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**AN ORDINANCE AMENDING THE TOWN OF SUMMERFIELD CODE GOVERNING
CABLE TELEVISION SERVICES**

BE IT ORDAINED by the Town Council of the Town of SUMMERFIELD (hereinafter "the Town"), as follows:

The Town Code of Ordinances is revised so the "Town of SUMMERFIELD Master Cable Services Regulatory Ordinance" is hereby adopted and ordained.

CABLE TELEVISION SERVICES

Article 1. STATEMENT OF INTENT AND PURPOSE

Section 1-1 Statement of Intent and Purpose

- A. The Town of SUMMERFIELD, North Carolina, pursuant to applicable Federal and State law, is authorized to grant one or more nonexclusive Franchises to construct, operate, maintain, and reconstruct Cable Systems within the incorporated area of the Town.
- B. The Town Council finds that Cable Service has become an integral part of its citizens' lives, and that evolving Cable Systems have the potential to play an even more dramatic role in the future, providing great benefits and advanced capabilities to the Town. At the same time, the Board further finds that the public convenience, safety, and general welfare can best be served by establishing regulatory powers that are vested in the Town or such Persons as the Town designates.
- C. In order to ensure that the Town and its Residents receive state-of-the-art Cable Services and capabilities as this technology further evolves, all Franchises granted pursuant to this Ordinance will be subject to periodic review and modifications to keep current with changing law, technology, and Services. It is the intent of this Ordinance to help ensure that local cable operators provide the best possible Cable Service to Residents of the Town, and any Franchises issued pursuant to this Ordinance shall be deemed to include this finding as an integral part thereof.
- D. Further, it is recognized that Cable Systems have the capacity to provide entertainment and information services to the Town's residents, and may have the capacity to provide a variety of broadband, interactive communications services to institutions and individuals. For these purposes, the following goals underlie the regulations contained herein:
 - (1) Cable television services should be made available to all of the Town's residents at the lowest reasonable cost.
 - (2) The System should be capable of accommodating both the present and reasonably foreseeable future State-of-the-Art cable television needs of the Town.

- (3) The Systems authorized by this Ordinance shall be responsive to the needs and interests of the local community, and shall provide the widest possible diversity of information sources and services to the public.
 - (4) Each of the above-enumerated goals shall be sought to the maximum extent, taking into account the costs and benefits to the residents of the Town.
- E. The Board further finds that on-going industry consolidation could result in less local accountability, and that, therefore, stringent customer service standards, including liquidated damages provisions, may be the only practical means of ensuring compliance and approximating the costs of Franchise Agreement noncompliance to the Town and its Residents.

Article 2. SHORT TITLE

This Ordinance shall be known and may be cited as "The Town of SUMMERFIELD Master Cable Services Regulatory Ordinance," and it shall become a part of the ordinances of the Town. This Ordinance shall take effect and be in force from and after its adoption for the grant of any new Franchise Agreement or Renewal of any Franchise existing at the time of adoption. All ordinances or parts of the Town of SUMMERFIELD Code in conflict with the provisions of this Ordinance are hereby repealed.

Article 3. DEFINITIONS

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

Additional Service

"Additional Service" means any Cable Service other than Basic Service provided over the System.

Basic Cable Service

"Basic Cable Service" means any Cable Service tier that includes the lawful retransmission of local television broadcast signals and any Public, Educational, and Governmental Access programming required by this Ordinance or a Franchise Agreement to be carried on the basic tier. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b)(7) (1997), and shall include any signal of any television broadcast station that is provided by a Grantee 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 the Grantee.

Cable Act

“Cable Act” means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, (codified at 47 U.S.C. § 521-611 (1982 & Supp. V. 1987) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and the Telecommunications Act of 1996, Pub. L. No. 104-104 (1996) as may, from time to time, be amended.

Cable Internet Service

“Cable Internet Service” means any Service offered by a Grantee whereby Persons receive access to the Internet or high-speed data information services through the cable System.

Cable Service or Service

“Cable Service” or “Service” means:

- A. The one-way transmission to subscribers of (i) video programming, or (ii) other programming service,
- B. Subscriber interaction, if any, which is required for the selection use of such video programming or other programming service; and
- C. For purposes of this Ordinance, Cable Internet Service shall be considered Cable Service unless determined otherwise by applicable state or federal law.

Cable Television System or Cable System

“Cable Television System” or “Cable 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 to multiple Subscribers within the Franchise Area, but such term does not include:

- A. A facility that serves only to retransmit the television signals of one or more television broadcast stations;
- B. A facility that serves Subscribers without using any public Right-of-Way; or
- C. A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201-226, except that such facility shall be considered a Cable System to the extent such facility, whether on a common carrier basis or otherwise, is used in the transmission of video programming directly to Subscribers.

Capital Contribution

“Capital Contribution” means a contribution provided by a Grantee as determined in a

Franchise Agreement that may at the Town's discretion be utilized for the Capital Costs of the municipal access channel facilities, or to help defray the costs of an I-Net.

Capital Costs

"Capital Costs" means costs associated with the purchase of assets, products or other resources that are designed to provide Service for more than one year, whether incurred during initial construction or throughout the life of the System.

Channel

"Channel" means a portion of the electromagnetic frequency spectrum that is capable of carrying one standard video signal, in either analog or digital form. Consistent with future changes in technology and/or applicable law, the parties may mutually agree to a different definition in an individual Franchise Agreement.

Community Access Corporation or CAC

"Community Access Corporation" or "CAC" means a non-profit access corporation serving the Town, or any other person designated by the Grantor whose duties shall include the financing, management, and programming of Public Access Channels, and whatever other duties with respect to the Public Access Channels that the Grantor from time to time may delegate.

Complaint

"Complaint" means any written or electronic inquiry, allegation, or assertion, made by a Person regarding Service.

Control

"Control" means the holding of legal or financial control of or over the holder of the Franchise, regardless of whether such control is direct or indirect, or is exercised or is permitted to be exercised directly or indirectly through other persons, holdings or entities. Control shall always be deemed to rest in the hands of any Person that has the right or authority to establish or change any policy or practice of the holder of the Franchise, whether such control may be exercised directly, or indirectly through other Persons.

Converter

"Converter" means an electronic device that converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber and, through the use of an appropriate Channel selector, permits a Subscriber to view all authorized Subscriber signals delivered at designated converter dial locations.

Council

"Council" means the Town Council of the Town of SUMMERFIELD or its delegates.

Direct Incremental Costs

“Direct Incremental Costs” means the costs actually incurred by Grantee in meeting an obligation under its Franchise which Grantee would not otherwise have incurred in order to either operate and conduct the business of its Cable System or meet another obligation of the Franchise.

Downstream Signal

“Downstream Signal” means a signal originating from or provided by a System to a Subscriber terminal or other terminal including video, audio, or digital signals or any other type of data or information for either programs or other uses such as security alert services, etc.

Drop

“Drop” means the cable or cables that connect users of the System to the distribution system in order to receive Service.

Educational Access Channels

“Educational Access Channels” means Channels specially designated for locally produced Non-Commercial educational access programming use.

Effective Date

“Effective Date” means the date a Franchise becomes effective in accordance with the Franchise and the rules and procedures of the Town.

Fair Market Value

“Fair Market Value” means the price that a willing buyer would pay to a willing seller for a going concern based on the System valuation prevailing in the industry at the time.

FCC

“FCC” means the Federal Communications Commission or its designated representative.

Franchise

“Franchise” means the rights and obligations extended by the Town of SUMMERFIELD pursuant to an initial authorization or a renewal thereof, to a Person to own, lease, construct, maintain, or operate a Cable System in the Right-of-Way within the Franchise Area for the purpose of providing Cable Services. Any such authorization, in whatever form granted, shall not mean or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the Town required by the ordinances and laws of the Town, including the provision of telecommunications services; (ii) any generally applicable non-discriminatory permit, agreement, or authorization required in connection

with operations in the Right-of-Way including, without limitation, permits and agreements for placing devices on or in poles, conduits, or other structures, whether owned by the Town or a private entity, or for excavating or performing other work in or along the Right-of-Way.

Franchise Agreement

“Franchise Agreement” means that document which grants a Franchise pursuant to this Ordinance.

Franchise Area

“Franchise Area” means the geographic area for which a Franchise is granted under the authority of this Ordinance. If not otherwise specifically stated in the Franchise Agreement, the Franchise area shall be the entire geographic area within the Town as it is now, or may in the future be constituted.

Franchise Fee

“Franchise Fee” includes any tax, fee, or assessment of any kind imposed by the Town or other governmental entity on a Grantee or cable subscriber or both solely because of their status as such. The term “Franchise Fee” does not include: (i) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their Services but not including a tax, fee, or assessment that is unduly discriminatory against cable operators or cable Subscribers); (ii) Capital Costs that are required by a Franchise Agreement to be incurred by a Grantee for Public Access Channels equipment and facilities; (iii) requirements or charges incidental to the award or enforcement of a Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or (v) any fee imposed under Title 17 of the United States Code.

Government Access Channels

“Government Access Channels” means Channels specially designated for locally produced Non-Commercial governmental access programming use.

Grantee

“Grantee” means a Person who is granted a Franchise or that Person’s lawful successors, transferees, or assignees.

Grantor

“Grantor” means the Town of SUMMERFIELD.

Gross Revenues

“Gross Revenues” means any and all revenue of any kind, arising from, attributable to, or in any way derived by the Grantee from the operation of a Grantee’s System to provide Cable Service (it being agreed that for purposes of this Franchise Agreement the term ‘Cable

Service” shall be defined by reference to FCC regulations), whether such revenue is received by the Grantee, its affiliates, or any Person in which the Grantee has a financial interest, or by any other Person who operates the system, directly or indirectly. Gross revenue includes, by way of illustration and not limitation, amounts charged for basic service; optional premium, per-channel, per-program services; cable programming services; audio services; launch fees; channel guide subscriptions; installation, disconnection, reconnection, and changes-in-service; equipment sales or rentals; leased channel fees; late fees and administrative charges of any type; consideration received from programmers; advertising revenue; and revenue from the sale of subscriber names and addresses. To the extent that Grantee receives revenue from Cable Services provided to a Subscriber for a fixed price that also includes non-Cable Services (i.e., those services are “bundled”), Grantee shall allocate an appropriate portion of those revenues for inclusion in Gross Revenues. If the fixed price of the bundled services is lower than the aggregate of the prices of those services if purchased individually, then the appropriate amount of the revenue to be allocated to each service shall be proportional to the individual price of that service when compared to the aggregate of the individual prices of those services when unbundled. Gross revenues shall not include:

- a. Deposits, refunds and credits made to subscribers and bad debt except to the extent that bad debt is recovered.
- b. The revenue of any person including, without limitation, a supplier of programming to the Grantee to the extent that said revenue is also included in gross revenue of the Grantee.
- c. Pass-through payments received by the Grantee from third-party programmers to purchase services from entities other than the Grantee, which services benefit, only the third-party programmers and for which the Grantee neither received nor provides any consideration.
- d. Any taxes on Services furnished by the Grantee which are imposed directly on any Subscriber by the state, the Town or other governmental unit and which are collected by the Grantee on behalf of said governmental unit.
- e. Any franchise fees collected by Grantee under the terms of this Agreement. To the extent the scope of Gross Revenues is limited by federal law or judicial action, the definitions herein shall be so amended.

Headend

“Headend” means the electronic control center of the System including components that amplify, filter, and convert incoming broadcast and other television and electronic signals for distribution over the Cable System.

Institutional Network or I-Net

“Institutional Network” or “I-Net” means capacity, fibers or both, from both within the primary cable network and/or separately constructed networks that are dedicated to municipal users or other governmental and educational users as determined by the Town for

two-way, broadband, Non-Commercial, non-competitive, not for profit communications. The I-Net includes all equipment and maintenance of equipment required to make the capacity available including but not limited to fiber, cable modems, coaxial cable, and all switching, routing, transmitting and receiving equipment necessary for the use of the I-Net as determined in the individual Franchise Agreement.

Institutional Network Services

“Institutional Network Services” means the provision of an I-Net by a Grantee to municipal users and other governmental and educational users as determined by the Town, pursuant to the terms of a Franchise Agreement for Non-Commercial, non-competitive, not for profit applications including but not limited to, two-way dedicated voice, data, video, Internet and telephony channels connecting and interconnecting user facilities; computerized traffic control systems; GIS systems; and the interconnection of facilities serving police, fire and other public safety systems.

Lockout Device

“Lockout Device” means a mechanical or electrical accessory to a Subscriber’s terminal that inhibits the video or audio portions of a certain program or certain Channel(s) provided by way of a Cable System.

Non-Commercial

“Non-Commercial” means Channels or programming that is operated on a not-for-profit basis.

Normal Business Hours

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

Normal Operating Conditions

“Normal Operating Conditions” means those service conditions which are within the control of the Franchisee. Those conditions which are not within the control of the Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the 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 System.

Other Programming Service

“Other Programming Service” means information that a Grantee makes available to all Subscribers generally.

Person

“Person” means any corporation, limited liability corporation (LLC), partnership, limited liability partnership (LLP), proprietorship, individual, organization, company, business entity, governmental entity or any natural person.

Public Access Channels

“Public Access Channels” means Channels specially designated for locally produced Non-Commercial public access programming use.

Public Building

“Public Building” means a building, or any portion thereof, owned, leased, used by, or otherwise occupied by the Town.

Reasonable Notice

“Reasonable Notice” means written notice addressed to the Town or Grantee at such location as the parties have designated in the Franchise Agreement as the address to which notice shall be transmitted to it, which notice shall be sent by certified mail and postmarked not less than seven (7) business days prior to that day in which the party giving such notice shall commence any action which requires the giving of notice. In computing said seven (7) days, holidays recognized by the Town shall be excluded.

Resident

“Resident” means any Person residing in the Town.

Right-of-Way

“Right-of-Way” means each of the following which have been, or are hereafter, dedicated to the public and maintained by any public authority or by others and located within the Town, including without limitation, the surface and space within, above and below any real property in which the Town has an interest in law or equity, whether held in fee, or other estate or interest, or as a trustee for the public, including, but not limited to, any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, swale, river, tunnel, viaduct, bridge, park, or any other place, area, easements, rights-of-way and similar public property and areas, or real property owned by or under the control of the Town.

School

“School” means any state-accredited public or nonprofit educational institution including primary and secondary schools, both public and private.

Service Interruption

“Service Interruption” means the loss of picture or sound on one or more cable Channels.

Standard Installation

“Standard Installation” means any Service drop not exceeding one hundred fifty (150) feet from a single point or pedestal attachment to the Subscriber’s residence.

State-of-the-Art

“State-of-the-Art” means the addition of new services and associated equipment as they are developed, available and when economically feasible and marketable to Subscribers as specifically required under the terms of a Franchise Agreement.

Subscriber

“Subscriber” means any Person who or which elects to subscribe for any purpose to Cable Service provided by a Grantee by means of, or in connection with, the Cable System, and whose premises or facilities are physically wired and lawfully activated to receive Cable Service from Grantee’s Cable System.

System

“System” means a Grantee’s Cable System operated pursuant to a Franchise Agreement within the Franchise Area.

Town

“Town” means the Town of SUMMERFIELD, North Carolina, as it is now, or may in the future be, constituted.

Town Administrator

“Town Administrator” means a person designated by the Town Council to represent the Town in all business with the Grantee.

Trained Representative

“Trained Representative” means employees of the Grantee who have the authority and capability while speaking with a Subscriber to, among other things, answer billing questions, adjust bills, and schedule service and installation calls.

Upstream Signal

“Upstream Signal” means a signal originating from a Subscriber’s terminal to the Headend of the System including video, audio, or digital signals or any other type of data or information for either programs or other uses such as security alert services, etc.

Article 4. FRANCHISE REQUIREMENTS

Section 4-1 Unlawful to Operate Without a Franchise

It shall be unlawful for any Person to construct, operate or maintain a Cable System or to provide Cable Service in the Town without a Franchise. Any such person shall be subject to a fine of \$500.00 per day. The payment of such fine notwithstanding, all such violators shall be subject to all other applicable provisions of this Ordinance, including but not limited to the payment of a Franchise Fee.

Section 4-2 Franchises Non-Exclusive

Any Franchise granted pursuant to this Ordinance shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional Franchises for a Cable System or any component thereof, to any other Person including itself, as it deems appropriate, subject to applicable federal and state law.

Section 4-3 Franchises Competitively Neutral and Non-Discriminatory

A. The Town shall grant Franchises on terms that are competitively neutral and non-discriminatory and shall include similar terms pertaining to:

- (1) Term
- (2) Franchise Fees
- (3) Public, educational, and governmental] ("PEG") access channels
- (4) PEG Access capital and operating support

Any Franchise granted, when evaluated as a whole, shall not be more favorable or less burdensome than any other Franchise granted under this Ordinance.

B. Procedure for Review and Equal Requirements

- (1) The Town will notify existing Grantees in writing at least thirty (30) days in advance, with a copy of a proposed additional Franchise, of its intent to grant an additional Franchise for Cable Services.
- (2) Within ten (10) days after receipt, existing Grantees may give written notice to Town that the proposed additional Franchise is inconsistent with Section 4-3(A) above.
- (3) The Town shall, prior to approving the additional Franchise, notify existing Grantees of the Town's determination related to notice under Section 4-3B(1).

- (4) If the Town determines that the terms of an additional franchise are more favorable or less burdensome than those imposed upon the Grantees, then:
 - (a) Except for PEG capital and operating grant requirements:
 - (1) The Town may make such modifications as it deems necessary to ensure that the terms of the additional Franchise are no more favorable or less burdensome than those imposed upon existing Grantees; or
 - (2) The Town may modify the terms and requirements of existing Franchises as mutually agreed to by existing Grantees, and if the existing Grantees do not reasonably so agree the Town shall be deemed to have fulfilled its obligations under Sec. 4-3(A) above.
 - (b) The Town may adjust the PEG capital and operating grant requirements to ensure the total dollars contributed by a new Grantee are the same as required of existing Grantees. In the event existing Grantees have paid Town amounts in excess of the amounts required of the new Grantee, the Town will refund the difference to existing Grantees.
- (5) The Town shall provide notice to existing Grantees of the date, time, and place of its proceedings relating to the approval of the proposed Franchise.

Section 4-4 Term of the Franchise

A Franchise Agreement shall establish the term of each individual Franchise.

Section 4-5 Federal, State, and Town Jurisdiction

- A. The Town shall exercise appropriate regulatory authority under the provisions of this Ordinance, the Cable Act, and all applicable laws. This authority shall be vested in the Town Council and administered through the Town Manager or Administrator or his/her designee in order to provide day-to-day administration and enforcement of the provisions of this Ordinance and any Franchise granted hereunder, and to carry out the Town's responsibilities with regard to Cable Service.
- B. This Ordinance shall be construed in a manner consistent with all applicable federal and state laws.
- C. In the event that the federal or state government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, Grantor may, if it so elects, adopt rules and regulations in these areas to the extent permitted by

law, provided the same do not materially alter the rights and obligations of a Grantee under any existing Franchise.

- D. Grantee's rights are subject to the police powers of the Town to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Grantee shall comply with all applicable general laws and ordinances enacted by the Town pursuant to that power.
- E. The provisions of this Ordinance shall apply to all Franchises granted or renewed after the effective date of this Ordinance. This Ordinance shall also apply to all existing Franchises, to the extent not inconsistent with the terms of any such Franchise or applicable law. In the event of any conflict between the terms and conditions of a Franchise Agreement and the provisions of this Ordinance, and other generally applicable regulatory ordinances of the Town, the specific terms of the Franchise Agreement shall control. A Franchise Agreement (including all of Grantee's particular rights, powers, protections, privileges, immunities and obligations associated therewith as the same exist on the date hereof) shall constitute a legally binding contract between the Town and Grantee, and as such, cannot be amended, modified or changed by the Town without the consent of Grantee in any manner whatsoever, whether by ordinance, rule, regulation or otherwise, to impose on Grantee more stringent or burdensome requirements or conditions; provided, however, that nothing herein contained shall preclude the Town from the proper exercise of its police powers, or its powers of eminent domain.
- F. In the event of a change in state or federal law which by its terms would require the Town to amend this Ordinance, the parties shall modify the existing Franchise in a mutually agreed upon manner.
- G. Grantee shall not be relieved of its obligation to comply with any of the provisions of this Ordinance or a Franchise Agreement by reason of any failure of the Town to enforce prompt compliance.

Section 4-6 Rights Reserved to Grantor

In addition to any rights specifically reserved to Grantor by this Ordinance or a Franchise Agreement, Grantor reserves to itself every right and power that is required to be reserved by a provision of any other ordinance or under any other Franchise.

Section 4-7 Franchise Agreement

- A. Every Grantee shall agree to the terms and provisions of a Franchise Agreement as negotiated between the Grantee and the Grantor.
- B. In addition to those matters required elsewhere in this Ordinance to be included in the Franchise Agreement, each Franchise Agreement must contain the following express representations by each Grantee:
 - (1) Grantee has examined all of the provisions of this Ordinance and accepts and agrees to all of the provisions of this Ordinance, as it exists as of the

effective date of the Grantee's Franchise Agreement, except as set forth in Section 4-5 (D) hereof and any supplementary specifications as to construction, operation, or maintenance of the System which the Town may include in the Franchise Agreement, unless otherwise agreed in the applicable Franchise Agreement.

- (2) Grantee recognizes, unless otherwise agreed in the applicable Franchise Agreement, the right of the Town to adopt such additional regulations of general applicability as it shall find necessary in the exercise of its police power.
- C. Every Franchise Agreement shall contain such further conditions or provisions as may be negotiated between the Town and a Grantee, except that no such conditions or provisions shall be such as to conflict with any provisions of state or federal law. In case of any conflict or of any ambiguity between any terms or provisions of a Franchise Agreement and this Ordinance, the provisions of the Franchise Agreement shall control.

Section 4-8 Initial Franchise Applications

Any Person desiring an initial Franchise for a Cable System shall file an application with the Town. An application for an initial Franchise for a Cable Television System shall contain, where applicable:

- A. A statement as to the proposed Franchise Area;
- B. Resume of prior history of applicant, including the legal, technical, and financial expertise of applicant in the cable television field;
- C. List of the partners, general and limited, of the applicant, if a partnership, or a list of the principals of the applicant, if a limited liability company, or the percentage of stock owned or controlled by shareholders holding 10 percent or greater, if a corporation;
- D. List of officers, directors, and managing employees of applicant, together with a description of the background of each such Person;
- E. The names and addresses of any parent or subsidiary of applicant or any other business entity owning or in Control of applicant, in whole or in part, or owned or controlled in whole or in part by applicant;
- F. A current financial statement of applicant verified by a CPA audit or otherwise certified to be true, complete, and correct to the reasonable satisfaction of the Town;
- G. Proposed preliminary construction and Cable Service schedule; and
- H. Any additional information that the Town may require for the administration of the Franchise.

Section 4-9 Consideration of Initial Applications

Upon receipt of any application and the \$2,000.00 application fee for an initial Franchise, the Town Administrator shall prepare a report and make his or her recommendations respecting such application to the Town Council.

Section 4-10 Franchise Renewal

Franchise renewals shall be in accordance with applicable law including, but not limited to, the Cable Communications Policy Act of 1984, as amended. Grantor and a Grantee, by mutual consent may enter into renewal negotiations at any time during the term of the Franchise.

Section 4-11 Grant of Additional Franchise and Competing Service

Competing or overlapping Franchises may have an adverse impact on the public Rights-of-Way and on the quality and availability of Services to the public. In considering whether to grant one or more additional Franchises, the Town shall specifically consider, and address in a written report or in provisions of the Franchise Agreement, the following issues:

- A. The positive and/or negative impact of an additional Franchise on the community.
- B. The ability and willingness of the specific applicant in question to provide Cable Services to the Franchise Area.
- C. The amount of time it will take the applicant to complete construction of the proposed System and activate Service in the Franchise Area; and, whether the applicant can complete construction and activation of its System in a timely manner.
- D. The financial capabilities of the applicant and its guaranteed commitment to make the necessary investment to erect, maintain, and operate the proposed Cable System for the duration of the Franchise term. In order to ensure that any prospective Grantee does have the requisite current financial capabilities, the Town may request equity and debt financing commitment letters, current audited financial statements, bonds, letters of credit, or other documentation to demonstrate to the Town's satisfaction that the requisite funds to construct and operate the proposed System are available.
- E. The quality and technical reliability of the proposed System, based upon the applicant's plan of construction and the method of distribution of signals, and the applicant's technical qualifications to construct and operate such System.

- F. The experience of the applicant in the erection, maintenance, and operation of a Cable System.
- G. The capacity of the public Rights-Of-Way to accommodate one or more additional Cable Systems and the potential disruption of those public Rights-Of-Way and private property that may occur if one or more additional Franchises are granted.
- H. The likelihood and ability of the applicant to continue to provide competing Cable Service to Subscribers within the Franchise Area for the duration of the Franchise.
- I. Such other information as the Town may deem appropriate to be considered prior to granting any competing or overlapping Franchise.
- J. The purpose of this Article is to ensure that any competition which may occur among Grantees will be on terms which when taken as a whole are nondiscriminatory according to federal law.

Section 4-12 Permits for Non-Franchised Entities

- A. The Town may issue a license, easement, or other permit to a Person other than the Grantee to permit that Person to traverse any portion of the Grantee's Franchise Area within the Town in order to provide Service outside, but not within the Town. Such license or easement, absent a grant of a Franchise in accordance with this Ordinance, shall not authorize nor permit said Person to provide Cable Service to any Subscriber within the Town nor render any other Service within the Town.
- B. The granting of such license, easement or permit shall be conditioned upon the payment of fee for occupancy of the public Right Of Way to the extent permitted by applicable law.

Section 4-13 Review for Competition

The Town recognizes that the cable television and telecommunications industries are in a period of convergence, that the technologies and services provided by these industries are rapidly changing, and that the Telecommunications Act of 1996 promoted and encouraged competition between and among these formerly discrete industries. At this time it is premature to know fully the extent to which there will be changes in law, technology or services that may impact entities that have been or may be granted Franchises or licenses to use the Towns Rights-Of-Way. It is the desire of the Town to be a communications friendly Town that encourages the development of competitive advanced communications capabilities for the benefit of all its citizens. For this reason the regulatory ordinances and Franchises of the Town should not impede or restrict the fair opportunity to compete, but rather are intended to provide uniform and consistent requirements for all similarly situated providers.

Section 4-14 Application and Renewal Fees

- A. An application fee shall not be deemed to be "Franchise Fees" within the meaning of Article 622 of the Cable Act (47 U.S.C. § 542), and such payments shall not be deemed to be (i) "payments in kind" or any involuntary payments chargeable against the compensation to be paid to the Town by Grantee, or (ii) part of the compensation to be paid to the Town by Grantee pursuant to this Ordinance or a Franchise Agreement.
- B. All applicants for an initial Franchise grant shall submit an application fee of \$2,000.00 to compensate the Town for its costs in reviewing, preparing and awarding a Franchise, including the costs of outside consultants. Upon grant of a Franchise the Town may request the payment of an additional fee to the extent that the reasonable costs of the franchise review and negotiation process exceed the initial application fee amount. Consistent with the Cable Act, all such fees shall not constitute or be credited towards a Grantee's Franchise Fee obligations. Reasonable costs include staff time, professional fees, and administrative costs as determined by the Town to be necessary.

Article 5 DESIGN PROVISIONS

Section 5-1 System Design

- A. Every Grantee shall offer Service that meets the current and future needs of the Town, taking into account the costs of meeting those needs. The Franchise Agreement shall incorporate a description of the Grantee's proposal including the general design and capabilities of the System to identify for the Town how the System will meet the current and future Cable Service needs of the Town.
- B. State-of-the-Art Review. The Grantee shall ensure that Cable Service and the Cable System is compatible with changes in law, technology, and programming and services to maintain a State-of-the-Art system throughout the Franchise term in accordance with the provisions contained in the franchise agreement.

Section 5-2 The System

Every System shall pass by every single-family dwelling unit and multiple-family dwelling unit within the Franchise Area in accordance with line extension policies set forth in this Ordinance. Service shall be provided to Subscribers in accordance with the schedules and line extension policies. Unless specified otherwise, Service shall also be extended to commercial buildings on a consistent basis with the residential line extension policies.

Section 5-3 Drops to Public Building

- A. Every Grantee shall provide installation of at least one (1) cable Drop, and provide monthly Basic Cable Service, without charge, to Public Buildings in accordance with the line extension policies of this Ordinance, or as otherwise specified in the applicable Franchise Agreement. Schools shall also receive one (1) cable Drop and Basic Cable Service at no charge. Following the Town's designation of additional

Public Buildings(s) to receive Cable Service, and upon the Towns request, a Grantee shall complete construction of the Drop and outlet within thirty (30) days.

- B. All such Cable Service outlets shall not be utilized for commercial purposes.
- C. In instances where the Drop to the Public Building exceeds 150 feet, the Grantee may charge for the actual and reasonable cost of its labor and materials.

Section 5-4 Use of Grantee Facilities

The Town shall have the right to install and maintain Town equipment upon the poles and conduit owned by the Grantee, at the actual cost of the space and on terms mutually agreeable to the Town and the Grantee and within a separate agreement. Installed Town equipment shall not unreasonably interfere with the operation of the Cable System.

Section 5-6 Upgrade of System

Every Grantee shall upgrade its System (herein referred to as the "System Upgrade"), if required, as set forth in its respective Franchise Agreement.

Section 5-7 Non-Discriminatory Access to Cable System

Grantee may be required to allow non-discriminatory access to its Cable System if such shall be required by federal law. Prior to the enactment of any such requirement, a Grantee shall be provided with reasonable notice and an opportunity to be heard, including the right to present evidence with respect to the need for such a requirement. Grantee reserves, and has not waived, any right it may have, or may later be determined to have, to challenge the Towns implementation of an open access requirement.

Article 6. INSTITUTIONAL NETWORK AND PUBLIC EDUCATIONAL AND GOVERNMENTAL (PEG) ACCESS

Section 6-1 Institutional Network, Access Channels

- A. Every Grantee shall, to the extent required by the Franchise Agreement, provide Institutional Networks as a condition of an initial grant or renewal, or transfer of a Franchise. To the extent that a Grantee is obligated to provide such support pursuant to its Franchise Agreement, such obligation will be implemented in a competitively neutral manner, on a per Subscriber basis with respect to any other Franchises granted after the adoption of this Ordinance. Costs associated with construction and operation of an I-Net shall not be a Franchise Fee unless otherwise specified in the Franchise Agreement.
- B. Every Grantee shall provide a Channel or Channels, bandwidth capacity, Service, and funding for Public, Educational, and Government ("PEG") Access Channels, as specified in its Franchise Agreement. Such PEG Access Channel(s) shall be available to all Subscribers as part of Basic Cable Service.

- C. Oversight and administration of the PEG Access Channel(s) shall be set forth in the Franchise Agreement. The Town may designate a Community Access Corporation or similar entity to administer one or more of the PEG Access Channel(s).

Article 7. TECHNICAL STANDARDS AND CUSTOMER SERVICE PRACTICES

Section 7-1 General Technical Standards and Customer Service Practices

- A. This Ordinance incorporates technical standards and establishes customer service practices with which a Grantee must comply. In addition, a Grantee shall comply with any additional or stricter requirements established by FCC regulations, or other federal regulation that may be adopted or amended from time to time.
- B. A Grantee shall maintain such equipment and keep such records as are required to enable the Grantor to determine whether the Grantee is in compliance with all standards required by these regulations and other applicable laws.

Section 7-2 Books and Records Available to the Grantor

- A. The Grantee shall maintain an office within a convenient distance from the Town. The Town shall have the right, upon reasonable request, to inspect and copy or transcribe at any time during normal business hours, all books, records, maps, plans, financial records, service complaint logs, performance test results and other like materials of the Grantee kept or maintained by Grantee or under its control concerning the operations, finances, affairs, transactions or property of Grantee when necessary to ascertain the Grantee's compliance with this Ordinance or the Franchise Agreement. Access to the aforementioned records shall not be denied by the Grantee on the basis that said records contain "proprietary" information. Proprietary information shall be safeguarded from public disclosure.
- B. If any of such maps or records are not kept in the Town, or upon reasonable request by the Town to make such available in the Town, and if the Town shall determine that an examination of such records is necessary or appropriate, all reasonable expenses necessarily incurred in making such examination shall be paid by Grantee.

Section 7-3 Reports Required

The Grantee shall file the following materials noted in Sections A through and inclusive of Section I with the Town, upon reasonable request, and as necessary to insure compliance with this ordinance or a Franchise Agreement, unless otherwise noted:

- A. Regulatory Communications. All reports required by the Federal Communications Commission (FCC) including, but not limited to annual proof of performance tests and results, Equal Employment Opportunity (EEO) reports, and all petitions, applications and communications of all types submitted by Grantee to the FCC, the Security and Exchange Commission (SEC), or any other federal or state regulatory commission or agency, having jurisdiction over any matter affecting operation of Grantee's System.

- B. Facilities Report. An annual report setting forth the physical miles of plant construction and plant in operation at the end of the fiscal year will be made available at the local office of the Grantee for review by the Town.
- C. Rebuild/Upgrade/Construction Reports. Such reports shall be sent to the Town thirty (30) days after the initial Franchise Agreement is awarded and monthly thereafter until construction is completed as specified in this Ordinance or the Franchise Agreement.
- D. Proof of Performance Tests. Proof of performance test results performed as required by the FCC shall be supplied to the Town.
- E. Test Required by Town. Tests required by Town as specified in this Ordinance shall be submitted within thirty (30) days of notification.
- F. Grantee Rules. The Grantee's schedule of charges, regular Subscriber service policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its Subscribers. All such charges and policies shall be in accordance with applicable state and federal laws, rules or regulations.
- G. Proof of Bonds and Insurance. Grantee shall submit to the Town the required performance bond, or a certified copy thereof, and insurance certificates as required under the terms and conditions described in this Ordinance.
- H. Financial and Ownership Reports. The following financial reports for the Franchise area shall be submitted to the Town, upon reasonable notice and as required by the Town:
 - (1) A statement verifying the amount of Gross Annual Revenues derived from the Franchise, certified by the Vice President for Finance or a duly authorized officer or manager of the Grantee.
 - (2) An annual list of officers and members of the Board of Directors of Grantee and of Grantee's parent corporation, if applicable.
- I. Additional Reports. The Grantee shall prepare and furnish to the Town at the times and in the form prepared by Grantee in the ordinary course of business, such additional reports with respect to its operation, affairs, transactions or property, as may be reasonably necessary and appropriate to ascertain Grantee's compliance with this Ordinance or the Franchise Agreement.

Section 7-4 Technical Standards

The technical standards used in the operation of a System shall comply, at a minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to the FCC's rules and regulations found in Title 47, Articles 76.601 to 76.617, as may be amended or modified from time to time, which regulations are expressly incorporated herein

by reference. The results of any tests required by the FCC, or a Franchise Agreement shall be made available to the Town within thirty (30) days of written request.

Section 7-5 Test and Compliance Procedure

- A. Tests for a System shall be performed periodically in a manner so as to conform with FCC specifications. The Town shall notify the Grantee of its desire to witness such tests for a period of 90 days beyond the date of request. Grantee shall notify the Town at least 3 business days prior to conducting such tests. Representatives of the Town may witness the tests and written test reports shall be made available to the Town upon request. If any test locations fail to meet such specifications, the Grantee shall be required to indicate what corrective measures have been or will be taken. Grantee shall have the site re-tested on a timely basis as needed.
- B. Complaints. Whenever there have been similar Complaints made or when there exists other evidence, which, in the reasonable judgment of the Town, casts doubt on the reliability or quality of the Grantee's System, the Town shall have the right and authority to compel the Grantee to test, analyze, and report on the performance of its System. The Town may require additional tests, full or partial repeat tests, different test procedures, or tests involving a specific Subscriber's terminal. Reports on such tests shall be delivered to the Town no later than thirty (30) days after the Town formally requests the tests and shall include the following information: the nature of the complaints which precipitated the special tests; what System component was tested; the equipment used, and procedures employed in said testing; the results of such tests; and methods by which said complaints were resolved. Said tests and analyses shall be supervised by an engineer or other trained technical specialist who shall sign all records of the special tests and forward same to the Town with a report interpreting the results of the tests and recommending what actions should be taken by the Town. All such tests conducted by Grantee shall be at the expense of the Grantee.
- C. Consultants. The Town shall have the right to employ or contract with qualified consultants and attorneys if necessary or desirable, to assist in the administration of this, or any other Article of this Ordinance or the Franchise Agreement. If an independent qualified consultant makes a finding that Grantee's test results differ by more than ten (10) percent from the FCC technical standard, the Grantee shall reimburse the Town for its reasonable costs associated with the testing.

Section 7-6 Emergency Requirements

Each Grantee must provide emergency alert override capabilities in a manner consistent with the FCC's emergency alert system ("EAS") rules and consistent with any state and/or regional emergency alert system plans adopted in response to the FCC's EAS rules that are applicable to the Franchise Area.

Section 7-7 Programming Decisions

Each Grantee shall provide programming from each of the broad programming categories identified in its Franchise Agreement. All programming decisions remain within the sole discretion of each Grantee provided that each Grantee complies with federal law regarding

notice to Grantor and Subscribers prior to any Channel additions, deletions, or realignments, and further subject to the Grantee's signal carriage obligations pursuant to 47 U.S.C. § 531-536, as may be amended and subject to the Town's rights pursuant to 47 U.S.C. § 545, as may be amended. The Grantee shall use its good faith efforts to ensure diversity of programming.

Section 7-8 Cable System Office Hours and Telephone Availability

Attached as Appendix A are the Federal Communication Commission (FCC) Customer Service Standards with which Grantee must comply.

Section 7-9 Parental Control

Every Grantee shall make available to any Subscriber upon request a "lockout" device for blocking both video and audio portions of any Channel(s) of programming entering the Subscriber's premises. Such device shall be provided at a reasonable charge, except to the extent that federal law specifically provides otherwise. The Grantee may, however, require a reasonable security deposit for the use of such a device. This Article shall not apply to Channels that are on the basic or expanded basic tier of programming unless the Subscriber receives Service via a programmable terminal device, such as a converter.

Section 7-10 Installations Exceeding Standard Installation

Service drops in excess of 150 feet and concealed wiring in the home shall be charged to the Subscriber based upon time and material. The desire of the Subscriber as to the point of entry into the residence shall be observed whenever possible. Runs in building interiors shall be as unobtrusive as possible. The Grantee shall use due care in the process of installation and shall repair any damage to the Subscriber's property caused by said installation. Such restoration shall be undertaken within no more than ten (10) days after the damage is incurred and shall be completed as soon as possible thereafter.

Section 7-11 Service Area and Line Extension Policy

- A. No Grantee may discriminate in the build-out of its System to a particular area of the Town in providing Service to an individual or groups of Residents on the basis of race, creed, religion or economic condition. Unless the Franchise Agreement provides otherwise, every Grantee shall serve all areas of the Town equally with populations of at least fifteen (15) residential dwelling units per cable mile as measured from a Grantee's existing distribution system, including areas annexed subsequent to the grant of the Franchise. The Franchise Agreement shall provide a schedule of the areas to be served, and the specific build-out requirements of the Grantee, and shall also describe the process for extending Service to areas that will meet minimum density requirements at some future date. Unless the Franchise Agreement provides otherwise, every Grantee shall extend Service to commercial areas at no additional cost where the cost to do so does not exceed the same cost of providing service in a residential area with a density of fifteen (15) homes per mile.
- B. During the initial construction phase of a new System, a Grantee may implement its System in stages pursuant to a schedule and line extension policy established in its Franchise Agreement that serves all areas of the Town equally, provided that any

deviation from the service and line extension requirements of this Ordinance do not discriminate between different areas of the Town on the basis of race, creed, religion or economic condition. A Grantee of any such new Franchise shall comply with all customer service obligations with respect to customers whose premises are passed by portions of the Grantee's network which are fully activated, tested and available for Service.

- C. Cost-sharing. In areas with fewer than fifteen (15) homes per proposed cable mile, Grantee shall offer a cost-sharing arrangement to Residents. Grantee shall bear its pro rata share of the current construction costs based upon the actual number of homes per mile. The cost-sharing arrangement shall consist of the following: On the request of a Resident desiring Service, Grantee shall prepare, at its cost, an engineering survey and cost analysis to determine the cost of the plant extension required to provide Service to the Resident from the closest usable point on the Cable System. The cost of construction shall be allocated based on the following formula: If a request for extension into a residential area requires the construction of cable plant which does not pass at least fifteen (15) homes per Cable mile, a proportionate share of construction costs shall be borne by Grantee and by the Subscribers. For example, if there are seven (7) dwelling units per mile, Grantee's share will equal 7/15ths of the construction cost. The remaining cost will be shared equally by each Subscriber in the area to be constructed. The line extension formula shall also be applied to a portion of a Cable mile meeting proportionate density requirements. For example, if there are seven (7) dwelling units per one-half mile, the Grantee shall construct the plant. The cost sharing described above would be utilized if there were less than the proportionate share of dwelling units per the portion of a mile needed to reach the dwelling units. Should additional Subscribers request Cable Service, Subscribers utilizing the cost-sharing plan for extension shall be reimbursed pro-rata for their contribution or a proportional share thereof. In such case, the pro-rata shares shall be recalculated and each new Subscriber shall pay the new pro-rata share, and all prior Subscribers shall receive refunds. In any event, at the end of twenty-four (24) months from completion of the project, the Subscribers are no longer eligible for refunds, and the amounts paid by Subscribers will be credited to the plant account of the Grantee. The average cost of the line extension shall be recalculated annually based upon the current costs of labor and material. Each Subscriber contributing toward the direct cost of the line extension shall waive all ownership interest in the line extension. All equipment and components of the line extension, including, but not limited to, cable wire, electronics and pedestals shall at all times remain the exclusive property of the Grantee.

Section 7-12 Town Monitoring

In addition to free Cable Service required by the Ordinance, Grantee shall provide one Service feed to the Town Administration Building (unless otherwise specified by Town) that shall receive without charge all Basic and expanded Basic Cable programming provided by Grantee. Such Service shall be provided in such a manner that the Town may monitor the programming and use of the Cable System for compliance with the Franchise Agreement and this Ordinance. The Service provided pursuant to this requirement shall be in a secure office location, and not in a location open to public viewing.

Section 7-13 Access to Inside Wiring

Access to, and ownership of, inside wiring shall be in accordance with Article 76.800, et. seq. of the FCC rules and regulations as the same may be amended from time to time.

Article 8. CONSTRUCTION STANDARDS

Section 8-1 Right-of-Way Construction

Prior to commencing any construction in the Town, a Grantee must obtain all necessary permits and licenses required by federal, state and generally applicable Town laws, ordinances and rules, and pay all associated non-discriminatory fees. Further, a Grantee shall comply with all applicable laws, ordinances, rules, and standards relating to the construction, operation and maintenance of a Cable System.

Section 8-2 Compliance with Laws

The construction, installation, and maintenance of the Cable System shall be effectuated by Grantee in a manner that is consistent with the laws, ordinances and construction standards of the State of North Carolina, the Occupational Safety and Health Administration, the National Electrical Safety Code, National Electrical Code and the FCC, to the extent applicable, as well as all other laws, rules, regulations and ordinances that are generally applicable and promulgated pursuant to the Town's lawful police power. All open connections on splitters, couplers and other devices shall be properly terminated.

Section 8-3 Minimum Interference

All of Grantee's construction, installation, operation, repair and maintenance, and the arrangement of its lines, cables and other appurtenances, on public or private property, shall be conducted in such a manner as to not unreasonably interfere with the rights and reasonable convenience of property owners that may be affected. In the event such work is not in accordance with applicable rules and regulations, the Town may require the removal, within such period of time after notice as is reasonable under the circumstances, of Grantee's lines, cables and appurtenances from the Rights-of-Way in question, at the sole expense of the Grantee.

Section 8-4 Repair of Property

Grantee shall promptly repair and restore any Town or private property which may be damaged as a result of the construction, installation, operation, repair, maintenance or removal of the Cable System. Any such property damaged or destroyed shall be promptly repaired and restored by Grantee, at Grantee's sole cost and expense to the reasonable satisfaction of the Town, to its condition prior to being damaged, or shall be replaced by Grantee with equivalent property. The Town may inspect and approve the condition of the Right-of-Ways and cables, wires, attachments, and poles after restoration. The liability, indemnity, insurance and performance bond as provided herein shall continue in full force and effect during the period of any removal and until the Grantee has fully complied with the terms and conditions of this Ordinance and the Franchise Agreement. In the event of a failure by the Grantee to complete any restoration work required by the Town within the time as may be established by the Town and to the reasonable satisfaction of the Town, the

Town may, following reasonable notice to the Grantee, cause such work to be done and the Grantee shall reimburse the Town the cost thereof within thirty (30) days after receipt of an itemized list of such costs, or the Town may at its option recover such costs through the performance bond provided by Grantee. The Town shall be permitted to seek legal and equitable relief to enforce the provisions of this Article.

Section 8-5 Erection of Poles

Grantee shall not erect any pole on or along any Rights-of-Way in an existing aerial utility system without the advance written approval of the Town. If additional poles in an existing aerial route are required, Grantee shall negotiate, as needed, with the owners thereof for the installation of the needed poles. Grantee shall negotiate the lease of pole space and facilities from the existing pole owners for all aerial construction, under mutually acceptable terms and conditions. The cost for such aerial routes are to be paid entirely and completely by Grantee.

Section 8-6 Reservations of Street Rights

Nothing in this Ordinance shall be construed to prevent the Town from constructing storm or sanitary sewers, grading, paving, repairing or altering any Rights-of-Way, or laying down, repairing or removing water mains, traffic signal control systems, Town fiber plant, or constructing or establishing any public utility, Service or other public work that the Town may operate or undertake now or in the future. All such work shall be done, insofar as practicable, in such manner as not to obstruct, injure or prevent the free use and operation of poles, wires, conduits, conductors, pipes or appurtenances of Grantee. If Town in its reasonable judgment shall determine that Grantees facilities interfere with the construction location or repair of any Rights-of-Way or public improvement, then all such facilities of Grantee shall be removed or replaced, or temporarily disconnected, in such manner as shall be directed by the Town so that the same shall not interfere with the public works of the Town. Such removal or replacement shall be at the expense of Grantee; provided, however, that nothing in this Ordinance shall preclude Grantee from seeking reimbursement for removal or replacement costs from any public funds generally available to Rights-of-Way users for the reimbursement of such costs.

Section 8-7 Underground Installation

In those areas within the Town where Cable Television, telephone, or electrical facilities are currently placed underground, all Cable System facilities shall remain or be placed underground. In areas where either telephone or electric utility facilities are above ground at the time of installation, Grantee may install its Cable System facilities above ground, provided that at such time as both electric and telephone utility facilities are placed underground, Grantee shall likewise place its Cable System facilities underground without cost to the Town. Nothing contained in this Article shall require a Grantee to construct, operate and maintain underground any ground-mounted appurtenances, except that Grantee shall take steps to minimize the number and visual impact of such facilities. If the Grantor reimburses any utility for such relocation, Grantee shall be similarly reimbursed. This Article shall not prevent the Town or any of its agencies or joint agencies from requiring the installation or relocation of Cable Services facilities underground pursuant to a separate ordinance or regulation or requirement imposed in accordance with the exercise of the general police power or regulatory function of such agency or joint agency.

Section 8-8 Conduit

- A. The Town shall not be responsible for any cuts or damage to buried or underground facilities of a Grantee that are not clearly marked or cannot be located through the North Carolina "one-call" service.
- B. Grantee shall provide strand and trench maps without detailed measurement calculations in a format mutually agreeable to both the Town and Grantee. Such information shall be subject to and not restrict any other Town Ordinances. Town agrees to treat the maps as proprietary information to the extent provided under law, or as may be indicated in Town Ordinances.
- C. Grantee shall provide a contact number for the Town to call in emergency situations requiring an immediate response on the part of the Town. If the Grantee does not properly and effectively identify the precise location of its facilities within a reasonable period of time taking into account the circumstance of an emergency call from the Town, the Town shall not be responsible for damage to the Grantee's facilities.

Section 8-9 Clearing Poles and Cables

Grantee shall have the right to remove, trim, cut and to keep clear of its poles, cables, underground conduits and related equipment the trees in and along the Rights-of-Way, but, in the exercise of such right, Grantee shall not cut such trees to any greater extent than is reasonably necessary for the construction, erection, installation, maintenance and use of Cable System equipment. Except in emergency situations, Grantee shall not remove, trim or cut such trees from any Rights-of-Way without first providing reasonable notice to the Town of its intention to do so, such notice to be delivered not less than ten (10) days in advance. The Grantee shall compensate the Town or any private owners of such trees for any damage proximately caused by Grantee's negligent conduct.

Section 8-10 Moving Facilities

Grantee, on the request of the Town, or any Person holding a building permit issued by the Town, or any permit issued by an appropriate state agency, shall temporarily move its wires, cables, poles or other Cable System facilities to permit the moving of large objects, vehicles, buildings or other structures. The expense of such temporary moves shall be paid to Grantee by the Person requesting the same and Grantee shall have the authority to require such payment in advance. Grantee shall be given not less than thirty (30) days advance notice to arrange for such temporary moves.

Section 8-11 Work Performed by Others

To the extent applicable, all provisions of this Ordinance shall apply to any subcontractors or others performing any work or services pursuant to the provisions of a Franchise Agreement on behalf of a Grantee.

Section 8-12 Duty to Grantee

Nothing contained in this Ordinance shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities while performing any

work connected with grading, regarding or changing the line of any Rights-of-Way or with the construction or reconstruction of any sewer or water system or utility system.

Article 9. GENERAL FINANCIAL AND INSURANCE PROVISIONS

Section 9-1 Franchise Fee

- A. The administration of this Ordinance or the Franchise Agreement imposes upon the Town additional regulatory responsibility and expense, and in consideration of permission to use the Rights-of-Way of the Town for the construction, operation and maintenance, of a Cable System within the Town, a Grantee of any Franchise hereunder shall pay to the Town a Franchise Fee in an amount as designated in the Franchise Agreement, up to the maximum amount allowed by applicable law. To the extent that applicable law changes the maximum authorized Franchise Fee, the Town reserves the right to change the Franchise Fee as stated in the Franchise Agreement, by adopting an ordinance establishing the new Franchise Fee rate and allowing reasonable notice to the Grantee for administration of the change. The Town shall hold a public hearing prior to adopting any change in the Franchise Fee.
- B. Payments due Grantor under this Article shall be computed quarterly, for the preceding quarter. Each quarterly payment shall be due and payable no later than thirty (30) days after the end of the preceding quarter. Each payment shall be accompanied by a brief report by a Grantee showing the basis for the computation. All such payments shall be certified as correct by an officer of the Grantee.
- C. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim Grantor may have for further sums payable under the provisions of this Ordinance or a Franchise Agreement. All amounts paid shall be subject to audit and re-computation by Grantor or its designee at any time during any calendar year (but not more than once per calendar year) upon twenty (20) calendar days' notice, which shall include a request for any documents sought to be reviewed. Audits shall be at the expense of the Grantee if the additional amount due is greater than two percent (2%) of the amount paid. Any additional amount due to the Town as a result of the audit shall be paid within sixty (60) days following written notice to the Grantee by the Town which notice shall include a copy of the audit report. Grantor's right to audit and Grantee's obligation to retain records related to the Franchise Fee audit shall expire three (3) years from the date on which the most recent franchise fee payment by the Grantee was due from the time of written notice of request of audit.
- D. In the event that any Franchise payment or recomputed amount is not made on or before the dates specified herein, Grantee shall pay as additional compensation an interest charge, computed from such due date, at the annual rate equal to the commercial prime interest rate of the Town's primary depository bank during the period that such unpaid amount is owed.

Section 9-2 Security Fund (Bond)

Each Grantee shall maintain a security fund with the Town to ensure compliance with this Ordinance and the applicable Franchise Agreement, in an amount and in a manner as set forth in the Grantee's Franchise Agreement.

Section 9-3 Penalties Procedure

- A. Whenever Grantor has reason to believe that a Grantee has violated any material provision of a Franchise Agreement or this Ordinance, Grantor shall first notify the Grantee of the material violation and demand correction within a reasonable time, which shall not be less than twenty (20) days in the case of the failure of a Grantee to pay any sum or other amount due the Grantor under a Franchise Agreement, and thirty (30) days in all other cases. If a Grantee fails to correct the violation within the time prescribed, or if a Grantee is unable to correct the violation and fails to commence corrective action within the time prescribed and to diligently remedy such violation thereafter, the Grantee shall then be given written notice of not less than twenty (20) days for public comment. Said notice shall indicate with reasonable specificity the violation alleged to have occurred.
- B. At the public hearing, the Town Council shall hear and consider all relevant evidence and thereafter render findings and a decision based upon the evidence. Any such hearing must, at a minimum, provide the Grantee a full and fair opportunity to be heard by the Town Council.
- C. In the event the Town Council finds that a Grantee has corrected the violation or promptly commenced correction of such violation after notice thereof from Grantor and is diligently proceeding to fully remedy the violation, or that no violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.
- D. In the event the Town Council finds that a violation exists and that a Grantee has not corrected the same in a satisfactory manner or did not promptly commence and diligently proceed to correct the violation, the Town Council may impose liquidated damages to be collected from the security fund, as set out in the Franchise Agreement.
- E. If the Town Council elects to assess liquidated damages, then such election shall constitute Grantor's exclusive remedy for a period of sixty (60) days. Thereafter, if a Grantee remains in non-compliance, the Grantor may pursue any other available remedy.
- F. In the event that a Franchise is cancelled or terminated by reason of the default of a Grantee, the security fund deposited pursuant to a Franchise Agreement shall remain in effect and available to the Grantor until all pending claims or penalties are resolved or settled, after which point any remaining amounts in the security fund shall revert to the Grantee.
- G. The rights reserved to Grantor with respect to the security fund are in addition to all other rights of Grantor, whether reserved by a Franchise Agreement, this Ordinance,

or authorized by law, and no action, proceeding, or exercise of a right with respect to such security fund shall affect any other right Grantor may have.

- H. In instances of repeated violations, whether remedied or not, the Grantor shall serve special notice outlining additional remediation requirements. Failure to cure, as measured by repeated instances of the same violation, is evidence of an evasive practice and may lead to revocation under Article 10.

- I. Grantee acknowledges that non-compliance with the provisions of the Franchise Agreement and this Ordinance will harm Subscribers and the Town and the amounts of actual damages will be difficult or impossible to ascertain. The Town may therefore assess the following liquidated damages against Grantee for unexcused non-compliance with the requirements of the Franchise Agreement and this Ordinance. Grantee acknowledges that the liquidated damages set forth below are a reasonable approximation of actual damages and that this provision is intended to provide compensation and is not a penalty. All damages provided shall be cumulative, unless expressly stated.
 - 1. For failure to materially complete construction or extend service in accordance with the Ordinance and the Franchise Agreement: \$250 calendar day for each day the violation continues;
 - 2. For failure to materially comply with requirements for Public Access Channels: \$250 calendar day for each day the violation continues;
 - 3. For failure to comply with the material requirements of the I-Net provisions of the Ordinance/Franchise Agreement: \$250 calendar day for each day the violation continues;
 - 4. For repeated, willful or continuing failure to submit reports, maintain records, provide documents or information: \$250 calendar day for each day the violation continues;
 - 5. For failure to comply with the material requirements of the Customer Service Standards: \$250 calendar quarter the violation continues;
 - 6. For failure to comply with the transfer provisions: \$250 calendar day for each day the violation continues;
 - 7. For violation of other material provisions of the Ordinance and the Franchise Agreement: up to \$250 calendar day for each day the violation continues.

Section 9-4 Bonds, Indemnification, and Insurance

Each Grantee shall maintain bonds and insurance with the Town in amounts and in a manner as set forth in the Grantee's Franchise Agreement. Each Grantee also shall be required to indemnify the Town in a manner as set forth in the Grantee's Franchise Agreement.

Article 10. REVOCATION

Section 10-1 Grounds for Revocation

Grantor reserves the right to revoke the Franchise, and all rights and privileges pertaining thereto, in the event that:

- A. A Grantee substantially violates any material provision of this Ordinance or a Franchise Agreement;
- B. A Grantee attempts to evade any of the material provisions of this Ordinance or a Franchise Agreement;
- C. A Grantee practices an act of fraud or deceit upon the Grantor;
- D. A Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt;
- E. A Grantee fails to provide or maintain in full force and effect the liability and indemnification coverage or the performance bond as required pursuant to its Franchise; or
- F. A Grantee violates any orders or rulings of any regulatory body having jurisdiction over the Grantee relative to this Ordinance or the Franchise and after notice thereof, shall continue the violation and not remedy the same within sixty (60) days.

Section 10-2 Procedure

- A. Whenever Grantor has reason to believe that there may be grounds for revocation of a Franchise, Grantor shall first notify the Grantee in writing of its basis for believing grounds for revocation exist. Such notice shall indicate with reasonable specificity the grounds for revocation that are believed to exist so that the Grantee may have a reasonable opportunity to cure or otherwise address the same. If a Grantee fails to adequately cure or address the purported grounds for revocation within thirty (30) days of such notice, then the Grantor may, upon thirty (30) days written notice to the Grantee, commence a public administrative hearing to determine whether there exists any ground for revocation.
- B. The administrative hearing shall be conducted so as to protect the full due process rights of the parties and provide for, at a minimum, the right to have counsel, the right to call and cross examine witnesses, and the right to a full transcript of the proceedings.
- C. After the close of the hearing, Grantor or the designated hearing officer shall issue a written decision based on the record of the proceedings, stating with specificity the findings and reasons supporting the decision.

- D. Upon revocation, a Grantee shall have a period of one hundred and twenty (120) days subsequent to the date of the formal adoption of a revocation of the Franchise by the Town within which to file an appeal with a court of competent jurisdiction.
- E. During the appeal period, the Franchise shall remain in full force and effect.

Article 11. FORECLOSURE, RECEIVERSHIP AND ABANDONMENT

Section 11-1 Foreclosure

Upon the foreclosure or other judicial sale of all or a part of a System, a Grantee shall notify Grantor of such fact and such notification shall be treated as a notification that a change in Control of the Grantee has taken place, and the provisions of this Ordinance governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

Section 11-2 Receivership

Apart from and supplemental to the right to revoke a Franchise, Grantor shall have the right to cancel a Franchise Agreement one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of a Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

- A. Within one hundred twenty (120) days after its election or appointment, the receiver or trustee has fully complied with all the provisions of Grantee's Franchise Agreement and this Ordinance and remedied all defaults thereunder; and
- B. Such receiver or trustee, within said one hundred twenty (120) days, has executed an agreement, duly approved by a court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Ordinance and the applicable Franchise Agreement.

Article 12. PURCHASE OF SYSTEM

Section 12-1 Purchase by Grantor Upon Termination of Franchise Term or Revocation of Franchise

The Grantor may, in accordance with and to the extent permitted by 47 U.S.C. § 547, upon the payment of a fair valuation, purchase, condemn, acquire, take over, and hold the property and plant of a Grantee, in whole or in part, on the following conditions:

- A. Upon revocation of a Franchise, a fair valuation shall be an equitable value that shall not include any sum attributable to the value of the Franchise itself, and plant and property shall be valued according to its book value at the time of revocation, or the System's initial cost less depreciation and salvage.
- B. At the expiration of a Franchise Agreement and following a denial of renewal of the Franchise Agreement, a fair valuation shall be the fair market value of the plant and property, exclusive of the value attributed to the Franchise itself.

- C. In the event Grantor shall acquire a Franchise pursuant to the provisions of this Ordinance or a Franchise Agreement, and commenced operation of the System, Grantor shall reimburse the Grantee for the Fair Market Value of the System.

Article 13. SALE OR TRANSFER

Section 13-1 Sale or Transfer of Franchise

- A. No Grantee shall sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, an interest in or Control of a Franchise or Cable System or any of the rights or privileges granted by a Franchise Agreement, without the prior consent of the Grantor, which consent shall not be unreasonably denied or delayed and may be denied only upon a good faith finding by the Grantor that the proposed transferee lacks the legal, technical, or financial qualifications to consummate the transaction and operate the System so as to perform its obligations under this Ordinance and the applicable Franchise Agreement. This Article shall not apply to sales of property or equipment in the normal course of business. Consent from the Grantor shall not be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure indebtedness, or for a transfer to a Person controlling, controlled by, or under common Control with a Grantee.
- B. The following additional events shall be deemed to be a sale, assignment, or other transfer of an interest in or Control of a Grantee or its Franchise or Cable System requiring compliance with this Article: (i) the sale, assignment, or other transfer of all or a majority of a Grantee's assets; (ii) the sale, assignment, or other transfer of capital stock or partnership, membership, or other equity interests in a Grantee by one or more of its existing shareholders, partners, members, or other equity owners so as to create a new controlling interest in a Grantee; (iii) the issuance of additional capital stock or partnership, membership or other equity interest by a Grantee so as to create a new controlling interest in a Grantee; and (iv) a Grantee's agreement to transfer management or operation of the Grantee or the System. The term "controlling interest" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised.
- C. In the case of any sale or transfer of ownership of an interest in or Control of a Grantee or its Franchise or Cable System, the Town shall have one hundred twenty (120) days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with FCC Regulations and the requirements of this Ordinance and the applicable Franchise Agreement, including information related to the legal, technical and financial qualifications, and the proposed transferee's ability to operate the System in accord with this Ordinance and the Franchise Agreement. Failure to provide all information reasonably requested by the Town as part of its review may be grounds for a denial of the proposed transfer. If the Town fails to render a final decision on the request within one hundred twenty (120) days after receipt by the Town of all required information, such request shall be deemed granted unless the Grantee and the Town agree to an extension of the one hundred twenty (120) day period.

- D. The consent or approval of the Town to any transfer of the Grantee shall not constitute a waiver or release of the rights of the Town in and to the Rights-of-Way, and any transfer shall, by its terms, be expressly subject to the terms and conditions of this Ordinance and the Franchise Agreement.
- E. In the absence of extraordinary circumstances, the Town will not approve any transfer or assignment of the Franchise prior to completion of construction of the proposed initial System.
- F. Any approval by the Town of a transfer shall be contingent upon the prospective new Grantee becoming a signatory to the Franchise Agreement.

Article 14. RIGHTS OF INDIVIDUALS PROTECTED

Section 14-1 Discriminatory Practices Prohibited

No Grantee shall deny Service, deny access, or otherwise discriminate against Subscribers, programmers, or general citizens on the basis of race, color, religion, national origin, sex, disability, or age. Every Grantee shall strictly adhere to the equal employment opportunity requirements of state and federal law. Each Grantee shall comply at all times with all other applicable federal, state, and local laws, and all executive and administrative orders relating to non-discrimination.

Section 14-2 Subscriber Privacy

Grantees shall at all times comply with the federal subscriber privacy requirements codified at 47 U.S.C. § 551.

Article 15. MISCELLANEOUS PROVISIONS

Section 15-1 Rate Regulation

The Town reserves the right to regulate rates for Basic Cable Service and any other Services offered over the Cable System, to the extent permitted by federal or state law. Grantee shall be subject to the rate regulation provisions provided for herein, and those of the Federal Communications Commission (FCC) at 47 C.F.R., Part 76.900, Subpart N. The Town shall follow the rules relating to cable rate regulation promulgated by the FCC at 47 C.F.R., Part 76.900, Subpart N. To the extent required by applicable federal or state law, Grantee shall establish rates that are nondiscriminatory within the same general class of Subscribers and which must be applied fairly and uniformly to all Subscribers in the Franchise Area for all Services. Nothing contained herein shall prohibit the Grantee 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; or (iv) discounts for senior citizens and/or low income residents; or (v) reduced rates to Subscribers who receive non-Cable Services in addition to Cable Services.

Section 15-2 Rights Reserved to Grantor

- A. Upon either the expiration or revocation of a Franchise, Grantor may permit and/or require a Grantee to continue to operate the Cable System for an extended period of time not to exceed three (3) months from the date of such expiration or revocation. A Grantee shall continue to operate the System under the terms and conditions of this Ordinance and the applicable Franchise Agreement and to provide Cable Service and any and all other Services which Grantee had been providing.
- B. The Grantor shall have the right to compel continued operation of the Cable System whether by the Grantee or a trustee or receiver or by the Grantor, and to ensure that such operation is consistent with public interest as determined by a court of competent jurisdiction. The Grantee may not remove equipment or documents necessary for continued operation of the System.
- C. At all reasonable times, Grantee shall permit examination by the Town of the System, together with any appurtenant property of Grantee situated within or without the Town when necessary to ascertain the Grantee's compliance with this Ordinance, the Franchise Agreement, and all applicable laws.
- D. The Town shall have the right of intervention in any suit or proceeding to which the Grantee is a party relative to Grantee's operations in the Town, and the Grantee shall not oppose such intervention by the Town.
- E. Except as otherwise provided by applicable law, the Grantee shall have no recourse whatsoever against the Town or its officials, Councils, commissions, agents, or employees for any loss, cost, expense, or damage arising out of any provision or requirements of this Ordinance or the Franchise Agreement, or of their enforcement.

Section 15-3 Non-Enforcement by the Town

Grantee shall not be relieved of its obligation to comply with any of the provisions of this Ordinance or the Franchise Agreement by reason of any failure of the Town to enforce prompt compliance.

Section 15-4 Governing Law and Choice of Forum

Any dispute arising with respect to this Ordinance or a Franchise Agreement granted pursuant to it shall be subject to review by the state and federal courts having primary jurisdiction in the Town of SUMMERFIELD, North Carolina.

Section 15-5 Severability

If any material portion of this Ordinance, or a Franchise Agreement adopted pursuant to it, is held by an authority of competent jurisdiction to be invalid or unlawful as conflicting with applicable laws now or hereafter in effect, or is held by a court of competent governmental authority to be modified in any way in order to conform to the requirements of any such applicable laws, such provision shall be considered a separate distinct, and independent part of this Ordinance or Franchise Agreement, and, to the extent possible, such holding shall not affect the validity and enforceability of all other provisions thereof.

Section 15-6 Publication of Notices

All public notices required to be published by Grantor under this Ordinance or any Franchise Agreement shall be published in a manner consistent with the public notice laws of the State of North Carolina.

Section 15-7 System Construction Capabilities and Schedule

- A. The Cable System shall generally conform to the System design and Channel capacity specifications set forth by the Grantee in its application for a Franchise submitted to the Town. The Grantee is permitted to modify its design and implementation plan, pursuant to the conditions provided herein, to accommodate technological innovations and refinements, which enhance System reliability and capacity.
- B. The initial construction required under initial Franchise Agreement shall be completed in compliance with a schedule specified therein. If the Grantee shows that, notwithstanding its due diligence, that it has been unable to extend service to a specified area because the acts or omissions of a third party (excluding the Grantee's subcontractors or agents) or other factors have caused a delay in construction beyond that reasonably expected during the course of construction, and the Grantee proposes a reasonable alternative deadline for extension of Service to that area, the Town shall grant reasonable extensions of time to complete construction.

Section 15-8 Effective Date.

This Ordinance shall become effective upon its adoption.

On motion by Council Member, ROBERT WILLIAMS

seconded by Council Member, JANE DOGGETT, the foregoing ordinance was passed and adopted by the Town Council of the Town of SUMMERFIELD, State of North Carolina, at a regular meeting thereof, this the 5th day of JANUARY, 2005, by the following vote, to wit:

AYES: 5

NOES: 0

ABSENT: CAROLYN COLLINS

Dena Barnes
Mayor
Town of SUMMERFIELD

ATTEST:

Deanne Laughlin
Clerk to Town Council

APPENDIX A. CUSTOMER SERVICE STANDARDS

- A. Grantee will at all times comply with the Town's Customer Service Standards in addition to compliance with the FCC standards (Title 47 CFR, Part 76.309 (Cable Television Service), Subpart H (General Operating Requirements) as amended.
- B. The Town's Customer Service Standards are:
- (a) The Customer Service Standards as set forth below are the standards set for all affected cable operators. This provision is the Town's notice of its intent to enforce the standards.
 - (b) Effective with adoption of this Ordinance, a cable operator shall be subject to the following customer service standards:
 - (1) Cable System office hours and telephone availability.
 - (A) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers 24 hours a day, seven days a week.
 - (i) Trained Representatives will be available to respond to customer telephone inquiries during normal business hours.
 - (ii) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a Trained Representative on the next business day.
 - (B) Under normal operating conditions, telephone answer time by a trained representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.
 - (C) The cable operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above, unless an historical record of complaints indicates a clear failure to comply.
 - (D) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.
 - (E) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

- (2) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety-five (95) percent of the time measured on a quarterly basis:
- (A) Standard installations will be performed within seven (7) business days after an order has been placed.
 - (B) Excluding conditions beyond the control of the cable operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.
 - (C) The "appointment window" alternatives for installations, service calls and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The cable operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)
 - (D) A cable operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
 - (E) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time that is convenient for the customer.

(3) Communications between cable operators and cable Subscribers.

(A) Notifications to Subscribers.

- (1) The cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all Subscribers, and at any time upon request:
 - (i) Products and services offered;
 - (ii) Prices and options for programming services and conditions of subscription to programming and other services;
 - (iii) Installation and service maintenance policies;

- (iv) Instruction on how to use the Cable Service;
 - (v) Channel positions of programming carried on the system; and
 - (vi) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.
- (2) Customers will be notified of any changes in rates, programming service or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by paragraph (c)(3)(i)(A). Notwithstanding any other provision of Part 76, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State or franchising authority on the transaction between the operator and the Subscriber.

(B) Billing.

- (1) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations, including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
- (2) In case of a billing dispute, the cable operator must respond to a written complaint from a Subscriber within thirty (30) days.

(C) Refunds. Refund checks will be issued promptly, but no later than either:

- (1) the customer's next billing cycle following resolution or the request of thirty (30) days, whichever is earlier; or
- (2) the return of the equipment supplied by the cable operator if service is terminated.

(D) Credits. Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.