

CHAPTER 5

Franchises and Communication Systems

Article 1 Cable Television Franchise

<i>Division 1</i>	<i>General Provisions</i>
Sec. 5-1-10	Definitions
Sec. 5-1-15	Exhibits
<i>Division 2</i>	<i>Grant of Franchise</i>
Sec. 5-1-60	Grant
Sec. 5-1-65	Use of rights-of-way
Sec. 5-1-70	Effective date and term
Sec. 5-1-75	Franchise nonexclusive
Sec. 5-1-80	Police powers
Sec. 5-1-85	Familiarity with Franchise
Sec. 5-1-90	Effect of acceptance
<i>Division 3</i>	<i>Franchise Fee Payment and Financial Controls</i>
Sec. 5-1-110	Franchise fee
Sec. 5-1-115	Payments
Sec. 5-1-120	Acceptance of payment and recomputation
Sec. 5-1-125	Franchise fee reports
Sec. 5-1-130	Audits
Sec. 5-1-135	Late payments
Sec. 5-1-140	Underpayments
Sec. 5-1-145	Alternative compensation
Sec. 5-1-150	Additional commitments not franchise fee payments
Sec. 5-1-155	Tax liability
Sec. 5-1-160	Financial records
Sec. 5-1-165	Payment on termination
<i>Division 4</i>	<i>Administration and Regulation</i>
Sec. 5-1-210	Authority
Sec. 5-1-215	Rates and charges
Sec. 5-1-220	Rate discrimination
Sec. 5-1-225	Filing of rates and charges
Sec. 5-1-230	Cross-subsidization
Sec. 5-1-235	Reserved authority
Sec. 5-1-240	Time limits strictly construed
Sec. 5-1-245	Franchise amendment procedure
Sec. 5-1-250	Performance evaluations
Sec. 5-1-255	Late fees
Sec. 5-1-260	Force majeure
<i>Division 5</i>	<i>Financial Responsibilities</i>
Sec. 5-1-310	Indemnification
Sec. 5-1-315	Insurance
Sec. 5-1-320	Deductibles and certificate of insurance
Sec. 5-1-325	Construction bond
Sec. 5-1-330	Letter of credit
Sec. 5-1-335	Customer service standards
Sec. 5-1-340	Customer service
Sec. 5-1-345	Open records
Sec. 5-1-350	Confidentiality
Sec. 5-1-355	Records required

Sec. 5-1-360	Annual reports
Sec. 5-1-365	Copies of federal and state reports
Sec. 5-1-370	Complaint file and reports
Sec. 5-1-375	False statements
<i>Division 6</i>	<i>Programming and Services</i>
Sec. 5-1-410	Broad programming categories
Sec. 5-1-415	Deletion or reduction of broad programming categories
Sec. 5-1-420	Parental control device
Sec. 5-1-425	Continuity of service mandatory
Sec. 5-1-430	Initial capital contribution
Sec. 5-1-435	Management and control of access channels
Sec. 5-1-440	Initial access channel
Sec. 5-1-445	Additional access channels
Sec. 5-1-450	Access channels on basic service
Sec. 5-1-455	Access channel assignments
Sec. 5-1-460	Relocation of access channels
Sec. 5-1-465	Technical quality
Sec. 5-1-470	Change in technology
Sec. 5-1-475	Information about access programming to subscribers
Sec. 5-1-480	Institutional network
<i>Division 7</i>	<i>General Right-of-Way Use and Construction</i>
Sec. 5-1-510	Right to construct
Sec. 5-1-515	Right-of-way meetings
Sec. 5-1-520	Joint trenching/boring
Sec. 5-1-525	General standard
Sec. 5-1-530	Permits required for construction
Sec. 5-1-535	Emergency permits
Sec. 5-1-540	Compliance with applicable codes
Sec. 5-1-545	Mapping
Sec. 5-1-550	Minimal interference
Sec. 5-1-555	Safety provisions
Sec. 5-1-560	Hazardous substances
Sec. 5-1-565	Locates
Sec. 5-1-570	Notice to private property owners
Sec. 5-1-575	Underground construction and use of poles
Sec. 5-1-580	Undergrounding of multiple dwelling unit drops
Sec. 5-1-585	Burial standards
Sec. 5-1-590	Electrical bonding
Sec. 5-1-595	Prewiring
Sec. 5-1-600	Repair and restoration of property
Sec. 5-1-605	Use of conduits by Town
Sec. 5-1-610	Common users
Sec. 5-1-615	Discontinuing use or abandonment of cable system facilities
Sec. 5-1-620	Movement of cable system facilities for Town purposes
Sec. 5-1-625	Movement of cable system facilities for other franchise holders
Sec. 5-1-630	Temporary changes for other permittees
Sec. 5-1-635	Reservation of Town use of right-of-way
Sec. 5-1-640	Tree trimming
Sec. 5-1-645	Inspection of construction and facilities
Sec. 5-1-650	Stop work
Sec. 5-1-655	Work of contractors and subcontractors
<i>Division 8</i>	<i>Technical Standards</i>
Sec. 5-1-710	Subscriber network and system upgrade

Sec. 5-1-715	Periodic evaluation
Sec. 5-1-720	Standby power
Sec. 5-1-725	Emergency alert capability
Sec. 5-1-730	Technical performance
Sec. 5-1-735	Additional tests
<i>Division 9</i>	<i>Service Availability</i>
Sec. 5-1-750	Universal service
Sec. 5-1-755	Service availability
Sec. 5-1-760	Interconnection with other cable systems
Sec. 5-1-765	Connection of public facilities
Sec. 5-1-770	Cable Internet service to schools, libraries and Town-owned and Town-leased buildings
<i>Division 10</i>	<i>Franchise Violations and Terms</i>
Sec. 5-1-810	Procedure for remedying franchise violations
Sec. 5-1-815	Revocation
Sec. 5-1-820	Procedures in event of termination or revocation
Sec. 5-1-825	Purchase of cable system
Sec. 5-1-830	Receivership and foreclosure
Sec. 5-1-835	No monetary recourse against Town
Sec. 5-1-840	Alternative remedies
Sec. 5-1-845	Assessment of monetary damages
Sec. 5-1-850	Effect of abandonment
Sec. 5-1-855	What constitutes abandonment
Sec. 5-1-860	Renewal
Sec. 5-1-865	Transfer of ownership or control
Sec. 5-1-870	Severability
<i>Division 11</i>	<i>Miscellaneous Provisions</i>
Sec. 5-1-910	Preferential or discriminatory practices prohibited
Sec. 5-1-915	Notices
Sec. 5-1-920	Descriptive headings
Sec. 5-1-925	Publication costs to be borne by Grantee
Sec. 5-1-930	Binding effect
Sec. 5-1-935	No joint venture
Sec. 5-1-940	Waiver
Sec. 5-1-945	Reasonableness of consent or approval
Sec. 5-1-950	Entire agreement

Article 2 Electric Franchise

Sec. 5-2-10	Definitions
Sec. 5-2-20	Grant of franchise
Sec. 5-2-30	Term of franchise
Sec. 5-2-40	Franchise fee
Sec. 5-2-50	Supply, construction and design
Sec. 5-2-60	Compliance
Sec. 5-2-70	Underground construction and conversion
Sec. 5-2-80	Planning, coordination and reports
Sec. 5-2-90	Indemnification of Town
Sec. 5-2-100	Transfer of franchise; consent of Town required
Sec. 5-2-110	Purchase, condemnation and termination
Sec. 5-2-120	Production of power
Sec. 5-2-130	Miscellaneous

Appendix

Appendix 5-A	Customer Service Standards
--------------	----------------------------

ARTICLE 1

Cable Television Franchise

Division 1
General Provisions

Sec. 5-1-10. Definitions.

For the purposes of this Franchise, 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, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word *shall* is always mandatory and not merely directory.

Activated means the status of any capacity or part of the cable system in which any cable service requiring the use of that capacity or part is available without further installation of system equipment, whether hardware or software.

Affiliate, when used in connection with the Grantee, means any person who owns or controls, is owned or controlled by, or is under common ownership or control with, the Grantee.

Bad debt means amounts lawfully billed to a subscriber, owed by the subscriber for cable service and accrued as revenues on the books of the Grantee, but not collected after reasonable efforts have been made by the Grantee to collect the charges.

Basic service means any cable service tier which includes, at a minimum, the retransmission of local television broadcast signals and local access programming.

Broadcast signal means a television or radio signal transmitted over the air to a wide geographic audience, and received by a cable system by antenna, microwave, satellite dishes or any other means.

Cable Act means Title VI of the Communications Act of 1934, as amended and codified at 47 U.S.C. § 151 et seq.

Cable Internet service means any cable service offered by the Grantee whereby persons receive access to the Internet through the cable system.

Cable operator means any person or groups of persons, including the Grantee, who provides cable service over a cable system and, directly or through one (1) or more affiliates, owns a significant interest in such cable system or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

Cable service means the one-way transmission to subscribers of video programming or other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. If it is so determined by the FCC or after final judgment and completion of all appeals by a court of competent jurisdiction in Colorado, *cable service* shall include cable Internet service and any other service as may be determined to be a cable service by the FCC or court of competent jurisdiction.

Cable system means any facility, including the Grantee's facility, consisting of a set of closed transmissions paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming

and which is provided to multiple subscribers within a community; however, such term does not include:

a. A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;

b. A facility that serves subscribers without using any right-of-way;

c. A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Federal Communications Act (47 U.S.C. § 201 et seq.), except that such facility shall be considered a cable system (other than for purposes of Section 621(c) (47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;

d. An open video system that complies with federal statutes; or

e. Any facilities of any electric utility used solely for operating its electric utility systems.

Channel means a portion of the electromagnetic frequency spectrum which is used in the cable system and which is capable of delivering a television channel (as *television channel* is defined by the FCC by regulation).

Commercial subscribers means any subscribers other than residential subscribers.

Designated access provider means the entity designated now or in the future by the Town to manage or co-manage access channels and facilities. The Town may be a designated access provider.

Downstream means carrying a transmission from the headend to remote points on the cable system or to interconnection points on the cable system.

Dwelling unit means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy. Buildings with more than one (1) set of facilities for cooking shall be considered multiple dwelling units unless the additional facilities are clearly accessory.

Expanded basic service means the tier of optional video programming services, which is the level of cable service received by most subscribers above basic service, and does not include premium services.

FCC means the Federal Communications Commission.

Fiber optic means a transmission medium of optical fiber cable, along with all associated electronics and equipment capable of carrying cable service by means of electric lightwave impulses.

Franchise means the document in which this definition appears, i.e., the contractual agreement executed between the Town and the Grantee, containing the specific provisions of the authorization granted to use the streets, alleys, public places or other rights-of-way of the Town, including references, specifications, requirements and other related matters.

Franchise area means the area within the jurisdictional boundaries of the Town, including any areas annexed by the Town during the term of this Franchise.

GAAP means generally accepted accounting principles.

Generally applicable means, when referenced to ordinances, laws or regulations, legal obligations that are not limited solely to the Grantee.

Grantee means US Cable of Coastal, Texas, L.P., or its lawful successor, transferee or assignee.

Gross revenues means any and all revenue received by the Grantee, or by any other entity, including the Grantee's affiliates, that is a cable operator of the cable system, from the operation of the Grantee's cable system to provide cable services in the Franchise Area. *Gross revenues* include, by way of illustration and not limitation, monthly fees charged subscribers for basic service; any expanded tiers of cable service; optional premium services; installation, disconnection, reconnection and change-in-service fees; leased access channel fees; remote control rental fees; all cable service lease payments from the cable system; revenues from rentals or sales of converters or other cable system equipment used to receive cable service; advertising revenues; the fair market value of consideration received by the Grantee for use of the cable system to provide cable service and accounted for as revenue under GAAP; revenues from program guides; revenue from cable Internet service or other service to the extent it is determined to be cable service in accordance with this Franchise; revenue from the sale or carriage of other cable services on the cable system; and revenue from home shopping, bank-at-home channels and other revenue-sharing arrangements. *Gross revenues* shall not include:

a. Payments or other consideration received by the Grantee from programmers for carriage of programming on the cable system to the extent that the Grantee's books and records consistent

with GAAP indicate that all such payments are utilized for payments by the Grantee for advertising or promotion which are contractually required by programmers;

b. To the extent consistent with GAAP, bad debt; provided, however, that all or part of any such bad debt that is written off but subsequently collected shall be included in gross revenues in the period collected;

c. The capital contribution specified in Section 5-1-435; or

d. Any taxes on services furnished by the Grantee which are imposed directly on any subscriber or user by the State, Town or other governmental unit and which are collected by the Grantee on behalf of said governmental unit. The Franchise fee is not such a tax.

The parties intend for the definition of *gross revenues* to be as inclusive as possible consistent with existing applicable law. If there is a change in federal law subsequent to the effective date of this Franchise, such change shall not impact this *gross revenues* definition unless the change specifically preempts the affected portion of the definition above.

Headend means any facility for signal reception and dissemination on a cable system, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators and processors for broadcast signals.

Institutional network or *I-Net* means that part of the cable system facilities or capacity designed principally as a private communications network governed by this Franchise and the Cable Act, to be utilized by the Town.

Interconnect or *interconnection* means the linking of the cable system or I-Net with another cable system, communications system or I-Net, including technical, engineering, physical, financial and other necessary components, to accomplish, complete and adequately maintain such linking, in a manner that permits the transmission and receiving of electronic or optical signals between the cable system and other cable system, communications system or I-Net; or the necessary components to accomplish, complete and adequately maintain pathways that permit the transmission and receiving of electronic or optical signals between locations connected to portions of the cable system outside the franchise area and those portions of the cable system inside the franchise area.

Leased access channel means any channel or portion of a channel of the cable system available to the public in a manner consistent with 47 U.S.C. § 532 for commercial use by persons other than the Grantee, for a fee or charge.

Node means an exchange point in the signal distribution system portion of the cable system, where optical signals are converted to RF signals.

PEG Access channel means any channel, or portion thereof, designated for PEG Access purposes or otherwise made available to facilitate or transmit PEG Access programming or services.

Person means any individual, sole proprietorship, partnership, association or corporation, or any other form of entity or organization.

Premium service means programming choices (such as movie channels, pay-per-view programs, video on demand or a package of digital tier services) offered to subscribers on a per-channel, per-program or per-event basis.

Public, educational, and governmental access or *PEG Access* means the availability of channel capacity on the cable system for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including the Town and its designees, including, but not limited to:

a. *Public access* means access where community-based, noncommercial organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users.

b. *Educational access* means access where schools are the primary users having editorial control over programming and services. For purposes of this definition, *school* means any state-accredited educational institution, public or private, including, for example, primary and secondary schools, colleges and universities.

c. *Government access* means access where governmental institutions or their designees are the primary users having editorial control over programming and services.

Residential subscriber means any person who receives cable service delivered to dwelling units or multiple dwelling units, excluding such multiple dwelling units billed on a bulk-billing basis.

Right-of-way means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the franchise area: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements, rights-of-way and similar public property and areas.

State means the State of Colorado.

Subscriber means any person who or which elects to subscribe to, for any purpose, cable service provided by the Grantee by means of or in connection with the cable system and whose premises are physically wired and lawfully activated to receive cable service from the Grantee's cable system.

Subscriber network means that portion of the cable system used primarily by the Grantee in the transmission of cable services to residential subscribers.

Telecommunications means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. § 153(43)).

Telecommunications service means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used (as provided in 47 U.S.C. § 153(46)).

Tier means a group of channels for which a single periodic subscription fee is charged.

Town means the Town of Wellington, Colorado, a body politic and corporate under the laws of the State, and all of the area within its boundaries, as such may change from time to time, and any of its legally established enterprises.

Town Administrator means the person designated by the Town who is responsible for the Town's administrative affairs.

Two-way means capable of providing both upstream and downstream transmissions.

Upgrade means improvements to the cable system, as specifically detailed in Section 5-1-710 of this Franchise.

Upstream means carrying a transmission to the headend from remote points on the cable system or from interconnection points on the cable system. (Ord. 2-2002 §1A; Ord. 11-2007 §1)

Sec. 5-1-15. Exhibits.

The document attached hereto as Appendix 5-A, entitled *Customer Service Standards*, and which is occasionally referred to in this Franchise, is formally incorporated and made a part of this Franchise by this reference. (Ord. 2-2002 §1B; Ord. 11-2007 §1)

Division 2 Grant of Franchise

Sec. 5-1-60. Grant.

(a) The Town hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct, operate, maintain, reconstruct, rebuild and upgrade a cable system in, along, among, upon, across, above, over, under or in any manner connected with public ways within the service area, for the purpose of providing cable service subject to the terms and conditions set forth in this Franchise and in any prior utility use agreements entered into with regard to individual property. This Franchise shall constitute both a right and an obligation to provide the cable services required by, and to fulfill the obligations set forth in, the provisions of this Franchise.

(b) Nothing in this Franchise shall be deemed to waive the lawful requirements of any

generally applicable Town ordinance existing as of the effective date, as defined in Section 5-1-70.

(c) Each and every term, provision or condition herein is subject to state law, federal law and Town ordinances and regulations enacted pursuant thereto.

(d) This Franchise shall not be interpreted to prevent the Town from imposing additional lawful conditions, including additional compensation conditions for use of the rights-of-way, should the Grantee provide service other than cable service.

(e) The Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any person who is a cable operator of this cable system in the franchise area, or directly involved in the management or operation of the cable system in the franchise area, will also comply with the terms and conditions of this Franchise.

(f) No rights shall pass to the Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the Town that may be required by the ordinances and laws of the Town;

(2) Any permit, agreement or authorization required by the Town for right-of-way users in connection with operations on or in rights-of-way or public property including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of the Town or private entities to which access is not specifically granted by this Franchise including,

without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

(g) This Franchise is intended to convey limited rights and interests only as to those rights-of-way in which the Town has an actual interest. It is not a warranty of title or interest in any right-of-way; it does not provide the Grantee with any interest in any particular location within the right-of-way; and it does not confer rights other than as expressly provided in the grant hereof.

(h) This Franchise does not authorize the Grantee to provide telecommunications service, or to construct, operate or maintain telecommunications facilities. This Franchise is not a bar to imposition of any lawful conditions on the Grantee with respect to telecommunications, whether similar, different or the same as the conditions specified herein. This Franchise does not relieve the Grantee of any obligation it may have to obtain from the Town an authorization to provide telecommunications services or to construct, operate or maintain telecommunications facilities or relieve the Grantee of its obligation to comply with any such authorizations that may be lawfully required. (Ord. 2-2002 §2.1)

Sec. 5-1-65. Use of rights-of-way.

Subject to the Town's supervision and control, the Grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the rights-of-way within the Town such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a cable system within the Town. The Grantee, through this Franchise, is granted extensive and valuable rights to operate its cable system for profit using the Town's rights-of-way in compliance with all

applicable Town construction codes and procedures. As trustee for the public, the Town is entitled to fair compensation to be paid for these valuable rights throughout the term of the Franchise. (Ord. 2-2002 §2.2)

Sec. 5-1-70. Effective date and term.

(a) This Franchise and the rights, privileges and authority granted hereunder shall take effect on _____, 2002 (the "effective date"), and shall terminate on January 20, 2017, unless terminated sooner as hereinafter provided.

(b) The grant of this Franchise shall have no effect on the Grantee's duty under prior Ordinance No. 8, Series 1985, dated September 24, 1985, and all amendments thereto, or any ordinance in effect prior to the effective date of this Franchise to indemnify or insure the Town against acts and omissions of the Grantee. (Ord. 2-2002 §2.3)

Sec. 5-1-75. Franchise nonexclusive.

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements or licenses granted by the Town to any person to use any property, right-of-way, right, interest or license for any purpose whatsoever, including the right of the Town to use the same for any purpose it deems fit, including the same or similar purposes allowed the Grantee hereunder. The Town may at any time grant authorization to use the rights-of-way for any purpose not incompatible with the Grantee's authority under this Franchise and for such additional franchises for cable systems as the Town deems appropriate on the same terms and conditions, so long as, in the reasonable direction of the Town, such additional franchises contain terms and conditions which, taken as a whole, are neither more favorable nor less burdensome than this Franchise. (Ord. 2-2002 §2.4)

Sec. 5-1-80. Police powers.

(a) The Grantee's rights hereunder are subject to the police powers of the Town to adopt and enforce ordinances necessary to the safety, health and welfare of the public, and the Grantee agrees to comply with all laws and ordinances of general applicability enacted, or hereafter enacted, by the Town or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The Town shall have the right to adopt, from time to time, such generally applicable ordinances as may be deemed necessary in the exercise of its police power; provided that such ordinances shall be reasonable and not destructive of the rights granted in this Franchise.

(b) The Town reserves the right to exercise its police powers, notwithstanding anything in this Franchise to the contrary, and any conflict between the provisions of this Franchise and any other present or future lawful exercise of the Town's police powers shall be resolved in favor of the latter. (Ord. 2-2002 §2.5)

Sec. 5-1-85. Familiarity with Franchise.

The Grantee and the Town each acknowledge and warrant by acceptance of the rights, privileges and agreements granted herein, that they have carefully read and fully comprehend the terms and conditions of this Franchise and are willing to and do accept all lawful and reasonable risks of the meaning of the provisions, terms and conditions herein. The Grantee further acknowledges and states that it has fully studied and considered the requirements relating to the upgrade of the cable system and all other requirements and provisions of this Franchise, and finds that the same are commercially practicable as of the effective date of this Franchise. (Ord. 2-2002 §2.6; Ord. 11-2007 §1)

Sec. 5-1-90. Effect of acceptance.

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the Town's legal right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise subject to applicable law and that as of the effective date this Franchise is consistent with federal and state law; and (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law and that it will not raise any claim to the contrary. (Ord. 2-2002 §2.7)

*Division 3
Franchise Fee Payment and
Financial Controls*

Sec. 5-1-110. Franchise fee.

(a) As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use the Town's rights-of-way, the Grantee shall pay as a franchise fee to the Town, throughout the duration of this Franchise, an amount equal to five percent (5%) of the Grantee's annual gross revenues. Accrual of such franchise fee shall commence as of the effective date of this Franchise.

(b) Whenever cable services (which are includable in gross revenues and subject to the franchise fee) are bundled (included) with non-cable services (which are not includable in gross revenues) and are billed to customers, such cable services revenues shall be calculated in the following manner and included in gross revenues subject to franchise fees.

(1) Step 1 – calculate the total price for all cable services using the a la carte prices for each. Example: $\$10 + \$25 + \$5 = \40 .

(2) Step 2 – calculate the total price for all noncable services using the a la carte price for each. Example: $\$20 + \$40 = \$60$.

(3) Step 3 – add the amounts calculated in Steps 1 and 2. Example: $\$40 + \$60 = \$100$.

(4) Step 4 – compare the amount calculated in Step 3 with the price for the bundled services; if the bundled price is less than the amount calculated in Step 3, go to Step 5. Example: bundled price = $\$75$.

(5) Step 5 – calculate the price discount percentage to be applied to both cable and non-cable revenues by dividing the amount of discount by the total a la carte price from Step 3. Example: discount ($\$100 - \$75 = \$25$) divided by a la carte price total from Step 3 ($\$100$) = 25%.

(6) Step 6 – multiply the cable services total price from Step 1 by the discount percentage from Step 5. Example: $\$40$ times 25% = $\$30$.

(7) Step 7 – include the amount calculated in Step 6 with gross revenues reported for franchise fee purposes.

In no event shall the amount allocated to cable services under the foregoing calculation exceed: (a) the total amount of combined revenue actually received by the operator; or (b) the net revenues derived when mandatory tariff rates, if any, imposed by a governmental authority for components of the combined service are deducted from the combined revenue. (Ord. 2-2002 §3.1)

Sec. 5-1-115. Payments.

In accordance with the Cable Act, the twelve-month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. The franchise fee payment shall be due annually. Each payment shall be due and payable no later than thirty (30) days after the end of the preceding calendar year. (Ord. 2-2002 §3.2)

Sec. 5-1-120. Acceptance of payment and recomputation.

No acceptance of any payment shall be construed as an accord by the Town that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the Town may have for further or additional sums payable or for the performance of any other obligation of the Grantee. (Ord. 2-2002 §3.3)

Sec. 5-1-125. Franchise fee reports.

The Grantee shall, with each franchise fee payment, furnish to the Town a statement stating the total amount of gross revenues for the year and all payments, deductions and computations for the period. Such statement shall be certified by an officer of the Grantee, prior to submission to the Town. Throughout the term of the Franchise, the Grantee, within thirty (30) days of the last day of the quarter, shall also submit to the Town annually franchise fee reports stating the total amount of gross revenues for the year, and all payments, deductions and computations for the quarter. (Ord. 2-2002 §3.4)

Sec. 5-1-130. Audits.

On an annual basis, upon thirty (30) days' prior written notice, the Town, including the Town's auditor, shall have the right to conduct an independent audit of the Grantee's records reasonably related to the administration or enforcement of this Franchise, in accordance with GAAP. If the audit shows that franchise fee payments have been underpaid by three percent (3%) or more, the Grantee shall reimburse the total out-of-pocket cost of the audit, such cost not to exceed three thousand dollars (\$3,000.00). The Town's right to audit and the Grantee's obligation to retain records related to a

franchise fee audit shall expire three (3) years after each franchise fee payment has been made to the Town. Reimbursement is due to the Town within thirty (30) days of mailing of an invoice to the Grantee. (Ord. 2-2002 §3.5)

Sec. 5-1-135. Late payments.

In the event any payment due annually is not received within sixty (60) days from the end of the calendar year, the Grantee shall pay interest on the amount due (at the rate of ten percent [10%] per annum compounded daily), calculated from the date the payment was originally due until the date the Town receives the payment. (Ord. 2-2002 §3.6)

Sec. 5-1-140. Underpayments.

If a net franchise fee underpayment is discovered as the result of an audit, the Grantee shall pay interest at the rate of the eight percent (8%) per annum, compounded quarterly, calculated from the date each portion of the underpayment was originally due until the date the Grantee remits the underpayment to the Town. (Ord. 2-2002 §3.7)

Sec. 5-1-145. Alternative compensation.

In the event the obligation of the Grantee to compensate the Town through franchise fee payments is lawfully suspended or eliminated, in whole or part, the Grantee shall pay to the Town compensation equivalent to the compensation paid to the Town by other similarly situated users of the Town's rights-of-way for the Grantee's use of the Town's rights-of-way, provided that in no event shall such payments exceed the equivalent of five percent (5%) of the Grantee's gross revenues (subject to the other provisions contained in this Franchise). (Ord. 2-2002 §3.8)

Sec. 5-1-150. Additional commitments not franchise fee payments.

No term or condition in this Franchise, including the funding required by Division 6, shall in any way modify or affect the Grantee's obligation to pay franchise fees. Although the total sum of franchise fee payments and additional PEG Access commitments set forth elsewhere in this Franchise may total more than five percent (5%) of the Grantee's gross revenues in any twelve-month period, the Grantee agrees that the additional PEG Access commitments herein are not franchise fees as defined under any federal law, nor are they to be offset or credited against any franchise fee payments due to the Town, nor do they represent an increase in franchise fees to be passed through to subscribers pursuant to any federal law. (Ord. 2-2002 §3.9)

Sec. 5-1-155. Tax liability.

Subject to applicable law, the franchise fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the Town, the State or the United States, including without limitation sales, use and other taxes, business license fees or other payments. Payment of the franchise fees under this Franchise shall not exempt the Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of the Grantee that may be lawfully imposed by the Town. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against the Grantee solely because of its status as a cable operator, or against subscribers, solely because of their status as such. (Ord. 2-2002 §3.10)

Sec. 5-1-160. Financial records.

The Grantee agrees to meet with a representative of the Town upon request to review the

Grantee's methodology of recordkeeping, financial reporting, the computing of franchise fee obligations and other procedures, the understanding of which the Town deems necessary for reviewing reports and records. (Ord. 2-2002 §3.11)

Sec. 5-1-165. Payment on termination.

If this Franchise terminates for any reason, the Grantee shall file with the Town within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the gross revenues received by the Grantee since the end of the previous fiscal year. The Town reserves the right to satisfy any remaining financial obligations of the Grantee to the Town by utilizing the funds available in the letter of credit or other security provided by the Grantee. (Ord. 2-2002 §3.12)

*Division 4**Administration and Regulation***Sec. 5-1-210. Authority.**

(a) The Town is vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest or to delegate that power and right, or any part thereof, in its sole discretion, to the extent permitted under state and local law; provided, however, that the Grantee shall have the right to appeal to the legislative body of the Town any adverse determination made by a delegate of the Town.

(b) Nothing in this Franchise shall limit or expand the Town's right of eminent domain under state law. (Ord. 2-2002 §4.1; Ord. 11-2007 §1)

Sec. 5-1-215. Rates and charges.

All of the Grantee's rates and charges related to or regarding cable services shall be subject to regulation by the Town to the full extent authorized by applicable federal, state and local laws. (Ord. 2-2002 §4.2)

Sec. 5-1-220. Rate discrimination.

All of the Grantee's rates and charges shall be nondiscriminatory as to all persons and organizations of similar classes, under similar circumstances and conditions, pursuant to Section 623 of the Cable Act, federal regulations promulgated thereunder and any other applicable federal, state or local law. (Ord. 2-2002 §4.3)

Sec. 5-1-225. Filing of rates and charges.

(a) Throughout the term of this Franchise, the Grantee shall maintain on file with the Town a complete schedule of applicable rates and charges for cable services provided under this Franchise. Nothing in this Section shall be construed to require the Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns. As used in this Section, no rate or charge shall be considered temporary if subscribers have the ability over a period greater than four (4) consecutive months (or such other period as may be approved by the Town) to purchase cable services at such rate or charge.

(b) Upon written request of the Town, the Grantee shall provide a complete schedule of current rates and charges for leased access channels, or portions of such channels, provided by the Grantee. The schedule shall include a description of the price, terms and conditions if established by the Grantee for leased access channels. (Ord. 2-2002 §4.4)

Sec. 5-1-230. Cross-subsidization.

The Grantee shall comply with all applicable laws regarding rates for cable services and all applicable laws covering issues of cross-subsidization. (Ord. 2-2002 §4.5)

Sec. 5-1-235. Reserved authority.

The Grantee and the Town each reserve all rights and authority arising from the Cable Act and any other relevant provisions of federal, state or local law. (Ord. 2-2002 §4.6)

Sec. 5-1-240. Time limits strictly construed.

Whenever this Franchise sets forth a time for any act to be performed by the Grantee, such time shall be deemed to be of the essence. (Ord. 2-2002 §4.7)

Sec. 5-1-245. Franchise amendment procedure.

Either party may at any time seek an amendment of this Franchise by so notifying the other party in writing. Within thirty (30) days of receipt of notice, the Town and the Grantee shall meet to discuss the proposed amendment. If the parties reach a mutual agreement upon the suggested amendment, such amendment shall be submitted to the Board of Trustees for its approval. If so approved by the Board of Trustees and the Grantee, then the amendment shall be deemed part of this Franchise. If mutual agreement is not reached, there shall be no amendment. (Ord. 2-2002 §4.8)

Sec. 5-1-250. Performance evaluations.

(a) The Town may hold performance evaluation sessions within ninety (90) days of the annual anniversary dates of the effective date of this Franchise. All such evaluation sessions shall be conducted by the Town.

(b) Special evaluation sessions may be held at any time by the Town during the term of this Franchise upon reasonable prior written notice to the Grantee.

(c) All evaluation sessions shall be open to the public and announced at least two (2) weeks in advance in a newspaper of general circulation in the Town. The Grantee shall also include with or on the subscriber billing statements, for the billing period immediately preceding the commencement of the session, written notification of the date, time and place of the regular performance evaluation session, and any special evaluation session as required by the Town, provided that the Grantee receives appropriate advance notice.

(d) Topics which may be discussed at any evaluation session may include, but are not limited to, cable service rate structures; franchise fee payments; liquidated damages; free or discounted cable services; application of new technologies; cable system performance; cable services provided; programming offered; subscriber complaints; privacy; amendments to this Franchise; judicial and FCC rulings; line extension policies; and the Town's or the Grantee's rules; provided that nothing in this Section shall be construed as requiring the renegotiation of this Franchise.

(e) During evaluations under this Section, the Grantee shall fully cooperate with the Town and shall provide such information and documents as the Town may reasonably require to perform the evaluation; provided, however, that nothing herein shall require the Grantee to create documents unless the parties mutually agree to the terms and conditions thereof. (Ord. 2-2002 §4.9)

Sec. 5-1-255. Late fees.

(a) For purposes of this Section, any assessment, charge, cost, fee or sum, however characterized, that the Grantee imposes upon a subscriber solely for late payment of a bill is a

late fee and shall be applied in accordance with applicable law.

(b) Nothing in this Section shall be deemed to create, limit or otherwise affect the ability of the Grantee, if any, to impose assessments, charges, fees or sums other than those permitted by this Section, for the Grantee's other services or activities it performs in compliance with applicable law, including FCC law, rule or regulation.

(c) The Grantee's late fee and disconnection policies and practices shall be nondiscriminatory; and such policies and practices, and any fees imposed pursuant to this Section, shall apply equally in all parts of the Town without regard to the neighborhood or income level of the subscriber. (Ord. 2-2002 §4.10)

Sec. 5-1-260. Force majeure.

(a) In the event the Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the control of the Grantee, the Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is reasonably satisfactory to the Town. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, labor unrest, lack of equipment or labor, telephone network outages and severe or unusual weather conditions which have a direct and substantial impact on the Grantee's ability to provide cable services in the Town and which were not caused and could not have been avoided by the Grantee using its reasonable best efforts in its operations to avoid such results.

(b) If the Grantee believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Franchise, the Grantee shall provide documentation as reasonably required by the Town to substantiate the Grantee's claim. If the Grantee has not yet cured

the deficiency, the Grantee shall also provide the Town with its proposed plan for remediation, including the timing for such cure. (Ord. 2-2002 §4.11)

Division 5
Financial Responsibilities

Sec. 5-1-310. Indemnification.

(a) General indemnification. The Grantee shall indemnify, defend and hold the Town, its officers, officials, boards, commissions and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees or expenses, arising from any casualty or accident to persons or property, including without limitation copyright infringement, defamation and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction or any other act done under this Franchise, by or for the Grantee, its agents or employees, or by reason of any neglect or omission of the Grantee; provided, however, that the Grantee shall have no responsibility whatsoever to indemnify any actions or claims of any kind arising from or related to PEG programming. The Grantee shall reasonably consult and cooperate with the Town while conducting its defense of the Town.

(b) Indemnification for relocation. The Grantee shall indemnify the Town for any damages, claims, additional costs or expenses assessed against, or payable by, the Town arising out of, or resulting from, the Grantee's failure to remove, adjust or relocate any of its facilities in the rights-of-way in a timely manner in accordance with any relocation required by the Town.

(c) Additional circumstances. The Grantee shall also indemnify, defend and hold the Town harmless for any claim for injury, damage, loss,

liability, cost or expense, including court and appeal costs and attorneys' fees or expenses in any way arising out of:

(1) The lawful actions of the Town in granting this Franchise to the extent such actions are consistent with this Franchise and applicable law; or

(2) Damages arising out of any failure by the Grantee to secure consents from the owners, authorized distributors or licensees/licensors of programs to be delivered by the cable system, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise.

(d) Procedures and defenses. If a claim or action arises, the Town or any other indemnified party shall promptly tender the defense of the claim to the Grantee, which defense shall be at the Grantee's expense. The Town may participate in the defense of a claim in which it is named, at its own cost.

(e) Nonwaiver. The fact that the Grantee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to the Grantee's duty of defense and indemnification under this Section.

(f) Expenses. If separate representation to fully protect the interests of both parties is necessary, such as arising from a conflict of interest between the Town and the counsel selected by the Grantee to represent the Town, after all reasonable measures have been taken to prevent the necessity of hiring separate counsel for the Town, the Grantee shall pay all reasonable expenses incurred by the Town in defending itself with regard to any action, suit or proceeding indemnified by the Grantee. The Town's expenses shall include all reasonable out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the Town Attorney or his

or her assistants or any employees of the Town, but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided to the Town by the Grantee. (Ord. 2-2002 §5.1)

Sec. 5-1-315. Insurance.

(a) The Grantee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance coverage:

(1) Commercial general liability insurance with limits of no less than one million dollars (\$1,000,000.00) per occurrence and one million dollars (\$1,000,000.00) general aggregate. Coverage shall be at least as broad as that provided by ISO CG 00 01 1/96 or its equivalent and include severability of interests. Such insurance shall name the Town, its officers, officials and employees as additional insureds per ISO CG 2026 or its equivalent. There shall be a waiver of subrogation and rights of recovery against the Town, its officers, officials and employees. Coverage shall apply as to claims between insureds on the policy, if applicable.

(2) Commercial automobile liability insurance with minimum combined single limits of one million dollars (\$1,000,000.00) each occurrence and one million dollars (\$1,000,000.00) aggregate with respect to each of the Grantee's owned, hired and nonowned vehicles assigned to or used in the operation of the cable system in the Town. The policy shall contain a severability of interests provision.

(b) Each policy shall provide that a certificate of insurance shall be provided to the Town stating that the policy or policies of insurance shall not be canceled or materially changed so as to be out of compliance with these requirements without thirty (30) days' written notice first provided to the Town, via certified mail, and ten (10) days' notice for nonpayment of premium. If

the insurance is canceled or materially altered so as to be out of compliance with the requirements of this Section within the term of this Franchise, the Grantee shall provide a replacement coverage policy. The Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Franchise. (Ord. 2-2002 §5.2)

Sec. 5-1-320. Deductibles and certificate of insurance.

(a) Liability. Any deductible of the policies shall not in any way limit the Grantee's liability to the Town.

(b) Endorsements. All policies shall contain, or shall be endorsed so that:

(1) The Town, its officers, official, boards, commissions and employees shall be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, the Grantee under this Franchise or applicable law, or in the construction, operation, repair or ownership of the cable system.

(2) The Grantee's insurance coverage shall be primary insurance with respect to the Town, its officers, officials, boards, commissions, employees and agents. Any insurance or self-insurance maintained by the Town, its officers, officials, boards, commissions, employees and agents shall be in excess of the Grantee's insurance and shall not contribute to it.

(3) The Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

(c) Acceptability of insurers. The insurance obtained by the Grantee shall be placed with insurers with a Best's rating of no less than "A VIII."

(d) Verification of coverage. The Grantee shall furnish the Town with a certificate of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificate and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices.

(e) Self-insurance. In the alternative to providing a certificate of insurance to the Town certifying insurance coverage as required above, the Grantee may provide self-insurance in the same amount and level of protection for the Grantee and the Town, its officers, agents and employees, as otherwise required under this Division. The adequacy of self-insurance shall be subject to the periodic review and approval of the Town. (Ord. 2-2002 §5.3)

Sec. 5-1-325. Construction bond.

(a) The Grantee shall provide and maintain in effect a construction bond in the amount of one hundred thousand dollars (\$100,000.00) to secure completion of the upgrade of the cable system. Upon the successful completion of the upgrade described in Division 8, the Town shall release or return the bond within ten (10) business days of receipt of written request, either by signing a release form or returning the bond itself.

(b) The construction bond may be drawn on by the Town for those purposes specified in Section 5-1-845 hereof, and/or violations of the requirements of Divisions 5 and 7 with regard to the system upgrade requirements provided in Division 8 herein. Any such draw shall be conducted according to the procedures of Division 10, as the case may be, provided that the Grantee has received written notice and thirty (30) days after receipt of notice to cure any material violations before any payment.

(c) Within thirty (30) days after notice to the Grantee that any amount has been withdrawn by the Grantee from the bond pursuant to Division 10, the Grantee shall restore the bond to its original amount.

(d) The Grantee shall have the right to appeal to the Board of Trustees for reimbursement in the event the Grantee believes that the bond was drawn upon improperly. The Grantee shall also have the right of judicial appeal if the Grantee believes that the bond has not been properly drawn upon in accordance with this Franchise. Any amounts the Town erroneously or wrongfully withdraws from the bond shall be returned to the Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the *Wall Street Journal* on the date the funds were withdrawn.

(e) Maintenance of the requisite construction bond shall not in any way limit the liability of the Grantee for any failure to fully perform its obligations under this Franchise. (Ord. 2-2002 §5.4; Ord. 11-2007 §1)

Sec. 5-1-330. Letter of credit.

(a) The Grantee shall establish and provide to the Town, as security for the faithful performance by the Grantee of all of the provisions of this Franchise, a letter of credit in the amount of five thousand dollars (\$5,000.00).

(b) The letter of credit shall be maintained at five thousand dollars (\$5,000.00) throughout the term of this Franchise.

(c) The letter of credit may be drawn upon by the Town in accordance with the procedures set forth in Section 5-1-810, for purposes including, but not limited to, the following:

(1) Failure of the Grantee to pay to the Town sums due under the terms of this Franchise;

(2) Reimbursement of costs borne by the Town to correct franchise violations not corrected by the Grantee;

(3) Monetary remedies or damages assessed against the Grantee due to default or breach of franchise requirements; and

(4) Failure to comply with the Customer Service Standards of the Town, as the same may be amended from time to time by the Board of Trustees acting by resolution or ordinance.

(d) Upon assessment of any amounts that may be drawn from the letter of credit after compliance with the procedures of Section 5-1-810 herein, the Town shall provide written notice to the Grantee of the amount assessed. The Grantee shall have thirty (30) days from the date of such notice to pay the assessment prior to the Town's accessing the letter of credit.

(e) The Town shall give the Grantee written notice of any withdrawal under this Section upon such withdrawal. Within seven (7) business days following receipt of such notice, the Grantee shall restore the letter of credit to the amount required under this Franchise.

(f) The Grantee shall have the right to appeal to the Board of Trustees for reimbursement in the event the Grantee believes that the letter of credit was drawn upon improperly. The Grantee shall also have the right of judicial appeal if the Grantee believes that the letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds the Town erroneously or wrongfully withdraws from the letter of credit shall be returned to the Grantee, with interest from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal. (Ord. 2-2002 §5.5)

Sec. 5-1-335. Customer service standards.

The Grantee shall comply with customer service standards promulgated by the FCC, as well as any applicable customer service standards lawfully adopted of the Town, as the same may be amended from time to time by the Board of Trustees acting by resolution or ordinance. The Town's current customer service standards are attached to this Chapter as Appendix 5-A. The Grantee reserves the right to challenge any customer service ordinance that it believes is inconsistent with its contractual rights under this Franchise. (Ord. 2-2002 §6.1; Ord. 11-2007 §1)

Sec. 5-1-340. Customer service.

(a) Subscriber privacy. The Grantee shall fully comply with any provisions regarding the privacy rights of subscribers contained in federal, state or local law.

(b) Subscriber contracts. The Grantee shall not enter into a contract with any subscriber that is in conflict with the terms of this Franchise or any exhibit thereto, or the requirements of any applicable customer service standard. Upon request, the Grantee will provide to the Town a sample of the subscriber contract or service agreement then in use.

(c) Advance notice to Town. The Grantee shall use reasonable efforts to furnish to the Town, in advance, any notices provided to subscribers or the media in the normal course of business. (Ord. 2-2002 §§6.2—6.4; Ord. 11-2007 §1)

Sec. 5-1-345. Open records.

The Town, including the Town's auditor, shall have access to and the right to inspect any books and records of the Grantee and its parent

corporations and affiliates, which are related to the administration or enforcement of the terms of this Franchise, subject to the provisions of Section 5-1-350 and which are not subject to contractual confidentiality agreements or subscriber privacy requirements. The Grantee shall not deny the Town access to any such records on the basis that the Grantee's records are under the control of any affiliate or a third party. The Town may, in writing, request copies of any such records required under this Division, and the Grantee shall provide such copies within thirty (30) days of the receipt of such request. One (1) copy of all reports and records required under this or any other section shall be furnished to the Town, at the sole expense of the Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, the Grantee may request, in writing within ten (10) days of receipt of the Town's written request, that the Town inspect them at the Grantee's local offices. If any books or records of the Grantee are not kept in a local office, and if the Town reasonably determines that an examination of such records is necessary or appropriate for the performance of any of the Town's administration or enforcement of this Franchise, the Grantee shall deliver the books or records for inspection locally. (Ord. 2-2002 §7.1)

Sec. 5-1-350. Confidentiality.

The Town agrees to treat as confidential any books or records that constitute proprietary, confidential or trade secret information under federal or state law, to the extent that the Grantee makes the Town aware of such confidentiality, and why such information is confidential under state or federal law. If the Town believes it must release any such confidential books and records in the course of enforcing this Franchise, or for any other reason, it shall advise the Grantee in writing at least ten (10) days in advance so that the Grantee may take appropriate steps to protect

its interests. If the Town receives a demand from any person for disclosure of any information designated by the Grantee as confidential, the Town shall advise the Grantee and provide the Grantee with a copy of any written request by the party demanding access to such information as soon as reasonably possible, but in all cases prior to the release of the information. Until otherwise ordered by a court or agency of competent jurisdiction, the Town agrees that, to the extent permitted by state and federal law, it shall deny access to any of the Grantee's books and records marked confidential as set forth above to any person. The Grantee shall indemnify the Town and reimburse the Town for all reasonable costs and attorneys' fees incurred in any legal proceedings pursued under this Section. (Ord. 2-2002 §7.2)

Sec. 5-1-355. Records required.

(a) Except as otherwise indicated herein, the Grantee shall maintain and retain records for the period of time required by the FCC or other applicable governmental regulatory agency or, when there is no applicable governmental agency requirement, for five (5) years, and shall furnish to the Town upon written request:

(1) At the completion of the upgrade of the cable system, a complete set of maps showing the location of all cable system equipment and facilities in the right-of-way, but excluding details on proprietary electronics contained therein and subscriber drops. As-built maps including proprietary electronics shall be available at the Grantee's offices for inspection by the Town's authorized representative or agent and made available to such upon reasonable notice during regular business hours, during the course of technical inspections as reasonably conducted by the Town. These maps shall be certified as accurate at the time they are prepared by an appropriate representative of the Grantee.

(2) A copy of all FCC filings on behalf of the Grantee and its affiliates which relate to the operation of the cable system in the Town.

(3) A current list of cable services, rates and channel line-ups.

(b) Subject to Section 350, all information furnished to the Town is public information and shall be treated as such, except for information involving the privacy rights of individual subscribers. (Ord. 2-2002 §7.3)

Sec. 5-1-360. Annual reports.

Upon written request, but no more often than annually, the Grantee shall submit to the Town a written report which shall include, but not necessarily be limited to, a summary of the previous year's activities in the development of the cable system, including but not limited to cable services begun or discontinued during the reporting year. (Ord. 2-2002 §7.4)

Sec. 5-1-365. Copies of federal and state reports.

Upon reasonable written request, the Grantee shall submit to the Town copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by the Grantee or its parent corporation to any federal, state or local courts, regulatory agencies and other governmental bodies if such documents directly relate to the operations of the Grantee's cable system within the Town. The Grantee shall submit such documents to the Town no later than thirty (30) days following receipt of a written request. The Grantee shall not claim confidential, privileged or proprietary rights to such documents unless, under federal, state or local law, such documents have been determined to be confidential by a court of competent jurisdiction or a federal or state agency. With

respect to all documents provided to any federal, state or local regulatory agency as a routine matter in the due course of operating the Grantee's cable system within the Town, the Grantee shall make such documents available to the Town upon reasonable written request. (Ord. 2-2002 §7.5; Ord. 11-2007 §1)

Sec. 5-1-370. Complaint file and reports.

(a) The Grantee shall keep an accurate and comprehensive file of any and all complaints it receives regarding the cable system and the Grantee's actions in response to those complaints. Such files shall be kept in a manner consistent with the privacy rights of subscribers. These files shall remain open to the Town and the public during normal business hours. Within sixty (60) days of December 31 of each year, the Grantee shall provide to the Town a report in a mutually acceptable format which shall include all customer complaints received by the Grantee within the time period specified in the Town's request, but no greater than a one-year period, including customer complaints referred by the Town to the Grantee.

(b) A log of all service interruptions shall be maintained and provided to the Town upon written request.

(c) The Grantee shall provide to the Town such other reports as mutually agreed upon. (Ord. 2-2002 §7.6)

Sec. 5-1-375. False statements.

Any false statement or representation in any written report required by this Franchise (not including clerical errors or errors made in good faith) may be deemed a breach of this Franchise and may subject the Grantee to liquidated damages. The Grantee shall have notice and the opportunity to cure any such statement, which shall bar the assessment of liquidated damages. (Ord. 2-2002 §7.7)

Division 6
Programming and Services

Sec. 5-1-410. Broad programming categories.

The Grantee shall provide or enable the provision of at least the following initial broad categories of programming to the extent such categories are reasonably available:

- (1) Educational programming;
- (2) Colorado news, weather and information;
- (3) Sports;
- (4) General entertainment (including movies);
- (5) Children/family-oriented;
- (6) Arts, culture and performing arts;
- (7) Science/documentary; and
- (8) National news, weather and information. (Ord. 2-2002 §8.1)

Sec. 5-1-415. Deletion or reduction of broad programming categories.

(a) Subject to federal law, the Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without the prior written consent of the Town.

(b) In the event of a modification proceeding under federal law, the mix and quality of cable services provided by the Grantee on the effective date of this Franchise shall be deemed the mix and quality of cable services required under this Franchise throughout its term. (Ord. 2-2002 §8.2)

Sec. 5-1-420. Parental control device.

Upon request by any subscriber, the Grantee shall lease or sell a parental control or lockout device, trap or filter to enable a subscriber to prohibit viewing of a particular cable service during periods selected by the subscriber. The Grantee shall inform its subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. (Ord. 2-2002 §8.3)

Sec. 5-1-425. Continuity of service mandatory.

(a) It shall be the right of all subscribers to continue to receive cable service from the Grantee insofar as their financial and other obligations to the Grantee are honored. The Grantee shall use its best efforts so as to ensure that all subscribers receive continuous, uninterrupted cable service regardless of the circumstances. For the purposes of this Section, *uninterrupted* does not include short-term outages of the cable system for maintenance or testing.

(b) In the event of a change of Grantee, or in the event a new cable operator acquires the cable system in accordance with this Franchise, the Grantee shall reasonably cooperate with the Town, new franchisee or cable operator in maintaining continuity of cable service to all subscribers. During any transition period, the Grantee shall be entitled to the revenues for any period during which it operates the cable system, and shall be entitled to reasonable costs for its services when it no longer operates the cable system.

(c) Subject to the force majeure provision of this Franchise, failure of the Grantee to operate the cable system for four (4) consecutive days without prior approval of the Town Administrator or without just cause may be considered a material violation of this Franchise. (Ord. 2-2002 §8.4)

Sec. 5-1-430. Initial capital contribution.

Within ten (10) days of the effective date of this Franchise, the Grantee shall provide a capital contribution of five thousand dollars (\$5,000.00) which the Town shall use for video production and to purchase equipment to produce access programming. On or before January 23, 2003, the Grantee shall provide a second capital contribution of two thousand five hundred dollars (\$2,500.00) which the Town shall use for video production and to purchase equipment to produce access programming. (Ord. 2-2002 §9.1)

Sec. 5-1-435. Management and control of access channels.

(a) The Town shall have sole and exclusive responsibility for the operation and administration of the access channels, identifying the designated access providers and allocating the access resources under this Division. The Town may authorize designated access providers to control and manage the use of any and all access facilities provided by the Grantee under this Franchise, including without limitation the operation of access channels. To the extent of such designation by the Town, the designated access provider shall have sole and exclusive responsibility for operating and managing such access facilities and for compliance with the law regarding the same. The Town may formulate rules for the operation of the access channels, consistent with this Franchise and the Grantee's reasonable technical requirements. The Grantee shall cooperate with the Town and designated access providers in the use of the cable system and access facilities for the provision of access; however, nothing herein shall require the Grantee to expend capital or human resources in support of access beyond that specifically required by this Franchise. Nothing herein shall prohibit the Town from authorizing itself to be a designated access provider. Nothing herein shall

prohibit the Town from assigning several designated access providers to share a single access channel.

(b) All assigned access channels can be used to transmit signals in any format which is technically compatible with the cable system, including, by way of example and not limitation, video, audio only, secondary audio and/or text messages. Such uses must be in furtherance of access purposes. (Ord. 2-2002 §9.2; Ord. 11-2007 §1)

Sec. 5-1-440. Initial access channel.

As of the effective date, the Grantee shall provide one (1) downstream government and educational access channel on the cable system for the Town's exclusive use. (Ord. 2-2002 §9.3)

Sec. 5-1-445. Additional access channels.

The Town may require the Grantee to activate, at the Grantee's expense, up to two (2) additional downstream access channels, for a maximum of three (3) access channels. If the Town believes that additional access channel capacity is needed, and if the Grantee provides more than three (3) access channels to any of its other cable systems in Larimer County, within ninety (90) days of receiving a request for an additional channel or channels from the Town, the Grantee shall provide such additional channel; provided, however, that the Grantee shall not be obligated to provide a greater total number of access channels to the Town than it provides to any other franchising authority in the County. (Ord. 2-2002 §9.4)

Sec. 5-1-450. Access channels on basic service.

All access channels provided to subscribers under this Franchise shall be included by the Grantee, without limitation, as a part of the basic service. (Ord. 2-2002 §9.5)

Sec. 5-1-455. Access channel assignments.

The Grantee will use its best efforts to minimize the movement of access channel assignments. (Ord. 2-2002 §9.6)

Sec. 5-1-460. Relocation of access channels.

The Grantee shall provide the Town with a minimum of one hundred twenty (120) days' notice prior to the time any access channel designation is changed, unless the change is required by federal law, in which case the Grantee shall give the Town the maximum notice possible. The Grantee, at its expense, will place the Town's notices of the channel change on or with its regular monthly billings, upon the Town's request. Any new channel designations for the access channels provided pursuant to this Franchise shall be in full compliance with FCC signal quality and proof-of-performance standards. (Ord. 2-2002 §9.7)

Sec. 5-1-465. Technical quality.

The Grantee shall maintain all access channels, interconnects and return lines at the same or better level of technical quality and reliability required by this Franchise and all other applicable laws, rules and regulations for other channels, services and Interconnects. The Grantee shall provide routine maintenance and shall repair and replace all Grantee-owned transmission equipment as necessary to carry a quality signal from the access facilities provided under this Franchise to subscribers. (Ord. 2-2002 §9.8)

Sec. 5-1-470. Change in technology.

In the event the Grantee makes any change in the cable system and related equipment and facilities or in the Grantee's signal delivery technology, which affects the signal quality or transmission of access services or programming, the Grantee shall, at its own expense, take necessary technical steps or provide necessary technical assistance, including the acquisition of all

necessary equipment and training of access personnel, to ensure that the capabilities of access services are not diminished or adversely affected by such change. For example, this provision shall apply if the cable system is converted from an analog to a digital format, such that the access channels must also be converted to digital in order to be received by subscribers. (Ord. 2-2002 §9.9)

Sec. 5-1-475. Information about access programming to subscribers.

Upon request by the Town, the Grantee shall include information about access programming in the installation packet provided to subscribers. The Town shall supply the materials, for insertion in the packet, in a format consistent with the Grantee's requirements. (Ord. 2-2002 §9.10)

Sec. 5-1-480. Institutional network.

The I-Net is a private communications network governed by this Franchise and the Cable Act. The I-Net may be used by the Town and any qualified I-Net user to provide any technically and legally compatible, noncommercial service. The Town and the Grantee shall negotiate in good faith and mutually agree on the development, use and cost of the I-NET; provided however, that any charges imposed by the Grantee upon the Town shall not exceed its actual costs. (Ord. 2-2002 §10)

*Division 7
General Right-of-Way
Use and Construction*

Sec. 5-1-510. Right to construct.

Subject to generally applicable laws, regulations, rules, resolutions and ordinances of the Town and the provisions of this Franchise, the Grantee may perform all construction in the rights-of-way for any facility needed for the maintenance, upgrade or extension of the Grantee's cable system. (Ord. 2-2002 §11.1)

Sec. 5-1-515. Right-of-way meetings.

Subject to receiving reasonable advance notice, the Grantee will regularly attend and participate in meetings of the Town regarding right-of-way issues that may impact the cable system. (Ord. 2-2002 §11.2)

Sec. 5-1-520. Joint trenching/boring.

Whenever it is possible and reasonably practicable to jointly trench or share bores or cuts, the Grantee shall work with other providers, licensees, permittees and franchisees so as to reduce so far as possible the number of right-of-way cuts within the Town. (Ord. 2-2002 §11.3; Ord. 11-2007 §1)

Sec. 5-1-525. General standard.

All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices. (Ord. 2-2002 §11.4)

Sec. 5-1-530. Permits required for construction.

Prior to doing any work in the right-of-way or other public property, the Grantee shall apply for and obtain appropriate permits from the Town. The Grantee shall comply with the generally applicable ordinances, laws or regulations regarding Town rights-of-way as may be adopted from time to time pursuant to the Town's lawful police powers. The Grantee shall pay all generally applicable and lawful fees for the requisite Town permits received by the Grantee. (Ord. 2-2002 §11.5)

Sec. 5-1-535. Emergency permits.

In the event that emergency repairs are necessary, the Grantee shall immediately notify the Town of the need for such repairs. The Grantee

may initiate such emergency repairs and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency. (Ord. 2-2002 §11.6)

Sec. 5-1-540. Compliance with applicable codes.

(a) Town construction codes. The Grantee shall comply with all applicable Town construction codes, including without limitation the Uniform Building Code and other building codes, the Uniform Fire Code, the Uniform Mechanical Code and zoning codes and regulations.

(b) Tower specifications. Antenna supporting structures (towers) shall be designed for the proper loading as specified by the Electronics Industries Association (EIA), as those specifications may be amended from time to time. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable federal, state and local codes or regulations.

(c) Safety codes. The Grantee shall comply with all applicable federal, state and Town safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by applicable law during construction, operation and repair of its cable system. By way of illustration and not limitation, the Grantee shall comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards. (Ord. 2-2002 §11.7)

Sec. 5-1-545. Mapping.

The Grantee shall comply with any generally applicable ordinances, rules and regulations of the Town regarding mapping systems for users of the rights-of-way. Upon completion of the upgrade, the Grantee shall provide to the Town Administrator a current, accurate and complete

set of maps, in digital format, compatible with the Town's mapping system. Such maps shall provide information indicating the horizontal and vertical location of the Grantee's system and equipment which the Grantee owns or controls for all new installations, and horizontal location of all existing system and equipment located in the streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks and front yard rights-of-way. (Ord. 2-2002 §11.8)

Sec. 5-1-550. Minimal interference.

Work in the right-of-way, on other public property, near public property or on or near private property shall be done in a manner that minimizes interference with the rights and reasonable convenience of property owners and residents. The Grantee's cable system shall be constructed and maintained in such manner as not to interfere with sewers, water pipes or any other property of the Town, or with any other pipes, wires, conduits, pedestals, structures or other facilities that may have been laid in the rights-of-way by, or under, the Town's authority. The cable system shall be located, erected and maintained so as not to endanger or unreasonably interfere with the lives of persons, to interfere with new improvements the Town may deem proper to make, or to unnecessarily hinder or obstruct the free use of the rights-of-way or other public property; shall not unreasonably interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof; and shall not obstruct or impede traffic. In the event of such interference, the Town may require the removal or relocation of the Grantee's lines, cables, equipment and other appurtenances from the property in question at the Grantee's expense. (Ord. 2-2002 §11.9)

Sec. 5-1-555. Safety provisions.

The Grantee shall provide and use any equipment and facilities necessary to control and carry the Grantee's signals so as to prevent

injury to the Town's property or property belonging to any person. The Grantee, at its own expense, shall repair, renew, change and improve its facilities to keep them in good repair and in safe and presentable condition. All excavations made by the Grantee in the rights-of-way shall be properly safeguarded for the prevention of accidents by the placement of adequate barriers, fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights. (Ord. 2-2002 §11.10)

Sec. 5-1-560. Hazardous substances.

(a) The Grantee shall comply with any and all applicable laws, statutes, regulations and orders concerning hazardous substances relating to the Grantee's cable system in the rights-of-way.

(b) The Grantee agrees to indemnify the Town against any claims, costs and expenses of any kind, whether direct or indirect, incurred by the Town arising out of a release of hazardous substances caused by the Grantee's cable system. (Ord. 2-2002 §11.11)

Sec. 5-1-565. Notice prior to work.

Prior to doing any work in the right-of-way, the Grantee shall give appropriate notices to the Town and to the notification association established in Section 9-1.5-105, C.R.S. (Ord. 2-2002 §11.12; Ord. 11-2007 §1)

Sec. 5-1-570. Notice to private property owners.

Except in the case of an emergency involving public safety or service interruptions to a large number of subscribers, the Grantee shall give notice to private property owners or legal tenants of work on private property in accordance with the adopted customer service standards, as the same may be amended from time to time by the Board of Trustees acting by ordinance. (Ord. 2-2002 §11.13; Ord. 11-2007 §1)

Sec. 5-1-575. Underground construction and use of poles.

(a) Where electric, telephone and other above-ground utilities are installed underground at the time of cable system construction upgrade, when construction in new developments where all utilities are required to be placed underground, or when all such wiring is subsequently placed underground, all cable system lines shall also be placed underground with other wire line service at no expense to the Town or subscribers unless funding is generally available for such relocation to all users of the rights-of-way. Related cable system equipment, such as pedestals, must be placed in accordance with the Town's applicable code requirements and rules. In areas where either electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation. Nothing contained in this Section shall require the Grantee to construct, operate and maintain underground any ground-mounted appurtenances.

(b) The Grantee shall utilize existing poles and conduit wherever possible and commercially reasonable. For purposes of this Section, rates set forth by any applicable state or federal regulations shall be considered commercially reasonable.

(c) In the event the Grantee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement on commercially reasonable terms, and only in such event, then it shall be lawful for the Grantee to make all needed excavations in the rights-of-way for the purpose of placing, erecting, laying, maintaining, repairing and removing poles, supports for wires and conductors, and any other facility needed for the maintenance or extension of the

Grantee's cable system. All poles of the Grantee shall be located as designated by the proper Town authorities.

(d) This Franchise does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the Town or any other person.

(e) The Grantee and the Town recognize that situations may occur in the future where the Town may desire to place its own cable or conduit for fiber-optic cable in trenches or bores opened by the Grantee. The Grantee agrees to cooperate with the Town in any construction by the Grantee that involves trenching or boring, provided that the Town has first provided reasonable notice to the Grantee that it is interested in sharing the trenches or bores in the area where the Grantee's construction is occurring. The Grantee shall allow the Town to lay its cable, conduit and fiber-optic cable in the Grantee's trenches and bores, provided that the Town shares in the cost of the trenching and boring on the same terms and conditions as the Grantee at that time shares the total cost of trenches and bores. The Town shall be responsible for maintaining its respective cable, conduit and fiber-optic cable buried in the Grantee's trenches and bores under this Section. (Ord. 2-2002 §11.14; Ord. 11-2007 §1)

Sec. 5-1-580. Undergrounding of multiple-dwelling-unit drops.

In cases of single-site multiple-dwelling units, the Grantee shall minimize the number of individual aerial drop cables by installing multiple drop cables underground between the pole and the multiple-dwelling unit where determined to be technologically feasible and commercially reasonable in agreement with the owners and/or owner's association of the multiple-dwelling units. (Ord. 2-2002 §11.15)

Sec. 5-1-585. Burial standards.

(a) Depths. Unless otherwise required by law, the Grantee shall comply with the following burial depth standards. In no event shall the Grantee be required to bury its cable deeper than electric or gas facilities in the same portion of the right-of-way:

(1) Underground cable drops from the curb shall be buried at a minimum depth of twelve (12) inches unless blocked by rock, terrain or other utilities.

(2) Feeder lines and trunk lines for coaxial cable shall be buried at a minimum depth of twenty-four (24) inches, unless blocked by rock, terrain or other utilities.

(3) Fiber-optic cable for all lines shall be buried at a minimum depth of thirty-six (36) inches, unless blocked by rock, terrain or other utilities.

(b) Timeliness. Cable drops installed by the Grantee to residences shall be buried according to these standards within one (1) calendar week of initial installation, or at a time mutually agreed upon between the Grantee and the subscriber. When freezing surface conditions or other weather conditions prevent the Grantee from achieving such timetable, the Grantee shall apprise the subscriber of the circumstances and the revised schedule for burial, and shall provide the subscriber with the Grantee's telephone number and instructions as to how and when to call the Grantee to request burial of the line if the revised schedule is not met. (Ord. 2-2002 §11.16)

Sec. 5-1-590. Electrical bonding.

The Grantee shall ensure that all cable drops are properly bonded to the electrical power ground at the home, consistent with applicable

code requirements. All nonconforming or non-performing cable drops shall be replaced by the Grantee as necessary. (Ord. 2-2002 §11.17)

Sec. 5-1-595. Prewiring.

Any ordinance or resolution of the Town which requires prewiring of residential developments in a joint trench for electrical and telephone service shall be construed to include wiring for cable systems, subject to compliance with Section 5-1-755. (Ord. 2-2002 §11.18)

Sec. 5-1-600. Repair and restoration of property.

(a) The Grantee shall protect public and private property from damage. If damage occurs, the Grantee shall promptly notify the property owner within twenty-four (24) hours in writing.

(b) Whenever the Grantee disturbs or damages any right-of-way, other public property or any private property, the Grantee shall promptly restore the right-of-way or property to at least its prior condition, normal wear and tear excepted, at its own expense.

(c) The Grantee shall warrant any restoration work performed by or for the Grantee in the right-of-way or on other public property for two (2) years, which two-year warranty shall not include landscaping materials. With respect to landscaping materials, the Grantee shall warrant such work and materials for one (1) year, provided that the party responsible for the landscaping material reasonably maintains it during the warranty period.

(d) Upon completion of the work that caused any disturbance or damage, the Grantee shall promptly commence restoration of private property, and will use its best efforts to complete the restoration within seventy-two (72) hours, considering the nature of the work that must be performed. (Ord. 2-2002 §11.19)

Sec. 5-1-605. Use of conduits by Town.

Subject to any applicable state or federal regulations or tariffs, the Town may install or affix and maintain wires and equipment owned by the Town for Town purposes in or upon any and all of the Grantee's ducts, conduits or equipment in the rights-of-way and other public places on mutually acceptable terms and conditions to the extent space therein or thereon is reasonably available and pursuant to all applicable ordinances and codes; provided that: (1) such use by Town does not interfere with the current or future use by the Grantee; (2) the Town holds the Grantee harmless against and from all claims, demands, costs or liabilities of every kind and nature whatsoever arising out of such use, including but not limited to reasonable attorneys' fees and costs; (3) such use by the Town is restricted to noncommercial municipal purposes; (4) the Town takes reasonable precautions to prevent any use of the Grantee's conduits, ducts or equipment in any manner that results in inappropriate use thereof, or any loss or damage to the conduit, ducts, equipment or cable system; and (5) the Town does not use the conduits, ducts or equipment for any purpose that is in competition with the services offered by the Grantee. For the purposes of this Subsection, *Town purposes* includes, but is not limited to, the use of the structures and installations for Town fire, police, traffic, water, telephone and/or signal systems, but not for cable service in competition with the Grantee. The Grantee shall not deduct the value of such use of its facilities from its franchise fee payments or from other fees payable to the Town. (Ord. 2-2002 §11.20)

Sec. 5-1-610. Common users.

(a) For the purposes of this Subsection:

Attachment means any wire, optical fiber or other cable, and any related device, apparatus or auxiliary equipment, for the purpose of voice, video or data transmission.

Conduit or *conduit facility* means any structure, or section thereof, containing one (1) or more ducts, conduits, manholes, hand-holes or other such facilities in the Grantee's cable system.

Duct means a single enclosed raceway for cables, fiber optics or other wires.

Licensee means any person licensed or otherwise permitted by the Town to use the rights-of-way.

Surplus ducts or *conduits* are conduit facilities other than those occupied by the Grantee or any prior licensee, or unoccupied ducts held by the Grantee as emergency use spares, or other unoccupied ducts that the Grantee reasonably expects to use within two (2) years from the date of a request for use. One (1) extra duct installed for backup or expansion shall not be considered surplus.

(b) The Grantee acknowledges that the rights-of-way have a finite capacity for containing conduits. Therefore, the Grantee agrees that, whenever the Town determines it is impracticable to permit construction of an underground conduit system by any other person which may at the time have authority to construct or maintain conduits or ducts in the rights-of-way, but excluding persons providing cable services in competition with the Grantee, the Town may require the Grantee to afford to such person the right to use the Grantee's surplus ducts or conduits in common with the Grantee, pursuant to the terms and conditions of a mutually acceptable agreement for use of surplus ducts or conduits entered into by the Grantee and the licensee. Nothing herein shall require the Grantee to enter into an agreement with such person on less than commercially reasonable terms and if, in the Grantee's reasonable determination, such an agreement could compromise the integrity of the cable system.

(c) A licensee occupying part of a duct shall be deemed to occupy the entire duct.

(d) The Grantee shall give a licensee a minimum of one hundred twenty (120) days' notice of its need to occupy a licensed conduit and shall propose that the licensee take the first feasible action as follows:

(1) Pay revised conduit rent designed to recover the cost of retrofitting the conduit with multiplexing, fiber optics or other space-saving technology sufficient to meet the Grantee's space needs;

(2) Pay revised conduit rent based on the cost of new conduit constructed to meet the Grantee's space needs;

(3) Vacate the needed ducts or conduit;
or

(4) Construct and maintain sufficient new conduit to meet the Grantee's space needs.

(e) When two (2) or more licensees occupy a section of conduit facility, the last licensee to occupy the conduit facility shall be the first to vacate or construct new conduit. When conduit rent is revised because of retrofitting, space-saving technology or construction of new conduit, all licensees shall bear the increased cost.

(f) All attachments shall meet applicable local, state and federal clearance and other safety requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between the Grantee and the licensee. The Grantee may, at its option, correct any attachment deficiencies and charge the licensee for its costs. Each licensee shall pay the Grantee for any fines, fees, damages or other costs the licensee's attachments cause the Grantee to incur.

(g) In order to enforce the provisions of this Subsection with respect to the Grantee, the Town must demonstrate that it has required that

all similarly situated users of the rights-of-way comply with the provisions of this Subsection. (Ord. 2-2002 §11.21)

Sec. 5-1-615. Discontinuing use or abandonment of cable system facilities.

Whenever the Grantee intends to discontinue using any facility within the rights-of-way, the Grantee shall submit to the Town a complete description of the facility and the date on which the Grantee intends to discontinue using the facility. The Grantee may remove the facility or request that the Town permit it to remain in place. Notwithstanding the Grantee's request that any such facility remain in place, the Town may require the Grantee to remove the facility from the right-of-way or modify the facility to protect the public health, welfare, safety and convenience, or otherwise serve the public interest; provided, however, that this provision shall not apply to any facilities which are used to provide telecommunications services. The Town may require the Grantee to perform a reasonable combination of modification and removal of the facility. The Grantee shall complete such removal or modification in accordance with a reasonable schedule set by the Town. Until such time as the Grantee removes or modifies the facility as reasonably directed by the Town, or until the rights to and responsibility for the facility are accepted by another person having authority to construct and maintain such facility, the Grantee shall retain all liability for such facility and be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the right-of-way, in the same manner and degree as if the facility were in active use. If the Grantee abandons its facilities, the Town may choose to use such facilities for any purpose whatsoever, including but not limited to access purposes. If the Town chooses to utilize any such abandoned facilities, the Grantee's liability for those facilities shall cease. (Ord. 2-2002 §11.22)

Sec. 5-1-620. Movement of cable system facilities for Town purposes.

(a) The Town shall have the right to require the Grantee to relocate, remove, replace, modify or disconnect the Grantee's facilities and equipment located in the rights-of-way or on any other property of the Town in the event of an emergency or when reasonable public convenience requires such change (for example, without limitation, by reason of traffic conditions, public safety, right-of-way vacation, right-of-way construction, change or establishment of right-of-way grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by the Town for public purposes). Such work shall be performed at no cost to the Town. Except during an emergency, the Town shall provide reasonable notice to the Grantee, not to be less than thirty (30) days, and allow the Grantee the opportunity to perform such action. In the event of any capital improvement project exceeding five hundred thousand dollars (\$500,000.00) in expenditures by the Town which requires the removal, replacement, modification or disconnection of the Grantee's facilities or equipment, the Town shall provide at least sixty (60) days' written notice to the Grantee. Following notice by the Town, the Grantee shall relocate, remove, replace, modify or disconnect any of its facilities or equipment within any right-of-way or on any other property of the Town. If the Town requires the Grantee to relocate its facilities located within the rights-of-way, the Town shall make a reasonable effort to provide the Grantee with an alternate location within the rights-of-way. If funds are generally made available to users of the rights-of-way for such relocation, the Grantee shall be entitled to its pro rata share of such funds.

(b) If the Grantee fails to complete this work within the time prescribed and to the Town's reasonable satisfaction, the Town may cause such work to be done and bill the actual

cost of the work to the Grantee, including all out-of-pocket costs and expenses incurred by the Town due to the Grantee's delay. In such event, the Town shall not be liable for any damage to any portion of the Grantee's cable system unless the Town acted in a negligent manner. Within thirty (30) days of receipt of an itemized list of those costs, the Grantee shall pay the Town. (Ord. 2-2002 §11.23)

Sec. 5-1-625. Movement of cable system facilities for other franchise holders.

If any removal, replacement, modification or disconnection of the cable system is required to accommodate the construction, operation or repair of the facilities or equipment of another Town franchise holder, the Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. The Grantee may require that the costs associated with the removal or relocation be paid by the benefited party at no cost to the Town. (Ord. 2-2002 §11.24)

Sec. 5-1-630. Temporary changes for other permittees.

At the request of any person holding a valid permit and upon reasonable advance notice, the Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder, and the Grantee may require a reasonable deposit of the estimated payment in advance. (Ord. 2-2002 §11.25)

Sec. 5-1-635. Reservation of Town use of right-of-way.

Nothing in this Franchise shall prevent the Town or public utilities owned, maintained or operated by public entities other than the Town from constructing sewers; grading, paving,

repairing or altering any right-of-way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of the Grantee's cable system. (Ord. 2-2002 §11.26)

Sec. 5-1-640. Tree trimming.

The Grantee may prune or cause to be pruned, using proper pruning practices, any tree in the Town's rights-of-way which interferes with the Grantee's cable system. The Grantee shall comply with any general ordinance or regulations of the Town regarding tree trimming. Except in emergencies, the Grantee may not prune trees at a point below thirty (30) feet above sidewalk grade until one (1) week's written notice has been given to the owner or occupant of the premises abutting the right-of-way in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at his or her own expense during this one-week period. The Grantee shall have no liability whatsoever for any acts or omissions by the owner or occupant of the abutting premises. If the owner or occupant fails to do so, the Grantee may prune such tree at its own expense. For purposes of this Section, emergencies exist when it is necessary to prune to protect the public or the Grantee's facilities from imminent danger only. (Ord. 2-2002 §11.27)

Sec. 5-1-645. Inspection of construction and facilities.

The Town may inspect any of the Grantee's facilities, equipment or construction at any time upon at least twenty-four (24) hours' notice or, in case of emergency, upon demand without prior notice. If the Grantee is out of compliance with its obligations hereunder, the Town, in addition to taking any other action permitted

under applicable law, may order the Grantee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the Town reasonably establishes. The Town has the right to correct, inspect, administer and repair the unsafe condition if the Grantee fails to do so, and to reasonably charge the Grantee therefor. (Ord. 2-2002 §11.28)

Sec. 5-1-650. Stop work.

(a) On notice from the Town that any work is being performed contrary to the provisions of this Franchise, in an unsafe or dangerous manner as determined by the Town, or in violation of the terms of any generally applicable permit, laws, regulations, ordinances or standards, the work may immediately be stopped by the Town. The Grantee shall have the immediate right to challenge the basis for the stop work order, including the right to seek equitable relief from the enforcement of such order, and shall be entitled to recoup from the Town all out-of-pocket costs and expenses incurred by the Grantee, excluding legal fees, legal costs and in-house costs due to the Town's action if it is not sustained.

(b) The stop work order shall:

- (1) Be in writing;
- (2) Be given to the person doing the work, or posted on the work site;
- (3) Be sent to the Grantee by overnight delivery or by facsimile at the address given herein;
- (4) Indicate the nature of the alleged violation or unsafe condition; and
- (5) Establish conditions under which work may be resumed. (Ord. 2-2002 §11.29)

Sec. 5-1-655. Work of contractors and subcontractors.

The Grantee's contractors shall be licensed and bonded in accordance with the Town's generally applicable ordinances, regulations and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by the Grantee. The Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, shall ensure that all such work is performed in compliance with this Franchise and other applicable law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is the Grantee's responsibility to ensure that contractors, subcontractors or other persons performing work on the Grantee's behalf are familiar with the requirements of this Franchise and other applicable laws governing the work performed by them. (Ord. 2-2002 §11.30)

*Division 8
Technical Standards*

Sec. 5-1-710. Subscriber network and system upgrade.

(a) The Grantee shall install a fiber optic trunk to connect the cable system in the Town with the Grantee's headend facility at 1021 N. State Highway 287, LaPorte, within nine (9) months of the effective date of this Franchise. The Grantee shall upgrade and activate the cable system bandwidth to at least five hundred fifty (550) MHz throughout the franchise area within eighteen (18) months from the effective date of this Franchise. The Grantee intends to deploy fiber optics to nodes which serve no more than five hundred (500) subscribers per node, with amplifier cascades no longer than eight (8) amplifiers, as part of the upgrade. The Grantee may substitute another transmission material

and/or modify its upgrade design, provided that the same technical benefits in reliability and picture quality are attained. The cable system shall be capable of supporting cable service and cable Internet service. Upon completion of the upgrade, the cable system shall deliver no less than one hundred ten (110) channels of analog and/or digital video programming services to subscribers.

(b) At such time as the Grantee has completed the upgrade required above, the Grantee shall send written notice to the Town. The Town shall have ninety (90) days from receipt of such notice to review the sweep analysis records kept by the Grantee which verify the completion of the cable system bandwidth expansion, and to complete such technical inspections as may be reasonably necessary to verify that the other components of the upgrade are complete; provided, however, that cable Internet service testing shall not occur until such time as the service is activated. The Town Administrator may require the Grantee to provide additional facts and information, in his or her reasonably exercised discretion, necessary to verify the completion of the upgrade. Upon its completion of this review and inspection, the Town shall notify the Grantee in writing of the Town's position concerning the completion of the upgrade.

(c) Equipment must be installed so that all closed captioning programming received by the cable system shall include the closed caption signal, so long as the closed caption signal is provided consistent with FCC standards. Equipment must be installed so that all local signals received in stereo or with secondary audio tracks (broadcast and access) are retransmitted in those same formats.

(d) All upgrade construction shall be subject to the Town's permitting process.

(e) The Grantee and Town shall meet, at the Town's request, to discuss the progress of the upgrade design plan and construction.

(f) The Grantee will take prompt corrective action if it finds that any facilities or equipment on the cable system are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Franchise or applicable law.

(g) The Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the franchise area.

(h) The Grantee shall provide a substantially similar channel line-up and service offerings in Town as it provides to other communities served from the Grantee's LaPorte headend. (Ord. 2-2002 §12.1)

Sec. 5-1-715. Periodic evaluation.

(a) Upon thirty (30) days' written notice to the Grantee, the Town may require an evaluation session. Evaluation sessions shall occur a minimum of once every five (5) years, beginning five (5) years from the effective date of this Franchise. All evaluation sessions shall be open to the public.

(b) Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, system performance, programming offered, access channels, facilities and support, municipal uses of cable, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics the Town and the Grantee deem relevant.

(c) As a result of a periodic review or evaluation session, the Town and the Grantee may develop such changes and modifications to the terms and conditions of this Franchise as are mutually agreed upon. (Ord. 2-2002 §12.2)

Sec. 5-1-720. Standby power.

The Grantee shall provide standby power generating capacity at the cable system headend which is rated to provide twelve (12) hours of emergency operation. The Grantee shall maintain standby power system supplies, rated for at least two (2) hours' duration, throughout the trunk and distribution networks, and rated for at least four (4) hours' duration at all nodes and at all hubs. (Ord. 2-2002 §12.3)

Sec. 5-1-725. Emergency alert capability.

(a) The Grantee shall provide an operating Emergency Alert System ("EAS") in accordance with and as required by the provisions of FCC Regulations, 47 C.F.R. Part II, and as such provision may from time to time be amended, so that the Town may use the cable system to transmit an emergency alert signal, including the ability to override the audio and, to the extent required by federal law, video on all channels throughout the Town from the Larimer County Communications Center or other location as may be designated by the Town pursuant to federal law. The Grantee shall test the EAS as required by federal law. Upon request, the Town shall be permitted to participate in and/or witness any EAS testing on a schedule formed in consultation with the Grantee. If the test indicates that the EAS is not performing consistent with FCC requirements, the Grantee shall make any necessary adjustment to the EAS, and the EAS shall be retested

(b) The Grantee shall ensure that the EAS is functioning properly at all times. It will test the EAS periodically, in a manner consistent with sound operational practices for emergency systems in accordance with federal law. The Grantee will advise the Town of the testing schedule and the Town may be present for the tests. (Ord. 2-2002 §12.4)

Sec. 5-1-730. Technical performance.

The Grantee shall fully comply with FCC technical standards and procedures, including all required FCC tests and all requirements to maintain test results in its public file. The technical performance of the cable system shall meet or exceed all applicable technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The Town shall have the full authority permitted by applicable law to enforce compliance with these technical standards. Copies of such test results will be available to the Town upon written request. (Ord. 2-2002 §12.5)

Sec. 5-1-735. Additional tests.

Where there exists other evidence which in the judgment of the Town casts doubt upon the reliability or technical quality of cable service, the Town shall have the right and authority to require the Grantee to test, analyze and report on the performance of the cable system. The Grantee shall reasonably cooperate with the Town in performing such testing and shall prepare the results and a report, if requested, within thirty (30) days after testing. Such report shall include the following information:

- (1) The nature of the complaint or problem which precipitated the special tests;
- (2) The cable system component tested;
- (3) The equipment used and procedures employed in testing;
- (4) The method, if any, in which such complaint or problem was resolved; and
- (5) Any other information pertinent to said tests and analysis which may be required. (Ord. 2-2002 §12.6)

Division 9
Service Availability

Sec. 5-1-750. Universal service.

The Grantee shall not arbitrarily refuse to provide cable services to any person within its franchise area. All dwelling units and multiple dwelling units in the franchise area shall have the same availability of cable services from the Grantee's cable system under nondiscriminatory rates and reasonable terms and conditions. The Town acknowledges that the Grantee cannot control the dissemination of particular cable services beyond the point of demarcation at a multiple dwelling unit. Notwithstanding the foregoing, the Grantee may introduce new or expanded cable services on a geographically phased basis, where such services require an upgrade of the cable system. The Grantee may also charge for line extensions and nonstandard installations pursuant to Section 5-1-755. (Ord. 2-2002 §13.1)

Sec. 5-1-755. Service availability.

(a) In general. Except as otherwise provided herein, the Grantee shall use its best efforts to provide cable service requiring a standard installation within seven (7) days of a request by any person within the Town, subject to payment of any required or owed fees or charges. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by the Grantee, receipt of a written request by the Grantee or receipt by the Grantee of a verified verbal request. The Grantee shall provide such service:

- (1) With no line extension charge except as specifically authorized elsewhere in this Franchise.

(2) At a nondiscriminatory installation charge for a standard installation, consisting of a one-hundred-twenty-five-foot drop from the existing subscriber distribution system to the demarcation point as that term is defined in federal law for residential subscribers, with additional charges for nonstandard installations computed according to a nondiscriminatory methodology for such installations, adopted by the Grantee and provided in writing to the Town.

(3) At nondiscriminatory monthly rates for residential subscribers.

(b) Extension. Whenever the Grantee receives a request for cable service from a customer in a contiguous unserved area where there are at least thirty-five (35) residences within five thousand two hundred eighty (5,280) cable-bearing strand feet (one [1] cable mile) from the portion of the Grantee's trunk or distribution cable which is to be extended, it shall extend its cable system to such customer at no cost to said customer for the cable system extension, other than the published standard installation fees charged to all customers.

(c) Customer charges for extensions of service. No customer shall be refused service arbitrarily. However, for unusual circumstances, such as a customer's request to locate the cable drop underground, the existence of more than one hundred twenty-five (125) feet of distance from distribution cable to connection of service to customers, or a request from a customer in an area which does not meet the density requirement of Subsection (b) above, density of less than thirty-five (35) residences per five thousand two hundred eighty (5,280) cable-bearing strand feet of trunk or distribution cable service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the

Grantee and customers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per five thousand two hundred eighty (5,280) cable-bearing strand feet of its trunk or distribution cable and whose denominator equals thirty-five (35). Customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential customers be paid in advance. (Ord. 2-2002 §13.2)

Sec. 5-1-760. Interconnection with other cable systems.

(a) The cable system shall be interconnected to the LaPorte headend, pursuant to this Article, and may, at its option, be interconnected with other area cable systems that are owned and operated by the Grantee or an affiliate, provided that such systems are within Larimer County.

(b) The Grantee shall explore with any public interconnection authority, regional interconnection authority or town, county, state or federal regulatory agency which may hereafter be established for the purpose of regulating, financing or otherwise providing for the interconnection of cable systems beyond the boundaries of the Town, the possibility of further interconnects. (Ord. 2-2002 §13.3)

Sec. 5-1-765. Connection of public facilities.

The Grantee shall, at no cost to the Town, provide one (1) outlet of basic service and expanded basic service to all Town-owned buildings, schools and public libraries where such service is provided as of the effective date of this Franchise. For purposes of this Section, *school* means all state-accredited K-12 public and private schools, but does not include home

schools. In addition, the Grantee shall provide, at no cost to the Town or other entity, one (1) outlet of basic and expanded basic service to additional owned or leased and occupied Town buildings, schools and libraries upon request, if the drop line from the feeder cable to such building does not exceed one hundred twenty-five (125) feet or if the Town or other entity agrees to pay the incremental cost of such drop line in excess of one hundred twenty-five (125) feet, including the cost of such excess labor and materials. Outlets of basic and expanded basic service provided in accordance with this Section may be used to distribute cable services throughout such buildings, provided that such distribution can be accomplished without causing cable system disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes, nor shall the outlets be used to entertain public groups or for commercial purposes. (Ord. 2-2002 §13.4)

Sec. 5-1-770. Cable Internet service to schools, libraries and Town-owned and Town-leased buildings.

At such time as the Grantee offers cable Internet service in the Town, the Grantee shall provide one (1) outlet of basic or first level cable Internet service (including one [1] modem) to all accredited K-12 public and private schools, excluding home schools, and public libraries which are within one hundred fifty (150) feet of the cable system at no cost to the institution. (Ord. 2-2002 §13.5)

*Division 10
Franchise Violations and Terms*

Sec. 5-1-810. Procedure for remedying franchise violations.

(a) If the Town believes that the Grantee has failed to perform any obligation under this

Franchise or has failed to perform in a timely manner, the Town shall notify the Grantee in writing, stating with reasonable specificity the nature of the alleged default, the Grantee shall have thirty (30) days from the receipt of such notice to:

(1) Respond to the Town, contesting the Town's assertion that a default has occurred, and requesting a meeting in accordance with Subsection (b), below;

(2) Cure the default; or

(3) Notify the Town that the Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, the Grantee shall promptly take all reasonable steps to cure the default and notify the Town in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the Town may set a meeting in accordance with Subsection (b) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether the Grantee's proposed completion schedule and steps are reasonable.

(b) If the Grantee does not cure the alleged default within the cure period stated above or by the projected completion date under Paragraph (a)(3) above, or denies the default and requests a meeting in accordance with Paragraph (a)(1) above, or the Town orders a meeting in accordance with Paragraph (a)(3) above, the Town shall set a meeting to investigate said issues or the existence of the alleged default. The Town shall notify the Grantee of the meeting in writing, and such meeting shall take place no less than thirty (30) days after the Grantee's receipt of notice of the meeting. At the meeting, the Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

(c) If, after the meeting, the Town determines that a default exists, the Town shall order the Grantee to collect or remedy the default or breach within fifteen (15) days or within such other reasonable time frame as the Town shall determine. In the event the Grantee does not cure within such time to the Town's reasonable satisfaction, the Town may recommend any legal or equitable remedy available under this Franchise or applicable law:

- (1) Withdraw an amount from the letter of credit as monetary damages;
- (2) Recommend the revocation of this Franchise pursuant to the procedures in Section 5-1-815; or
- (3) Recommend any other legal or equitable remedy available under this Franchise or any applicable law.

(d) The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the Town, provided that any such final determination may be subject to appeal to a court of competent jurisdiction under applicable law. (Ord. 2-2002 §14.1)

Sec. 5-1-815. Revocation.

(a) In addition to revocation in accordance with other provisions of this Franchise, the Town may revoke this Franchise and rescind all rights and privileges associated with this Franchise in the following circumstances, each of which represents a material breach of this Franchise:

- (1) If the Grantee fails to perform any material obligation under this Franchise or under any applicable local law or ordinance;
- (2) If the Grantee willfully fails for more than forty-eight (48) consecutive hours to provide continuous and uninterrupted cable service;

(3) If the Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the Town or subscribers;

(4) If the Grantee becomes insolvent or if there is an assignment for the benefit of the Grantee's creditors; or

(5) If the Grantee makes a material misrepresentation of fact in the application for or negotiation of this Franchise.

(b) Following the procedures set forth in Subsections 5-1-810(a) and (b), and prior to forfeiture or termination of this Franchise, the Town shall give written notice to the Grantee of its intent to revoke the Franchise. The notice shall set forth the exact nature of the noncompliance.

(c) Any proceeding under Subsection (b) above shall be conducted by the Board of Trustees and open to the public. The Grantee shall be afforded at least sixty (60) days' prior written notice of such proceeding.

(1) At such proceeding, the Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence and, to the extent otherwise permitted by law, to require production of evidence, to compel the testimony of persons and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared equally between the parties. The Board of Trustees shall hear any persons interested in the revocation, and shall allow the Grantee, in particular, an opportunity to state its position on the matter.

(2) Within ninety (90) days after the hearing, the Board of Trustees shall determine whether to revoke the Franchise and declare that the Franchise is revoked and

the letter of credit forfeited; or, if the breach at issue is capable of being cured by the Grantee, direct the Grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the Board of Trustees determines are reasonable under the circumstances. If the Town determines that the Franchise is to be revoked, the Town shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee. The Grantee shall be bound by the Town's decision to revoke the Franchise unless the Grantee appeals the decision to a court of competent jurisdiction within thirty (30) days of the date of the decision.

(3) The Grantee shall be entitled to such relief as the court may deem appropriate.

(4) The Board of Trustees may at its sole discretion take any lawful action which it deems appropriate to enforce the Town's rights under this Franchise in lieu of revocation of this Franchise. (Ord. 2-2002 §14.2)

Sec. 5-1-820. Procedures in event of termination or revocation.

(a) If this Franchise expires without renewal or is otherwise lawfully terminated or revoked, the Town may, subject to applicable law:

(1) Allow the Grantee to maintain and operate its cable system on a month-to-month basis or short-term extension of this Franchise for not less than six (6) months, unless a sale of the cable system can be closed sooner or the Grantee demonstrates to the Town's satisfaction that it needs additional time to complete the sale; or

(2) Purchase the Grantee's cable system in accordance with the procedures set forth in Section 5-1-825 below.

(b) In the event that a sale has not been completed in accordance with Paragraphs (a)(1) and/or (a)(2) above, the Town may order the removal of the above-ground cable system facilities and such underground facilities from the Town at the Grantee's sole expense within a reasonable period of time as determined by the Town. In removing its plant, structures and equipment, the Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all rights-of-way, public places and private property in as good condition as that prevailing prior to the Grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions and the letter of credit shall remain in full force and effect during the period of removal, and the Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefor.

(c) If the Grantee fails to complete any removal required by Subsection (b) above to the Town's satisfaction, after written notice to the Grantee, the Town may cause the work to be done and the Grantee shall reimburse the Town for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or the Town may recover the costs through the letter of credit provided by the Grantee.

(d) The Town may seek legal and equitable relief to enforce the provisions of this Franchise. (Ord. 2-2002 §14.3)

Sec. 5-1-825. Purchase of cable system.

(a) If at any time this Franchise is revoked, terminated or not renewed upon expiration in accordance with the provisions of federal law, the Town shall have the option to purchase the cable system.

(b) The Town may, within sixty (60) days of such events as described in Subsection (a) above, offer in writing to purchase the Grantee's cable system. The Grantee shall have thirty (30) days from receipt of a written offer from the Town within which to accept or reject the offer.

(c) In any case where the Town elects to purchase the cable system, the purchase shall be closed within one hundred twenty (120) days of the date of the Town's audit of a current profit and loss statement of the Grantee. The Town shall pay for the cable system in cash or certified funds, and the Grantee shall deliver appropriate bills of sale and other instruments of conveyance.

(d) For the purposes of this Section, the price for the cable system shall be determined as in accordance with federal law. (Ord. 2-2002 §14.4)

Sec. 5-1-830. Receivership and foreclosure,

(a) At the option of the Town, subject to applicable law, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(1) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or

(2) The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise, and have remedied all defaults under this Franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise.

(b) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of the Grantee, the Town may serve notice of revocation on the

Grantee and to the purchaser at the sale, and the rights and privileges of the Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

(1) The Town has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and

(2) The purchaser has covenanted and agreed with the Town to assume and be bound by all of the terms and conditions of this Franchise. (Ord. 2-2002 §14.5)

Sec. 5-1-835. No monetary recourse against Town.

The Grantee shall not have any monetary recourse against the Town or its officers, officials, boards, commissions or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Franchise or the enforcement thereof, in accordance with the provisions of applicable federal, state and local law. The rights of the Town under this Franchise are in addition to, and shall not be read to limit, any immunities the Town may enjoy under federal, state or local law. (Ord. 2-2002 §14.6)

Sec. 5-1-840. Alternative remedies.

No provision of this Franchise shall be deemed to bar the right of the Town to seek or obtain judicial relief from a violation of any provision of this Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the Town to recover monetary damages for such violations by the Grantee, or to seek and obtain judicial enforcement of the Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity. (Ord. 2-2002 §14.7)

Sec. 5-1-845. Assessment of monetary damages.

To the extent the Town chooses to assess damages pursuant to Subsection 5-1-810(c), the Town may assess against the Grantee monetary damages for material cable system upgrade delays of five hundred dollars (\$500.00) per day. For all other Franchise violations, the Town may assess monetary damages of up to two hundred fifty dollars (\$250.00) per day. To assess any amount of damages from the letter of credit, the Town shall follow the procedures for withdrawals from the letter of credit set forth in the letter of credit and in this Franchise. Such damages shall accrue beginning the day following the Grantee's receipt of notice required by Subsection 5-1-810(a) or at such later date if approved by the Town in its sole discretion, but may not be assessed until after the procedures in Section 5-1-810 have been completed. (Ord. 2-2002 §14.8)

Sec. 5-1-850. Effect of abandonment.

If the Grantee abandons its cable system during the franchise term, or fails to operate its cable system in accordance with its duty to provide continuous service, the Town may obtain an injunction requiring the Grantee to continue operations. If the Town is authorized by a court of competent jurisdiction to operate or designate another entity to operate the cable system, the Grantee shall reimburse the Town for all reasonable costs, expenses and damages incurred. (Ord. 2-2002 §14.9)

Sec. 5-1-855. What constitutes abandonment.

The Town shall be entitled to exercise its options in Section 5-1-850 if:

(1) The Grantee fails to provide cable service in accordance with this Franchise over a substantial portion of the franchise

area for four (4) consecutive days, unless the Town authorizes a longer interruption of service; or

(2) The Grantee, for any period, willfully and without cause refuses to provide cable service in accordance with this Franchise. (Ord. 2-2002 §14.10)

Sec. 5-1-860. Renewal.

The Town and the Grantee agree that any proceedings undertaken by the Town that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law. (Ord. 2-2002 §15.1)

Sec. 5-1-865. Transfer of ownership or control.

(a) No sale, transfer, lease or corporate change of or in the Grantee, including but not limited to the sale of a majority of the entity's assets, a merger including the merger of a subsidiary and parent entity, consolidation or the creation of a subsidiary or affiliate entity, shall take place until the parties to the sale, transfer or corporate change file a written request with the Town for its approval and such approval is granted by the Town; provided, however, that said approval shall not be required where the Grantee grants a security interest in its Franchise and assets to secure an indebtedness.

(b) The Grantee shall promptly notify the Town of any actual or proposed change in, transfer of or acquisition by any other party of control of the Grantee. Any sale, transfer, exchange, lease or assignment of stock in the Grantee so as to create a new controlling interest in the system

shall be subject to the requirements of this Division. The term *controlling interest*, as used herein, is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. As a minimum, *control* or *controlling interest*, as used herein, means a legal or beneficial interest (even though actual working control does not exist) of at least twenty-five percent (25%).

(c) The parties to the sale or transfer shall make a written request to the Town for its approval of a sale or transfer and furnish all information required by law and the Town.

(d) In seeking the Town's consent to any change in ownership or control, the proposed transferee shall indicate whether it:

(1) Has ever been convicted or held liable for acts involving deceit, including any violation of federal, state or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

(2) Has ever had a judgment in an action for fraud, deceit or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;

(3) Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a cable system;

(4) Is financially solvent, by submitting financial data, including financial statements that are audited by a certified public accountant who may also be an officer of the transferee, along with any other data that the Town may reasonably require; and

(5) Has the financial, legal and technical capability to enable it to maintain and operate the cable system for the remaining term of the Franchise.

(e) The Town shall act by ordinance on the request within one hundred twenty (120) days of the request; provided that it has received all requested information. Subject to the foregoing, if the Town fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Town agree to an extension of time.

(f) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the Town, the Grantee shall file with the Town a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by the Grantee and the transferee, and the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to applicable law. In the event of a change in control, in which the Grantee is not replaced by another entity, the Grantee will continue to be bound by all of the provisions of the Franchise, subject to applicable law, and will not be required to file an additional written acceptance.

(g) In reviewing a request for sale or transfer, the Town may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and the Grantee shall assist the Town in so inquiring. The Town may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate; provided, however, that any such terms and conditions so attached shall be related to the legal, technical and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Franchise by the Grantee. For purposes of this Division, *non-compliance* means issues that have been identified to the Grantee, where the Grantee has been given a reasonable opportunity to cure.

(h) Notwithstanding anything to the contrary in this Section, the prior approval of the Town shall not be required for any sale, assignment or transfer of the Franchise or cable system to an affiliate of the Grantee; provided that the proposed assignee or transferee must show financial responsibility as may be reasonably determined necessary by the Town, and must agree in writing to comply with all of the provisions of this Franchise. Further, the Grantee may pledge the assets of the cable system for the purpose of financing without the consent of the Town; provided that such pledge of assets shall not impair or mitigate the Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise. (Ord. 2-2002 §15.2)

Sec. 5-1-870. Severability.

If any section, subsection, paragraph, term or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other section, subsection, paragraph, term or provision of this Franchise, all of which will remain in full force and effect for the term of this Franchise. (Ord. 2-2002 §16)

*Division 11
Miscellaneous Provisions*

Sec. 5-1-910. Preferential or discriminatory practices prohibited.

In connection with the performance of work under this Franchise, the Grantee agrees not to refuse to hire, discharge, promote demote or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status or physical or mental disability; and the Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise, the

Grantee shall fully comply with all equal employment or nondiscrimination provisions and requirements of federal, state and local laws, and in particular, FCC rules and regulations relating thereto. (Ord. 2-2002 §17.1; Ord. 11-2007 §1)

Sec. 5-1-915. Notices.

Throughout the term of this Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent postage prepaid to such respective address, and such notices shall be effective upon the date of mailing. These addresses may be changed by the Town or the Grantee by written notice at any time. At the effective date of this Franchise:

- (1) The Grantee's address shall be:

General Manager
US Cable Group
III West South Street
Johnstown, Colorado 80534

With a copy to:

US Cable of Coastal-Texas, L.P.
14700 West 66th Place, Unit 22
Arvada, Colorado 80004

- (2) The Town's address shall be:

Town of Wellington
Attention: Town Administrator
3735 Cleveland Avenue
P.O. Box 127
Wellington, Colorado 80549

With a copy to:

Brad March, Town Attorney
March, Olive & Pharris
110 East Oak Street, Suite 200
Fort Collins, Colorado 80524

(Ord. 2-2002 §17.2; Ord. 11-2007 §1)

Sec. 5-1-920. Descriptive headings.

The headings and titles of the sections and subsections of this Franchise are for reference purposes only, and shall not affect the meaning or interpretation of the text herein. (Ord. 2-2002 §17.3)

Sec. 5-1-925. Publication costs to be borne by Grantee.

The Grantee shall reimburse the Town for all costs incurred in publishing this Franchise, if such publication is required. (Ord. 2-2002 §17.4)

Sec. 5-1-930. Binding effect.

This Franchise shall be binding upon the parties hereto, their permitted successors and assigns. (Ord. 2-2002 §17.5)

Sec. 5-1-935. No joint venture.

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party, act toward third persons or the public in any manner which would indicate any such relationship with the other. (Ord. 2-2002 §17.6)

Sec. 5-1-940. Waiver.

The failure of the Town at any time to require performance by the Grantee of any provision hereof shall in no way affect the right of the Town hereafter to enforce the same. Nor shall the waiver by the Town of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision. (Ord. 2-2002 §17.7)

Sec. 5-1-945. Reasonableness of consent or approval.

Whenever under this Franchise "reasonableness" is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy and moral and ethical standards, as well as business and economic considerations. (Ord. 2-2002 §17.8)

Sec. 5-1-950. Entire agreement.

This Franchise and all exhibits represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations between the parties. (Ord. 2-2002 §17.9)

ARTICLE 2

Electric Franchise

Sec. 5-2-10. Definitions.

In this Section, unless the context otherwise requires, the following words and phrases have the meanings indicated:

Board of Trustees means the legislative body of the Town.

Company means Public Service Company of Colorado and its successors and assigns.

Electric distribution facilities means that portion of the Company's electric system which delivers electric energy from the substation breaker to the point of delivery of the consumer, including all devices connected to that system.

Facilities means facilities reasonably necessary or actually used to provide electric energy into, within and through the Town,

and includes plants, works, systems, substations, transmission and distribution structures, equipment, conduit, transformers, meters, underground lines, wires, cables and poles.

Public place means any street, alley, viaduct, bridge, road, lane, highway, public and dedicated easement or public right-of-way within the Town.

PUC means the Public Utilities Commission of the State of Colorado or other authority succeeding to the regulatory powers of the Public Utilities Commission.

Residents means and includes all persons, businesses, industries, governments or governmental agencies, and other entities located, in whole or in part, within the Town.

Revenues means money which the Company receives from the sale of electricity within the Town and for the use of its overhead facilities in the Town by others, less adjustments for refunds, uncollectible accounts, corrections and other regulatory adjustments.

Town means the municipal corporation designated as the Town of Wellington, Larimer County, Colorado, and includes the territory as currently is or may in the future be included within the boundaries of the Town of Wellington and within the Company's certificated territory as the same may exist from time to time.

Work means and includes all work done by the Company in the Town, including excavations, installation, construction, repair, maintenance, renovation, removal and replacement of facilities. (Ord. 11-2007 §1)

Sec. 5-2-20. Grant of franchise.

The Town hereby grants the Company, subject to the terms of this Section, a nonexclusive right and duty to furnish, sell and distribute electricity to the Town and all residents of the Town, and to install, maintain and operate facilities reasonably necessary for service to the Town and areas outside the Town, and a nonexclusive right to make reasonable use of public places as may be necessary to carry out the terms of this franchise. (Ord. 11-2007 §1)

Sec. 5-2-30. Term of franchise.

This franchise shall take effect on August 14, 1990. The term of this franchise shall be for twenty (20) years, beginning on the said effective date. This franchise shall expire on August 13, 2010. (Ord. 11-2007 §1)

Sec. 5-2-40. Franchise fee.

(a) Franchise fee. In consideration for the grant of this franchise, the Company shall pay the Town a sum equal to three percent (3%) of all, revenue as defined in Section 5-2-10. The franchise fee provided herein shall constitute the exclusive monetary payment by the Company to the Town for the Company's special use and occupancy of public streets and other public places within the Town.

(b) Payment schedule. For the franchise fee owed on revenue received from the sale of electricity after the effective date of this franchise, payment shall be made in monthly installments not more than thirty (30) days following the close of the month for which payment is to be made. For the franchise fee owed on revenues received from the use of its overhead facilities within the Town by others, payment shall be made ninety (90) days following the close of the

calendar year for which payment is to be made. Initial and final payments shall be prorated for the portions of the months at the beginning and end of the term of this franchise. The Town's authorized representative shall have access to the books of the Company for the purpose of auditing or checking to ensure that the franchise fee has been correctly computed and paid. In the event an error by the Company results in an underpayment of the franchise fee to the Town, the Company shall repay the correct payment. If an error by the Company results in any overpayment of the franchise fee in excess of five hundred dollars (\$500.00), credit for the overpayment shall be spread over the same period the error was undiscovered. If the overpayment is five hundred dollars (\$500.00) or less, credit shall be taken against the next payment.

(c) Change of franchise fee or consideration. Once each year, the Board of Trustees may, after giving the Company thirty (30) days' notice of its intention to do so, review and change the consideration paid by the Company under this franchise. The Town may change the consideration to be received by the Town under the terms of this franchise to the consideration paid by the Company to any city and town in the State in which the Company supplies electricity under franchise. The Company shall report to the Town within sixty (60) days the execution or change of any franchise under which a municipality receives greater consideration than is provided herein. For the purpose of this Section, *consideration* means the franchise fee established in Subsection (a) above, the underground program established in Section 5-2-70 below, and any other provision of significant financial benefit to the Town.

(d) Franchise fee is payment in lieu of other fees. The franchise fee is the only monetary payment to the Town for the rights granted in this franchise. Payment of the franchise fee by

the Company is accepted by the Town in lieu of any occupancy tax, license tax or similar tax on the privilege of doing business or in connection with the physical operation thereof, but does not exempt the Company from any lawful taxation upon its property or other tax not related to the franchise or the physical or operation thereof, and does not exempt the Company from sales and use taxes, head taxes or fees and charges that are uniform and generally applicable to all businesses alike.

(e) Contract obligation. If the franchise fee specified in this Article is declared illegal, unconstitutional or void for any reason by any court or proper authority, the Company is contractually bound to pay the Town the amount which would have been paid as a franchise fee at the same times and in the same manner as provided for the franchise fee. (Ord. 11-2007 §1)

Sec. 5-2-50. Supply, construction and design.

(a) Supply of electricity. The Company shall take all reasonable and necessary steps to make available an adequate supply of electricity to provide service throughout the Town when needed by customers. The Company shall supply electricity at the lowest reasonable cost. If the supply of electricity is limited or interrupted, the Company shall immediately take all reasonable and necessary actions to restore such supply as soon as possible.

(b) Obligations regarding Company facilities.

(1) Work. All work by the Company shall be done:

- a. In a good workmanlike manner;
- b. In a timely and expeditious manner;

c. In a manner which minimizes inconvenience to the public and individuals; and

d. In a cost-effective manner, which may include the use of qualified private contractors.

(2) Restoration. All public and private property and lawfully installed improvements which are disturbed by Company activities within the public places shall be restored as soon as possible by the Company, at its expense, to substantially their former condition. For the purpose of this Section, private improvements which overlay, enclose or limit access to Company facilities, and which are located in dedicated easements shall not be deemed to be lawfully installed.

(3) Location of facilities. Company facilities shall not interfere with water facilities, sewer facilities or other public use of public places. Company facilities shall be installed so as to minimize interference with other property and improvements.

(4) Repair of damage. The Company shall promptly repair all damage caused by Company activities or facilities within public places. If such damage poses a threat to health, safety or welfare of the public or individuals, the Town may cause repairs to be made at the Company's expense unless the Company makes such repairs promptly upon the Town's request.

(5) Inspection. All work is subject to inspection by the Town. The Company shall promptly perform reasonable remedial action required by the Town pursuant to said inspection.

(6) Quality. The Company's facilities will be of sufficient capacity, quality, durability and redundancy to provide adequate and efficient electric service to the Town and its residents. The Company shall keep its facilities in good working order.

(c) Relocation of Company facilities. Any relocation of the Company's facilities in any public place required, caused or occasioned by any Town project shall be at the cost of the Company. Relocation shall be completed within one hundred twenty (120) days or such other reasonable time from the date when the Town makes its request, such time to be established by the Company as soon as possible after the Town's request. The Company shall be granted an extension of time of completion equivalent to any delay caused by conditions not under its control, provided that the Company proceeds with due diligence at all times. Following relocation, all property shall be restored to substantially its former condition by the Company, at its expense. Relocated underground facilities shall be underground. Relocated aboveground facilities shall be above ground unless the Town either agrees to pay the additional cost of moving them underground or requests that such costs be paid out of available funds under Section 5-2-70. Nothing herein contained shall be construed to impose any obligation upon the Town to make any payment for any relocation of the Company's facilities.

(d) Service to new areas. If, during the term of this franchise, the boundaries of the Town are expanded within the Company's certificated service area as the same may exist from time to time, the Company shall extend service to residents of the newly annexed area as soon as possible, subject to the payment provisions of the Company's extension policy. Such services shall be in accordance with all terms of this franchise, including the payment of franchise fees.

(e) Town not required to advance funds. Upon receipt of the Town's authorization for billing and construction, the Company shall extend its facilities to provide electric service for municipal uses within or outside the Town and within the Company's certificated territory as the same may exist from time to time. The Town shall not be required to advance funds prior to construction.

(f) Technological improvements. The Company shall use its best efforts to introduce and install, as soon as practicable, technological advances in its equipment and services within the Town. Upon request by the Town, the Company shall promptly review and report advances which it is aware have occurred in the electric utility industry and report whether it believes it appropriate to incorporate such advances into its Company operations.

(g) Town use of Company facilities. The Town shall be permitted to make all reasonable use for Town purposes of any suitable poles and overhead electrical distribution facilities of the Company, without cost, for the purpose of stringing wires; provided that such use does not unreasonably interfere with the use of such systems for distribution of electrical energy or create an unreasonable hazard. Such use by the Town may include, by way of explanation and not limitation, the attachment of traffic control signs, fire alarm or police signal systems or the attachment of cables for transmission of television or radio signals. Such use shall not be for commercial purposes. The Company shall not be responsible for any modifications to the system or for payment of any costs necessitated by such use. Such use by the Town shall not include the transmission or distribution of electric energy.

(h) Use of Company facilities by others. The Company shall permit use of Company poles and suitable overhead electric distribution facilities so long as such grantees are not in

competition with the Company; provided that such joint use does not unreasonably interfere with the Company's use of these facilities; and provided further that such joint use does not create a safety hazard. The Company shall assume no liability nor shall it be put to any additional expense in connection with such joint use.

(i) Underground conduit. If the Company installs a new underground conduit, opens a trench or replaces conduit or cable, the Company shall provide adequate advance notice to permit additional installation of similar conduit and pull-wire for the Town. If the Town wants additional similar conduit and pull-wire installed, it will so notify the Company and provide similar conduit and pull-wire at its expense to the Company, which will install it without further expense to the Town, provided that such action by the Town will not unreasonably delay or interfere with the accomplishment of the project or with the Company's facilities.

(j) Use of Company right-of-way facilities. The Company will offer to grant to the Town use of the transmission right-of-way which it now, or in the future, owns or has an interest in within the Town for the purposes set forth in and pursuant to the provisions of the Park and Open Space Act of 1984; provided that the Company shall not be required to make such an offer in any circumstances where such offer would interfere with the Company's use of the transmission right-of-way. If the Company's offer of use is accepted by the Town, then any improvements deemed appropriate by the Town, and consistent with the purpose of the Park and Open Space Act of 1984 shall be made by the Town at its sole expense. (Ord. 11-2007 §1)

Sec. 5-2-60. Compliance.

(a) Town regulation. The Town expressly reserves, and the Company expressly recognizes, the Town's right to adopt, from time to time, in addition to the provisions herein contained, such

ordinances, rules and regulations as it may deem necessary in the exercise of its police powers for the protection of the health, safety and welfare of its residents and their property.

(b) Compliance with Town requirements. The Company will comply with all Town ordinances, rules and regulations and shall obtain all required permits. The Company shall submit, in advance, reports of long-term planning for capital improvement projects and descriptions of planned curb and street cut and other work. All work shall be coordinated with the Town's public improvement projects.

(c) Town review of construction design. Before construction or installation of any significant aboveground electric facilities, any building, any substation or any similar structures within the Town, unless otherwise requested, the Company shall furnish the Town with plans for such facilities. In addition, upon request, the Company shall assess and report on the impact of the proposed construction on the Town environment. Such plans and reports may be reviewed by the Town to ensure, inter alia, (1) that all applicable laws are complied with; (2) that aesthetic and good planning principles have given due consideration; and (3) that adverse impact has been minimized. The Company shall incorporate all reasonable changes requested by the Town.

(d) Compliance with PUC regulations. The electricity which the Company distributes shall conform with the standards promulgated by the PUC in the *Rules Regulating the Services of Electric Utilities* and with the tariff provisions of the Company setting standards, as the same may be amended from time to time. The Town shall have access to all records of the Company

monitoring compliance with such PUC standards. Prior to final adoption by the Town of the franchise ordinance, the Company shall file with the PUC such amendments to its tariffs as may be necessary to make its tariff provisions compatible with the provisions of this franchise, and shall report to the Town any changes that have been made for this purpose.

(e) Compliance with air and water pollution laws. The Company shall use its best efforts to take measures which will result in its facilities meeting the standards required by applicable air and water pollution laws. Upon the Town's request, the Company shall provide the Town with a status report of such measures.

(f) Inspection. The Town shall have the right to inspect at all reasonable times any portion of the Company's facilities used to serve the Town and its residents. The Town shall also have access at all reasonable times to relevant Company records for the purpose of determining Company compliance with this Section. The Company agrees to cooperate fully with the Town in conducting the inspection of the Company's records and to correct any discrepancies affecting the Town's interest in a prompt and efficient manner.

(g) PUC regulation. The Town and the Company recognize that the lawful provisions of the Company's tariffs on file and in effect with the Public Utilities Commission, which are consistent with the restrictions and limitations of Article XXV of the Colorado Constitution regarding the rights of municipalities to franchise, are controlling over any inconsistent provision in this franchise dealing with the same subject matter. In the opinion of the Company, no provision of this franchise is inconsistent with any of the currently effective provisions of the Company's tariffs. (Ord. 11-2007 §1)

Sec. 5-2-70. Underground construction and conversion.

(a) Underground electrical distribution facilities. The Company shall place newly constructed electric distribution facilities used to serve newly developed subdivisions underground in accordance with and to the extent required by Chapter 16 of this Code. Nothing in this Section shall require the Company to install facilities for which the charges provided in its tariffs have not been paid.

(b) Overhead conversion at expense of Company.

(1) As and when requested by the Town, the Company will spend one percent (1%) of the preceding calendar year's electric revenue to move electric distribution facilities located in public places in the Town underground, provided that the undergrounding shall extend for a minimum distance of one (1) block or seven hundred fifty (750) feet, whichever is less, or as may be mutually agreed by the parties.

(2) Any unexpended portion of the one percent (1%) of electric revenue may be carried over to succeeding years for overhead conversion. In addition, upon request by the Town, the Company shall anticipate amounts to be available for up to three (3) succeeding years in advance for overhead conversion. Any amounts advanced shall be credited against amounts to be expended in succeeding years until such advances are eliminated. No relocation expenses which the Company is required to expend pursuant to Section 5-2-50 above shall be charged to this allocation.

(3) The Town and the Company shall consult and plan together regarding projects to be undertaken pursuant to this Section. The final decision as to which projects are

selected rests with the Town. The specific scheduling of projects rests with the Company, which shall make every reasonable effort to complete such projects within the time requested by the Town. In no event shall any overhead conversion expense be charged against the one percent (1%) program herein provided for unless the project has been approved by the Town.

(4) If the PUC authorizes a system-wide program of undergrounding electric distribution facilities, the Company will allocate to the program of undergrounding in the Town such amount as is authorized by the PUC, but in no case less than one percent (1%) of annual electric revenues as hereinabove provided.

(5) When undertaking a project of undergrounding, the Town and the Company shall work with other utilities or companies which have their lines overhead to have all lines undergrounded as part of the same project. When other utilities or companies are placing their lines underground, the Company shall cooperate with these utilities and companies and undertake to underground Company facilities as part of the same project where feasible. In each instance, each utility and company shall pay its own costs incurred to move its facilities underground.

(6) In addition to the provisions of this Section, the Town may require additional facilities to be moved underground at the Town's expense.

(7) Funds to be expended pursuant to this Section shall not be used in any project or situation for which and to the extent that the Town has received federal or state funds for the purpose of undergrounding utilities. Funds to be expended pursuant to this Section may be used for "matching" purposes with state or federal monies.

(8) The Town acknowledges that the establishment of this undergrounding program creates no vested right in the Town to the underground monies. Further, if such monies are not expended pursuant to the conditions hereof, the fund is not convertible to cash or available for any other purposes. (Ord. 11-2007 §1)

Sec. 5-2-80. Planning, coordination and reports.

(a) General. The Company shall keep the Town informed as to existing and planned system capacity, construction and other activities. The Town shall keep the Company informed as to existing and planned development, construction and other activities.

(b) Emergencies. If there is an emergency affecting Company operations or service, the Company shall maintain ongoing communication with the Town as to the nature of the problem and its anticipated duration and resolution. The Company shall develop and keep up to date and on file with the Town a mutually agreeable plan to facilitate such communication. At all times, the Company shall have on file with the Town a twenty-four-hour telephone number, not available to the general public, which the Town government can use to obtain information in the event of an emergency, and the Company shall use other available methods as needed to facilitate communications with the Town. In addition, the Company shall make information available to residents as to any problem and its anticipated duration and resolution.

(c) Reports on Company operations. The Company shall submit, upon the Town's request, reasonable reports with respect to Company operations, which may include the following:

(1) An annual report of the return earned by the Company on its operations and the

rate base used for calculation of such return, as is currently provided or as may in the future be provided to the PUC in conjunction with various adjustment clause provisions;

(2) An annual list of all real property and leasehold interests in real property owned by the Company in the Town, excluding public and other easements;

(3) An annual report listing the Town's accounts by type of account (e.g., electric service by location) and evaluating bill and rate classification alternatives;

(4) An annual report of the electric revenues received from residents of the Town, showing each adjustment to gross revenue; and

(5) Periodically, upon the Town's request, a presentation on electric facilities used to serve the Town.

(d) Copies of tariffs, all PUC filings. The Company shall keep on file in a local office all tariffs, rules, regulations and policies approved by the PUC relating to service by the Company to the Town and its residents. Upon request by the Town, the Company shall provide the Town with copies of such documents and of filings which it makes with the PUC. (Ord. 11-2007 §1)

Sec. 5-2-90. Indemnification of Town.

The Company shall indemnify, defend and save the Town harmless from and against all liability or damage and all claims or demands whatsoever in nature arising out of the operations of the Company within the Town pursuant to this franchise and the securing of and the exercise by the Company of the franchise rights granted in this Article, and shall pay all reasonable expenses arising therefrom. None of the

Town's expenses reimbursed by the Company under this Section shall be surcharged. The Town will provide prompt written notice to the Company of the pendency of any claim or action against the Town arising out of the exercise by the Company of its franchise rights. The Company will be permitted, at its own expense, to appear and defend or to assist in defense of such claim. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the Town harmless to the extent any claim, demand or lien arises out of or in connection with any negligent act or failure to act of the Town or any of its officers or employees. (Ord. 11-2007 §1)

Sec. 5-2-100. Transfer of franchise; consent of Town required.

The Company shall not sell, transfer or assign any rights under this franchise to another entity, excepting corporate reorganizations not involving a third party, without the Board of Trustees' written approval, which shall not be unreasonably withheld. In the event of a sale, transfer or assignment of rights under this franchise, excepting corporate reorganizations not involving a third party, the transferee shall promptly pay to the Town a pro rata share of one million dollars (\$1,000,000.00), which pro rata share shall be calculated by multiplying one million dollars (\$1,000,000.00) times a fraction of which the then-population of the Town of Wellington is the numerator and the population of the City and County of Denver is the denominator, said transfer fee being conclusively deemed reasonable. (Ord. 11-2007 §1)

Sec. 5-2-110. Purchase, condemnation and termination.

(a) Town's right to purchase or condemn. The right of the Town to construct, purchase or condemn utility facilities and the rights of the Company in connection therewith, as provided by the Colorado Constitution and state statutes, are hereby expressly recognized.

(b) Negotiations and condemnation. If the Town exercises its right to purchase or condemn, no value shall be given to the rights granted under this franchise. The parties shall negotiate in good faith to determine a mutually acceptable purchase price. If the Town and the Company cannot agree within ninety (90) days, the Town may commence condemnation proceedings.

(c) Continued cooperation by Company. If the Town purchases or condemns, the Company shall continue service, in whole or in part, at the Town's request for the duration of this franchise pursuant to terms and conditions negotiated for such continued operation. The Company shall take no action which could inhibit the Town's ability to effectively or efficiently use the acquired system. At the Town's request, the Company shall supply electricity for use by the Town in the Town system.

(d) Right of first purchase. In the event the Company at any time during the term of this franchise proposes to sell or dispose of any of its real property located within the Town, it shall grant to the Town the right of first purchase of the same. The Company shall obtain a qualified appraisal on any such property, and the Town shall have sixty (60) days in which to exercise the right of first purchase by giving written notice to the Company. Should the Town not provide the required written notice, the Company may proceed to negotiate with others for the sale of such property, provided that the Company may not sell such property for an amount less than ninety percent (90%) of the appraised value without first providing the Town an opportunity to purchase such property at such lesser price, in which event the Town must notify the Company in writing within thirty (30) days if it wishes to purchase such property. It is understood that nothing in this Section shall preclude the Company from transferring real property to a subsidiary or affiliate without first

according to the Town the rights referred to above, provided that if the transferee proposes to sell or dispose of such property within one (1) year, it shall not do so without first affording the Town the rights referred to above.

(e) Limitations of Company removal. If this franchise is not renewed or is forfeited, or the Company terminates any service provided for herein for any reason, and the Town has not provided for service, the Company shall not remove the electric system pending resolution of its disposition. The Company will not withhold any temporary services necessary to protect the public and, in such event, shall be entitled only to monetary compensation in no greater amount than it would have been entitled to were such services provided during the term of this franchise.

(f) Forfeiture. Both the Company and the Town recognize there may be circumstances whereby compliance with this franchise is impossible or delayed. In those instances, the Company shall use its best efforts to comply in a timely manner and to the extent possible. If the Company fails to perform any of its obligations under this franchise, the Board of Trustees may determine, after public hearing, whether such failure is of a substantial nature. Upon receiving notice of such determination, the Company shall have a reasonable time, not to exceed six (6) months, in which to remedy the violations, unless the parties otherwise agree in writing. If after such time corrective actions have not been successfully taken, the Board of Trustees may declare the franchise forfeited. This shall not limit or restrict any other rights or remedies available to the Town at law or equity. Any such declaration of forfeiture shall be subject to judicial review. (Ord. 11-2007 §1)

Sec. 5-2-120. Production of power.

Company to purchase electricity. The Town reserves the right to obtain or produce electricity. If requested by the Town, the Company

agrees to negotiate for the purchase of Town-generated electricity pursuant to the Company's tariffs and PUC Rules and Regulations. (Ord. 11-2007 §1)

Sec. 5-2-130. Miscellaneous.

(a) Annexations to the Town. When any property owned by the Company becomes eligible for voluntary annexation to the Town and is not simultaneously eligible for annexation by any other municipal corporation, the Company will take whatever action is necessary to annex that property, upon request by the Town. No condition of such annexation shall impair the Company's ownership of its property or its use of its land and water rights for utility purposes. Except as herein provided, the Company shall comply with all terms and conditions imposed upon the annexation by the Town which are no more stringent than those generally imposed upon property owners seeking annexation of their land to the Town. The Company shall be exempted from a public donation of land, money or water rights arising from such annexation under this Section to the extent that the land being annexed is committed, dedicated and being utilized by facilities directly involved in generating, transmitting or distributing electricity. In addition, said exemption shall not extend to any unimproved land or land not so committed, dedicated or currently used.

(b) Amendments. If the Board of Trustees or the Company proposes amendments hereto, both parties will negotiate within a reasonable time in good faith in an effort to agree on mutually satisfactory amendments. As used in this Section, *amendment* does not include a change authorized in Section 5-2-_____.

(c) Successors and assigns. The provisions of this Section shall inure to the benefit of and be binding upon successors and assigns of the Town and of the Company.

(d) Representatives. Each party shall have a representative to whom notices shall be sent regarding this franchise. Initially, the Town's representative shall be the Town Clerk and the Company's representative shall be its Northern Division Manager. Notices, including notice of any change of representative, shall be in writing and forwarded by certified mail or hand-delivery to the designated representative.

(e) Severability. If any provisions of this Section are determined to be illegal or unenforceable, all other provisions shall remain effective. In such case, the parties shall proceed with due diligence to attempt to draft provisions that will achieve the original intent.

(f) No waiver. Neither the Town nor the Company shall be excused from complying with any provision of this franchise by any failure of the other to insist upon or to seek compliance with such provisions.

(g) Breach of contract. If the Company fails to fulfill any substantial obligations under this Section, the Town will have a breach of contract claim against the Company, in addition to any other remedy provided by law.

(h) Third parties. Nothing herein contained shall be construed to provide rights to third parties.

(i) Board approval. This grant of franchise shall not become effective unless approved by a majority vote of the Board of Trustees.

(j) Company approval. The Company shall file with the Town Clerk its written acceptance of this franchise and of all its terms and provisions within ten (10) days after adoption of this franchise by the Board of Trustees. (Ord. 11-2007 §1)

Appendix 5-A
Customer Service Standards

Section 1
Policy

(a) The Cable Operator shall be permitted to first resolve citizen complaints without delay and interference from the Franchising Authority.

(b) Where a given complaint is not addressed by the Cable Operator to the citizen's satisfaction, the Franchising Authority may intervene, if requested to do so by the citizen. In addition, if after written notice and a fifteen-day opportunity thereafter to cure is provided to the Grantee, the Grantee has failed to cure the complaint, the Franchising Authority may prescribe a cure which complies with the Grantee's Franchise and its rights under applicable law, and establish a thirty-day deadline for implementation of the cure. If the noncompliance is not cured within thirty (30) days, monetary sanctions may be imposed pursuant to the Grantee's Franchise to encourage compliance.

(c) These Standards are intended to be of general application; however, the Cable Operator shall be relieved of any obligations hereunder if it is unable to perform due to a region-wide natural emergency or in the event of force majeure affecting a significant portion of the Franchise Area. The Cable Operator is free to exceed these Standards to the benefit of its Customers, and such shall be considered performance for the purposes of these Standards. (Ord. 2-2002 Exh. A §1)

Section 2
Definitions

When used in these Customer Service Standards (the "Standards"), the following words, phrases and terms shall have the meanings given below.

Cable Operator shall mean any grantee of a franchise to provide Cable Service over a Cable System and, directly or through one (1) or more affiliates, owns a significant interest in such Cable System or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System.

Customer shall mean any person who lawfully receives Cable Service from the Cable Operator.

Customer Service Representative (or *CSR*) shall mean any person employed by the Cable Operator to assist, or provide service to, Customers, whether by answering public telephone lines, writing service or installation orders, answering Customers' questions, receiving and processing payments or performing other Customer service-related tasks.

Franchising Authority shall mean the Town acting by and through the Board of Trustees or its designee.

Normal business hours shall mean those hours during which most similar businesses in the Town are open to serve Customers. In all cases, *normal business hours* must include some evening hours at least one (1) night per week and/or some weekend hours.

Normal operating conditions shall mean those service conditions which are within the control of the Cable Operator. Those conditions which are not within the control of the Cable Operator 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 Cable Operator 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.

Service interruption shall mean the loss of picture or sound on one (1) or more cable channels.

Town shall mean the Town of Wellington, Colorado. (Ord. 2-2002 Exh. A §2; Ord. 11-2007 §1)

Section 3 *Customer Service*

3.1. Courtesy.

All employees of the Cable Operator shall use their best efforts to be courteous, knowledgeable and helpful and to provide effective and satisfactory service in all contacts with Customers. (Ord. 2-2002 Exh. A §3.1)

3.2. Accessibility; cable system office hours and telephone availability.

(a) The Cable Operator shall maintain a local, toll-free or collect-call telephone access line which will be available to its subscribers twenty-four (24) hours a day, seven (7) days a week.

(1) Trained company representatives will be available to respond to Customer telephone inquiries during normal business hours.

(2) 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 company representative on the next business day.

(b) Under normal operating conditions, telephone answer time by a Customer Service 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 percent (90%) 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 set forth above, unless a 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 percent (3%) 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. (Ord. 2-2002 Exh. A §3.2)

3.3. Responsiveness; installations, outages and service calls.

(a) Under normal operating conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time, measured on a quarterly basis:

(1) Standard installation will be performed within seven (7) business days after an order has been placed. Standard installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system.

(2) 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 twenty-four (24) hours after the interruption becomes known. If the service interruption occurs on a weekend, the Grantee shall respond on the first business day thereafter, unless three (3) or subscribers are affected, in which case, the Grantee shall respond within twelve (12) hours. The Cable Operator must begin actions to correct other service problems the next business day after notification of the service problem.

(3) 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.

(4) The Cable Operator may not cancel an appointment with a Customer after the close of business on the business day prior to the scheduled appointment.

(5) If the Cable Operator's 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 which is convenient for the Customer.

(b) The Cable Operator shall meet the following standards for TV reception: The Cable Operator shall provide clear television reception that meets or exceeds technical standards established by the United States Federal Communications Commission (the "FCC"). The Cable Operator shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions for maintenance shall be preceded by notice and, to the extent reasonably possible, shall occur during periods of minimum use of the system, preferably between 12:00 a.m. and 6:00 a.m.

(c) The Cable Operator's Customer Service Representative shall have the authority to provide credit for interrupted service, to waive fees, to schedule service appointments and to change billing cycles, where appropriate. Any difficulties that cannot be resolved by the Customer Service Representative shall be referred to the appropriate supervisor who shall contact the Customer and shall attempt to resolve the problem within forty eight (48) hours or within such other time frame as is acceptable to the Customer and the Cable Operator.

(d) Billings, refunds and credits.

(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. In case of a billing dispute, the Cable Operator must respond to a written complaint from a Customer within thirty (30) days.

(2) Refund checks will be issued promptly, but no later than either the Customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or the return of the equipment supplied by the Cable Operator if service is terminated.

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

(e) Treatment of public or private property.

(1) Nothing herein shall be construed as authorizing access or entry to private property or any other property, where such right to access or entry is not otherwise provided by law. For major construction or installation projects, property owners or occupants shall also be notified forty-eight (48) hours prior to the commencement of construction. In the case of an emergency, the Cable Operator shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made.

(2) The Cable Operator personnel shall clean all areas surrounding any work site and ensure that all cable materials have been disposed of properly. (Ord. 2-2002 Exh. A §3.3)

3.4. Services for customers with disabilities.

(a) For any Customer with a disability, the Cable Operator shall at no charge deliver and pick up converters at the Customer's home. In the case of a malfunctioning converter, the technician shall provide another converter, hook it up and ensure that it is working properly, and shall return the defective converter to the Cable Operator.

(b) The Cable Operator shall provide assistance rendered by the Cable Operator's Customer Service Representatives for any hearing-impaired Customer at no charge.

(c) The Cable Operator shall provide free use of a remote control unit to mobility-impaired (if disabled, in accordance with Paragraph (d) below) Customers.

(d) Any Customer with a disability may request the special services described above by providing the Cable Operator with a letter from the Customer's physician stating the need, or by making the request to the Cable Operator's installer or service technician, where the need for the special services can be visually confirmed. (Ord. 2-2002 Exh. A §3.4)

3.5. Notification to subscribers.

(a) 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.

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Installation and service maintenance policies;
- (4) Instructions on how to use the cable service;
- (5) Channel positions programming carried on the system; and
- (6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

(b) Customers will be notified of any changes in rates, programming services 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 (a) above. Notwithstanding any other provision herein, the 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 change of any kind imposed by any federal agency, state or Franchising Authority on the transaction between the Cable Operator and the subscriber.

(c) All officers, agents and employees of the Cable Operator or its contractors or subcontractors who are in personal contact with Customers shall wear on their outer clothing identification cards bearing their names and photographs. The Cable Operator shall account for all identification cards at all times. Every vehicle of the Cable Operator shall be clearly visually identified to the public as working for the Cable Operator. All CSRs shall identify themselves orally to callers immediately following the greeting during each telephone contact with the public. (Ord. 2-2002 Exh. A §3.5)

3.6. Customer privacy.

(a) The Cable Operator shall not monitor cable television signals to determine the individual viewing patterns or practices of any Customer without prior written consent from that Customer, except as otherwise permitted by the Cable Franchise Agreement.

(b) The Cable Operator shall not sell or otherwise make available Customer lists or other personally identifiable Customer information without prior written Customer consent, except as otherwise permitted by the Cable Franchise Agreement. The Cable Operator is permitted to disclose such information if such disclosure is necessary to render or conduct a legitimate business activity related to a cable service or other service provided by the Cable Operator to its Customers. (Ord. 2-2002 Exh. A §3.6)

3.7. Safety.

The Cable Operator shall install and locate its facilities, cable system and equipment in compliance with all federal, state, local and company safety standards, and in such manner as shall not unduly interfere with or endanger persons or property. Whenever the Cable Operator receives notice that an unsafe condition exists with respect to its equipment, the Cable Operator shall investigate such condition immediately, and shall take such measures as are necessary to remove or eliminate any unsafe condition. (Ord. 2-2002 Exh. A §3.7)

Section 4 *Complaint Procedure*

4.1. Complaints to Cable Operator.

(a) The Cable Operator shall establish written procedures for receiving, acting upon and resolving Customer complaints and crediting Customer accounts without interventions by the Franchising Authority; and shall publicize such procedures through printed documents at the Cable Operator's sole expense.

(b) Said written procedures shall prescribe a simple manner in which any Customer may submit a complaint by telephone or in writing to the Cable Operator that it has violated any provision of these Customer Service Standards, any terms or conditions of the Customer's contract with the Cable Operator, or reasonable business practices.

(c) At the conclusion of the Cable Operator's investigation of a Customer complaint, but in no more than thirty (30) calendar days after receiving the complaint, the Cable Operator shall notify the Customer of the results of its investigation and its proposed action or credit.

(d) The Cable Operator shall also notify the Customer of the Customer's right to file a complaint with the Franchising Authority in the event the Customer is dissatisfied with the Cable Operator's decision, and shall thoroughly explain the necessary procedures for filing such complaint with the Franchising Authority.

(e) The Cable Operator's complaint procedures shall be filed with the Franchising Authority prior to implementation. (Ord. 2-2002 Exh. A §4.1)

4.2 Security fund.

(a) Within thirty (30) days of the effective date of these Standards or the effective date of any franchise granted by the Franchising Authority, whichever occurs first, the Cable Operator shall establish and provide to the Franchising Authority a letter of credit from a financial institution satisfactory to the Franchising Authority in an amount of five thousand dollars (\$5,000.00) or, in the sole discretion of the Franchising Authority, such lesser amount as the Franchising Authority deems reasonable to protect subscribers within its jurisdiction. The letter of credit shall constitute the "Security Fund" for ensuring compliance with these Standards for the benefit of the Franchising Authority. The letter of credit shall be maintained by the Cable Operator at five thousand dollars (\$5,000.00), or such lesser amount accepted by the Franchising Authority, even if amounts are withdrawn pursuant to any provision of these Standards.

(b) The Security Fund shall serve as security for the payment of any penalties, fees, charges or credits as provided for herein and for the performance by the Cable Operator of all its obligations under these Customer Service Standards. If any Cable Operator is required by its Franchise Agreement to provide a letter of credit or other Security Fund, such security shall suffice as the Security Fund required pursuant to this Section. (Ord. 2-2002 Exh. A §4.2)

4.3. Complaints to Franchising Authority.

(a) Any Customer who is dissatisfied with any proposed decision of the Cable Operator or who has not received a decision within the thirty-day period as required shall be entitled to have the complaint reviewed by the Franchising Authority.

(b) The Customer may initiate the review by filing a written complaint together with the Cable Operator's written decision, if any, with the Franchising Authority.

(c) The Customer shall make such filing and notification within fifteen (15) days of receipt of the Cable Operator's decision or, if no decision has been provided, within forty (40) days after filing the original complaint with the Cable Operator. The Customer shall notify the Cable Operator that a complaint has been filed with the Franchising Authority by mailing a copy of the complaint to the Cable Operator by certified mail, return receipt requested.

(d) The Cable Operator shall file a written response to the complaint with the Franchising Authority within fifteen (15) days of receipt of a copy of the complaint from the Customer.

(e) If the Franchising Authority decides that further evidence is warranted, the Franchising Authority may require the Cable Operator and the Customer to submit, within ten (10) days of notice thereof, a written statement of the facts and arguments in support of their respective positions.

(f) The Cable Operator and the Customer shall produce any additional evidence, including any reports from the Cable Operator, which the Franchising Authority may deem necessary to an understanding and determination of the complaint.

(g) The Franchising Authority shall issue a determination within thirty (30) days after examining the materials submitted, setting forth its basis for the determination.

(h) The Franchising Authority may extend these time limits for reasonable cause and may intercede and attempt to negotiate an informal resolution.

(i) If the Franchising Authority determines that the Customer's complaint is valid and that the Cable Operator did not provide the complaining customer with the proper resolution and/or credit, the Franchising Authority may reverse any decision of the Cable Operator in the matter and/or require the Cable Operator to grant a specific resolution as determined by the Franchising Authority. If the Franchising Authority determines that the Customer's complaint has no validity, the complaint shall be dismissed with no further action being taken.

(j) Any decision by the Franchising Authority may be reviewed by a court of competent jurisdiction pursuant to C.R.C.P. (Ord. 2-2002 Exh. A §4.3; Ord. 11-2007 §1)

4.4. Verification of compliance.

The Cable Operator shall establish its compliance through annual reports that demonstrate said compliance, or as requested by the Franchising Authority. (Ord. 2-2002 Exh. A §4.4)

4.5. Overall quality of service.

The Franchising Authority may evaluate the overall quality of Customer service provided by the Cable Operator to Customers:

- (1) In conjunction with any performance review provided for in the Cable Franchise Agreement; and
- (2) At any other time, at its sole discretion, based on the number of Customer complaints received by the Cable Operator and the Franchising Authority, and the Cable Operator's response to those complaints. (Ord. 2-2002 Exh. A §4.5)

4.6. Noncompliance with Standards.

Noncompliance with any provision of these Standards is a violation of these Standards. (Ord. 2-2002 Exh. A §4.6)

4.7. Procedure for remedying violations.

If any Cable Operator is found to have violated any of these Standards, such Cable Operator shall be subject to any appropriate damages, penalties or any other remedy as provided by its cable Franchise with the Town. (Ord. 2-2002 Exh. A §4.7)

Section 5
Miscellaneous

5.1. Severability.

Should any section, subsection, paragraph, term or provision of these Standards be determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction with regard thereto, such determination shall have no effect on the validity of any other section, subsection, paragraph, term or provision of these Standards, each of the latter of which shall remain in full force and effect. (Ord. 2-2002 Exh. A §5.1)

5.2. Nonwaiver.

Failure to enforce any provision of these Standards shall not operate as a waiver of the obligations or responsibilities of the Cable Operator under said provision, or any other provision of these Standards. (Ord. 2-2002 Exh. A §5.2)

