

AN ORDINANCE AMENDING THE CODE OF  
ORDINANCES OF THE TOWN OF SOUTHERN SHORES

**BE IT ORDAINED** by the Town Council of the Town of Southern Shores, North Carolina, that the Code of Ordinances of the Town of Southern Shores be amended as follows:

**PART I.** A new chapter is hereby created in the Code of Ordinances of the Town of Southern Shores as Chapter 13, FRANCHISES AND BUSINESS REGULATION.

**PART II.** ARTICLE I. CABLE SERVICES REGULATORY ORDINANCE is hereby adopted to read as follows:

DIVISION 1. STATEMENT OF INTENT AND PURPOSE

Sec. 13. 1.1. Statement of Intent and Purpose

- A. The Town of Southern Shores, 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 areas of the Town.
- B. The Town Council of the Town of Southern Shores 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 Town Council 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 the Town, 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 of Southern Shores.
- E. The Town Council 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 non-compliance to the Town and its Residents.

## DIVISION 2. SHORT TITLE

This Ordinance shall be codified as Article I, Chapter 13 of the Town of Southern Shores Code of Ordinances and known as the "Cable Services Regulatory Ordinance."

## DIVISION 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.

### Sec. 13. 3.1 Additional Service

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

### Sec. 13. 3.2 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.

Sec. 13. 3.3 Board

“Board” means the Town Council of the Town of Southern Shores, North Carolina or its delegates.

Sec. 13. 3.4 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.

Sec. 13. 3.5 Cable Internet Service

“Cable Internet Service” means any Cable Service offered by a Grantee whereby Persons receive access to the Internet or high-speed data information services through the Cable System. Cable Internet Service shall be deemed Cable Service unless determined to the contrary by federal law or a court of competent jurisdiction.

Sec. 13. 3.6 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 or use of such video programming or other programming service; and
- C. For purposes of this Ordinance, unless determined otherwise under applicable Federal law, Cable Internet Service shall be considered Cable Service.

Sec. 13. 3.7 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

Sec. 13. 3.8 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.

Sec. 13. 3.9 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.

Sec. 13. 3.10 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.

Sec. 13. 3.11 Complaint

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

Sec. 13. 3.12 Control

“Control” means the holding of legal or financial control of or over the holder of the Franchise, the Service Provider or System Owner or Operator, 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 or entity that has the right or authority to establish or change any policy or practice of the holder of the Franchise or the Service Provider (including, but not limited to, the holder of twenty (20) percent or more of the equity interest in the Grantee), whether such control may be exercised directly, or indirectly through other persons, holdings or entities.

Sec. 13. 3.13 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.

Sec. 13. 3.14 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.

Sec. 13. 3.15 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.

Sec. 13. 3.16 Drop

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

Sec. 13. 3.17 Educational Access Channels

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

Sec. 13. 3.18 Effective Date

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

Sec. 13. 3.19. Facilities

“Facilities” means any poles, buildings, conduits or equipment appurtenant to same owned or controlled by the Grantee and associated with the Cable System located within the Cable Service Area.

Sec. 13. 3.20 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.

Sec. 13. 3.21 FCC

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

Sec. 13. 3.22 Franchise

“Franchise” means the rights and obligations extended by the Town of Southern Shores 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.

Sec. 13. 3.23 Franchise Agreement

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

Sec. 13. 3.24 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.

Sec. 13. 3.25 Franchise Fee

“Franchise Fee” means any tax, fee, or assessment of any kind imposed by the Town or other governmental entity on a Grantee solely because of its status and activities 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) costs associated with the construction and operation of an I-Net; (iv) requirements or charges incidental to the award or enforcement of a Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, compliance audits, penalties, or

liquidated damages; or (v) any fee imposed under Title 17 of the United States Code.

Sec. 13. 3.26 Government Access Channels

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

Sec. 13. 3.27 Grantee

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

Sec. 13. 3.28 Grantor

“Grantor” means the Town.

Sec. 13. 3.29 Gross Revenues

“Gross Revenues” means any and all revenue, whether received in the form of cash, credits, barter, trade, property or consideration of any kind or nature, arising from, attributable to, or in any way derived by the Grantee from the operation of a Grantee’s System to provide cable service, 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. This definition is intended to reach as broadly as possible to encompass all revenue. 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; internet access or service; 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; franchise fees (if elected by the Town from time-to-time); and revenue from the sale of subscriber names and addresses. Gross Revenues also includes the full value of complimentary services provided by the Grantee, exclusive of complimentary services provided to employees of the Grantee, non-profit corporations or as required by a Franchise Agreement, or any revenues earned by use of the Cable System to provide any services other than Cable Services, unless the Cable Act is amended to specifically authorize the imposition of franchise fees on such other services. 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. Bad debt except to the extent that bad debts are 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. A franchise fee is not such a tax.

To the extent the scope of gross revenues is limited by federal law or judicial action, the definitions herein shall be so amended.

Sec. 13. 3.30 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

Sec. 13. 3.31 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.

Sec. 13. 3.32 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.

Sec. 13. 3.33 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.

Sec. 13. 3.34 Non-Commercial

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

Sec. 13. 3.35 Normal Business Hours

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

Sec. 13. 3.36 Normal Operating Conditions

“Normal Operating Conditions” means any and all situations or conditions that are ordinarily within the control of a Grantee, including, but not limited to, management or corporate decisions; employee conduct; staffing levels; special promotions; pay-per-view events; rate increases; regular peak or seasonal demand periods; electronic and video equipment; and maintenance, repair or upgrade of the Cable System, and any associated computer or software systems. Those conditions that are not within the control of a Grantee include, but are not limited to, natural disasters; civil disturbances; power outages; telephone network outages; and severe or unusual weather conditions. A condition shall not be deemed to be beyond the Grantee’s control if committed or omitted by a corporation or other business entity which the Grantee controls.

Sec. 13. 3.37 Other Programming Service

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

Sec. 13. 3.38 Person

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

Sec. 13. 3.39 Public Access Channels

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

Sec. 13. 3.40 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.

Sec. 13. 3.41 Resident

“Resident” means any Person owning property or residing in the Town.

Sec. 13. 3.42 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.

Sec. 13. 3.43 School

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

Sec. 13. 3.44 Service Interruption

“Service Interruption” means the loss of picture or sound on one or more Channels on the System, or the degradation of the picture and/or sound quality on such Channels to the extent that the Subscriber is unable to use the signals, regardless of the cause, for any reason whatsoever.

Sec. 13. 3.45 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.

Sec. 13. 3.46 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.

Sec. 13. 3.47 Town

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

Sec. 13. 3.48 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.

Sec. 13. 3.49 System

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

Sec. 13. 3.50 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.

Sec. 13. 3.51 Upstream Signal

“Upstream Signal” means a signal originating from a Subscriber’s terminal to the head end 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.

#### DIVISION 4. FRANCHISE REQUIREMENTS

Sec. 13. 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 civil penalty and other legal remedies as stated in section 1-6 of this Code. The payment of such civil penalty 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.

Sec. 13. 4.2 Franchises Nonexclusive

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.

Sec. 13. 4.3 Franchises Non-Discriminatory

In the event the Town grants more than one Franchise or similar authorization for the construction, operation, or maintenance of any Cable System to a qualified Person in the Town, the Town shall grant the Franchises on terms that are non-discriminatory and competitively neutral, provided that nothing herein shall be construed as requiring the use of identical terms or conditions, in accordance with federal law.

Sec. 13. 4.4 Term of the Franchise

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

Sec. 13. 4.5 Federal, State, and Town Jurisdiction

- F. 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 of Southern Shores Town Council and administered through the Town Manager 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.
- G. This Ordinance shall be construed in a manner consistent with all applicable federal and state laws.
- H. 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.
- I. 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.
- J. 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 Ordinance 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.

- K. 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.
- L. 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.

Sec. 13. 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.

Sec. 13. 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 13. 4.6, and any supplementary specifications as to construction, operation, or maintenance of the System which the Town may include in the Franchise Agreement.
  - (2) Grantee recognizes 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 Ordinance shall control.

Sec. 13. 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.

Sec. 13. 4.9 Consideration of Initial Applications

- A. Upon receipt of any application, negotiated franchise agreement, and application fee for an initial Franchise, the Town Manager shall prepare a report and make his or her recommendations respecting such application to the Town Council.
- B. Upon acceptance of the application by the Town Council, the applicant shall prepare a proposed Franchise Agreement and present it to the Town Manager. The proposed Franchise Agreement shall meet the cable related needs of the Town.

- B. A public hearing shall be held prior to any initial Franchise grant, at a time and date approved by the Town Council. Within a reasonable time after the close of the hearing, the Town Council shall make a decision based upon the information provided by the applicant as to whether or not the Franchise(s) should be granted, and, if granted, subject to any conditions imposed by the Town Council. In considering whether to grant the franchise the Town Council shall consider whether the application and franchise agreement meet the intent and requirements of this ordinance.

Sec. 13. 4.10 Franchise Renewal

- A. Franchise renewals shall be in accordance with applicable law including, but not limited to, the Cable Communications Policy Act of 1984, as amended and this ordinance. Grantor and a Grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the Franchise.
- B. Upon receipt of any application, negotiated franchise agreement and application fee for a franchise renewal the Town Manager shall prepare a report and make his or her recommendations respecting such application to the Town Council.
- C. A public hearing shall be held prior to any renewal of a Franchise at a time and date approved by the Town Council. Within a reasonable time after the close of the hearing, the Town Council shall make a decision based upon the information provided by the applicant as to whether or not the Franchise(s) should be renewed, and, if renewed, subject to any conditions imposed by the Town Council. In considering whether to renew the franchise the Town Council shall consider whether the application and franchise agreement meet the intent and the requirements of this ordinance.

Sec. 13. 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 the impact that competing or overlapping systems may have on the public ways.

Sec. 13. 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.

Sec. 13. 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 formally 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 Town's 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.

Sec. 13. 4.14 Application and Renewal

- A. An application fee shall not be deemed to be "Franchise Fees" within the meaning of Section 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 and the required fee, as published, from time-to-time in the Fee Schedule of the Town. Consistent with the Cable Act, all such fees shall not constitute or be credited towards a Grantee's Franchise Fee obligations.
- C. The Town reserves the right, unless prohibited by applicable law, to require a Grantee to provide a proposal for renewal under the current rules of the FCC and to pay a cable television franchise renewal fee as published, from time-to-time in the Fee Schedule of the Town. Consistent with the Cable Act, all such fees shall not constitute or be credited towards a Grantee's Franchise Fee obligations.

## DIVISION 5. DESIGN PROVISIONS

### Sec. 13. 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 Franchise Agreement shall include provisions to ensure Cable Service and Cable System compatibility with changes in law, technology, and programming and services to maintain a State-of-the-Art system throughout the Franchise term.

### Sec. 13. 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. Unless specified otherwise, Service shall also be extended to commercial buildings on a consistent basis with the residential line extension policies.

### Sec. 13. 5.3 Drops to Public Buildings

- 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. Accredited Schools shall also receive one (1) cable Drop and Basic Cable Service at no charge. Following the Town's designation of additional buildings(s) to receive Cable Service, and upon the Town's 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 three hundred (300) feet, the Grantee may charge for the actual and reasonable cost of its labor and materials for the installation.
- D. Every Grantee that offers two-way interactive broadband services to Subscribers within the Town shall provide and install courtesy interactive cable modems at every School and to all public libraries, within the Franchise Area that are passed by the portions of the Grantee's Cable System that are capable of supporting such two-way services.

Sec. 13. 5.4 Use of Grantee Facilities

The Town shall have the right to install and maintain Town equipment on Grantee's facilities, at the actual cost for the space, not including cost for existing space. Cost will be limited to any incremental cost for any wire or fixtures. This applies to the excess space upon the poles and within the underground pipes and conduits of a Grantee, any wires and fixtures desired by the Town to the extent that such installation and maintenance does not interfere or compete with existing operations of a Grantee. Town will relinquish its use of such poles and conduits upon ninety (90) days' notice from a Grantee that Town's use interferes with Company's actual or anticipated use of the same.

Sec. 13. 5.5 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.

Sec. 13. 5.6 Non-Discriminatory Access to Cable System

Grantee may be required to allow non-discriminatory access to its Cable System if federal law shall require such. 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 Town's implementation of an open access requirement.

DIVISION 6. INSTITUTIONAL NETWORK, AND PUBLIC EDUCATIONAL AND GOVERNMENTAL ("PEG") ACCESS

Sec. 13. 6.1 Institutional Network, Access Channels

- A. Every Grantee shall, to the extent required by the Town, provide institutional networks as a condition of an initial grant, 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.
- B. Every Grantee shall provide a channel or channels, bandwidth capacity, Service, and funding for separate Public, Educational, and Government ("PEG") Access Channels, as specified in its Franchise Agreement. All such PEG Access Channels shall be available to all Subscribers as part of Basic Cable Service.

- D. Oversight and administration of the PEG Access Channels 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 Access Channels.

DIVISION 7. TECHNICAL STANDARDS AND  
CUSTOMER SERVICE PRACTICES

Sec. 13. 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.

Sec. 13. 7.1.1 Books and Records Available to the Grantor

- A. The Grantee shall maintain an office centrally located within the service area. The Town shall have the right 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.
- B. If any of such maps or records are not kept in the Town, or upon reasonable request made 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.

Sec. 13. 7.1.2 Reports Required

The Grantee shall file with the Town, upon Reasonable Notice:

- 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