

**8. FRANCHISE FEE**

(a) *Payment to County.* Each year during the Franchise term, as compensation for use of Public Rights-of-Way and public land, the Grantee shall pay to the County, on a quarterly basis, a Franchise Fee of five percent of Gross Revenues. Such payments shall be made no later than thirty days following the end of each quarter.

(b) *Supporting Information.* Each Franchise Fee payment shall be submitted with supporting detail and a statement certified by the Grantee's chief financial officer or an independent certified public accountant, reflecting the total amount of monthly Gross Revenues for the payment period. The County shall have the right to reasonably require further supporting information.

(c) *Late Payments.* In the event any Franchise Fee payment due and owing is not made on or before the required date, the Grantee shall pay any applicable penalties and interest charges computed from such due date, as provided for in the Communications Ordinance.

(d) *Audit.*

(1) The County shall have the right to inspect books and records and to audit and recompute any amounts determined to be payable under this Agreement, whether the records are held by the Grantee, an Affiliate, or any other agent of Grantee.

(2) The Grantee shall be responsible for making available to the County all records necessary to confirm the accurate payment of Franchise fees, without regard to by whom they are held. Such records shall be made available pursuant to the requirements of Section 9(a) herein. The Grantee shall maintain such records in accordance with its normal record retention policy, which the Grantee shall provide to the County upon execution of this Agreement and shall update whenever Grantee changes that policy over the course of the Franchise term.

(3) The County's audit expenses shall be borne by the County unless the audit discloses an underpayment of more than three percent of any quarterly payment, in which case the County's out-of-pocket costs of the audit shall be borne by the Grantee as a cost incidental to the enforcement of the Franchise. Any additional undisputed amounts due to the County as a result of the audit shall be paid within thirty days following written notice to the Grantee by the County of the underpayment, which notice shall include a copy of the audit report. If recomputation results in additional revenue to be paid to the County, interest will be due pursuant to Section 8(c).

(4) The County shall have three years from the time the Grantee delivers a Franchise Fee payment to question that payment, and if the County fails to question the payment within that time period, the County shall be barred from questioning it after that time period. If the County gives written notice to the Grantee within that three-year period, the three-year period shall be tolled for one year to allow the County to conduct an audit. Any legal action by either party relating to a Franchise Fee payment will toll the remaining term, if any, of the three-year time period and the one-year audit period with respect to that payment.

*(e) No Limitation on Taxing Authority.*

(1) Nothing in this Agreement shall be construed to limit any authority of the County to impose any tax, fee, or assessment of general applicability.

(2) The Franchise Fee payments required by this section shall be in addition to any and all taxes or other fees or charges of a general nature which the Grantee shall be required to pay to the County or to any state or federal agency or authority, as required herein or by law, all of which shall be separate and distinct obligations of the Grantee. The Grantee shall not have or make any claim for any deduction or other credit of all or any part of the amount of said

Franchise Fee payments from or against any of said County taxes or other fees or charges which the Grantee is required to pay to the County, except as required by law or provided for in this Franchise Agreement. The Grantee shall not apply nor seek to apply all or any part of the amount of said Franchise Fee payments as a deduction or other credit from or against any of said County taxes or other fees or charges, each of which shall be deemed to be separate and distinct obligations of Grantee. Nor shall the Grantee apply or seek to apply all or any part of the amount of any of said taxes or other fees or charges as a deduction or other credit from or against any of its Franchise obligations, each of which shall be deemed to be separate and distinct obligations of the Grantee. Notwithstanding the above provisions of this paragraph, however, the Grantee shall have the right to a credit, in the amount of its Franchise Fee and PEG capital grant payments under this Agreement, against any general utility tax on Cable Services that may be imposed by the County, to the extent such a tax is applicable to the Grantee or its subscribers. The Grantee may designate Franchise Fee(s) as a separate item in any bill to a Subscriber of the Grantee's Cable System, but shall not designate or characterize it as a tax.

(f) *No Accord and Satisfaction.* The acceptance of any payment required hereunder by the County shall not be construed as an acknowledgment or an accord and satisfaction that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release or waiver of any claim which the County may have for additional sums due and payable. However, the County's acceptance of full payment of the amount determined to be due by the County through an audit shall be construed as an accord and satisfaction.