



# Franchise Ordinance

August 2016

## ORDINANCE NO. 325

### AN ORDINANCE ESTABLISHING REGULATIONS AND STANDARDS FOR GRANTING CABLE TELEVISION

The Board of supervisors of the Town of Empire ordains as follows:

#### SECTION 1. TITLE

This ordinance shall be known as the Town of Empire Cable Television Franchise Ordinance.

#### SECTION 2. INTENT

- A. The Town, pursuant to applicable laws, is authorized to grant one or more nonexclusive franchises to construct, operate, maintain and reconstruct cable television systems within the Town Limits.
- B. The Town Board finds that the development of cable television systems has the potential of having great benefit and impact upon the residents of the Town. Because of the complex and rapidly changing technology associated with cable television, the Town Board further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the Town or such persons as the Town shall designate. It is the intent of the Ordinance and subsequent amendments to provide for and specify the means to attain the best possible cable television service to the public and any franchises issued pursuant to this Ordinance shall be deemed to include this finding as an integral part thereof.

#### SECTION 3. DEFINITIONS

APPLICABLE LAWS: Any service tier which includes the retransmission of local television broadcast signals. "Basic cable service" as defined herein shall not be inconsistent with 47 USC section 543(b)(7)(1993).

BOARD: The Town Board of the Town of Empire, Minnesota

CABLE ACT: The Cable Communications Policy Act of 1984, Public Law No. 98-549, 98 stat. 2779 (1984) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Public Law No. 102-385 and the Telecommunications Act of 1996, Public Law No. 104-458 and as the same may, from time to time, be amended.

CABLE SERVICE: A. The one-way transmission to subscribers of: 1) video programming, or 2) other programming service; and

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**SECTION 1. TITLE**

This ordinance shall be known as the Town of Empire Cable Television Franchise Ordinance.

**SECTION 2. INTENT**

- A. The Town, pursuant to applicable laws, is authorized to grant one or more nonexclusive franchises to construct, operate, maintain and reconstruct cable television systems within the Town limits.
- B. The Town Board finds that the development of cable television systems has the potential of having great benefit and impact upon the residents of the Town. Because of the complex and rapidly changing technology associated with cable television, the Town Board further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the Town or such persons as the Town shall designate. It is the intent of this Ordinance and subsequent amendments to provide for and specify the means to attain the best possible cable television service to the public and any franchises issued pursuant to this Ordinance shall be deemed to include this finding as an integral part thereof.

**SECTION 3. DEFINITIONS**

APPLICABLE LAWS: Any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority.

BASIC CABLE SERVICE: Any service tier which includes the retransmission of local television broadcast signals. "Basic cable service" as defined herein shall not be inconsistent with 47 USC section 543(b)(7)(1993).

BOARD: The Town Board of the Town of Empire, Minnesota.

CABLE ACT: The Cable Communications Policy Act of 1984, Public Law No. 98-549, 98 stat. 2779 (1984)1 as amended by the Cable Television Consumer Protection and Competition Act of 1992, Public Law No. 102-385 and the Telecommunications Act of 1996, Public Law No. 104-458 and as the same may, from time to time, be amended.

CABLE SERVICE: A. The one-way transmission to subscribers of: 1) video programming, or 2) other programming service; and

B. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

CABLE TELEVISION SYSTEM, SYSTEM OR CABLE SYSTEM: 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 rights of way;
- C. A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 USC sections 201-226, except that such facility shall be considered a cable system (other than for purposes of 47 USC section 541) 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 section 653 of the Cable Act; or
- E. Any facilities of any electric utility used solely for operating its electric utility system.

CHANNEL OR CABLE CHANNEL: A portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel as defined by the Federal Communications Commission.

CLASS IV CABLE COMMUNICATIONS CHANNEL: A signaling path provided by a system to transmit signals of any type from a subscriber terminal to another point in the system.

FRANCHISE: An initial authorization, or renewal thereof, issued by the Town, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorizes the construction or operation of a cable system over publicly owned rights of way.

FRANCHISE AGREEMENT: A franchise granted pursuant to this Ordinance containing the specific provisions of the franchise granted, including references, specifications, requirements and other related matters.

FRANCHISE FEE: Any tax, fee or assessment of any kind imposed by the Town or any other governmental authority on a grantee or cable subscriber, or both, solely because of their status as such. The term "franchise fee" does not include: a) any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers); b) capital costs which are required by the franchise agreement to be incurred by the grantee for PEG Access Facilities; c) requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or d) any fee imposed under title 17 of the United States Code.

GOVERNMENTAL AUTHORITY: Any court or other Federal, state, county, municipal or other governmental department, commission, board, agency or instrumentality.

GRANTEE: Any person receiving a franchise pursuant to this Ordinance and its agents, employees, officers, designees, or any lawful successor, transferee or assignee.

GRANTOR OR TOWN: The Town of Empire, Minnesota, as represented by the Board or any delegate acting within the scope of its jurisdiction. The Town Clerk shall be responsible for the continuing administration of the franchise.

GROSS REVENUES: All revenue received directly or indirectly by the grantee, its affiliates, subsidiaries, parents, or any person in which grantee has a financial interest of five percent (5%) or more, arising from or attributable, to the provision of cable service by the grantee within the Town including, but not limited to, monthly fees charged to subscribers for basic cable service; monthly fees charged to subscribers for any optional service; monthly fees charged to subscribers for any tier of service other than basic cable service; installation, disconnection and reconnection fees; leased channel fees; converter and remote revenues; advertising revenues; and revenue from home shopping channels. Gross revenues shall be the basis for computing the franchise fees under this Ordinance. Grantee shall not be required to pay a franchise fee on gross revenues derived from any person receiving free cable service pursuant to a franchise agreement. Gross revenues shall include franchise fees collected by grantee on behalf of the Town.

INITIAL SERVICE AREA: The area of the Town which will receive cable service initially, as set forth in any franchise agreement.

INSTALLATION: The connection of the system to a subscriber and the provision of cable service.

NORMAL BUSINESS HOURS: Those hours during which most similar businesses in the Town 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.

NORMAL OPERATING CONDITIONS: Those service conditions which are within the control of the grantee. Those conditions which are not within the control of the grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the system.

PERSON: Any individual or any association, firm, general partnership, limited partnership, joint stock company, joint venture, trust, corporation, limited liability company or other legally recognized entity, private or public, whether for profit or not for profit.

PUBLIC, EDUCATIONAL OR GOVERNMENT ACCESS FACILITIES OR PEG ACCESS FACILITIES:

- A. Channel designated for public, educational or governmental use; and

B. Facilities and equipment for the use of such channel.

SERVICE AREA OR FRANCHISE AREA: The entire geographic area within the Town as it is now constituted or may in the future be constituted, unless otherwise specified in the franchise agreement.

SERVICE INTERRUPTION: The loss of picture or sound on one or more cable channels.

STATE: The State of Minnesota.

STREET OR PUBLICLY OWNED RIGHT OF WAY: Each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the Town limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights of way and similar public property and areas that the grantor shall permit to be included within the definition of street from time to time.

SUBSCRIBER: Any person who or which lawfully elects to subscribe to, for any purpose, a service provided by the grantee by means of or in connection with the cable system whether or not a fee is paid for such service.

#### **SECTION 4. FRANCHISE TO INSTALL AND OPERATE**

A. A franchise granted by the Town under the provisions of this Ordinance shall encompass the following purposes:

1. To engage in the business of providing cable service, and such other lawful services as may be permitted by the Town, to subscribers within the service area.
2. To erect, install, construct, repair, rebuild, reconstruct, replace, maintain and retain cables, lines, related electronic equipment, supporting structures, appurtenances and other property in connection with the operation of a cable system in, on, over, under, upon, along and across streets within the service area.
3. To maintain and operate said franchise properties for the origination, reception, transmission, amplification and distribution of television and radio signals for the delivery of cable services.
4. To set forth the obligations of a grantee under the franchise agreement.

B. Nothing contained in this Ordinance relieves a person from liability arising out of failure to exercise reasonable care to avoid injuring grantee's facilities while performing work connected with grading, regarding or changing the line of a street or public place or with the construction or reconstruction of a sewer or water system.

#### **SECTION 5. FRANCHISE REQUIRED**

It shall be unlawful for any person, other than the Town unless specifically required by applicable laws, to construct, install or operate a cable television system in the Town in, on, over, under, upon, along or across any street or publicly owned right of way without a franchise properly granted pursuant to the provisions of this Ordinance.

**SECTION 6. TERM OF THE FRANCHISE:**

- A. A franchise granted hereunder shall be for the term established in the franchise agreement and shall not exceed fifteen (15) years.
- B. A franchise granted hereunder may be renewed upon application by the grantee pursuant to the provisions of this Ordinance and applicable laws.

**SECTION 7. FRANCHISE TERRITORY**

Any franchise granted pursuant to this Ordinance shall be valid within the service area.

**SECTION 8. FEDERAL, STATE AND TOWN JURISDICTION**

- A. This Ordinance shall be construed in a manner consistent with applicable laws.
- B. This Ordinance shall apply to all franchises granted or renewed after the effective date hereof. This Ordinance shall further apply to the extent permitted by applicable laws to all existing franchises granted prior to the effective date hereof.
- C. The rights of all grantees are subject to the policing powers of the Town to adopt and enforce ordinances necessary to the health, safety and welfare of the public. All grantees shall comply with all applicable laws enacted by the Town pursuant to that power.
- D. No grantee shall be relieved of its obligation to comply with any of the provisions of this Ordinance or any franchise granted pursuant to this Ordinance by reason of any failure of the Town to enforce prompt compliance.
- E. This Ordinance and any franchise granted pursuant to this Ordinance shall be construed and enforced in accordance with the substantive laws of the Town, State and applicable Federal laws, including the Cable Act.
- F. This Ordinance together with any franchise granted hereunder shall comply with the Minnesota franchise standards contained in Minnesota Statutes section 238.084
- G. Grantee and the Town shall conform to State laws and rules regarding cable communications not later than one year after they become effective, unless otherwise stated, and shall conform to Federal laws and regulations regarding cable communications as they become effective.

**SECTION 9. TRANSFERRING FRANCHISE**

- A. Grantee shall not voluntarily or involuntarily, by operation of law or otherwise, sell, assign, transfer, lease, sublet or otherwise dispose of, in whole or in part, the franchise and/or cable system or any of the rights or privileges granted by the franchise, without the prior written consent of the Board and then only upon such terms and conditions as may be prescribed by the Board with regard to the proposed transferee's legal, technical and financial qualifications, which consent shall not be unreasonably denied or delayed. Any attempt to sell, assign, transfer, lease, sublet or otherwise dispose of all or any part of the franchise and/or cable system or grantee's rights therein without the prior written consent of the Board shall be null and void and shall be grounds for termination of the franchise pursuant to this Ordinance and the applicable provisions of any franchise agreement.

- B. Without limiting the nature of the events requiring the Board's approval under this Section, the following events shall be deemed to be a sale, assignment or other transfer of the franchise and/or cable system requiring compliance with this Section: 1) the sale, assignment or other transfer of all or a majority of grantee's assets or the assets comprising the cable system to any person; 2) the merger of the grantee or any of its parents with or into another person (including the merger of grantee or any parent with or into any parent or subsidiary corporation or other person); 3) the consolidation of the grantee or any of its parents with any other person; 4) the creation of a subsidiary corporation or other entity; 5) the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in grantee or any of its parents by one or more of its existing shareholders, partners, members or other equity owners so as to create a new controlling interest in grantee; 6) the issuance of additional capital stock or partnership, membership or other equity interest by grantee or any of its parents so as to create a new controlling interest in grantee; and 7) the entry by the grantee into an agreement with respect to the management or operation of the grantee, any of grantee's parents and/or the system or the subsequent amendment thereof. The term "controlling interest" as used herein is not limited to majority equity ownership of the grantee, but also includes actual working control over the grantee, any parent of grantee and/or the system in whatever manner exercised.
- C. Grantee shall notify grantor in writing of any foreclosure or any other judicial sale of all or a substantial part of the property and assets comprising the cable system of the grantee or upon the termination of any lease or interest covering all or a substantial part of said property and assets. Such notification shall be considered by grantor as notice that a change in control or ownership of the franchise has taken place and the provisions under this Section governing the consent of grantor to such change in control or ownership shall apply.
- D. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, grantor may inquire into the qualifications of the prospective transferee or controlling party, and grantee shall assist grantor in any such inquiry. In seeking grantor's consent to any change of ownership or control, grantee shall have the responsibility of ensuring that the transferee completes an application in form and substance reasonably satisfactory to grantor, which application shall include the information required under this Ordinance and applicable laws. The transferee shall be required to establish to the satisfaction of the Town that it possesses the legal, technical and financial qualifications to operate and maintain the system and comply with all franchise requirements for the remainder of the term of the franchise. If, after considering the legal, financial, character and technical qualities of the transferee and determining that they are satisfactory, the grantor finds that such transfer is acceptable, the grantor shall permit such transfer and assignment of the rights and obligations of such franchise as may be in the public interest. The consent of the grantor to such transfer shall not be unreasonably denied.
- E. Any financial institution having a security interest in any and all of the property and assets of grantee as security for any loan made to grantee or any of its affiliates for the

construction and/or operation of the cable system must notify the grantor that it or its designee satisfactory to the grantor shall take control of and operate the cable television system, in the event of a default in the payment or performance of the debts, liabilities or obligations of grantee or its affiliates to such financial institution. Further, said financial institution shall also submit a plan for such operation of the system within thirty (30) days of assuming such control that will ensure continued service and compliance with all franchise requirements during the term the financial institution or its designee exercises control over the system. The financial institution or its designee shall not exercise control over the system for a period exceeding one year unless extended by the grantor in its discretion and during said period of time it shall have the right to petition the grantor to transfer the franchise to another grantee.

- F. In addition to the aforementioned requirements in this Section, the Town and grantee shall, at all times, comply with the requirements of Minnesota Statutes section 238.083, regarding the sale or transfer of a franchise and with all other applicable laws.

#### **SECTION 10. TOWN'S RIGHT TO PURCHASE SYSTEM**

The Town shall have a right of first refusal to purchase the cable system in the event the grantee receives a bona fide offer to purchase the cable system from any person. Bona fide offer as used in this Section means a written offer which has been accepted by grantee, subject to the Town's rights under this Ordinance and any franchise agreement. The price to be paid by the Town shall be the amount provided for in the bona fide offer, including the same terms and conditions as the bona fide offer. The Town shall notify grantee of its decision to purchase within sixty (60) days of the Town's receipt from grantee of a copy of the written bona fide offer and such other relevant and pertinent information as the Town shall deem appropriate.

#### **SECTION 11. PURCHASE BY TOWN UPON EXPIRATION OR REVOCATION**

Consistent with section 627 of the Cable Act and all other applicable laws, at the expiration, cancellation, revocation or termination of any franchise agreement, the Town shall have the option to purchase, condemn or otherwise acquire and hold the cable system.

#### **SECTION 12. GEOGRAPHICAL COVERAGE**

- A. Grantee shall design, construct and maintain the cable television system to have the capability to pass every dwelling unit in the service area, subject to any service area line extension requirements of the franchise agreement.
- B. After service has been established by activating trunk and/or distribution cables for any service area, grantee shall provide cable service to any requesting subscriber within that service area within thirty (30) days from the date of request, provided that the grantee is able to secure all rights of way necessary to extend service to such subscriber within such thirty (30) day period on reasonable terms and conditions.
- C. No subscriber shall be refused service arbitrarily. However, for unusual circumstances such as the existence of more than one hundred fifty feet (150') of distance from distribution cable to connection of service to subscribers, or a density equivalent of less than forty (40) homes per mile, service may be made available on the basis of a capital

contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the grantee and subscribers in the area in which service may be expanded, the grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per mile, and whose denominator equals forty (40) residences. Subscribers who request service hereunder, will bear the remainder of the construction and other costs on a pro rata basis. The grantee may require that the payment of the capital contribution in aid of construction borne by such potential subscribers be paid in advance.

- D. Grantee shall bury all drops to subscribers' dwellings when required by local construction standards. In the event the ground is frozen or otherwise unsuitable to permit immediate burial, grantee shall be permitted to delay such burial until the ground becomes suitable for burial which in no event shall be later than June 30.

### **SECTION 13. NONEXCLUSIVE FRANCHISE**

Any franchise granted under this Ordinance shall be nonexclusive. The grantor specifically reserves the right to grant, at any time, such additional franchises for a cable television system as it deems appropriate on terms and conditions no more favorable nor less burdensome than those imposed in previously granted franchises, subject to applicable laws. The grantor also specifically reserves the right to operate a Municipal cable television system pursuant to applicable laws and shall not be required to grant a franchise to the Town for the operation of a Municipal cable television system unless specifically required by applicable laws.

### **SECTION 14. MULTIPLE FRANCHISES**

- A. Grantor may grant one or more franchises for a service area. Grantor may, in its sole discretion, limit the number of franchises granted, based upon, but not necessarily limited to, the requirements of applicable laws and specific local considerations; such as:
  - 1. The capacity of the public rights of way to accommodate multiple coaxial cables in addition to the cables, conduits and pipes of the utility systems, such as electrical power, telephone, gas and sewage.
  - 2. The impact on the Town of having multiple franchises.
  - 3. The disadvantages that may result from cable system competition, such as the requirement for multiple pedestals on residents' property, and the disruption arising from numerous excavations of the rights of way.
  - 4. The financial capabilities of the applicant.
- B. Each grantee awarded a franchise to serve the entire Town shall offer service to all residences in the Town, in accordance with construction and service schedules mutually agreed upon between grantor and grantee, and consistent with applicable laws.
- C. The Town may, in its sole discretion, require developers of new residential housing with underground utilities to provide conduit to accommodate cables for a minimum of two (2) cable systems in accordance with this Ordinance.

- D. Grantor may require that any new grantee be responsible for its own underground trenching and the costs associated therewith, if, in grantor's opinion, the rights of way in any particular area cannot feasibly and reasonably accommodate additional cables.
- E. Any additional franchise granted by the Town to provide cable service in a part of the Town in which a franchise has already been granted and where an existing grantee is providing service shall require the new grantee to provide service throughout its service area within a reasonable time and in a sequence which does not discriminate against lower income residents.

## **SECTION 15. FRANCHISE APPLICATIONS**

- A. Any person other than the Town unless specifically required by applicable laws, desiring an initial franchise for a cable television system shall file an application with the Town. A reasonable nonrefundable application fee in an amount established by the Town shall accompany the initial application. Such application fee shall not be deemed to be "franchise fees" within the meaning of section 622 of the Cable Act<sup>2</sup>, and such payments shall not be deemed to be: 1) "payments in kind" or any involuntary payments chargeable against the franchise fees to be paid to the Town by pursuant to this Ordinance and applicable provisions of a franchise agreement, or 2) part of the franchise fees to be paid to the Town by grantee pursuant to this Ordinance and applicable provisions of a franchise agreement.
- B. An application for an initial franchise for a cable television system shall be in a form reasonably acceptable to grantor and shall contain, where applicable:
  - 1. A statement as to the proposed service area;
  - 2. A resume of prior history of applicant, including the legal, technical and financial expertise of applicant in the cable television field;
  - 3. A list of the general and limited partners of the applicant, if a partnership, or the shareholders, if a corporation;
  - 4. The percentage ownership of the applicant of each of its partners, shareholders or other equity owners;
  - 5. A list of officers, directors and managing employees of applicant or its general partner, as applicable, together with a description of the background of each such person;
  - 6. The names and addresses of any parent or subsidiary of applicant or any other business entity owning or controlling applicant in whole or in part, or owned or controlled in whole or in part by applicant;
  - 7. A current financial statement of applicant verified by an audit or otherwise certified to be true, complete and correct to the reasonable satisfaction of the Town;
  - 8. Proposed construction and service schedule;
  - 9. Any additional information that the Town deems applicable and as may be required under Minnesota Statute Ordinance 283, as amended.

## **SECTION 16. CONSIDERATION OF INITIAL APPLICATIONS**

- A. Upon receipt of any application for an initial franchise, the Town Administrator shall prepare a report and make his or her recommendations respecting such application to the Town Board.
- B. A public hearing shall be set prior to any initial franchise grant, at a time and date approved by the Board. After the close of the hearing, the Board shall make a decision based upon the evidence received at the hearing as to whether or not the franchise(s) should be granted, and, if granted subject to what conditions. The Board may grant one or more initial franchises, or may decline to grant any franchise.

## **SECTION 17. FRANCHISE RENEWAL**

Franchise renewals shall be in accordance with applicable laws. Grantor and grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise. To the extent consistent with applicable laws, a reasonable nonrefundable renewal application fee in an amount established by the Town may be required to accompany any renewal application. Such application fee shall not be deemed to be "franchise fees" within the meaning of section 622 of the Cable Act<sup>3</sup>, and such payments shall not be deemed to be: a) "payments in kind" or any involuntary payments chargeable against the franchise fees to be paid to the Town by grantee pursuant to this Ordinance and applicable provisions of a franchise agreement, or b) part of the franchise fees to be paid to the Town by grantee pursuant to this Ordinance, and applicable provisions of a franchise agreement.

## **SECTION 18. CONSUMER PROTECTION AND SERVICE STANDARDS**

Grantee shall maintain a convenient local customer service or bill payment location for receiving subscriber payments. Grantee shall also maintain or arrange for a location where equipment can be dropped off or exchanged in the service areas is necessary or, in the alternative, establish a system for having subscriber equipment picked up at the subscriber's residence free of charge. Grantee shall also provide the necessary facilities, equipment and personnel to comply with the following consumer protection standards under normal operating conditions:

- A. Cable System Office Hours and Telephone Availability:
  1. Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers twenty four (24) hours a day, seven (7) days a week.
    - a. Trained grantee representatives will be available to respond to customer telephone inquiries during normal business hours.
    - b. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained grantee representative on the next business day.
  2. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the

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

3. The grantee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
4. Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time.
5. Customer service center and bill payment locations will be open at least during normal business hours.

B. Installations, Outages And Service Calls: Under normal operating conditions, each of the following five (5) standards will be met no less than ninety five percent (95%) of the time measured on a quarterly basis:

1. Standard installations will be performed within seven (7) business days after an order has been placed. "Standard installations" are those that are located up to one hundred twenty five feet (125') from the existing distribution system.
2. Excluding conditions beyond the control of grantee, grantee will begin working on "service interruptions" promptly and in no event later than twenty four (24) hours after the interruption becomes known. The grantee must begin actions to correct other service problems the next business day after notification of the service problem.
3. The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four (4) hour time block during normal business hours. (The grantee may schedule service calls for other installation activities outside of normal business hours for the express convenience of the customer.)
4. Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
5. If grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted prior to the time of the scheduled appointment. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

C. Communications Between Grantee And Subscribers:

1. Notifications to Subscribers:
  - a. The grantee shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:
    - (1) Products and services offered;
    - (2) Prices and options for programming services and conditions of subscription to programming and other services;
    - (3) Installation and service maintenance policies;
    - (4) Instructions on how to use the cable service;

- (5) Channel positions of the programming carried on the system; and
    - (6) Billing and complaint procedures, including the address and telephone number of the grantee's office within the service area.
  - b. Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the changes are within the control of the grantee. In addition, the grantee shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by this Ordinance. Grantee shall not be required to provide prior notice of any rate changes as a result of a regulatory fee, franchise fee, or other fees, tax, assessment or change of any kind imposed by any Federal agency, State or franchising authority on the transaction between the operator and the subscriber.
- 2. Billing:
  - a. Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
  - b. In case of a billing dispute, the grantee must respond to a written complaint from a subscriber within thirty (30) days.
- 3. Refunds: Refund checks will be issued promptly, but no later than either:
  - a. The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
  - b. The return of the equipment supplied by the grantee if service is terminated.
- 4. Credits: Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.
- D. Reports: Grantee shall provide Town with a quarterly customer service compliance report in regard to service calls and installation specific to the system serving the Town in a form attached as an exhibit to grantee's franchise agreement. Said exhibit shall, at a minimum, describe in detail grantee's compliance with each and every term and provision of this Section and any additional customer service requirements contained in grantee's franchise and shall outline and summarize all subscriber complaints received by grantee during the preceding calendar quarter.

## **SECTION 19. EMERGENCY USE**

In the case of any emergency or disaster, grantee shall, upon request of the Town or emergency management personnel, make its cable system and related facilities available to the Town for emergency use.

## **SECTION 20. RATE REGULATION**

The Town reserves the right to regulate rates for basic cable service and any other services offered over the cable system, to the extent not prohibited by applicable laws. The grantee shall be subject to the rate regulation provisions provided for herein, and those of the Federal Communications Commission (FCC) at 47 CFR, part 76, subpart N, as the same may be amended from time to time. The Town shall follow the rules relating to cable rate regulation promulgated by the FCC at 47 CFR, part 76, subpart N, as the same may be amended from time to time.

## **SECTION 21. FRANCHISE FEE**

- A. Following the issuance and acceptance of a franchise, the grantee shall pay to the grantor a franchise fee in the amount set forth in the franchise agreement.
- B. The grantor, on a quarterly basis, shall be furnished a statement within ninety (90) days of the close of the calendar quarter, certified by the company controller or chief financial officer, reflecting the total amounts of gross revenues and all payments, and computations of the franchise fee for the previous calendar quarter. Upon ten (10) days' prior written notice, grantor shall have the right to conduct an independent audit of grantee's records. If such audit indicates a franchise fee underpayment of five percent (5%) or more, the grantee shall assume all of Town's out-of-pocket costs associated with the conduct of such an audit and shall remit to grantor all applicable franchise fees due and payable together with interest thereon at the lesser of the maximum rate permitted by applicable laws or eighteen percent (18%) per annum.
- C. Except as otherwise provided by law, no acceptance of any payment by the grantor shall be construed as a release or as an accord and satisfaction of any claim the grantor may have for further or additional sums payable as a franchise fee under this Ordinance or any franchise agreement or for the performance of any other obligation of the grantee.
- D. In the event that any franchise fee payment or recomputed amount is not made on or before the dates specified in the franchise agreement, grantee shall pay as additional compensation an interest charge, computed from such due date, at an annual rate equal to the lesser of the maximum rate permitted by applicable laws or eighteen percent (18%) per annum during the period for which payment was due.
- E. Franchise fee payments shall be made in accordance with the schedule indicated in the franchise agreement.

## **SECTION 22. DESIGN AND CONSTRUCTION REQUIREMENTS**

- A. Permit Required: Grantee shall not construct any cable system facilities until grantee has secured the necessary permits from grantor, or other applicable governmental authorities.
- B. Underground Transmission And Distribution: In those areas of the Town where transmission or distribution facilities of all the public utilities providing telephone and electric power service are underground, the grantee likewise shall construct, operate and maintain its transmission and distribution facilities therein underground.

- C. Above ground Transmission And Distribution: In those areas of the Town where grantee's cables are located on the aboveground transmission or distribution facilities of the public utility providing telephone or electric power service, and in the event that the facilities of both such public utilities subsequently are placed underground, then the grantee likewise shall construct, operate and maintain its transmission and distribution facilities underground, at grantee's cost. Certain of grantee's equipment, such as pedestals, amplifiers and power supplies, which normally are placed aboveground, may continue to remain in aboveground closures, however, the Town specifically reserves all of its rights to approve aboveground or underground locations for pedestals subject to applicable laws.
- D. Residential Areas; Underground Facilities: In new residential developments in which all the electric power and telephone utilities are underground, the Town may, in its sole discretion, require that the following procedure apply with respect to access to and utilization of underground easements:
1. The developer shall be responsible for contacting and surveying all grantees to ascertain which grantees desire (or, pursuant to the terms and provisions of this Ordinance and any franchise agreement, may be required) to provide cable service to that development. The developer may establish a reasonable deadline to receive responses from grantees. The final development map shall indicate the grantees which have agreed to serve the development.
  2. If one or more grantees wish to provide service within all or part of the development, they shall be accommodated in the joint utilities trench on a nondiscriminatory shared basis. If fewer than two (2) grantees indicate interest, the developer shall provide conduit to accommodate a minimum of two (2) sets of cable television cables and dedicate to the Town any initially unoccupied conduit. The developer shall be entitled to recover the cost of such initially unoccupied conduit in the event that grantor subsequently leases or sells occupancy or use rights to any grantee.
  3. The developer shall provide at least ten (10) business days' notice of the date that utility trenches will be open to the grantees that have agreed to serve the development. When the trenches are open, such grantees shall have two (2) business days to begin the installation of their cables, and five (5) business days after beginning installation to complete installation.
  4. The final development map shall not be approved until the developer submits evidence that:
    - a. It has notified each grantee that underground utility trenches are to open as of an estimated date, and that each grantee will be allowed access to such trenches, including trenches from proposed streets to individual homes or home sites, on specified nondiscriminatory terms and conditions; and
    - b. It has received a written notification from each grantee that the grantee intends to install its facilities during the open trench period on the specified terms and conditions, or such other terms and conditions as are

mutually agreeable to the developer and grantee, or has received no reply from a grantee within ten (10) days after its notification to such grantee, in which case the grantee will be deemed to have waived its opportunity to install its facilities during the open trench period.

5. Sharing the joint utilities trench shall be subject to compliance with State regulatory agency and utility standards. If such compliance is not possible, the developer shall provide a separate trench for the cable television cables, with the entire cost shared among the participating grantee(s). With the concurrence of the developer, the affected utilities and the grantees, alternative installation procedures, such as the use of deeper trenches, may be utilized, subject to the requirements of applicable laws.
6. Any grantee wishing to serve an area where the trenches have been closed shall be responsible for its own trenching and associated costs and shall repair all property to the condition which existed prior to such trenching.

E. Construction Codes and Permits:

1. Grantee shall obtain all necessary permits from Town before commencing any construction upgrade or extension of the system, including the opening or disturbance of any street, or private or public property within Town. Grantee shall strictly adhere to all State and local laws and building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the system in Town and give due consideration at all times to the aesthetics of the property.
2. The Town shall have the right to inspect all construction or installation work performed pursuant to the provisions of the franchise and to make such tests at its own expense as it shall find necessary to ensure compliance with the terms of the franchise and applicable provisions of local, State and Federal law.

F. Repair Of Streets And Property: Any and all streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the system shall be promptly and fully restored by grantee, at its expense, to a condition as good as that prevailing prior to grantee's work, as approved by Town in the case of streets and other public property. If grantee shall fail to promptly perform the restoration required herein, Town shall have the right to put the streets, public, or private property back into good condition. Town reserves its rights to pursue reimbursement for such restoration from grantee.

G. Conditions on Street Use:

1. Nothing in this franchise shall be construed to prevent Town from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any street; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.
2. All system transmission and distribution structures, lines and equipment erected by the grantee within Town shall be located so as not to obstruct or interfere with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights of property owners who abut any of the said

streets, alleys and other public ways and places, and not to interfere with existing public utility installations. The grantee shall furnish to and file with Town Administrator the maps, plats, and permanent records of the location and character of all facilities constructed, including underground facilities, and grantee shall file with Town updates of such maps, plats and permanent records annually if changes have been made in the system.

3. If at any time during the period of this franchise the Town shall elect to alter, or change the grade or location of any street, alley or other public way, the grantee shall, at its own expense, upon reasonable notice by Town, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the system, and in each instance comply with the standards and specifications of Town. If Town reimburses other occupants of the street, grantee shall be likewise reimbursed.
4. The grantee shall not place poles, conduits, or other fixtures of system above or belowground where the same will interfere with any gas, electric, telephone, water or other utility fixtures and all such poles, conduits, or other fixtures placed in any street shall be so placed as to comply with all requirements of Town.
5. The grantee shall, on request of any person holding a moving permit issued by Town, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the person requesting the same, and the grantee shall be given not less than ten (10) days' advance notice to arrange for such temporary changes.

### **SECTION 23. TECHNICAL STANDARDS**

- A. The grantee shall construct, install, operate and maintain its system in a manner consistent with all applicable laws and the Federal Communications Commission's technical standards, and any standards set forth in its franchise agreement. In addition, the grantee shall provide to the grantor, upon request, a written report of the results of the grantee's periodic proof of performance tests conducted pursuant to Federal Communications Commission standards and guidelines.
- B. Failure to comply with the Federal Communications Commission's technical standards shall constitute a violation of this Ordinance.
- C. All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended, as well as all other applicable laws.
- D. All installation of electronic equipment at the time of installation shall be of a permanent nature, durable and installed in accordance with the provisions of the National Electrical and Safety Code and National Electrical Code, as amended, and as said code may from time to time be amended.
- E. Antennas and their 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 laws.
- F. All of grantee's plant and equipment, including, but not limited to, the antenna site, headend and distribution system, towers, house connections, structures, poles, wire,

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 improvements the Town may deem appropriate 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.

- G. 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 24. TRIMMING OF TREES**

Grantee shall have the authority to trim trees, in accordance with all applicable utility restrictions, and all requirements of the Town's Ordinance relating to trimming of trees, upon and hanging over streets and public places of the Town so as to prevent the branches of such trees from coming in contact with the wires and cables of grantee. Town representatives shall have authority to supervise and approve all trimming of trees conducted by grantee.

#### **SECTION 25. USE OF GRANTEE FACILITIES**

The Town shall, at its own expense, have the right to install and maintain upon the poles and within the underground pipes and conduits of grantee, any wires and fixtures desired by the Town to the extent that such installation and maintenance does not interfere or compete with current or future operations of grantee; provided, however, that Town may not use any such wires or fixtures to compete with any commercial services offered by grantee, its affiliates, parents or subsidiaries to subscribers.

#### **SECTION 26. PROGRAMMING DECISIONS**

All programming decisions shall be at the sole discretion of grantee; provided, however, that any change in the mix, quality or level of service pursuant to 47 USC section 545(a) shall require the prior approval of the Town. Such approval by the Town shall not be unreasonably withheld.

#### **SECTION 27. INDEMNIFICATION**

Grantee shall indemnify, defend and hold the Town, its officers, boards, commissions, agents and employees (collectively the indemnified parties) harmless from and against any and all lawsuits, claims, causes of action, actions, liability, demands, damages, judgments, settlements, losses, expenses (including reasonable attorney fees) and costs of any nature that any of the indemnified parties may at any time, directly or indirectly, suffer, sustain or incur arising out of, based upon or in any way connected with the grant of a franchise to grantee, the operation of grantee's system and/or the acts and/or omissions of grantee or its agents or employees, whether or not pursuant to the franchise. This indemnity shall apply, without limitation, to any action or cause of action for invasion of privacy, defamation, antitrust, errors and omissions, theft, fire, violation or infringement of any copyright, trademark, trade names, service mark, patent, or any other right of any person, whether or not any act or omission complained of is authorized, allowed or prohibited by this Ordinance or any franchise agreement, but shall exclude any claim

or action arising out of the acts or omissions of the indemnified parties or related to any Town programming or other access programming for which the grantee is not legally responsible.

## **SECTION 28. INSURANCE**

Within sixty (60) days following the grant of a franchise, the grantee shall obtain, pay all premiums for and make available to the Town at its request copies of the following insurance policies:

- A. A general comprehensive liability insurance policy insuring, indemnifying, defending and saving harmless the indemnified parties from any and all claims by any person whatsoever on account of injury to or death of a person or persons occasioned by the operations of the grantee under any franchise granted hereunder, or alleged to have been so caused or occurred with a minimum coverage of one million dollars (\$1,000,000.00) for personal injury or death of one person, and three million dollars (\$3,000,000.00) for personal injury or death of any two (2) or more persons in any one occurrence. The policy limits provided for in this subsection shall be reviewed and adjusted by the Town as necessary not more than once every three (3) years. Grantee also agrees to any other adjustments in liability coverage required by changes in Federal, State or County requirements.
- B. Property damage insurance for property damage occasioned by the operation of grantee under any franchise granted pursuant to this Ordinance, or alleged to have been so caused or occurred, with minimum coverage of one million dollars (\$1,000,000.00) for property damage to the property of any one person and three million dollars (\$3,000,000.00) for property damage to the property of two (2) or more persons in any one occurrence. The policy limits provided for in this subsection shall be reviewed and adjusted by the Town as necessary not more than once every three (3) years.
- C. Workers' compensation insurance as provided by applicable laws.
- D. All insurance policies called for herein shall be in a form satisfactory to the Town with a company licensed to do business in the State with a rating by A.M. Best & Co. of not less than "A", and shall require thirty (30) days' written notice of any cancellation to both the Town and the grantee. The grantee shall, in the event of any such cancellation notice, obtain, pay all premiums for, and file with the Town, written evidence of the issuance of replacement policies within thirty (30) days following receipt by the Town or the grantee of any notice of cancellation.
- E. If grantee sells or transfers the cable system, or in the event of expiration, termination or revocation of a franchise, insurance tail coverage shall be purchased and filed with the Town for the then applicable amounts, providing coverage for the time periods according to applicable statutes of limitation, insurance for any issues attributable to the period grantee held its franchise.
- F. It shall be the obligation of grantee to promptly notify the Town of any pending or threatened litigation that would be likely to affect the indemnified parties.

## **SECTION 29. RECORDS REQUIRED AND GRANTOR'S RIGHT TO INSPECT**

- A. Grantee shall at all times maintain the following records and information relating to the cable system serving the Town:
  - 1. A full and complete set of plans, records and "as-built" drawings and/or maps in an electronic form agreed to by Town and grantee which shall be updated annually showing the location of the cable television system installed or in use in the Town, exclusive of subscriber service drops and equipment provided in subscribers' homes.
  - 2. If requested by grantor, a summary of service calls, identifying the number, general nature and disposition of such calls, on a monthly basis. A summary of such service calls shall be submitted to the grantor within thirty (30) days' following its request in a form reasonably acceptable to the grantor.
- B. Upon reasonable notice, and during normal business hours, grantee shall permit examination by any duly authorized representative of the grantor, of all franchise property and facilities, together with any appurtenant property and facilities of grantee situated within or without the Town, and all records relating to the franchise, provided they are necessary to enable the grantor to carry out its regulatory responsibilities under applicable laws, this Ordinance and the franchise agreement. Grantee shall have the right to be present at any such examination.
- C. The Town shall also have the right to inspect, upon seventy two (72) hours' written notice, at any time during normal business hours at grantee's office, all books, records, maps, plans, financial statements, service complaint logs, performance test results, records of request for service, and other like materials of grantee.
- D. Copies of all petitions, applications, communications and reports submitted by grantee or on behalf of or relating to grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other governmental authority having jurisdiction with respect to any matters affecting the cable system authorized pursuant to this Ordinance and any franchise shall, upon request, be submitted, upon request to the Town. Copies of responses from the governmental authority to grantee shall likewise be furnished to the Town.

## **SECTION 30. ANNUAL REPORTS**

- A. Grantee shall, upon request, within ninety (90) days of each calendar year-end, submit a written end of the year report to grantor with respect to the preceding calendar year containing the following information:
  - 1. A summary of the previous year's (or in the case of the initial reporting year, the initial year's) activities in development of the cable system, including, but not limited to, services commenced or discontinued during the reporting year;
  - 2. A list of grantee's officers, members of its board of directors, and other principals of grantee;
  - 3. A list of stockholders or other equity investors holding five percent (5%) or more of the voting interest in grantee; and

4. Information as to the number of subscribers, additional television outlets, and the number of basic and pay service subscribers.
- B. All reports required under this Ordinance, except those required by law to be kept confidential, shall be available for public inspection in the grantee's offices during normal business hours.
- C. All reports and records required under this Ordinance shall be furnished at the sole expense of grantee, except as otherwise provided in this Ordinance or the franchise agreement.

### **SECTION 31. FRANCHISE VIOLATION**

In the event grantor believes that grantee has breached or violated any material provision of this Ordinance or a franchise granted hereunder, grantor may act in accordance with the following procedures:

- A. Grantor may notify grantee of the alleged violation or breach and demand that grantee cure the same within a reasonable time, which shall not be less than ten (10) days in the case of an alleged failure of the grantee to pay any sum or other amount due the grantor under this Ordinance or the grantee's franchise and thirty (30) days in all other cases. If grantee fails either to cure the alleged violation or breach within the time prescribed or to commence correction of the violation or breach within the time prescribed and thereafter diligently pursue correction of such alleged violation or breach, the grantor shall then give written notice of not less than fourteen (14) days of a public hearing to be held before the Board. Said notice shall specify the violations or breaches alleged to have occurred. At the public hearing, the Board shall hear and consider relevant evidence and thereafter render findings and its decision. In the event the Board finds that a material violation or breach exists and that grantee has not cured the same in a satisfactory manner or has not diligently commenced to cure of such violation or breach after notice thereof from grantor and is not diligently proceeding to fully cure such violation or breach, the Board may revoke and terminate the franchise or impose any other remedy permitted by the franchise agreement or applicable laws.

### **SECTION 32. FORCE MAJEURE; GRANTEE'S INABILITY TO PERFORM**

In the event grantee's performance of any of the terms, conditions or obligations required by this Ordinance or a franchise granted hereunder is prevented by a cause or event not within grantee's control, such inability to perform shall be deemed excused for the period of such inability and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this Section, causes or events not within the control of grantee shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, restraints imposed by order of a governmental agency or court, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides and fires.

### **SECTION 33. ABANDONMENT OR REMOVAL OF FRANCHISE PROPERTY**

- A. In the event that the use of any property of grantee within the franchise area or a portion thereof is discontinued for a continuous period of twelve (12) months, grantee shall be deemed to have abandoned that property.
- B. Grantor, upon such terms as grantor may impose, may give grantee permission to abandon, without removing, any system facility or equipment laid, directly constructed, operated or maintained in, on, under or over the franchise area. Unless such permission is granted or unless otherwise provided in this Ordinance, the grantee shall remove all abandoned facilities and equipment upon receipt of written notice from grantor and shall restore any affected street to its former state at the time such facilities and equipment were installed, so as not to impair its usefulness. In removing its plant, structures and equipment, grantee shall refill, at its own expense, any excavation made by or on behalf of grantee and shall leave all streets and other public ways and places in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. Grantor shall have the right to inspect and approve the condition of the streets, public ways, public places, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this Ordinance and any security fund provided for in the franchise agreement shall continue in full force and effect during the period of removal and until full compliance by grantee with the terms and conditions of this Section.
- C. Upon abandonment of any franchise property in place, the grantee, if required by the grantor, shall submit to grantor a bill of sale and/or any other instrument, satisfactory in form and content to the grantor, transferring to the grantor the ownership of the franchise property abandoned.
- D. At the expiration of the term for which the franchise is granted, or upon its earlier revocation or termination, as provided for herein and/or in the franchise agreement, in any such case without renewal, extension or transfer, the grantor shall have the right to require grantee to remove, at its own expense, all aboveground portions of the cable television system from all streets and public ways within the Town within a reasonable period of time, which shall not be less than one hundred eighty (180) days; provided, however, Town may not require removal if grantee is authorized to provide telecommunications services in Town pursuant to State or Federal law.
- E. Notwithstanding anything to the contrary set forth in this Ordinance, the grantee may, with the consent of the grantor, abandon any underground franchise property in place so long as it does not materially interfere with the use of the street or public rights of way in which such property is located or with the use thereof by any public utility or other cable grantee.

### **SECTION 34. EXTENDED OPERATION AND CONTINUITY OF SERVICES**

Upon termination or forfeiture of the franchise, the grantee shall remove its cable, wires, and appliances from the streets, alleys, or other public places within the service area if the Town so

requests. Failure by the grantee to remove its cable, wires and appliances as referenced herein shall be a violation of this Ordinance.

### **SECTION 35. RECEIVERSHIP AND FORECLOSURE**

- A. A franchise granted hereunder shall, at the option of grantor, cease and terminate one hundred twenty (120) days after appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of grantee, 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 one hundred twenty (120) days, or unless: 1) such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Ordinance and the franchise granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all the defaults and violations under the franchise and/or this Ordinance or provided a plan for the remedy of such defaults and violations which is satisfactory to the grantor; and 2) such receivers or trustees shall, within said one hundred twenty (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 and this Ordinance.
- B. In the case of a foreclosure or other judicial sale of the franchise property, or any material part thereof, grantor may give notice of termination of any franchise granted pursuant to this Ordinance upon grantee and the successful bidder at such sale, in which event the franchise granted and all rights and privileges of the grantee hereunder shall cease and terminate thirty (30) days after such notice has been given, unless: 1) grantor shall have approved the transfer of the franchise in accordance with the provisions of the franchise and this Ordinance; and 2) such successful bidder shall have covenanted and agreed with grantor to assume and be bound by all terms and conditions of the franchise.

### **SECTION 36. RIGHTS OF INDIVIDUALS**

- A. Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, disability, national origin, age, gender or sexual preference. Grantee shall comply at all times with all other applicable laws, relating to nondiscrimination.
- B. Grantee shall adhere to the applicable equal employment opportunity requirements of applicable laws, as now written or as amended from time to time including 47 USC section 551, Protection of Subscriber Privacy.
- C. Neither grantee, nor any person, agency, or entity shall, without the subscriber's consent, tap or arrange for the tapping, of any cable, line, signal input device, or subscriber outlet or receiver for any purpose except routine maintenance of the system, detection of unauthorized service, polling with audience participating, or audience viewing surveys to support advertising research regarding viewers where individual viewing behavior cannot be identified.

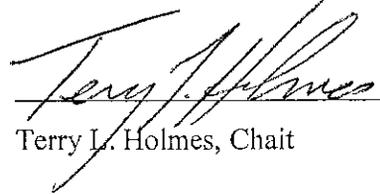
- D. In the conduct of providing its services or in pursuit of any collateral commercial enterprise resulting therefrom, grantee shall take reasonable steps to prevent the invasion of a subscriber's or general citizen's right of privacy or other personal rights through the use of the system as such rights are delineated or defined by applicable laws. Grantee shall not, without lawful court order or other applicable valid legal authority, utilize the system's interactive two-way equipment or capability for unauthorized personal surveillance of any subscriber or general citizen.
- E. No cable line, wire, amplifier, converter, or other piece of equipment owned by grantee shall be installed by grantee in the subscriber's premises, other than in appropriate easements, without first securing any required consent. If a subscriber requests service, permission to install upon subscriber's property shall be presumed. Where a property owner or his or her predecessor was granted an easement including a public utility easement or a servitude to another and the servitude by its terms contemplates a use such as grantee's intended use, grantee shall not be required to service the written permission of the owner for the installation of cable television equipment.
- F. No signals of a class IV cable communications channel may be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of a subscriber. The request for permission must be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. The written permission must be for a limited period of time not to exceed one year which is renewable at the option of the subscriber. No penalty may be invoked for a subscriber's failure to provide or renew the authorization. The authorization is revocable at any time by the subscriber without penalty of any kind. The permission must be required for each type or classification or class IV cable communications activity planned.
1. No information or data obtained by monitoring transmission of a signal from a subscriber terminal, including, but not limited to, the lists of the names and addresses of the subscribers or lists that identify the viewing habits of subscribers may be sold or otherwise made available to any person other than to grantee and its employees for internal business use, or to the subscriber who is the subject of that information, unless the grantee has received specific written authorization from the subscriber to make the data available.
  2. Written permission from the subscriber must not be required for the systems conducting system-wide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing. Confidentiality of this information is subject to subsection F1 of this Section.

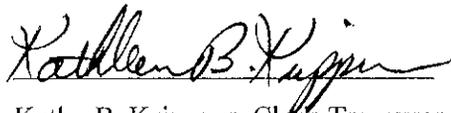
### **SECTION 37. SEVERABILITY**

If any provision of this Ordinance is held by any governmental authority of competent jurisdiction, to be invalid as conflicting with any applicable laws now or hereafter in effect, or is held by such governmental authority to be modified in any way in order to conform to the requirements of any such applicable laws, such provision shall be considered a separate, distinct,

and independent part of this Ordinance, and such holding shall not affect the validity and enforceability of all other provisions hereof.

ATTEST:

  
Terry L. Holmes, Chait

  
Kathy B. Krippner, Clerk-Treasurer