

# **MERRIMAC CABLE TELEVISION FRANCHISE ORDINANCE**

## **Sec. 1. Short title.**

This chapter shall be known and may be cited as the "Merrimac Cable Television Franchise Ordinance," hereinafter "Franchise" or "Ordinance."

## **Sec. 2. Definitions.**

For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein:

“Basic Service” means all Subscriber services provided by the Grantee in one (1) or more service tiers, which includes the delivery of local broadcast stations, and public, educational and government access channels. Basic Service does not include optional program and satellite service tiers, a la carte services, per channel, per program, or auxiliary services for which a separate charge is made. However, Grantee may include other satellite signals on the Basic Service tier.

“Cable Service” means: (A) the transmission to subscribers of (1) video programming, or (2) other programming services; and (B) subscriber interaction, if any, that is required for the selection or use of such video programming or other programming services.

“Cable System” or “System” or “Cable Television System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any public right-of-way, (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of this Act, except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) to the extent such facility is used in transmission of video programming directly to Subscribers; or (D) any facilities of any electric utility used solely for operating its electric utility system.

“Class IV Channel” means a signaling path provided by a cable communications system to transmit signals of any type from a Subscriber terminal to another point in the cable communications system.

“Control” or “Controlling Interest” shall mean actual working control or ownership of a System in whatever manner exercised. A rebuttal presumption of the existence of Control or a Controlling Interest shall arise from the ownership, directly or indirectly, by any person or legal entity (except underwriters during the

period in which they are offering securities to the public) of forty percent (40%) or more of a Cable System or the Franchise under which the System is operated. A change in the Control or Controlling Interest of a legal entity which has Control or a Controlling Interest in a Grantee shall constitute a change in the Control or Controlling Interest of the System under the same criteria. Control or Controlling Interest as used herein may be held simultaneously by more than one person or legal entity.

“Converter” means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber, and by an appropriate channel selector also permits a Subscriber to view more than twelve (12) channels delivered by the System at designated converter dial locations.

“Dwelling Unit” means any building or part of a building that is used as a home or residence.

“FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

“Franchise” means an initial authorization, or renewal thereof, issued by the Town, as the franchising authority, to a Grantee to construct or operate a Cable System.

“Franchise Agreement” means a contractual agreement entered into between the Town and any Grantee hereunder that is enforceable by the Town and by the Grantee, and which sets forth the rights and obligations between the Town and the Grantee in connection with the Franchise.

“Grantee” means a person or legal entity to whom or to which a Franchise under this Ordinance is granted by the Town, along with the lawful successors or assigns of such person or entity.

“Gross Revenues” means all revenue collected by the Grantee, arising from or attributable to the provision of cable service by the Grantee within the Town including, but not limited to: periodic fees charged Subscribers for any basic, optional, premium, per-channel or per-program service; franchise fees; installation and reconnection fees; leased channel fees; converter rentals and/or sales; program guide revenues; late or administrative fees; upgrade, downgrade or other change-in-service fees; local advertising revenues; revenues from home shopping; revenues from the sale, exchange, use or cable cast of any programming developed on the System for community or institutional use; provided, however, that this shall not include any taxes on services furnished by the Grantee herein imposed directly upon any Subscriber or User by the state, local or other governmental unit and collected by the Grantee on behalf of the governmental unit.

Initial Franchise means the first franchise awarded to any entity.

“Initial Service Area” means all areas in the Town having a density of at least thirty-five (35) dwelling units per street mile.

“Installation” means the connection of the System from feeder cable to a Subscriber’s terminal.

“May” is permissive.

“Monitoring” means observing a communications signal, or the absence of a signal, where the observer is neither the Subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever; provided monitoring shall not include system-wide, non-individually addressed sweeps of the System for purposes of verifying System integrity, controlling return paths transmissions, or verification of billing for premium or other services.

“Normal Business Hours” as applied to the Grantee shall mean those hours during which similar businesses in the Town are open to serve customers. In all cases, Normal Business Hours must include some evening hours at least one night per week, and/or some weekend hours.

“Normal Operating Conditions” shall mean those service conditions that are within the control of the Grantee. Those conditions that are not within the control of the Grantee include, but are not limited to: natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

“Person” means any natural person or any association, firm, partnership, joint stock company, limited liability company, joint venture, corporation, or other legally recognized entity, private or public, whether for-profit or not-for-profit.

“Shall” is mandatory.

“Service Interruption” is the loss of either picture or sound or both for a single or multiple Subscriber(s).

“Street” means the surface of and all right-of-ways and the space above and below any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive or easement now or hereafter held by the Town for the purpose of public travel and shall include other easements or right-of-ways as shall be now held or hereafter held by the Town which shall, within their proper use and meaning entitle the Grantee to the use thereof for the purposes of installing poles, wires, cable, conductors, ducts,

conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a Cable Television System.

“Subscriber” shall mean any person(s), firm, Grantee, corporation or other legal entity, or association lawfully receiving any service provided by a Grantee pursuant to this Ordinance.

“User” means a party utilizing a Cable Television System channel for purposes of production or transmission of material to Subscribers, as contrasted with receipt thereof in a Subscriber capacity.

“Town” means the Town of Merrimac, Wisconsin.

**Sec. 3. Rights and privileges of Grantee.**

Any Franchise granted by the Town pursuant to Wisconsin Statutes Section 66.00419 shall grant to the Grantee the right and privilege to erect, construct, operate and maintain in, upon, along, across, above, over and under the streets now in existence and as may be created or established during the term of the Franchise any poles, wires, cable, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation of a Cable System.

**Sec. 4. Agreement and incorporation of application by reference.**

(a) Upon adoption of any Franchise Agreement by the Town and execution thereof by the Grantee, the Grantee and the Town agree to be bound by all the terms and conditions contained herein.

(b) Any Grantee also agrees to provide all services specifically set forth in its application, and to provide cable television service within the confines of the Town; and by its acceptance of the Franchise, the Grantee specifically grants and agrees that its application, is thereby incorporated by reference and made a part of the Franchise.

**Sec. 5. Franchise territory.**

Any Franchise is for the legally incorporated territorial limits of the Town and for any area henceforth added thereto during the term of the Franchise.

**Sec. 6. Duration and acceptance of Franchise.**

Any Franchise and the rights, privileges and authority granted under this Ordinance shall take effect and be in force from and after final Town approval thereof, as provided by law, and shall continue in force and effect for a term of no longer than fifteen (15) years, provided that within forty-five (45) days after the

date of final Town approval of the Franchise the Grantee shall file with the Town its unconditional acceptance of the Franchise and promise to comply with and abide by all its provisions, terms and conditions. Such acceptance and promise shall be in writing duly executed. Such Franchise shall be non-exclusive and revocable.

**Sec. 7. Franchise renewal.**

Current federal procedures and standards pursuant to 47 U.S.C. §546, shall govern the renewal of any Franchise awarded under this Ordinance.

**Sec. 8. Police powers.**

- (a) In accepting a Franchise, the Grantee acknowledges that its rights thereunder are subject to the police power of the Town to adopt and enforce 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. Any Ordinance enacted that directly contradicts the express terms of the Franchise Agreement shall not be enforced during the term of any Franchise Agreements that may already be in place at the time the new or amended Ordinance is passed.
- (b) Any conflict between the provisions of a Franchise and any other current 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 television systems which contains provisions inconsistent with this ordinance, shall prevail only if upon such exercise the Town finds a danger to health, safety, property or general welfare or if such exercise is mandated by law.

**Sec. 9. Cable Television Franchise required.**

No Cable Television System shall be allowed to operate or to occupy or use the streets for System installation and maintenance purposes without a Franchise.

**Sec. 10. Use of Grantee facilities.**

The Town shall have the right to install and maintain upon the poles of the Grantee at a charge equal to Grantee's costs any wire or pole fixtures that do not unreasonably interfere with the Cable Television System operations, including future plans, of the Grantee. The Town shall indemnify and hold harmless the Grantee from any claim that might arise due to or as a result of the Town's use.

**Sec. 11. Initial Franchise Costs.**

Costs to be borne by a Grantee shall include any requirements or charges incidental to the awarding or enforcing of its initial Franchise, but shall not be limited to: all costs of publications of notices prior to any public meeting provided for pursuant to this Ordinance, and any costs not covered by application fees, incurred by the Town in its study, preparation of proposal documents, evaluation of all applications, and examinations of the applicant's qualifications unless all, or any portion thereof, shall be waived by the Town.

## **Sec. 12. Notices.**

All notices from the Grantee to the Town pursuant to any Franchise shall be to the Town Clerk. The Grantee shall maintain with the Town, throughout the term of the Franchise, an address for service of notices by mail. The Grantee shall maintain a central office to address any issues relating to operating under this cable television Ordinance.

## **Sec. 13. Bond.**

(a) Within sixty (60) days after the award of an initial or renewal Franchise, the Grantee shall deposit with the Town a bond in the amount of five thousand dollars (\$5,000.00) with the form to be established by the Town. The form and content of such bond shall be approved by the Town Attorney. This instrument shall be used to ensure the faithful performance of the Grantee of all provisions of this Ordinance, and to ensure compliance with all orders, permits and directions of any agency, commission, board, department, division, or office of the Town having jurisdiction over its acts or defaults under this Ordinance, and to ensure the payment by the Grantee of any claims, liens, and taxes due the Town which arise by reason of the construction, operation or maintenance of the System.

(b) The bond shall be maintained at the amount established in Section 13(a) for the entire term of the Franchise, even if amounts have to be withdrawn pursuant to this Ordinance.

(c) If the Grantee fails to pay to the Town any amounts owed under the Franchise Agreement, that is not on appeal to the court of proper jurisdiction, within the time fixed herein; or fails after fifteen (15) days notice to pay to the Town any taxes due and unpaid; or fails to repay the Town within fifteen (15) days, any damages, costs or expenses which the Town is compelled to pay by reason of any act or default of the Grantee in connection with the Franchise, or fails, after three (3) days notice of such failure by the Town to comply with any provision of the Franchise which the Town reasonably determines can be remedied by demand on the bond, the Town may immediately demand payment of the amount thereof, with interest and any penalties, from the bond. Upon such demand for payment, the Town shall notify the Grantee of the amount and date thereof.

(d) The rights reserved to the Town with respect to the bond are in addition to all other rights of the Town, whether reserved by the Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the Town may have.

(e) The bond shall contain an endorsement agreeing that the bond may not be canceled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the Town, by registered mail, of a written notice of such intention to cancel or not to renew.

(f) In the event the Town receives a thirty (30) day notice from a surety, it shall have the right to demand payment from the bond unless Grantee provides appropriate assurance that a replacement bond will be presented before the expiration of the thirty (30) day period. Assurance shall be determined by the Town at its sole discretion. This section shall not apply if the Town and Grantee agree that a bond is no longer required or if the bond is, by agreement between the Town and Grantee, in the process of being reduced.

(g) The Town may, at any time during the term of this Ordinance, waive the Grantee's requirement to maintain a bond. The waiver of the requirement may be initiated by the Town or may be requested by the Grantee.

#### **Sec. 14. Construction Performance Bond.**

(a) Within sixty (60) days after the award of an initial or renewal Franchise, the Grantee shall file with the Town a performance bond in the amount of not less than fifty thousand dollars (\$50,000) in favor of the Town. This bond shall be maintained throughout the construction period and until such time as determined by the Town, unless otherwise specified in the Franchise Agreement.

(b) If the Grantee fails to comply with any law, ordinance or resolution governing the Franchise, or fails to observe, fulfill and perform each term and condition of the Franchise, as it relates to the conditions relative to the construction of the System, including the Franchise Agreement that is incorporated herein by reference, there shall be recoverable jointly and severally, from the principal and surety of the bond, any damages or losses suffered by the Town, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorney's fees, including the Town's legal staff, and costs, up to the full amount of the bond. This section shall be an additional remedy for any and all violations outlined in Section 13.

(c) The Town shall, upon completion of construction of the service area, waive the requirement of the Grantee to maintain the bond. However, the Town may require a performance bond to be posted by the Grantee for any construction subsequent to the completion of the initial service areas, in a

reasonable amount not to exceed fifty thousand dollars (\$50,000) and upon such terms as determined by the Town.

(d) The bond shall contain an endorsement stating that the bond may not be canceled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the Town, by registered mail, a written notice of such intent to cancel and not to renew.

(e) Upon receipt of a thirty (30) day notice, and following a 30-day period to cure, this shall be construed as default granting the Town the right to demand payment on the bond.

(f) The Town, at any time during the term of this Ordinance, may waive Grantee's requirement to maintain a performance bond. The waiver of the requirement can be initiated by the Town or the Grantee.

#### **Sec. 15. Liability and insurance.**

(a) The Grantee shall maintain and by its acceptance of the Franchise specifically agrees that it will maintain throughout the term of the Franchise, liability insurance insuring the Town and the Grantee in the minimum amount of:

- (1) One million dollars (\$1,000,000.00) for property damage to any one person;
- (2) One million dollars (\$1,000,000.00) for property damage from any one occurrence;
- (3) One million dollars (\$1,000,000.00) for personal injury to any one person; and
- (4) One million dollars (\$1,000,000.00) for personal injury from any one occurrence.

(b) The certificate of insurance obtained by the Grantee in compliance with this section shall be filed and maintained with the Town during the term of the Franchise. The Grantee shall immediately advise the Town Attorney of any litigation that may develop that would affect this insurance.

(c) Neither the provisions of this section nor any damages recovered by the Town thereunder, shall be construed to or limit the liability of the Grantee under any Franchise issued hereunder.

#### **Sec. 16. Indemnification.**

(a) Disclaimer of Liability. The Town shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of the construction, maintenance, repair, use, operation,



condition or dismantling of the Grantee's Cable Television System or due to the act or omission of any person or legal entity other than the Town or those persons or legal entities for which the Town is legally liable as a matter of law.

(b) Indemnification. The Grantee shall, at its sole cost and expense, indemnify and hold harmless the Town, its respective officers, boards, departments, commissions and employees (hereinafter referred to as "Indemnitees") from and against:

- (1) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or asserted against the Indemnitees by reason of any act or omission of the Grantee, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, corporation or other legal entity, which may arise out of or be in any way connected with the construction, installation, operation, maintenance or condition of the Cable Television System caused by Grantee, its subcontractors or agents or the Grantee's failure to comply with any federal, state or local law.
- (2) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants) imposed upon Indemnitees by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to Grantee, its contractors or subcontractors, for the installation, construction, operation or maintenance of the Cable Television System. Upon written request by the Town, such claim or lien shall be discharged or bonded within fifteen (15) days following such request.
- (3) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or asserted against the Indemnitees by reason of any financing or securities offering by Grantee or its Affiliates for violations of the common law or any laws, statutes or regulations of the

State of Wisconsin or of the United States, including those of the Federal Securities and Exchange Commission, whether by the Grantee or otherwise; excluding therefrom, however, claims which are based upon and arise out of information supplied by the Town to the Grantee in writing and included in the offering materials with the express written approval of the Town prior to the offering.

(c) Assumption of Risk.

- (1) The Grantee undertakes and assumes for its officers, directors, agents, contractors and subcontractors and employees all risk of dangerous conditions, if any, on or about any Town-owned or controlled property, including public right-of-ways, and the Grantee hereby agrees to indemnify and hold harmless the Indemnitees against and from any claim asserted or liability imposed upon the Indemnitees for personal injury or property damage to any person arising out of the installation, operation, maintenance or condition of the Cable Television System or the Grantee's failure to comply with any federal, state or local law.
- (2) The Town shall hold Grantee harmless for any damages resulting from the negligence or misconduct of the Grantor or its officials, boards, departments, commissions or employees.

(d) Defense of Indemnitees. In the event any action or proceeding shall be brought against any or all of the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, the Grantee shall, upon notice from any of the Indemnitees, at the Grantee's sole cost and expense, defend the same to the extent it is obligated to do so.

(e) Notice, Cooperation and Expenses. The Town shall give the Grantee reasonably prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. Nothing herein shall be deemed to prevent the Town from cooperating with the Grantee and participating in the defense of any litigation by the Town's own counsel at the Town's own expense. No recovery by the Town of any sum under the bond shall be any limitation upon the liability of the Grantee to the Town under the terms of this Section, except that any sum so received by the Town shall be deducted from any recovery which the Town might have against the Grantee under the terms of this Section.

(f) Nonwaiver of Statutory Limits. Nothing in this Ordinance is intended to express or imply a waiver by the Town of statutory provisions,

privileges or immunities of any kind or nature as set forth in Wisconsin Statutes Section 893.80, et. seq., including the limits of liability of the Town.

**Sec. 17. Rights of individuals.**

- (a) 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, income, sex, marital status, sexual preference or age. The Grantee shall make reasonable attempts to comply at all times with all other applicable federal, state and local laws and regulations and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this Ordinance by reference.
- (b) The Grantee shall make all reasonable efforts to comply with the equal employment opportunity requirements of the Federal Communications Commission and of state and local governments, and as amended from time to time.
- (c) The Grantee shall, at all times, make all reasonable efforts to comply with the privacy requirements of state and federal law.
- (d) The Grantee is required to make all services available to all residential dwellings throughout the service area located in areas having a density of at least thirty-five (35) dwelling units per street mile.
- (e) The Grantee shall have the right deny service or deny access to any Subscriber, User, or Citizen who is unable to pay for Grantee's Service regardless of race, color, religion, national origin, sex, marital status, sexual preference or age.

**Sec. 18. Public notice.**

Minimum public notice of any public meeting relating to the Franchise shall be governed by the provisions of the State Open Meetings Law, and shall be on at least one (1) channel of the Grantee's System between the hours of 7:00 p.m. and 9:00 p.m., for five (5) consecutive days prior to the meeting.

**Sec. 19. Service availability and record request.**

The Grantee shall provide cable television service throughout the entire Franchise area pursuant to the provisions of the Franchise and shall keep a record for at least three (3) years of all requests for service received by the Grantee. This record shall be available for public inspection at the local office of the Grantee during regular office hours.

**Sec. 20. System construction.**

- (a) New construction timetable.
  - (1) Within two (2) years from the date of the award of an initial Franchise, the Grantee must make cable television service available to every dwelling unit within the initial service area.
    - a. The Grantee must make cable television service available to at least twenty (20) percent of the dwelling units within the initial service area within six (6) months from the date of the award of the Franchise.
    - b. The Grantee must make cable television service available to at least fifty (50) percent of the dwelling units within the initial service area within one (1) year from the date of the award of the Franchise.
  - (2) The Grantee, in its application, may propose a timetable of construction which will make cable television service available in the initial service area sooner than the above minimum requirements, in which case the said schedule will be made part of the Franchise Agreement, and will be binding upon the Grantee.
  - (3) Any delay beyond the terms of this timetable, unless specifically approved by the Town, will be considered a violation of this Ordinance for which the provisions of either Sections 37 or 46 shall apply, as determined by the Town.
  - (4) In special circumstances the Town may waive one hundred percent (100%) completion within the two (2) year time frame, provided substantial completion is accomplished within the allotted time frame, substantial completion to be not less than ninety-five (95) percent. Justification for less than one hundred percent (100%) must be submitted subject to the approval of the Town.
- (b) Line extensions:
  - (1) In areas of the Franchise territory not included in the initial service areas, a Grantee shall be required to extend its System pursuant to the following requirements:
    - a. No customer shall be refused service arbitrarily. Grantee is hereby authorized to extend the Cable

System as necessary within the Town. To expedite the process of extending the Cable System into a new sub-division, the Town will forward to the Grantee an approved engineering plan of each project. Subject to the density requirements, the Grantee shall commence the design and construction process upon receipt of the final engineering plan. Upon notification from the Town that the first home in the project has been approved for a building permit, the Grantee shall have a maximum of three (3) months, weather permitting, to complete the construction/activation process within the applicable project phase.

- b. The Grantee shall extend and make cable television service available to every dwelling unit in all unserved, developing areas having at least thirty-five (35) dwelling units per street mile, as measured from the existing System from which service can be provided.
  - c. The Grantee shall extend and make cable television service available to any isolated resident outside the initial service area requesting connection at the standard connection charge, if the connection to the isolated resident would require no more than a standard one hundred and fifty (150) foot drop line.
- (2) Early extension. In areas not meeting the requirements for mandatory extension of service, the Grantee shall provide, upon the request of a potential Subscriber desiring service, an estimate of the Grantee's costs required to extend service to the Subscriber. The Grantee shall then extend service upon request of the potential Subscriber. The Grantee may require advance payment or assurance of payment satisfactory to the Grantee. In the event the area reaches the density required for mandatory extension within two (2) years, such payments shall be refunded to the Subscriber upon request.
- (3) New development undergrounding. 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. 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; except that if the Grantee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five (5) day period, the cost of new trenching is to be borne by the Grantee. 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 plat request shall satisfy the requirement of reasonable notice if sent to the local general manager of the Grantee prior to approval of the preliminary plat request.

(c) Special agreements. Nothing herein shall be construed to prevent the Grantee from serving areas within the legally incorporated boundaries of the Town not covered under this section upon agreement with developers, property owners residents, or businesses, provided that five (5) percent of the gross revenues from those areas are paid to the Town as franchise fees under Section 27. The Town may waive or modify any or all of the provisions set forth in this Section.

(d) A Grantee may propose a line extension policy that will result in serving more residents of the Town than as required above, in which case the Grantee's policy will be incorporated into the Franchise Agreement and will be binding on the Grantee.

(e) The continued violation of this section following a reasonable notice of at least a thirty (30)-day period to cure shall be considered a breach of the terms of this Ordinance, for which the provisions of either Sections 38 or 46 shall apply, as determined by the Town.

## **Sec. 21. Construction and technical standards.**

(a) Compliance with construction and technical standards. The Grantee shall construct, install, operate and maintain its System in a manner consistent with all laws, ordinances, construction standards, governmental requirements, and FCC technical standards. In addition, the Grantee shall provide the Town, upon request, a written report of the results of the Grantee's annual proof of performance tests conducted pursuant to Federal Communications Commission standards and requirements.

(b) Additional specifications:

(1) Construction, installation and maintenance of the Cable Television System shall be performed in an orderly and

workmanlike manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

- (2) The Grantee shall at all times make reasonable efforts to comply with the applicable:
  - a. National Electrical Safety Code (National Bureau of Standards);
  - b. National Electrical Code (National Bureau of Fire Underwriters);
  - c. Applicable FCC or other federal, state and local regulations.
- (3) In any event, the System shall not endanger or interfere with the safety of persons or property in the Franchise area or other areas where the Grantee may have equipment located.
- (4) Any antenna structure used in the System shall comply with construction, marking, and lighting of antenna structure, required by the United States Department of Transportation.
- (5) All working facilities and conditions used during construction, installation and maintenance of the Cable Television System shall comply with the standards of the Occupational Safety and Health Administration.
- (6) Radio frequency (RF) leakage shall be checked at reception locations for emergency radio services to prove no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception in the normal flight patterns. FCC rules and regulations shall govern.
- (7) In all areas of the Town where all cables, wires and other like facilities of public utilities are placed underground, the Grantee shall place its cables, wires and other like facilities underground. When all public utilities relocate their facilities from pole to underground, the cable operator must concurrently do so.

**Sec. 22. Use of streets.**

(a) Interference with persons and improvements. The Grantee's System, poles, wires and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons or interfere with the rights or reasonable health, safety or welfare of property owners who adjoin any of the streets and public ways, or interfere with any improvements the Town may make, or hinder or obstruct the free use of the streets, alleys, bridges, easements or public property.

(b) Restoration to prior condition. In case of any disturbance of pavement, sidewalk, landscaping, 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 condition as before the work was commenced and in accordance with standards for such work set by the Town. After thirty (30) days, if restoration measures are not performed to the reasonable satisfaction of the Town, the Town may undertake remedial restoration activities, such activities to be performed at the Grantee's cost.

(c) Erection, removal and common uses of poles:

- (1) No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the Town 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 be 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 health, safety or welfare would be enhanced thereby.
- (2) Where poles or other wire-holding structures already existing for use in serving the Town are available for use by the Grantee, but it does not make arrangements for such use, the Town may require the Grantee to use such poles and structures if it determines that the public health, safety or welfare would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.
- (3) Where the Town desires to make use of the poles or other wire-holding structures of the Grantee and the use will not unduly interfere with the Grantee's operations, the Town may require the Grantee to permit such use for reasonable consideration and terms.

(d) Relocation of facilities. If at any time during the period of the Franchise the Town shall lawfully elect to alter, or change the grade of any street, alley or other public ways, the Grantee, upon reasonable notice by the Town, shall



remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

(e) Cooperation with building movers. The Grantee shall, at the request of any person holding a building moving permit issued by the Town, temporarily raise or lower its wires to permit the moving of buildings. Expenses of such temporary removal, raising or lowering of wires shall be paid by the person making the request, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given at least ten (10) days advance notice to arrange for such temporary wire changes.

(f) Tree trimming. The Grantee shall not remove any tree or trim any portion of any tree within any public street as defined herein without the prior consent of the Town, except in an emergency situation. The Grantee shall provide notice to any affected residents at the same time that the Grantee applies to the Town for consent to perform tree trimming. The Town shall have the right to do the trimming requested by the Grantee at the cost of the Grantee. Regardless of who performs the work requested by the Grantee, the Grantee shall be responsible, shall defend and hold Town harmless from any and all damages to any tree as a result of Grantee's trimming, or to the property surrounding any tree, whether such tree is trimmed or removed.

(g) Road cuts. The Grantee shall not use road cuts for the laying of cable or wires without the prior approval of the Town. In the absence of such approval, the Grantee shall utilize auguring.

### **Sec. 23. Operational standards.**

(a) The Grantee shall maintain all parts of the System in good condition throughout the entire Franchise period.

(b) Upon the reasonable request for service by any person located within the Franchise territory, the Grantee shall, within thirty (30) days, furnish the requested service to such person within terms of the line extension policy. A request for service shall be unreasonable for the purpose of this subsection if no distribution line capable of servicing that person's block has been installed.

(c) Temporary Service Drops:

(1) The Grantee shall put forth every effort to bury temporary drops within twenty-five (25) days after placement. Any delays for any other reason than listed will be communicated to the Town. The following delays will be found understandable and within the course of doing business: weather, ground conditions, street bores, System redesign requirements and any other unusual obstacle, such as obstructive landscaping that is created by the customer.

(2) The Grantee shall provide reports to the Town, upon request, on the number of drops pending.

(d) The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum System use.

(e) The Grantee shall not allow its cable or other operations to interfere with television reception of Subscribers or persons not served by the Grantee, nor shall the System interfere with, obstruct or hinder in any manner the operation of the various utilities serving the customers within the confines of the Town, nor shall other utilities interfere with the Grantee's System.

**Section 24. Customer service standards.**

(a) Nothing in this Ordinance shall be construed to prohibit the enforcement of any federal, state or local law or regulation concerning customer service or consumer protection that imposes customer service standards or consumer protection requirements that exceed the customer service standards set out in this Ordinance or that address matters not addressed in this Ordinance.

(b) The Grantee shall maintain a local or toll-free telephone access line which is available to its Subscribers and shall have knowledgeable, qualified representatives available to respond to customer telephone inquiries regarding repairs twenty-four (24) hours per day, seven (7) days per week.

(c) Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the total time that the office is open for business.

(d) A centrally-located customer service center will be open for walk-in customer transactions a minimum of eight (8) hours per day Monday through Friday, unless there is a need to modify those hours because of the location or customers served. The Grantee and Town by mutual consent shall establish supplemental hours on weekdays and weekends as fits the needs of the community.

(e) Under Normal Operating Conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time as measured on an annual basis.

(1) Standard installations will be performed within seven (7) business days after an order has been placed. A standard installation is one that is within one hundred fifty (150) feet of the existing System.

- (2) Excluding those situations that are beyond its control, the Grantee will respond to any service interruption promptly and in no event later than twenty-four (24) hours from the time of initial notification. All other regular service requests will be responded to within thirty-six (36) hours during the normal work week for that System. The appointment window alternatives for installations, service calls and other installation activities will be: "morning" or "afternoon"; not to exceed a four-hour "window" during Normal Business Hours for the System, or at a time that is mutually acceptable. The Grantee shall schedule supplemental hours during which appointments can be scheduled based on the needs of the community. If at any time an installer or technician is running late, an attempt to contact the customer will be made and the appointment rescheduled as necessary at a time that is convenient to the customer.

(f) Subscriber Credit for Outages. Upon Service Interruption of a Subscriber's Cable Service, the following shall apply:

- (1) For Service Interruptions of more than four (4) hours and up to four (4) days, the Grantee shall provide, at the Subscriber's request, a credit of one-thirtieth (1/30) of one month's fees for affected services for each 24-hour period service is interrupted for four (4) or more hours for any Subscriber, with the exception of Subscribers disconnected because of non-payment or excessive signal leakage.
- (2) For interruptions of one hundred sixty-eight (168) hours or more in one month, the Grantee shall provide, at the Subscriber's request, a full month's credit for affected services for all affected Subscribers.

(g) The Grantee shall provide written information for each of the following areas at the time of installation and at any future time upon the request of the customer:

- (1) Product and services offered
- (2) Prices and service options
- (3) Installation and service policies
- (4) How to use the cable television services

(h) Bills will be clear, concise and understandable, with all charges for cable services itemized.

(i) Credits will be issued promptly, but no later than the customer's next billing cycle following the resolution of the request and the return of the equipment by the Grantee if service has been terminated.

(j) The Grantee shall notify customers a minimum of thirty (30) days in advance of any rate or channel change.

(k) The Grantee shall maintain and operate its network in accordance with the rules and regulations incorporated herein or as may be promulgated by Federal Communications Commission, the United States Congress, or the State of Wisconsin.

(l) The Grantee shall continue, through the term of the Franchise, to maintain the technical standards and quality of service set forth in this Ordinance. Should the Town find, by resolution, that the Grantee has failed to maintain these technical standards and quality of service, and should it, by resolution, specifically enumerate improvements to be made, the Grantee shall make such improvements, if reasonable. Failure to commence such improvements within three (3) months of such resolution will constitute a breach of a condition for which penalties contained in Section 46 are applicable.

(m) The Grantee shall keep a monthly service log that indicates the nature of each service complaint received in the last twenty-four (24) months, the date and time each complaint was received, the disposition of each complaint, and the time and date thereof. This log shall be made available for periodic inspection by the Town.

## **Sec. 25. Continuity of service mandatory.**

(a) It shall be the right of all Subscribers to continue receiving service as long as their financial and other obligations to the Grantee are honored. If the Grantee elects to rebuild, modify or sell the System, or the Town gives notice of intent to terminate or fails to renew the Franchise, the Grantee shall reasonably act so as to ensure that all Subscribers receive continuous, uninterrupted service until alternative service can be provided; however, in all events, not beyond the duration of the Franchise Agreement.

(b) If there is a change of Franchise, or if a new operator acquires the System, the Grantee shall cooperate with the Town, new franchisee or new operator to maintain continuity of service to all Subscribers.

(c) If 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 operator is selected. 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.

**Sec. 26. Complaint procedure.**

(a) The Town Board or its designee has primary responsibility for the continuing administration of the Franchise and implementation of complaint procedures.

(b) During the terms of the Franchise and any renewal thereof, the Grantee shall maintain a central office, designated by the Grantee, for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, and similar matters. The office must be reachable by a local and/or toll-free telephone call to receive complaints regarding quality of service, equipment functions and similar matters. The Grantee will make good faith efforts to arrange for one or more payment locations in a central location where customers may pay bills or drop off equipment.

(c) As Subscribers are connected or reconnected to the System, 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 employee or employees or agent to whom such inquiries or complaints are to be addressed.

(d) When there have been similar complaints made, or where there exists other evidence, which, in the judgment of the Town, casts doubt on the reliability or quality of cable service, the Town shall have the right and authority to require the Grantee to test, analyze and report on the performance of the System. The Grantee shall fully cooperate with the Town in performing such testing and shall prepare results and a report, if requested, within thirty (30) days after notice, if reasonably possible. Such report shall include the following information:

- (1) The nature of the complaint or problem that precipitated the special tests;
- (2) The System component(s) tested;
- (3) The equipment used and procedures employed in testing;
- (4) The method, if any, in which such complaint or problem was resolved;
- (5) Any other information pertinent to the tests and analysis which may be required.

(e) The Town may require that tests be supervised, at the Grantee's expense unless results are found to be in compliance by an independent

professional engineer or equivalent of the Town's choice. The engineer shall sign all records of special tests and forward to the Town such records with a report interpreting the results of the tests and recommending actions to be taken.

(f) The Town's rights under this section shall be limited to requiring tests, analysis and reports covering specific subjects and characteristics based on complaints or other evidence when and under such circumstances as the Town has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard cable service.

#### **Sec. 27. Grantee rules and regulations.**

The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under the Franchise, and to assure uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations.

#### **Sec. 28. Franchise fee.**

(a) A Grantee shall pay to the Town a franchise fee in the amount designated in the Franchise Agreement. Unless otherwise specified in the Franchise Agreement, such franchise fee shall be five percent (5%) of the basic and extended basic service charge generated from subscribers located in the Town.

(b) The franchise fee payment shall be in addition to any other tax or payment owed to the Town by the Grantee and shall not be construed as payment in lieu of municipal property taxes or other state, county or local taxes.

(c) The franchise fee and any other costs or penalties assessed shall be payable quarterly on a calendar year basis to the Town within forty-five (45) days of the end of each quarter. The Grantee shall also file a complete and accurate verified statement of all Gross Revenues as previously defined within forty-five (45) days of the end of each quarter.

(d) The Town shall have the right to inspect the Grantee's income records and to audit and recompute any amounts determined to be payable under this Ordinance; provided, however, that such audit shall take place within sixty (60) months following the close of each of the Grantee's fiscal years that is the subject of the audit. Any additional amount due the Town as a result of an audit shall be paid within thirty (30) days following written notice to the Grantee by the Town, which shall include a copy of the audit report.

(e) If any franchise fee payment or recomputed amount, cost or penalty, is not made on or before the applicable dates heretofore specified, interest shall be charged from such date at an annual rate of twelve percent (12%). The

Grantee shall reimburse the Town for any additional expenses and costs incurred by the Town by reason of the delinquent payment(s), including, but not limited to, attorney's fees, consultant fees and audit fees.

- (f) The Town may waive the franchise fee provisions set forth in this Section.

**Sec. 29. Transfer of ownership or control.**

(a) A Franchise shall not be assigned or transferred, either in whole or in part, or leased or sublet in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person without the prior written consent of the Town. The Grantee may, however, transfer or assign the Franchise to a wholly owned subsidiary of the Grantee and such subsidiary may transfer or assign the Franchise back to the Grantee without such consent, providing that such assignment is without any release of liability of the Grantee. Any proposed assignee must show legal, technical and financial responsibility as determined by the Town and must agree to comply with all provisions of the Franchise. The Town shall have one hundred and twenty (120) days to act upon any request for approval of a sale or transfer submitted in writing that contains or is accompanied by all such information as is required in accordance with FCC regulations and by the Town. The Town shall be deemed to have consented to a proposed transfer or assignment if its refusal to consent (including the reasons therefor) is not communicated in writing to the Grantee within one hundred and twenty (120) days following receipt of written notice together with all necessary information as to the effect of the proposed transfer or assignment upon the public, unless the requesting party and the Town agree to an extension of time. The Town shall not unreasonably withhold consent to a proposed transfer.

(b) The Grantee shall promptly notify the Town of any actual or proposed change in, or 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 rebuttal presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of forty percent (40%) of the voting shares of the Grantee. Every change, transfer or acquisition of control of the Grantee shall make the Franchise subject to cancellation unless and until the Town shall have consented thereto, which consent shall not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the Town may inquire into the legal, technical, financial and other qualifications of the prospective controlling party, and the Grantee shall assist the Town in such inquiry.

(c) 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 in and to the

streets, and any transfer shall by its terms, be expressly subordinate to the terms and conditions of the Franchise.

(d) In the absence of extraordinary circumstances, the Town shall not be required to approve any transfer or assignment of a new Franchise prior to substantial completion of construction of the proposed System.

(e) In no event shall a transfer of ownership or control be approved without the successor(s) in interest agreeing in writing to abide by the terms and conditions of the Franchise Agreement.

### **Sec. 30. Availability of books and records.**

(a) The Grantee shall fully cooperate in making available at reasonable times, and the Town shall have the right to inspect at the Grantee's office, upon reasonable notice and where reasonably necessary for the enforcement of the Franchise, books, records, maps, plans and other like materials of the Grantee applicable to the Cable Television System, at any time during Normal Business Hours.

(b) Unless prohibited by law, rule or regulation, the following records and/or reports are to be made available to the Town upon request, but no more frequently than on an annual basis if so mutually agreed upon by the Grantee and the Town:

- (1) a yearly review and resolution or progress report submitted by the Grantee to the Town;
- (2) periodic preventive maintenance reports;
- (3) copies of FCC Form 395-A (or successor form) or any supplemental forms related to equal opportunity or fair contracting policies;
- (4) Subscriber inquiry/complaint resolution data (but not including names or addresses) and the right to review documentation concerning these inquiries and/or complaints periodically;
- (5) periodic construction update reports including, where appropriate, the submission of strand maps.

### **Sec. 31. Other petitions and applications.**

Copies of all petitions, applications, communications and reports submitted by the Grantee to the Federal Communications Commission, or to any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to



the Franchise or received from such agencies shall be provided to the Town upon request.

**Sec. 32. Fiscal reports.**

(a) The Grantee shall file annually with the Town no later than one hundred twenty (120) days after the end of the Grantee's fiscal year, a copy of a gross revenues statement certified by an officer of the Grantee. This provision may be waived by the Town.

**Sec. 33. Removal of Cable Television System.**

At the expiration of the term for which the Franchise is granted or when any renewal is denied, or upon its termination as provided herein, the Grantee shall forthwith, upon written notice by the Town, remove at its own expense all aerial portions of the Cable Television System from all streets and public property within the Town within six (6) months. If the Grantee fails to do so within six (6) months, the Town may perform the work at the Grantee's expense. Upon such notice of removal, a bond shall be furnished by the Grantee in an amount sufficient to cover this expense.

**Sec. 34. Required services and facilities.**

(a) The Cable Television System shall have a minimum channel capacity of seventy-seven (77) channels.

(b) Such System shall maintain a plant having the technical capacity for two-way communications.

(c) The Grantee shall provide the following:

- (1) At least one (1) specially designated channel for use by local education authorities;
- (2) At least one (1) specially designated channel for local governmental uses;
- (3) If required by the Franchise Agreement, an Institutional Network (I-Net) of cable, optical, electrical or electronic equipment, including Cable Television Systems, used for the purpose of transmitting two-way video signals interconnecting designated entities to be determined by the Town. The cost of such network will be borne by the Town as negotiated between the Grantee and the Town. Such Network may be provided as needed by utilizing capacity on the System.
- (4) Provided, however, these uses may be combined on one or more channels until such time as additional channels

become necessary in the opinion of the Town. Studios and associated production equipment will be located in a mutually agreed upon site to meet the need for educational and local governmental access as noted in (1), (2) and (3). Financial and technical support and replacement and maintenance of equipment of this facility shall be separately incorporated into the Franchise by agreement.

(d) The Grantee shall incorporate into its Cable Television System the capacity to permit the Town, in times of emergency, to override by remote control the audio, video and/or text of all channels simultaneously, which the Grantee may lawfully override. The Grantee shall provide emergency broadcast capacity pursuant to FCC rules. The Grantee shall cooperate with the Town in the use and operation of the emergency alert override system.

### **Sec. 35. Rules and regulations.**

(a) In addition to the inherent powers of the Town to regulate and control any cable television Franchise, and those powers expressly reserved by the Town, or agreed to and provided for herein, the right and power is hereby reserved by the Town to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers and furtherance of the terms and conditions of the Franchise; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations and do not appreciably increase the burdens or appreciably impair the rights of the Grantee under the Franchise Agreement.

(b) The Town may also adopt such regulations at the request of Grantee upon application.

### **Sec. 36. Performance evaluation sessions.**

(a) The Town and the Grantee may hold scheduled performance evaluation sessions within thirty (30) days of the third and sixth anniversary dates of the Grantee's award or renewal of the Franchise and as may be required by federal and state law. All such evaluation sessions shall be open to the public.

(b) Special evaluation sessions may be held at any time during the term of the Franchise at the request of the Town or the Grantee.

(c) All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with legal notice. The Grantee shall notify its Subscribers of all evaluation sessions by announcements on at least one (1) channel of its System between the hours of 7:00 p.m. and 9:00 p.m., for five (5) consecutive days preceding each session.

(d) Topics which may be discussed at any scheduled or special evaluation session may include, but are not limited to: service rate structures; franchise fee, penalties, free or discounted services; application of new technologies; System performance; services provided; programming offered; customer complaints; privacy; amendments to this Ordinance; judicial and FCC rulings; line extension policies; and Grantee or Town rules. The Town acknowledges that, pursuant to federal law, it does not have jurisdiction nor enforcement rights over all the standards and services mentioned above, including programming and the application of all new technologies under a cable television franchise. Nothing in this subsection shall be construed as requiring the renegotiation of the cable Franchise Agreement.

(e) Members of the general public may add topics either by working through the negotiating parties or by presenting a petition. If such a petition bears the valid signatures of fifty (50) or more residents of the Town, the proposed topic or topics shall be added to the list of topics to be discussed at the evaluation session.

### **Sec. 37. Rate change procedures.**

Pursuant to the Cable Television Consumer Protection and Competition Act of 1992, if the Town is currently certified to regulate the Basic Service rates charged by Grantee, it may, under these rules, require the Grantee to obtain approval from the Town for a rate increase for any change to the rates for Basic Service. Should federal or state law permit further rate regulation beyond Basic Service the Town may, if certified, assume such rate regulation and adopt appropriate procedures for such regulation.

### **Sec. 38. Forfeiture and termination.**

(a) Pursuant to Section 47, in addition to all other rights and powers retained by the Town under this Ordinance or otherwise, the Town reserves the right to forfeit and terminate the Franchise and all rights and privileges of the Grantee hereunder in the event of a substantial breach of its terms and conditions following a reasonable period of at least thirty (30) days to cure. A substantial breach by the Grantee shall include, but shall not be limited to the following:

- (1) Violation of any material provision of the Franchise or any material rule, order, regulation or determination of the Town made pursuant to the Franchise;
- (2) Attempt to evade any material provision of the Franchise or to practice any fraud or deceit upon the Town or its Subscribers or customers;
- (3) Failure to begin or complete System construction or System extension as provided under section 20;

- (4) Failure to provide the services promised in the Grantee's initial application as incorporated herein by section 4;
- (5) Failure to restore service after one hundred sixty-eight (168) consecutive hours of interrupted service, except when approval of such interruption is obtained from the Town; or
- (6) Material misrepresentation of fact in the application for or negotiation of the Franchise.

(b) The foregoing shall not constitute a major breach if the violation occurs but is without fault of the Grantee or occurs as a result of circumstances beyond its control. The Grantee shall not be excused by mere economic hardship.

(c) The Town may make a written demand that the Grantee comply with any such provision, rule, order or determination under or pursuant to the Franchise. If the violation by the Grantee continues for a reasonable period of at least thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the Town may place the issue of termination of the Franchise before the Town Board. The Town shall cause to be served upon the Grantee, at least twenty (20) days prior to the date of such meeting, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and the issue(s) which the Board is to consider.

(d) The Town Board shall hear and consider the issue(s) and shall hear any person interested therein and shall determine in its discretion whether or not any violation by the Grantee has occurred.

(e) If the Town Board determines that the violation by the Grantee was the fault of the Grantee and within its control and that the Grantee has failed to make reasonable efforts to correct the violation, then the Board may, by resolution declare that the Franchise of the Grantee shall be forfeited and terminated unless there is compliance within such period as the Board may fix, such period to not be less than thirty (30) days; provided, however, that no opportunity for compliance need be granted for fraud or material misrepresentation.

(f) The issue of forfeiture and termination shall automatically be placed upon the Board agenda at the expiration of the time set by it for compliance. The Board may then terminate the Franchise forthwith upon finding that the Grantee has failed to take reasonable actions necessary to achieve compliance or it may further extend the period, at its discretion.

### **Sec. 39. Foreclosure.**

Upon the foreclosure or other judicial sale of all or a substantial part of the System, or upon the termination of any lease covering all or a substantial part of

the System, the Grantee shall notify the Town of such fact, and such notification shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of the Franchise governing the consent of the Town to such change in control of the Grantee shall apply.

**Sec. 40. Approval of transfer and right of acquisition by the Town.**

(a) Federal regulations as per 47 U.S.C. §537 shall apply to approval of transfer issues and the right of acquisition by the Town.

**Sec. 41. Receivership.**

The Town shall have the right to cancel a Franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Grantee, unless such receivership or trusteeship shall have been vacated prior to the expiration of one hundred twenty (120) days, or unless:

(1) Within one hundred twenty (120) days after his/her election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Ordinance and remedied all defaults thereunder; and

(2) Such receiver or trustee, within the one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Ordinance and the Franchise granted to the Grantee.

**Sec. 42. Compliance with state and federal laws.**

(a) Notwithstanding any other provisions of the Franchise to the contrary, the Grantee shall at all times make reasonable efforts to comply with all laws and regulations of the state and federal government or any administrative agencies thereof; provided, however, if any such state or federal law or regulation shall require the Grantee to perform any service, or shall permit the Grantee to perform any service, or shall prohibit the Grantee from performing any service, in conflict with the terms of the Franchise or of 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 regulation or law and the laws or regulations of the Town or the Franchise.

(b) If the Town determines that a material provision of this Ordinance is affected by any subsequent action of the state or federal government, the Town and the Grantee shall negotiate to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this Ordinance.

(c) If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid or unconstitutional by any court of competent

jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the franchise, or any renewal or renewals thereof.

#### **Sec. 43. Landlord/tenant.**

(a) Interference with cable service prohibited. Neither the owner of any multiple unit residential dwelling nor his agent or representative shall interfere with the right of any tenant or lawful resident thereof to receive and use Cable Service, cable installation or maintenance of the Cable System in any way.

(b) Penalties and charges to tenants for service prohibited. Neither the owner or any multiple unit residential dwelling nor his agent or representative shall penalize, charge or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or receives cable television service from a Grantee operating under a valid and existing cable television Franchise issued by the Town.

(c) Reselling service prohibited. No person shall resell, without the expressed, written consent of the Grantee, any cable service, program or signal transmitted by a cable television Grantee under a Franchise issued by the Town.

(d) Protection of property permitted. Nothing in this Ordinance shall prohibit a person from requiring that Cable Television System facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning, appearance and value of premises or the convenience and safety of persons or property.

#### **Sec. 44. Applicants' Applications for Initial Franchise.**

(a) All applications received by the Town from the applicants for an Initial Franchise will become the sole property of the Town.

(b) The Town reserves the right to reject any and all applications and waive informalities and/or technicalities where the best interest of the Town may be served.

(c) All questions regarding the meaning or intent of this Ordinance or application documents shall be submitted to the Town in writing. Replies will be issued by addenda mailed or delivered to all parties recorded by the Town as having received the application documents. The Town reserves the right to make extensions of time for receiving applications as it deems necessary. Questions received less than fourteen (14) days prior to the date for the opening of applications will not be answered. Only replies to questions by written addenda will be binding. All applications must contain an acknowledgment of receipt of all addenda.

(d) Applications must be sealed, and submitted at the time and place indicated in the application documents for the public opening. Applications may be modified at any time prior to the opening of the applications, provided that any modifications must be duly executed in the manner that the applicant's application must be executed. No application shall be opened or inspected before the public opening.

(e) Before submitting a application, each applicant must:

- (1) Examine this Ordinance and the application documents thoroughly;
- (2) Familiarize himself/herself with local conditions that may in any manner affect performance under the Franchise;
- (3) Familiarize himself/herself with federal, state and local laws, ordinances, rules and regulations affecting performance under the Franchise; and
- (4) Carefully correlate the application with the requirements of this Ordinance and the application documents.

(f) The Town may make such investigations as it deems necessary to determine the ability of an applicant to perform under the Franchise, and the applicant shall furnish to the Town all such information and data for this purpose as the Town may request. The Town reserves the right to reject any application if the evidence submitted by, or investigation of, such applicant fails to satisfy the Town that such applicant is properly qualified to carry out the obligations of the Franchise and to complete the work contemplated therein. Conditional applications will not be accepted.

(g) All applications received shall be placed in a secure depository approved by the Town and shall not be opened nor inspected prior to the public opening.

**Sec. 45. Financial, contractual, shareholder and system disclosure for initial Franchises.**

(a) No initial Franchise will be granted to any applicant unless all requirements and demands of the Town regarding financial, contractual, shareholder and System disclosure have been met.

(b) Applicants, including all shareholders and parties with any interest in the applicant, shall fully disclose all agreements and undertakings, whether written or oral, or implied with any person, firm, group, association or corporation with respect to the Franchise and the proposed Cable Television System. The Grantee of a Franchise shall disclose all other contracts to the Town as the

contracts are made. This section shall include, but not be limited to, any agreements between local applicants and national companies.

(c) Applicants, including all shareholders and parties with any interest in the applicant, shall submit all requested information as provided by the terms of this Ordinance or the application documents, which are incorporated herein by reference. The requested information must be complete and verified as true by the applicant.

(d) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose the numbers of shares of stock, and the holders thereof, and shall include the amount of consideration for each share of stock and the nature of the consideration.

(e) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose any information required by the application documents regarding other cable Systems in which they hold an interest of any nature, including, but not limited to, the following:

- (1) Locations of all other Franchises and the dates of award for each location;
- (2) Estimated construction costs and estimated completion dates for each System;
- (3) Estimated number of miles of construction and number of miles completed in each System as of the date of this application; and
- (4) Date for completion of construction as promised in the application for each System.

(f) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose any information required by the application documents regarding pending applications for other cable Systems, including, but not limited to, the following:

- (1) Location of other Franchise applications and date of application for each System;
- (2) Estimated dates of Franchise awards;
- (3) Estimated number of miles of construction; and
- (4) Estimated construction costs.

**Sec. 46. Penalties and Forfeitures.**



For the violation of any of the following provisions of this Ordinance, damages shall be chargeable to the letter of credit or corporate guarantee in lieu of bond as follows, and the Town may determine the amount of the forfeiture for other violations that are not specified in a sum not to exceed two hundred and fifty dollars (\$250.00) for each violation, with each day constituting a separate violation:

(a) Failure to furnish, maintain, or offer all cable services to any eligible Subscriber within the Town pursuant to Section 20 herein upon order of the Town: up to two-hundred-fifty dollars (\$250.00) per day, per violation, for each day that such failure occurs or continues up to a maximum of \$1,000;

(b) Failure to obtain or file evidence of required insurance, construction bond, performance bond, or other required financial security: up to two-hundred-fifty dollars (\$250.00) per day, per violation, for each day such failure occurs or continues up to a maximum of \$1,000;

(c) Failure to provide access to data, documents, records, or reports to the Town as required by sections 19, 29, 30, 31 and 37: up to two-hundred-fifty dollars (\$250.00) per day, per violation, for each day such failure occurs or continues up to a maximum of \$1,000;

(d) Failure to comply with applicable construction, operation, or maintenance standards: up to two-hundred-fifty dollars (\$250.00) per day, per violation up to a maximum of \$1,000;

(e) Failure to comply with a rate decision or refund order: up to five hundred dollars (\$500.00) per day, per violation, for each day such a violation occurs or continues up to a maximum of \$1,000.

(f) Any violations for non-compliance with the customer service standards of Sections 23 through 25, the Grantee shall pay up to two-hundred-fifty dollars (\$250.00) per day for each day, or part thereof, that such noncompliance continues up to a maximum of \$1,000;

(g) Any other violations of a Franchise Agreement to be determined by the Grantor in a public hearing but not specifically noted in this section shall not exceed two hundred and fifty dollars (\$250.00) per day, per violation up to a maximum of \$1,000.

#### **Section 47. Procedures.**

(a) Whenever the Town believes that the Grantee has violated one (1) or more terms, conditions or provisions of the Franchise, and wishes to impose penalties, a written notice shall be given to the Grantee informing it of such alleged violation or liability. The written notice shall describe in reasonable detail the specific violation so as to afford the Grantee an opportunity to remedy the violation. The Grantee shall have thirty (30) days subsequent to receipt of the

notice in which to correct the violation before the Town may impose penalties unless the violation is of such a nature so as to require more than thirty (30) days and the Grantee proceeds diligently within the thirty (30) days to correct the violation. In any case where the violation is not cured within thirty (30) days of notice from the Town, or such other time as the Grantee and the Town may mutually agree to, the Town may proceed to impose the penalties described in Section 46 above.

(b) The Grantee may, within twenty (20) days of receipt of notice, notify the Town that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by the Grantee to the Town shall specify with particularity the matters disputed by the Grantee and shall stay the running of the applicable right to cure period pending Board decision as required below. The Board shall hear the Grantee's dispute. Grantee must be given at least twenty (20) days notice of the hearing. At the hearing, the Grantee shall be entitled to the right to present evidence and the right to be represented by counsel. After the hearing, the Town shall provide Grantee a copy of its action, along with supporting documents. In the event the Town upholds the finding of a violation, the Grantee shall have fifteen (15) days subsequent, or such other time period as the Grantee and the Town mutually agree, to correct the violation.

(c) The rights reserved to the Town under this section are in addition to all other rights of the Town whether reserved by this Ordinance or authorized by law or equity, and no action, proceeding or exercise of a right with respect to penalties shall affect any other right the Town may have.

#### **Section 48. Force Majeure**

The grantee shall not be held in default under, or in noncompliance with, the provisions of the franchise, nor suffer any enforcement or penalty relating to noncompliance or default including termination, cancellation or revocation of the franchise, where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, severe weather conditions or other catastrophic act of nature, labor disputes, inability to obtain necessary contract labor or materials, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate and control and that makes performance impossible.

Drafted by: Supervisor Tim McCumber  
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