CHAPTER 25

CABLE TELEVISION

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CHAPTER 25

ARTICLE I.
OVERVIEW AND DEFINITIONS

SECTION 25-1. PURPOSE.

This Ordinance governs the regulation of rates for basic cable television service and equipment and customer service standards within the City, and does not replace Ordinance No. 90-655 approved by the City on July 9, 1990.

SECTION 25-2. PROVISIONS TO BE CONSISTENT WITH FEDERAL COMMUNICATIONS COMMISSION RULES.

That the provisions set forth as follows are intended to be consistent with all FCC rules and regulations governing the regulation of basic service rates and equipment and customer service standards including but not limited to, (1) Federal Communications Commission Report and Order 93-177, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, adopted April 1, 1993, and released May 3, 1993, and (2) Federal Communications Commission Report and Order 93-145, Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992, Customer Protection and Customer Service, adopted March 11, 1993, and released April 7, 1993, all of which are incorporated herein by this reference and available for inspection at the office of the city clerk.

SECTION 25-3. DEFINITIONS.

For purposes of this ordinance, the following terms, phrases, words and abbreviations shall have the meanings ascribed to them below, and shall apply to the interpretation and enforcement of these regulations:

(a) Basic Service or Basic Cable Service has the same meaning as the term "basic service" as defined at 47 U.S.C. Section 522, or as amended.

(b) C.F.R. means the Code of Federal Regulations currently in effect, or as amended.

(c) Municipality or City means the City of Kemmerer, Wyoming, whether acting through the governing body or its administration.

(d) Municipal Representative shall mean the administrative department division or individual as designed by the mayor then in elected office.

(e) FCC means the Federal Communications Commission, or successor governmental entity thereto.

(f) Franchisee means a current holder or granted of a cable television license or franchise.

(g) Governing body means the mayor and city council of the City of Kemmerer, Wyoming.

(h) Equipment refers to all equipment and services subject to regulation under 47 C.F.R. Section 79.923, or as amended.

(i) Or as amended refers to federal or state regulations or to those regulations as they may be amended; if a reference section is renumbered, the ordinance shall be read to refer to the section as renumbered.

(j) Revenues shall mean all revenues, in whatever form received.

(k) Subscriber shall mean any person who legally receives any one or more of the services provided by a franchisee.

(l) U.S.C. means the United States Code currently in effect, or as amended.

ARTICLE II
FILING AND REVIEW OF RATES

SECTION 25-4. INITIAL FILINGS BY FRANCHISEE.

(a) Filing: When Made. A franchisee subject to regulation must file a submission ("the rate filing") within thirty (30) days of the notification of said regulation (but is not required to make a filing earlier than February 28, 1994, justifying its then-existing basic service and equipment rates. All rates for customer classifications must be justified. Once a franchisee has been notified by the City that its rates are subject to regulation, it may not thereafter increase its rates for basic service or equipment without the prior approval of the City. This requirement applies in all cases, including increases in rates announced prior to the date the operator was notified its rates were subject to regulation. A franchisee must submit a rate filing to justify any increase in basic service or equipment rates or any new basic service or equipment rate (collectively referred to herein as rate increases). An "increase" occurs when there is an increase in rates or a decrease in program or customer services. Rate filings proposing and supporting increases must be filed for review at least thirty (30) days in advance of the proposed effective date of the increase. This requirement does not alter or eliminate any other notice requirement. Where there is no applicable FCC form that is to be used to support an equipment charge, the franchisee shall submit sufficient information to demonstrate that the price it proposes to charge recovers only its costs plus a reasonable profit.

(b) Filing: Where Made. Every rate filing must be submitted to the City. A rate filing shall be considered filed for review on the date received. Three (3) copies of each rate filing (including all supporting materials) must be submitted. If any part of the rate filing

contains information that is claimed to be proprietary under applicable FCC rules, the franchisee must file three (3) copies of the filing with the proprietary information removed.

(c) Filing: Contents. Subject to FCC regulations governing the burden of proof, a rate filing submitted by a franchisee must show that the rates proposed for basic service and equipment are reasonable. Except as inconsistent with FCC rules:

(1) Every rate filing must clearly state in a cover letter whether it justifies existing rates, or proposes an increase in rates. The cover letter must also identify any rate that is derived in whole or in part based upon cost of service, and identify any pages of the rate filing that contain information that the franchisee claims is proprietary. It must state whether any part of the proposed increase is based on an inflation adjustment or an alleged increase in external costs. The cover letter should also contain a brief narrative description of any proposed changes in rates or in service;

(2) The pages of each rate filing must be numbered sequentially;

(3) The rate must contain all applicable FCC forms correctly completed; and

(4) If different rates are being charged or are to be charged for different customers or classes of customers, the filing must show that the classifications and the differences in the rates charged are reasonable and consistent with federal law.

(d) If the franchisee seeks to support a rate based upon a cost of service, the City will establish a rate that provides the franchisee an opportunity to recover its reasonable costs, including a reasonable profit. An expense or investment is not presumed reasonable merely because the franchisee has incurred or made it. A franchisee is not entitled to recover monopoly rents in any form.

(e) In addition to information the City requires the franchisee to provide, unless the City grants a waiver of this provision, a franchisee who seeks to justify all or part of its rates based upon its cost of service must submit a complete cost of service analysis that shows all expenses it incurs and all revenues derived from the system, directly or indirectly by the franchisee or any person that constitutes a "cable operator" of the system within the meaning of 47 U.S.C. Section 522, or as amended. The cost of service must identify that accounting level (as that term is used in the FCC's regulations) at which each expenses or revenue identified was aggregated and clearly show how the expense or revenue was allocated. The franchisee may not include costs at an accounting level unless it also includes all revenues from that same level attributable to the system or to a group of systems of which the system is a part. The replacement cost of a comparable system must be identified and supported. The franchisee must identify the name and address of any entity with which it has a contract, other than a programmer, which

derives revenues from the system, and must state whether and how the revenues of that entity were included in the cost of service. In addition, the cost of service shall clearly show the derivation of a proposed charge per channel and the application of that charge to yield a basic service rate. It must also show and support the derivation and allocation of any amounts included in the derivation of the rate for:

(1) Operation and maintenance expenses;

(2) Administrative and general expenses;

(3) Programming expenses (identifying retransmission consent costs and copyright fees separately);

(4) Costs for required facilities, equipment or services for public educational and government use and any institutional network;

(5) Franchise fee expenses;

(6) Investment in the system and associated depreciation;

(7) Other itemized expenses, including federal, state and local taxes; and

(8) The proposed return on equity and actual interest expense paid by the franchisee.

(f) Notwithstanding the foregoing, a franchisee is not required to submit the cost of service specified in section (e) above for equipment rates, and instead initially shall complete, submit and support the costs of equipment using applicable FCC forms. Any cost of service submitted to justify basic service rates must show that the cost of service does not include equipment costs.

SECTION 25-5. INITIAL CITY REVIEW.

(a) After receiving a rate filing, the City promptly shall publish a notice that a filing has been received and that, except for those parts which may be withheld as proprietary, it is available for public review. The notice shall state that interested parties may comment on the filing, and shall provide all interested parties seven (7) days to submit written comments on the filing. The City shall submit comments received and recommendations or action to the governing body no later than twenty (20) days after the filing and shall make those comments and recommendations available for public inspection. The franchisee may submit a response to public comments or the City's recommendations, but must do so no later than five (5) days after the City's recommendations are submitted to the governing body and the franchisee. The response shall be filed with the City, and if submitted in a timely fashion, shall be forwarded to the governing body. The

governing body may provide for a public hearing to receive additional input from all parties if it so desires.

(b) Within thirty (30) days of the date of the filing, the governing body shall issue a written order, which may be in any lawful form, approving the proposed rate in whole or in part; denying the proposed rate in whole or in part; or tolling the proposed rate in whole or in part. If the governing body denies a proposed rate, it should provide a written explanation. If the governing body tolls the rate in whole or in part, its written order at least shall explain that it requires additional time to review the rate filing and state that the franchisee may cure any deficiency in its filing by submitting a supplementary filing. With respect to existing rates, tolling means the rates may remain in effect, subject to the refund; with respect to rate changes, tolling means the portion of the rate change that is tolled may not go into effect.

SECTION 25-6. SUPPLEMENTARY FILINGS.

(a) If a proposed rate is tolled in whole or in part, the franchisee shall submit a supplementary filing twenty (20) days from the date the tolling order was issued, containing corrections, if any, to its filing (including any required supplement to its cost of service filing) and any response to information filed by interested parties or to the recommendations of the City and any additional information supporting the proposed rate. Supplementary filings must be filed in accordance with section I(b).

(b) A supplementary filing also must contain such reasonable information as the City directs the franchisee to provide.

(c) In addition to information the City requires the franchisee to provide, and unless the City grants a waiver of this provision, a franchisee who claims that it is entitled under the applicable federal law to a rate in whole or in part based upon the adjustments for inflation and external costs contemplated by 47 C.F.R. Section 76.922(d)(i)-(2), or as amended, must submit the following:

(1) A calculation showing how each part of the adjustment was derived;

(2) A statement itemizing each external cost (as defined by FCC regulations), the amount of that external cost for the two (2) calendar years prior to the date of the filing and the year-to-date in which the filing is made; and the projected amount of the external cost for the remainder of the year in which the filing is made and for the following calendar year. The statement must specifically show any increases in revenues from programming services;

(3) If the increase is attributable to any increase in programming service costs, the contract for each programming service whose cost has increased; a sworn statement identifying each programming service whose costs increased where the

programmer is an affiliate of the franchisee (as defined by FCC regulation); and, for any contract that has been in effect less than twelve (12) months, the prior contract for the service; and

(4) A sworn statement by the franchisee's chief financial officer or an independent, certified accountant stating that he or she has examined all external costs (including all programming costs) and has offset against any increased claimed, the amount of any decrease in external costs, and the amount by which any increase in external costs was below the GNP-PI, as required by 47 C.F.R. Section 76.922(d)(2), or as amended; affirming that the franchisee has only sought to recover any external cost to the extent that cost exceeded the GNP-PI; and affirming that the franchisee has not attempted to recover any increase in the cost of programming purchased by an affiliate except as provided in 47 C.F.R. Section 76.922(d)(2)(vi), or as amended.

(d) Upon receiving the supplementary filing, the City promptly shall publish a notice that a filing has been received and that it is available for public review (except those parts which may be withheld as proprietary). The notice shall state the interested parties may comment on the filing, and shall provide interested parties twenty (20) days to submit written comments on the filing. The City shall submit comments received and recommendations for action to the governing body. The recommendations shall be made available for public inspection. The franchisee may submit a response to public comments or the City's recommendations, but must do so no later than ten (10) days after the City's recommendations are submitted to the governing body.

(e) The governing body shall issue a written order, which may be in any lawful form, approving the proposed rate in whole or in part; denying the proposed rate in whole or in part; or allowing the rate to go into effect in whole or in part, subject to refund. If the governing body denies a proposed rate, it shall provide a written explanation. If the governing body issues an order allowing the rates to go into effect subject to refund, it shall also direct the franchisee to maintain an accounting in accordance with 47 C.F.R. Section 76.933, or as amended.

(f) The order specified in section (e) above shall be issued ninety (90) days after the tolling order for any rate the franchisee justifies based on the FCC benchmark. The order shall be issued within one hundred fifty (150) days of the tolling order for any rate the franchisee justifies with a cost of service showing.

SECTION 25-7. PROVISIONS GENERALLY APPLICABLE TO RATE ORDERS.

(a) Any rate order of the governing body shall be effective upon approval by the governing body and any publication required shall give the manner in which the order was adopted. Each rate order shall be released to the public and the franchisee. In any case where the

governing body approves, denies or tolls a rate; orders that a rate may go into effect subject to refund; or orders refunds or establishes rates, a public notice shall be published by the City stating that the order has been issued and is available for review. Any such order shall be in writing.

(b) The governing body may take any steps it is not prohibited from taking by federal law to protect the public interest as part of any rate order or by any other means. By way of illustration and not limitation, it may require refunds, set rates and impose forfeitures and penalties directly or through its delegated representatives, and enforce refund orders. No penalties shall be imposed, however, based only on a finding that the franchisee filed for approval of rates later found to be unreasonable. Any order prescribing a rate must explain why the franchisee's proposed rate was unreasonable and why the prescribed rate is reasonable. However, before prescribing a rate or ordering a refund to subscribers, the governing body shall ensure the franchisee has had notice and opportunity to comment on the proposed rate or refunds. If the recommendations of the City propose a refund or a specific rate, mailing a copy of the recommendation to the franchisee at the time it is submitted to the governing body shall be deemed to provide notice, and the franchisee must comment on the refund or rate in its response to the recommendations.

(c) No order approving or setting a rate using the FCC benchmark shall be interpreted to establish the just and reasonable rate to subscribers. Every such rate approved or established shall be subject to further reduction and the refund to the extent permitted under applicable laws and regulations, as the same may be amended form time to time. By way of illustration and not limitation, should the FCC reduce the benchmark, the City shall have the right to reduce a franchisee's rates and to require the franchisee to refund any amounts collected above the benchmark, except to the extent prohibited by federal law.

SECTION 25-8. DUTIES OF THE FRANCHISEE.

(a) A franchisee must implement remedial requirements, including prospective rate reductions and refunds, within sixty (60) days of the date the governing body issues an order mandating a remedy.

(b) Within ninety (90) days of the date an order mandating a remedy is issued, a franchisee must file a certification, signed by an authorized representative of the cable company stating:

(1) Whether the franchisee has complied fully with all provisions of the governing body's order;

(2) Describing in detail the precise measures taken to implement the governing body's order; and

(3) Showing how refunds (including interest) were calculated and distributed.

(c) It is each franchisees' responsibility to keep books and records of account so that it can refund any amounts owed to subscribers.

(d) It is each franchisee's duty to submit as complete a filing as possible. Knowingly withholding information or making a filing that is incomplete under applicable law, shall be treated as an evasion of these regulations.

(e) Information Requests.

(1) A franchisee and any other entity that has records of revenues or expenses that are allocated to the franchisee's system must respond to requests for information from the City by deadlines established by the City. A franchisee is responsible for ensuring that such other entity responds to the City's requests.

(A) All notices or other information requested by these regulations or by the city representative shall be mailed to the person so appointed by the mayor, or to the mayor in the absence of a specific appointment; provided that any notices triggering a response due in ten (10) days or less shall be sent via overnight mail, hand-delivered or sent via fax with telephone confirmation to the franchisee's local office.

(2) Because federal law limits the time available for an initial response to a filing by a franchisee before the order contemplated by Article II, Section II issues, the franchisee must be prepared to respond to written requests for information regarding its filing within five (5) days of the date an information request is provided to the franchisee. The information may include the information the franchisee would be required to provide as part of any supplementary filing.

SECTION 25-9. DUTIES OF THE CITY.

(a) The City shall be responsible for administering the provisions herein. Without limitation and by way of illustration:

(1) The City shall ensure notices are given to the public and each franchisee as required herein and by FCC regulations;

(2) The City may submit requests for information to the franchisee and establish deadlines for responses;

(3) For good cause, the City may waive any provision herein or extend any deadline for filing or response except as to such matters that are mandatory under FCC regulations.

(4) The City shall rule on any request for confidentiality; and

(5) The City shall prepare the recommendations to the governing body contemplated by Article II, Sections II-III hereof. If the City recommends that any increase be denied in whole or in part, the representative shall:

(A) Propose a rate and explain the basis for its recommendation or the City may propose that rates remain at existing levels or a lower level;

(B) Recommend whether and on what basis refunds should issue; and

(C) Notify the franchisee of the recommendations at the time they are submitted to the governing body.

SECTION 25-10. PROPRIETARY INFORMATION.

(a) If these provisions or any request for information requires the production of proprietary information, the franchisee must produce the information. However, at the time the allegedly proprietary information is submitted, the franchisee may request that specific, identified portions of its response be treated as confidential and withheld from public disclosure. The request must state the reason why the information should be treated as proprietary and the facts that support those reasons. The request for confidentiality will be granted if the City determines that the preponderance of the evidence shows that nondisclosure is consistent with the provisions of the Freedom of Information Act, 5 U.S.C. Section 552, or as amended. The City shall place in a public file for inspection any decision that results in information being withheld. If the franchisee requests confidentiality and the request is denied, (1) where the franchisee is proposing a rate increase, it may withdraw the proposal, in which case the allegedly proprietary information will be returned to it; or (2) the franchisee may seek review within five (5) working days of the denial in any appropriate forum. Release of the information will be stayed pending review.

(b) Any interested party may file a request to inspect material withheld as proprietary. The City shall weigh the policy considerations favoring nondisclosure against the reasons cited for permitting inspection in light of the facts of the particular case. It will then promptly notify by certified or registered mail the requesting entity and the cable franchisee that submitted the information as to the disposition of the request. The City may grant, deny or condition a request. The requesting party or the franchisee may seek review of the decision by filing an appeal with any appropriate forum. Disclosure will be stayed pending resolution of any appeal.

SECTION 25-11. PETITION FOR CHANGES IN STATUS.

Any franchisee may petition for a change in status in accordance with 47 C.F.R. Section 76.915, or as amended, and the City shall consider that petition in accordance with 47 C.F.R. Section 76.915, or as amended. The petition and three (3) copies must be filed with the city representative.

SECTION 25-12. PENALTIES AND FORFEITURES.

(a) Except as prohibited by federal law, a franchisee shall be subject to penalties and forfeitures under the general municipal code penalty section.

(b) Any request for approval of a rate may be denied if the franchisee:

(1) Knowingly submits false or fraudulent information to the City in connection with any rate proceeding;

(2) Fails to comply with any lawful order or request of the City, including but not limited to, a request for information concerning an order setting rates; or

(3) Evades or attempts to evade federal or local rate regulation; provided that, filing for approval of a rate that is later determined to be unreasonable is not in and of itself an evasion of federal or local rate regulation.

ARTICLE III
CUSTOMER SERVICE STANDARDS

SECTION 25-13. PURPOSE.

The purpose of this article is as follows:

(a) To establish minimum customer service standards which become service requirements applicable to franchised cable television system operators in the City of Kemmerer.

(b) To provide for enforcement by the City of the franchised cable television system operator customer service requirements.

SECTION 25-14. DEFINITIONS.

For the purpose of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

(a) Cable Operator. The term "cable operator" includes all cable television franchisees of the City.

(b) Normal Business Hours. The term "normal business hours" means 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays which are observed by the City, and three evening hours at lease one night per week and/or during Saturdays or Sundays.

(c) Normal Operating Conditions. The term "normal operating conditions" means those service conditions which are within the control of a cable operator. Those conditions which are not within the control of a cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of a cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of a cable system.

(d) Service Interruption. The term "service interruption" means the loss of picture or sound on one or more cable channels.

SECTION 25-15. CUSTOMER SERVICE STANDARDS.

(a) Cable System Office Hours and Telephone Availability.

(1) Cable operators will maintain a local, toll-free or collect call telephone access line which will be available to their subscribers 24 hours a day, seven (7) days a week.

(2) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(3) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained representative of the cable company on the next business day.

(4) Under normal operating conditions, telephone answer time by a company representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis.

(5) Operators will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless a

historical record of complaints indicates a clear failure to comply with such standards.

(6) Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time.

(7) Customer service centers and bill payment locations will be open at least during normal business hours and will be conveniently located.

(b) Installations, Outages and Service Calls. Under normal operating conditions, each of the following four standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis.

(1) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

(2) Excluding conditions beyond the control of an operator, it will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. Cable operators must begin actions to correct other service problems the next business day after notification of the service problem.

(3) "Appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at a maximum, a four-hour time block during normal business hours. (Operators may schedule service calls and other installations activities outside of normal business hours for the express convenience of the customer.)

(4) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(5) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer is to be contacted in advance. In such case, the appointment is to be rescheduled at a time which is convenient for the customer.

(c) Communications Between Cable Operators and Cable Customers.

(1) Notification to Subscribers.

A. Cable operators shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

1. Products and services offered;

2. Prices and options for programming services and conditions of subscription to programming and other services;

3. Installation and service maintenance policies;

4. Instructions on how to use the cable service;

5. Channel positions of programming carried on the system; and,

6. Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

B. Customers will be notified of any changes in rates, programming services, or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, cable operators shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph.

(d) Billing.

(1) Bills will be clear, concise, and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(2) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within thirty (30 days.

(e) Refunds. Refund checks will be issued promptly, but no later than either:

(1) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier; or,

(2) The return of the equipment supplied by the cable operator if service if terminated.

(f) Credits. Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

SECTION 25-16. VIOLATIONS AND PENALTIES.

Except as prohibited by federal law, a cable operator shall be subject to any and all of the following penalties:

(a) Violation of any of the provisions of this chapter shall constitute a misdemeanor offense, punishable upon first conviction by a fine of not more than the maximum allowed by law; second and subsequent convictions shall be punishable by a fine and/or sentence of incarceration up to the maximum allowed by law.

(b) For any violation of the customer service standards by a cable operator, and/or the failure or refusal of a cable operator to comply with the city's written notice to correct a deficiency regarding the customer service, the following requirements may be imposed upon the cable operator:

(1) Refunds, rebates or credits by the cable operator to the cable subscribers; and/or

(2) Civil remedies as may be applicable including, but not limited to, specific performance or injunction.

SECTION 25-17. ENFORCEMENT.

The city administrator or mayor, or an agenda authorized by either, shall have the authority to enforce the provisions of this chapter, as follows:

(a) By providing written notice to a cable operator to comply with the provisions of this chapter within the time period specified in the notice;

(b) By issuing a written order to a cable operator to provide refunds, rebates and/or credits to cable subscribers;

(c) By initiating misdemeanor criminal charges and/or civil legal action necessary to enforce the provisions of this chapter.

SECTION 25-18. SEVERABILITY.

The City will regulate cable operators and interpret this chapter to provide consistency with all applicable FCC regulations, as if those regulations were set forth in full herein. If any section, subsection, sentence, clause, phrase or portion of this ordinance is held invalid or unconstitutional by the FCC or any court of competent jurisdiction, such determination shall not affect the validity of the remaining portions, which shall remain in full force and effect.