

MINUTES of the Special Meeting of the City
Council of the City of Rye held in City Hall on May 29,
1996 at 8:00 P.M.

PRESENT:

JAMES K. BURKE
EDWARD J. COLLINS
ROBERT H. HUTCHINGS
JOSEPH L. LATWIN
KATHLEEN E. WALSH
Councilmen

ABSENT:

EDWARD B. DUNN, Mayor
CAROLYN C. CUNNINGHAM

1. Roll Call

Acting Mayor Collins called the meeting to order; a quorum was present to conduct official City business.

2. Public hearing on a proposed local law amending Chapter 185, Telecommunications, of the Code of the City of Rye

Acting Mayor Collins opened the public hearing.

There being no one present who wished to address the Council, Acting Mayor Collins closed the public hearing.

In response to an inquiry from Councilman Latwin, Mr. John Gregg, chairman of the RCTV Commission, told the Council that the Commission was in agreement with the proposed local law as submitted.

Councilman Burke made a motion, seconded by Councilman Hutchings, to adopt the following local law:

**City of Rye
LOCAL LAW NO. 4-1996**

**A LOCAL LAW AMENDING CHAPTER 185, TELECOMMUNICATIONS,
OF THE CODE OF THE CITY OF RYE, NEW YORK**

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF RYE as follows:

Section 1. Subdivision 185-2 of such law is hereby amended to read as follows:

This local law shall be construed in accordance with the applicable Federal and State laws governing multi-channel service practices which specifically includes the operation and provision of a cable television system. Moreover, with respect to the operation and provision of a cable television system, this local law shall be construed in accordance with any applicable rules and regulations of the PSC.

Section 2. Subdivision 185-4 of such law is hereby amended to read as follows:

If any word phrase, sentence, part, section, subsection, or other portion of this local law, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this local law, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

Section 3. Subdivisions (1), (4), (6), (7), (9), (12), (15), (16), (28), (33), (34), (38), (40), (43), (46), (57), (62), (63), (64), (65), (75), (77), and (91) of section 185-5 of Chapter 185, Telecommunications, adopted on September 8, 1993 are hereby amended, repealed, renumbered, or added, to read as follows:

Subdivision (1) is repealed and replaced with a note that this numbered subdivision is "Reserved."

Subdivision (4) is repealed and replaced with a note that this numbered subdivision is "Reserved."

(6) "Alternative user charge" means a charge used in place of a traditional franchise fee that the Council requires as payment for the privilege of using the streets, easements, public ways, or rights-of-way of the City in order to construct, maintain, and/or operate a multi-channel system. An alternative user fee is not based on an MCS provider's gross annual revenues (as is the case in a franchise fee), but rather is based, to the extent permitted by applicable law on the value of the City property that an MCS provider uses to construct, maintain, and operate its multi-channel system.

(7) "Applicant" means a person submitting an application or proposal to the City for a license or franchise (where required) to operate a multi-channel system under the terms and conditions set forth in this local law, and any State regulations (including where applicable, those of the PSC).

(9) "Assignment of a franchised MCS provider's franchise" means any transfer of a franchise to a party other than a majority owned Affiliate, whether by sale, assignment, lease or other form of alienation other than a Hypothecation made to secure indebtedness.

- (12) "Cable Act" or "CCPA" means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 and as amended by the Telecommunications Act of 1996, which in large part is codified at 47 USC 521 et seq.
- (15) "Cable service" means:
- (a) the one-way transmission to subscribers of video programming, or other programming service; and
 - (b) subscriber interaction, if any, or other programming which is required for the selection or use of such video programming service.
- (16) "Cable System" or "Cable Television 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, voice or data programming, and which is provided to multiple subscribers within the City. However, such terms do not include the following:
- (a) a facility that serves only to retransmit the television signals of one (1) or more broadcast stations; or
 - (b) a facility that serves subscribers without using any public rights-of-way; or
 - (c) a facility of a common carrier which is subject, in whole, or in part, to the provisions of Title II of the Communications Act of 1934, except that such facility shall be considered a cable system (other than for purposes of Section 621(c) of the Cable Act -- codified at 47 USC 541) to the extent such facility is used in the transmission of video programming or service directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; or
 - (d) an open video system that complies with Section 653 of the Cable Act - to be codified - at 47 USC; or
 - (e) any facilities of any electric utility used solely for operating its electric utility systems.
- (28) "Customer" means a lawful subscriber, or user of the services and/or facilities of the multi-channel system provided by an MCS provider.
- (33) "Easement" means and shall include any public or private easement or other compatible use created by dedication, or by other means, to the City for public utility purposes or any other purpose whatsoever, including cable television, or any multi-channel service. "Easement" shall include a private easement used for the provision of cable service or any other multi-channel service.
- (34) "FCC" means the Federal Communications Commission and/or such other Federal regulatory agency as now or in the future may have jurisdiction to oversee multi-channel service providers.
- (38) "Franchise expiration" or "Franchise agreement expiration" means the date of expiration, or the end of the term of a franchised MCS provider, as noted under a franchise agreement, or any lawful extension thereof.

- (40) "Franchised MCS provider" or "Franchisee" means a person that is awarded a Franchise by the Council/franchising authority to construct or operate a franchised multi-channel system, within all, or part, of the City.
- (43) "Gross Revenue" for any period means any and all revenues received by the Franchisee or other MCS provider for that period which are derived from the operation of the MCS system to provide MCS services, or in the case of a Cable operator, to provide Cable service, under the authority of the Franchise granted to it by the City.

For purposes of the calculation of Franchise Fees pursuant to Section 106 of this Local Law, the Gross Revenues of the Franchisee shall include any and all compensation actually derived from such Franchisee's operation of its Cable System to provide cable services under the authority of its Franchise whether received directly or indirectly by such Franchisee in the form of direct payment to such Franchisee or to a controlling owner or Affiliate of such Franchisee, and shall include the value of goods or services and other non-subscriber revenues (including transmission or advertising services) provided by such Franchisee under the authority of such Franchise to a controlling owner or Affiliate of such Franchisee to the extent not otherwise compensated to such Franchisee by such owner or Affiliate in a manner consistent with established practice or available to non-affiliated parties.

However, "Gross Revenue" does not include any revenues billed but not collected or credited when actually written off as bad debt, or revenues refunded back to customers, or any taxes imposed and/or assessed by law on subscribers which an MCS provider collects and pays in full to the applicable authorities, nor any revenues received by any person other than such Franchisee or MCS provider with respect to cable service or other service provided by such person over the Franchisee's or MCS provider's cable system for which charges are assessed to subscribers but not received by such Franchisee or MCS provider.

- (46) "Hypothecation" means providing security for a loan or indebtedness of an MCS provider in a manner and method that does not specifically include the assignment or transfer of possession or sale of the multi-channel system or franchise.
- (57) "MCS provider" or "Multi-channel service provider" means any person or group of persons who:
- (a) provides multi-channel communications service over a multi-channel system, irrespective of the technology employed and subject to federal and state preemption or limitation, and directly or indirectly owns a significant interest in such multi-channel system; or
 - (b) who otherwise controls or is responsible through any arrangement, the management and operation of such a multi-channel system.

The term "MCS provider" or "multi-channel service provider" specifically includes the terms "cable operator", "MDS provider" or "multi-point distribution system provider", "MMDS provider", personal communications network system provider (where applicable and permitted under State rule or regulation, including that of the PSC), and "SMATV operator," provided, however, that when used in reference to a "Franchised MCS provider" such use shall mean only the "Franchisee."

- (62) "Multi-channel system" means
- (a) a facility consisting of a closed transmission paths and associated signal generation reception, and control equipment; or
 - (b) a facility consisting of infra-red transmission or point-to-point transmission (as permitted by law); or
 - (c) any functional equivalent that is designed to provide multi-channel service which includes video, voice, or data programming to multiple subscribers within the City.

However, such term does not include the following:

- (i) a facility that serves only to re-transmit the television signals of one (1) or more broadcast stations; or
- (ii) a facility that serves subscribers without using any public-right-of-way; or
- (iii) a facility of a common carrier which is subject, in whole, or in part, to the provision of Title II of the Communication Act of 1934 except that such facility shall be considered a multi-channel system (other than for purposes of Section 621 (c) of the Cable Act-- codified at 47 USC 541) to the extent such facility is used in the transmission of video, voice, or data programming or service directly to subscriber; or
- (iv) any facilities of any electric utility used solely for operating its electric utility.

(63) "Normal operating conditions" means those service conditions which are within the control of the Franchisee. Those conditions which are not within the control of the Franchisee 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 the Franchisee 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 the cable system.

(64) "NYSPSC" or "PSC" means the New York State Public Service Commission or any successor agency.

(64) is hereby renumbered as (65).

Subdivision (75) is repealed and replaced with a note that this numbered subdivision is "Reserved."

(77) "Public way" means any public street, public way, public place, easement, or rights-of-way, now laid out or dedicated, and the space on, above or below it, and all extensions thereof, and additions thereto, in the area served by the MCS provider.

(90) "SMATV system" means a private multi-channel system not crossing any public rights-of-way and which is located on private property, and serving private dwellings, provided that such a system is exempt from municipal franchise requirements by applicable provisions of Federal or State law.

Section 4. Paragraph (5) of subdivision B of section 185-6 of such law is hereby amended to read as follows:

5) establish an orderly process for franchise renewal which protects Franchisees against unfair denials of renewal where a Franchisee's past performance and proposal for future performance meet the standards set by the Cable Act, and this local law; and

Section 5. Subdivision E of section 185-6 of such law is hereby amended to read as follows:

E. With respect to the rules and regulations of the PSC, it is expressly understood that such rules and regulations establish threshold requirements that are to be met in order to operate a multi-channel system classified as a Cable System within the City. Consequently, such threshold rules and regulations of the PSC may be supplemented, and/or exceeded, unless specifically pre-empted by the PSC, or unless the extent of the City's authority is determined otherwise by way of formal PSC action.

Section 6. Subdivision F of section 185-6 of such law is hereby amended to read as follows:

F. However, unless determined otherwise by the State or a court of competent jurisdiction, the rules and regulations of the PSC are applicable only to MCS providers classified as cable operators. For all such other MCS providers, the Council/franchising authority may develop and implement its own set of rules and regulations, to the extent permitted by both State and Federal law.

Section 7. Subdivisions A and B of section 185-7 of such law are hereby amended to read as follows:

- A. Unless otherwise designated by the Council, the Council/franchising authority is hereby designated the officer of the City who is responsible for the continuing administration of this local law.
- B. Unless prohibited by federal or State law (including the PSC), the Council/franchising authority may delegate its powers and authority with respect to administering this local law with regard to a franchise agreement, to a duly authorized official of the City.

Section 8. Subdivision A of section 185-8 of such law is hereby amended to read as follows:

A. Unless exempted entirely from this local law, or exempted under one (1) or more provisions of this local law, or of a Franchise Agreement, or granted relief (by either the PSC, or the Council/franchising authority) from one (1) or more provisions and/or requirements of this local law, then this local law shall be applicable to an MCS provider, and this local law shall have full effect, and be enforceable in its entirety. Moreover, a MCS provider shall be expected to comply with this local law no later than twelve (12) months after this local law becomes effective, except where a different compliance date is given or noted (including a different date noted in an applicable franchise agreement).

Section 9. Paragraph (1) of subdivision A of section 185-9 of such law is hereby amended to read as follows:

- 1) an MCS provider who is exempted from this local law as a result of an applicable FCC, or PSC ruling; or

Section 10. Subdivision C of section 185-9 of such law is hereby amended to read as follows:

- C. It also is expressly noted that the extent of the exemption for a qualified MCS provider is only for this local law. Consequently, such an exempted MCS provider is expected to abide by, and comply with, any other applicable City, State (including applicable PSC), or Federal laws and regulations, including any applicable Federal, or State consumer protection, or customer service laws and regulations.

Section 11. Paragraph (1) of subdivision B of section 185-10 of such law is hereby amended to read as follows:

- 1) the provision and/or requirement is expressly prohibited by Federal law, the FCC, or State law, or (where applicable) PSC rule or regulation; or

Section 12. Subdivisions E and F of section 185-10 of such law are hereby amended to read as follows:

- E. In accordance with this local law, the Council/franchising authority may charge the petitioning MCS provider with the actual costs for processing such a petition, including any costs incurred by outside consultants who are retained by the City to review an MCS provider's petition, provided that the franchised MCS provider seeks a substantial waiver of material provisions of this local law previously understood to be applicable to the Franchisee and if such petition is deemed likely to cause the City to incur additional and otherwise unnecessary costs not previously anticipated in the determination of its Franchise fee.
- F. In those instances where the Council/franchising authority grants an exemption or relief to a franchised MCS provider, or deems a franchised MCS provider's operational policy to be comparable to a local law provision, the franchise agreement (initial, existing, or renewal) shall be deemed amended to reflect the exact extent of such exemption and/or relief. It should be specifically noted that the benefit of such exemption, relief, clarification, or comparable policy extends only to the MCS provider granted such exemption, relief, clarification, or comparable policy.

Section 13. Subdivisions A and B of section 185-12 of such law are hereby amended to read as follows:

- A. Any MCS provider, its assignee, or transferee or buyer shall be subject to, and expected to comply with, all local laws now or hereafter adopted and in effect within the City, including this local law, to the extent that said MCS provider or its predecessor in interest has not received an exemption or relief from said local law(s), and to the extent that said local laws do not materially conflict with the rights granted and standards expressed in a Franchise or Franchise agreement between a MCS provider and the City.
- B. Any MCS provider, its assignee, or transferee shall be subject to, and expected to comply with, all Federal and State Laws, and with all rules and regulations issued by all applicable regulatory agencies (including where applicable, the FCC and PSC) now or hereafter in existence.

Section 14. Subdivision A of section 185-14 of such law is hereby amended to read as follows:

- A. In any case of an actual inconsistency between any provision or section of this local law, and any provision or section of a Federal or State rule, regulation, or law preemptive in nature and effect, then the preemptive Federal or State rule, regulation, or law shall not only supersede the effect of the local law, but also control in any local application.

Section 15. Subdivisions A and B of section 185-15 of such law are hereby amended to read as follows:

- A. Where there is a conflict (actual or apparent) between this local law and an existing and applicable franchise agreement, the local law shall control, and prevail, unless administratively, or judicially determined invalid, unenforceable, or unconstitutional, or unless the provisions of subsection (B) of this section apply to the MCS provider and its Franchise Agreement.
- B. In the case where a franchised MCS provider receives an exemption, relief, clarification from one (1) or more provisions or Section of this local law, or has one (1) or more of its policies deemed comparable to a provision contained in this local law, the said Franchisee's franchise agreement shall be deemed to be amended to reflect the same such exemption, relief, clarification, or comparable policy, to whatever extent may be necessary, and to the extent that such an exemption, relief, clarification, or comparable policy as contained in a franchise agreement is inconsistent with a provision contained in this local law, then the specifically noted exemption, relief, clarification, or comparable policy language contained in the franchise agreement shall control.

Section 16. Subdivisions A, B and C of section 185-17 of such law are hereby amended to read as follows:

- A. Any Franchisee or other MCS provider willfully violating or failing to comply with any provisions of this local law shall be guilty of a civil violation and upon conviction thereof be subject to a fine or other penalty of not more than Two Hundred Fifty Dollars (\$250) as provided for by State law.

Each day of a continuing violation shall constitute a separate violation and shall be subject to a separate fine or civil penalty. A violation that consists of a single instance and which is promptly corrected upon awareness or notification shall not be considered the equivalent of multiple violations for the period predating discovery and notification.

- B. In addition to any other penalties prescribed in this section, the City's Corporation Counsel may maintain an action in a court of competent jurisdiction to compel compliance with or restrain by injunction any violations of the provisions of this local law. Each day upon which there exists a violation of this local law, or a failure to abide by, or comply with, any provision or requirement of this law, after due notice and an opportunity to cure the violation has been afforded the MCS provider, shall constitute a separate occurrence, and may subject the MCS provider to separate penalties.
- C. In instances where a franchise agreement provides for assessed charges or liquidated damages for the breach or violation of that franchise agreement, then such assessed charges or liquidated damages shall be considered controlling and an adequate alternative to the remedies described in this Law. Such assessed charges or liquidated damages shall not be used by the City, until after it first attempts to resolve the matter in the manner prescribed by this local law.

Section 17. Subdivisions A, B, C and D of section 185-19 of such law are hereby amended to read as follows:

- A. Subject to pre-emption by, or other approval authority of, the FCC or any other Federal or State governmental entity or agency (including where applicable, the PSC), and to the extent permitted by any applicable law, the Council/franchising authority retains the authority to provide for:
- 1) the regulation and control of any multi-channel system within the geographical limits of City;
 - 2) the award and grant of an MCS franchise (where required) subsequent to review of an application or proposal by the Council/franchising authority;
 - 3) the periodic review and/or amendment or repeal of all, or part, of this local law; except as it may not unilaterally impose substantial capital requirements not anticipated in the franchise agreement; and
 - 4) if mutually agreed to with a franchised MCS provider, the periodic review and/or amendment of any existing franchise agreement.
- B. The Council/franchising authority, to the extent permitted by Section 623 or other provisions of the Cable Act (codified at 47 USC 543), retains the power to approve the rates or charges associated with the providing of multi-channel service classified as cable service by an MCS provider classified as a cable operator.
- C. Subject to pre-emption by, or other approval authority of, the FCC, or any other Federal or State governmental entity or agency (including in certain instances the PSC), the Council/franchising authority retains the jurisdiction to enforce all laws and regulations relating to multi-channel customer service practices and consumer protection.
- D. If the FCC, Congress, the State, PSC, or other governmental agency with authority over cable or any other MCS provider ever abrogates, deletes, removes, or otherwise disposes of rules or standards that are referenced in this local law, or relied upon by the Council/franchising authority for purposes of MCS provider compliance with this local law, then the Council/franchising authority may, to the extent not pre-empted by, or inconsistent with, later adopted law or regulations, re-instate such rules or standards. In such case, the re-instated rules will have the same weight (as allowed under prevailing law) as they had prior to their initial deletion.

Section 18. Subdivision A of section 185-21 of such law is hereby amended to read as follows:

- A. Both the Council/franchising authority and each MCS provider shall provide the other party with the name and address of the contact designated to receive notices, filings, reports, records, documents, and other correspondence. All notices affecting the rights of such parties shall be delivered to each party's contact by certified mail, return receipt requested, personal service with a signed receipt of delivery, or overnight with receipt verification, unless otherwise provided in an applicable franchise agreement. All other filings, reports, records, documents, and other correspondence may be delivered by any permissible means including, but not limited to: facsimile transmission ("faxing"); personal service; overnight mail or package delivery; or delivery via cable. The delivery of all notices, reports, records, and other correspondence shall

be deemed to have occurred at the time of receipt (unless otherwise designated by State law, or PSC rule or regulation).

Section 19. Subdivision A of section 185-26 of such law is hereby amended to read as follows:

- A. To the extent permitted by law, a MCS provider shall, as a condition of the exercise of its rights to use the City's streets or ways, be required to at all times defend, indemnify, protect, save harmless, and exempt the City, the City Manager, the Council/franchising authority, their officers, agents, servants, and employees from any, and all, penalty, damage, or charges arising out of claims, suits, demands, causes of action, or award of damages whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might be claimed now or in the future, which may arise out of, or be caused by, the construction, erection, location, products performance, operation, maintenance, repair, installation, replacement, removal or restoration of the multi-channel system within the City by a negligent act or omission of an MCS provider, its agents or employees, contractors, subcontractors, independent contractors, or implied or authorized representatives. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included as those costs which may be recovered by the Council/franchising authority.

Subdivision, C of section 185-26 of such law is hereby repealed and subdivisions D, E and F respectively are redesignated as subdivisions C, D and E.

Section 20. Subdivision F of section 185-26 of such law is hereby repealed.

Section 21. Subdivisions A, B, C, D, E, F, G and H of section 185-27 of such law are hereby amended to read as follows:

- A. An MCS provider shall secure and maintain, for as long as it provides multi-channel service to subscribers liability insurances in at least the following amounts each inclusive of annual aggregate:
- 1) Commercial general liability: \$1,000,000.00 combined single limit per occurrence for personal injury or death, and/or property damage.
 - 2) Automobile liability: \$1,000,000.00 combined single limit per accident.
 - 3) Umbrella liability: \$5,000,000.00.
- B. An MCS provider's public and personal liability insurance policy shall specifically include the City, the City Manager, the Council/franchising authority as additional insureds.
- C. The public and personal liability and property damage insurance policy shall be issued by an agent or representative of an insurance company licensed to do business in the State.

Subdivision D of section 185-27 of such law is hereby repealed and subdivisions E, F, G and H respectively are redesignated as subdivisions D, E, F and G.

Newly redesignated subdivision E of section 185-27 of such law is amended to read as follows:

- E. Renewal or replacement policies or certificates shall be delivered to the Council/franchising authority before the expiration of the insurance which such policies are to renew or replace.

Newly redesignated subdivision F of section 185-27 of such law is amended to read as follows:

- F. Before a multi-channel system provides multi-channel service to subscribers, the MCS provider shall deliver the policies or certificates representing the insurance to the Council/franchising authority.

Newly redesignated subdivision G of section 185-27 of such law is amended to read as follows:

- G. If the Council, State or PSC permits an MCS provider to self-insure, or to provide other evidence of adequate security of its obligations, then the MCS provider may exercise its right to self-insure, so as long as the minimal amounts of insurance coverage outlined in this Section, or similar levels of security, are met and maintained for the entire period that the affected MCS provider is self-insured.

Section 22. Subdivisions B, C, D, E and F of section 185-28 of such law are hereby amended to read as follows:

- B. Unless an alternative form of financial guarantee or security is accepted by the Council, an MCS provider shall furnish to the Council/franchising authority, a construction/completion bond prior to the time it commences a construction, upgrade, rebuild, or repair/maintenance project required by its Franchise or license that has a capital construction cost or outlay exceeding one hundred thousand dollars (\$100,000.00) in value. The amount of the bond shall equal ten thousand dollars (\$10,000.00). The construction/completion bond shall remain in force at all times until the subject construction is complete, unless relief is granted or a reduction schedule is detailed in an agreement between the Council/franchising authority, and the MCS provider.
- C. The construction/completion bond or security bond shall specifically guarantee that an MCS provider will timely abide by its required construction, upgrade, rebuild, or repair/maintenance schedule for the multi-channel system and/or any timetable for technical and service improvements or additions to the multi-channel system as may be committed to, or agreed upon, from time to time, by the Council/franchising authority and MCS provider.
- D. If the City draws on a performance or completion bond or cash deposit, or other guarantee, as a result of an MCS provider's failure to timely discharge its obligations, or failure to construct and activate the multi-channel system, or failure to complete a multi-channel system upgrade or rebuild or repair/maintenance, then the MCS provider shall be required, within thirty (30) days to replenish the completion and performance bond or security bond, or guarantee, to the minimal level required by the Council/franchising authority.
- E. Should the Council/franchising authority make a formal determination that due to the MCS provider's past performance (such as a documented history of repeated or multiple franchise violations), or increased cost (greater than 50% of the original estimated cost), the Council/franchising authority (unless pre-empted by either the State or PSC) may raise the required amount of either the performance or the construction/completion bond.

- F. The performance bond or security bond, shall be in force at all times unless relief is granted or a reduction schedule is detailed in a separate agreement, executed between the MCS provider and the Council/franchising authority.

Section 23. Subdivision A of section 185-30 of such law is hereby amended to read as follows:

- A. Within ninety (90) days after this local law becomes effective, or the grant of a Franchise or license pursuant hereto, an MCS provider shall submit a list to the Council/franchising authority, or designee, of the principal files, reports, records, data, or other information that the MCS provider periodically files with the FCC, or another Federal or State agency. As part of a performance evaluation, or for any legitimate matter related to the administration of an MCS provider agreement, the Council/franchising authority may specifically request that it be provided with any of the pertinent reports, records, data, or other information, that were originally filed with the FCC, or another Federal or State agency (including the PSC). However, unless specifically authorized by the State, an MCS provider shall not be required to provide to the Council/franchising authority, any State or Federal tax returns, or any documents (inclusive of all above-referenced categories) exempted under State or Federal privacy laws, including Section 631 of the Cable Act (codified at 47 USC 551).

Section 24. Subdivisions A, B, C and E of section 185-31 of such law are hereby amended to read as follows:

- A. An MCS provider shall keep complete and accurate books of its pertinent accounts, and records of the business and operations under, and in connection with, the MCS system, including records of its telephone responses.
- B. The Council/franchising authority shall have the right to be provided for review (either by mail or at the MCS provider's local office) all pertinent records (needed for the administration and enforcement of this local law and/or franchise agreement) on seven (7) days written notice, unless specifically exempted by the Council/franchising authority. Such review, unless mutually agreed upon, or judicially ordered, should occur within the MCS provider's regular office hours.
- C. The Council/franchising authority shall have the right to hire, at its own expense, an independent certified public accountant, or other business or financial expert, to review the books and records of an MCS provider. If after a financial audit it is determined that the MCS provider has underpaid amounts owed to the City by \$5,000, or greater amount, then the City may require the MCS provider to reimburse the City for the actual cost of the audit. Absent fraud, any audit that is agreed to by subject parties shall be binding on all parties concerned.
- E. An MCS provider shall keep complete and accurate books and records of the pertinent aspects of the multi-channel system's operation for at least the preceding three (3) years in such a manner that all matters pertaining to the City, can be easily produced and/or verified at the City's request. Also, the MCS provider shall keep and shall make available and provide upon request, any other applicable records and information that may be required by any other Federal or State agency (including PSC) having jurisdiction over one or more classes of MCS providers.

Section 25. Subdivisions A, B, C and D of section 185-36 of such law are hereby amended to read as follows:

- A. Within one hundred eighty (180) days from the date that this local law becomes effective, the City shall develop a registration and compliance statement for any MCS provider or class of MCS provider that is not a Franchisee and is not subject to the periodic performance evaluation detailed elsewhere in this local law.
- B. The Council/franchising authority declares as its purpose that the registration and compliance statement is intended to furnish the Council/franchising authority with periodic operational, and compliance information concerning MCS providers operating within all, or part, of the City, who are not otherwise subject to a periodic performance evaluation, and are not Franchisees.
- C. Prior to January 15 of each calendar year, the Council/franchising authority shall furnish each such affected MCS provider, a registration and compliance statement.
- D. Prior to March 1 of each calendar year, the affected non-franchised MCS provider shall return to the Council/franchising authority a completed and executed compliance statement.

Section 26. Section 185-37 of such law is hereby amended to read as follows:

In addition to any, and all, requirements of this local law, each and every MCS provider shall comply with, and abide by, all applicable provisions of any State law concerning consumer sales practices (and including where applicable, consumer protection rules and regulations of the PSC).

Section 27. Subdivisions C, D and E of section 185-38 of such law are hereby amended to read as follows:

- C. In order to provide customers with the variety of information needed to make an informed decision, and to ensure that customers are notified of their, and the MCS provider's rights and responsibilities with respect to the multi-channel system, an MCS provider must provide a customer with a written "Notice of a Customer's and MCS Provider's Rights and Responsibilities With Respect to the Provision of Multi-Channel Service," or the effective equivalent thereof.
- D. The "Notice of a Customer's and MCS Provider's Rights and Responsibilities With Respect to the Provision of Multi-Channel Service" shall be provided at the time of initial installation. Thereafter, a subscriber shall be provided with a written "Notice" at least once every twelve (12) months. If however, an MCS provider amends, repeals, adds, deletes, modifies, or makes other changes to any customer service practice that is required in this local law, then said MCS provider shall provide a subscriber with such written notification with no more than thirty (30) days following the effective date of such amendment, repeal, addition, deletion, modification, or other change, unless earlier notice is required by applicable Federal or State law or rules. An MCS provider will use its best efforts to provide written notice thirty (30) days prior to effective date.
- E. Unless expressly prohibited by the State or PSC, an MCS provider may comply with the "Notice" requirements by providing said "Notice" over the MCS system, on a channel clearly designated for the dissemination of such information--(such a channel need not be solely designated for dissemination of such information, and may, in fact, be used at other times for any lawful purpose).

Section 28. Paragraph (1) of subdivision A of section 185-39 of such law is hereby amended to read as follows:

- 1) timely listing of the specific multi-channel services provided--clearly indicating and isolating the basic, premium, and informational services offered, as well as the service tiers or service clusters offered;

Paragraph (3) of subdivision A of section 185-39 of such law is hereby repealed.

Paragraphs (4) through (14) of subdivision A of section 185-39 of such law are hereby renumbered respectively, as paragraphs (3) through (13).

Newly renumbered paragraph (3) of subdivision A of section 185-39 of such law is hereby amended to read as follows:

- 3) a comprehensive listing and explanation of all rates and charges (including rates for basic and premium channels/services, particular service tiers or service clusters, generally applicable discount or promotional fees, installation charges, and security deposits, if any, but excepting pay-per-view single event prices);

Section 29. Subdivisions B and D of section 185-39 of such law are hereby amended to read as follows:

- B. The "Notice" shall be understandable and legible, and any exclusions, limitations, or caveats shall be clearly indicated as such in the "Notice."
- D. If the MCS provider chooses to avail itself of the opportunity to provide the "Notice" over the MCS system, on a channel clearly designated for the dissemination of such information, such "Notice" shall be cablecast continuously, at least once hourly, twenty-four (24) hours a day, for thirty (30) consecutive days.

Section 30. Subdivision B of section 185-40 of such law is hereby amended to read as follows:

- B. Any information concerning billing practices which is contained in the "Notice" shall be consistent with, and include any matter specified by PSC rules and regulations.

Subdivision C of section 185-40 of such law is hereby repealed.

Subdivisions D through F of section 185-40 of such law are hereby redesignated respectively, as subdivisions C through E, and newly designated subdivisions C, D and E of such law are hereby amended to read as follows:

- C. Existing subscribers shall be informed of the items listed in subsection (A) of this Section at least once every twelve (12) months.
- D. Whenever there is a change in an MCS provider's billing practices or payment requirements, all subscribers must be notified in writing by no later than thirty (30) days after such billing practices or payment requirements become effective, unless earlier notice is required by applicable Federal or State law or rules. MCS provider will use its best efforts to provide written notice thirty (30) days prior to the effective date of such change.

- E. Pursuant to PSC regulations, in any case where a subscriber requests a cancellation or reduction of service within thirty (30) days after the notification of a scheduled rate or charge adjustment, then the subscriber's liability for such service received during the thirty (30) days following the date of notice until the cancellation or reduction of service shall be determined in accordance with the rates or charges in effect prior to such change.

Section 31. Subdivisions A, B, C and D of section 185-41 of such law are hereby amended to read as follows:

- A. An MCS provider shall adhere to, and comply with, applicable State laws and regulations, including those of the PSC, with respect to service outages or interruptions.
- B. Consistent with subsection (A) of this Section, and to the extent permitted by either State law or PSC rule and regulation, then the Council/franchising authority requires that an MCS provider (not covered by preemptive State law or PSC rules and regulations) automatically (without a separate request from the subscriber) provide a subscriber with credit for a service outage or interruption, or loss of any signal or service exceeding four (4) hours in length, whenever such MCS provider may reasonably be expected to be able to determine the existence of the outage and the extent of such outage. For a service outage or interruption of a pay-per-view event that exceeds more than one quarter of the scheduled or projected length of the pay-per-view event, or four (4) hours (whichever is shorter), then the MCS provider must provide a subscriber with a credit for the full amount of the pay-per-view event, provided, however, such credit shall not exceed the cost of one full day of such pay-per-view event programming for an outage that does not exceed twenty-four (24) hours.
- C. To the extent permitted by the rules of the FCC or by the State or PSC, the Council/franchising authority may prescribe rules for giving credit to a subscriber in cases where a substandard signal or substandard picture quality is furnished by the MCS provider. Substandard signal or picture quality being a signal not delivered with the quality, or lack of degradation, reasonably able to be provided given the performance capabilities of the receiving and distribution equipment of the system.
- D. In the case of a charge for unsolicited service, an MCS provider shall, to the extent required by applicable Federal and State law or rules, provide a subscriber with an adjustment or billing credit on the next available billing statement. Moreover, in such a case, an MCS provider shall not consider a subscriber delinquent for failure to pay a charge for unsolicited service. This is not intended to prevent an MCS operator from adding new programming services so long as there is no increased cost to the subscriber.

Section 32. Subdivisions B, D and G of section 185-42 of such law are hereby amended to read as follows:

- B. For purposes of this Section, a subscriber's affirmative request need not be in writing, but an MCS provider relying on an oral request must keep an accurate record of the date when the request was made.
- D. Moreover, an MCS provider may not automatically enroll a subscriber into a different class or tier of multi-channel service, including any or all equipment needed, without first promptly

informing such subscriber of any, and all, costs associated with such a different class or tier of multi-channel service or equipment.

- G. If the PSC adopts rules and regulations concerning this practice, then those rules and regulations should control and be operative with respect to an MCS provider classified as a cable operator.

Section 33. Subdivision B of section 185-43 of such law is hereby amended to read as follows:

- B. Should an MCS provider implement and/or offer menu-driven program/service selection for all, or the majority, of the MCS provider's multi-channel services, then the Council/franchising authority reserves the power to adopt (consistent with any applicable PSC rules and regulations) additional rules and regulations (subject to the conditions listed in subsection (C) of this Section) concerning the following potential problem areas:
- 1) notification to the subscriber [on a periodic (at least annual) basis] of the costs for each menu-driven program/service, including any installation or equipment rental charges but this is not intended to include single event pay-per-view programming;
 - 2) notification of what constitutes, or what is required for selection or subscription to a particular program/service;
 - 3) limitations on negative option marketing plans when done in connection with a menu-driven system unless the subscriber provides written consent to be included on a list of potential subscribers and is informed initially, and periodically thereafter (at least annually) of the right to refuse such consent ; and
 - 4) restricting access to menu-driven program/service selection by subscribers (through the use of individual, non-duplicative access codes or some other means), in order to limit unauthorized purchases, or purchases above a certain pre-set amount.

Subdivision D of section 185-43 of such law is hereby repealed, and subdivision E is hereby redesignated as subdivision D.

Section 34. Subdivisions A, C, G, H, I, K, L and M of section 185-44 of such law is hereby amended to read as follows:

- A. In order to facilitate the needs of the local customers, an MCS provider shall maintain a customer service office which is both within reasonable proximity to the City and easily accessible to customers.
- C. Within the forty (40) hours per week that a customer service office must be open, an MCS provider must provide office hours either on at least two (2) evenings (after 5 p.m.), or on Saturdays and/or Sundays (if not prohibited by State law, including PSC rules and regulations).
- G. Where not prohibited by the State (including PSC rules and regulations), an MCS provider may install an interactive customer assistance service over one (1) more multi-channels which can handle various types of customer inquiries.

- H. Neither the presence of an after hours depository, nor automated customer service device, nor interactive customer service channel, relieves an MCS provider from maintaining the minimal required number of office hours, or adequate staff of customer service representatives to handle the service inquiries (unless the MCS provider can demonstrate to the Council/franchising authority's satisfaction that the efficiency of such devices or service channel(s) reduces the need for customer service hours or customer service staff).
- I. Any MCS provider shall be able to certify to the Council/franchising authority that each customer service representative (CSR) has taken and passed an MCS provider-implemented course designed to train customer service representatives to handle their jobs in a courteous, efficient, and responsive manner.
- K. An MCS provider shall maintain a twenty-four (24) hour toll-free and/or local telephone number to facilitate calls concerning repair of equipment and extended interruption of service. During any hours that the customer service office is open, the MCS provider must have, or make available, in-house personnel to address a customer's inquiries. During other hours, the franchisee's service telephone lines may be manned by remotely located staff or by an automatic answering device. Incoming calls are to be monitored at all times to determine the existence of any service outages, and to facilitate the Franchisee's prompt response to such outages consistent with all applicable standards of this local law or Federal or State rules. Three or more related service outage calls from the same area will receive immediate attention. The MCS provider shall not be required to make in-person telephone contacts to subscribers at a rate which exceeds sixty (60) calls per hour.
- L. An MCS provider shall have adequate staff and/or extension lines (except during special marketing promotion periods, peak billing cycles, and service outages) in order to handle calls and inquiries directed to the general information number, so that the following standards may be met at least ninety percent (90%) of the time as measured on a quarterly basis, under normal operating conditions:
- 1) Ninety-five percent (95%) of all customer calls received in a year shall be attended within three (3) minutes by a representative of the MCS provider, or by a device that is capable of complaint/inquiry resolution; and
 - 2) All customer calls shall be answered properly within thirty (30) seconds. The rate of abandoned calls shall be less than five percent (5%) over any [thirty (30)] day period of time. "Abandoned calls" shall in no event be deemed to include calls in which the caller hangs up within forty-five (45) seconds of making the call.
- M. With respect to the standards listed in subsection (L) of this Section it shall be the MCS provider's responsibility to be able, if required, to quarterly certify to the Council/franchising authority that the affected MCS provider is meeting the minimal standards.

Section 35. Section 185-45 of such law is hereby amended to read as follows:

Notwithstanding any other requirements mandated by this local law, or by Federal or State law (including PSC rules and regulations), an MCS provider shall comply with the following special service requirements for blind, hearing-impaired, or ambulatory-impaired customers:

Paragraphs (2) and (3) of section 185-45 of such law are hereby repealed and paragraphs (4) and (5) are hereby redesignated as paragraphs (2) and (3). Newly redesignated paragraphs (2) and (3) are hereby amended to read as follows:

- 2) for which it may impose a non-discriminatory charge, and if otherwise made available, a remote control device and/or converter for ambulatory impaired subscribers or subscribers with a permanent medical or physical ambulatory impairment;
- 3) where applicable, provide modified or special instructions for use of equipment by individuals who have physical impairments.

Paragraphs (6) and (7) of section 185-45 of such law are hereby repealed.

Section 36. Subdivisions A, C and F of section 185-46 of such law are hereby amended to read as follows:

- A. An MCS provider shall not, as to rules, regulations, rates, charges, provision of service, or use of a provider's facilities and equipment, make, allow, or grant any undue preference or advantage to any person, nor subject any person to prejudice or disadvantage on the basis of age, race, creed, color, sex, national origin, non-relevant handicap as defined by the Americans with Disabilities Act, or religious affiliation .
- C. Subsection (A) of this Section, however, does not prohibit an MCS provider from offering a promotional or incentive discount rate or charge . This subsection does not prohibit an MCS provider from offering special incentive rates such as one (1) month basic service free, if twelve (12) months of basic service are paid in one (1) payment, or within a certain time frame, or similar types of pre-payment discounts (as long as such is not prohibited by the PSC).
- F. Subsection (A) of this Section also does not prohibit an MCS provider from implementing a service tier or service cluster for "lower income", and/or fixed income individuals.

Section 37. Subdivisions A, D and E of section 185-47 of such law are hereby amended to read as follows:

- A. Prior to formally delivering any equipment, including auxiliary equipment to a customer, an MCS provider shall have tested a representative sample (at least one percent (1%)) of such equipment to make sure that it is in proper working order, unless such equipment has been pretested already or such equipment is tested at the time of installation.
- D. An MCS provider shall comply with any, and all, applicable State rules (including any applicable PSC rules and regulations), concerning the imposition, retention, and return of security deposits.
- E. If the State and/or PSC is silent on the security deposit for a particular piece of equipment, then the MCS provider shall be prohibited from charging any security deposit for equipment which exceeds the value of the equipment.

Subdivision G of section 185-47 of such law is hereby repealed and subdivisions H, I, J and K are hereby redesignated respectively as subdivisions G, H, I and J.

Newly redesignated subdivision G of such law is hereby amended to read as follows:

- G. An MCS provider shall return a security deposit held to secure equipment return (together with any interest earned) after the equipment is satisfactorily returned, and a deposit held to secure service payment shall be returned when the subscriber maintains a satisfactory payment history (which is determined as no payment delinquencies within the preceding twelve (12) month period). There shall be separate deposits for equipment and service if deposits are required.

Subdivision L of section 185-47 of such law is hereby repealed.

Section 38. Subdivision A of section 185-48 of such law is hereby amended to read as follows:

- A. An MCS provider shall be required to keep and maintain service inquiry logs, subject to any limitations imposed by the PSC, or by State or Federal law, including (for MCS providers classified as cable operators) any subscriber privacy limitations imposed by the Cable Act.

Paragraph (1) of subdivision C of section 185-48 of such law is hereby amended to read as follows:

- 1) the time and date of initial receipt of any service request, inquiry, or complaint, relating to service outage or transmission problems, together with the time and date of initial response to that service request, inquiry or complaint;

Subdivision D of section 185-48 of such law is hereby amended to read as follows:

- D. In addition to any other right of inspection that the Council/franchising authority may possess, it shall have the right to review and inspect a compilation of such logs. However, the Council/franchising authority shall not have the right of access, review, or inspection for any service inquiry logs or any information contained within service inquiry logs that are otherwise protected from access, review, or inspection by Federal or State law (including any applicable PSC rules and regulations).

Section 39. Subdivisions A, B and C of section 185-56 of such law are hereby amended to read as follows:

- A. At any time an MCS provider (in furtherance of its right to construct, operate, and maintain a multi-channel system), disturbs the yard, residence, or other real or personal property of a subscriber, and/or upon a request by the subscriber for restoration of property, such MCS provider shall ensure that the subscriber's yard, residence, or other personal property is returned, replaced, and/or restored to a condition that is reasonably comparable to the condition that existed prior to the commencement of the work.
- B. The costs associated with both the disturbance and the return, replacement, and/or restoration shall be borne by the MCS provider unless the disturbance was made at the request of the subscriber or property owner. This subsection also requires the MCS provider, or the subscriber, to reimburse the private property owner, for any actual physical damage caused by the MCS provider, its subcontractor, or its independent contractor, in connection with the disturbance of the private property owner's property.

- C. The types of acts specifically included in this Section are the following, subject to existing easement rights:
- 1) removal of a property owner's sod, lawn, plants, shrubbery, flowers, trees, driveway, or fence to install, trench, repair, replace, remove, or locate cable or other equipment of an MCS provider;
 - 2) installation or removal of cable or other equipment of an MCS provider within a residence which requires drilling, excavating, plastering, or the like on the part of the MCS provider;
 - 3) temporarily relocating or moving a piece of personal property or a fixture of a subscriber (such as a motor vehicle, fence, air conditioning or heating unit, or the like), in order to perform some sort of construction, maintenance, or repair on the multi-channel system; or
 - 4) permanently removing an MCS provider's cable or equipment due to either the revocation, termination, or non-renewal of a franchise (if applicable), or the abandonment, withdrawal, or cessation, of multi-channel service to any portion of the City.

Section 40. Subdivisions A, B, C, and D of section 185-57 of such law are hereby amended to read as follows:

- A. Except in times of a natural or man-made emergency, or an appointment scheduled with the mutual consent of a subscriber, an MCS provider shall, under normal operating conditions, respond to the service inquiries, requests, and complaints of subscribers, within such MCS provider's normal business or service hours, and within the time schedules detailed in subsections (B) through (G) of this Section. The MCS provider shall be considered in compliance by the Council/franchising authority if the standards of service outlined in subsections (B) through (G) are met or exceeded at least 95% of the time over any calendar quarter. Moreover, except in emergency situations, an MCS provider shall inform the customer that there is a choice as to whether the service call is scheduled for the morning, afternoon, or evening hours. If the service call has to be canceled or rearranged by the MCS provider, then the MCS provider shall make every effort to notify the customer as soon as possible, and shall re-schedule the service call within twenty-four (24) hours of the original scheduled service call unless otherwise mutually agreed upon.
- B. In the case of a signal or service interruption (such being defined as a visually discernible degradation in picture or sound), an MCS provider shall respond to, and begin working on the problem within twenty-four (24) hours from the time the MCS provider first received notification of the signal or service interruption.
- C. In the case of a "blank" or "no-picture" situation of any given level of billing or service (except for pay-per-view events), an MCS provider shall respond to, and begin working on the problem within twenty-four hours from the time the MCS provider first received notification of the "blank" or "no-picture" situation and continue working until the problem is resolved.

- D. In the case of a defective, improperly operating, or non-operating piece of equipment affecting the transmission of cable television or MCS service, an MCS provider shall make its best efforts to respond and remedy the problem the same day, but in no case will the response be later than twenty-four (24) hours or one (1) working day from the time the MCS provider first received notification of the defective, improperly operating, or non-operating piece of equipment.

Subdivision E of section 185-57 of such law is hereby repealed, and subdivisions F and G are hereby redesignated respectively as subdivisions E and F. Newly redesignated subdivisions E and F are hereby amended to read as follows:

- E. In no case shall a subscriber's service request or inquiry relating to an area service outage (three (3) or more related calls from the same area) go unresponded or unattended to for more than twelve (12) hours from the time the MCS provider first received notification of the service inquiry or request. Moreover, except in emergency situations, and with the exception of Sundays and regularly scheduled holidays, all service outage complaints shall receive an immediate response and, if required, a visit from a service technician on the same day if feasible or by no later than twenty-four (24) hours following the complaint. In any event, except for calls or inquiries generated on Sundays or regularly scheduled holidays, all requests and inquiries shall generate a telephone response within twenty-four (24) hours, unless prevented by circumstances beyond the service provider's control, and appropriate corrective action or adjustment shall be implemented within one (1) week from the time the MCS provider first received notification.
- F. In case of a dispute concerning the precise time that the MCS provider received notification, or the precise circumstances surrounding the MCS provider receiving the notification, or whether notification was received at all, the Council/franchising authority reserves the right and authority to settle such a dispute, with the consent of the parties. However, for MCS providers classified as cable operators, such MCS providers have the option of choosing the PSC for the resolution of the timing dispute.

Section 41. Subdivisions A, C, and D of section 185-58 of such law are hereby amended to read as follows:

- A. Except in times of natural or man-made emergency, an MCS provider shall, at all times, have access to, and be able to secure, sufficient maintenance and repair parts and equipment for the MCS system, so that the MCS provider can respond to, and begin appropriate steps to correct, all subscriber service interruptions within the time periods specified in this local law.
- C. Except in times of natural or man-made emergency, or strike by the employees of the MCS provider (whose duration has been less than seventy-two (72) hours), an MCS provider shall have sufficient maintenance and repair personnel, so that the MCS provider can respond to, and begin appropriate steps to correct, subscriber service interruptions within the time periods specified in this local law.
- D. An MCS provider shall be able to certify to the Council/franchising authority that each service technician has taken and passed an MCS provider-implemented course designed to train service technicians to handle their jobs in a courteous, efficient, and responsive manner. Also, the course should be designed to provide continuing education to service technicians in changes in technology, repair/maintenance procedures and related matters.

Section 42. Subdivisions A, E, F and G of section 185-59 of such law are hereby amended to read as follows:

- A. Under normal operating conditions, new installations, promotional, short-term, or seasonal connections, re-connections, and upgrades of multi-channel service by an MCS provider shall be performed and completed within seven (7) days (excluding holidays) of a customer requesting such. This standard shall be met no less than ninety-five percent (95%) of the time as measured on the basis of a calendar quarter.
- E. An MCS provider may charge an appropriate re-connection charge or require a security deposit. However, the re-connection charge or security deposit related to an involuntary disconnection must not be based on the location or address of the residence or structure.
- F. Downgrading a particular service level, or service cluster to a lower-priced or less comprehensive service or cluster level shall not subject the Subscriber to an installation or service change charge in excess of that authorized and permitted under applicable federal and State law and rules, or, in the absence of such law or rules, in an amount greater than the cost of implementing such downgrade.
- G. An MCS provider classified as a cable operator shall comply with any, and all, rules and regulations of the PSC concerning downgrading.

Section 43. Subdivisions A, D, and G of section 185-60 of such law are hereby amended to read as follows:

- A. As regards subjecting a subscriber to involuntary disconnection, a subscriber shall not be considered delinquent in payment until at least forty-five (45) days after the posting of the bill to the subscriber.
- D. Disconnection of service must occur both on a normal service day, and within normal business hours of an MCS provider, unless the subscriber agrees otherwise or is given the opportunity to pay the full amount of the past due account.
- G. An MCS provider may add a reasonable collection charge to the subscriber's bill if the applicable provisions of this local law, and any applicable State regulations (including those of the PSC), are followed.

Section 44. Subdivisions F, G, and J of section 185-61 of such law are hereby amended to read as follows:

- F. For MCS providers classified as cable operators, any charge or billing imposed on a subscriber as a result of a downgrade by such MCS providers, shall be no more than the maximum permitted by FCC and PSC rules and regulations. For other MCS providers, the Council/franchising authority reserves the right to approve any charge or billing that would be imposed on a subscriber as a result of a downgrade in service.
- G. If, however, an MCS provider's equipment is, or has been lost, appropriated, or damaged by a subscriber, prior to such disconnection, then the MCS provider may charge the subscriber with

the entire cost for such loss or damage, provided that the MCS provider notify the subscriber within thirty (30) days of the disconnection. A subscriber shall not be required to pay for equipment failure, if the circumstances fall within the normal wear and tear or acts of nature guidelines established in this local law.

- J. The provisions contained in this Section concerning downgrades shall be considered supplemental to any applicable rules and regulations of the PSC.

Section 45. Subdivision A of section 185-62 of such law is hereby amended to read as follows:

- A. The Council/franchising authority recognizes the fact that it is in the public's interest to be able to utilize the functions inherent in subscriber receiving equipment, without having to incur additional costs to obtain the same functions. Consequently, the Council/franchising authority may require that the MCS provider comply with applicable Federal or State law or rules relating to the availability of compatible customer equipment.

Paragraph (1) of subdivision A of section 185-62 of such law is hereby repealed.

Section 46. Subdivisions A, and B of section 185-66 of such law are hereby amended to read as follows:

- A. An MCS provider shall abide by any, and all, subscriber privacy rules or regulations of the Federal, or State governments (including any applicable rules and regulations of the PSC).
- B. For MCS providers classified as cable operators, such operators shall also abide by, and comply with, any subscriber privacy protection requirements and procedures listed in Section 631 of the Cable Act (codified at 47 USC 551).

Section 47. Subdivisions B and C of section 185-67 of such law are hereby amended to read as follows:

- B. An MCS provider's complaint/inquiry resolution policy shall be reduced to writing, and such policy shall be available upon request, to any person. In any event, a subscriber shall receive notice of such policy in the manner that is prescribed by this local law, and any State rules and regulations (including those of the PSC). Further, nothing in this Section shall be prohibit a customer, from seeking relief from the PSC for any matter within its jurisdiction.
- C. An MCS provider's complaint/inquiry resolution policy shall contain at least the following minimal standards:
- 1) except in the event of circumstances beyond the control of the service provider, e.g., natural disaster, the initial response to any complaint/inquiry relating to a service problem shall occur no later than twenty-four (24) hours after receipt of the complaint/inquiry, with the exception of Sundays and regularly scheduled holidays. Appropriate corrective action or adjustment shall be implemented within one week;
 - 2) every reasonable attempt will be made to resolve the complaint/inquiry relating to service problems within twenty-four (24) hours after receipt of the complaint/inquiry;

- 3) complaints/inquiries that fall into the category of inquiries for service changes or additions shall be addressed by the procedure set forth in this local law;
- 4) informing subscribers of the credit/refund policy which is consistent with this local law, and any applicable State regulations (including those of the PSC); and
- 5) informing subscribers of the billing disputes policy which is consistent with this local law, and any applicable State regulations (including those of the PSC).

Section 48. Subdivisions C, D and H of section 185-68 of such law are hereby amended to read as follows:

- C. In any situation (including any of those mentioned above), which threatens the City and subscribers with the loss or interruption in the continuity of multi-channel service, then the MCS provider shall, to the extent that it has adequate advance knowledge, provide the Council/franchising authority with at least forty-five (45) days notice (except in extreme circumstances) prior to the effective date of any action which would cause a loss or interruption in the continuity of multi-channel service. The purpose of the notice is to apprise the Council/franchising authority of the possibility of such loss or interruption in the continuity of multi-channel service, so that it might explore its options and take appropriate measures.
- D. Whenever any situation occurs (including those mentioned above) which threatens the City and subscribers with the loss or interruption in the continuity of multi-channel service, then the Council/franchising authority may permit the MCS provider for a period of up to twenty-four (24) months to do everything in its power to ensure that all subscribers receive continuous, uninterrupted multi-channel service of the same quality, mix, and level(s) regardless of the circumstances.
- H. Nothing in this Section should be construed as requiring an MCS provider to operate a multi-channel system at a continued financial loss (due to bankruptcy or insolvency) for an extended period of time. Consequently, the Council/franchising authority may take appropriate steps to ensure the continuity of service.

Section 49. Subdivisions A, E, and G of section 185-78 of such law are hereby amended to read as follows:

- A. All wires, conduits, cable (coaxial, fiber, or functional equivalent), and other property and facilities of an MCS provider shall be so located, constructed installed, and maintained so as not to endanger or unnecessarily interfere with usual and customary use, traffic and travel upon the streets, rights-of-way, easements, and public ways of the City. To prevent the unnecessary disruption of the flow of traffic during peak traffic hours, any MCS provider shall make reasonable efforts to minimize unnecessary work associated with construction, installation (other than in subscriber homes) activities that involve working on or within the street system between 7:00 A.M. and 9:00 A.M. or 3:00 P.M. and 6:00 P.M. on regular business weekdays.
- E. It shall be the responsibility of an MCS provider (acting alone or in conjunction with another person), upon request, to locate and mark or otherwise visibly indicate and alert others to the location of its underground cable (coaxial, fiber or functional equivalent) before employees, agents, or independent contractors of any entity install cable in the marked-off area.

G. For any new installations occurring after the effective date of this local law, and at the time that an MCS provider rebuilds or upgrades the multi-channel system, all trunk or feeder cable (coaxial, fiber, or functional equivalent) shall be placed underground, when, and if, other utilities are required to have their facilities placed underground. Further, where both power and utilities are presently required to be underground, multi-channel system cable shall also be placed underground.

Section 50. Subdivisions B, C, and E of section 185-79 of such law are hereby amended to read as follows:

B. Whenever the following occurs:

- 1) a franchised MCS provider ceases to operate all, or part, of the multi-channel system for a continuous period of six (6) months;
- 2) a franchised MCS provider ceases and fails to construct the multi-channel system outlined in the application, or proposal for renewal, or renewal franchise agreement;
- 3) the Council/franchising authority elects not to renew the franchise pursuant to the provisions set forth, in this local law; or
- 4) the franchised MCS provider's franchise is revoked pursuant to the provisions set forth in this local law;

Then -- unless the City or another MCS provider uses such multi-channel system, under the continuity provisions outlined in this local law, or unless other arrangements have been agreed to by the Council/franchising authority or the owners of the property where the subject facilities are located, the affected franchised MCS provider shall promptly remove any portions of its multi-channel system property that if not removed could pose a hazard to public health, safety or welfare or a harm to the interests of the City from the streets, public ways, and private property located within the City.

C. If not removed voluntarily by a franchised MCS provider, then the Council/franchising authority may notify such franchised MCS provider that if removal of any property that is found to be likely to constitute a hazard or harm if not removed is not accommodated within two hundred seventy (270) days, or substantial progress towards removal is not made within two hundred ten (210) days, then the Council/franchising authority may direct officials or representatives of the City to remove such franchised MCS provider's system property at that franchised MCS provider's expense. The performance and/or construction bond, irrevocable letter of credit, cash deposit, or full faith and credit guarantee required as set forth in this local law shall be available to pay for such work.

E. When such franchised MCS provider removes its multi-channel system property from the streets, public ways, and private property located within the City, the franchised MCS provider shall, at its own expense, and in a manner approved by the Council/franchising authority, replace and restore such property in as good a condition as before the work causing the disturbance was done.

Section 51. Subdivisions B, C, E and F of section 185-80 of such law are hereby amended to read as follows:

- B. All construction, installation, maintenance, and repair shall treat the aesthetics of the property as a priority, shall not unreasonably impair the appearance of the structure.
- C. All underground drops shall follow (to the greatest extent possible) all reasonable construction and installation standards required under City, State, or Federal rules. Underground installations shall be constructed in accordance with the specifications and requirements of the City of Rye and the National Electric Safety Code and must be designed to minimize disruption to the City's underground facilities associated with the computerized traffic control system network.
- E. In instances where either electrical or telephone utilities wire or cable aerially, then the MCS provider may construct its multi-channel system aerially, unless otherwise required by State law (including any applicable PSC rules and regulations).
- F. In instances where both electrical or telephone utilities are required to place wire or cable underground, then the MCS provider shall construct its multi-channel system underground, unless otherwise permitted by State law (including applicable PSC rules and regulations). However, where existing aerial electrical or telephone utilities convert to underground facilities, an existing aerial MCS provider shall have the option to continue remaining aerial for as long as it does not provide a safety hazard, and is permitted by State law (including any applicable PSC rules and regulations).

Section 52. Subdivisions A, and C of section 185-81 of such law are hereby amended to read as follows:

- A. This Section is applicable to any MCS provider required to maintain a franchise to operate within the City which is required to construct or rebuild an MCS system.
- C. A franchised MCS provider who does not abide by the system construction schedule shall be handled in the manner allowed under either this local law, or where applicable, a franchise agreement, or applicable Federal or State law or rules.

Section 53. Subdivision C of section 185-82 of such law is hereby amended to read as follows:

- C. A franchised MCS provider shall submit, within six (6) months of the effective date of this local law, a detailed plan for multi-channel system expansion to any area in which the public streets are not presently served within the City. Such plan should not be construed as a requirement for universal service, but rather as a means for achieving the Council/franchising authority's goals, mentioned in Subsection (A). However, at a minimum, a franchised MCS provider shall extend multi-channel service to any area within the City that has a density of twenty (20) home or building passings per mile, or fractional equivalent thereof, as measured from the extremity of the system nearest the unserved area. Also, in such a case, a newly installed subscriber shall not be assessed or apportioned the cost for installation, except for the usual and normal connection fees paid by subscribers and except for the costs of custom service arrangements or exceptional distance from the public streets or ways, so long as the system expansion is technically feasible.

Section 54. Subdivision A of section 185-84 of such law is hereby repealed and the letter B designation in subdivision B of section 185-84 of such law is hereby repealed.

Section 55. Section 185-85 of such law is hereby amended to read as follows:

The MCS provider shall design and conduct any, and all, tests necessary to verify the performance and technical integrity of the multi-channel system. Such tests shall be performed at least annually, and shall be in accordance (where applicable) with any, and all rules and regulations of the PSC concerning proof-of-performance.

Section 56. Section 185-86 of such law is hereby amended to read as follows:

185-86. Reservation of Right to Inspect Construction, Documents Related to Construction, and Tests Related to Performance, Technical Integrity, Preventive Maintenance, and Safety.

- A. In order to verify that an MCS provider constructed and maintained the multi-channel system in the manner required by this local law, and conducted the various performance, technical integrity (including cumulative leakage), preventive maintenance, and safety tests required by federal, State (including PSC), and local laws required by this local law, the Council/franchising authority reserves the right to inspect all facets of an MCS provider's construction, as well as, inspect documents related to construction, and inspect tests related to performance, technical integrity, preventive maintenance, and safety.
- B. The Council/franchising authority shall pay for all its costs associated with such an inspection, except for those circumstances precipitated by an MCS provider's unreasonable refusal to provide necessary information (such as, schematic drawings, or as-built maps), or occasioned by the repeated failure to construct, install, maintain, repair, rebuild, or upgrade, in the manner specified and required by this local law, or where applicable, a franchise agreement. In such instances, the MCS provider shall pay for such costs incurred by the City caused by the MCS provider's refusal to supply necessary information, or repeated failure to abide by the rules.

Section 57. Paragraph (3) of subdivision B of section 185-90 of such law is hereby repealed.

Paragraph (4) of subdivision B of section 185-90 of such law is hereby renumbered as paragraph (3).

Paragraph (5) of subdivision B of section 185-90 of such law is hereby repealed.

Paragraph (6) of subdivision B of section 185-90 of such law is hereby renumbered as paragraph (4).

Section 58. Paragraph (2) of subdivision B of section 185-91 of such law is hereby amended to read as follows:

- 2) inform subscribers of the designated emergency channel on a periodic basis with reasonable regularity (not less than once a year);

Paragraph (3) of subdivision B of section 185-91 of such law is hereby repealed.

Paragraphs (4), (5) and (6) of subdivision B of section 185-91 of such law are hereby renumbered respectively as paragraphs (3), (4) and (5).

Newly redesignated paragraph (3) of subdivision B of section 185-91 of such law is hereby amended to read as follows:

- 3) test the emergency override system regularly, and remedy any problems on operational deficiencies immediately;

Section 59. Section 185-92 of such law is hereby repealed and shall remain reserved.

Section 60. Subdivisions B and C of section 185-93 of such law are hereby amended to read as follows:

- B. Such a program may be reviewed and approved by the Council/franchising authority. Such approval by the Council/franchising authority shall not be unreasonably withheld for an MCS provider designed preventive maintenance plan the meets the objectives of the Council/franchising authority.
- C. Within forty-five (45) days after the completion of any preventive maintenance component test, the MCS provider shall be prepared to make available for inspection a written report (except for daily or weekly components, and tests which may be submitted once a quarter) to the Council/franchising authority detailing the results of the tests conducted, and all items performed or addressed during the periodic preventive maintenance program. Although not exhaustive, the following areas should be included in a preventive maintenance program, and subsequent report:

Paragraph (3) of subdivision C of section 185-93 of such law is hereby repealed and paragraphs (4) through (12) respectively are hereby redesignated as paragraphs (3) through (11).

Newly redesignated paragraph (6) of subdivision C of section 185-93 of such law is hereby amended to read as follows:

- 6) employing a status monitoring system, or other adequate practices, to identify problems or situations in which the multi-channel system electronics are operating outside pre-programmed parameters;

Newly redesignated paragraph (8) of subdivision C of section 185-93 of such law is hereby amended to read as follows:

- 8) testing of any safety alert system or technology;

Newly redesignated paragraph (10) of subdivision C of section 185-93 of such law is hereby amended to read as follows:

- 10) testing as required or allowed by Federal or State law (including any applicable or required PSC testing); and

Section 61. Subdivision A of section 185-94 of such law is hereby amended to read as follows:

- A. An MCS provider shall construct, operate, maintain, repair, remove, replace, or restore the multi-channel system in strict compliance with all current technical codes adopted by the

Council/franchising authority, the State (including any applicable codes of the PSC), or the United States.

Section 62. Subdivision A of section 185-100 of such law is hereby amended to read as follows:

- A. This Section is applicable to any licensed, but otherwise authorized non-Franchised MCS provider, and to any Franchised MCS provider who has had its franchise ruled unconstitutional, unenforceable, or invalid. For all franchised MCS providers the provisions concerning franchise fees shall be applicable.

Section 63. Subdivision A of section 185-101 of such law is hereby amended to read as follows:

- A. Except as provided in subsections (B) and (C), and (D) of this Section, no person, or MCS provider shall be permitted to construct, operate or maintain a multi-channel system which requires the laying or positioning or use of cable (coaxial, fiber or functional equivalent) across the rights-of-way of the City, without having first obtained from the City a MCS franchise which is then in effect, or whose provisions have been renewed or extended temporarily.

Section 64. Subdivision B of section 185-102 of such law is hereby amended to read as follows:

- B. A franchised MCS provider shall be selected as part of a public proceeding and hearing which affords due process to both the City, and the applicant, and in accordance with the procedure set forth by the Federal, State (including any applicable PSC rules and regulations) and local laws and regulations.

Section 65. Subdivision C of section 185-103 of such law is hereby amended to read as follows:

- C. At a minimum, a franchise agreement shall contain, to the extent appropriate, provisions for the following:
 - 1) a detailed definition of "Gross Revenue" which specifically includes an explanation of what constitutes the revenue base for determining what revenues are subject to any franchise fee or alternative user charge;
 - 2) the term or duration of the franchise;
 - 3) indemnity and holds harmless clauses;
 - 4) insurance;
 - 5) performance and completion bonds or security deposits;
 - 6) construction, upgrade or rebuild schedule;
 - 7) compensation including franchise fees;
 - 8) continuity of multi-channel programming service;
 - 9) assignment, transfer or sale of an existing franchise;

- 10) repeal of prior inconsistent franchise agreements;
- 11) a severability clause;
- 12) the law that governs the franchise agreement; and
- 13) any exemptions or relief from this local law granted, or any local law clarifications noted with respect to the MCS provider's operation of a franchised multi-channel system.

Section 66. Subdivision C of section 185-104 of such law is hereby amended to read as follows:

- C. If necessary, and except to the extent that easement rights are conveyed by the grant of a municipal franchise pursuant to the provisions of Federal law, the responsibility of obtaining easements for private property (including privately owned utility or street light poles) shall be that of a franchised MCS provider.

Section 67. Subdivisions A and B of section 185-105 of such law are hereby amended to read as follows:

- A. The term of an initial MCS franchise may be for a period not to exceed ten (10) years from the date that a franchise agreement is both approved and executed by the Council/franchising authority (and where applicable, the PSC).
- B. The term of a renewal franchise may be for a period not less than five (5) years, nor more than ten (10) years from the date that a franchise renewal agreement is both approved and executed by the Council/franchising authority (and where applicable, the PSC).

Section 68. Subdivisions A and B of section 185-106 of such law are hereby amended to read as follows:

- A. The Council/franchising authority may develop rules and regulations with respect to the submission and processing of applications for a franchise. Such rules shall be consistent with, and/or subordinate to, any applicable rules and regulations of the State (including where applicable, those of the PSC). Further, such rules and regulations shall primarily be aimed at determining the legal, financial, technical, and character qualifications of the applicant for a franchise.
- B. Unless prohibited by any State agency (including the PSC) and unless inconsistent with applicable Federal law, an applicant shall pay an application fee which shall be no greater than the administrative and consulting costs associated with processing an application for a franchise. The total application fee must be paid, unless waived (totally or partially), regardless of whether the applicant receives, or does not receive, a franchise. The total application fee must be paid (or waived) prior to the Council/franchising authority's formal action on the applicant's request for a franchise.

Section 69. Subdivisions A, B, C, D, E, G, H, I, J, L, O, P and Q of section 185-107 of such law are hereby amended to read as follows:

- A. Any franchised MCS provider (specifically including any MCS provider classified as a cable operator) awarded a franchise or renewal franchise after the date this local law becomes

effective, shall pay to the City for the privilege and use of the streets, rights-of-way, easements, and public ways, and other facilities of the City in the operation of the multi-channel system, and for the City's supervision thereof during the term of the franchise, a sum equal to five percent (5%) of gross revenue for the required period for payment of such franchised MCS provider, provided that such fee shall be reduced to the extent necessary to comply with applicable Federal and State law and rules when added to the fees, charges, and taxes paid to the PSC or other State or local entities.

- B. If the FCC, Congress or other governmental entity with authority over multi-channel service ever allows a governmental entity or Council/franchising authority to increase the franchise fee beyond five percent (5%), then the Council/franchising authority shall have the authority to increase the franchise fee to the maximum percentage allowable, provided that no increase in fee may be imposed upon a Franchisee during the term of a Franchise Agreement without the consent of the Franchisee, unless otherwise permitted by applicable law or regulation.
- C. For franchised MCS providers classified as cable operators, such franchised MCS providers (consistent with the Cable Act and the applicable rulings of the FCC or the PSC) may pass through to subscribers, the amount of any increase in a franchise fee, unless the Council/franchising authority demonstrates that the rate structure specified in the franchise agreement reflects all costs of franchise fees and so notifies the franchised MCS provider classified as a cable operator in writing. For franchised MCS providers not classified as cable operators, such franchised MCS providers must petition and be granted the authority to pass through any increase in a franchise fee.
- D. Franchised MCS providers shall, to the degree required by the applicable rulings of the FCC and PSC, pass through to subscribers the amount of any decrease in a franchise fee.
- E. A franchised MCS provider shall file with the Council/franchising authority, within forty-five (45) days after the expiration of each of the franchised MCS provider's fiscal quarters, a detailed financial and revenue statement clearly showing the franchise fee due for the preceding quarter together with the bases of the calculations thereof. Such statement shall be certified by a certified public accountant or officer of a franchised MCS provider attesting to the accuracy, completeness, and veracity of the revenue figures. Such statement shall be in a form and format adequate to show the subject revenue and fees due (subject to the reasonable review by the Council/franchising authority) and shall include revenue from any pertinent source. Revenue will be reported by service category, type, and level showing computations and using incremental billing rates for all sources, levels, tiers, clusters, types of service and other revenue sources by kind and type, subject to appropriate protections of proprietary information and the confidentiality of subscriber information under Federal law.
- G. In the event that payment is not made by the due date or within sixty (60) days thereafter upon proper demand then such franchised MCS provider may be declared in default of the franchise, and the franchise may be revoked, terminated, or canceled in the manner prescribed by this local law.
- H. The Council/franchising authority reserves the right to audit franchised MCS provider's books, if the Council/franchising authority deems it necessary, subject to appropriate protections of the confidentiality of subscriber information under Federal law. If such audit discovers an underpayment of franchise fees in any amount, then the affected franchised MCS provider shall reimburse the City for the cost of such an audit (unless such cost is waived by the

Council/franchising authority) in accordance with the provisions of Section 185-31(C) of this Local Law. It is specifically understood, that the right of audit and re-computation of any, and all, amounts paid under a franchise fee, shall always be accorded to the Council/franchising authority.

- I. If an audit, or other research discovers that franchise fees have been either significantly underpaid or not paid for a period exceeding six (6) months from the original due date, then the City may seek full recovery of the underpaid, or non-paid fees plus reasonable interest.

- J. All annual reports due and pertaining to the payment of franchise fees, will be certified by an officer of the franchised MCS provider, and will be provided in the form, format and detail applicable to quarterly reports under subsection (F) above; such provider shall maintain records used in the preparation of said report, to be produced in their originality and totality upon request or demand by the Council/franchising authority, subject to protection of the privacy of subscriber information under Federal law.
- L. Payments of compensation made by a franchised MCS provider to the City, pursuant to the provisions of this local law, shall be considered, to the extent consistent with applicable Federal and State law, in addition to, and exclusive of, any and all authorized taxes, business license fees, other fees, other levies or assessments presently in effect, or subsequently adopted.
- O. For any twelve (12) month period, the fees paid by any person subject to subsection (N) who provides any such multi-channel service shall not exceed five percent (5%) of such person's gross revenue, or such higher percentage as may be authorized by the FCC, Congress, or other governmental entity derived in such period from the provision of such service over the multi-channel system.
- P. If at any time, the highest court of the nation, or the highest court of the State, invalidates, voids, or rules as unconstitutional the concept of franchise fees, then the Council/franchising authority may impose an alternative user charge on the franchised MCS provider, in the manner set forth in this local law, and not inconsistent with the terms of an applicable franchise agreement or the lawful rights of the Franchisee.
- Q. In light of subsection (P) of this Section, and recognizing that an alternative user charge may affect a franchised MCS provider, please note that the franchise agreement may contain express language which details a different method or manner for collection of franchise fees should the way they historically have been calculated (as a percentage of gross revenue) be ruled unconstitutional or unenforceable, so that the City's source of revenue and compensation for the use of the public right-of-way may be protected.

Section 70. Subdivisions A, C, E, F and I of section 185-108 of such law are hereby amended to read as follows:

- A. There shall be no assignment of a franchised MCS provider's franchise by the affected MCS provider, without the prior express written approval by the Council/franchising authority.
- C. In the event of such a default, the Council/franchising authority shall proceed according to the procedure set forth in this local law, and any applicable State law (including any applicable rules or regulations of the PSC).
- E. The Council/franchising authority will not unreasonably withhold its consent to such an assignment, nor disclose confidential information considered in connection with such a petition provided such non-disclosure complies with the State's Freedom of Information law. However, in making such a determination, the Council/franchising authority may consider all relevant facts including the following:

Paragraphs (1) through (9) of subdivision E of section 185-108 of such law remain in the original.

- F. A copy of the completed sales agreement, or a functionally equivalent instrument, between the franchised MCS provider and proposed assignee or transferee or buyer shall be provided to the Council/franchising authority, so that the Council/franchising authority may discover the assumption of obligations by the franchised MCS provider and proposed assignee or transferee or buyer with respect to the multi-channel system. In lieu of the sales agreement, the Council/franchising authority may, at its election, accept an attested summary of obligations assumed by the above-referenced parties. The City may request additional information other than that which is expressly prohibited by law.
- I. An assignment shall not relieve the former franchised MCS provider of its financial liabilities and obligations to the City under the franchise agreement unless specifically relieved by Federal, or State law (including any applicable PSC rules and regulations), or unless specifically relieved by the Council/franchising authority (or where applicable the PSC) at the time an assignment is approved.

Section 71. Subdivision A of section 185-109 of such law is hereby amended to read as follows:

- A. Except as provided herein, an MCS provider may hypothecate its multi-channel system without prior, formal approval of the Council/franchising authority, provided that such hypothecation not include the conveyance of any right of transfer assignment, or acquisition of the Franchise without the further prior approval of the Council/franchising authority.

Subdivision B of section 185-109 of such law is hereby repealed.

Subdivision C of section 185-109 of such law is hereby redesignated as subdivision B.

Section 72. Subdivisions A, B, D, E and F of section 185-110 of such law are hereby amended to read as follows:

- A. When any event, act or omission (on the part of the franchised MCS provider) occurs which represents a violation of a material provision of this local law, or compromises the corporate character, or legal, financial or technical integrity and/or stability of the multi-channel system or the franchised MCS provider to such a degree that the interests of the customers are negatively affected, then such event, act or omission may be considered a major breach of this local law. Under such circumstances, the Council/franchising authority shall notify the affected MCS provider in writing, of the specific breach, and direct such franchised MCS provider to comply with all such provisions of its franchise agreement, or this local law.

- B. For illustrative purposes only, the events, acts and omissions include, but are not limited to: bankruptcy, insolvency, failure to pay taxes or franchise fees (including the alternative user charge if applicable), failure to receive written Council/franchising authority approval for an assignment, or failure to abide by the material terms and conditions of the franchise agreement, or material provisions of this local law, such as cooperating with the City in the conduct of a periodic ascertainment of the adequacy of the MCS provider's record of reasonably meeting identified community needs, including those involving matters of customer service and consumer protection needs as expressed by subscribers. For purposes of this Section, "material" means a provision which either 1) affects the ability of the customer to receive multi-channel service, or 2) affects the ability of the Council/franchising authority to receive compensation for the use of its right-of-ways, or 3) affects the ability of the Council/franchising authority to evaluate an MCS provider's performance in the technical, financial, and legal aspects of the multi-channel system.
- D. A copy of such notice of material breach shall be mailed to the surety on the performance bond, unless otherwise directed by State law (including any applicable rule or regulation of the PSC).
- E. Within seventy-five (75) days, after such written notice is mailed to a franchised MCS provider, the Council/franchising authority shall conduct a public hearing on the matter unless State law or PSC rule or regulation requires a different procedure in which the State or PSC rule or regulation procedure would control, or unless the alleged breach has been corrected to the City's satisfaction.
- F. The Council/franchising authority shall provide written notice to a franchised MCS provider, and to the surety, of the time and place of said public hearing in a manner consistent with either State law, or approved by the Council/franchising authority (including where necessary, the PSC).

Section 73. Subdivision A of section 185-116 of such law is hereby amended to read as follows:

- A. In addition to any requirements contained within this local law, all MCS providers that are classified as cable operators shall be expected to abide by, and comply with, all applicable provisions of the Cable Act, as amended.

Paragraph (6) of subdivision B of section 185-116 of such law is hereby repealed and paragraphs (7) through (11) of such law are hereby renumbered respectively as paragraphs (6) through (10).

A new paragraph (11) of section 185-116 of such law is inserted to read as follows:

- 11) all applicable safety and electrical codes.

Subdivision D of section 185-116 of such law is hereby amended to read as follows:

- D. Further, the Council/franchising authority is committed that the goal of the Cable Act, as set forth in Section 601 (4) of the Act (codified at 47 USC 521 (4)), is met at all times. As a result, the Council/franchising authority expressly requires that upon the advent, implementation, and transmission of high definition television (HDTV), its functional equivalent, or any subsequently developed technological advancement affecting channel capacity or needed bandwidth for any video programming source or service, the MCS provider classified as a cable operator shall not lessen, dilute, or decrease the mix, level, quality, or quantity of programming services carried on the multi-channel system for reasons of lack of adequate channel capacity, except to the extent permitted pursuant to the applicable provisions of Federal law.

Section 74. Paragraphs (2), (3), (4) and (5) of subdivision B of section 185-117 of such law are hereby amended to read as follows:

- 2) Both the Council/franchising authority and the affected Franchisee shall review use after every twenty-four (24) months, including the percentage of use of every PEG channel. At the end of each twenty-four (24) month period, the Council/franchising authority or its designee shall evaluate the response and actual use of such channels. If, after any twenty-four (24) month period, the percentage of use for any required PEG channel drops below twenty-five percent (25%) of the total time allocated, then the required number of hours may be reduced to a number that most closely approximates the average hours of use per day.
- 3) If a separate channel is not dedicated for either government or educational use at any time, and thereafter seventy-five percent (75%) of the total time allocated for any combined required government/educational channel is consistently used five (5) days a week for a period of three (3) months, then the Franchisee shall provide an additional PEG channel.
- 4) Franchisee may be required, pursuant to the provisions of the negotiated Franchise Agreement which is in effect, to provide mobile, portable, and stationary equipment dedicated for PEG access, together with the aid of technical and production assistance provided by the Franchisee. The provisions of such a Franchise Agreement, to the extent consistent with applicable Federal law, may also provide that: a Franchisee shall provide equipment that can store programs for delayed cablecasting; that there will be no cost for technical production assistance for City PEG access users; and that the cost of maintenance of such PEG access studio, and equipment required to run the studio, and other PEG access facilities shall be borne by the Franchisee.
- 5) Franchisee shall be permitted to use such PEG access channel capacity required by this local law for the provision of other services if such channel capacity has not been used for the purposes designated for a period of ninety 90 days and if the Council/franchising authority agrees in advance. Such agreement may not be unreasonably withheld. However, such use by the Franchisee shall cease if required to accommodate the designated PEG program uses, subject to reasonable arrangements to avoid untimely disruption of current program services and to allow reasonable notice to subscribers.

Section 75. Section 185-118 of such law is hereby repealed.
Section 76. This local law shall take effect immediately on filing in the office of the Secretary of State.

ROLL CALL:

AYES: Acting Mayor Collins, Councilmen Burke,
Latwin, Hutchings, and Walsh

NAYS:None

ABSENT: Mayor Dunn, Councilwoman Cunningham

The local law was adopted.

3. Public hearing on a proposed Cable Television Renewal Franchise Agreement.

Acting Mayor Collins opened the public hearing.

There was no one wishing to address this proposed Cable Television Renewal Franchise Agreement.

Acting Mayor Collins closed the public hearing

Councilman Burke made a motion, seconded by Councilman Hutchings, to adopt the following resolution:

RESOLVED, that the City Council of the City of Rye hereby approves the Renewal of the Cable Television Franchise granted to UA-Columbia Cablevision of Westchester, Inc., d/b/a TCI Cable of Westchester, and authorizes the City Manager to execute the Cable Television Renewal Franchise Agreement.

ROLL CALL:

AYES: Acting Mayor Collins, Councilmen Burke,
Latwin, Hutchings, and Walsh

NAYS:None

ABSENT: Mayor Dunn, Councilwoman Cunningham

The resolution passed.

Acting Mayor Collins advised that the agreement increased Rye's franchise fee from 3% to 5% of the gross revenues, effective retroactively January 1, 1996. Additionally, Rye will receive \$23,000 per year for 10 years from TCI Cable for capital improvements.

Councilman Hutchings remarked on the outstanding job done by the RCTV Commission during the past three years in negotiating this contract. He told the Council that it was encouraging that there will now be a flow of cash which will be used to improve the type of equipment that will meet some of the needs of the Cable Commission.

4. Consideration of the request from residents of Rye Beach Avenue for controlled traffic on June 22, 1996 for a "Block Party" on Halsted Place, with a rain date of June 29, 1996

Councilman Latwin made a motion, seconded by Councilwoman Walsh and unanimously carried, to approve the request from residents of Rye Beach Avenue for controlled traffic on June 22, 1996 for a "Block Party" on Halsted Place, with a rain date of June 29, 1996.

5. Draft unapproved minutes of the regular meeting of the City Council held May 15, 1996

Councilman Latwin made a motion, seconded by Councilwoman Walsh and unanimously carried, to approve the minutes of the regular meeting of the City Council held May 15, 1996 as submitted.

6. Miscellaneous communications and reports

A. Acting Mayor Collins advised the Council that Mr. Joseph Chira, 11 Kirby Lane North, had withdrawn his request for a license to use a portion of the City's right-of-way abutting 11 Kirby Lane North for parking.

B. Councilman Latwin informed the Council that Councilwoman Walsh and he attended a forum of parents concerned about drug and alcohol use which was held in Rye High School on May 28, 1996. He said that Commissioner Pease will present a report and proposals on this issue at the next regular City Council meeting.

7. Adjournment

Councilman Latwin made a motion, seconded by Councilman Burke and unanimously carried, to adjourn the meeting.

There being no further business to discuss, the meeting was adjourned at 8:10 P.M.

Respectfully submitted,

Alice K. Conrad
City Clerk