to Subscribers through Subscriber rates or itemize or otherwise identify on Subscriber bills any obligation Franchisee may have to pay liquidated damages.

H. Penalties, Fines and Other Monetary Sanctions

(1) Penalties. In addition to any other remedies provided for in this Title or otherwise available by law, the County shall have the power to impose monetary penalties in the

event a Franchisee violates any provision of this Title, a Franchise, or any regulation lawfully adopted thereunder. The amounts of such penalties shall be specified in the Franchise and shall be based on the following principles.

(a) Penalties shall exceed the financial benefits to a Franchisee delaying or failing to comply with the applicable requirement;

(b) Even where such benefits are not easily discernible, the penalties shall be sufficiently high to have a significant deterrent effect on a Franchisee; and

(c) Penalties shall be sufficient to protect the County and other affected parties against loss of revenues resulting from violations.

(2) Other Monetary Sanctions. A Franchise may also provide for fines, liquidated damages and other monetary sanctions, the amounts of which shall also reflect the foregoing principals.

(3) Private Suit Against Franchisee.

(a) Any person or organization adversely affected by a violation, or by a pattern and practice of violations, shall have the right to sue a Franchisee in a court of competent jurisdiction for damages and for injunctive and other relief to require enforcement of the Franchise. Organizations shall be entitled to sue on behalf of themselves or their members.

(b) The remedy herein provided shall be in addition to any remedies provided by law.

(c) Except in emergency situations in which immediate relief is required, private litigants shall notify the County Counsel not fewer than 10 days prior to filing suit. However, suit by the County shall not preempt the private litigant's right to proceed.

(4) Except as otherwise provided herein, a violation of this Title is a misdemeanor. (Ord. 2628 § 1, 2005)

4.02.140 Books and Records.

A. Generally. Each Franchisee shall provide Tuolumne County access to books and records related in whole or in part to the construction, operation, or repair of the cable communications system, or a group of systems of which the system is a part, so that Tuolumne County may inspect and copy these books and records. The records include, but are not limited to revenue records, and other records related to compliance with any provision of this Title or a Franchise. A Franchisee is responsible for

obtaining or maintaining the necessary possession or control of all such books and records, so that it can produce the documents upon request. Books and records must be maintained for a period of four years, except that a Franchise may specify a shorter period for certain categories of voluminous books and records where the information contained therein can be derived simply from other materials. The phrase "books and records" shall be read expansively to include information in whatever format stored.

B. Production. Books and records requested shall be produced to Tuolumne County by a time and at a location in the County designated by the Tuolumne County Administrator. However, if the requested books and records are too voluminous, or for security reasons cannot be copied and moved, then the Franchisee may request that the inspection take place at some other location mutually agreed to by Tuolumne County and the Franchisee, provided that (1) the Franchisee must make necessary arrangements for copying documents selected by the County after its review; and (2) the Franchisee must pay all travel and additional copying expenses incurred by the County (above those that would have been incurred had the documents been produced in the County) in inspecting those documents or having those documents inspected by its designee. (Ord. 2628 § 1, 2005)

4.02.150 Reports.

A. Obligation to submit. The Tuolumne County Administrator may from time to time direct a Franchisee to prepare reports and to submit those reports by a date certain, in a format prescribed by the Administrator, in addition to those required by this Title.

B. Quarterly reports. Unless an exemption is granted by the Tuolumne County Administrator, within 45 days of the end of each calendar quarter, a Franchisee shall submit a report to the County containing the following information:

(1) the number of service calls (calls requiring a truck roll) received during the prior quarter and the percentage of service calls compared to the subscriber base; and

(2) the total estimated hours of known outages as a percentage of total hours of operation. An outage is a loss of sound or

video on any signal, or a significant deterioration of any signal affecting two or more subscribers.

C. Annual reports. The Tuolumne County Administrator may require a Franchisee to submit a report containing the following information within ninety (90) days after the end of the Franchisee's fiscal year:

(1) A fully audited or certified revenue report from the previous calendar year for the cable communications system, and a certified statement setting forth the computation of Gross Revenues used to calculate the Franchise Fee for the preceding year and a detailed explanation of the method of computation showing (i) Gross Revenues by category (e.g., basic cable tier, expanded basic tier, pay-per-view, advertising, installation, equipment, late charges, miscellaneous, other); and (ii) what, if any, deductions were made from Gross Revenues in calculating the Franchise Fee (e.g., bad debt, credits and refunds), and the amount of each deduction.

(2) A report showing, for each applicable customer service standard, the Franchisee's performance with respect to that standard for each quarter of the preceding year. In each case where a Franchisee concludes it did not comply fully, the Franchisee will describe the corrective actions it is taking to assure future compliance. In addition, the report should identify the number and nature of all the customer service complaints received and an explanation of their dispositions.

(3) An ownership report, indicating all persons who at the time of filing control or own an interest in the Franchisee of ten percent (10%) or more.

D. Contemporaneous Reports. Within 10 days of their receipt or (in the case of documents created by the Franchisee or its Affiliate) filing, a Franchisee shall provide Tuolumne County:

(1) notices of deficiency or forfeiture related to the operation of the system; and

(2) any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the Franchisee or by any partnership or corporation that owns or controls the Franchisee directly or indirectly. (Ord. 2628 § 1, 2005)

4.02. 160 Maps Required. Each Franchisee shall maintain accurate maps and improvement

plans which show the location, size, and a general description of all facilities installed in the public rights-of-way and any power supply sources (including voltages and connections). Maps shall be based upon post-construction inspection to verify location. Each Franchisee shall provide a map to Tuolumne County showing the location of its facilities, in such detail and scale as may be reasonably directed by the County and update the map at least annually, and whenever the facility expands or is relocated. Copies of maps shall be provided in hard copy and on disk, in a commercially available electronic format specified by the County. (Ord. 2628 § 1, 2005)

4.02.170. Other Records Required. Unless the Tuolumne County Administrator waives the requirement, a Franchisee shall at all times maintain:

A. Complaint records. Records of all complaints received their nature and resolution. The term "complaints" refers to complaints about any aspect of the Franchisee's operations.

B. Outage records. Records of outages known to the Franchisee, their cause and duration.

C. Complaint response. Records of service calls for repair and maintenance indicating the date and time service was requested, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was solved.

D. Installation records. Records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and the date and time service was extended.

E. Customer service. Records sufficient to show whether the Franchisee has complied with each customer service standard that applies to it. (Ord. 2628 § 1, 2005)

4.02.180 Exemptions. The Tuolumne County Administrator may temporarily exempt any Franchisee from its obligations under Sections 4.02.140 through 4.02.170 if the Administrator determines that the requirement would be unduly burdensome or unnecessary, and that the County and subscriber interests may be adequately protected in some other manner. (Ord. 2628 § 1, 2005)

4.02.190 Privacy. A Franchisee shall take all reasonable steps required so that it is able to provide reports, books and records to Tuolumne County, including by providing appropriate subscriber privacy notices. Each Franchisee shall be responsible for redacting data that applicable law prevents it from providing to the County. Nothing in this section shall be read to require a Franchisee to violate state or federal subscriber privacy laws. (Ord. 2628 § 1, 2005)

4.02.200 Procedures for paying Franchise Fees and fees in lieu of Franchise Fees.

A. Fees paid quarterly. The Franchise Fee paid pursuant to Chapter 4.04, or any fee in lieu of Franchise Fee shall be paid quarterly unless otherwise specified in a Franchise. Payment for each quarter shall be made to Tuolumne County not later than forty-five (45) days after the end of each calendar quarter.

B. Quarterly statement. Unless a Franchise provides otherwise, a Franchisee or other entity subject to a fee shall file with Tuolumne County within forty-five (45) days of the end of each calendar quarter a statement showing Gross Revenues during the preceding quarter and the number of subscribers served.

C. Acceptance of payment not a release. Acceptance by Tuolumne County of any payment shall not be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such payment be construed as a release of any claim Tuolumne County may have for additional sums payable.

D. Fee Not in Lieu of Taxes. No Franchise Fee paid under provisions of this Title is a payment in lieu of any tax, fee or other assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and Franchisees or their services, but not including a tax, fee, or assessment which is unduly discriminatory against Franchisees or subscribers).

E. Failure to Pay Franchise Fee. In the event that a fee payment is not received by Tuolumne County on or before the due date set forth in this Title or in a Franchise, or the fee owed is not fully paid, the person subject to the fee will be charged interest from the due date at an interest rate equal to three (3%) above the rate for three-month Federal Treasury Bills at the most recent United States Treasury Department

sale of such Treasury Bill occurring prior to the due date of the Franchise Fee payment.

F. Final Statement of Gross Revenues. Within ninety (90) days of the date a Franchisee ceases operations under a Franchise (whether because of Franchise termination, transfer, bankruptcy or for any other reason), the Franchisee shall file a final statement of Gross Revenues covering the period from the beginning of the calendar year in which the operations ceased to the date operations ceased. The statement shall contain the information and be audited or certified as required by Section 4.02.160(C) (1). (Ord. 2628 § 1, 2005).