

Chapter 9

CABLE TELEVISION*

* **Cross References:** Streets, sidewalks and other public places, Ch. 29; utilities and services, Ch. 34.

Art. I. In General, §§ 9-1--9-29

Art. II. Basic Cable Rate Regulation, §§ 9-30--9-99

Art. III. Owosso Community Television, §§ 9-100--9-110

ARTICLE I.

IN GENERAL

Sec. 9-1. Definitions.

For the purposes of this chapter the following terms, phrases and words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular, and words in the singular include the plural. The word "shall" is mandatory not merely directory.

City is the City of Owosso.

Company is the grantee of this franchise.

Council is the City Council of Owosso.

Person is any person, firm, corporation, partnership, association, company or organization of any kind.

Television is the transmission of audio signals and/or visual images by means of electrical impulses.

Signal shall mean the transmission of any signal or data.

(Code 1977, § 7.271; Ord. No. 370, § 1, 3-16-81)

Cross References: Definitions and rules of construction generally, § 1-2.

Sec. 9-2. Grant of authority.

(a) The city hereby grants to the company the right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, alleys and public ways now laid out or dedicated and all extensions thereof and additions thereto in the city, poles, wires, cables, underground conduits, man holes and all television conductors and fixtures necessary for the maintenance and operation in the city of a community television system for the interception, sale and distribution of television.

(b) The city reserves the right to require the company to place its conductors underground in all areas where electrical and telephone conductors now are or may hereafter be placed underground, and also to order the removal or relocation of poles, wires and other appurtenances, erected by the company whenever in the judgment of the council such action is in the public interest and the company shall forthwith comply with any and all instructions and directions in such matters at its own expense.

(c) The company shall, at all times during the life of this franchise, be subject to all lawful exercise of the police power of the city, and to such reasonable regulations as the city shall hereafter by resolution or ordinance provide.

(d) The right to use and occupy said streets, alleys and public places for the purposes herein set forth shall not be exclusive, and the city reserves the right to grant a similar use to any other person at any time during the term of this franchise.

(Code 1977, § 7.272)

State Law References: Consent for construction in rights-of-way by cable television companies required from municipalities, MCL 247.183, MSA 9.263.

Sec. 9-3. Compliance with applicable laws and ordinances.

The company at all times during the life of the franchise shall be subject to all lawful exercise of the police power of the city, and to such reasonable regulations as the city shall by resolution or ordinance provide. (Code 1977, § 7.273)

Sec. 9-4. Company liability; indemnification.

(a) The company shall at all times indemnify, protect and save the city harmless from and against all liability, claims and damages whatsoever, including any payments required by the worker's compensation law, which may arise out of or be caused by the erection, location, maintenance, repair, installation, replacement and/or removal of any of its equipment for facilities used in its television business in the city and by any act or omission of the company, its agents or employees.

(b) The company shall carry insurance with a responsible insurance company licensed to do business in the state, of not less than one hundred thousand dollars (\$100,000.00) against property damage for any one accident, and the company shall carry insurance of not less than five hundred thousand dollars (\$500,000.00) per person and one million dollars (\$1,000,000.00) per accident for liability due to personal injury or death. Such insurance shall protect the parties hereto from and against all claims, demands, accidents, judgments, and liability which may arise or result directly or indirectly from or by reason of such loss, injury or damages as set out in the first sentence of this section. All insurance required hereby shall be kept and maintained by the company in full force and effect during the entire life of this franchise. The company shall also carry insurance to protect it from all claims under the worker's compensation law applicable to it. To meet the foregoing requirements the policies of such insurance and the companies issuing them must be those approved by the city attorney, and copies thereof or certificates of insurance filed in the office of the city clerk, and shall be purchased and filed prior to the commencement of any construction by the company.

(c) The city shall notify the company or any representative thereof within ten (10) days after any claim or demand, either by suit or otherwise, if made against the city on account of company operations. Notice

by registered or certified mail deposited in the U.S. Post Office with postage pre-paid addressed to the company or its representatives at its last known address within such ten (10) day period shall satisfy this requirement, or notice by telephone, telegraph, or other means of communication may be given with like effect within said period.

(Code 1977, § 7.274)

Sec. 9-5. Service standards.

(a) The company shall maintain and operate its system in good working order at all times and render efficient service in accordance with such rules and regulations as are, or may be, set forth by the council as provided for in section 9-12 or by the public service commission of the state.

(b) Construction and maintenance of the transmission distribution system, including house connections, shall be in accordance with the provisions of the National Electrical Safety Code, prepared by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters and such applicable ordinances of the city, laws of the state, and of the United States, affecting such installations which may be presently in effect or may from time to time in the future be in effect, including the securing of all permits for such construction and maintenance required by any city ordinances. All installations of equipment shall be of a permanent nature, durable and installed in accordance with good engineering practice, and maintained in a safe suitable and substantial condition in good order and repair, and of sufficient height to company with all city regulations, ordinances and state laws, and so as not to interfere in any manner with the rights of the public or individual property owners, or to endanger the lives of any persons or interfere with travel and the use of public places by the public, and the construction, repair or removal thereof shall be done in such a manner as not to obstruct or impede traffic.

(c) Whenever it is necessary to shut off or interrupt service for the purpose of making repairs, adjustments or installations, the company shall do so at such time as will cause the least amount of inconvenience to its customers, and unless such interruption is unforeseen and immediately necessary, it shall give reasonable notice thereof to its customers.

(d) The company shall maintain its service in accordance with the best accepted standards of the industry, and the antenna and receiving equipment shall be installed and maintained so as to give a reasonably noise-free picture on each channel. Installation and maintenance of equipment shall be such that the standard NTSC color signals shall be transmitted to any subscriber receiver without objectionable picture degradation.

(e) The company is granted the right to contract with subscribers for what is commonly called "Pay TV" at rates to be set by the company, provided, however, that in the provision of said service the company shall not diminish its present level of service or number of channels presently provided to its present subscribers at current rates. Provided, further, that no materials or programs offensive to the community standards of morality shall be transmitted over such cable network nor MPAA X-rated films.

(Code 1977, § 7.275; Ord. No. 370, § 2, 3-16-81)

Sec. 9-6. Company rules.

The company shall have authority to promulgate such rules and regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable it to exercise its rights and

perform its obligations under this franchise, and to assure uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof, the laws of the state, or the rules and regulations of any state or federal regulatory body having jurisdiction thereof.

(Code 1977, § 7.276)

Sec. 9-7. Conditions on street occupancy.

(a) *Use.* All transmission and distribution structures, lines and equipment erected by the company within the city shall be so located as to cause a minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners adjoining same.

(b) *Restoration.* In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the company shall, at its own cost and expense, and in a manner approved by the city engineer, replace and restore same in as good condition as before the work was commenced, and shall maintain said restoration in a condition approved by the city engineer.

(c) *Relocation.* If at any time during the life of this franchise the city shall elect to alter or change the grade of any street, alley or other public way, or to close, vacate, abandon, relocate, reopen, extend, pave or repave same, the company, upon reasonable notice by the city, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures and equipment as the city shall direct, at its own expense.

(d) *Placement of fixtures.* The company shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone facility, water hydrant, main or sewer, and all such fixtures placed in any street shall be placed at the edge of the sidewalk and inside the curb line, and those placed in alleys shall be placed close to the line of the lot abutting on said alley and in such manner as not to interfere with travel on said streets, alleys and public ways.

(e) *Temporary removal of wires for building moving.* The company shall on the request of any person holding a building moving permit issued by the city temporarily remove, raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising, or lowering the wires shall be paid by the person requesting same, and the company shall have the authority to require such payment in advance. The company shall be given not less than forty-eight (48) hours' advance notice to arrange for complying with the provisions of this paragraph.

(f) *Tree trimming.* The company shall have the authority to trim trees overhanging streets, alleys, sidewalks and public ways of the city so as to prevent the branches of such trees from coming in contact with the wires and cables of the company, all trimming to be done under the supervision and direction of the city at the expense of the company.

(Code 1977, § 7.277)

Sec. 9-8. Preferential or discriminatory practices prohibited.

The company shall not, as to rates charged, service, facilities, rules, regulations or in any other respect,

make or grant any preference or advantage to any person, not subject any person to any discrimination, prejudice or disadvantage, providing that nothing in this franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled, or be deemed to prohibit the suspension of the terms of this section for a limited time during advertised promotional campaigns of the company.
(Code 1977, § 7.278)

Sec. 9-9. Extension policy.

(a) The company shall file with the city clerk its extension policy approved by the council and the state public service commission and federal communications commission, if required, and the company shall not make or refuse to make any extension except in accordance with the policy and permitted by this franchise.

(b) The company shall extend its lines to serve all applicants for television service whose dwellings or places of business are located in the city who in good faith have entered into a contract for such service, provided, that additional charges in any area of the city with a population density of less than fifty (50) homes per cable mile of system may be added to the installation charges when necessary to cover extra installation costs.

(c) Publication. Upon acceptance of this franchise the company, at its own expense, shall publish in a newspaper of general circulation in the city its extension policy filed and approved as aforesaid.
(Code 1977, § 7.279)

Sec. 9-10. Approval of transfer.

The company shall not sell or transfer its plant or system to another or transfer any rights under this franchise to another without city approval. No sale or transfer shall be effective until the vendee or transferee has filed in the office of the city clerk as instrument duly executed reciting the fact of such sale, or transfer, accepting terms, conditions and provisions thereof.
(Code 1977, § 7.280)

Sec. 9-11. Subcontracting construction.

The company may subcontract the construction, erection and maintenance of poles, wires, cables, underground conduits, manholes and other fixtures and equipment necessary for the operation and maintenance of its community television system, or may lease such facilities from a utility or utilities now serving the community or which may subsequently be authorized to serve same.
(Code 1977, § 7.281)

Sec. 9-12. City rules.

The city hereby reserves the right to adopt such additional rules and regulations as it may find necessary in the exercise of its police power, in addition to the provisions herein contained and those of existing applicable ordinances, provided, that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted nor the laws of the state.
(Code 1977, § 7.282)

Sec. 9-13. Supervision and inspection.

The city shall have the right to supervise all construction and installation work done under this franchise and to make such inspections of same and of the maintenance thereof as it shall deem necessary to ensure compliance with this franchise and the provisions of other applicable ordinances.
(Code 1977, § 7.282)

Sec. 9-14. Payment to city.

(a) For and in consideration of the granting of this franchise, the company, upon the execution hereof, shall pay to the city the sum of one thousand dollars (\$1,000.00), and in the event the company shall fail to commence giving cable television service in the city on or before eighteen (18) months from the date of this agreement, then, this amount shall be forfeited as a penalty for failing to commence giving cable television service to the city.

(b) And for the privilege of operating a community television system under this franchise the company shall pay to the city annually, not later than sixty (60) days after the company's fiscal year end, a sum of money equal to three (3) percent of the annual gross revenues received by it from sales of its service to its customers in the city, excluding all installation and connection charges necessary to enable the company to give service.

(c) The one thousand dollar (\$1,000.00) down payment will be credited to any monies due the city for service revenue percentage payment during the period of the franchise.
(Code 1977, § 7.273)

Sec. 9-15. Rates.

(a) The rates to be charged shall be fair and reasonable and no higher than necessary to meet cost of service, assuming efficient and economical management and including a fair rate of return.

The council shall be notified thirty (30) days in advance of any rate increase, and if such rates are not in compliance with the standards set forth in this subsection, the council may, after hearing, put into effect such rates as it deems fair to the public and the franchise holder.

(b) The company shall provide one (1) community channel. This channel shall be equipped and maintained by the company to provide the following: Audio override on all channels, equipment necessary for character generation and video and audio feed or video tapes. The above equipment shall be located in the public safety building, and shall be installed and completed within twelve (12) months from this date.
(Code 1977, § 7.284; Ord. No. 370, § 3, 3-16-81)

Sec. 9-16. Records and reports.

The city shall have access at all reasonable hours to all of the company's financial, customer and service records relating to its operation in the city. The following records and reports shall be filed with the city clerk in the local office to the company:

- (1) *Company rules and regulations.* Copies of such rules, regulations, terms and conditions as are adopted by the company for the conduct of its business.
- (2) *Gross revenues.* The company shall provide a financial accounting of gross revenues received, certified by an independent auditing firm, acceptable to the city and attested to by an officer of company. The financial accounting shall be presented not later than sixty (60) days after the end of the company's fiscal year.

(Code 1977, § 7.215; Ord. No. 370, § 4, 3-16-81)

Sec. 9-17. Term of franchise.

(a) This franchise and the rights herein granted shall take effect and be in force from and after its acceptance by the company, the final adoption of this chapter by the city, and payment by the company of the initial fee provided for in section 9-16 hereof, and shall continue in force and effect for a term of twenty-five (25) years after its effective date, unless sooner revoked for any of the reasons hereinafter set forth.

(b) The company shall proceed as soon as possible and no longer than ninety (90) days from the effective date hereof to obtain all other necessary permits, authorizations and licenses which may be required in the conduct of its business, both public and private, and shall commence construction within six (6) months from the granting of such permits or licenses, as required.

(c) Installation of the system shall be completed and the company shall be prepared to furnish service to subscribers within a period of eighteen (18) months from the effective date of this franchise. If for any reason the company shall fail or neglect to complete its installation and be prepared to furnish service by that date this franchise shall become null and void and have no further force or effect.

(d) The company may surrender this franchise at any time upon filing with the city a written notice of its intention so to do at least sixty (60) days before the surrender date. On the surrender date specified in such notice all the rights and privileges and the obligations, duties and disabilities of the company shall cease and terminate, except that the company shall have an additional six (6) months to remove its plant and equipment from the city. At the end of said six (6) months' period any property owned by the company not removed from the city shall become the property of the city to do with it as it may choose. Any costs or expense incurred by the city in removing the company's former property from its streets or lands shall be a valid claim against the company's performance bond.

(e) The company shall not engage in the sale, rental or repair of television receivers. The installations and operation by the company shall be so maintained as not to interfere in any way with television reception already in existence.

(Code 1977, § 7.286)

Sec. 9-18. Special service.

(a) The company shall, without charge for installation, maintenance or service, make single installations of its standard community antenna facilities at each fire station, public and parochial school in the city.

(b) The company shall make its facilities available on a temporary basis without charge, to the city, the state and/or the United States of America, or the civil defense authorities for the communication to residents of any information pertaining to war, threat of war, natural catastrophe, or other information designed to protect or save lives or property.
(Code 1977, § 7.287)

Sec. 9-19. Penalties.

Any violation by the company, its vendee, lessee or successor of the provisions of this franchise, or failure promptly to perform any of the provisions of this franchise shall be cause for the forfeiture of same and all rights thereunder to the city.
(Code 1977, § 7.288)

Secs. 9-20--9-29. Reserved.

ARTICLE II.

**BASIC CABLE
RATE REGULATION**

Sec. 9-30. Definitions.

For purposes of this article, "Act" shall mean the Communications Act of 1934, as amended (and specifically as amended by the Cable Televisions Consumer Protection and Competition Act of 1992, Pub. L. 102-385), and as may be amended from time to time; "FCC" shall mean the Federal Communications Commission; "FCC Rules" shall mean all rules of the FCC promulgated from time to time pursuant to the Act; "basic cable service" shall mean "basic service" as defined in the FCC Rules, and any other cable television service which is subject to rate regulation by the city pursuant to the Act and the FCC Rules; "associated equipment" shall mean all equipment and services subject to regulation pursuant to 47 CFR § 76.923; and an "increase" in rates shall mean an increase in rates or a decrease in programming or customer services. All other words and phrases used in this article shall have the same meaning as defined in the Act and FCC Rules.
(Ord. No. 510, § 1, 10-4-93)

Sec. 9-31. Purpose; interpretation.

The purpose of this article is to: (1) adopt regulations consistent with the Act and the FCC Rules with respect to basic cable service rate regulations, and (2) prescribe procedures to provide a reasonable opportunity for consideration of the views of interested parties in connection with basic cable service rate regulation by the city. This article shall be implemented and interpreted consistent with the Act and FCC Rules.
(Ord. No. 510, § 1, 10-4-93)

Sec. 9-32. Rate regulations promulgated by FCC.

In connection with the regulation of rates for basic cable service and associated equipment, the City of Owosso shall follow all FCC Rules.

(Ord. No. 510, § 1, 10-4-93)

Sec. 9-33. Filing; additional information; burden of proof.

(a) A cable operator shall submit its schedule of rates for the basic service tier and associated equipment or a proposed increase in such rates in accordance with the Act and the FCC Rules. The cable operator shall include as part of its submission such information as is necessary to show that its schedule of rates or its proposed increase in rates complies with the Act and FCC Rules. The cable operator shall file ten (10) copies of the schedule or proposed increase with the city clerk. For purposes of this article, the filing of the cable operator shall be deemed to have been made when at least ten (10) copies have been received by the city clerk. The city council may, by resolution or otherwise, adopt rules and regulations prescribing the information, data and calculations which must be included as part of the cable operator's filing of the schedule of rates or a proposed increase.

(b) In addition to information and data required by rules and regulations of the city pursuant to subsection (a) above, a cable operator shall provide all information requested by the city manager in connection with the city's review and regulation of existing rates for the basic service tier and associated equipment or a proposed increase in these rates. The city manager may establish deadlines for submission of the requested information and the cable operator shall comply with such deadlines.

(c) A cable operator has the burden of proving that its schedule of rates for the basic service tier and associated equipment or a proposed increase in such rates complies with the Act and the FCC Rules including, without limitation, 47 USC § 543 and 47 CFR §§ 76.922 and 76.923.

(Ord. No. 510, § 1, 10-4-93)

Sec. 9-34. Proprietary information.

(a) If this article, any rules or regulations adopted by the city pursuant to section 9-33(a), or any request for information pursuant to section 9-33(b) requires the production of proprietary information, the cable operator shall produce the information. However, at the time the allegedly proprietary information is submitted, a cable operator may request that specific, identified portions of its response be treated as confidential and withheld from public disclosure. The request must state the reason why the information should be treated as proprietary and the facts that support those reasons. The request for confidentiality will be granted if the city determines that the preponderance of the evidence shows that nondisclosure is consistent with the provisions of the Freedom of Information Acts, 5 U.S.C. § 552 and MCL 15.231. The city shall place in a public file for inspection any decision that results in information being withheld. If the cable operator requests confidentiality and the request is denied: (1) where the cable operator is proposing a rate increase, it may withdraw the proposal, in which case the allegedly proprietary information will be returned to it; or (2) the cable operator may seek review within five (5) working days of the denial in any appropriate forum. Release of the information will be stayed pending review.

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

any appropriate forum. Disclosure will be stayed pending resolution of any appeal.

(c) The procedures set forth in this section shall be construed as analogous to and consistent with the rules of the FCC regarding requests for confidentiality including, without limitations, 47 CFR § 0.459. (Ord. No. 510, § 1, 10-4-93)

Sec. 9-35. Public notice; initial review of rates.

Upon the filing of ten (10) copies of the schedule of rates or the proposed increase in rates pursuant to section 9-33(a) above, the city clerk shall publish notice in a newspaper of general circulation in the city which shall state that: (1) the filing has been received by the city clerk and (except those parts which may be withheld as proprietary) is available for public inspection and copying, and (2) interested parties are encouraged to submit written comments on the filing to the city clerk not later than seven (7) days after the public notice is published. The city clerk shall give notice to the cable operator of the date, time, and place of the meeting at which the city council shall first consider the schedule of rates or the proposed increase. This notice shall be mailed by first-class mail at least three (3) days before the meeting. In addition, if a written staff or consultant's report on the schedule of rates or the proposed increase is prepared for consideration of the city council, then the city clerk shall mail a copy of the report by first-class mail to the cable operator at least three (3) days before the meeting at which the city council shall first consider the schedule of rates or the proposed increase. (Ord. No. 510, § 1, 10-4-93)

Sec. 9-36. Tolling order.

After a cable operator has filed its existing schedule of rates or a proposed increase in these rates, the existing schedule of rates will remain in effect or the proposed increase in rates will become effective after thirty (30) days from the date of filing under section 9-33(a) above unless the city council (or other properly authorized body or official) tolls the thirty-day deadline pursuant to 47 CFR § 76.933 by issuing a brief written order, by resolution or otherwise, within thirty (30) days of the date of filing. The city council may toll the thirty-day deadline for an additional ninety (90) days in cases not involving cost-of-service showings and for an additional one hundred fifty (150) days in cases involving cost-of-service showings. (Ord. No. 510, § 1, 10-4-93)

Sec. 9-37. Public notices; hearing on basic cable service rates following tolling of thirty-day deadline.

If a written order has been issued pursuant to section 9-36 and 47 CFR § 76.933 to toll the effective date of existing rates for the basic service tier and associated equipment or a proposed increase in these rates, the cable operator shall submit to the city any additional information required or requested pursuant to section 9.33 of this article. In addition, the city council shall hold a public hearing to consider the comments of interested parties within the additional ninety (90) days or one hundred fifty-day period, as the case may be. The city clerk shall publish a public notice of the public hearing in a newspaper of general circulation within the city which shall state: (1) the date, time, and place at which the hearing shall be held; (2) interested parties may appear in person, by agent, or by letter at such hearing to submit comments on or objections to the existing rates or the proposed increase in rates; and (3) copies of the schedule of rates or the proposed increase in rates and related information (except those parts which may be withheld as proprietary) are available for inspection or copying from the office of the clerk. The public notice shall be published not less than fifteen (15) days before the hearing. In addition, the city clerk shall mail by first-class mail a copy of the public notice to the cable operator

not less than fifteen (15) days before the hearing.
(Ord. No. 510, § 1, 10-4-93)

Sec. 9-38. Staff or consultant report; written response.

Following the public hearing, the city manager shall cause a report to be prepared for the city council which shall (based on the filing of the cable operator, the comments or objections of interested parties, information requested from the cable operator and its response, staff or consultant's review, and other appropriate information) include a recommendation for the decision of the city council pursuant to section 9-39. The city clerk shall mail a copy of the report to the cable operator by first-class mail not less than twenty (20) days before the city council acts under section 9-39. The cable operator may file a written response to the report with the city clerk. If at least ten (10) copies of the response are filed by the cable operator with the city clerk within ten (10) days after the report is mailed to the cable operator, the city clerk shall forward it to the city council.

(Ord. No. 510, § 1, 10-4-93)

Sec. 9-39. Rate decisions and orders.

The city council shall issue a written order, by resolution or otherwise, which in whole or in part, approves the existing rates for basic cable service and associated equipment or a proposed increase in such rates, denies the existing rates or proposed increase, orders a rate reduction, prescribes a reasonable rate, allows the existing rates or proposed increase to become effective subject to refund, or orders other appropriate relief, in accordance with the FCC Rules. If the city council issues an order allowing the existing rates or proposed increase to become effective subject to refund, it shall also direct the cable operator to maintain an accounting pursuant to 47 CFR § 76.933. The order specified in this section shall be issued within ninety (90) days of the tolling order under section 9-36 in all cases not involving a cost-of-service showing. The order shall be issued within one hundred fifty (150) days after the tolling order under section 9-36 in all cases involving a cost-of-service showing.

(Ord. No. 510, § 1, 10-4-93)

Sec. 9-40. Refunds; notice.

The city council may order a refund to subscribers as provided in 47 CFR § 76.942. Before the city council orders any refund to subscribers, the city clerk shall give at least seven (7) days written notice to the cable operator by first-class mail of the date, time, and place at which the city council shall consider issuing a refund order and shall provide an opportunity for the cable operator to comment. The cable operator may appear in person, by agent, or by a letter at such time for the purpose of submitting comments to the city council.

(Ord. No. 510, § 1, 10-4-93)

Sec. 9-41. Written decisions; public notices.

Any order of the city council pursuant to section 9-39 or section 9-40 shall be in writing, shall be effective upon adoption by the city council, and shall be deemed released to the public upon adoption. The clerk shall publish a public notice of any such written order in a newspaper of general circulation within the city which shall: (1) summarize the written decision; and (2) state that copies of the text of the written decision are available for inspection or copying from the office of the clerk. In addition, the city clerk shall mail a copy of

the text of the written decision to the cable operator by first-class mail.
(Ord. No. 510, § 1, 10-4-93)

Sec. 9-42. Rules and regulations.

In addition to rules promulgated pursuant to section 9-33, the city council may, by resolution or otherwise, adopt rules and regulations for basic cable service rate regulation proceedings (including, without limitation, the conduct of hearings), consistent with the Act and the FCC rules.
(Ord. No. 510, § 1, 10-4-93)

Sec. 9-43. Failure to give notice.

The failure of the city clerk to give the notices or to mail copies of the reports as required by this article shall not invalidate the decisions or proceedings of the city council.
(Ord. No. 510, § 1, 10-4-93)

Sec. 9-44. Additional hearings.

In addition to the requirements of this article, the city council may hold additional public hearings upon such reasonable notice as the city council, in its sole discretion, shall prescribe.
(Ord. No. 510, § 1, 10-4-93)

Sec. 9-45. Additional powers.

The city shall possess all powers conferred by the Act, the FCC Rules, the cable operator's franchise, and all other applicable law. The powers exercised pursuant to the Act, the FCC Rules, and this article shall be in addition to powers conferred by law or otherwise. The city may take any action not prohibited by the Act and the FCC Rules to protect the public interest in connection with basic cable service rate regulation.
(Ord. No. 510, § 1, 10-4-93)

Sec. 9-46. Failure to comply; remedies.

The city may pursue any and all legal and equitable remedies against the cable operator (including, without limitation, all remedies provided under a cable operator's franchise with the city) for failure to comply with the Act, the FCC Rules, any orders or determinations of the city pursuant to this article, any requirements of this article, or any rules or regulations promulgated hereunder. Subject to applicable law, failure to comply with the Act, the FCC Rules, any orders or determinations of the city pursuant to this article, any requirements of this article, or any rules and regulations promulgated hereunder, shall also be sufficient grounds for revocation or denial of renewal of cable operator's franchise.
(Ord. No. 510, § 1, 10-4-93)

Sec. 9-47. Severability.

The various parts, sections, and clauses of this article are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the article shall not be affected thereby.

(Ord. No. 510, § 1, 10-4-93)

Sec. 9-48. Conflicting provisions.

In the event of any conflict between this article and the provisions of any prior ordinance, or any franchise, permit, consent agreement or other agreement with a cable operator, then the provisions of this article shall control.

(Ord. No. 510, § 1, 10-4-93)

Sec. 9-49. Effective date.

This article shall become effective October 24, 1993.

(Ord. No. 510, § 1, 10-4-93)

Secs. 9-50--9-99. Reserved.

ARTICLE III.

OWOSSO COMMUNITY TELEVISION

Sec. 9-100. Purpose of OCTV.

(a) The Owosso Community Television (OCTV) studio has been established to provide support services necessary for video casting locally produced television programs.

(b) It is the purpose of OCTV to provide the people of the city and organizations in the Owosso area with an opportunity to be involved in using the television medium to inform, communicate, educate and entertain. It is also the purpose of OCTV to provide the Owosso community with locally produced programs of public interest.

(c) The following television channels shall be operated by OCTV:

(1) *Channel 3.* This channel or its successor shall be known as the "public access channel" and shall be used solely to cablecast non-profit, non-commercial programming produced or sponsored by individuals or organizations in the Owosso area. When the aforementioned programming is not scheduled, this channel may cablecast either an electronic message board to be known as the "public access electronic message board" or the Channel 10 electronic message board. The public access electronic message board shall be used solely for promotion of the public access channel and shall not be used for "for-profit" commercials or advertisements. Messages cablecast on the public access electronic message board may not contain any of the following:

- a. Obscene material as the same is defined and regulated under Act No. 343 of the Public Acts of Michigan of 1984, being MCL 752.362 et seq.
- b. Slanderous or libelous material.

- (2) *Channel 10.* This channel or its successors shall be known as the "government/education access channel" and shall be used to cablecast non-profit, non-commercial programs produced or submitted by government or educational agencies. When the aforementioned programming is not scheduled, this channel shall cablecast an electronic message board containing government or educational messages submitted by government or educational agencies, or an electronic message board used for the promotion of community activities, meetings or events by non-profit organizations within the county, as determined by the city administration. Electronic messages advising of emergencies, including but not limited to weather emergencies, shall take precedence over all other programming on this channel.

(Ord. No. 687, § 1, 10-15-07)

Sec. 9-101. Access channels program restrictions.

- (a) No program, production or presentation shall be cablecast that contains any of the following:

- (1) Information which relates directly or indirectly to a lottery, gift, enterprise or similar scheme, offering prizes dependent upon lot or chance.
- (2) Obscene material as the same is defined and regulated under Public Act 343 of the Public Acts of the State of Michigan of 1984, being MCL 752.362 et seq.
- (3) Slanderous or libelous material.

(b) Cablecasting of programs, productions or presentations shall be for noncommercial, nonprofit purposes only and accordingly, the following shall be excluded:

- (1) Material, the primary purpose of which is to promote a commercial service, product, trade or business.
- (2) Program material which identifies any product, service, trademark or brand name in a manner that is not reasonably related to the noncommercial use of such product, service, trademark or brand name, portrayed on the program material.
- (3) Any solicitation for funds or other goods that would benefit the access user or his/her agent.

(Ord. No. 687, § 1, 10-15-07)

Sec. 9-102. Electronic message board restrictions.

- (a) The electronic message board is for informational purposes only and may be used for:

- (1) The promotion of community activities, meetings or events by non-profit organizations.
- (b) The electronic message board shall not be used for "for-profit" commercials or advertisements.
- (c) No electronic message shall be cablecast that contains any of the following:

(1) Obscene material as the same is defined and regulated under Act No. 343 of the Public Acts of Michigan of 1984, being MCL 752.362 et seq.

(2) Slanderous or libelous material.

(Ord. No. 687, § 1, 10-15-07)

Sec. 9-103. Rules and procedures.

The city council shall establish by resolution such rules and procedures relative to the general administration, control, supervision and uses of OCTV facilities as shall be deemed necessary or advisable. Scheduling of cablecast time on any channels that may now or hereafter be designated as a government or school district channel by the city council of the city and any use of a OCTV access channel or channels, including the use of any OCTV studio or equipment, by the city council of the city or by the city manager or his or her designee may be exempt from all or part of these rules, as determined by the city manager or his designee. A copy of said rules and procedures shall be published and maintained in the office of the city clerk.

(Ord. No. 687, § 1, 10-15-07)

Sec. 9-104. Cable access advisory commission--Created.

There is hereby established an advisory body to the city council to be known as the cable access advisory commission, hereinafter to be known as the "commission," which shall act solely in an advisory capacity to the city council with regard to all aspects of public access cable service in the city.

(Ord. No. 687, § 1, 10-15-07)

Sec. 9-105. Same--Membership.

Membership of the commission shall consist of seven (7) citizen at large voting members possessing the qualifications to hold appointed office as stated in Charter sections 4.2 and 4.3. Whenever possible, members shall be cable subscribers.

The person from the administrative staff of the city who has been designated by the city manager as the OCTV coordinator shall be an ex officio member of the commission but without the right to vote.

(Ord. No. 687, § 1, 10-15-07; Ord. No. 706, § 1, 4-20-09)

Sec. 9-106. Same--Term of members.

Each at large member of the commission shall be appointed for a term of three (3) years commencing on July 1 except that the members at the time of this reorganization shall begin their terms immediately with two (2) of said members being appointed for term ending June 30, 2009, two (2) said members being appointed for terms ending June 30, 2010, and three (3) said member being appointed for terms ending June 30, 2011. Terms for current members previously appointed annually will be determined by drawing. Seats originally assigned to members representing local organizations will convert to citizen at large positions upon the expiration of their assigned term.

(Ord. No. 687, § 1, 10-15-07; Ord. No. 706, § 1, 4-20-09)

Sec. 9-107. Same--Internal administration.

The commission shall select one (1) of its voting members as chair and shall designate the ex-officio member as secretary. The commission may adopt such rules as it deems necessary for the transaction of its business. Any decision of the commission shall require the concurrence of four (4) members. The commission shall meet as often as necessary with at least one (1) meeting each calendar quarter and all of its meetings shall comply with the open meetings act.

(Ord. No. 687, § 1, 10-15-07; Ord. No. 706, § 1, 4-20-09)

Sec. 9-108. Same--Specific duties.

The commission shall have the following specific duties:

- (1) Advise the city council regarding general policy matters related to the services provided to public access producers and viewers pursuant to the Code of Ordinances of the city.
- (2) Encourage the use of public access channels among the widest range of institutions, groups, and individuals within the city.
- (3) Make an annual report to the city which shall include, but not be limited to, a summary report on the utilization of any public access channels and a summary report of the commission's deliberations throughout the year.
- (4) Request comments and encourage suggestions from the public regarding public access channels.
- (5) Perform such other functions as the city council may direct.
- (6) Conduct public hearings at the request of the city council

(Ord. No. 687, § 1, 10-15-07)

Sec. 9-109. Same--Finances.

The commission shall not have the power to expend public funds but may make recommendations to the city council for budget purposes.

The commission shall not engage in rate regulation, rate change request processing, financial analysis, legal interpretation, or contractual negotiation with a cable operator or public service channel operator.

(Ord. No. 687, § 1, 10-15-07)

Sec. 9-110. Effective date.

This article shall become effective November 4, 2007.

(Ord. No. 687, § 1, 10-15-07)