

ORDINANCE NO. 22-_____

AN ORDINANCE CREATING SECTIONS 10-21-2101 THROUGH 10-21-2154, ARTICLE 10-21, CHAPTER 10, LAWTON CABLE FRANCHISE ORDINANCE 2022, LAWTON CITY CODE, 2015; BY CREATING THE ARTICLE, CREATING REGULATIONS FOR GRANTING NEW CABLE FRANCHISES, CREATING REGULATIONS FOR CABLE FRANCHISE GRANTEE'S OPERATION AND MAINTENANCE, PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED by the Council of the City of Lawton, Oklahoma, that:

Section 1. The title of Article 10-21 is hereby created to read as follows:

Article 10-21 - LAWTON CABLE FRANCHISE ORDINANCE 2022

Section 2. Section 10-21-2101 is hereby created to read as follows:

10-21-2101 - Statement of Purpose, Statement of Intent and Authority.

- A. Purpose. The purpose of this Ordinance, Lawton Cable Franchise 2022, is to update the City's Cable Franchise code. The previous code, Chapter 10 Finance, Article 10-11 Lawton Cable Franchise Ordinance has been in effect since 2014 when it was used to grant a non-exclusive cable franchise to Fidelity. This 2022 Ordinance does not repeal the 2014 Lawton Cable Franchise Ordinance (Chapter 10 Finance, Article 10-11), but all grants and acceptance of a Cable Franchise after the effective date of this Ordinance will proceed under and be governed by this Ordinance.
- B. Statement of Intent. The City of Lawton, Oklahoma ("City") intends, by the adoption of this franchise ordinance, to authorize the continued operation of cable systems and to facilitate investment in the upgrade of such cable systems. The continued development of cable systems and the provision of cable service will contribute significantly to the communication needs and interests and the well-being of the City and its inhabitants, associations, and institutions.
- C. Authority. Insofar as the United States of America, the Federal Communications Commission, and the State of Oklahoma have authorized the city to grant a franchise for cable system operation within the City's territorial boundaries, the City hereby exercises its authority to grant a nonexclusive franchise permitting the operation of a television cable system and the provision of television cable service within the city.

Section 3. Section 10-21-2102 is hereby created to read as follows:

10-21-2102 - Short Title.

This Ordinance shall be known and cited as the “Lawton Cable Franchise 2022 Ordinance.”

Section 4. Section 10-21-2103 is hereby created to read as follows:

10-21-2103 - Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) Affiliate means any person who owns or controls, is owned or controlled by, or is under common ownership or control with the grantee.
- (2) Annual Gross Revenues:
 - (a) Annual Gross Revenues shall include:
 - (i) recurring charges from basic service;
 - (ii) event-based charges for basic service, including but not limited to pay-per-view and video-on-demand charges;
 - (iii) rental of set top boxes and other basic service equipment;
 - (iv) service charges related to the provision of basic service, including but not limited to, activation, installation, and repair;
 - (v) administrative charges related to the provision of basic service, including, but not limited to, service order and service termination charges;
 - (vi) amounts billed subscribers to recover the annual fee authorized by this chapter.
 - (b) Annual Gross Revenues shall not include:
 - (i) Uncollectible fees, provided that all or part of uncollectible fees which is written off as bad debt but subsequently collected, less expenses of collection, shall be included in gross revenues in the period collected;
 - (ii) late payment fees;
 - (iii) revenues from contracts for in-home maintenance service unless they relate solely to maintenance on equipment used only for the provisioning of basic service and not for the provisioning of any other services provided by a grantee or its affiliates;
 - (iv) amounts billed to basic service subscribers to recover taxes, fees or surcharges imposed upon basic service subscribers in connection with the provision of basic service, other than the franchise fee authorized by this section;
 - (v) revenue from the sale of capital assets or surplus equipment; or
 - (vi) charges, other than those described in Subsection (2)(a) above, that are aggregated or bundled with amounts billed to basic service subscribers.

- (c) Annual Gross Revenues which are subject to the annual fee shall additionally include a pro rata portion of all revenue collected by a grantee pursuant to compensation arrangements for advertising (less any commissions grantee receives from any third parties for advertising), and home-shopping sales derived from the operation of a cable system within the City. Advertising commissions paid to third parties (excluding any refunds, rebates, or discounts a grantee makes to advertisers) shall not be deducted from advertising revenue included in annual gross revenue. The allocation of advertising and home-shopping revenue referred to above shall be based on the number of subscribers in the City divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement.
- (d) Bundling discounts shall be apportioned fairly among video and other services. A grantee shall not apportion revenue in such a manner as to avoid the annual fee.
- (e) If or when the Federal Communications Commission or a court of competent jurisdiction modifies the current interpretation, this definition may also be altered to include or exclude revenue from other sources as may be permitted by such modification.
- (3) Basic service means any service tier which includes the retransmission of local television broadcast signals.
- (4) Cable Act means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended from time to time.
- (5) Cable mile means a linear mile of strand-bearing cable as measured on the street or easement from pole to pole or pedestal to pedestal.
- (6) Cable service means the one-way transmission to Subscribers of (i) video programming, or (ii) other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- (7) Cable system means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Subchapter II of the Federal Communications Act of 1934, except that such facility shall be considered a cable system (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with 47 U.S.C. § 573; or (E) any facilities of any electric utility used solely for operating its electric utility system.
- (8) City means The City of Lawton, a municipal corporation of the State of Oklahoma, in its present incorporated form or in any later reorganized, consolidated, enlarged, or reincorporated form.

- (9) Commence operation means that time and date when operation of the cable system is considered to have commenced, which shall be when sufficient distribution facilities have been installed so as to permit the offering of cable service to at least 20 percent of the dwelling units located within the service area.
- (10) Council or City Council means the City Council of The City of Lawton, Oklahoma.
- (11) FCC means the Federal Communications Commission and any legally appointed or elected successor.
- (12) Franchise means an initial authorization, or renewal thereof, (including a renewal of an authorization which has been granted subject to 47 U.S.C. § 546), issued by the City, which authorizes the construction or operation of a cable system within the City's rights-of-way for the business of delivering a cable television service to the residents of the City, which is a business affected with a public interest. Said business could not be conducted without the occupation of and placement of private commercial facilities in the public streets and other public ways of the City, which is essential to the performance of the general function or purpose of the grantee.
- (13) Franchise fee means the fee a grantee is required to pay under the terms of a Franchise for consideration of the rights and privileges granted therein, subject to the limitations of 47 U.S.C. §542.
- (14) Grantee means any person or entity receiving a franchise pursuant to this chapter and under the granting franchise ordinance, and its lawful successor, transferee, or assignee.
- (15) May is permissive.
- (16) Normal Business Hours means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.
- (17) Person means an individual, partnership, association, organization, corporation or any lawful successor, transferee, or assignee of said individual, partnership, association, organization, or corporation.
- (18) Public Right of Way means the surface, air space above the surface, and the area below any public street, road, highway, freeway, lane, alley, boulevard, parkway, easement, or right-of-way now or hereafter held by city, or dedicated for use to the city for use by the public. The term "public right-of-way" does not include any easement that precludes its use for cable system purposes or that restricts the city's right to grant access to third parties.
- (19) Public school means any elementary, junior high or high school operated within the City by a public school system.
- (20) Sale includes any sale, exchange, barter or offer for sale.
- (21) Service area means the geographic area within the franchise territory having a potential of 40 subscribers per cable mile.
- (22) Shall and must, each is mandatory and not merely directory.

(23) State means the State of Oklahoma.

(24) Street includes each of the following which has been dedicated to the public or hereafter is dedicated to the public and maintained under public authority or by others and located within the City limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public ways and extensions and additions thereto, together with such other public property and areas that the City shall permit to be included within the definition of street from time to time.

(25) Subscriber means any person lawfully receiving any form of cable service from the grantee.

(26) Substantially completed shall occur when sufficient distribution facilities have been installed by the grantee so as to permit the offering of cable service to at least 90 percent of the potential subscribers in the service area.

Section 5. Section 10-21-2104 is hereby created to read as follows:

10-21-2104 - Selection of Grantee.

(a) Application for a franchise. Applications for an original franchise grant hereunder shall be filed with the City Clerk in accordance with the filing instructions promulgated by the City and will be accompanied by a nonrefundable filing fee of \$500.00. Such applications shall contain written information, as outlined in the request for proposals, presented in the specific form required. The categories set forth are for the sole purpose of providing the Council relevant information to aid in the selection process and are not intended to be considered requirements for a successful application. Such information, when applicable, shall include, but not be limited to, the following:

(1) Name and address of applicant. The name and business address of the applicant, date of application and signature of applicant or appropriate corporate officers.

(2) Description of proposed operation. A general description of the applicant's proposed operation including, but not limited to business hours; operating staff; maintenance procedures beyond those required in the ordinance; management and marketing staff complement and procedures; and, if available, the rules of operation for public access.

(3) Signal carriage. A statement of the television services to be provided, including signals to be received via microwave, satellite, off-the-air and locally originated.

(4) Special services. A statement setting forth a description of the automated services proposed as well as a description of the production facilities to be made available by the grantee for the public, municipal, and educational channel.

(5) Programming assistance. A statement describing the hours of availability, if any, that a studio, studio equipment and network personnel will be made available to educational institutions and other similar agencies for programming.

(6) Schedule of charges. A statement of the applicant's proposed schedule of charges.

(7) Applicant organization. A statement detailing and setting forth the names and addresses of all persons having a proprietary or equitable interest in the franchise and,

- in the event the applicant is a corporation, the names and addresses of the officers, directors and shareholders of said corporation together with the number of shares held by each shareholder, both nominal and beneficial, owning ten percent or more of the outstanding shares of the corporation's outstanding stock.
- (8) Intra-company relationships. A statement describing all intra-company relationships of the applicant, if any, including parent, subsidiary, or affiliated companies.
- (9) Agreements and understandings. A statement setting forth any agreements and understandings, whether written or oral, existing between the applicant and any other person, firm, group, or corporation with respect to any franchise awarded hereunder and the conduct of the operation thereof existing at the time of proposal submittal.
- (10) Financial statement. All applicants shall furnish audited financial statements for its two latest fiscal years unless applicant has not been in existence for at least two years, then applicant shall furnish audited financial statements for such lesser periods of time covering the period that the applicant has been in existence. If the applicant is a partnership, audited financial statements shall include copies of the "U.S. Partnership Return of Income" (IRS Form 1965) for its latest two fiscal years or such lesser period of time that said partnership has been in existence.
- (11) Financial projection. A ten-year operations pro forma financial statement which shall include estimated initial and continuing plant investment, annual profit and loss statements detailing income and expenses, annual balance sheets, and annual levels of subscriber penetration. Costs anticipated for voluntary services or contributions shall, if presented, be incorporated in the pro forma financial statements as required in this chapter, but shall be separately identified.
- (12) Financial support. Suitable written evidence shall be supplied advising that the required funds are available to applicant for construction and operation of the system if it is awarded a franchise. If the planned operation is to be internally financed, a corporate board resolution shall be supplied.
- (13) Technical description. A technical description of the type of network proposed by the applicant including, but not limited to, network configuration (e.g., hub), network capacity, and two-way capability, studio, studio equipment and planned hours of operation.
- (14) Engineering statement. A statement from the applicant's senior technical staff member or consultant advising that he has reviewed the network description, construction standards and conditions of street occupancy as set forth herein and in Chapter 50 of this Code and that the applicant's planned network and operations thereof will meet all the requirements set forth herein.
- (15) Existing franchises. A listing of all existing franchises awarded the applicant in the past three years indicating when the franchises were issued and when the systems were constructed in each respective governmental unit together with the name, address and phone number of a responsible governmental official knowledgeable of the applicant.
- (16) Convictions. A statement as to whether the applicant or any of its officers or directors or holders of ten percent or more of its voting stock have in the past ten years been convicted of any crime involving moral turpitude.

- (17) Operating experience. A statement detailing the prior community antenna television experience of the applicant including that of the applicant's officers, management, and staff to be associated with the proposed operation.
- (18) Extension policy. A statement detailing the extension policy proposed by the applicant for potential subscribers for whom service is not required pursuant to Section 11-25.
- (19) Fifteen copies of the application shall be supplied to the City, each separately bound and containing no information not specifically requested by the City. Supplementary or additional information that the applicant deems reasonable for consideration may be submitted at the same time as the application in the same number of copies. The City may, at its discretion, consider such additional information as part of the application.
- (20) The City reserves the right to require any supplementary or additional information it deems necessary in order to make the proper analysis and determination. In this connection, the applicant agrees, if applicable, to cooperate fully any time the City desires to contact other cities served by the applicant in order to determine the quality of service provided and the willingness to meet the needs of their subscribers. The City may waive the requirement of inclusion of any information set forth above if it deems the information unnecessary.
- (b) Criteria for evaluation of grantee. Proposals will be evaluated according to the legal, financial, character, technical and other public interest qualities of the applicant as required or suggested by the Federal Communications Commission. Preference may be given to applicants demonstrating the best total service package and more reasonable installment and subscriber rate schedules, the most expeditious installation schedule, and to those applicants demonstrating a significant sensitivity to the knowledge of local conditions.
- (c) Council to submit selection of grantee to election. After examining all applications submitted pursuant to the prescribed procedures, with respect to the applicant's legal, character, financial, technical and other qualifications, including adequacy and feasibility of its construction plans, and after reviewing the recommendations of the staff, the Council shall select the person who they consider has presented the proposal in the best interests of the City and if required by applicable law, shall submit the question of granting a nonexclusive franchise, pursuant to the terms of this chapter, to the citizens of the City for their choice either at a special or general election. However, no provision of this chapter shall be deemed or construed as to require the Council to submit to a vote any prospective grantee following the receipt of any franchise application.
- (d) Decision of Council final. The decision of the Council concerning grantee selection is final. Applicants agree as a condition of application not to contest the Council's decision unless it is alleged that such decision is arbitrary, capricious, and unreasonable, or unconstitutionally discriminatory.

Section 6. Section 10-21-2105 is hereby created to read as follows:

10-21-2105 – Application of Article.

The provisions of this Article shall apply only to persons that the City has authority to franchise pursuant to state and local law, subject to applicable federal laws and regulations.

Section 7. Section 10-21-2106 is hereby created to read as follows:

10-21-2106 - Franchise required.

No person shall construct, install, maintain, or operate on or within any public streets or public ways, a cable system unless a franchise authorizing the use of the public streets and public ways has first been obtained pursuant to the provisions of this chapter and thereafter only while said person is legally operating under the terms and provisions of said franchise.

Section 8. Section 10-21-2107 is hereby created to read as follows:

10-21-2107 - Election and costs.

The Cable Act preempts any state or local requirement of a voter-approved cable television franchise. In the event the preemption is eliminated, and applicable state or local law requires franchises to be voter-approved, then, in order for a nonexclusive franchise to be granted pursuant to this chapter, an election must be held, and a majority of those voting must vote in favor of the granting of such franchise. The entire cost of the election together with all printing and publishing costs relating thereto shall be prepaid by the applicant selected by the Council to be grantee, regardless of whether or not the applicant is granted a franchise by said election. When the actual costs of the election are known, the final payment may be adjusted accordingly.

Section 9. Section 10-21-2108 is hereby created to read as follows:

10-21-2108 - Term of franchise.

The nonexclusive franchise and the rights, privileges, obligations, and authority thereby granted shall take effect and be in force as provided herein after approval by the City Council, so long as the requirements of Section 10-21-2113 have been met and shall continue in full force and effect for a term of not more than 20 years from date of acceptance by franchisee, subject, however, to the right of the City to terminate said franchise as provided herein.

Section 10. Section 10-21-2109 is hereby created to read as follows:

10-21-2109 - Franchise fee.

(a) The City has authority to grant a non-exclusive franchise to a cable television operator for the right to use the public streets, and other public ways, for the purpose of maintaining and operating a cable television business within the City. The business of delivering cable services to the residents of the City is a business affected with a public interest. The construction, installation, maintenance and operation of a Cable System involves the occupation of and placement of private commercial facilities in the valuable and scarce public streets and other public ways within the City and which are maintained by the City at a significant cost, and such use is essential to the performance of the general function or purpose of the cable television operator. The City further finds that the grant of a franchise for use of rights-of-way to provide service is a valuable property right without which a grantee would be required to invest substantial capital.

- (b) A grantee of a franchise hereunder shall pay to the City an annual franchise fee in an amount to be set by the franchise agreement as a percentage of annual gross revenues derived from operation of the cable system by the grantee to provide cable service. Such payment shall be in addition to any other payment, charge, or permit fee owed to the City by the grantee and shall not be construed as payment in lieu of personal or real property taxes levied by State, County or local authorities; provided, however, such fee shall include and be in lieu of any fee required by the City for any construction, building, or other permit for use or occupation of, or work in, the streets, except for the inspection fees and service charges.

Section 11. Section 10-21-2110 is hereby created to read as follows:

10-21-2110 - Payments to City and audits of payments.

- (a) The franchise fee shall be paid on a monthly basis with payments made no later than the 15th of each month for the preceding month. Nothing in this section shall be construed to limit any authority of the City to impose any tax, fee or assessment of general applicability.
- (b) No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee under this chapter or for the performance of any other obligation of the grantee.
- (c) The City shall have the right to request a certified audit, within one-hundred and twenty (120) days of the close of the grantee's business year to assure that the annual fee has been properly calculated.

Section 12. Section 10-21-2111 is hereby created to read as follows:

10-21-2111 - Nature of nonexclusive franchise.

- (a) Franchise nonexclusive. Any franchise granted hereunder shall not be exclusive and the City reserves the right to grant a similar franchise to any other person at any time.
- (b) Authority granted. Any franchise granted hereunder shall give to the grantee the right and privilege to construct, erect, operate, modify and maintain in, upon, along, above, over and under the public streets and public ways, such facilities necessary for the operation of a cable system in the City. All privileges prescribed by a franchise shall be subordinate to (without limitation) the City's use of the public rights-of-way for purposes that do not directly or indirectly compete with the grantee and to any prior lawful occupancy of the public rights-of-way. A grantee shall at all times be subject to all lawful exercise of the police power and any other lawful authority of the City, including without limitation, all rights the City may have under 47 U.S.C. § 552.
- (c) Rights, privileges, powers and immunities. Any franchise granted hereunder shall be in lieu of any and all other rights, privileges, powers, immunities, and authorities owned, possessed, controlled, or exercisable by the grantee, or any successor to any interest of the grantee, of, or pertaining to, the construction, operation, or maintenance of any cable system in the City; and the acceptance of any franchise hereunder shall operate, as between the

grantee and the City, as an abandonment of any and all of such rights, privileges, powers, immunities, and authorities within the City, to the effect that, as between the grantee and the City, all construction, operation and maintenance by any grantee of any cable television system in the City shall be, and shall be deemed and construed in all instances and respects to be, under and pursuant to said franchise, and not under or pursuant to another right, privilege, power, immunity, or authority whatsoever.

- (d) Privileges must be specified. No privilege or exemption shall be granted or conferred by any franchise granted except those specifically prescribed therein.
- (e) Privileges subordinated. Any privilege claimed under a franchise by a grantee in any street or other public property shall be subordinate to any prior existing lawful occupancy of the streets or other public property.
- (f) Franchise held in personal trust. Any such franchise shall be a privilege to be held in personal trust by the original grantee. It cannot in any event be sold, transferred, leased, assigned or disposed of, in whole or in part, either by forced or involuntary sale, or by voluntary sale, merger, consolidation or otherwise, except to an affiliate of a grantee, without prior consent of the Council as provided herein, which consent shall not be unreasonably withheld.
- (g) Franchise binding. Any franchise granted hereunder shall be binding upon the grantee, and all successors, lessees or assignees as may be approved by the City.
- (h) Transfer of City's rights, powers or duties. Any right or power in, or duty impressed upon, any officer, employee, department, or board of the City shall be subject to transfer by the City to any other officer, employee, department, or board of the City.
- (i) Obligations of grantee. Any such franchise granted shall not relieve the grantee of any obligations involved in obtaining pole or conduit space from any department of the City, utility company, or from others maintaining utilities in streets.

Section 13. Section 10-21-2112 is hereby created to read as follows:

10-21-2112 - Franchise agreement.

The grantee awarded a franchise shall execute a franchise agreement which shall set forth the terms and provisions of the franchise. No conditions or provisions of a franchise agreement shall conflict with any provisions of this chapter or other law. In case of such conflict or ambiguity between any terms or provisions of the franchise agreement and this ordinance, the words of the franchise agreement shall control.

Section 14. Section 10-21-2113 is hereby created to read as follows:

10-21-2113 - Acceptance and effective date of franchise.

- (a) No franchise granted pursuant to this chapter and passed by the City Council or a vote of the qualified electors, as applicable, shall become effective for any purpose unless and until written acceptance thereof shall have been filed with the City Clerk, duly executed by the

proper officers of the grantee. Written acceptance must contain, in addition to any other matters included, the following express representations by the grantee that:

- (1) it has carefully read the terms and conditions of this chapter and the franchise agreement and accepts all of the terms and conditions imposed by this chapter and the franchise agreement and agrees to abide by same; and
 - (2) it further acknowledges by acceptance of the franchise that it has carefully read the terms and conditions of this chapter and expressly waives any claims that any provisions hereof are unreasonable, arbitrary or void; and
 - (3) by accepting the franchise, it acknowledges that it has not been induced to accept same by any promise, verbal or written, by or on behalf of the City or by any third person regarding any term or condition of this chapter or the franchise agreement not expressed therein. The grantee further pledges that no promise or inducement, oral or written, has been made to any City employee or official regarding receipt of the cable system franchise.
- (b) The written acceptance shall be filed by the grantee not later than 12:01 p.m. of the 30th day next following the Council's approval of a Franchise, or if an election was allowed, following the franchise election granting such franchise. In default of the filing of such written acceptance as herein required, the grantee shall be deemed to have rejected and repudiated the franchise. Thereafter, the acceptance of the grantee shall not be received by the City Clerk. The grantee shall have no rights, remedies, or redress unless and until the Council, by resolution, shall determine that such acceptance be received, and then upon such terms and conditions as the Council may impose.
- (c) In addition to the written acceptance and within the same 30-day period the grantee shall:
- (1) file a certificate of insurance as provided herein; and
 - (2) file a performance bond if required by the franchise; and
 - (3) advise the City in writing of the grantee's address for mail and official notifications from the City.

Section 15. Section 10-21-2114 is hereby created to read as follows:

10-21-2114 - Franchise reviews and modification.

- (a) Upon written notice given by the City or the grantee, one to the other, the terms and conditions of the franchise agreement may be modified, provided that both the City and the grantee are agreeable to such modification. Modifications shall be directed toward effecting alterations in the terms and conditions to reflect those technical, economic, or regulatory changes which have occurred during the interim period.
- (b) Any changes in the franchise agreement necessitated by modifications to the Federal Communications Commission regulations shall be incorporated into the franchise agreement within the time limit provided for in the rules and regulations of the Federal Communications Commission then in force and effect.

Section 16. Section 10-21-2115 is hereby created to read as follows:

10-21-2115 - Franchise renewal.

A franchise granted pursuant to this chapter shall be renewed pursuant to the procedures established by the Cable Act or such other procedure to which the City and a grantee mutually agree. In the event that the City and an existing franchisee cannot agree upon terms for renewal of the franchise agreement, the parties may mutually agree to hold over the current franchise agreement for no more than one year or as otherwise provided for by applicable federal law.

Section 17. Section 10-21-2116 is hereby created to read as follows:

10-21-2116 - Transfer of franchise.

- (a) Any franchise granted hereunder shall be a privilege to be held for the benefit of the public. Said franchise cannot in any event be sold, transferred, leased, assigned or disposed of, including but not limited to, by forced or voluntary sale, merger, consolidation, receivership or other means without the prior consent of the City, and then only under such conditions as the City may establish. Such consent as required by the City shall, however, not be unreasonably withheld.
- (b) Nothing in this chapter shall be deemed to prohibit the assignment of the franchise, mortgage or pledge of the network or any part thereof for financing purposes. However, any such assignment, mortgage, pledge or lease shall be subject to the rights of the City under this chapter.
- (c) Subsection (a) of this section shall not apply to the sale, transfer, or assignment of the franchise or all or part of a cable system to an affiliate of a grantee.

Section 18. Section 10-21-2117 is hereby created to read as follows:

10-21-2117 - Franchise territory.

Any nonexclusive franchise granted pursuant to this chapter shall designate the area of the City to be served by the grantee throughout the term of the franchise.

Section 19. Section 10-21-2118 is hereby created to read as follows:

10-11-2118 - Extension of network.

- (a) After a grantee has substantially completed the construction of its cable system as defined in Section 10-21-2103, it shall continue to extend its cable system so as to provide service to all parts of the franchise territory having a density of at least 40 single-family residential units per cable mile.
- (b) If a grantee is also operating in another municipality abutting the franchise territory located within the City, and if the density requirements set forth in Subsection (a) above can be met by counting single-family resident units located in both the City franchise territory and in the abutting municipality, then upon request of the City Manager, the grantee will use its

best efforts, where economically and technologically feasible, to extend the cable system and service from the abutting municipality into the City franchise territory.

Section 20. Section 10-21-2119 is hereby created to read as follows:

10-21-2119 - Abandonment of service.

After the grantee has established service pursuant to this chapter in the franchise area, such service shall not be suspended or abandoned in the whole of or any part of the franchise area unless the suspension or abandonment is authorized by the Council, which authorization shall not be unreasonably denied. The Council's failure to act within 90 calendar days of such a request shall be deemed approval.

Section 21. Section 10-21-2120 is hereby created to read as follows:

10-21-2120 - Network description.

Cable System Construction Schedule: As applicable, each franchise shall specify the construction schedule that will apply to any required construction, upgrade, or rebuild of the cable system. Each cable system generally shall have at least the following characteristics:

- (1) Modern Design. A modern design when built, utilizing an architecture that will permit additional improvements necessary for the delivery of high-quality and reliable cable service throughout the franchise area, and the capability to operate continuously on a 24-hour a day basis without severe material degradation during operating conditions typical to the Lawton Metropolitan Area;
- (2) FCC Technical Performance Standards. A system that conforms to or exceeds all applicable FCC technical performance standards, as amended from time to time, which standards are incorporated herein by reference, and any other applicable technical performance standards. End of the line performance must meet or exceed FCC specifications at the end of the subscriber drop;
- (3) Safety compliance. A cable system shall, at all times, comply with all applicable laws, practices and guidelines pertaining to the construction, upgrade, operation, extension and maintenance of cable systems;
- (4) No deterioration to access signals. A system shall be so constructed and operated that there is no significant deterioration in the quality of access channel signals or leased access signals, either upstream or downstream, as compared with any other channel on that system. Deterioration refers to any signal problem, including but not limited to ghost images and other interference and distortions.

Section 22. Section 10-21-2121 is hereby created to read as follows:

10-21-2121 - Access channels and complimentary services.

- (a) The grantee shall provide to the City and each subscriber of the grantee two dedicated noncommercial access channels for use by the City or the City's designee. The City may

designate an access channel as a governmental access or educational access channel at its discretion. The City may designate a nonprofit consortium of educational agencies within the City to program and administer the educational access channel.

- (b) The grantee shall provide within the service area, without charge for installation, at least one video service drop to each public school, public library, and occupied municipal building located within 200 feet of the company's activated cable network. The grantee shall provide its limited basic service or equivalent, at no charge to each installation or as otherwise specifically set forth in the franchise agreement.

Section 23. Section 10-21-2122 is hereby created to read as follows:

10-21-2122 - Emergency alert override.

The grantee shall comply with the Emergency Alert System regulations of the Federal Communications Commission.

Section 24. Section 10-21-2123 is hereby created to read as follows:

10-21-2123 - Network technical requirements.

Each cable system shall meet or exceed all applicable technical standards established by the Federal Communications Commission.

Section 25. Section 10-21-2124 is hereby created to read as follows:

10-21-2124 - Performance monitoring.

A grantee shall comply with all applicable federal standards with respect to the construction, maintenance, and operation of a cable system.

Section 26. Section 10-21-2125 is hereby created to read as follows:

10-21-2125 - Interconnections.

- (a) Consistent with applicable law, the franchisee shall so construct and operate the network as to have the capability to interconnect the same into all other networks within the City.
- (b) Consistent with applicable law, whenever it is financially and technically feasible, the franchisee shall so construct, operate, and modify the network to have the capability to interconnect the same into all networks adjacent to the City.
- (c) All costs of interconnecting with another network shall be borne by the party requesting interconnection.

Section 27. Section 10-21-2126 is hereby created to read as follows:

10-21-2126 - Parental control device.

A parental control device will be made available upon request to provide control over TV programming as required by federal law and regulations.

Section 28. Section 10-21-2127 is hereby created to read as follows:

10-21-2127 - Regulatory jurisdiction and procedures.

- (a) Continuing regulatory jurisdiction. Except as preempted by applicable law, the City shall have continuing regulatory jurisdiction and primary supervision over any franchise granted hereunder, including subscriber rates, if said rate regulation is allowed by the Cable Act. The daily routine administrative responsibilities and supervision of the franchise should be entrusted to the City Manager.
- (b) Regulatory responsibilities of the City. The City Council does hereby designate the City Manager to exercise the City's continuing regulatory and supervisory jurisdiction over the franchise and, in this regard, the City Manager may exercise the following powers and shall have such other responsibilities and duties that the City may assign and delegate to him:
 - (1) resolve disputes as provided herein.
 - (2) review and audit all reports and filings submitted to the City as required hereunder and such other correspondence as may be submitted to the City concerning the operation of the cable system and review the rules and regulations set by the grantee under provisions herein.
 - (3) assure that all tariffs, rates, and rules pertinent to the operation of the cable system in the City are made available for inspection by the public at reasonable hours.
 - (4) confer and coordinate with the grantee on the interconnection of the City's cable system with other similar networks, if requested by such other networks.
 - (5) advise the Council on matters which might constitute grounds for revocation of the franchise in accordance with this chapter.
 - (6) determine general policy relating to the service provided subscribers and the operation and use of the governmental and educational access channels.
 - (7) maintain a knowledge of current developments in cable communications.
 - (8) audit all grantee records required by this chapter and, in the City Manager's discretion, require the preparation and filing of information in addition to that required herein.
 - (9) conduct periodic evaluations of the network with the grantee and pursuant thereto, make recommendations to the Council for amendments to this chapter or the franchise agreement.
 - (10) employ, as necessary, the services of a consultant, to assist in the analysis of any matter relative to any franchise under this chapter.

Section 29. Section 10-21-2128 is hereby created to read as follows:

10-21-2128 - Resolving disputes.

The City Manager, or his designee, may mediate any controversy or charge arising from the operations of any grantee under this ordinance and any cable franchise agreement.

Section 30. Section 10-21-2129 is hereby created to read as follows:

10-21-2129 - Construction schedule.

Each initial franchise shall provide a construction schedule for the construction of a cable system within the City.

Section 31. Section 10-21-2130 is hereby created to read as follows:

10-21-2130 - Construction standards.

- (a) Compliance with safety codes. All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970 and any amendments thereto as well as all State and local codes where applicable.
- (b) Compliance with electrical codes. All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the provisions of Chapter 18 of this Code.
- (c) Antennas and towers. Antenna-supporting structures (towers) shall be designed for the proper loading zone as specified in Electronics Industry Association's R.S.—22A Specifications.
- (d) Compliance with aviation requirements. Antenna-supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable State and local codes and regulations.
- (e) Construction standards and requirements. All of the grantee's plant and equipment, including but not limited to the antenna site, head-end and distribution system, towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with the safety of any persons or property, or to interfere with improvements the municipality may deem proper to make, or to interfere in any manner with the rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic on municipal properties.
- (f) Safety, nuisance requirements. The grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public.

Section 32. Section 10-21-2131 is hereby created to read as follows:

10-21-2131 - Customer service standards.

Every franchise shall require that a grantee shall comply with the customer service standards of the Federal Communications Commission, as may set forth in the applicable sections of the Code of Federal Regulations, including without limitation 47 C.F.R. §§ 76.309, 76.1602, 76.1603, 76.1604, 76.1619.

Section 33. Section 10-21-2132 is hereby created to read as follows:

10-21-2132 - Reports, records, and maps.

- (a) Reports required. A grantee shall maintain up-to-date copies of the grantee's schedule of charges, contract or application forms for regular subscriber service, policy regarding the processing of subscriber complaints, delinquent subscriber disconnects and reconnect procedures and any other terms and conditions adopted as the grantee's policy in connection with its subscribers, and shall provide such information to the City upon request.
- (b) Records required. The grantee shall at all times maintain records sufficient to demonstrate the proper payment of the annual fee.
- (c) Maps. A grantee shall maintain a full and complete set of plans, records and "as built" maps showing the exact location of all cable system equipment installed or in use in the City streets, exclusive of subscriber service drops. Plans, records and "as built" maps will be available for inspection by the City Manager or his designee during normal business hours. Copies of maps shall be provided upon request.

Section 34. Section 10-21-2133 is hereby created to read as follows:

10-21-2133 - Inspection of property and records.

As necessary to ensure franchise compliance and/or the health, safety, and welfare of City residents, a grantee shall permit the City Manager, City Engineer or the City Auditor, or any duly authorized representative of the City Manager, City Engineer, or the City Auditor, to inspect and copy all franchise property and records related thereto, together with any appurtenant property of grantee situated within or without the City. Outside of emergency circumstances, such inspections shall be conducted at mutually agreeable times during normal business hours.

Section 35. Section 10-21-2134 is hereby created to read as follows:

10-21-2134 - Street occupancy.

- (a) A grantee shall comply with all generally applicable ordinances and regulations pertaining to the use and occupation of the streets.
- (b) The grantee shall comply with the City's permitting requirements prior to commencing any new construction in any streets. The City shall cooperate with the grantee in granting any permits required, providing that such grant and subsequent construction by the grantee shall

not unduly interfere with the use of such streets and that proposed construction shall be done in accordance with the current Lawton City Code of Ordinances.

Section 36. Section 10-21-2135 is hereby created to read as follows:

10-21-2135 - Request for removal or change.

- (a) The grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of said building. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the grantee shall have authority to require such payment in advance. The grantee shall be given not less than five days advance notice of any move contemplated, to arrange for temporary wire changes.
- (b) The City shall notify the grantee at least 30 days prior to the intention of the City to commence any construction in the streets that requires the relocation of the grantee's lines, wires or other network appurtenances so as not to interfere with such construction. To the extent there are state or federal funds available to compensate facility owners for the cost of relocating their facilities, a grantee shall be offered such compensation on a non-discriminatory basis.

Section 37. Section 10-21-2136 is hereby created to read as follows:

10-21-2136 - Fees, rates, and charges.

The City shall have the power to regulate fees, rates, and charges pursuant to applicable law.

Section 38. Section 10-21-2137 is hereby created to read as follows:

10-21-2137 - Employment practices.

A grantee shall comply with all applicable Federal, State, and local laws regarding its employment practices.

Section 39. Section 10-21-2138 is hereby created to read as follows:

10-21-2138 - Preferential or discriminatory practices prohibited.

A grantee shall not deny access to service to any group of potential subscribers because of the income of the residents of the local area in which the group resides, or because of race, color, religion, sex, or national origin.

Section 40. Section 10-21-2139 is hereby created to read as follows:

10-21-2139 - Compliance with applicable laws and regulations.

The grantee, at its expense, shall comply with all laws, orders, and regulations of Federal, State, and municipal authorities and with any directive of any public officer pursuant to law who shall legally impose any regulation, order, or duty upon the grantee with respect to the franchise.

Section 41. Section 10-21-2140 is hereby created to read as follows:

10-21-2140 - Liability and indemnification.

- (a) The City shall require a grantee to indemnify and hold harmless the City, its officers, boards, commissions, agents, and employees, against and from any and all claims, demands, causes of action, actions, suits, proceedings, damages (including but not limited to damages to City property and damages arising out of copyright infringements, and damages arising out of any failure by grantee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by grantee's cable system), costs or liabilities (including costs or liabilities of the City with respect to its employees), of every kind and nature whatsoever, including but not limited to, damages for injury or death or damage to person or property, and regardless of the merit of any of the same, and against all liability to others, and against any loss, cost, and expense resulting or arising out of any of the same, including any attorney fees, accountant fees, expert witness or consultant fees, court costs, per diem expense, traveling and transportation expense, or other costs or expense arising out of or pertaining to the exercise or the enjoyment of any franchise hereunder by the grantee, or the granting thereof by the City, provided that the grantee shall not be liable for any such damages, fees or expenses where any lawsuit is based on the actions or omissions of the City but not on any act or omission by the grantee.
- (b) The City shall require a grantee to maintain a general comprehensive liability insurance policy naming, as an additional insured, the City, its officers, boards, commissions, agents and employees, in a company mutually acceptable by the grantee and the City in a form satisfactory to the City protecting the City and all persons against liability for loss or damage for personal injury, death or property damage occasioned by the operations of the grantee under any franchise granted hereunder in the amount of:

 - (1) \$500,000.00 for bodily injury or death to any one person, within the limit, however, of \$1,000,000.00 for bodily injury or death resulting from any one accident.
 - (2) \$500,000.00 for property damage resulting from any one accident.
 - (3) workmen's compensation insurance in such coverage as may be required by the workmen's compensation insurance and safety laws of the State and amendments thereto.
- (c) Notice of cancellation and reduction of coverage. The insurance policies referred to above shall contain an endorsement stating that the policies are extended to cover the liability assumed by the grantee under the terms of this ordinance and shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled, or the amount of coverage thereof reduced until 30 days after receipt by the City by registered mail, of written notice of such intent to cancel or reduce the coverage."

Section 42. Section 10-21-2141 is hereby created to read as follows:

10-21-2141 - Receivership and foreclosure.

- (a) The franchise granted hereunder shall, at the option of the City Council or its designee, cease and terminate 120 days after the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of the franchise whether in a receivership, reorganization, bankruptcy, or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days, or unless:

 - (1) such receivers or trustees shall have, within 120 days after their election or appointment, fully complied with all the terms and provisions of this chapter and the franchise granted pursuant thereto, and the receivers or trustees within said 120 days shall have remedied all defaults under the franchise: and
 - (2) such receivers or trustees shall, within said 120 days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the franchise herein granted.
- (b) In the case of a foreclosure or other judicial sale of the plant, property and equipment of the grantee, or any part thereof, including or excluding this franchise, the Council or its designee may serve notice of termination upon the grantee and the successful bidder at such sale, in which event the franchise herein granted, and all rights and privileges of the grantee hereunder shall cease and terminate 30 days after service of such notice, unless:

 - (1) the Council shall have approved the transfer of this franchise, as and in the manner in this chapter provided; and
 - (2) such successful bidder shall have covenanted and agreed with the City to assume and be bound by all the terms and conditions of this franchise.

Section 43. Section 10-21-2142 is hereby created to read as follows:

10-21-2142 - Permits and authorizations.

- (a) A grantee shall diligently apply for all necessary permits and authorizations, required in the conduct of its business, and shall diligently pursue the acquisition thereof, including necessary pole attachment agreements and necessary authorizations from the Federal Aviation Agency to construct such receiving antenna towers as may be required and any necessary authorizations or waivers from the Federal Communications Commission.
- (b) A grantee shall not apply for any waivers, exceptions, or declaratory rulings from the Federal Communications Commission or any other Federal or State regulatory agency without the written notification to the City Manager or his designee.

Section 44. Section 10-21-2143 is hereby created to read as follows:

10-21-2143 - Rights reserved to the City.

- (a) Nothing herein shall be deemed or construed to impair or affect, in any way, to any extent, the right of the City to acquire the property of a grantee through the exercise of the right of eminent domain at a fair and just value, and nothing herein contained shall be construed to contract away or to modify or abridge, whether for a term or in perpetuity, the City's right of eminent domain.
- (b) There is hereby reserved to the City every right and power which is required to be herein reserved or provided by any law, and a grantee, by its acceptance of a franchise, agrees to be bound thereby and to comply with any action or requirements of the City in its exercise of such rights or power, heretofore or hereafter enacted or established, consistent with this chapter and the franchise granted pursuant to this chapter.
- (c) Neither the granting of any franchise nor any provision hereof shall constitute a waiver or bar to the exercise of any governmental right or power of the City.
- (d) If the Federal Communications Commission or any other Federal or State body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of any franchise granted under this chapter, then to the extent such jurisdiction shall preempt or preclude the exercise of like jurisdiction by the City, the jurisdiction of the City shall cease and no longer exist.
- (e) The preemption or preclusion of the exercise by the City of any of its police power shall not diminish, impair, alter, or affect any contractual benefit to the City or grantee, nor any contractual obligation of a grantee under any franchise issued hereunder. Any and all rights, power, privileges and authorities arising under this chapter or any franchise agreement are each and all hereby declared by the City and any grantee accepting any franchise hereunder to be contractual in nature and to be for the benefit of the City.
- (f) There is hereby reserved to the City the right to impose rules and regulations similar to but not more strict than those currently in effect under the jurisdiction of the FCC if and when the FCC chooses to abrogate its power and authority in any or all areas now under FCC control.
- (g) At the expiration of the term for which a franchise is granted or upon the termination and cancellation as provided therein, the City reserves the right to require the grantee to remove at its own expense any and all portions of the cable system from the public ways within the City.
- (h) The City reserves the right to require the Grantee to pay the costs of publication of this chapter.

Section 45. Section 10-21-2144 is hereby created to read as follows:

10-21-2144 - Forfeiture or revocation.

- (a) Grounds for revocation. The City reserves the right to revoke any franchise granted hereunder and rescind all rights and privileges associated with the franchise in the following circumstances, each of which shall represent a default and breach under this ordinance and the franchise grant:
- (1) if the grantee should default in the performance of any of its material obligations under this chapter or under the franchise.
 - (2) if the grantee should fail to provide or maintain in full force and effect, the liability and indemnification coverages as may be required herein.
 - (3) if any court of competent jurisdiction, the Federal Communications Commission or any State regulatory body by rules, decision, or other action determines that any material provision of the franchise documents, including this chapter, is invalid or unenforceable prior to the commencement of construction as set forth in Section 10-21-2129 herein.
 - (4) if the grantee should frequently violate any orders or rulings of any regulatory body having jurisdiction over the grantee relative to this franchise.
 - (5) if the grantee fails to receive necessary Federal Communications Commission certification.
 - (6) if the grantee ceases to provide services for any reason within the control of the grantee over the cable system.
 - (7) if the grantee is found by a court of competent jurisdiction to have attempted to evade any of the provisions of this chapter or the franchise agreement or practices any fraud or deceit upon the City.
- (b) A grantee shall not be declared at fault or be subject to any sanction under any provision of this chapter in any case in which performance of any such provision is prevented for reasons beyond the grantee's control. A fault shall not be deemed to be beyond the grantee's control if committed by an Affiliate or a corporation or other business entity in which the grantee holds a controlling interest, whether directly or indirectly.
- (c) Procedure prior to revocation.
- (1) the City Manager may make written demand that the grantee comply with any such requirement, limitation, term, condition, rule, or regulation. If the failure, refusal, or neglect of the grantee continues for a period of 30 days following such written demand, the City Manager may place his request for termination of the franchise upon the next regular Council meeting agenda. The City Manager shall cause to be served upon such grantee, at least ten days prior to the date of such Council meeting, a written notice of his intent to request such termination, and the time and place of the meeting, notice of which shall be published by the City Clerk at least once ten days before such meeting in a newspaper of general circulation within the City.
 - (2) the Council shall consider the request of the City Manager and shall hear any persons interested therein, and shall determine, in its discretion, whether or not any failure, refusal or neglect by the grantee was with just cause.

- (3) if such failure, refusal, or neglect by the grantee was with just cause, the Council shall direct the grantee to comply within such time and manner and upon such terms and conditions as are reasonable.
- (4) if the Council shall determine such failure, refusal or neglect by the grantee was without just cause, then the Council may, by resolution, declare that the franchise of such grantee shall be terminated unless there be compliance by the grantee within such period as the Council may fix.
- (d) Disposition of facilities. In the event a franchise is revoked, or is otherwise terminated, the City may order the removal of the network facilities from the City within a period of time as determined by the City or require the original grantee to maintain and operate its network until a subsequent grantee is selected.
- (e) Restoration of property. In removing its plant, structures and equipment, the grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to the company's removal of its equipment and appliances without affecting the electrical or telephone cable wires, or attachments. The City shall inspect and approve the condition of the public ways and public places, and cables, wires, attachments, and poles after removal. The liability indemnity and insurance as provided herein, shall continue in full force and effect during the period of removal and until full compliance by the grantee with the terms and conditions of this paragraph and this chapter.
- (f) Restoration by City, reimbursement of costs. In the event of a failure by the grantee to complete any work required by Subsection (c) above and/or Subsection (d) above, or any other work required by City law or ordinance within the time as may be established and to the satisfaction of the City, the City may cause such work to be done and the grantee shall reimburse the City the costs thereof within 30 days after receipt of an itemized list of such costs or the City may recover such costs. The City shall be permitted to seek legal and equitable relief to enforce the provisions of this section.
- (g) Extended operation. Upon the revocation of a franchise, the City may require the grantee to continue to operate the network for an extended period of time not to exceed one year from the date of such expiration or revocation, or as otherwise provided for by applicable law. The grantee shall, as trustee for its successor in interest, continue to operate the cable television system under the terms and conditions of this chapter and the franchise and to provide the regular subscriber service and any and all of the services that may be provided at that time. During such interim period, the grantee shall not sell any of the system assets nor shall the grantee make any physical, material, administrative or operational change that would tend to (1) degrade the quality of service to the subscribers, (2) decrease income, or (3) materially increase expenses without the express permission, in writing, of the City or its assignee. The City shall be permitted to seek legal and equitable relief to enforce the provisions of this section.
- (h) City's rights not affected. The revocation or termination and forfeiture of any franchise shall in no way affect any of the rights of the City under the franchise or any provision of law.

Section 46. Section 10-21-2145 is hereby created to read as follows:

10-21-2145 - Further agreement and waiver by grantee.

- (a) A grantee shall not be excused from complying with any of the terms and conditions of this chapter or the franchise agreement by any failure of the City, upon any one or more occasions, to insist upon the grantee's performance or to seek grantee's compliance with any one or more of such terms or conditions; provided, no penalty shall be assessed absent notice and opportunity to cure.
- (b) The grantee shall have no recourse whatsoever against the City for any loss, cost, expense, or damage arising out of any provision or requirement of this chapter or the franchise agreement or the regulation thereof.

Section 47. Section 10-21-2146 is hereby created to read as follows:

10-21-2146 - Protection of privacy.

Grantee shall comply with all provisions of applicable Federal and State law as it relates to subscriber privacy.

Section 48. Section 10-21-2147 is hereby created to read as follows:

10-21-2147 - Time is of the essence.

Whenever this ordinance or the franchise sets forth any time for any act to be performed by or on the behalf of the grantee, such time shall be deemed of the essence, and the grantee's failure to perform within the time allotted shall, in all cases, be sufficient grounds for the City to invoke the remedies available under the terms and conditions of this chapter and the franchise.

Section 49. Section 10-21-2148 is hereby created to read as follows:

10-21-2148 - Unauthorized connections or interference with franchisee.

- (a) It shall be unlawful for any person without the expressed consent of the grantee to make any connection, extension, or division, whether physically, acoustically, inductively, electronically, or otherwise with or to any segment of a franchised cable system for any purpose whatsoever, except as provided in Section 10-21-2121 herein.
- (b) It shall be unlawful for any person to willfully interfere with, tamper, remove, obstruct, or damage any part, segment, or content of a franchised cable system for any purpose whatsoever.

Section 50. Section 10-21-2149 is hereby created to read as follows:

10-21-2149 - Federal regulations adopted by reference.

The provisions of 47 Code of Federal Regulations (CFR), Part 76, Subpart N—Cable Rate Regulation, as currently promulgated, are hereby adopted by reference, shall be published by

summary, and shall be retained on file in the office of the City Clerk pursuant to 11 O.S. § 14-107.

Section 51. Section 10-21-2150 is hereby created to read as follows:

10-21-2150 - Summary publication of Federal regulations.

Summary publication of Part 76, Subpart N, shall be as follows:

47 CFR, Part 76, Subpart N—Cable Rate Regulation

47 CFR, Part 76, Subpart N—Cable Rate Regulation

Section 52. Section 10-21-2151 is hereby created to read as follows:

10-21-2151 - Effect of Federal regulations.

The provisions of 47 CFR, Part 76, Subpart N, as supplemented below and as applicable to any cable rate regulation proceeding before the Council of the City as a "franchising authority" under 47 USC § 543, shall govern such proceeding.

Section 53. Section 10-21-2152 is hereby created to read as follows:

10-21-2152 - Further definitions.

The following words, terms, and phrases, when used in this article or in 47 CFR, Part 76, Subpart N, shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning:

- (1) Cable operator means any "grantee" under this chapter.
- (2) Commission means the Federal Communications Commission.
- (3) FCC means the Federal Communications Commission.
- (4) Franchising authority means The City of Lawton, Oklahoma

Section 54. Section 10-21-2153 is hereby created to read as follows:

10-21-2153 - 47 CFR 76.935 procedure for consideration of the views of interested parties.

- (a) Any basic service, equipment or installation rate filing by a cable operator on the franchising authority under 47 CFR, Part 76, Subpart N, shall contain a brief summary or description for publication purposes, and shall include appropriate FCC forms and/or worksheets.
- (b) A cable operator shall make Subpart N filings with the City Clerk.
- (c) Upon such filing, the City Clerk shall forthwith place on the agenda for the next regularly scheduled meeting of the City Council an agenda item conforming to the requirements of

the Oklahoma Open Meeting Act (25 O.S. § 301 et seq.) for the Council to set a public hearing on said basic service, equipment, or installation rate request.

- (d) Said hearing shall then be set by Council on a date at least seven but not more than 14 days thereafter.
- (e) Notice of the date, time, and place of such hearing, together with a brief summary or description of the rate request, shall be published by the City Clerk in a newspaper of general circulation at least five days prior to said hearing.
- (f) In the event additional days are taken under 47 CFR 76.933, said hearing shall be deemed continued until final regulatory action is taken by the Council, which shall be in open meeting under the notice and agenda requirements of the Oklahoma Open Meeting Act.

Section 55. Section 10-21-2154 is hereby created to read as follows:

10-21-2154 - Effect of amendments to Federal regulations.

Any amendments to Subpart N as adopted by reference above shall be deemed effective as published by the FCC, including but not limited to effective dates; provided said amendments will not be enforced hereunder absent ratification by the Council; provided further that no 47 CFR 76.943 fines shall be levied thereunder absent adoption by the Council; and provided further that no gap in rate regulation authority shall be implied by or inferred from any failure of the Council to anticipate or simultaneously adopt revisions as contemplated at 47 USC § 543(b)(2).

Section 56. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, said portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this ordinance.

Section 57. Effective Date. The provisions of this ordinance shall become effective thirty days after passing of the ordinance.

ADOPTED and APPROVED by the Council of the City of Lawton, Oklahoma this 11th day of January, 2022.

STANLEY BOOKER, MAYOR

ATTEST:

TRACI L. HUSHBECK, CITY CLERK

ORDINANCE NO. 22-____

AN ORDINANCE CREATING SECTIONS 10-21-2101 THROUGH 10-21-2154, ARTICLE 10-21, CHAPTER 10, LAWTON CABLE FRANCHISE ORDINANCE 2022, LAWTON CITY CODE, 2015; BY CREATING THE ARTICLE, CREATING REGULATIONS FOR GRANTING NEW CABLE FRANCHISES, CREATING REGULATIONS FOR CABLE FRANCHISE GRANTEE'S OPERATION AND MAINTENANCE, PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

BRIEF GIST

This ordinance creates regulations for granting new cable franchises and regulations for cable franchise grantee's operation and maintenance of their cable system.

ADOPTED and APPROVED by the Council of the City of Lawton, Oklahoma this 11th day of January, 2022.

STANLEY BOOKER, MAYOR

ATTEST:

TRACI L. HUSHBECK, CITY CLERK

(Published in the Lawton Constitution this ____ day of _____, 2022.)