

CABLE TELEVISION ORDINANCE  
FOR  
TOWN OF ROCKY MOUNT, VIRGINIA

January 9, 2017

**CABLE TELEVISION ORDINANCE.**

**§1 DEFINITIONS.**

For the purposes of this Ordinance, the following terms, phrases, words and their derivation shall have meaning 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, and the words in a singular number include the plural number. The word "shall" is always mandatory and not merely directory. All terms used in this ordinance, unless otherwise defined, shall have the same meaning as set forth in Virginia Code § 15.2 Chapter 21. Franchises; Sale and Lease of Certain Municipal Public Property; Public Utilities and Title VI of the Communications Act of 1934, 47 U.S.C. § 521 et seq. Such references to state and federal code shall include amendments thereto as are enacted from time-to-time.

AFFILIATE - means each person who falls into one (1) or more of the following categories: each person having, directly or indirectly, control or a controlling interest in Franchisee; each person in which Franchisee has, directly or indirectly, control or a controlling interest; each office, director, general partner, joint venture or joint venture partner of Franchisee; and each person directly or indirectly controlling, controlled by or otherwise related to Franchisee by common ownership, common management or common control.

BASIC CABLE SERVICE - means a separately available basic service tier to which subscription is required for access to any other tier of service. Such basic service tier shall, at a minimum, consist of the following: all signals carried in fulfillment of the Cable Act, any educational access and governmental access and local origination programming included in this Ordinance or the franchise agreement; and any signal of any television broadcast station that is provided by the cable operator to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station. Additional signals may be added to the basic tier by Franchisee.

CABLE ACT - means the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, codified at 47 U.S.C §521 *et. Seq.*, as it may be amended or succeeded.

CABLECASTING - means educational access, governmental access and local origination programming carried on a cable television system not under the exclusive control of the cable operator.

CABLE SERVICE - means (A) the one-way transmission to subscribers of (i) 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 or as otherwise provided by law or regulation.

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 (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves only 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 provision of Title II of the Cable Act, except that such facility shall be considered a cable television system to the extent such facility is used in the transmission of video programming directly to subscribers; or (D) any facilities of any electric utility used solely for operating its electric utility systems. Cable television system, for the purpose of this Ordinance, shall include facilities owned or operated by a person providing cable service or multiple channels of video programming on private property that receive cable service or multiple channels of video programming in whole or in part via cable, fiber or other wires or lines that are within the public right of way regardless of whether the person providing cable

service or multiple channels of video programming on private property receives video programming transmission service, cable service, or other multiple channel video service from a common carrier pursuant to tariff or otherwise or other person that retains the ownership, control and responsibility for all facilities located outside of the private property line.

CHANNEL - means a portion of the electromagnetic frequency spectrum (or any other means of transmission, including, but not limited to optical fibers) which is discretely identified and capable of carrying full motion color video, mono or stereo audio, and may include other non-video subcarriers and digital information.

COMPLAINT - means any written communication by any person or any oral communication by a subscriber or potential subscriber reduced to writing, including to a computer form, expressing dissatisfaction with any non-programming or non-financial aspect of Franchisee's business or operation of the cable television system.

DAYS - means calendar days unless otherwise specified.

DROP - means a coaxial connection from the activated feeder cable of the cable television system to the subscriber's demarcation point as specified by the FCC.

EDUCATIONAL ACCESS CHANNEL - means any channel provided by Franchisee, which is designated by the Town for educational use.

FCC or THE FEDERAL COMMUNICATIONS COMMISSION - means the Federal administrative agency, or its lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.

FRANCHISE - means an initial authorization, extension or renewal thereof, including authorization granted under the Cable Act, by the Town providing for the

nonexclusive and revocable right to construct, operate and/or maintain a cable television system along any public right-of-way and/or to provide cable service within the franchise area. However, any such authorization, in whatever form granted, shall not include any license or permit required for the privilege of transacting or carrying on business within the Town, and Franchisee is required to comply with all applicable provisions of Town ordinances, including but not limited to zoning and subdivision and land development ordinances.

FRANCHISE AREA - means the entire corporate limits of the Town, or portions thereof, as said areas are specifically described in the franchise agreement, and any area annexed by the Town during the term of the franchise agreement.

FRANCHISE FEE - means the communications tax, as specified in the Code of Virginia Chapter 6.2-Virginia Communications Sales and Use Tax, paid in exchange for the rights granted pursuant to this Ordinance. For the purposes of compliance with Chapter 6.2-Virginia Communications Sales and Use Tax the Town of Rocky Mount Franchise fee was 5% on January 1, 2007.

FRANCHISEE - means any person or persons who have been legally granted a franchise by the Town and shall include the lawful successors, transferees or assignees of such Franchisee(s) which have been approved by the Town.

GOVERNMENT ACCESS CHANNEL - means any channel provided by Franchisee which is designated by the Town for government use.

GROSS REVENUES - means all amounts in accordance with Generally Accepted Accounting Principles, in whatever form and from all sources, actually received by Franchisee from the operation of Franchisee's cable television system within the Town with gross revenues being calculated according Virginia Code § 6.2-Virginia Communications Sales and Use Tax, as such may be amended.

INSTALLATION - means the connection of the cable

television system from feeder cable to subscribers' terminal(s).

LAWS AND REGULATIONS - means any and all applicable federal, State and local laws and regulations promulgated thereunder.

LEASED ACCESS CHANNEL LESSEE - means a non-affiliated third party leasing a cable channel for the presentation and distribution of local non-operator video/audio programs or other video/audio communications over a cable channel for a specified fee.

LEASED ACCESS CHANNEL - means a cable channel leased by the Franchisee to a non-affiliated third party to permit presentation and distribution of local non-operator video/audio programming or other video/audio communications to subscribers for a specified fee paid to the Franchisee.

LOCAL ORIGINATION - means programming, exclusive of broadcast signals, carried on a cable television system over one (1) or more channels.

OPEN VIDEO SYSTEM or OVS - means any channel or a facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable television service, which includes video programming, which is provided to multiple subscribers within a community, and which the Federal Communications Commission or its successor has certified as compliant with Part 76 of the Rules of the Federal Communications Commission, 47 C.F.R. Part 76, as amended from time to time.

PERSON - means any individual, firm, partnership, association, corporation, company or organization of any kind.

PLANT MILE - means a linear mile of strand-bearing cable placed along the right of way.

PUBLIC RIGHT-OF-WAY - means the surface, the air space above the surface, and the area below the surface of any highway, street, alley, sidewalk, bridge, and/or

tunnel which the Town has the right to grant the use of, or any other public right-of-way which is located within the Town. No reference herein, or in any permit, to the public right-of-way shall be deemed to be a representation or guarantee by the Town that its title to any property is sufficient to permit its use for such purpose, and Franchisee shall be deemed to gain only such rights to use property in the Town as the Town may have the undisputed right and power to give. Notwithstanding the foregoing, the term, "public right-of-way" shall not include any public property except the right-of-way described herein.

REBUILD - means improving the cable system with new electronic and passive devices and involves replacing a significant portion of the coaxial cable and/or fiber optic plant with new plant.

RESIDENT - means any person residing in the Town.

RESIDENTIAL SUBSCRIBER - means a subscriber who lawfully receives a service in an individual dwelling unit where the service is not to be utilized in connection with a business, trade or profession.

SALE - means any sale, exchange, barter or similar transaction.

SCHOOL - means any public or private educational institution including primary and secondary schools (K-12).

STATE - means the State of Virginia.

SUBSCRIBER - means a purchaser of any service delivered over the cable television system and includes those persons who are not required to pay a fee because of their exemption from fees by this Ordinance or through agreements with Franchisee.

SYSTEM FACILITIES - means the cable television system constructed for use within the Town, including without limitation, the headend, antenna, cables, wires, lines, towers, amplifiers, converters, 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, 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 cable television system; provided, however, such cable television system facilities excludes buildings, facilities, or equipment whose sole use is to provide service to any cable television system facilities located outside the Town limits.

TOWN - means the Town of Rocky Mount, Virginia.

TRUNK LINE - means the major distribution cable used in the cable television system, which divides into feeder lines which are tapped for service to subscribers.

UPGRADE - means improving the cable system, through the exchange of electronic and passive devices, while utilizing a significant portion of the existing coaxial cable and/or fiber optic plant.

USER - means a person utilizing a cable television system channel for purposes of production and/or transmission of material, as contrasted with receipt thereof in a subscriber capacity.

## **§2 GRANT OF NONEXCLUSIVE FRANCHISE**

1. Grant. Upon careful consideration of the qualifications of the applicants and in consideration of the faithful performance and observation of the conditions and reservations herein specified, the Town may grant revocable and nonexclusive Franchises for the right, privilege, authority to provide cable service and/or to erect, construct, operate and maintain, in upon, along, across, above, over and under the public right-of-way now laid out and dedicated and all such extensions thereof and additions thereto in the Town, and public utility right-of-way and easements to the extent the Town is empowered to grant such rights with respect thereto; underground conduits, manholes and other television

conductors and fixtures necessary for the maintenance and operation of a cable television system, hereinafter sometimes referred to as a cable television system and/or systems, solely for the provision of cable television services, on the terms and conditions hereinafter set forth. The Town expressly reserves the right to grant similar use of said public right-of-way to any person at any time during the period of the franchise agreement(s).

2. Open Video System. Any franchise granted for an open video system shall comply with all sections of this Ordinance, unless precluded from compliance with specific sections by Federal or State law, rule, or regulation.
3. Other Right-of-Way Use. No grant of any franchise shall affect the right of the Town to grant to any other person a right to occupy or use the public right-of-way, or portions thereof, for the construction and operation of a cable television system within the Town or the right of the Town to permit the use of the public right-of-way of the Town for any purpose whatever. By accepting a franchise, Franchisee acknowledges the Town's right to make such grants and permit such uses.
4. Event of Conflict. In the event of conflict between the terms and conditions of this Ordinance and the franchise agreement, this Ordinance shall control, taking into account the terms of the Franchise in regards to any amendments.
5. General Town Ordinances. Any franchise granted by the Town is hereby made subject to the general Ordinance provisions now in effect and hereafter made effective. Nothing in the franchise agreement shall be deemed to waive the requirements of the various codes and Ordinances of the Town regarding permits, taxes, and fees to be paid, or manner of construction. All provisions of this Ordinance are to be applied to both new construction and modification of existing cable television systems for upgrading and major repair or replacement.
6. Franchise Nonexclusive. The Town specifically reserves

the right to (i) grant at any time such additional franchises for a cable television system as it deems appropriate, and/or (ii) build, operate, and own such cable television system or systems as it deems appropriate.

7. Rights Reserved. Nothing in this Ordinance or the franchise agreement shall limit any right the Town may have under applicable Federal, State and local law.
8. Time is of the Essence to this Ordinance. Whenever this Ordinance or the franchise agreement shall set forth any time for any act to be performed by or on behalf of Franchisee, such time shall be deemed to be of the essence and any failure of Franchisee to perform within the time allotted shall always be sufficient grounds for the Town to invoke an appropriate penalty.
9. No Waiver of Rights. No course of dealing between Franchisee and the Town nor any delay on the part of the Town in exercising any rights hereunder shall operate as a waiver of any such rights of the Town or acquiescence in the actions of Franchisee in contravention of rights except to the extent expressly waived by the Town or expressly provided for in the franchise agreement.

### **§3 FRANCHISE.**

No cable television system, open video system, or person providing cable service may operate within the Town or occupy or use any public right-of-way without a cable television franchise granted by the Town. All cable franchises in the Town shall be subject to this Ordinance. The term of the franchise agreement shall commence upon execution of a franchise by the Town and Franchisee and shall continue for the period specified in the franchise agreement, unless sooner terminated as provided for herein or the franchise agreement.

### **§4 FRANCHISE AREA.**

A franchise granted pursuant to this Ordinance shall mean the entire corporate limits of the Town, or

portions thereof, as said areas are specifically described in the franchise agreement, and any area annexed by the Town during the term of the franchise agreement.

**§5 CONDITIONS OF OCCUPANCY OF PUBLIC RIGHT-OF-WAY.**

1. Non-interference. Franchisee's rights and privileges shall be subordinated to any prior lawful use or occupancy of the public right-of-way or other public property and shall not be so used as to interfere with existing improvements or with new improvements the Town may deem proper to make, or as to hinder or obstruct the free use of the public right-of-way or other public property. In the event any equipment or facilities of Franchisee shall interfere with any such improvement existing or intended to be made by the Town, Franchisee shall, upon notice from the Town, forthwith relocate said equipment and facilities at Franchisee's expense so as to eliminate said interference.
2. Permit Required. Franchisee shall not open or disturb the surface of any public right-of-way for any purpose without first having obtained a permit to do so in accordance with Town requirements, which shall not be unreasonably withheld or denied.
3. Poles. Nothing in this Ordinance or any franchise granted hereunder shall authorize Franchisee to erect and maintain new poles where existing poles are servicing the area. Franchisee shall obtain permission from the appropriate Town officials before erecting any new poles or underground conduit. Any poles or other fixtures placed in any public right-of-way by Franchisee shall be placed in such a manner as to not interfere with travel on such public right-of-way.
4. Restoration of Public Right-of-Way, Sidewalks, and Pavement. In case of disturbance of any public right-of-way, sidewalk or paved area, Franchisee shall, at its own cost and expense and in a manner in accordance with Town ordinances and standards established by the Town and approved by the Town Engineer, replace and restore such public right-of-way, sidewalk or paved area to as good or better condition than existed prior

to the disturbance promptly, but in no more than twenty (20) business days unless such addition time as specified by the Town. The Town may order Franchisee to restore the public right-of-way, sidewalk, or pavement to a condition as good as or better than existed prior to cable television system construction including any improvements made to said public right-of-way subsequent to cable television system construction. With regard to public property not in the public right of way, Franchisee shall restore such property to a condition as good or better than existed prior to cable television system construction including any improvement made to such property subsequent to cable television system construction. Restoration of public right-of-way and public property not in the public right of way shall be approved by the Town Engineer. In the event that Franchisee and its contractors and subcontractors fail to make such repair within the time specified by the Town, the Town shall be entitled to complete the repair and Franchisee shall pay the costs of the Town for such repair.

5. Subsurface Installation. Franchisee shall participate in and be a member of a "One Call" notification program, if such a program exists.
6. Maps. Franchisee shall at all times keep on file true and accurate maps or plats of all existing and proposed aerial and underground feeder lines, trunk lines and subtrunk lines and a list of educational and municipal buildings to which special services are being provided, which shall be made available to the Town for review, upon request at the offices of the Franchisee. Franchisee shall provide the Town with strand maps of the location of system facilities in the Town and provide map updates to the Town as changes are made in the location of system facilities. Upon request of the Town, Franchisee shall develop and provide a Geographical Information System (GIS) compatible layer, using the program and format currently used by Franchisee, which accurately displays their "as built" utility systems.
7. Codes. Construction and maintenance of the transmission distribution system shall, at

Franchisee's expense, be in accordance with the provisions of the National Electrical Code, latest edition, and National Electrical Safety Code (latest edition), or any amendments or revisions thereof and in compliance with any applicable rules, regulations or orders now in effect or hereafter issued by any federal or State commission or any other public authority (or utility) joint attachment practices. Applicant should also comply with the provisions of Act 287 of the State of Virginia (underground facilities) and, upon request of the Town, submit proof of compliance with said act prior to commencement of any construction.

8. Construction Standards. All installations of equipment shall be durable, of a permanent nature and installed in accordance with current best cable television system engineering practices. Franchisee, upon written request by the Town, shall provide the Town with the cable television construction standards to be used in the construction and installation of the cable television system, which construction standards shall be in compliance with this Ordinance, the Franchise Agreement, and applicable building codes or Town Ordinances. Franchisee shall maintain up-to-date maps of all facilities in both public and private property. Franchisee and any subcontractors shall comply with all laws, rules, regulations and specifications heretofore or hereafter enacted or established including, but not limited to, those concerning street work, street excavation, use and removal and relocation of property within a street.
  
9. Placement. All cables and wires shall be installed parallel with existing telephone and electric wires whenever possible. Multiple cable configurations shall be arranged in parallel and bundled, in accordance with engineering and safety considerations as mandated by the National Electrical Code. All installations shall be underground in those areas of the Town where public utilities providing both telephone and electric service are underground at the time of installation. In areas where either telephone or electric utility facilities are above ground at the time of installation, Franchisee may install its service above ground with the understanding that at such time as

those facilities are required to be placed underground by the Town; Franchisee shall likewise place its service underground.

10. Traffic Safety. Franchisee shall comply with all Town, County and State traffic requirements and Uniform Traffic Safety Code regulations. Barricades or other barriers such as signs, traffic cones, red flags, and warning lights, shall be utilized at all work sites frequented by the public until an area is cleared for normal public use. Local law enforcement shall be contacted, when necessary, to direct traffic. Before leaving a job site each day, Franchisee's employees and contractors shall be required to pick up all scrap materials and ensure that any construction materials and tools are properly stored and covered and that derricks, planks and ladders are removed from or piled at the roadside in a manner that will not obstruct traffic or create a safety hazard for pedestrians.
11. Public Works. If the grades or lines of any street within the franchise area are changed at any time during the term of the franchise agreement, then Franchisee shall, at its own cost and expense and upon reasonable written notification of at least thirty days and request of the Town, protect or promptly alter or relocate the cable television system, or any part thereof, so as to conform with such new grades or lines. In the event that Franchisee refuses or neglects to so protect, alter, or relocate all or part of the cable television system, following notice to do so, the Town shall have the right to break through, remove, alter, or relocate all or any part of the cable television system without any liability to Franchisee, any affiliated person or any other person, and Franchisee shall pay to the Town the documented costs incurred in connection with such breaking through, removal, alteration, or relocation.
12. Protection of Structures. In connection with the construction, operation, maintenance, repair, upgrade, or removal of the cable television system, Franchisee shall, at its own cost and expense, protect any and all existing structures belonging to the Town and all designated landmarks. Franchisee shall obtain permits

from the Town before altering any water main, sewerage or drainage system, or any other municipal structure. Any such alteration shall be made by Franchisee, at its sole cost and expense, and in any reasonable manner prescribed by the Town. Franchisee agrees that it shall be liable, at its own cost and expense, to replace or repair and restore to a condition as good or better than existed previously, in any reasonable manner as may be specified by the Town, any public right-of-way or any municipal structure involved in the construction, operation, maintenance, repair, upgrade or removal of the cable television system that may become disturbed or damaged as a result of any work thereon by or on behalf of Franchisee pursuant to this Ordinance or the franchise agreement.

13. Service Interruption. Franchisee shall use its best efforts to interrupt the provision of service only with good cause and for the shortest time possible. Franchisee shall use reasonable efforts to interrupt service only between the hours of 12:00 midnight and 6:00 a.m.
14. No Burden on Public Right-of-Way. Franchisee shall not erect, install, construct, repair, replace or maintain its cable television system in such a fashion as to unduly burden the present or future of the public right-of-way. If the Town in its reasonable judgment determines that a portion of the cable television system is an undue burden, Franchisee at its expense shall make reasonable efforts to modify its cable television system or take such other actions as the Town may determine is in the public interest to remove or alleviate the burden, and Franchisee shall do so within a reasonable period of time as established by the Town.
15. Restoration of Private Property. In accordance with Town ordinances, standards established by the Town and with approval of the Town Engineer, any portion of the private property that is in any way disturbed by the construction, operation, maintenance or repair of the cable television system to as good or better condition than existed previously. Costs for Town Engineer review and restoration of private property shall be borne by Franchisee in the same manner that

such costs are borne in standard development agreements. In addition, Franchisee shall at its sole cost and expense restore and replace any other property, real or personal, disturbed, damaged or in any way injured by or on account of Franchisee or by its acts or omissions, in as good or better condition as such property was in immediately prior to the disturbance, damage or injury.

16. Barriers. While any portion of the public right-of-way is open, Franchisee shall maintain reasonable barriers, lights at night and other warnings to the users of the public right-of-way in compliance with applicable government regulations requiring and pertaining to such barriers.
17. Town Maps. The Town does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures. In public right-of-way, it shall be the Franchisee's obligation, to verify the location or substructures in the public right-of-way.
18. Tree Trimming. Franchisee shall have the authority under the supervision of the appropriate authority of the Town and only after prior approval thereof (except in emergency situations), to trim trees upon an overhanging public right-of-way and places within the Town so as to prevent the branches of such trees from coming in contact with its wires and cable. All trimming of trees on private property shall require notice to, and approval from, the property owner.
19. Trees, Shrubs, and Lawns. The following applies to trees, lawns, or shrubs within the public right-of-way where the Franchisee performs construction and in accordance with Town ordinances and land use guidelines where applicable. Trees or shrubs to be transplanted shall be transplanted in accordance with the Town regulations. All damaged trees, shrubs or lawns shall be replaced or restored as directed by the Town. Such trees, shrubs, and lawns shall be warranted for twelve (12) months.
20. Easement Usage. In using easements, Franchisee shall comply with all federal, State, and local laws and

regulations governing the construction, installation, operation, and maintenance of a cable television system. Without limitation, Franchisee shall ensure that:

- A. The safety, functioning and appearance of the property and the convenience and the safety of other persons not be adversely affected by the installation or construction of facilities necessary for the cable television system;
- B. The cost of the installation, construction, operation, or removal of such facilities be borne by Franchisee; and
- C. The owner of the property be justly compensated by Franchisee for any damages caused by the installation, construction, operation, or removal of such facilities by Franchisee.

21. Emergency Notification. Franchisee shall provide the Town with a twenty-four (24) hour emergency telephone number at which a named responsible adult representative of Franchisee (not voice mail or a recording) can be reached in the event of an emergency. Additional specifications for general notification shall be provided for in the franchise.

22. Removal of Obsolete Facilities/Cooperation. When Franchisee opens a trench, accesses a conduit or boring, or is working on aerial locations, it shall remove, unless the Town specifies otherwise, all of Franchisee's obsolete and inactive cable television system facilities from such locations.

A. When Franchisee opens a trench or access to borings, it shall notify all other Franchisees and permittees ten (10) days in advance of such work through Virginia One Call, so that they may remove their obsolete and inactive facilities from such locations or add new facilities. Franchisee shall cooperate with such persons in such activities and may charge a reasonable fee for such use. When Franchisee receives notification from another Franchisee or permittee that it is opening a trench or access to borings, Franchisee shall remove all of its obsolete

facilities from such location while they are open.

23. Preventative Maintenance. Upon completion of construction, Franchisee shall institute and adhere to a preventive maintenance program, good engineering practices and then current industry practices.
24. Identification. For new facilities, Franchisee shall identify its cable television system and cable drops (by color code, stamping, engraving, tags, stickers, or other appropriate method selected by Franchisee) so as to distinguish Franchisee's cables from that of all other cable operator(s), utilities, and service providers in the authorized area.
25. Interior Wiring. The ownership of cable installed by Franchisee after the effective date of this Ordinance which is located inside subscribers' dwellings shall be determined and governed by applicable FCC regulation.
26. Easements on Town Property. Any easements over or under property, including but not limited to Town parks and greenways, owned by the Town other than the public right-of-way shall be separately negotiated with the Town and paid for by the Franchisee.
27. Vacation. If a public right-of-way is vacated, eliminated, discontinued or closed, all rights of Franchisee under this Ordinance to use same shall terminate and Franchisee at its expense shall immediately remove the cable television system from such public right-of-way unless Franchisee obtains any necessary easements from the affected property owners to use the former public right-of-way.

## **§6 CONSTRUCTION AND DEPLOYMENT.**

1. Cable Television System. Franchisee shall construct or upgrade the cable television system and/or deploy cable services in the franchise area as specified in the franchise agreement. If necessary, Franchisee shall submit applications for issuance of the pole permits necessary to install the cable television system to the appropriate utility companies within one

hundred twenty (120) days of the effective date of the franchise agreement.

2. Construction and Deployment Plan and Approval. Franchisee shall obtain the approval of the appropriate Town officials prior to commencing construction in the public right-of-way and/or for the cable services deployment plan. In such cases, Franchisee shall submit to the Town a construction plan showing the location, placement, dimensions, and type of facilities of all construction proposed in the public right-of-way and also those areas not being served. Franchisee shall not begin any construction, rebuild, upgrade removal or any change whatsoever in any Town Franchisee facilities except ordinary and necessary repairs, without having first obtained all permits required by the Town. Franchisee shall give the Town appropriate written notice of proposed construction at least ten (10) days prior to such construction or as otherwise specified in the franchise.
3. Interconnection. Franchisee shall interconnect with other systems as specified in the franchise agreement.

#### **§7 SYSTEM FEATURES.**

1. Emergency Alert. Franchisee shall comply with the requirements of the Federal emergency alert system as specified by the FCC (47 CFR Part 11.1, et seq.) and as provided for in the franchise agreement.
2. Standby Power. Franchisee shall maintain equipment providing standby powering for an eight (8) hour period at the headend. Franchisee shall provide battery backup power (or an electric generator) a system where the loss of electric power might disrupt the provision of service within the Town such that the cable television system will operate at all strategic fiber optic node locations on the cable television trunk amplifiers and fiber nodes for at least 2.5 hours even if electric service from conventional utility lines are interrupted. Franchisee shall take all reasonable measures to insure reliable delivery of signals throughout the Town.

3. Two-way. The cable television system shall have active bi-directional return communications.

#### **§8 TECHNICAL PERFORMANCE AND STANDARDS.**

1. Performance Standards. The performance and technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance and dismantling of the cable television system provided for herein shall be in accordance with all applicable Federal Commission and other federal and State Communications laws and regulations.
2. Rebates. For verified service interruptions or outages of over eight (8) hours in a twenty-four hour period, the Franchisee shall provide, at the subscriber's verbal or written request, a credit of one-thirtieth (1/30) of one month's fees for affected services. For clarification, a service outage refers to loss of the service as a whole, not an individual Channel.
3. Performance Testing. Franchisee shall conduct performance tests as required by the Federal Communications Commission and the franchise agreement. Such tests shall be conducted in the presence of Town consultants if requested by the Town. The results of such tests shall be provided to the Town as specified in the franchise.

#### **§9 SUBSCRIBER SERVICES.**

1. Basic Service. Cable television basic service shall be made available to substantially all individual dwellings, residences, institutions, organizations and all other entities within the limits of the Town, in accordance with the provisions of this Ordinance and all laws governing the rights of privacy.
2. Installation and Service Fees. Installations and service fees shall be equal for all basic service subscribers. Installation or subscriber use of cable television service which involves the retransmission of the cable signal to multiple reception points via a privately-owned closed circuit television distribution

system shall be negotiated separately by Franchisee and the owners. Franchisee may reduce or waive installation and/or service fees for promotional purposes.

3. Town Ordinances. Cable, whether underground or aerial, shall be in accordance with all generally applicable Town ordinances or regulations.
4. 24-Hour Operation. The system shall be designed for reliable operation twenty-four (24) hours per day.
5. Business Office. Franchisee shall maintain an office as specified in the franchise.
6. Staff, Telephones and Complaints. Franchisee shall have a toll-free, publicly listed telephone number. Franchisee's telephone system shall have, at a minimum, enough incoming lines and adequate staff to process incoming calls such that telephone answer time, including wait time under normal operating conditions, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds under normal operating conditions. Subscribers shall receive a busy signal less than three percent (3%) of the time. Franchisee shall have an e-mail address for receiving consumer complaints and other communications. Franchisee shall maintain a twenty-four (24) hour operation in order to receive customer complaints.
7. Complaints to Town. Any subscriber who has a complaint regarding the quality of cable television service, equipment malfunctions, billings or any other matter which remains unresolved after it has been brought to Franchisee's attention, may file a complaint with the Town.
8. Resolution of Complaints to Town. Upon the filing of a complaint verbally or in writing, the Town shall notify Franchisee and within 5 business days Franchisee shall inform the Town of the resolution or status of the complaint. If the Franchisee is unable to cure within a reasonable period of time, the Town may make an investigation to determine whether or not

there is reason to credit the allegations. If it is determined after such informal investigation that there is reason to credit the allegations of the complainant, the Town shall so notify Franchisee and the complainant, and shall promptly endeavor to resolve the matter by conciliation. In the event such efforts are not successful, the Town may hold a hearing and the Franchisee shall be given an opportunity to speak at the hearing.

9. Time Period for the Resolution of Complaints. Except where another time period is required by any other provision of this Section, Franchisee shall make a good faith effort to resolve, as soon as practicable and in no event later than thirty (30) business days, all complaints after they are received by Franchisee.
10. Adequate Repair Staff. Franchisee shall maintain a repair force capable of responding to subscriber complaints and/or requests for cable television system repairs within twenty-four (24) hours after the receipt of the complaint and/or request. Franchisee shall respond to all service calls throughout the franchise area on a nondiscriminatory basis.
11. Nondiscrimination. Each class of subscriber service shall be offered cable television service on a uniform, nondiscriminatory basis. Franchisee shall not deny nor delay service, deny or delay access, or otherwise discriminate against subscribers, channel users or general citizens on any basis whatsoever. Nothing contained herein shall prohibit Franchisee from offering (i) discounts to commercial and multiple family dwelling subscribers billed on a bulk basis; (ii) promotional discounts; (iii) reduced installation rates for subscribers who have multiple services; (iv) discount for senior citizens and/or low income residents; or (v) discounts for prepayment.
12. Tabulation. For the purpose of selling or sharing information with third parties, Franchisee shall not tabulate any test results, nor permit the use of its cable television system for such tabulation, which would reveal the individual commercial product performance or individual opinions of subscribers, members of their families or their invitees, licensees

or employees without the express written consent of each and every subscriber so polled or tabulated.

13. New Developments. In all cases where developments and subdivisions are to be constructed and to be served in whole or in part by underground power and telephone utilities, and in such areas where both utilities are to be placed underground, exclusive of all electronic cable television facilities, Franchisee shall similarly install the cable television system concurrently with the installation of the underground power and telephone utilities.
14. Line Extension. Franchisee shall install cable plant and offer cable service to subscribers as specified in the Franchise.
15. Card Showing Channel line-up. Franchisee shall provide subscribers with a channel line-up for all cable services: (i) at the time of installation; and/or (ii) upon request.
16. Procedure for Installation. Franchisee shall abide by the following procedure for installation:
  - A. Under normal operating conditions, the standards in this Section shall be met no less than ninety-five percent (95%) of the time as measured on an annual basis. The term normal operating conditions means those service conditions which are within the control of Franchisee. Those conditions which are not within the control of Franchisee include, but are not limited to, strikes, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Franchisee 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 television system.
  - B. Once a request for cable service is received, Franchisee shall either set a specific appointment time or specify a four (4) hour time

block during normal business hours, as requested by the subscriber or potential subscriber, during which Franchisee's work crew shall install the new equipment to receive service. The term normal business hours means those hours during which most similar businesses in the community are open to serve subscribers. Franchisee may schedule installation activities outside of normal business hours for the express convenience of the subscriber.

- C. For new aerial installations, excluding locations where all utilities are underground, if a subscriber requests underground cable service, Franchisee may charge the subscriber the differential between the cost of aerial and underground installation of the drop to the subscriber. This provision shall not apply where underground construction is required by Town Code or where utilities are located underground.
17. The Format of a Subscribers Bill. Franchisee shall abide by the following format requirements on subscriber's bills.
- A. The bill shall be designed in such a way as to present the information contained therein clearly and comprehensibly to subscribers. The bill shall include a due date and be in an easily readable font and format.
  - B. The bill shall contain itemized charges for each category of service and equipment and any installation of equipment or facilities and monthly use thereof (together, "equipment") for which a charge is imposed (including late charges, if any), an explicit due date, the name and address of Franchisee and telephone number for Franchisee's office responsible for inquiries and billing, the telephone number specified by the Town for the resolution of billing disputes, and the FCC Community Unit Identifier Number. The bill shall state the billing period, amount of current billing and appropriate credits or past due balances, if any.

- C. Franchisee shall not charge a potential subscriber or subscriber for any service or equipment that the subscriber has not affirmatively requested by name.
18. Payment Options. Franchisee shall provide all individual, residential subscribers with the option of paying for cable service by (I) cash, (ii) check, (iii) an automatic payment plan, where the amount of the bill is automatically deducted from a checking account designated by the subscriber, or (iv) by major credit card on a preauthorized basis.
19. Procedure for the Resolution of Billing Disputes. Franchisee shall comply with the following procedure in resolving billing disputes.
- A. The billing dispute resolution procedure shall be initiated once a subscriber contacts Franchisee's department which handles billing questions or notifies the Town orally or in writing.
- B. The subscriber shall not be required to pay the disputed portion of the bill until the dispute is resolved. Franchisee shall not apply finance charges, issue delinquency or termination notices, or initiate collection procedures for the disputed portion of the bill pending resolution of the dispute.
- C. Franchisee shall promptly undertake whatever review is necessary to resolve the dispute and shall notify the subscriber the results of the review and Franchisee's proposed resolution of the billing dispute as soon as it is completed, but in no case later than twenty (20) business days after receipt from the subscriber of the billing dispute, problem or complaint notification.
20. Subscriber Equipment. Franchisee shall comply with all rules and regulations promulgated by the FCC pursuant to Sections 623 and 624A of the Cable Act (47 U.S.C. §§ 543 and 544a).
21. No Charge for Repair Service. Franchisee shall not

impose any fee or charge any subscriber for any service call to his or her premises to perform any repair or maintenance work on Franchisee's equipment, excluding negligence or other action on the part of the subscriber.

22. Records of Complaints, Repair Requests, and Outages. Franchisee shall keep records showing all (a) requests for repair service, (b) complaints or requests that generate a work order or written response, and (c) outages. Franchisee's records shall contain, at a minimum, the following information: (a) the address of the affected subscriber, (b) the date and the approximate time of the complaint or request, (c) the date and approximate time Franchisee responded, (d) the date and approximate time service is restored, (e) the type and the probable cause of the problem, and (f) a description of the corrective action taken. Franchisee shall keep all such records for at least two (2) years from the date the record is made. Franchisee shall keep summary reports of such records for three (3) years. Upon request by the Town, and in compliance with the Cable Act, Franchisee shall produce the requested records to the designated Town office within thirty (30) days of the request for such records, subject to all applicable customer privacy laws and regulations. Also, Franchisee shall provide to the Town, upon request by the Town, a written summary of all such records from the past year on a quarterly basis. Quarterly dates for the provision of such written summaries are March 31, June 30, September 30 and December 31.
23. Notice of Interruption of Service. Except in emergencies or incidents requiring immediate action, Franchisee shall use reasonable efforts to provide the Town and all affected subscribers with prior notice of scheduled service interruptions.
24. Outages. Following are time periods by which outages must be corrected and repairs must be made by Franchisee.
  - A. Franchisee shall maintain sufficient repair and maintenance crews so as to be able to respond to any reception problem or other service problem of

either picture, or sound quality, including any outage except for a problem caused by an intentional, wrongful act of the subscriber or by the subscriber's own equipment which was not supplied by Franchisee, promptly and in no event later than twenty-four (24) hours after Franchisee either receives a request for repair service or Franchisee learns of a problem and Franchisee shall use its best efforts to correct such problem within forty-eight (48) hours after a request for repair service or Franchisee learns of a problem. For purposes of this Section, "reception problem" shall constitute reception that an affected subscriber reasonably determines is unsatisfactory, unless Franchisee can demonstrate that the signals transmitted to such subscriber are in compliance with the FCC's technical signal quality standards.

- B. Franchisee shall maintain, at all times, an adequate repair and service force in order to satisfy its obligations pursuant to A. above, and in cases where it is necessary to enter upon a subscriber's premises to correct any reception problem or other service problem, Franchisee shall either set a specific appointment time or specify a four (4) hour time block during normal business hours, as requested by the subscriber or potential subscriber, during which Franchisee's work crew shall work on the service problem. Franchisee may schedule service calls outside of normal business hours for the express convenience of the subscriber, provided that Franchisee's customer service representatives shall at all times endeavor to be aware of service or other problems in adjacent areas which may obviate the need to enter a subscriber's premises.
  
- C. In no event shall Franchisee cancel any necessary scheduled service call after close of the business on the business day prior to the scheduled appointment. If Franchisee needs to cancel a scheduled appointment, it must contact the subscriber and reschedule at a time convenient for the subscriber.

25. Failure to Meet Time Periods May Be Excused. Franchisee's failure to correct outages or to make repairs within the stated time periods shall be excused in the following circumstances:
- A. If Franchisee could not obtain access to the subscriber's premises when such access is necessary to correct the problem; or
  - B. If the Town agrees with Franchisee that correcting such outages or making such repairs was not reasonably possible within the allotted time period.
26. Notices Required. Franchisee shall provide the following notices.
- A. Franchisee shall provide notice to all persons receiving cable service, including the Town of any change in any fee, charge, deposit, term or condition, which notice shall be provided no later than thirty (30) days prior to the effective date of any such change. All notices required by this Section shall specify, as applicable, the service or services affected, the new rate, charge, term or condition, the effect of the change, and the effective date of the change.
  - B. Franchisee shall provide notice, in writing, to all persons receiving cable service, including the Town, of any change in any channel assignment or in any service provided over any such channel, which notice shall be provided no later than thirty (30) days prior to the effective date of any such change.
  - C. Franchisee may terminate service to any subscriber whose bill has not been paid after it becomes delinquent, so long as Franchisee gives seven (7) day notice to the subscriber.
27. Resubscription to Cable Service. Franchisee shall not refuse to serve a former subscriber whose service was terminated, so long as all past bills and late charges have been paid in full.

28. Disconnect. Franchisee shall adhere to the following procedures regarding disconnection.
- A. Franchisee shall either set a specific appointment time or specify a four (4) hour time period during normal business hours, during which its work crew shall visit the subscriber's premises to disconnect service and to remove any equipment. Franchisee may schedule such service outside normal business hours for the express convenience of the subscriber.
  - B. Franchisee shall not charge any fee for any disconnection.
29. Credits. In the event applicable law or regulation requires Franchisee to retroactively decrease or "rollback" rates, fees or charges for any service Franchisee shall automatically provide a credit on each existing subscriber's bill affected by such decrease or rollback as prescribed by the applicable FCC regulation, law or order.
30. Privacy and Monitoring. Franchisee shall not tap, monitor, or arrange for the tapping or monitoring, or permit any other person to tap or monitor, any cable, line, signal, input device, or subscriber facility for any purpose, except as authorized by applicable law (e.g. court order or police warrant).
31. Truth in Advertising. Franchisee's bills, advertising and communications to its current or potential subscribers shall be truthful and shall not contain any false or misleading statement. For the purposes of the preceding, a statement is false or misleading if it contains an untrue statement of any material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.
33. Reservation. The Town reserves the right by ordinance to alter or amend the customer service and consumer protection matters set forth in this Section, to the extent permitted by law, including adopting ordinances

stricter than or covering items not presently set forth in this Section. The Town agrees to meet with Franchisee on the matters in question prior to taking such action, and to provide Franchisee with at least forty-five (45) days prior written notice of such action.

**§10 INITIAL SERVICE AND SUBSCRIBER RATES.**

1. Town Regulation. To the extent that federal or State law or regulation may now, or hereafter, authorize the Town to regulate the rates for any particular service tiers, service packages, equipment, or any other services provided by Franchisee, the Town shall have the right to exercise rate regulation to the full extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the Town.
2. Ability to Petition. If applicable, the Town shall have the right to petition the Federal Communications Commission or other appropriate agency or organization to obtain rate regulation authority or to petition the federal body to review or regulate rates in the Town.
3. Rate Schedule Filings. Franchisee shall annually send to all persons receiving cable service, including the Town, an official rate card and a full schedule of all other subscriber and user rates and all other charges such as, but not limited to, pay TV, lease channel and other services made in connection with the cable television system. Franchisee shall notify affected subscribers in writing at least thirty (30) days prior to the implementation of any change in services offered, rates, or charges related thereto. Any special rates for large institutions, motels, multiple-family dwelling units or any other type of subscriber shall be provided upon request.
4. Rate Regulation. Rates charged for basic and additional services shall be consistent with Federal Communications Commission regulations and in conformance with this Ordinance. In case of a conflict, this Ordinance shall govern unless preempted by Federal or State regulations.

5. Security Deposit. Franchisee shall not be permitted to charge a hardware/software security deposit fee greater than Franchisee's cost of the hardware/software.
6. Refund on Deposits. If Franchisee collects a deposit on any service requested by a subscriber or user, Franchisee shall provide such service within thirty (30) days or refund within the next five (5) days all deposits or advance charges paid for the service. This provision does not alter a Franchisee's responsibility to subscribers and users under any contractual agreements separate from this Ordinance that Franchisee may have with subscribers or users or relieve Franchisee of liability for penalties under this Ordinance or damages that may accrue to the Town or any subscriber because of Franchisee's failure to provide a promised service.
7. Termination. If a subscriber terminates basic service prior to the end of a prepaid period, a prorated portion of any prepaid subscriber service fee, using the total number of days of the prepaid period as a basis, shall be refunded to the subscriber by Franchisee.
8. Long Drop Fees. In the event that a resident desires connection and Franchisee determines that more than one hundred and fifty (150) feet of connecting cable is required in order to connect the resident, then Franchisee shall provide to and may charge to the subscriber the additional labor and materials (above the cost of the initial 150 feet) required to connect the resident at Franchisee's actual cost, upon notice of the cost to, and the agreement to pay the cost from, the subscriber.

**§11 FRANCHISE FEES.**

1. Franchise Fees. As compensation for a franchise granted pursuant to this Ordinance, and in consideration of permission to use the public right-of-way of the Town for the construction, operation, maintenance and reconstruction of a cable television system within the Town, Franchisee shall pay a

communications fee consistent with the Code of Virginia Chapter 6.2-Viginia Communications Sales and Use Tax, as such may be amended, and any regulations promulgated thereunder.

2. Scheduled Payments to Be Made. The communications fee shall be payable, consistent with the Code of Virginia Chapter 6.2-Viginia Communications Sales and Use Tax, as such may be amended, and any regulations promulgated thereunder.
3. Audit. The acceptance of any payment shall not be construed, as an accord that the amount paid is, in fact, the owed amount, nor shall such acceptance of payment be construed as a release of any claim the Town may have for further or additional sums payable under the provisions of this Ordinance. All amounts paid shall be subject to audit and recomputation by the Town. Any audit or calculation is such audit shall be consistent with the Code of Virginia Chapter 6.2-Viginia Communications Sales and Use Tax, as such may be amended, and any regulations promulgated thereunder

**§12 REVOCATION OF FRANCHISE; DEFAULT BY FRANCHISEE.**

1. Grounds for Revocation. The Town reserves the right to revoke any franchise granted hereunder and rescind all rights and privileges associated with the franchise in any of the following circumstances, each of which shall represent a default and breach under this Ordinance and the franchise agreement:
  - A. Franchisee's default in the performance of any of the material obligations under this Ordinance, the franchise agreement, or under such documents, contracts and other terms and provisions entered into by and between the Town and Franchisee.
  - B. Franchisee's failure to provide or maintain in full force and affect all bonds required herein.
  - C. Franchisee's failure to maintain in full force and effect, any insurance required herein.
  - D. Franchisee's violation of any orders or rulings

of any regulatory body having jurisdiction over Franchisee relative to this Ordinance or the franchise agreement. Provided, however, that such order or ruling is not under appeal or being litigated.

- E. Franchisee's violation of any of the provisions of this Ordinance or the franchise agreement or the practice of any fraud or deceit upon the Town or cable subscribers.
  - F. Franchisee's construction schedule is delayed later than the schedule contained in the franchise agreement or beyond any extended date set by the Town.
  - G. Franchisee's failure to restore service from an outage after ninety-six (96) consecutive hours of interrupted service, except upon a condition of force majeure or when approval of such interruption is obtained from the Town.
  - H. Franchisee's misrepresentation of, or omission of, a material fact in the application for or negotiation of the franchise agreement or any extension or renewal thereof.
  - I. Franchisee's cessation of provision of services over the cable television system for any reason within the control of Franchisee.
  - J. Franchisee's failure to comply with the educational access, government access and local origination provisions of this Ordinance or the franchise agreement.
  - K. To the extent allowed by law, Any foreclosure or judicial sale of all, or any part of, the cable television system shall be considered default. Initiation of any such proceedings shall be treated as a notification of a change of control of Franchisee.
2. Force Majeure. If, by reason of force majeure, Franchisee, in whole or in part, is unable to carry out its obligations hereunder, Franchisee shall not be

deemed in violation or default during the continuance of such inability. The term "force majeure," as used herein, shall mean the following: strikes, acts of God; acts of public enemies; orders of any kind of the government of the United States of America or of the State of Virginia or of any of their departments, agencies, political subdivisions or officials or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; civil disturbances; explosions; and circumstances beyond the control of Franchisee and any affiliates.

3. Revocation. The Town shall notify Franchisee in writing, by certified mail, return receipt requested, at its business address, of the alleged default giving rise to revocation of the franchise. Franchisee shall have sixty (60) days from its receipt of the notice to cure the violation(s) and/or make a written response to the Town, as the case may be. If Franchisee does not respond or, if upon receipt of Franchisee's response, the Town concludes that a basis for revocation still exists, it shall notify Franchisee thereof, and provide the Franchisee sixty (60) days written notice of the time and place of a public hearing before the Town Council.
4. Public Hearing. At the public hearing, the parties shall have the right to be represented by counsel and shall be afforded the opportunity to present evidence and cross-examine witnesses on relevant issues. Formal rules of evidence shall not apply, but irrelevant, immaterial or unduly repetitions matter may be excluded. A stenographic record of the proceedings shall be kept. A decision by a majority of the Town Council is required for revocation. Following the public hearing, the Town Council may revoke the Franchise, may direct Franchisee to comply within such time and manner and upon such reasonable terms and conditions as the Town Council may direct, may mitigate the revocation to a penalty in the discretion of the Town Council, or take any other action that it deems equitable and just in the circumstances. Franchisee retains any right of appeal as allowed by law.

5. Removal. Upon revocation of a franchise, the Town shall have the right to require Franchisee to remove, at Franchisee's expense, all or a portion of the cable television system required by public necessity from all public right-of-way within the Town.
6. Purchase. If the franchise is revoked in accordance with the foregoing procedures, the Town may (but shall not be required to) initiate proceedings to acquire the system at an equitable price in compliance with state and federal law.
7. Effect of Pending Litigation. Pending litigation or any appeal to any regulatory body or court having jurisdiction over Franchisee shall not excuse Franchisee from the performance of its obligations under this Ordinance or the franchise agreement except for claims of commercial impracticality. Failure of Franchisee to perform such obligations because of pending litigation or petition may result in forfeiture or revocation pursuant to the provisions of this section.
8. Compliance with Law. Notwithstanding anything contained herein to the contrary, any revocation must be in a manner consistent with all Laws and Regulations, including those of the FCC and the Cable Act.

### **§13 RENEWAL PROCEDURES.**

1. Franchise Renewal. Upon completion of the term of any Franchise granted under this Ordinance, the Town may in its sole discretion grant or deny renewal of the franchise of Franchisee in accordance with the provisions of the Cable Act. Franchisee shall continue to own the cable television system, but shall have no right to use of public right-of-way upon the denial of the franchise renewal is revocation of the franchise. There shall be no automatic right of renewal of the franchise rights granted hereunder.
2. Denial of Renewal. If at any time Franchisee requests renewal of the franchise and the Town decides to deny such renewal, thereby rendering the franchise null and

void, the Town shall have the right but not the obligation to purchase the cable television system at fair market value, determined on the basis of the cable television system valued as a going concern butyl with no value allocated to the franchise itself as determined by state and federal law.

3. Removal. Upon denial of renewal of a franchise, the Town shall have the right to require Franchisee to remove, at Franchisee's expense, all or a portion of the cable television system required by public necessity from all public right-of-way within the Town.
4. Compliance with Law. Notwithstanding anything contained herein to the contrary, any renewal must be in a manner consistent with all Laws and Regulations, including those of the FCC and the Cable Act.

#### **§14 REGULATION OF FRANCHISE.**

1. On-Going Regulation. The Town shall exercise appropriate regulatory authority under the provisions of this Ordinance and applicable law. This authority shall be vested in the Town Council and administered by the Town Council or their designee. The Town Manger or his or her designee shall provide day-to-day administration and enforcement of the provisions of this Ordinance and any franchise granted hereunder, and shall carry out the Town's responsibilities with regard to cable television.
2. Compliance. At all times during the term of the franchise agreement, Franchisee shall comply with all laws, ordinances, rules or regulations of the Town, State and governments, their regulatory agencies or commissions which are now, or may be applicable to the construction and operation of the cable television system.
3. Change in Law or Regulation. Notwithstanding any other provisions of this Ordinance to the contrary, Franchisee shall at all times comply with all applicable laws and regulations of the Town, State and federal governments. In the event that any actions of the State, 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 Ordinance or the franchise agreement, or if in compliance with any Town, State, or federal law or regulation, Franchisee finds conflict with the terms of this Ordinance, the franchise agreement, or any law or regulation of the Town, then as soon as possible following knowledge thereof, Franchisee shall notify the Town of the point of conflict believed to exist between such law or regulation and/or the laws or regulations of the Town, this Ordinance and the franchise agreement. The Town, at its option, may notify Franchisee that it wishes to negotiate those provisions which are affected in any way by such modification in regulations or statutory authority. Thereafter, the Town and Franchisee shall proceed as specified in the franchise agreement's equal protection provision. In cases where the franchise agreement's equal protection provision does not apply, Franchisee shall negotiate in good faith with the Town in the development of alternate provisions which shall fairly restore the Town's rights. The Town shall have the right to modify any of the provisions to such reasonable extent as may be necessary to carry out the negotiated settlement.

4. Authority. The Town reserves the right to exercise its granted authority, as may at any time be lawfully permissible, to regulate the cable television system, the franchise agreement and Franchisee. Should applicable legislative, judicial or regulatory authorities at any time permit regulation not presently permitted to the Town, the Town may, upon written notice to the Franchisee, engage in any such additional regulation as may then be permissible, whether or not contemplated by this Ordinance or the franchise agreement, including without limitation, regulation regarding franchise fees, taxes, programming, rates charged to subscribers and users, consumer protection, or any other similar or dissimilar matter. Judicial authority shall not be deemed granted pursuant to this section if such authority is under appeal or is being litigated. Right of Inspection of Records. Franchisee shall permit any duly authorized representative of the Town and upon receipt of advance written notice to examine during

normal business hours and on any and all records and maps as is reasonably necessary to ensure Franchisee's compliance with this Ordinance or the franchise agreement. Such notice shall specifically reference the subsection of the Ordinance or Franchise that is under review so that the franchisee may organize the necessary books and records for easy access by the Town. The Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years, except for service complaints, which shall be kept for two (2) years and three (3) years as specified above. The Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. The Town agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Town make the Franchisee aware of such confidentiality and marks such documents "proprietary" prior to providing the information to the Town. If the Town believes it must release any such confidential books or records in the course of enforcing this Ordinance and Franchise Agreement, it shall advise Franchisee in advance so that Franchisee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Town agrees that, to the extent permitted by State and federal law, it shall deny access to any of Franchisee's books and records marked confidential, as set forth above, to any Person. Notwithstanding the above, the Town shall be governed by the requirements of state and federal law.

6. Testing. The Town shall have the right to make tests as it shall deem necessary to ensure compliance with the terms of this Ordinance and the Franchise Agreement, and other applicable provisions of State or federal law or regulation.
7. Right of Inspection of Property. At all reasonable times, Franchisee shall permit examination by any duly authorized representative of the Town of the cable system, together with any appurtenant property of Franchisee situated within or without the Town.
8. Right of Intervention. The Town shall have the reasonable right of intervention in any suit or

proceeding to which Franchisee is party and is relevant to this Ordinance or the Franchise, and Franchisee shall not oppose such intervention by the Town.

9. Expense Reimbursement to Town. Franchisee for an initial Franchise shall pay the Town a sum of money which will reimburse all costs and expenses incurred by the Town in connection with the initial Franchises processes, including, but not limited to, consultant fees, attorneys' fees, publication fees, travel expenses and all other direct costs; provided, however, that the Town shall submit a detailed schedule of all such costs. Such payment shall be made within thirty (30) days after the Town furnishes Franchisee with a written statement of such expenses. Except that, if upon request for a transfer, the Franchisee is in compliance with this Ordinance and the franchise agreement, the Town shall be reimbursed for a total of five thousand dollars adjusted annually for increases in the Consumer Price Index.

**§16 REGULATION, SUPERVISION AND ENFORCEMENT OF FRANCHISE AND ORDINANCE.**

1. Functions. The Town Manager or his designee shall have the following functions:
  - A. Advise the Town Council and review franchise applications and applications for franchise renewal, extension, and transfer.
  - B. Initiate proceedings regarding revocation of the franchise, make initial determinations of Ordinance violations, serve notice of Ordinance violations and penalties on Franchisee and consider complaints of any person with respect to cable service.
  - C. Ensure that Franchisee complies with all testing requirements of the Ordinance and franchise agreement, and require additional testing as provided for in the Ordinance and/or franchise agreement. Review all reports provided for in the Ordinance and/or franchise agreement. Make

recommendations to the Town Council regarding the requirement of additional tests, as provided for in this Ordinance.

- D. Receive complaints from subscribers of cable television services, attempt to resolve disputes regarding the provision of service and make initial determinations of Ordinance violations and serve notice of Ordinance violations on the Franchisee, in accordance with any applicable Sections of this Ordinance.
- E. Resolve disagreements and disputes among franchises or other types of services operating or desiring to operate within the Town(s).
- F. Cooperate with other municipalities and government agencies regarding development of the technology exchanges and assist in developing access, institutional network and Internet use.
- G. Audit all Franchisee records as required by this Ordinance, and specify details for Franchisee's preparation and filing of information additional to that required herein.
- H. Make periodic reports to the Town, including an account of franchise fees received and remitted, the total number of hours of utilization of access and local origination channels, and hourly sub-totals for various programming categories, and a review of any plans submitted during the year by Franchisee for development of new services or changes of existing services.
- I. Promote the viewership of all educational and governmental access channels required in the franchise agreement.
- J. Designate the organizations or institutions which will serve as access and local origination channel operators.
- K. Conduct an evaluation of the cable television system, services, customer complaints, state-of-the-art, and other areas related to compliance

with the Ordinance and the franchise agreement whenever deemed appropriate by the Town.

- L. Make recommendations to the Town regarding cable services.

**§17 INDEMNITY, INSURANCE AND FINANCIAL SECURITY.**

1. Disclaimer of Liability. Town shall not at any time be required to pay from its own funds for injury or damage occurring to any person or property from any cause whatsoever arising out of Franchisee's construction, maintenance, repair, use, operation, condition or dismantling of Franchisee's cable television system or Franchisee's provision of cable services. Nothing herein shall be construed to hold Franchisee responsible for the Town's gross negligence.
2. Indemnification. Franchisee shall pay on behalf of, or indemnify and hold harmless, the Town, its employees, officers, agents and volunteers from and against any and all suits, claims, actions, damages, fees, penalties, costs of defense (including attorney fees, expert witness fees and court costs) and liabilities arising out of Franchisee's (or Franchisee's officers, employees, agents, volunteers or subcontractors) performance, failure to perform, error, omission, negligence or default under the terms of its franchise or other contracts. The indemnification and hold harmless provisions of this Ordinance and the franchise agreement shall survive the termination or expiration of the Franchise for any claims arising during the term of the franchise agreement or during the removal of the cable system from the right of way. Franchisee's obligations shall not extend to any claims caused by the willful misconduct of the Town. The Town shall provide the Franchisee with prompt and reasonable notice of receipt of a claim or action pursuant to this section. If Franchisee chooses to settle a claim that releases the Town from liability and the Town does not believe such settlement is in the Town's best interests, the Town shall provide written notice to the Franchisee and the Franchisee shall be excluded from its

obligation to represent the Town and Shall only be liable up to the amount the Franchisee was willing to provide for the settlement.

3. Commercial General Liability Insurance. Franchisee shall maintain and by its acceptance of this Ordinance specifically agrees that it will maintain throughout the terms of the franchise agreement liability insurance insuring the Town and Franchisee with regard to all damages mentioned herein, in the minimum amounts of:

- A. \$1,000,000 for property damage per occurrence;
- B. \$1,000,000 for property damage aggregate;
- C. \$1,000,000 for personal bodily injury or death to any one person; and
- D. \$5,000,000 bodily injury or death aggregate per single accident or occurrence.

4. Automobile Liability Insurance. Franchisee shall maintain, and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain throughout the term of the franchise agreement, automobile liability insurance for owned, non-owned, or rented vehicles in the minimum amount of:

- A. \$1,000,000 for bodily injury and consequent death per occurrence;
- B. \$500,000 for bodily injury and consequent death to any one person; and
- C. \$500,000 for property damage per occurrence.

5. Umbrella Liability Coverage. Umbrella liability coverage, with limits of not less than one million dollars (\$1,000,000) per occurrence covering all work performed under this contract.

6. Financial Security.

- A. Franchise Agreement. Franchisee shall maintain

throughout the term of its franchise financial security in the form satisfactory to the Town Solicitor and in an amount specified in the franchise agreement or satisfactory to the Town Engineer. Such security shall ensure that Franchisee observes, fulfills and performs each term of its franchise agreement and this Ordinance.

- B. Financial Security Prior to Construction. Prior to any initial construction, upgrade or rebuild in the public right-of-way, Franchisee shall post financial security in an amount specified in the franchise agreement.
  - C. Types of Financial Security. The following shall be acceptable financial security: cash escrow, performance or construction bond in a form and with a surety, or a letter of credit posted with a financial institution authorized to do business in the State of Virginia.
- 7. Town Surety Approval. The insurance policies and financial securities obtained by Franchisee in compliance with this Section shall be in compliance with this Ordinance. Franchisee shall be responsible for filing all required certificates of insurance policies and financial security with the Town.
  - 8. Expenses. All expenses of the above noted insurance and financial surety shall be paid by Franchisee.
  - 9. Insurance Policies. The insurance policies mentioned herein shall contain an endorsement stating that the policies are extended to cover liability assumed by Franchisee under the terms of this Ordinance and shall contain the following endorsement:
    - A. The insurance policy may not be cancelled, terminated or reduced unless 60 days advance written notice is served upon the Town by registered mail.
    - B. The Town is an additional or co-insured under this policy of insurance.

C. Cancellation or reduction of any insurance required herein shall be considered a default of Franchisee's obligations under this Ordinance and the franchise agreement and subjects Franchisee to revocation of the franchise as provided for herein.

10. No Limitation on Liability. Neither the provisions of this Ordinance nor any insurance accepted by the Town pursuant hereto, nor any damages recovered by the Town there under, shall be construed to excuse faithful performance by Franchisee or limit the liability of Franchisee under the franchise agreement issued hereunder or for damages, either to the full amount of the financial security or otherwise.
11. Hold Harmless. All contractual liability insurance policies maintained pursuant to this Ordinance or the franchise agreement shall include the provision of the following hold harmless clause:

Franchisee agrees to indemnify, save harmless and defend the Town, its officials, agents, servants, and employees, and each of them against and hold it and them harmless from any and all lawsuits, claims, demands, liabilities, losses and expenses, including court costs and reasonable attorney's fees for or on account of any injury to any person, or any death at any time resulting from such injury, or any damage to any property, which may arise or which may be alleged to have arisen out of or in connection with Franchisee's installation, operation, maintenance or repair of the cable television system and/or copyright infringements and/or other damages arising from the Town 's grant of this non-exclusive franchise and is caused, in whole or in part, by a negligent act or omission of Franchisee, its subcontractors or anyone directly or indirectly employed by any of them or anyone for whose act any of them may be liable, regardless of whether or not it is caused in part by party indemnified hereunder and whether or not the act or omission complained of is authorized or prohibited by this Ordinance and/or the franchise granted hereunder; excepting when the party indemnified hereunder acts in a grossly negligent manner.

**§18 PROGRAMMING.**

1. FCC Regulations. Franchisee shall comply with the present and future rules and regulations of the Federal Communications Commission in connection with and relating to the operation of its cable television system and shall provide the access channels as specified in the franchise agreement.
2. Access Equipment. Franchisee shall provide educational and government access and local origination equipment, facilities, and services as provided in the franchise agreement.
3. Content. Except as provided by Federal law, Franchisee shall in no way restrict the content or message of any program presented over any of the access channels. There are, however, subjects which are specifically prohibited by this Ordinance from being distributed, telecast and/or cablecast via the cable television system. The following material(s) are specifically prohibited from being distributed, telecast and/or cablecast on any and all access channels by access users.
  - A. Any advertising material designed to promote the sale of commercial products or services, including advertising by or on the behalf of candidates for public elective office.
  - B. Any lottery information, gift enterprise or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of prizes drawn or awarded by means of any such lottery, gift enterprise or similar scheme, whether such list contains any part or all of such prizes, or similar scheme if, in connection with such programs, a prize consisting of money or an item of value is awarded to any person whose selection is dependent in whole or in part upon lot or chance, if as a condition of winning or competing for such prize, such winner or winners are required to furnish any money or item of value or are required to have in their possession any product sold or manufactured, furnished or distributed by a sponsor of any

program transmitted via the cable television system.

- C. Any material that is obscene or otherwise unprotected by the First Amendment.
- 4. Prohibited Material. In accordance with the Cable Act, Franchisee shall refuse to distribute via the cable television system access programming or leased channel programming that is obscene or otherwise unprotected by the United States Constitution.
- 5. Access Regulations. The Town shall have the authority to approve or promulgate the rules and regulations for educational and government access channels and the local origination channel and to designate the organizations or institutions which will serve as educational and/or access channel or local origination operators.
- 6. Cable In The Classroom. Franchisee shall notify all schools of "Cable In The Classroom" and provide guidance on accessing the Cable In The Classroom Internet website.

**§19 REPORTS.**

- 1. Reports. Upon written request, Franchisee shall submit the following written reports to the Town:
  - A Annual statement of income certified by a financial officer of Franchisee or CPA. The annual statement of income shall be delivered to the Town no later than ninety (90) days after request by the Town.
  - B. Annual list of officers and members of the Board of a Franchisee and the parent corporation, a consolidated financial statement, and annual report of Franchisee and parent corporation. These documents shall be delivered to the Town no later than 30 days after request by the Town.
  - C. A Quarterly summary of all: (a) requests for repair service, (b) complaints that generate a

work order or written response, and (c) outages. Such summary to include the following information: (a) the date and the approximate time of the complaint or request, (b) the date and approximate time Franchisee responded, (d) the date and approximate time service is restored, (e) the type and probable cause of the problem, and (g) a description of the corrective action taken.

- D. Quarterly, the number of subscribers at each level of service.
- E. Copies of Franchisee's proof of performance measurement and signal leakage measurements and compliance within thirty (30) days of request and completion of the tests.
- F. Upon request prior to transfer or renewal, a financial statement including a statement of income, a balance sheet, and a statement of sources and applications of funds.
- G. Insurance and Securities Certificate. Annual certificates of insurance and financial securities required by this Ordinance to be provided to the Town. The certificates of insurance and financial securities shall be delivered to the Town no later than 30 days after the effective date of the franchise agreement entered into between Franchisee and the Town.
- H. Franchise Fee Reports. At the time of payment of the franchise fee, Franchisee shall file applicable reports as required under the Code of Virginia Chapter 6.2-Viginia Communications Sales and Use Tax and any regulations promulgated thereunder. Upon request, Franchisee shall provide the Town with a copy of such reports.
- I. Technical Test Results. Results of tests required by Town within thirty (30) business days of the date the Town notifies Franchisee to perform such test.
- J. Upon request, Franchisee shall prepare and

furnish to the Town at the times reasonably prescribed by the Town, 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 rights, functions or duties of the Town in connection with this Ordinance or the franchise agreement.

2. Records Retention.

- A. Financial Records. Franchisee shall retain all records related to franchise fees for a period of three (3) years.
  - B. Records of Complaints, Repair Service Requests and Outages. Franchisee shall keep all records relating to all: (a) requests for repair service, (b) complaints or requests that generate a work order or written response, and (c) outages; for two (2) year from the date the record is made. Upon request by the Town, Franchisee shall produce the requested records to the designated Town office within thirty (30) days of the request for such records.
  - C. Other Records. Franchisee shall retain all other records for a period of three (3) years, unless a shorter period is designated herein or in the franchise agreement.
3. Federal Filings. Upon written request by the Town, copies of all petitions, applications and communications submitted by Franchisee to the Federal Communications Commission, Securities and Exchange Commission or any other federal or State regulatory commission or agency having jurisdiction in respect to any matters affecting Franchisee's operations authorized pursuant to this Ordinance, shall also be submitted by Franchisee.

**§20 TRANSFER, ASSIGNMENT AND FORECLOSURE.**

1. Transfer of Franchise. A franchise shall not be assigned or transferred, either in whole or in part, or leased, sublet, or mortgaged in any manner, nor shall title to the cable television system be transferred, 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. Any transfer of the franchise without the prior consent of the Town shall make the franchise subject to cancellation.
2. Transfer of Ownership. Franchisee shall not sell, assign, transfer or dispose of twenty percent (20%) or greater ownership interest in Franchisee or more at one time of the ownership or controlling interest in the cable television system, or twenty percent (20%) cumulatively over the term of the franchise agreement of such interests to a corporation, partnership, limited partnership, trust or association, or person or group of persons acting in concert without the prior written consent of the Town. Every sale, transfer, or disposition of twenty percent (20%) or greater ownership interest as specified above in Franchisee shall make the franchise subject to cancellation.
3. Transfer of Control. Franchisee shall not change control, in whatever manner exercised, of Franchisee or any parent company without the prior written consent of the Town. Every change, transfer, or acquisition of control of Franchisee shall make the franchise subject to cancellation unless and until the Town shall have consented thereto.
4. Town Approval. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of the franchise or ownership or control, the Town may inquire into the legal, financial, character, technical and other public interest qualifications of the prospective transferee or controlling party, and Franchisee shall provide the Town with all required information. The Town reserves the right to impose certain conditions on the transferee as a condition of the franchise to ensure that the transferee is able to meet existing requirements of this Ordinance and the franchise

agreement requirements. If required by law or regulation the Town shall act on a request for transfer within one hundred twenty (120) days. Notwithstanding anything contained herein to the contrary, any renewal shall be in a manner consistent with all Laws and Regulations, including those of the FCC and the Cable Act.

5. No Waiver of Town Property Rights. The consent or approval of the Town or any other public entity to any transfer of Franchisee shall not constitute a waiver or release of the rights of the Town in and to the public property or public right-of-way, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Ordinance and the franchise agreement.
6. Hypothecation. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Franchisee in the Franchise or Cable System to secure indebtedness.
7. Signatory Requirement. Any approval by the Town of transfer of ownership or control of the franchise or Franchisee shall be contingent upon the prospective transferee agreeing in writing to be bound by the terms and conditions of this Ordinance and the Franchise Agreement.
8. Default Notification. To the extent allowed by law, any foreclosure or judicial sale of all, or any part of, the cable television system shall be considered default. Initiation of any such proceedings shall be treated as a notification of a change of control of Franchisee.
9. Receiver. To the extent allowed by law, the Town Council shall have the right to cancel Franchisee's franchise one hundred twenty (120) days after the election or appointment of a receiver or trustee to take over and conduct the business of Franchisee, whether in receivership, reorganization, bankruptcy or other action or proceedings, unless such receivership or trusteeship shall have vacated prior to the expiration of the one hundred and twenty (120) days;

or unless:

- A. Within one hundred and twenty (120) days after the election or appointment such receiver or trustee shall have fully complied with all provisions of this Ordinance and remedied all defaults there under; and,
- B. Within said one hundred and twenty (120) days such receiver or trustee 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.

**§21 INITIAL FRANCHISE APPLICATIONS.**

- 1. Invitation of Applications for an Initial Franchise, Public Notice of "Request for Proposals". The Town may invite applications for an initial cable television franchise by means of a public notice advertising the availability of its "Request for Proposals."
  - A. The public notice shall contain, but need not be limited to:
    - (1) A description of the franchise area which is sought.
    - (2) A statement that a formal "Request for Proposals" is available to prospective applicants from a Town official whose name, address, and telephone number are specified.
    - (3) A statement that applications for the franchise must be submitted in writing in the form and manner specified in the "Request for Proposals" no later than a day certain.
    - (4) A statement that all applications will be made available for public inspection during normal business hours at a specified location.

2. Application Request. At any time, a person may request an application for a Franchise from the Town for a cable television franchise.
3. Request for Proposals. Prior to inviting any applications for any initial cable television franchise, the Town shall prepare a "Request for Proposals" that shall contain, but need not be limited to, the following:
  - A. A description of the cable television system and/or services desired by the Town including any cable television system specifications established by the Town.
  - B. A statement specifying the form that all applications shall follow.
  - C. A statement indicating the amount of the application fee (if any) to be submitted with the application, and the manner in which such fee is to be submitted.
  - D. A statement that all applications must contain the information required by the "Request for Proposal."
  - E. The closing date for the submission of applications.
  - F. The name, address, and telephone number of the Town official(s) who may be contacted for further information.
4. Initial Franchise Application. Any applicant for a franchise shall complete the Town's Request for Proposal and provide the information required therein.
5. Requirement for Public Hearing on Reasonable Notice. The Town shall conduct a public hearing prior to awarding or denying any cable television franchise. The hearing shall be preceded by reasonable notice to each of the franchise applicants and to the public, and shall be conducted by the Town in accordance with the following procedures:

- A. There shall be an agenda for the hearing which shall specify the proposal(s) to be considered at the hearing.
  - B. Every person who has applied for a cable television franchise shall appear at the hearing either in person or by authorized representative. The application of any applicant not so appearing shall not be further considered, except for good cause shown.
  - C. All persons shall be given opportunity to participate in the hearing, but nothing contained herein shall limit the power of the presiding officer to establish reasonable time limits and otherwise limit repetitive statements or questions.
  - D. The notice of hearing shall:
    - (1) Conform to all relevant State and local laws and Ordinances.
    - (2) Describe the agenda to be considered at the public hearing.
    - (3) Indicate that copies of all franchise applications are available for public inspection during normal business hours at a place to be specified in the notice.
6. Town Discretion. As allowed by law, the Town, at its discretion and consistent with Laws and Regulations, may reject any application for a franchise. In awarding a franchise, the Town: shall allow the applicant's cable television system a reasonable period of time to become capable of providing cable service to all households in the franchise area; may require adequate assurance that the cable operator will provide adequate educational and governmental access channel capabilities, facilities, financial support or institutional network facilities; and may require adequate assurance that the cable operator has the financial, technical, or legal qualifications to provide cable service.

**§22 MISCELLANEOUS PROVISIONS.**

1. State and Federal Law and Regulation. This document hereby incorporates by reference all orders, rules and/or regulations of the Federal Communications Commission or other federal or State agencies applicable to a cable television system and such other orders, rules and/or regulations as any such agency or agencies may from time to time adopt. Such regulations shall be a part of this document as though the same were fully set forth at length herein. In the event any such agency ceases to exist or revokes any applicable orders, rules and/or regulations, the said orders, rules and/or regulations shall continue to apply to Franchisee and this Ordinance document unless also revoked by the Town. In the event any such agency ceases to exist, the Town shall be the agency to which application should be made for any required approval or certification.
2. Precedence. This Ordinance shall take priority over other ordinances, acts or statutes regulating cable television adopted by Town unless such ordinance, act or statute specifically preempts regulation by the Town. To the extent permissible by rules of statutory construction this Ordinance shall be construed to supplement and/or implement any other statute, act or regulation by any other agency regarding the provision of cable television services either heretofore or hereafter enacted.
3. Effective Date Conditions. Any franchise agreement entered into pursuant to this Ordinance shall become effective as specified in the Franchise Agreement.
4. Consent of the Parties. Where consent of either party hereto is required, it is deemed to be the intention of the parties in each case that neither party may unreasonably withhold such consent.
5. Cable Act. This Ordinance is subject to the provision of the Cable Communications Policy Act of 1984, as amended.
6. Compliance with Federal Nondiscrimination Laws. Franchisee shall comply at all times with all other

applicable Federal, State and local laws and regulations, and all executive and administrative orders and rates relating to nondiscrimination which are hereby incorporated and made part of this Ordinance by reference.

7. Severability. If any section, sentence, paragraph, term or provision of this Ordinance is determined to be illegal, invalid or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory agency having 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.
8. Partial Repealer. All prior Cable Television Ordinances, including the Cable Television Ordinance adopted in 2006 are repealed. All other ordinances inconsistent herewith or in conflict with any of the terms hereof are, to the extent of said inconsistencies or conflicts, hereby specifically repealed.
9. Effective Date. This Ordinance shall take effect five (5) days after adoption.
10. Captions. The captions to sections throughout this Ordinance are intended solely to facilitate reading and reference to the sections and provisions of this Ordinance. Such captions shall not affect the meaning or interpretation of this Ordinance.

TOWN COUNCIL  
ROCKY MOUNT, VIRGINIA

By:

\_\_\_\_\_  
Mayor

Attest:  
Clerk of the Council

\_\_\_\_\_  
Clerk of the Council