

**TOWN OF DAVIDSON, NORTH CAROLINA  
CABLE COMMUNICATIONS REGULATIONS**

**DIVISION 1. GENERALLY**

**Section 1.1. PURPOSE.**

- 1.1.1. The Town of Davidson finds that the development of cable television and communications systems has the potential of having great benefit and impact upon the people of Davidson. Because of the complex and rapidly changing technology associated with cable television, the Town further finds that the public convenience, safety and general welfare can best be served by establishing certain regulatory powers, which may be vested in the Town or such persons as the Town shall designate.
- 1.1.2. Further, it is recognized that cable communications systems have the capacity to provide not only entertainment and information services to the Town's residents but can also provide a variety of broadband, interactive communications services to institutions and individuals.
- 1.1.3. For these purposes, the following goals underlie the regulations contained herein:
  - 1.1.3.1. Where economically feasible, communications services should be available to the maximum number of Town residents, as provided for herein;
  - 1.1.3.2. The cable television systems should be capable of accommodating both the present and reasonably foreseeable future communications needs of the Town;
  - 1.1.3.3. The cable television systems should be maintained as necessary during the franchise term so that the new facilities, if any, may be integrated to the maximum extent possible with existing facilities;
  - 1.1.3.4. The communications systems authorized by this article shall be responsive to the needs and interests of the local community;
- 1.1.4. The public, educational and governmental needs for reasonable access to the cable system shall be met.

**Section 1.2. TITLE; EFFECTIVE DATE; SEVERABILITY**

- 1.2.1. This article shall be known and may be cited as the "Davidson Cable Communications Regulatory Ordinance," and it shall become a part of the ordinances of the Town of Davidson.
- 1.2.2. This article shall take effect and be in force from and after the date as established herein.
- 1.2.3. All ordinances or parts of ordinances in conflict with the provisions of this article are hereby repealed.

**Section 1.3. DEFINITIONS.**

For the purpose of this article, the following terms, phrases, 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 in the plural number include the singular number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meanings.

- 1.3.1. *ADDITIONAL SERVICES* means programming or services for which an additional charge is made beyond the charge for basic subscriber services, including, but not limited to, movies, concerts, variety acts, sporting events, pay-per-view programs, interactive services, and any other service utilizing any facility or equipment of a cable television system operating pursuant to a franchise granted under this article.

- 1.3.2. *BASIC CABLE SERVICE* means any service tier which includes the retransmission of local television broadcast signals and public, educational and government access channels.
- 1.3.3. *CABLE TELEVISION SYSTEM*, also referred to as "*SYSTEM*," means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:
- 1.3.3.1. A facility that serves only to re-transmit the television signals of one or more television broadcast stations;
  - 1.3.3.2. A facility that serves only subscribers in one or more multiple dwelling unit dwellings under common ownership, control, or management, unless such facility or facilities uses any Public Rights-of-Way;
  - 1.3.3.3. A facility of a common carrier which is subject, in whole or in part, to the provision of Title II of the Cable Act, except that such facility shall be considered a cable system other than for purposes of Section 621(c) of the Cable Act to the extent such facility is used in the transmission of video programming directly to subscribers; or
  - 1.3.3.4. Any facilities of any electric utility used solely for operating its electric utility systems.
- 1.3.4. *CABLE ACT OR COMMUNICATIONS POLICY ACT* means the Cable Communications Policy Act of 1984 (Public Law No. 98-549, 47 USC 521 (Supp.) and the Telecommunications Act of 1996 as they may be amended or succeeded.
- 1.3.5. *CABLE SERVICE* shall be defined as the one-way transmission to subscribers of video programming service and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- 1.3.6. *CHANNEL* means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).
- 1.3.7. *CLOSED-CIRCUIT OR INSTITUTIONAL SERVICE* means such video, audio, data and other services provided to institutional users on an individual application basis. These may include, but are not limited to, one-way video, two-way video, audio or digital signals among institutions to residential subscribers.
- 1.3.8. *COMMENCE OPERATION* means that time and date when operation of the cable communications system is considered to have commenced, which shall be when the system is fully constructed.
- 1.3.9. *COMMERCIAL SUBSCRIBER* means a subscriber who receives a service in a place of business where the service may be utilized in connection with a business, trade or profession.
- 1.3.10. *CONVERTER* means an electronic device which converts signals to a frequency receivable by a subscriber television receiver, and any channel selector which permits a subscriber to view all signals at designated converter dial locations at the set or by remote control.
- 1.3.11. *COMMISSION* means the Town of Davidson Board of Commissioners.
- 1.3.12. *DEDICATED INSTITUTIONAL ACCESS CHANNELS* means broadband communications channels dedicated to serving City, County, State or Federal governmental agencies, educational institutions, health care institutions or other nonprofit and profit-making organizations that may be qualified by the Commission.
- 1.3.13. *DISCRETE CHANNEL* shall mean a channel which can only be received by the person and/or institution intended to receive signals on such channel.

- 1.3.14. *DROP* shall mean a coaxial connection from feeder cable to the subscriber/user television set, radio or other terminal.
- 1.3.15. *EDUCATIONAL CHANNEL OR EDUCATIONAL ACCESS CHANNEL* means any analog channel designated for noncommercial educational access programming.
- 1.3.16. *EXTERNAL INCREMENTAL COST* means only the incremental material costs for additional fibers within common cable sheaths and includes no labor costs for construction of such common cable sheaths.
- 1.3.17. *FAIR MARKET VALUE* means the price that a willing buyer would pay to a willing seller for a going concern.
- 1.3.18. *FCC* means the Federal Communications Commission or any legally appointed or elected successor.
- 1.3.19. *FRANCHISE* means the nonexclusive rights, granted pursuant to this article, to construct, operate and maintain a cable communications system along the public ways within all or a specified area in the Town. Any such authorization, in whatever form granted, shall not mean or include any license or permit required for the privilege of transacting and carrying on a business within the Town, as required by other ordinances and laws of the Town.
- 1.3.20. *FRANCHISE AGREEMENT* means a contract entered into voluntarily by the Town and the Grantee, containing the specific provisions of the franchise granted including applicable referenced specifications, franchise proposals, applications and other related material.
- 1.3.21. *FRANCHISE AREA* means the entire Town, or portions thereof, for which a franchise is granted under the authority of this article. If not otherwise stated in the franchise agreement, the franchise area shall be the limits of the Town.
- 1.3.22. *FRANCHISE FEE* means an amount, as specified by the Town, of the Grantee's gross receipts from the operation of the system pursuant to the franchise agreement.
- 1.3.23. *FRANCHISEE* or *GRANTEE* means the natural person(s), partnership(s), domestic and foreign corporation(s), association(s), joint venture(s), or organization(s) of any kind which has been legally granted a franchise by the Town, and its lawful successor, transferee or assignee.
- 1.3.24. *GOVERNMENT CHANNEL OR GOVERNMENT ACCESS CHANNEL* means any channel specifically designated or dedicated for government use.
- 1.3.25. *GRANTOR* means the Town of Davidson as represented by the Board of Commissioners acting within the scope of its jurisdiction.
- 1.3.26. *GROSS ANNUAL REVENUES* means all revenue received directly or indirectly by the Grantee, its affiliates, subsidiaries and any person in which the Grantee has a financial interest derived from the operation of the system hereunder; or as further defined in a franchise agreement.
- 1.3.27. *INCREMENTAL MATERIAL COST* means only that portion of the costs incurred in the installation of facilities which exceed the construction capital cost of the cable television system and, but for the additional capacity provided upon request of the Town, which would be incurred in the normal course of providing facilities of the Grantee's own use and purpose.
- 1.3.28. *INSTALLATION* shall mean the connection of the system from feeder cable to an outlet in a subscribers home.

- 1.3.29. *LEASED ACCESS CHANNEL* or *COMMERCIAL LEASED CHANNEL* means any channel designated or dedicated for use by persons unaffiliated with the Grantee in accordance with the Cable Act.
- 1.3.30. *MONITORING* means observing a communications signal, or the absence of a signal, where the observer is not a party to the communications, whether the signal is observed by visual or electronic means, for any purpose whatsoever.
- 1.3.31. *PERSON* means an individual, partnership, association, organization, corporation or any lawful successor, or transferee of said individual, partnership, association, organization or corporation.
- 1.3.32. *PLANT MILE* means a linear mile of strand-bearing cable as measured on the street or easement from pole or pedestal to pedestal.
- 1.3.33. *PROGRAMMER* means any person or entity who or which produces or otherwise provides program material or information for transmission by video, audio, digital or other signals, either live or from recorded traces or other storage media, to users or subscribers by means of the cable communications system.
- 1.3.34. *PUBLIC ACCESS CHANNEL* or *COMMUNITY ACCESS CHANNEL* means any channel designated or dedicated for use by the general public or noncommercial organizations which is made available for use without charge on a nondiscriminatory basis.
- 1.3.35. *PUBLIC BUILDINGS* shall mean buildings so designated by the Town that shall not be used for commercial purposes.
- 1.3.36. *PUBLIC PROPERTY* shall mean any real property owned by the Town, other than street.
- 1.3.37. *PUBLIC WAY* or *PUBLIC RIGHTS-OF-WAY* means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, waterways, utility easements or other public right-of-way hereafter located within the Town, which shall entitle the Town and the Grantee to the use thereof for the purpose of installing and maintaining a cable television system.
- 1.3.38. *REASONABLE NOTICE* shall be written notice addressed to either Towner Grantee at its respective principal office within the Town or such other office as the party has designated to the other as the address to which notice shall be transmitted to it, which notice shall be certified and postmarked not less than seven (7) days prior to that day in which the party giving such notice shall commence any action which requires the giving of notice. In computing said seven (7) days, holidays recognized by the Town shall be excluded.
- 1.3.39. *RESIDENT* means any person residing in the Town, as otherwise defined by applicable law.
- 1.3.40. *RESIDENTIAL SUBSCRIBER* means a subscriber who receives a service in an individual dwelling unit where the service is not to be utilized in connection with a business, trade or profession.
- 1.3.41. *SALE* shall include any sale, exchange, barter or offer for sale.
- 1.3.42. *SCHOOL* means any public, private or nonprofit educational institution, including primary and secondary schools, colleges and universities.
- 1.3.43. *SERVICE OR CABLE SERVICE* means (A) the one-way transmission to subscribers of (1) video programming, or (ii) 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.
- 1.3.44. *SERVICE AREA* means the entire geographic area within the franchise territory.

- 1.3.45. *SIGNAL* means any transmission of radio frequency energy or optical information.
- 1.3.46. *STATE* means the State of North Carolina.
- 1.3.47. *STREET* means such 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 ways and extensions and additions thereto, together with such other public property and areas that the Town shall permit to be included within the definition of street from time to time.
- 1.3.48. *SUBSCRIBER* means any person, firm, corporation or other entity who or which elects to subscribe to, for any purpose, a service provided by the Grantee by means of or in connection with a cable communications system.
- 1.3.49. *SYSTEM FACILITIES* means the cable communications system constructed for use within the Town, without limitation, the headend, antenna, cables, wires, lines, towers, amplifiers, converters, health and property security systems, equipment or facilities located within the corporate limits of the Town, designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing by coaxial cable, fiber optics, microwave or other means, audio and visual radio, television and electronic signals to and from subscribers in the Town, and any other equipment or facilities located within the corporate limits of the Town intended for the use of the system; provided, however, such system facilities exclude buildings, contacts, facilities and equipment where primary use is for providing service to other system facilities located outside the Town limits.
- 1.3.50. *TRANSFER* means the disposal by the Grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, except publicly traded issue, not in control of the Grantee. A rebuttable presumption that a transfer of control has occurred shall arise upon the disposal by the Grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of five (5) percent or more at one time of the ownership or controlling interest in the system, or twenty (20) percent cumulatively over the term of the franchise, of such interests to a corporation, partnership, limited partnership, trust or association, or person or group of persons acting in concert.
- 1.3.51. *TRUNK LINE* means the major distribution cable used in cable communications, which divides into feeder lines which are tapped for service to subscribers.
- 1.3.52. *UPSTREAM SIGNAL* means a signal originating from a terminal to another point in the cable television system, including video, audio or digital signals for either programs or other uses such as security alert services, etc.
- 1.3.53. *USER* means a person or organization utilizing channel or equipment and facilities for the purpose of production and/or transmission of material, as contrasted with receipt thereof in a subscriber capacity.

## **DIVISION 2. GRANT OF FRANCHISE**

### **Section 2.1. GRANT OF FRANCHISE; TERRITORY**

- 2.1.1. *GRANT OF FRANCHISE.* In the event that the Town shall grant to the Grantee a nonexclusive, revocable-for-cause as provided herein, franchise to construct, operate and maintain a cable communications system within the Town, said franchise shall constitute both a right and an obligation to provide the services of a cable communications system, as regulated by the provisions of this article and the franchise agreement.

- 2.1.1.1. The franchise agreement shall include by reference those provisions of the Grantee's "application for franchise" that are finally negotiated and agreed to by the Town and Grantee.
- 2.1.2. *TERMS/CONDITIONS.* The franchise shall be granted under the terms and conditions contained herein, consistent with the other applicable statutory requirements. In the event of conflict between the terms and conditions of this article, the franchise agreement, or the terms and conditions on which the Town may grant a franchise, statutory requirements shall control.
- 2.1.3. *ORDINANCE PROVISIONS.* Any franchise granted by the Town is hereby made subject to the applicable general ordinance provisions of the Town now in effect and hereafter made effective. Nothing in the franchise shall be deemed to waive the requirements of the various codes and ordinances of the Town regarding permits, fees to be paid or manner of construction.
- 2.1.4. *FRANCHISE TERRITORY.* The franchise territory shall be the entire Town, or portions thereof, for which a franchise is granted under authority of this article. The service area shall be the entire territory defined in the franchise agreement.

**Section 2.2. USE OF PUBLIC STREETS AND WAYS, TOWN AND GRANTEE FACILITIES**

- 2.2.1. *PUBLIC STREETS AND WAYS.* For the purpose of operating and maintaining a cable communications system in the Town, the Grantee may erect, install, construct, repair, replace, reconstruct and/or retain in, on, over, under, upon, across and along the public streets and ways within the Town such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary to the operation of the cable communications system; provided, however, that the Grantee complies with all design, construction, safety and performance provisions contained in this article, the franchise agreement and other applicable regulations.
- 2.2.2. *TOWN FACILITIES.* At the Town's option, the Town may require a Grantee to utilize Town-owned conduit or other facilities for any portion of its cable communications system which is being newly constructed or rebuilt. The consideration, if any, for the use of Town conduit or other facilities shall be as stated in the franchise agreement. A reasonable fee, if any, for the use of Town facilities established in the franchise agreement may be adjusted at the periodic performance evaluations.
- 2.2.3. *GRANTEE FACILITIES.* No poles shall be erected by the Grantee without prior approval of the appropriate governing authorities with regard to location, height, type and any other pertinent aspect. However, no location of any pole of the Grantee shall be a vested right, and such poles shall be removed or modified by the Grantee at its own expense whenever the appropriate governing authority determines that the public convenience would be enhanced thereby. The Grantee shall utilize existing poles and conduits, where possible. The Town shall have the right, during the life of the franchise, to install and maintain upon the poles owned by the Grantee, at fair market value, any wire and pole fixtures that do not unreasonably interfere with the cable system operations of the Grantee.

**Section 2.3. FRANCHISE REQUIRED; TERM, ACCEPTANCE.**

- 2.3.1. *REQUIRED.* No cable communications system shall be allowed to occupy or use the streets of the Town or be allowed to operate without a franchise.
- 2.3.2. *TERM.* The term of any franchise granted pursuant to this article shall be ten (10) years, unless otherwise stated in the franchise agreement.

- 2.3.3. Acceptance.
- 2.3.3.1. Following approval by the Town, any franchise granted pursuant to this article, and the rights, privileges and authority granted thereunder, shall take effect and be in force from and after the date on which the Grantee accepts, signs and affixes its corporate seal to the franchise agreement.
- 2.3.3.2. By accepting the franchise, the Grantee agrees to be bound by all the terms and conditions contained in this article and said franchise. The Grantee also agrees to provide all services specifically set forth in its application to provide cable television service within the confines of the Town, and by its acceptance of the franchise, the Grantee specifically acknowledges and agrees that its application is thereby attached and incorporated by reference and made a part of the franchise.
- 2.3.3.3. By accepting the franchise, the Grantee acknowledges that it does so relying upon its own investigation and understanding of the Town in connection with the system and the franchise.
- 2.3.3.4. By accepting the franchise, the Grantee acknowledges that it has not been induced to enter into the franchise by any understanding or promise or other statement not expressed therein, whether oral or written, concerning any term or condition of the franchise, regardless of whether such statement was made by or on behalf of the Town.
- 2.3.3.5. By accepting the franchise, the Grantee acknowledges that it has carefully read the terms and conditions of the franchise agreement.
- 2.3.4. *NONEXCLUSIVE.* Any franchise granted hereunder shall be nonexclusive. The Town specifically reserves the right to grant at any time such additional franchises containing substantially equivalent standards, terms and conditions to those previously granted hereunder for a cable communications system as it deems appropriate.
- 2.3.5. *TIME OF THE ESSENCE.* Whenever the franchise agreement shall set forth any time for an act to be performed by or on behalf of either party, such time shall be deemed of the essence, and any failure of the party to perform within the time allotted shall always be sufficient ground for the other party to invoke an appropriate penalty.
- 2.3.6. *NORTH CAROLINA LAW GOVERNS.* In any controversy or dispute under this article, the law of the State of North Carolina shall apply to the extent such law has not been superseded or preempted.
- 2.3.7. *SEVERABILITY.* If any section, subsection, sentence, clause, phrase or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, or by any federal, state, county, or local statute or regulation, such portion shall be deemed a separate, distinct and independent provision and shall be excised as such; and such holding shall not affect the validity of the remaining portions hereof.

#### **Section 2.4. TRANSFER OF OWNERSHIP OR CONTROL**

- 2.4.1. *TRANSFER/SALE/LEASE/ASSIGNMENT.* Any franchise granted hereunder cannot in any event be sold, transferred, leased, assigned or disposed of, including but not limited to by force or voluntary sale, receivership or other means, without the prior consent of the Town and then, under such reasonable conditions as the Town may establish.
- 2.4.2. *NOTICE.* The Grantee shall promptly notify the Town of any actual or proposed change in, transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the disposal by the Grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of five (5) percent or more at one time of the ownership or controlling interest in the system, or twenty (20) percent cumulatively over the term of the franchise, of such

interests to a corporation, partnership, limited partnership, trust or association, or person or group of persons acting in concert.

- 2.4.3. *FRANCHISE SUBJECT TO CANCELLATION.* Every change, transfer or acquisition of control, as defined above, of the Grantee shall make the franchise subject to cancellation unless and until the Town shall have consented thereto, which consent will not be unreasonably withheld.
- 2.4.3.1. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the Town may inquire into the legal, financial, character, technical and other public interest qualifications of the prospective controlling party, and the Grantee shall assist the Town in any such inquiry.
- 2.4.3.2. Failure to provide all information reasonably requested by the Town as part of said inquiry shall be grounds for denial of the proposed change, transfer or acquisition of control.
- 2.4.4. *PLEDGE OF FRANCHISE.* The Town agrees that any financial institution having a pledge of the franchise or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the Town that it, or its designees satisfactory to the Town, will take control and operate the cable television system.
- 2.4.4.1. Further, said financial institution shall also submit a plan for such operation that will ensure continued service and compliance with all franchise obligations during the term the financial institution exercises control over the system.
- 2.4.4.2. The financial institution shall not exercise control over the system for a period exceeding one (1) year, unless extended by the Town at its discretion, and during said period of time it shall have the right to petition for transfer of the franchise to another Grantee.
- 2.4.4.3. If the Town finds that such transfer, after considering the legal, financial, character, technical and other public-interest qualifications of the applicant, is satisfactory, the Town will transfer and assign the rights and obligations of such franchise as are in the public interest.
- 2.4.4.4. The consent of the Town to such transfer shall not be unreasonably withheld.
- 2.4.5. *TOWN CONSENT.* The consent or approval of the Town to any transfer of the Grantee shall not constitute a waiver or release of the rights of the Town or other governmental entity in and to the streets, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this article and the franchise agreement.
- 2.4.6. *NON-APPROVAL.* In the absence of extraordinary circumstances, the Town will not approve any transfer or assignment of the franchise prior to completion or rebuild of construction of the proposed system.
- 2.4.7. *CONTROLLING PARTY SIGNATORY.* Any approval by the Town of transfer of ownership or control or rebuilds of the cable system shall be contingent upon the prospective controlling party becoming a signatory to the transfer amendment with the Town.
- 2.4.8. *TOWN RIGHTS RESERVED.* The Town reserves the right of first purchase in any sale, transfer, lease, assignment or disposal of the system at a cost at least equal to a bona fide offer otherwise acceptable to the Grantee.

## **Section 2.5. FRANCHISE RENEWAL; POLICE POWERS**

- 2.5.1. *RENEWAL.* Upon completion of the term of any franchise granted under this article, the Town may grant or deny renewal of the franchise of the Grantee in accordance with the provisions of the Cable Act.



2.5.2. *POLICE POWERS.*

2.5.2.1. In accepting the franchise, the Grantee acknowledges that its rights hereunder are subject to the police powers of the Town to adopt and enforce reasonable general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the Town pursuant to such power.

2.5.2.2. Any conflict between the provisions of this article or the franchise and any other present or future lawful exercise of the Town's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction, or applies exclusively to the Grantee or cable communications systems, which contains provisions inconsistent with this article shall prevail only if, upon such exercise, the Town finds an emergency exists constituting a danger to health, safety, property or general welfare and such exercise is mandated by law.

**Section 2.6. FRANCHISE FEES**

2.6.1. *FEE AMOUNT.* A Grantee of any franchise hereunder shall pay to the Town an annual fee in an amount as designated in the franchise agreement.

2.6.1.1. The quarterly franchise payment shall commence as of the effective date of the franchise.

2.6.1.2. The Town shall be furnished a statement of said payment by a certified public accountant, reflecting the total amounts of annual gross revenues and the above charges and computations for the period covered by the payment.

2.6.2. *PAYMENT ADDITIONAL.* This payment shall be in addition to any other tax or payment owed to the Town or other taxing jurisdiction by the Grantee.

2.6.3. *ACCEPTANCE NOT RELEASE.* No acceptance of any payment by the Town shall be construed as a release or as an accord and satisfaction of any claim the Town may have for further or additional sums payable as a franchise fee under this article.

2.6.4. *INTEREST.* In the event that any undisputed franchise payment is not made on or before the dates specified herein, the Grantee shall pay an interest charge, computed from such due date, at the annual rate equal to the commercial prime interest rate in effect upon the due date.

2.6.5. *PAYABLE QUARTERLY.* The franchise fee and any other cost or damages assessed shall be payable quarterly to the Town and submitted to the Town Finance Officer or other designee. Payment date is the last day of the month following the month in which payment is due.

2.6.6. *AUDITED FINANCIALS.* Grantee agrees to provide to the Town an independently audited annual financial statement, including a Balance Sheet and Income Statement which details all gross revenues, in addition to a copy of the annual audit report of the Grantee's parent company.

2.6.7. *RIGHT TO INSPECT.* The Town shall have the right upon reasonable notice to inspect the Grantee's income records and to re-compute any amounts determined to be payable under this article. Any undisputed additional amount due to the Town as a result of the audit shall be paid within ninety (90) days following written notice to the Grantee by the Town, which notice shall include a copy of the audit report.

**Section 2.7. FORFEITURE OR REVOCATION.**

2.7.1. *REVOCATION.* The Commission reserves the right to revoke any franchise granted hereunder and rescind all rights and privileges associated with the franchise in the following circumstances, each of which shall represent a default and breach under this article or the franchise agreement:

- 2.7.1.1. If the Grantee shall default in the performance of any of the material obligations under this article or under such documents, contracts and other terms and provisions entered into by and between the Town and the Grantee;
  - 2.7.1.2. If the Grantee shall fail to provide or maintain in full force and effect the liability and indemnification coverage or the performance bond as required herein pursuant to the franchise agreement;
  - 2.7.1.3. If the Grantee's construction schedule is delayed later than the schedule contained in the franchise agreement, if any, or beyond any extended date set by the Board of Commissioners;
  - 2.7.1.4. If the Grantee becomes insolvent or unable to pay its debts or is adjudged bankrupt;
  - 2.7.1.5. If the Grantee fails to restore service after ninety-six (96) consecutive hours of interrupted "system-wide" service, except when such service interruption is caused by forces beyond the Grantee's control (including but not limited to actions of subscribers), or when approval of such interruption is obtained from the Town Manager or his designee;
  - 2.7.1.6. If there has been material misrepresentation of fact in the application for or negotiation of the franchise or any extension or renewal thereof.
- 2.7.2. *FORCE MAJEURE.* The Grantee shall be not liable for any failure or delay in the performance of its obligations pursuant to this Ordinance and the Franchise and such failure or delay shall not be deemed a default of this Ordinance and the Franchise or grounds for termination hereunder if any of the following conditions are satisfied:
- 2.7.2.1. If such failure or delay:
    - 2.7.2.1.1. could not have been prevented by reasonable precaution, and
    - 2.7.2.1.2. cannot reasonably be circumvented by the Grantee through the use of alternate sources, work-around plans, or other means; or
  - 2.7.2.2. If and to the extent such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, or court order.
- 2.7.3. *FORCE MAJEURE EVENT.* Upon the occurrence of an event which satisfies any of the conditions set forth above (a "Force Majeure Event") the Grantee shall be excused from any further performance of those of its obligations pursuant to this Ordinance and the Franchise affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the Grantee continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
- 2.7.4. *NOTICE.* Upon the occurrence of a Force Majeure Event, the Grantee shall immediately notify the Town by telephone, to be confirmed by written notice, of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event.
- 2.7.5. Procedure prior to revocation.
- 2.7.5.1. The Town shall make written demand that the Grantee comply with any such requirement, limitation, term, condition, rule or regulation or correct any action deemed cause for revocation
    - 2.7.5.1.1. If the failure, refusal or neglect of the Grantee continues for a period of thirty (30) days following such written demand, the Town shall place its request for revocation of the franchise upon a regular commission meeting agenda.
    - 2.7.5.1.2. The Town shall cause to be served upon the Grantee, at least seven (7) days prior to the date of such commission meeting, a written notice of this intent to request such revocation, and the time and place of the meeting, notice of which shall be published by the Town Clerk at least twice, seven (7) and fourteen (14) days respectively, before such meeting, in a newspaper of general circulation within the Town.

- 2.7.5.2. The commission shall hear any persons interested therein, including the Grantee, and shall determine in its discretion whether or not any failure, refusal or neglect by the Grantee was with just cause.
  - 2.7.5.3. If such failure, refusal or neglect by the Grantee was with just cause, as defined by the Town, the Commission shall direct the Grantee to comply within such time and manner and upon such terms and conditions as are reasonable.
  - 2.7.5.4. If the Commission shall determine such failure, refusal or neglect by the Grantee was without just cause, then the council shall, by resolution, declare that the franchise of the Grantee shall be revoked and bond shall be forfeited, unless there is compliance by the Grantee within ninety (90) days.
- 2.7.6. *TERMINATION.* In the event a franchise is revoked or otherwise terminated, the Town may, in its sole discretion, do any of the following:
- 2.7.6.1. Purchase the system under the procedures set forth in Section 2.11 of this article;
  - 2.7.6.2. Effect a transfer of ownership of the system to another party for good and sufficient considerations, which shall be an amount at least equal to the fair market value of the system under the original Grantee's operation, in accordance with the Cable Act;
  - 2.7.6.3. Order the removal of all system facilities from the Town within a reasonable period of time.
- 2.7.7. *FACILITIES REMOVAL..* In removing its system facilities, the Grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good a condition, normal wear and tear excepted, as was prevailing prior to the Grantee's removal of system facilities.
- 2.7.7.1. The Town shall inspect and approve the condition of the public ways and public places and cables, wires, attachments and poles after removal.
  - 2.7.7.2. The liability, indemnity, insurance and performance bond as provided herein shall continue in full force and effect during the period of removal and until full compliance by the Grantee with the terms and conditions of this paragraph, this article and the franchise agreement is reached.
- 2.7.8. *PERFORMANCE FAILURE.* In the event of a failure by the Grantee to complete any work required by Section 5 and/or this Section or any other work required by Town law or ordinance, and upon reasonable notice to the Grantee, the Town may cause such work to be done and Grantee shall reimburse the Town the reasonable costs thereof within thirty (30) days after verification of an itemized list of such costs.
- 2.7.8.1. The Town shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

**Section 2.8. RECEIVERSHIP AND FORECLOSURE.**

- 2.8.1. *RECEIVERSHIP.* The franchise shall, at the option of the Town, cease and terminate one hundred twenty (120) days after the appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of the 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:
- 2.8.1.1. 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 article and the franchise granted pursuant hereto, and the receivers or trustees, within said one hundred twenty (120) days, shall have remedied all defaults under the franchise agreement; and
  - 2.8.1.2. Such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement, duly approved by the court having jurisdiction of the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provisions and limitation of this article and the franchise agreement.

- 2.8.2. *FORECLOSURE.* In the case of a foreclosure or other judicial sale of the plant, property and equipment of the Grantee or any part thereof, including or excluding the franchise, the Town may serve notice of termination upon the Grantee and the successful bidder at such sale, in which event the franchise and all rights and privileges of the Grantee granted hereunder shall cease and terminate thirty (30) days after service of such notice unless:
- 2.8.2.1. The Town shall have approved the transfer of the franchise in the manner this article provides, and
- 2.8.2.2. Such successful bidder shall have covenanted and agreed with the Town to assume and be bound by all the terms and conditions of the franchise.

### **Section 2.9. EQUAL OPPORTUNITY.**

The Grantee shall be an equal opportunity/affirmative action employer, adhering to all federal, state, county or municipal laws and regulations related thereto.

- 2.9.1. *MAINTENANCE.* The Grantee shall establish and maintain equal opportunity in employment, and no person shall be discriminated against in employment by the Grantee because of race, religion, color, sex, national origin, age, physical disability.
- 2.9.2. *IMPLEMENTATION.* Implementation, administration and review of all Equal Employment Opportunity (EEO) and affirmative action policies and programs shall be the direct responsibility of the chief executive officer of the cable communications system. All officers, executives, managers, and administrative and supervisory personnel of the Grantee shall be directed to participate in the Grantee's affirmative action efforts.
- 2.9.3. *AFFIRMATIVE ACTION PLAN.* Any significant subcontractor of the Grantee or a parent, subsidiary or affiliate of the Grantee which does not already have an affirmative action plan which would cover its activities in the Town of Davidson shall submit to the Town a plan for its operations on behalf of the Grantee, consistent with the spirit of this section.
- 2.9.4. *RECORDS.* The Grantee shall prepare and maintain records of promotions, demotions, terminations and transfers.
- 2.9.5. *FEDERAL LAW COMPLIANCE.* The Grantee shall assure that it constructs all facilities so that they are in compliance with applicable federal law pertaining to service to the disabled.
- 2.9.6. *M/WBD ENTERPRISES.* The Grantee shall make a good-faith effort to utilize minority/women business enterprises in construction and purchase contracts.

### **Section 2.10. LOCAL OFFICE; ENFORCEMENT, WAIVER OF PROVISIONS**

- 2.10.1. *LOCAL OFFICE.* The Grantee shall maintain, within 30 miles of the corporate limits of the Town, an office and local telephone number for the conduct of business related to the franchise during normal business hours. The Grantee shall be required to advise the Town of such address and telephone numbers and any changes thereof.
- 2.10.2. *FAILURE OF TOWN TO ENFORCE THE FRANCHISE IS NO WAIVER OF THE TERMS THEREOF.* The Grantee shall not be excused from complying with any of the terms and conditions of this article or the granted franchise by any failure of the Town upon any one (1) or more occasions to insist upon or to seek compliance with any such terms or conditions.

### **Section 2.11. RIGHTS RESERVED TO THE GRANTOR**

- 2.11.1. Right to purchase.
- 2.11.1.1. In the event the Town revokes the franchise pursuant to provisions of this article, or at the normal expiration of the franchise term, the Town shall have the right, directly or as an intermediary, to purchase the cable communications system. The purchase

- price shall be based upon the value of the system determined pursuant to this section. In no event shall the Town, when acting as an intermediary or effecting the transfer or ownership of the system to another person, be paid any consideration by any party for such activities.
- 2.11.1.2. The date of valuation shall be no earlier than the day following the date of expiration or revocation and no later than the date the Town makes an appropriate offer for the system.
  - 2.11.1.3. The value of the cable system shall be determined by a qualified appraiser appointed by the Town and in accordance with the Cable Act. The appraiser shall determine the worth of the assets as follows:
    - 2.11.1.3.1. If a franchise held by the Grantee is revoked for cause and the Town acquires ownership of the system or effects a transfer of ownership of the system to another person, any such acquisition shall be at an equitable price; or
    - 2.11.1.3.2. If a renewal of a franchise held by the Grantee is denied and the Town acquires ownership of the system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be at fair market value.
  - 2.11.1.4. Upon receipt of reasonable notice of the Town's intent to purchase the system at the value established above, the Grantee shall have thirty (30) days within which to accept that valuation as the purchase price of the system. In the event that purchase price is not acceptable, the parties shall have one hundred twenty (120) days in which to negotiate an acceptable purchase price.
  - 2.11.1.5. Upon exercise of this option and the payment of the agreed-upon sum by the Town and its service of reasonable notice of such action upon the Grantee, the Grantee shall immediately transfer to the Town possession and title to all facilities and property, real and personal, of the cable communications system, free from any and all liens and encumbrances not agreed to be assumed by the Town in lieu of some portion of the purchase price set forth above; and the Grantee shall execute such warranty, deeds or other instruments of conveyance to the Town as shall be necessary for this purpose.
  - 2.11.1.6. In the event the Town and the Grantee are unable to agree upon the value of the cable communications system within the time limits set forth above, either party may require by reasonable notice to the other that the value of the cable communications system be submitted to arbitration in the following manner:
    - 2.11.1.6.1. The Town and the Grantee shall each, within fifteen (15) days after such notice, select an arbitrator who shall be a disinterested person with reasonable knowledge and experience relative to the subject to be arbitrated. The two (2) arbitrators thus selected shall immediately thereafter select a third arbitrator who shall likewise be a disinterested person having reasonable knowledge and experience relative to the subject to be arbitrated.
    - 2.11.1.6.2. Within thirty (30) days after appointment of all arbitrators and upon ten (10) days written notice to the parties, the panel of arbitrators shall commence a hearing on the issue of valuation and shall receive all relevant information from the parties. The value of the system as determined by the arbitration panel shall be in accordance with this Section 2.11.
    - 2.11.1.6.3. The hearing shall be recorded and may be transcribed at the request of either party. All hearing proceedings, debate and deliberations shall be open to the public and at such times and places as contained in the notice or as thereafter publicly stated, except that, at the request of either of the parties, debate and deliberations may be held in closed session.
    - 2.11.1.6.4. Within thirty (30) days after the close of the hearing, the panel of arbitrators shall prepare findings and a decision agreed upon by a

majority of the panel, which shall be filed with the Town and served by mail immediately upon the Grantee. Should there be no majority decision, the proceedings shall be started anew, unless the parties extend by mutual agreement the time in which the panel of arbitrators may make a decision.

- 2.11.1.6.5. Either party may seek judicial relief in the following circumstances: (i) a party fails to select an arbitrator; (ii) the arbitrators fail to select a third arbitrator; (iii) one (1) or more arbitrators is unqualified in either party's opinion; (iv) designated time limits have been exceeded; (v) the decision was procured by corruption, fraud or undue means; (vi) there was evident partiality on the part of the independent arbitrator who represents neither the Grantee nor the Town; (vii) the arbitration panel exceeded the authority granted hereunder; (viii) based upon the record, the panel abused its discretion.
  - 2.11.1.6.6. In the event a court of competent jurisdiction determines that judicial relief is appropriate to the circumstances set forth above, the court in its discretion may order the arbitration procedure repeated and issue findings, orders and directions.
  - 2.11.1.6.7. The expenses of the arbitrators selected by each party shall be borne by that party, and the expenses of the third arbitrator and those expenses incurred by the panel as a whole shall be borne equally by the parties.
  - 2.11.1.6.8. Upon receipt of the decision of the arbitration panel, the Town shall have thirty (30) days in which to notify the Grantee of its intent to exercise its option to purchase the system. The purchase price shall be the value of the system as determined by the arbitration panel in accordance with Section 2.11 hereof.
  - 2.11.1.7. At any time prior to the actual transfer to the Town of possession and title of the system hereunder, the Grantee may operate the system, using its good-faith judgment in all matters, and be compensated therefor in an amount appropriate to be paid to an independent party providing the same management services. Revenues collected by the Grantee during such a period shall be considered revenues of the Town or other person to whom the Town intends to transfer ownership.
- 2.11.2. *RIGHT TO INSPECT.* The Town shall have the right, at its expense, to inspect all construction or installation work performed subject to the provisions of the franchise and to make such tests as it shall find necessary to ensure compliance with the terms of this article, the franchise agreement, and other pertinent provisions of the law.
- 2.11.3. *RIGHT TO INTERVENE.* The Town shall have the right of intervention in any suit of proceeding to which the Grantee is party.

### **DIVISION 3. REGULATION OF FRANCHISE**

#### **Section 3.1. REGULATORY AUTHORITY**

- 3.1.1. *REGULATION.* The Town may exercise appropriate regulatory authority under the provisions of this article and applicable law. This authority shall be vested in the Commission and administration through the Town Manager or his designee in order to provide day-to-day administration of this article and any franchise granted hereunder.
- 3.1.2. *LEGAL COMPLIANCE.* Notwithstanding any other provisions of this article to the contrary, the Grantee shall at all times comply with all applicable laws and regulations of the local, state and federal government. In the event that any actions of the state or federal government or any agency thereof, or any court of competent jurisdiction upon final adjudication, substantially reduce in any way the power or authority of the Town under this article or the franchise, or if in

compliance with any local, state or federal law or regulation, the Grantee finds conflict with the terms of this article, the franchise, or any law or regulation of the Town, then as soon as possible following knowledge thereof, the Grantee shall notify the Town of the point of conflict believed to exist between such law or regulation and the laws or regulations of the Town, this article and the franchise. The Town shall have the right to modify any provisions of this article to such reasonable extent as may be necessary to carry out the intent and purpose of this article.

- 3.1.3. *PLENARY AUTHORITY.* The Town reserves the right to exercise the maximum plenary authority, as may at any time be lawfully permissible, to regulate the cable communications system, the franchise and the Grantee. Should applicable legislative, judicial or regulatory authorities at any time permit regulation not presently permitted to the Town, the Town may, without the approval of the Grantee, legislate any such additional regulation as may then be permissible, whether or not contemplated by this article.

### **Section 3.2. REGULATION OF THE FRANCHISE**

- 3.2.1. The Town shall have the following regulatory responsibility:

- 3.2.1.1. Administration and enforcement of the provisions of this article and any franchise granted hereunder;
- 3.2.1.2. Award renewal, extension or termination of a franchise pursuant to the provisions of this article, the franchise, and other applicable law;
- 3.2.1.3. Consent prior to sale or transfer of any franchise granted hereunder;
- 3.2.1.4. Performance evaluations pursuant to this article and the franchise.

- 3.2.2. The Town also reserves the right to perform the following functions:

- 3.2.2.1. Develop objectives and coordinate activities related to the operation of government channels;
- 3.2.2.2. Provide technical, programming and operational support to public agency users such as Town departments, schools and health care institutions;
- 3.2.2.3. Coordinate plans for interconnection of cable services;
- 3.2.2.4. Analyze the possibility of integrating cable communications with other Town, state or regional telecommunications networks;
- 3.2.2.5. Formulate and recommend long-range telecommunications policy for the Town and provide for the determination of future cable-related needs and interests of the community,
- 3.2.2.6. Provide the administration effort necessary for the conduct of performance evaluations pursuant to this article and the franchise, and any other activities required for the administration of the franchise;
- 3.2.2.7. Monitor the Grantee's process for handling citizen complaints and periodically inspect and analyze the records related to such complaints;
- 3.2.2.8. Monitor the Grantee's adherence to operational procedures and line-extension policies;
- 3.2.2.9. Assure compliance with applicable laws and ordinances;
- 3.2.2.10. Arrange tests and analyses of equipment and performance, pursuant to this article and franchise, to ensure compliance with this article and the franchise;
- 3.2.2.11. Provide for reasonable continuity in service;
- 3.2.2.12. Receive for examination all data and reports required by this article.

### **Section 3.3. RATES AND CHARGES**

- 3.3.1. *RATE REGULATION.* The Town may regulate basic cable service tier rates and related equipment, installation and service charges of any cable television system operating in the Town of Davidson pursuant to existing federal law and FCC regulations, notwithstanding any different or inconsistent provisions in the franchise.

- 3.3.2. *VIEWS CONSIDERED.* In connection with such rate regulation, the Town shall ensure a reasonable opportunity for consideration of the views of interested parties.

- 3.3.3. *FCC FORMS.* The Town Manager, or his designee, is authorized to execute on behalf of the Town and file with the FCC such certification forms or other instruments as may be required by federal law or FCC regulations in order to enable the Town to regulate rates and charges.
- 3.3.4. *RATE/SCHEDULES.* The Grantee shall file with the Town schedules which shall describe all services offered, all rates and charges of any kind, and all terms and conditions relating thereto.

**Section 3.4. PERFORMANCE EVALUATION.**

- 3.4.1. *PERFORMANCE EVALUATIONS.* The Town and the Grantee shall, at the discretion of the Town, hold scheduled performance evaluation sessions every third year during the term of the franchise.
- 3.4.2. *SPECIAL EVALUATIONS.* Special evaluation sessions may be held at any time during the term of the franchise at the request of the Town.
- 3.4.3. *PUBLIC NOTICE.* All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with the public notice provisions of this Ordinance. The Grantee shall notify subscribers of all such evaluation sessions by announcement on the designated local-origination channel on the system at such various times and frequencies so as to ensure comprehension between the hours of 11:00 a.m. and 9:00 p.m. for five (5) consecutive days preceding each session.
- 3.4.4. *TOPICS.* Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, system performance, Grantee compliance with this article and the franchise, customer service and complaint response, subscriber privacy, franchise fees, penalties, applications of new technologies, judicial and FCC filings, and line extensions.
- 3.4.5. *GRANTEE COOPERATION.* During the review and evaluation by the Town, the Grantee shall cooperate with the Town and shall provide such information and documents as the Town may need to reasonably perform its review.

**Section 3.5. SCHEDULE OF LIQUIDATED DAMAGES**

- 3.5.1. *WILLFUL VIOLATION.* For the willful violation of any of the following provisions of this article, the Town shall notify the Grantee in writing of the violation and the Grantee shall be allowed thirty (30) days, or such greater amount of time as the Town may specify, to correct such violation.
- 3.5.2. *CHARGEABLE TO BOND.* Such undisputed liquidated damages shall be chargeable, to the extent available, to the security fund and performance bond if not tendered by the Grantee within the aforesaid period of time.
- 3.5.3. *HEARING.* The Grantee may request a hearing before the Commission in writing within seven (7) business days of receiving notice of violation from the Town. The time frame specified in the notice for correction of the violation shall be tolled from the date of receipt of a request from the Grantee for a hearing until the day after the hearing.
- 3.5.4. *DAMAGES PENALTIES.* These liquidated damages shall be in addition to and not a limitation upon the other penal provisions of this article, including penalties or revocation, or other statutorily or judicially imposed penalties.
  - 3.5.4.1. No decision by the Town to invoke any remedy under this article, the franchise agreement, or any statute, law or ordinance, shall preclude the availability of any other such remedy.



ISSUE

FAILURE TO RENDER PAYMENT OF THE REIMBURSEMENT OF THE TOWN'S FRANCHISE EXPENSES, FRANCHISE FEE OR PENALTY PAYMENTS:

LIQUIDATED DAMAGES

FIVE HUNDRED DOLLARS (\$500.00) PER DAY FROM TIME DUE UNTIL PAID.

FAILURE TO FILE REPORTS:

ONE HUNDRED DOLLARS (\$100) PER DAY FROM TIME DUE UNTIL REPORT(S) ARE FILED.

FAILURE TO COMPLETE SYSTEM CONSTRUCTION

ONE THOUSAND DOLLARS (\$1,000) PER DAY FROM TIME DUE UNTIL CONSTRUCTION IS COMPLETE.

FAILURE TO COMPLY WITH MATERIAL PROVISIONS OF THIS ORDINANCE OR THE FRANCHISE AGREEMENT

TWO HUNDRED DOLLARS (\$200) PER DAY UNTIL GRANTEE IS IN COMPLIANCE WITH THE PROVISION(S).

FAILURE TO PROVIDE ACCESS FUNDS, EQUIPMENT, FACILITIES OR SERVICES

FIVE HUNDRED DOLLARS (\$500) PER DAY FROM TIME DUE UNTIL PAID OR PROVIDED.

3.5.4.2. *TOWN RIGHTS.* The Town retains the right at its sole option, to reduce or waive any of the above-listed penalties where extenuating circumstances or conditions beyond the control of the Grantee are deemed to exist. The Town Manager or his designee shall determine the Town's willingness to reduce or waive any of the above-listed penalties.

**DIVISION 4. BOND, INSURANCE, INDEMNIFICATION**

**Section 4.1. PERFORMANCE BOND**

4.1.1. *PERFORMANCE BOND.* Not later than forty-five (45) days after the effective date of the franchise, the Grantee shall obtain and maintain during the entire term of the franchise and any extensions and renewals thereof, at its cost and expense, and file with Town a corporate surety bond or letter of credit, in an amount specified in the franchise agreement, to guarantee the faithful performance of the Grantee of all its obligations provided under this article and the franchise. Failure to timely obtain, file and maintain said bond shall constitute a substantial violation of this article.

4.1.2. *CONDITIONS.* The performance bond shall provide the following conditions:

4.1.2.1. There shall be recovered by the Town, jointly and severally from the principal and surety, any and all fines and penalties due to the Town and any and all damages, losses, costs and expenses suffered or incurred by the Town resulting from the failure of the Grantee to: faithfully comply with the provisions of this article and the franchise applicable orders, permits and directives of any Town agency or body having jurisdiction over its acts or defaults; pay any claims, liens or taxes due the Town which arise by reason of the construction, operation, maintenance or repair of the cable system.

4.1.2.2. The total amount of the bond shall be forfeited in favor of the Town in the event:

- 4.1.2.2.1. The Grantee abandons the cable system at any time during the term of the franchise or any extension thereto;
- 4.1.2.2.2. The Grantee assigns the franchise without the express written consent of the Town.

4.1.3. *REDUCTION OF BOND.* Upon written application by the Grantee, the Town may, at its sole option, permit the amount of the bond to be reduced or waive the requirements for a performance bond subject to the conditions set forth below. Reductions granted or denied upon application by the

Grantee shall be without prejudice to the Grantee's subsequent applications or to the Town's right to require the full bond at any time thereafter. However, no application shall be made by the Grantee within ninety (90) days of any prior application.

- 4.1.4. *USE OF PERFORMANCE BOND.* Prior to drawing upon the performance bond for the purposes described in this section, the Town shall notify the Grantee in writing that payment is due, and the Grantee shall have ten (10) days from the receipt of such written notice to make a full and complete payment of undisputed amounts. If the Grantee does not make the payment within ten (10) days the Town may withdraw the amount thereof from the performance bond.
- 4.1.5. *NOTIFICATION.* Within three (3) days of a withdrawal from the performance bond, the Town shall send to the Grantee, by certified mail, return receipt requested, written notification of the amount, date and purpose of such withdrawal.
- 4.1.6. *REPLENISHMENT OF PERFORMANCE BOND.* No later than thirty (30) days after receipt by the Grantee of certified mail notification of a withdrawal pursuant to paragraph (e) above, the grantor shall replenish the performance bond in an amount equal to the amount so withdrawn. Failure to make timely replenishment of such amount to the performance bond shall constitute a substantial violation of this article.
- 4.1.7. *NON-RENEWAL, ALTERATION OR CANCELLATION OF PERFORMANCE BOND.* The performance bond required herein shall be in a form satisfactory to the Town and shall require thirty (30) days written notice of any non-renewal, alteration or cancellation to both the Town and the Grantee. The Grantee shall, in the event of any such cancellation notice, obtain, pay all premium for, and file with the Town, written evidence of the issuance of a replacement bond within thirty (30) days following receipt by the Town or the Grantee of any notice of cancellation.

#### **Section 4.2. LIABILITY AND INSURANCE**

- 4.2.1. *INSURANCE AMOUNTS.* As of the effective date of this article, the Grantee shall file with the Town a certificate of insurance and thereafter maintain in full force and effect at all times for the full term of the franchise, at the expense of the Grantee, a comprehensive general liability insurance policy, naming the Town as additional insured, written by a company authorized to do business in the State of North Carolina, protecting the Town against liability for loss or bodily injury and property damage occasioned by the installation, removal, maintenance or operation of the cable communications system by the Grantee in the following minimum amounts:
  - 4.2.1.1. One million dollars (\$1,000,000.00) combined single limited, bodily injury and for property damage in any one (1) occurrence;
  - 4.2.1.2. One million dollars (\$1,000,000.00) aggregate.
- 4.2.2. *AUTOMOBILE LIABILITY.* The Grantee shall also file with the Town a certificate of insurance for a comprehensive automobile liability policy written by a company authorized to do business in the State of North Carolina, for all owned, non-owner, hired and leased vehicles operated by the Grantee, with limits no less than one million dollars (\$1,000,000.00) each accident, single limit, bodily injury and property damage combined, or evidence of self-insurance.
- 4.2.3. *WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE.* The Grantee shall maintain, and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain throughout the term of the franchise, worker's compensation and employer's liability, valid in the state, in the minimum amount of the statutory limit for worker's compensation, and five hundred thousand dollars (\$500,000.00) for employer's liability.
- 4.2.4. *TERM AND ENDORSEMENTS.*
  - 4.2.4.1. All liability insurance required in this section shall be kept in full force and effect by the Grantee during the existence of the franchise and until after the removal of all poles, wires, cables, underground conduits, manholes, and other conductors and

fixtures installed by the Grantee incident to the maintenance and operation of the article.

- 4.2.4.2. All policies shall be endorsed to give the Town of Davidson thirty (30) days written notice of the intent to amend, cancel or non-renew by either the Grantee or the insuring company.
- 4.2.5. *LIABILITY AND INSURANCE.* The Grantee agrees and binds itself to indemnify, keep and hold free and harmless the Town from any and all liability or costs, including attorneys' fees and court costs pertaining thereto, arising from any activities herein authorized, in that the Grantee shall pay, and by its acceptance of the franchise the Grantee specifically agrees that it will pay, all damages and penalties which the Town may be legally required to pay as a result of the franchise, provided that the Town provides Grantee timely notice of any such damages and penalties, and tender promptly any cases for which it seeks indemnification. These damages or penalties shall include but shall not be limited to damages arising out of copyright infringements and all other damages arising out of installation, operation or maintenance of the cable communications system authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this article.
- 4.2.6. *NO LIMITATION ON LIABILITY.* None of the provisions of this Ordinance or any insurance policy required herein, or any damages recovered by the Town hereunder, shall be construed to excuse the faithful performance by or limit the liability of Grantee under this Ordinance or the Franchise Agreement for damages either to the limits of such policies or otherwise.

## **DIVISION 5. DESIGN AND CONSTRUCTION**

### **Section 5.1. AUTHORITY TO CONSTRUCT**

- 5.1.1. *AUTHORIZATION TO COMMENCE NEW CONSTRUCTION AND APPLICATION PROCEDURES.* Within thirty (30) days of the acceptance by the Grantee of a franchise, the Grantee shall register the system with the FCC and apply for contracts for use of poles.
- 5.1.1.1. Within thirty (30) days after completion of the make-ready survey identifying the routes of the system facilities, the Grantee shall apply for all additional licenses from the state, Town or other necessary parties, such as the railroads, for crossing under or over their property.
- 5.1.1.2. In any event, all necessary applications for permits, licenses, certificates and authorizations shall be applied for in a timely fashion so that such filing and processing shall not interfere with or cause delay with the construction schedule as outlined in the franchise.
- 5.1.1.3. Failure to make such timely application and timely filing shall constitute a substantial violation of this article.
- 5.1.2. *POWER TO CONTRACT.* Upon grant of the franchise and in order to construct, operate and maintain a cable system in the Town, the Grantee may enter into contracts with any public utility companies or any other owner or lessee of any poles or underground areas located within or without the Town, obtain right-of-way permits from appropriate City, County, State or Federal officials necessary to cross or otherwise use highways or roads under their respective jurisdiction; obtain permission from the Federal Aviation Administration to erect and maintain antennas; and obtain whatever other permits a City, County, State or Federal agency may require.

### **Section 5.2. CONSTRUCTION AND TECHNICAL STANDARDS**

- 5.2.1. *COMPLIANCE WITH CONSTRUCTION AND TECHNICAL STANDARDS.* The Grantee shall construct, reconstruct, install, operate and maintain its system in a manner consistent with all applicable laws, ordinances, construction standards, governmental requirements, and FCC technical standards, which standards are incorporated by reference herein.

- 5.2.1.1. The system shall be designed, constructed, operated and maintained for twenty-four (24) hours-a-day continuous operation.
- 5.2.2. *STATE OF THE ART.* The Grantee shall construct, install, operate and maintain its system in accordance with, but not limited to, the following:
  - 5.2.2.1. The system will be designed to permit a minimum of 750 MHZ operation.
  - 5.2.2.2. Where economically feasible, the system will utilize home terminals which will make the system adaptable for the development of future services.
  - 5.2.2.3. The Grantee shall maintain its system facilities in a manner which will continue to enable to add new services and associated equipment as they are developed, available, and proved economically feasible and marketable to subscribers.
- 5.2.3. *FACILITY INSTALLATION/CONSTRUCTION.* Prior to the erection or installation by the Grantee of any towers, poles, or fixtures of five feet by five feet by four feet (5' x 5' x 4') or larger for use in connection with the installation, construction, maintenance or operation of the cable communications system under this article, the Grantee shall first submit to the Town and other appropriate parties for approval a concise description of the facilities proposed to be erected or installed, including engineering drawings, if required, together with a map and plans indicating the proposed location of all such facilities. If required for Town approval, pursuant to Section 2, Grantee shall also provide such description and drawings for underground construction.
- 5.2.4. *CONTRACTOR QUALIFICATIONS.* Any contractor proposed for work of construction, reconstruction, installation, operation, maintenance and repair of system equipment must be properly licensed under the laws of the state and all local ordinances.
- 5.2.5. *MAP ACCURACY.* The Town does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures. In public rights-of-way, where necessary, the location shall be verified by excavation.
- 5.2.6. *WORK PERFORMANCE.* Construction, reconstruction, installation, operation and maintenance of the cable communications system shall be performed in an orderly and workmanlike manner in accordance with then-current technological standards.
  - 5.2.6.1. All cables and wires shall be installed, where possible, parallel with electric and telephone lines.
  - 5.2.6.2. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.
- 5.2.7. Grantee shall at all times comply with:
  - 5.2.7.1. Occupational Safety and Health Administration (OSHA) Regulations;
  - 5.2.7.2. National Electric Code;
  - 5.2.7.3. National Electrical Safety Code (NESC);
  - 5.2.7.4. AT&T Manual of Construction Procedures (Blue Book);
  - 5.2.7.5. Bell Telephone Systems Code of Pole Line Construction;
  - 5.2.7.6. All federal, state, Town, and municipal construction requirements including FCC rules and regulations utility construction and requirements;
  - 5.2.7.7. All building and zoning codes, and all land use restrictions as the same exist or may be amended hereafter.
- 5.2.8. *ANTENNAS.* Any antenna structure used in the cable communications system shall comply with construction, marking, and lighting of antenna structure standards as required by federal and state laws or regulations.
- 5.2.9. *WORK FACILITIES, CONDITIONS, AND PROCEDURES.* All worker facilities, conditions, and procedures that are used during construction, installation, operation and maintenance of the cable system shall comply with the standards of the Occupational Safety and Health Administration.

- 5.2.10. *RF LEAKAGE*. RF leakage shall be checked at reception location for emergency radio services to prove measurable interference signal combinations are possible.
- 5.2.10.1. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no measurable interference to airborne navigational reception in the normal flight pattern.
- 5.2.10.2. FCC rules and regulations shall govern.
- 5.2.10.3. The system shall cause no measurable interference in television signal reception to any operating receiver not connected to and serviced by the system.
- 5.2.11. *STANDBY POWER*. The Grantee shall maintain equipment capable of providing standby power for a minimum of four (4) hours for the headend and all fiber optic nodes.
- 5.2.12. *HEALTH/SAFETY*. If, at any time, it is reasonably determined by the Town or any other agency or authority of competent jurisdiction that any part of the system, including without limitation, any means used to distribute signals over or within the system, is harmful to the health or safety of any person, then the Grantee shall, at its own cost and expense, promptly correct all such conditions.
- 5.2.13. *TOWN NOT LIABLE*. Except for acts of willful misconduct or gross negligence, neither the Town nor its officers, employees, agents, attorneys, consultants or independent contractors shall have any liability to the Grantee or any affiliated person for any liability as a result of or in connection with the protection, breaking through, movement, removal, alteration, or relocation of any part of the system by or on behalf of the Grantee or Town in connection with any emergency, public work, public improvement, alteration or any municipal structure, any change in the grade or line of any street, or the elimination, discontinuation, and closing of any street.

### **Section 5.3. SYSTEM CONSTRUCTION SCHEDULE**

- 5.3.1. *SERVICE AVAILABILITY*. The Grantee must make cable television service available to every dwelling unit within the franchise service area in accordance with the terms of the franchise agreement and this article.
- 5.3.2. *DEDICATED ACCESS*. It is the intent of the Town that dedicated access channels shall be constructed concurrently with any franchised cable communications system to take advantage of the cost reduction inherent in concurrent construction.
- 5.3.2.1. The requirements for dedicated institutional access channels shall be stated in the franchise agreement.

### **Section 5.4. EXTENSION OF SERVICE**

- 5.4.1. *DENSITY*. The Grantee shall provide service to any new residential dwelling units or commercial subscribers within the initial service area and any additional areas annexed to the Town where there are at least eighteen (18) potential subscribers or residential dwelling units per proposed cable plant mile for residentially zoned areas, and at least fifty (50) subscribers per proposed cable plant mile for commercially zoned areas, except where served by another cable company.
- 5.4.2. *LACK OF DENSITY*. In other areas with less than eighteen (18) residential dwelling units or fifty (50) commercial subscribers per proposed cable plant mile, the Grantee shall offer a cost-sharing arrangement with residents. The cost-sharing arrangement shall consist of the following:
- 5.4.2.1. On the request of one (1) or more potential subscribers desiring service, the Grantee shall prepare, at its cost, an engineering survey and cost analysis to determine the cost of plant extension required to provide service to each subscriber from the closest point where available quality signals exist.
- 5.4.2.2. The cost of construction shall be allocated based on the following formula: If a request for extension of service into a residential area requires the construction of cable plant which does not pass at least eighteen (18) potential subscribers per

strand or trench mile, the Grantee and subscribers will each bear their proportionate share of construction costs. For example, if there are nine (9) subscribers per strand mile or trench mile, the Grantee's share will equal 9/18ths or one-half (1/2) of construction cost. The remaining cost will be shared equally by each subscriber.

- 5.4.2.3. The average cost of line extension shall be recalculated annually and based upon then- current costs for labor and materials.
- 5.4.3. *NEW CONSTRUCTION.* In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give the Grantee reasonable notice of such construction or development and of the particular date on which open trenching will be available for the Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at the Grantee's expense.
- 5.4.3.1. The Grantee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner.
- 5.4.3.2. Except for the notice of the particular date on which trenching will be available to the Grantee, any notice provided to the Grantee by the Town of a preliminary plant request shall satisfy the requirement of reasonable notice if sent to the local general manager or system engineer of the Grantee prior to approval of the preliminary plant request.

## **Section 5.5. USE OF STREETS**

- 5.5.1. *UNDERGROUND INSTALLATIONS.* All installations shall be underground in those areas of the Town where public utilities providing telephone and electric service are underground at the time of installation.
- 5.5.1.1. In areas where either telephone or electric utility facilities are above ground at the time of installation, the Grantee may install its service above ground, provided that, at such time as those facilities are required to be placed underground by the Town or are placed underground, the Grantee shall likewise place its services underground without additional cost to the Town or to the individual subscriber so served.
- 5.5.1.2. Where not otherwise required to be placed underground by this article or the franchise agreement, the Grantee's system shall be located underground at the request of the adjacent property owner, provided that the excess cost over the aerial location shall be borne by the property owner making the request.
- 5.5.1.3. All new cable passing under the roadway shall be installed in conduit or PVC sheathing no less than eighteen (18) inches from the top of the conduit to the surface of the ground.
- 5.5.2. *INTERFERENCE WITH PERSONS, IMPROVEMENTS, PUBLIC AND PRIVATE PROPERTY AND UTILITIES.* The Grantee's system and facilities, including poles, lines, equipment and all appurtenances, shall be located, erected and maintained so that such facilities shall:
- 5.5.2.1. Not endanger or interfere with the health, safety or lives of persons;
- 5.5.2.2. Not interfere with any improvements the City, County or State may deem proper to make;
- 5.5.2.3. Not interfere with the free and proper use of public streets, alleys, bridges, easements or other public ways, places or property, except to the minimum extent possible during actual construction or repair;
- 5.5.2.4. Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction or repair; and
- 5.5.2.5. Not obstruct, hinder or interfere with any gas, electric, water or telephone facilities or other utilities located within the Town.
- 5.5.3. *RESTORATION TO PRIOR CONDITION.* In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the Town, replace and restore all paving, sidewalk, driveway, landscaping or surface of any street or

alley disturbed, in as good a condition as, or better than, before said work was commenced and in a good workmanlike, timely manner in accordance with standards for such work set by the Town.

5.5.3.1. Such restoration shall be undertaken within no more than ten (10) days after the disturbance is incurred and shall be completed as soon as possible thereafter.

5.5.4. *RESTORATION OF THE FACILITIES.* In the event that at any time during the period of this franchise the City, County or State shall lawfully elect to alter or change the grade of any street, alley or other public ways, the Grantee, upon reasonable notice by the proper authority, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

5.5.5. *COOPERATION WITH BUILDING MOVERS.* The Grantee shall, on the request of any person holding a building moving permit issued by the Town, temporarily raise or lower its wire to permit the moving of buildings.

5.5.5.1. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance.

5.5.5.2. The Grantee shall be given not less than fifteen (15) working days advance notice to arrange for such temporary wire changes.

5.5.6. *TREE TRIMMING.* The Grantee shall have the authority, except when in conflict with existing Town ordinances, to trim any trees upon and overhanging public rights-of-way so as to prevent the branches of such trees from coming in contact with system facilities, except that at the option of Town, such trimming may be done by it, or under its supervision and direction, at the expense of the Grantee.

5.5.7. *EASEMENTS.* All necessary easements over and under private property shall be arranged for by the Grantor.

5.5.7.1. Any easements over or under property owned by the Town other than the public rights-of-way shall be separately negotiated with the Town.

5.5.8. *WORK WITHIN RIGHT-OF-WAY.* The closing of any part of a publicly maintained street or right-of-way must be approved by the Town or State and shall not unreasonably impede traffic flow.

5.5.8.1. During repairs or improvements traffic on streets must be maintained.

5.5.8.2. Where full closing of the street is required, the request for approval must be submitted at least (10) days in advance.

5.5.8.3. Closings will not be permitted in the central business district during the holiday shopping season.

5.5.8.4. Where emergency closings are necessary, the Town is to be notified as soon as possible.

5.5.8.5. All closings are to be protected and signed.

5.5.9. *REMOVAL OF TOWN OR STATE PROPERTY.* No Town or State property is to be removed from a right-of-way, including signing on utility poles, without proper permission from the Town.

5.5.10. *NO BURDEN ON PUBLIC RIGHTS-OF-WAY.* Grantee shall not erect, install, construct, repair, replace or maintain its cable system in such a fashion as to unduly burden the present or future use of the streets or public rights-of-way.

5.5.10.1. If the Town, in its reasonable judgment, determines that any portion of the cable system is an undue burden, Grantee at its expense shall modify its cable system or take such other actions as the Town may determine is in the public interest to remove or alleviate the burden, and Grantee shall do so within the time period established by the Town.

- 5.5.11. *BARRIERS*. While any portion of the streets or public rights-of-way are open, Grantee shall maintain reasonable barriers, lights at night and other warnings to the users of the streets or public rights-of-way in compliance with applicable government regulations requiring and pertaining to such barriers.
- 5.5.12. *SOIL EROSION*. All construction shall be in accordance with State and local laws and regulations regarding soil erosion.
- 5.5.12.1. Grantee or Grantee's contractor shall correct any violation at the direction of the Town and at Grantee's expense.
- 5.5.13. *UTILITY CROWDING*. In areas of Town where Town or State finds that the public rights-of-way will not accommodate further underground facilities, the Town or State may require that the Grantee's conduits be oversized, duplicated, or placed in multiple configurations, and Grantee shall share the use of its underground conduits and multiple configurations at such locations at reasonable rates.
- 5.5.13.1. Such rates shall be determined by the Town or State if Grantee and third parties cannot agree on same.
- 5.5.14. *REMOVAL OF OBSOLETE FACILITIES/COOPERATION*. When Grantee opens a trench, accesses a conduit or boring, or is working on aerial locations, it shall remove all obsolete cable system facilities from such locations.
- 5.5.14.1. When Grantee opens a trench or access to underground bores, it shall notify all other Grantees and permittees in advance of such work, so that they may remove their obsolete facilities from such locations. Grantee shall cooperate with such persons in such activities.
- 5.5.14.2. When Grantee receives notification from another Grantee or permittee that it is opening a trench or access to underground bores, Grantee shall remove all of its obsolete facilities from such location while they are opened.
- 5.5.15. *VACATING OF RIGHTS-OF-WAY*. If a public right-of-way is vacated, eliminated, discontinued, or closed, all rights of Grantee under its franchise to use same shall terminate and Grantee at its expense shall immediately remove the cable systems from such public right-of-way unless Grantee obtains any necessary easements from the affected property owners to use the former public right-of-way.
- 5.5.16. *ACQUISITION OF RIGHT-OF-WAY*. In acquiring or widening public right-of-way, the Town or State shall determine the minimum right-of-way necessary to accommodate paved streets, pedestrian walkways, landscaping, traffic signals, drainage, water and sewer lines and other governmental facilities.
- 5.5.17. *PAVEMENT CUT COORDINATION/ADDITIONAL FEES*. Grantee shall coordinate its construction program and all other work in the public rights-of-way with Town's or State's program for street construction, rebuilding, resurfacing and repair (hereinafter collectively referred to as "street resurfacing"). Grantee shall meet with the official of the Town responsible for such program at least twice per year to this end.
- 5.5.17.1. The goals of such coordination shall be to require Grantee to conduct all work in the public rights-of-way in conjunction with or immediately prior to any street resurfacing planned by the Town. Grantee shall provide timely notice to the Town prior to such work and Grantee shall have applied for permits as required.
- 5.5.17.2. In addition to any other fees or payments required by this Ordinance and the Franchise, Grantee shall pay to the Town any costs required under local ordinances. This fee is in addition to and not in lieu of the obligation to restore the public rights-of-way.



**Section 5.6. ERECTION, REMOVAL AND COMMON USE OF POLES**

- 5.6.1. *APPROVAL REQUIRED.* No poles shall be erected by the Grantee without prior approval of the Town or State with regard to location, height, types and any other pertinent aspect. However, no location of any pole or wire holding structure of the Grantee shall give rise to a vested interest, and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the Town determines that the public convenience would be enhanced thereby.
- 5.6.2. *UTILIZATION OF EXISTING POLES.* Where poles already in existence for use in serving the Town are available for use by the Grantee, the Town or State may require the Grantee to use such poles and structures, if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.
- 5.6.3. *PERMITTING.* Where a public utility serving the Town desires to make use of the poles or other wire-holding structures of the Grantee, but agreement therefor with the Grantee cannot be reached, the Town may require the Grantee to permit such use for such consideration and upon such terms as the Town shall determine to be just and reasonable, if the Town determines that the use would enhance the public convenience and would not unduly interfere with the Grantee's operation.

**Section 5.7. CONSTRUCTION REPORTING REQUIREMENTS**

- 5.7.1. *CONSTRUCTION REPORT.* The Grantee shall provide the Town with a written progress report detailing construction work completed as specified in the Franchise

**Section 5.8. TESTS AND PERFORMANCE MONITORING**

- 5.8.1. *TECHNICAL PERFORMANCE.* Not later than ninety (90) days after any new or substantially rebuilt portion of the system is made available for service to subscribers, and thereafter on the third anniversary of the effective date of the franchise, the Grantee shall conduct technical performance tests to demonstrate substantial compliance with all technical standards contained in this article and the franchise agreement and the applicable technical standards and guidelines of the FCC.
- 5.8.2. *SUPERVISION/REPORTING.* Such tests shall be performed by or under the supervision of a qualified registered professional engineer or an engineer with proper training and experience.
  - 5.8.2.1. A copy of said engineer's report shall be submitted to the Town, describing test results, instrumentation, calibration and test procedures and the qualification of the engineer responsible for the tests.
- 5.8.3. *MONITOR TEST POINTS.* System monitor test points shall be established at or near the output of the last amplifier in the longest feeder line, at or near trunk line extremities.
  - 5.8.3.1. Such periodic tests shall be made at the test points as shall be required by the FCC and/or the franchise agreement.
- 5.8.4. *FCC TESTS.* In addition to the performance test reports required herein, a copy of any performance test reports required by the FCC shall be submitted to the Town within sixty (60) days of completion.
- 5.8.5. *COMPLAINT RESPONSE.* Whenever there have been similar complaints made within one (1) year from more than ten (10) percent of the subscribers to the Grantee's system, or when there exists other substantial evidence which, in the judgement of the Town, casts doubt on the reliability or quality of the Grantee's system, the Town shall have the right and authority to compel the Grantee to test, analyze and report on the performance of its system.
  - 5.8.5.1. Reports on such tests shall be delivered to the Town no later than thirty (30) days after the Town reasonably notifies the Grantee and shall include the following information:

- 5.8.5.1.1. The nature of the complaints which precipitated the special tests; and
- 5.8.5.1.2. What system component was tested; and
- 5.8.5.1.3. the equipment used and procedures employed in said testing; (iv) the results of such tests; and (v) methods by which said complaints were resolved. Said tests and analyses shall be supervised by a qualified technician, who shall sign all records of the special tests and forward same to the Town with a report interpreting the results of the tests and recommending what actions, if any, should be taken by the Grantee or Town.

5.8.6. *CONSULTANTS.* The Town shall have the right to employ, at the Town's expense, qualified consultants if necessary or desirable to assist in the administration of this or any other section of this article or the franchise agreement.

## **DIVISION 6. SERVICE**

### **Section 6.1. SERVICES TO SUBSCRIBERS AND USERS**

- 6.1.1. *SERVICES.* Concurrently with the activation of the cable communications system in the Town, the Grantee shall provide those services to subscribers as described in the franchise agreement or services of similar mix, quality and level.
- 6.1.1.1. The system shall carry the programming and services as indicated in the franchise agreement.
    - 6.1.1.1.1. Should the Grantee desire to change the selection of programs or services offered on any of its tiers, it shall use its best efforts to maintain the mix, quality and level of services provided over the system.
    - 6.1.1.1.2. Any such change in programs or services offered shall comply with the conditions and procedures contained in the franchise agreement and shall be reported to the Town at least thirty (30) days prior to the proposed implementation when possible.
    - 6.1.1.1.3. The Grantee shall use its best efforts to ensure diversity of programming.
  - 6.1.1.2. A basic service tier shall be offered to subscribers throughout the term of this franchise.
  - 6.1.1.3. The Grantee shall provide and maintain Access Channels pursuant to the terms defined under the Franchise Agreement.
  - 6.1.1.4. The Grantee shall provide and maintain an Institutional Network or provisions for such services pursuant to the terms defined under the Franchise Agreement.
  - 6.1.1.5. The Grantee shall make available "leased-access channels" to assure that the widest possible diversity of information sources are made available to subscribers.
    - 6.1.1.5.1. Such channels shall be especially designated for leased-access use by persons unaffiliated with the Grantee on terms, rates and conditions which are in accordance with Federal regulation.
    - 6.1.1.5.2. The number of such channels shall be determined by the provisions of Federal regulation.
    - 6.1.1.5.3. The Grantee shall advertise periodically the availability of such channels.
    - 6.1.1.5.4. The Grantee shall not exercise any editorial control over any programming provided over such channels, except as permitted in accordance with the provisions of Federal regulation.
  - 6.1.1.6. Grantee shall install and maintain, at no charge, one (1) service drop to each public building within the Franchise area for which the demarcation point (common entry point for utilities) is located 300 feet or closer to the closest useable point on the Grantee's cable system.

- 6.1.1.6.1. On request from the appropriate official, and if the Town or the respective entity is willing to pay the incremental costs, Grantee will run feeder rather than drop cable to a public building which does or plans to amplify the signal for internal distribution.
  - 6.1.1.6.2. Grantee shall provide full basic service and the CPST tier or its equivalent and one (1) non-addressable converter to such building free of charge. Any additional converters will be provided on request at Grantee's standard lease rate.
  - 6.1.1.6.3. Upon request from an appropriate official, at free drop locations, Grantee will provide inside wiring for a reasonable number of outlets, and the requesting entity shall reimburse Grantee's full cost of labor and materials for such internal wiring unless otherwise provided for in Grantee's (or parent company's) social contract with the FCC.
  - 6.1.1.6.4. Grantee shall also extend cable to public buildings located further than 300 feet from Grantee's distribution plant where the Town or the respective entity is willing to reimburse Grantee's full cost for materials and labor beyond the first 300 feet.
- 6.1.2. *EMERGENCY OVERRIDE.* To the extent required by and consistent with applicable federal statutes and FCC regulations, the Grantee shall satisfy its Emergency Access Override Obligation throughout the Town, and shall designate a government access channel for emergency broadcast of both audio and video signals.
- 6.1.2.1. The Town shall train its personnel in proper use of the channel; shall limit access to its override functions to such trained individuals; and shall indemnify, hold harmless, and defend the Grantee against any and all claims, causes of action, proceedings, and judgments for damages arising out of the Town's use of the emergency channel.

**Section 6.2. INSTALLATIONS, CONNECTIONS, OTHER GRANTEE SERVICES**

- 6.2.1. *STANDARD INSTALLATIONS.* Standard installation shall consist of a subscriber connection not exceeding one hundred fifty (150) feet from a single point or pedestal attachment to the customer's residence.
- 6.2.1.1. Service in excess of one hundred fifty (150) feet and concealed wiring shall be charged before installation begins at a rate not to exceed additional installation costs.
  - 6.2.1.2. The desire of the subscriber as to the point of entry into the residence shall be observed whenever possible, subject to the Grantee's good-faith judgment in regard to, but limited to, safety, efficiency and system performance.
  - 6.2.1.3. The Grantee shall use due care in the process of installation and shall repair any damage to the subscriber's property caused by said installation.
    - 6.2.1.3.1. Such restoration shall be undertaken within a reasonable time after the damage is incurred and shall be completed as soon as possible thereafter, said time not to exceed fifteen (15) days, weather permitting.
- 6.2.2. *ANTENNAS AND ANTENNA SWITCHES.* The Grantee shall not, as condition to providing cable communications service, require any subscriber or potential subscriber to remove any existing antenna structures for the receipt of over-the-air television signals.
- 6.2.3. *LOCKOUT DEVICES.* The Grantee shall provide to the potential subscriber, as part of its promotional literature, information concerning the availability of a lockout device for use by a subscriber.
- 6.2.3.1. The lockout device described herein shall be made available to all subscribers requesting it, beginning on the first day that any cable service is provided or, in the case of a renewed or extended franchise, on the effective date of such renewal or extension.

- 6.2.4. *RECONNECTION*. The Grantee shall restore service to customers wishing restoration of service, provided the customer shall first satisfy any previous obligations owed.
- 6.2.4.1. Further, any such reconnection may be on terms and conditions established by the Grantee.
- 6.2.5. *FREE DISCONNECTION*. Subscribers shall have the right to have cable service disconnected or de-authorized without charge therefor.
- 6.2.5.1. Such disconnection or de-authorization shall be made as soon as practicable and not to exceed fifteen (15) days.
- 6.2.5.2. A refund of unused service charges shall be paid to the customer within sixty (60) days from the date of termination of service.
- 6.2.6. *DELINQUENT ACCOUNTS*. The Grantee shall use its best efforts to collect delinquent subscriber accounts.
- 6.2.6.1. Whenever possible, the Grantee shall provide the customer with at least seven (7) working days written notice prior to disconnection.

**Section 6.3. SERVICE CALLS AND COMPLAINT PROCEDURES.**

- 6.3.1. *SYSTEM OFFICE*. The Grantee shall establish, operate and maintain, a local office and local telephone number within the System, including a business office and maintenance and repair facility for the purpose of receiving inquiries, requests and complaints concerning all aspects of the construction, installation, operation and maintenance of the system and for the payment of subscribers' service charges.
- 6.3.2. *SYSTEM TELEPHONE*. The Grantee shall have a listed, locally staffed telephone number for service calls, and such telephone service shall be available twenty-four (24) hours a day, seven (7) days a week.
- 6.3.3. *COMPLAINT RESPONSE*. The Grantee shall respond to and resolve subscribers' complaints or requests for service in connection with repairs and maintenance and malfunctions of system facilities.
- 6.3.3.1. The Grantee shall respond as quickly as possible to such complaints and requests.
- 6.3.3.2. Complaints or requests which may pose a potential health and safety hazard will be responded to immediately.
- 6.3.3.3. In connection with billing complaints, the Grantee shall respond within seven (7) business days.
- 6.3.4. *RULES/REGULATIONS*. The Grantee shall prepare and file with the Town copies of all of its rules and regulations in connection with the handling of inquiries, requests and complaints.
- 6.3.4.1. The Grantee shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the office or agent to whom such inquiries or complaints are to be addressed, and furnish information concerning the Town office responsible for the administration of the franchise, including, but not limited to, the address and telephone number of said office.
- 6.3.5. *RECORDS*. The Grantee shall keep full records in connection with all complaints and requests in the nature of complaints in connection with the system.
- 6.3.5.1. Such records shall identify the person contacting the Grantee and the person responding on behalf of the Grantee, the subject matter of the contract, the date and time it was received, the resolution of the matter in question or the action taken by the Grantee in connection with the contact, and the date and time thereof, and such other information as may be deemed pertinent by the Grantee.
- 6.3.5.2. These records shall be made available for periodic inspection by the Town after forty-eight (48) hours notice to Grantee.

- 6.3.6. *EQUIPMENT SERVICE/REPLACEMENT.* The Grantee shall service or replace without charge all equipment provided by it to the subscriber, provided, however, that the Grantee may charge a subscriber for service to or replacement of any equipment damaged directly or indirectly by a subscriber.
- 6.3.7. *UNRESOLVED COMPLAINTS.* The Town may review and monitor unresolved customer complaints.
- 6.3.8. *SERVICE INTERRUPTION REBATE.* In the event that any subscriber is interrupted for twenty-four (24) or more consecutive hours due to causes within the Grantee's control, the Grantee shall provide a prorated rebate of monthly fees to the affected subscriber upon the subscriber's request.

**Section 6.4. CONSUMER SERVICE GOALS.**

Grantee agrees to the following consumer service goals or any other goals established by federal or state governmental authorities, whichever are higher:

- 6.4.1. *COMPLAINT RESOLUTION.* The Grantee shall resolve all complaints within fifteen (15) days, and shall notify the Town of those not resolved within fifteen (15) days.
- 6.4.2. *SUBSCRIBER INFORMATION.* The Grantee shall provide all prospective subscribers with complete, clear and concise information concerning all services and rates provided by the Grantee upon solicitation of service and prior to the confirmation of any agreement for the installation of cable service.
  - 6.4.2.1. Such information shall include but not be limited to the following: all services and rates; deposits, if applicable; installation costs; additional set charges; service upgrade and downgrade charges; and stolen or lost converter charges.
- 6.4.3. *SUBSCRIBER HANDBOOK.* A subscriber handbook shall be provided to each subscriber upon installation. This handbook should include information:
  - 6.4.3.1. on the utilization of video cassette recorders;
  - 6.4.3.2. regarding complaint, billing, and collection procedures, methods of ordering changes, termination of services, refund policies, and the telephone number and address of the appropriate Town department to whom problems with complaint procedures can be addressed;
  - 6.4.3.3. installation and service maintenance policies;
  - 6.4.3.4. instructions on how to use the cable service;
  - 6.4.3.5. channel positions of programming carried on the system;
  - 6.4.3.6. concerning parental lock-out devices;
  - 6.4.3.7. about use of the Grantee's converters;
  - 6.4.3.8. about adjusting the television set;
  - 6.4.3.9. explaining the bill;
  - 6.4.3.10. describing community programming;
  - 6.4.3.11. regarding office hours and customer-related telephone numbers; and
  - 6.4.3.12. regarding addresses for the Grantee's offices.
- 6.4.4. *SERVICES.* The Grantee's office shall be open weekdays from 8:00 AM to 6:00 PM and on Saturdays from 9:00 AM to 6:00 PM, unless otherwise stated in Grantee's Franchise Agreement.
  - 6.4.4.1. Additional payment centers located elsewhere in the Town should be provided throughout the term of the franchise, as consumer needs demand.
  - 6.4.4.2. Where feasible, Grantee shall provide contract services for the purpose of exchange or retrieval of converter equipment outside the normal business hours.
  - 6.4.4.3. The Grantee shall respond to repair calls, either by telephone contact with the subscriber for an appointment, by a visit to the premises, or by a doorknob hanger if no one is at home, within 24 hours.

- 6.4.5. *MAINTENANCE NOTICES.* The Grantee shall notify subscribers of routine maintenance activities through methods such as notes in the monthly guide, bill inserts, and video commercials.
- 6.4.5.1. Whenever possible, routine maintenance should be done by the Grantee in the early morning so that the subscribers are inconvenienced the least amount possible.
- 6.4.6. *CORRECTIVE ACTIONS.* Excluding conditions beyond the control of the Grantee, the Grantee will begin working on the loss of picture or sound on one or more channels promptly and in no event later than 24 hours after the interruption becomes known.
- 6.4.6.1. The Grantee must begin actions to correct other service problems the next business day after notification of the service problem.
- 6.4.7. *INSTALLATIONS.* The Grantee shall install cable television service to new subscribers and perform service changes to existing subscribers within seven (7) business days of initial requests under standard conditions.
- 6.4.8. *APPOINTMENTS.* Appointment window alternatives for installations, service calls and other installation activities will be either for a specific time or no more than a four (4) hour block of time during the business day.
- 6.4.8.1. Appointments cannot be canceled after the close of business the day before an appointment is scheduled.
- 6.4.8.2. Customers must be contacted and offered another time at their convenience if the company representative is running late and cannot keep the scheduled appointment.
- 6.4.8.3. The above standards must be met no less than ninety-five percent (95%) of the time, as measured on a quarterly basis.
- 6.4.9. *TELEPHONE RESPONSE.* For consumer telephone calls, the Grantee should answer ninety (90) percent of all calls handled (i.e. all calls which held more than sixty (60) seconds) within sixty (60) seconds.
- 6.4.9.1. No more than fifteen (15) percent of the total calls received and held for over sixty (60) seconds should be lost. Busy signals cannot be received more than three percent (3%) of the time, under normal operating conditions.
- 6.4.9.2. The Grantee shall provide information to the Town annually or upon special request regarding the number of active telephone lines, the time period in which telephone calls are answered, and the percent of calls lost.
- 6.4.9.3. Such back-up information as deemed necessary by the Town which can be provided by the Grantee's telephone management information system should be provided by the Grantee.
- 6.4.10. *TRAINED REPRESENTATIVE.* A trained company representative will answer consumer calls during normal business hours.
- 6.4.10.1. Calls made after normal business hours are to be answered by trained company representatives on the next business day.
- 6.4.11. *CONSUMER EDUCATION.* The Grantee shall provide ongoing consumer education programs regarding billing, which shall include at a minimum annual subscriber notification of the billing process and cycles and thirty (30) days prior notification of changes to this process or the cycles.
- 6.4.12. *CONSUMER RESEARCH.* The Grantee, on an ongoing basis, shall research customer needs, especially in the areas of Automated Response Units, Universal Remote Controls, and cable converter boxes.
- 6.4.13. *PERFORMANCE REVIEW INFORMATION.* The Grantee shall provide information deemed necessary to the Town for triennial performance review of the Grantee's performance and to evaluate consumer service performance.

- 6.4.14. *BILLING.* The Grantee, at a maximum, shall bill subscribers monthly, but this shall not preclude other payment arrangements expressly agreed upon by the Grantee and the subscriber.
- 6.4.15. *BILL CLARITY.* All bills must be clear, concise and understandable.
- 6.4.15.1. Bills must be itemized, including itemization for basic and premium service charges, and equipment charges.
- 6.4.15.2. All activities during the billing period must be shown, including optional charges, rebates, and credits.
- 6.4.16. *COMPLAINT RESPONSE.* The Grantee must respond to written complaints from subscribers regarding billing disputes within thirty (30) days.
- 6.4.16.1. Refund checks must be issued promptly, but not later than:
- 6.4.16.1.1. The customer's next billing cycle following resolution of the customer's request, or thirty (30) days, whichever is earlier; or
- 6.4.16.1.2. Upon return of equipment supplied by Grantee if service is terminated.
- 6.4.16.2. Credit is to be issued no later than the customer's next billing cycle following determination that credit is warranted.
- 6.4.17. *NOTICES.* Customers must be notified of any changes in rates, programming services or channel positions in writing and by announcements on the cable system.
- 6.4.17.1. If the change is within the Grantee's control, notice must be provided at least thirty (30) days in advance.
- 6.4.18. *REPAIR RESPONSE.* The Grantee shall resolve eighty (80) percent of all repair calls within forty-eight (48) hours, unless otherwise stipulated in Grantee's Franchise Agreement.
- 6.4.19. *PRIOR APPROVAL.* The Grantee shall secure formal approval from the Administrator prior to any and all changes to all the aforementioned items of this section, which approval shall not unreasonably be withheld.
- 6.4.20. In addition to the above, the Grantee shall comply with all service-related procedures contained in the Franchise Agreement.

**Section 6.5. CONTINUITY OF SERVICE.**

- 6.5.1. *UNINTERRUPTED SERVICE.* The Grantee shall use its best efforts to ensure that all subscribers receive continuous, uninterrupted service, insofar as their financial and other obligations to the Grantee are honored.
- 6.5.2. *REBUILD, MODIFY OR SALE OF SYSTEM.* In the event that the Grantee elects to rebuild, modify or sell the system, or the Town gives notice of intent to terminate or fails to renew the Grantee's franchise, the Grantee shall cooperate with the Town or new Grantee or operator in maintaining continuity of service to all subscribers.
- 6.5.2.1. During such period, the Grantee shall be entitled to the revenues for any period during which it operated the system and shall be entitled to reasonable costs when it no longer operates the system.
- 6.5.3. *FAILURE TO OPERATE.* In the event the Grantee fails to operate the system for seven (7) consecutive days without prior approval of the Town or without just cause, the Town may, at its option, operate the system or designate an operator until such time as the Grantee restores service under conditions acceptable to the Town or a permanent successor is selected.
- 6.5.3.1. If the Town is required to fulfill this obligation for the Grantee, the Grantee shall reimburse the Town for all reasonable costs or damages in excess of revenues from the system received by the Town that are the result of the Grantee's failure to perform.

**Section 6.6. PROTECTION OF SUBSCRIBER PRIVACY.**

- 6.6.1. *NOTICE.* At the time of entering into an agreement to provide any cable service or other service to a subscriber, and at least once a year thereafter, the Grantee shall provide notice, in the form of a separate written statement to each subscriber, which clearly and conspicuously informs the subscriber of:
- 6.6.1.1. The nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information.
  - 6.6.1.2. The nature, frequency and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;
  - 6.6.1.3. The period during which such information might be maintained by the Grantee;
  - 6.6.1.4. The times and places at which the subscriber may have access to such information in accordance with this article and other applicable federal, state, county and local law.
- 6.6.2. *PERSONALLY IDENTIFIABLE INFORMATION.* The Grantee shall not use the cable system to collect personally identifiable information concerning any subscriber, except as necessary to render a cable service or other service provided by the Grantee to the subscriber, or to detect unauthorized reception of cable communications, without the prior written or electronic consent of the subscriber concerned or as otherwise required by the FCC.
- 6.6.3. *CONSENT.* The Grantee shall not, without the specific written or electronic consent of the subscribers concerned, sell, disclose or otherwise make available to any party any list of the names and addresses of individual subscribers, any list which identifies the viewing habits of individual subscribers, or any personal data, social security number, income and other data the Grantee may have on file about individual subscribers, except as necessary to render or conduct a legitimate business activity related to a cable service or other service provided by the Grantee to the subscriber, or if required to be in compliance with Federal law or regulation, or if the Grantee has provided the subscriber the opportunity to prohibit or limit such disclosure and the disclosure does not reveal directly or indirectly the extent of viewing or other use by the subscriber of a cable service or other service provided by the Grantee, or the nature of any transaction made by the subscriber over the cable system.
- 6.6.4. *INFORMATION ACCESS.* Each subscriber shall be provided access to all personally identifiable information regarding such subscriber that the Grantee collects or maintains.
- 6.6.4.1. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by the Grantee.
  - 6.6.4.2. The subscriber shall be provided the reasonable opportunity to correct any error in such information.
- 6.6.5. *NOT PROHIBITED.* This section is not intended to prohibit the use or transmission of signals useful only for the control or measurement of system performance.

**Section 6.7. RIGHTS OF INDIVIDUALS.**

- 6.7.1. *NON-DISCRIMINATION REQUIRED.* The Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin, age, sex or physical or mental handicaps, provided the subscriber shall pay all applicable fees for the service desired; and, provided further that nothing contained herein shall prohibit the Grantee from granting senior citizens discounts to subscribers.
- 6.7.1.1. The Grantee shall comply at all times with all other applicable federal, state, county and local laws and regulations relating to non-discrimination which may hereinafter be incorporated and made a part of this article by reference.
- 6.7.2. *FAIRNESS OF ACCESSIBILITY.* The entire system of the Grantee shall be operated in a manner consistent with the principles of fairness and equal accessibility of its facilities, equipment, channels, studios and other services to all citizens, businesses, public agencies and other entities



having a legitimate use for the network; and no one shall be arbitrarily excluded from its use; provided, however, that allocation of use of said facilities shall be made according to the rules or decisions of the Grantee and any regulatory agencies affecting the same.

6.7.3. Information accessibility.

6.7.3.1. Each individual shall have the right to information concerning the provisions of this article and the rules and regulations formulated pursuant to it by the Commission, agent or entity created hereunder or pursuant to this article.

6.7.3.1.1. The location and hours of operation for the delivery of such information shall be published in the newspaper of the greatest circulation within the Town and in such other media as the Commission may determine.

6.7.3.2. Each individual subscribing to the services of the cable communications system or leasing channels thereof or using the access channels shall be provided with a memorandum setting forth all rules and regulations specifically outlining such individual rights, duties and obligations pertinent to such use.

6.7.3.3. Such information as may herein be prescribed will be made available to the public and individual subscribers in such form required for understanding, including the deaf and blind, and in such languages as may be specified by the Commission.

6.7.3.4. Each document required to be maintained, prepared, filed or submitted under the provisions of this article or pursuant to it, except those required and designated confidential by the Grantee or the Federal Communications Commission, shall be a public document, available for public inspection and copying at the requestor's expense, at the office of the Grantee or the Town during normal business hours.

6.7.3.4.1. The charge for such copying shall approximate the cost of mechanical reproduction and shall not include a charge for labor.

6.7.3.5. Each individual shall have the right to representation on such boards, commissions, agencies or other entities created hereunder or hereafter by the Commission pursuant to the provisions of this article.

6.7.3.5.1. Such representation by citizens of the Town shall be in the manner and form as the Commission may determine, ensuring equal participation of all protected groups.

## **DIVISION 7. BOOKS, RECORDS, REPORTS; MISCELLANEOUS PROVISIONS**

### **Section 7.1. BOOKS AND RECORDS AVAILABLE TO THE TOWN.**

7.1.1. The Grantee shall manage all of its operations in accordance with a policy of open books and records as such may pertain to the operation of the system in the Town.

7.1.2. The Town shall have the right to inspect upon twenty-four (24) hours written notice, at any time during normal business hours, books records, maps, plans, service complaint logs, performance test results and other like materials of the Grantee which relate to the operation of the system unless otherwise provided for in the franchise.

### **Section 7.2. REPORTS REQUIRED.**

*REPORTS REQUIRED TO BE FILED.* The Grantee shall file the following reports with the Town as indicated herein, unless modified by terms of Grantee's franchise agreement:

7.2.1. *REGULATORY COMMUNICATIONS.* All reports required by the Federal Communications Commission (FCC) including, but not limited to, annual proof of performance tests and results and Equal Employment Opportunity (EEO) reports.

7.2.2. *FACILITIES REPORT.* An annual report setting forth the physical miles of plant construction and plant in operation during the fiscal year.

- 7.2.3. *GRANTEE RULES.* The Grantee's schedule of charges, contract or application forms of regular subscriber policy regarding the processing of subscriber complaints, delinquent subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its system subscribers, shall be filed with the Town.
- 7.2.4. *PROOF OF BONDS AND INSURANCE.* The Grantee shall submit to the Town the required performance bond, or a certified copy thereof, and written evidence of payment of required premium, and certificates of policies of insurance required by this article, and written notice of payment of required premium.
- 7.2.5. *FINANCIAL AND OWNERSHIP REPORTS.* The Grantee shall submit to the Town an independently audited annual financial statement for its Town system, including a Balance Sheet and Income Statement which details gross revenues, in addition to a copy of its parent company's annual audit report.
- 7.2.6. *OPERATIONAL REPORTS.* The following system and operational reports shall be submitted annually to the Town:
- 7.2.6.1. A report on the system's technical tests and measurements as set forth herein and in the franchise agreement;
  - 7.2.6.2. A summary of the previous year's activities including, but not limited to, new services offered;
  - 7.2.6.3. A summary of complaints received and handled;
  - 7.2.6.4. A summary of the number of outages (three (3) or more service calls in one area).
- 7.2.7. *ADDITIONAL REPORTS.* The Grantee shall prepare and furnish to the Town, at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions or property as may be reasonably necessary and appropriate to the performance of any of the functions or duties of the Town in connection with the system.
- 7.2.8. *EXCLUSIONS FOR SMALL SYSTEMS.* Small system operators, as classified under current FCC guidelines, shall be permitted to petition the Town to secure waivers of certain reporting requirements in the franchise.

**Section 7.3. MISCELLANEOUS - PUBLIC NOTICE; CAPTIONS; FRANCHISE APPLICATIONS.**

*REPORTS REQUIRED TO BE MAINTAINED.* The Grantee shall at all times maintain the following reports:

- 7.3.1. *COMPLAINTS/SERVICE INTERRUPTIONS.* A record of all complaints received and interruptions or degradation of service experienced for the preceding period prior to a performance review.
- 7.3.2. *PLANS/MAPS.* A full and complete set of plans, record and "as-built" maps showing the exact location of all cable communication system equipment installed or in use in the Town, exclusive of subscriber service drops.
- 7.3.2.1. Grantee shall provide the "as built" maps to the Town using a Geographical Information Systems format approved by the Town, which accurately displays their "as built" system.
  - 7.3.2.2. These maps will be kept current continuously, and updated at least annually by the Grantee.
- 7.3.3. *CONTRACTOR RECORDS.* A comprehensive record of all personnel transactions and utilization of contractors, subcontractors, vendors and suppliers by race and sex.
- 7.3.4. *OTHER RECORDS.* The Town may impose reasonable requests for additional information, records and documents from time to time.

**Section 7.4. RECORDS REQUIRED.**

*RECORDS REQUIRED TO BE MAINTAINED.* The Grantee shall at all times maintain the following records:

- 7.4.1. *PUBLIC NOTICE.* Minimum public notice of any public meeting relating to this article or the franchise shall be by publication in a newspaper of general circulation in the area at least seven (7) days prior to the meeting, and by posting at the Charlotte-Mecklenburg Government Center.
- 7.4.2. *CAPTIONS.* The captions to sections throughout this article are intended solely to facilitate reading and reference to the sections and provisions of this proposal. Such captions shall not affect the meaning or interpretation of this article.
- 7.4.3. *FRANCHISE APPLICATIONS.* Applicants for a franchise shall submit to the Town written applications utilizing the appropriate standard format provided by the Town, at the time and place designated by the Town for accepting applications and including the designated applications and including the designated application fee, if any.

**Section 7.5. EXCLUSIONS FOR SMALL SYSTEMS.**

7.5.1. *SECTION EXCLUSIONS.* Any small system (as defined by the FCC), operating within the Town, shall be excluded from the following provisions:

- 7.5.1.1. Section 2.9.9. -  
**EQUAL OPPORTUNITY**  
*AFFIRMATIVE ACTION PLAN*
- 7.5.1.2. Section 5.2.2.2. -  
**CONSTRUCTION AND TECHNICAL STANDARDS**  
*STATE OF THE ART*
- 7.5.1.3. Section 7.3.3. -  
**MISCELLANEOUS, PUBLIC NOTICE; CAPTIONS; FRANCHISE APPLICATIONS**  
*CONTRACTOR RECORDS*

7.5.2. *SECTION SUBSTITUTIONS.* Any small system (as defined by the FCC), operating within the Town, shall have the following sections replace the so numbered section herein:

**SECTION 3.5. SCHEDULE OF LIQUIDATED DAMAGES.**

- 3.5.1. *WILLFUL VIOLATION.* For the willful violation of any of the following provisions of this article, the Town shall notify the Grantee in writing of the violation and the Grantee shall be allowed thirty (30) days, or such greater amount of time as the Town may specify, to correct such violation.
- 3.5.2. *CHARGEABLE TO BOND.* Such undisputed liquidated damages shall be chargeable, to the extent available, to the security fund and performance bond if not tendered by the Grantee within the aforesaid period of time.
- 3.5.3. *HEARING.* The Grantee may request a hearing before the Commission in writing within seven (7) business days of receiving notice of violation from the Town. The time frame specified in the notice for correction of the violation shall be tolled from the date of receipt of a request from the Grantee for a hearing until the day after the hearing.
- 3.5.4. *DAMAGES PENALTIES.* These liquidated damages shall be in addition to and not a limitation upon the other penal provisions of this article, including penalties or revocation, or other statutorily or judicially imposed penalties.
  - 3.5.4.1. No decision by the Town to invoke any remedy under this article, the franchise agreement, or any statute, law or ordinance, shall preclude the availability of any other such remedy.

<u>ISSUE:</u>		<u>LIQUIDATED DAMAGES:</u>
FAILURE TO RENDER PAYMENT OF THE REIMBURSEMENT OF THE TOWN'S FRANCHISE EXPENSES, FRANCHISE FEE OR PENALTY PAYMENTS:		TWO HUNDRED DOLLARS (\$200.00) PER DAY FROM TIME DUE UNTIL PAID.
FAILURE TO FILE REPORTS		FIFTY DOLLARS (\$50) PER DAY FROM TIME DUE UNTIL REPORT(S) ARE FILED.
FAILURE TO COMPLETE SYSTEM CONSTRUCTION		FOUR HUNDRED DOLLARS (\$400) PER DAY FROM TIME DUE UNTIL CONSTRUCTION IS COMPLETE.
FAILURE TO COMPLY WITH MATERIAL PROVISIONS OF THIS ORDINANCE OR THE FRANCHISE AGREEMENT		ONE HUNDRED DOLLARS (\$100) PER DAY UNTIL GRANTEE IS IN COMPLIANCE WITH THE PROVISION(S).
FAILURE TO PROVIDE ACCESS FUNDS, EQUIPMENT, FACILITIES OR SERVICES		TWO HUNDRED DOLLARS (\$200) PER DAY FROM TIME DUE UNTIL PAID OR PROVIDED

3.5.5. *TOWN RIGHTS.* The Town retains the right at its sole option, to reduce or waive any of the above-listed penalties where extenuating circumstances or conditions beyond the control of the Grantee are deemed to exist. The Town Manager or his designee shall determine the Town's willingness to reduce or waive any of the above-listed penalties.

SECTION 7.1. BOOKS AND RECORDS AVAILABLE TO THE TOWN.

7.1.1. The Grantee shall manage all of its operations in accordance with a policy of open books and records as such may pertain to the operation of the system in the Town.

7.1.2. The Town shall have the right to inspect upon reasonable written notice, at any time during normal business hours, books records, maps, plans, service complaint logs, performance test results and other like materials of the Grantee which relate to the operation of the system.

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