

Chapter 9

**CABLE TELEVISION\***

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**ARTICLE I. IN GENERAL**

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**ARTICLE II. CABLE TV FRANCHISES**

## DIVISION 1. GENERALLY

**Sec. 9-19. Purpose.**

(a) The town of Cary finds that the development of cable television systems has the potential to provide great benefits for the people of Cary. The town finds that the public convenience, safety and general welfare can best be served by establishing a regulatory ordinance which delineates the principal regulatory requirements for persons operating cable systems within the town. It is the intent of this chapter to provide for and specify the means to secure the interest and public purpose in these matters and any franchise issued pursuant to this chapter shall be deemed to include this finding as an integral part thereof.

(b) For these purposes, the following goals underlie the regulations contained herein:

- (1) Cable television services should be made available to the maximum number of town residents.
- (2) Any cable system should be capable of accommodating both the present and reasonably foreseeable future cable television needs of residents of the town.
- (3) Any cable system should be improved and upgraded during the franchise term so that the new facilities necessary for the operation of this system shall be integrated to the maximum extent possible with existing facilities.
- (4) Cable systems authorized by this chapter shall be responsive to the needs and interests of the local community, and shall provide the widest possible diversity of programming sources and services to the public.

(Ord. No. 04-009, § 6-1, 8-26-2004)

**Sec. 9-20. Definitions.**

For the purpose of this chapter 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 number include the singular number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning:

*Basic cable service* means any service tier which includes the retransmission of local television broadcast signals.

*Cable service* means the one-way transmission to subscribers of (i) video programming (ii) other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

*Cable system* means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

- (1) A facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (2) A facility that serves subscribers without using any public right of way;
- (3) A facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Communications Act, except that such facility shall be considered a cable system (other than for purposes of section 621 (c)) of the communications act 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;
- (4) An open video system that complies with section 653 of the Communications Act; or
- (5) Any facilities of any electric utility used solely for operating its electric utility system.

*Cablecast signal* means a nonbroadcast signal that originates within the facilities of the cable communications system.

*Channel* means a frequency band, which is capable of carrying either one standard video signal, a number of audio, digital or other nonvideo signals or some combination of such signals.

*Closed-circuit or institutional service* means such video, audio, data and other services provided to institutional users on an individual application basis. These may include, but are not limited to, one-way video, two-way video, audio or digital signals among institutions to residential subscribers.

*Commercial subscriber* means a subscriber who receives a service in a place of business where the service may be utilized in connection with a business, trade or profession.

*Communications act* means the communications act of 1934 as it may be amended.

*Converter* means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and any channel selector which permits a subscriber to view all signals delivered at designated converter dial locations at the set or by remote control.

*Council* means the council of the town of Cary.

*CPI* shall mean the national percentum increase for the most recently completed calendar year of the average consumer price index for all items as published by the bureau of labor statistics of the United States department of labor, subject to maximum limits as may be set forth within the franchise agreement.

*Discrete channel* shall mean a channel which can only be received by the person and/or institution intended to receive signals on such channel.

*Downstream signal* means a signal originating from or provided by a cable television system to a subscriber terminal or other terminal including video, audio, or digital signals or any other type of data or information for either programs or other uses such as security alert services, etc.

*Drop* shall mean a connection from feeder cable to the subscriber/user television set, radio or other terminal.

*Educational access channel* means any channel designated for noncommercial educational access use.

*Fair market value* means the price that a willing buyer would pay to a willing seller for a going concern based on the system valuation prevailing in the industry at the time.

*FCC* means the federal communications commission.

*Franchise* means the nonexclusive rights granted pursuant to this chapter to construct, operate and maintain a cable system along the public ways within all or a specified area in the town. Any such authorization, in whatever form granted, shall not mean or include any license or permit or other nondiscriminatory charge required for the privilege of transacting and carrying on a business within the town as required by other ordinances and laws of the town.

*Franchise area* means the entire town, or portions thereof, for which a franchise is granted under the authority of this chapter or the franchise. If not otherwise stated in the franchise, the franchise area shall be the corporate limits of the town, including all territory thereafter annexed to the town.

*Franchise fee* means the percentage, as specified by the town, of the franchisee's gross revenues in exchange for the rights granted pursuant to this chapter and the franchise.

*Government access channel* means any channel specifically designated or dedicated for noncommercial government access use.

*Grantee* or *franchisee* means the natural person(s), partnership(s), domestic and foreign corporation(s), association(s), joint venture(s), or organization(s) of any kind which has been legally granted a franchise by the town, and its lawful successor, transferee or assignee.

*Grantor* means the town of Cary as represented by the town council acting within the scope of its jurisdiction.

*Gross annual revenues* or *gross revenues* means all revenues received directly or indirectly from the operation of the cable system to provide cable service in the town by the grantee, its affiliates, subsidiaries or any person in which grantee has a financial interest. Gross revenue shall include, but not be limited to:

- (1) All cable service fees;
- (2) Franchise fees;
- (3) Installation and reconnection fees;

- (4) Upgrade and downgrade fees;
- (5) Advertising revenue;
- (6) Home shopping commissions;
- (7) Converter and remote control rental fees;
- (8) Lockout device fees; and
- (9) Unless excluded under generally accepted accounting principles ("GAAP"), guides and late fees.

Gross Revenues shall not include:

- a. The revenues of any entity or Person where such revenues have been included in grantee's gross revenues so as to preclude double imposition of franchise fees;
- b. Bad debt write-offs; or
- c. Any taxes on services furnished by a grantee which are imposed upon any Subscriber or User by the state, town or other governmental unit and collected by the grantee on behalf of said governmental unit.

*Installation* shall mean the connection of the system from feeder cable to subscribers' terminals.

*Leased access channel, or commercial access channel* means any channel designated or dedicated for use by persons unaffiliated with the grantee, at rates which are fair and reasonable.

*Monitoring* means observing a communications signal, or the absence of a signal, where the observer is not a party to the communication, whether the signal is observed by visual or electronic means, for any purpose whatsoever.

*Narrowcasting* shall mean the ability to distribute cable programming to a particular segment or segments of the cable subscribers.

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

*Normal operating conditions* means 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.

*Operator* shall mean the entity granted a franchise.

*Origination site* means a location capable of transmitting audio-video television signals to the operator's headend or other location as provided.

*OVS* shall refer to open video system as defined by the federal communications commission.

*Person* means an individual, partnership, association, organization, corporation or any other legal entity including any lawful successor transferee of said individual, or entity.

*Plant mile* means a linear mile of strand-bearing cable as measured on the street or easement from pole to pole or pedestal to pedestal. In cases where cable is on both sides of the street, only the cable on one side of the street will be utilized in measuring a plant mile.

*Public access channel* means any channel designated or dedicated for use by the general public or noncommercial organizations which is made available for noncommercial access use without charge on a first-come, first-served, nondiscriminatory basis.

*Public way or public rights-of-way* means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkways, waterways, utility easements or other public right-of-way, including state and private streets, or hereafter held by the town which shall entitle the town and the company to the use thereof for the purpose of installing and maintaining the company cable television system. No reference herein, or in any franchise, to the "public way" shall be deemed to be a representation or guarantee by the town that its title to any property is sufficient to permit its use for such purpose, and the grantee shall, by its use of such terms, be deemed to gain only such rights to use property in the town as the town may have the undisputed right and power to give.

*Reasonable notice* shall be written notice addressed to the grantee at its principal office within the town or such other office as the grantee has designated to the town as the address to which notice shall be transmitted to it, which notice shall be certified and postmarked not less than seven business days prior to that day in which the party giving such notice shall commence any action which requires the giving of notice. In computing said seven business days, town holidays shall be excluded.

*Resident* means any person residing in the town as otherwise defined by applicable law.

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

*Sale* shall include any sale, exchange or barter.

*School* means any state accredited public or nonprofit educational institution including primary and secondary schools, colleges and universities.

*Service interruption* means the loss of picture or sound on one or more cable channels.

*State* means the state of North Carolina.

*Town* means the town of Cary, North Carolina.

*Transfer* means the disposal of the franchise by the grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise. "transfer" shall also mean a sale or fundamental corporate change of or in grantee, including, but not limited to, a fundamental

corporate change in grantee's parent corporation or any entity having a controlling interest in grantee, the sale of controlling interest in the grantee's assets, a merger, including a merger of a subsidiary and parent entity, consolidation, or the creation of a subsidiary or affiliate entity.

(Ord. No. 04-009, § 6-3, 8-26-2004)

**Secs. 9-21—9-43. Reserved.**

DIVISION 2. GRANT OF FRANCHISE

**Sec. 9-44. Grant.**

(a) In the event that the town shall grant to grantees a nonexclusive, revocable franchise to construct, operate, and maintain a cable system within the town, said franchise shall constitute both a right and an obligation to provide the services of a cable system as regulated by the provisions of this chapter and the franchise. The franchise shall include by reference those provisions of the grantee's "application for franchise" that are finally negotiated and accepted by the town and grantee.

(b) The franchise shall be granted under the terms and conditions contained herein, consistent with the town's Charter, Code of Ordinances, and/or other applicable statutory requirements. In the event of conflict between the terms and conditions of this chapter, the franchise, or the terms and conditions on which the town can grant a franchise, the franchise shall control.

(c) Any franchise granted by the town is hereby made subject to the generally applicable, nondiscriminatory Code of Ordinances of the Town of Cary as amended from time to time. Nothing in the franchise shall be deemed to waive the requirements of the various generally applicable, nondiscriminatory codes and ordinances of the town regarding permits, fees to be paid, or manner of construction.

(Ord. No. 04-009, § 6-4, 8-26-2004)

**Sec. 9-45. Franchise area.**

The franchise area shall be the entire town, or portions thereof, for which a franchise is granted.  
(Ord. No. 04-009, § 6-5, 8-26-2004)

**Sec. 9-46. Use of public rights-of-way.**

For the purpose of operating and maintaining a cable system in the town, the grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and within the rights-of-way within the town such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary to the operation of the cable system, provided, however, that grantee complies with all design, construction and safety provisions contained in this chapter, the franchise, and other applicable state and generally applicable, nondiscriminatory local ordinances.

(Ord. No. 04-009, § 6-6, 8-26-2004)

**Sec. 9-47. Use of grantee facilities.**

No poles shall be erected by the grantee without prior approval of the town and as permitted by town ordinances and regulations. However, no location of any pole of the grantee shall be a vested right and such poles shall be removed or modified by the grantee at its own expense whenever the town determines that the public convenience would be enhanced thereby. The grantee shall utilize existing poles and conduits, where possible. The town shall have the right, during the life of the franchise, to install, subject to an agreement between the parties upon the terms and conditions of such use, upon the poles owned by the grantee, any wire and pole fixtures that are noninterfering and noncompetitive with the cable system operations of the grantee. The town's right to use grantee facilities is not transferable.

(Ord. No. 04-009, § 6-8, 8-26-2004)

**Sec. 9-48. Franchise required.**

No cable system shall be allowed to occupy or use the streets of the town or be allowed to operate without a franchise.

(Ord. No. 04-009, § 6-9, 8-26-2004)

**Sec. 9-49. Term of franchise.**

The term of any franchise granted pursuant to this chapter shall be stated in the franchise.

(Ord. No. 04-009, § 6-10, 8-26-2004)

**Sec. 9-50. Franchise nonexclusive.**

The franchises discussed herein are nonexclusive. The town specifically reserves the right to grant at any time such additional franchises for a cable system or OVS as it deems appropriate provided, however, no such additional franchises, taken as a whole, shall be granted on terms or conditions more favorable or less burdensome than in any franchise previously granted by the town. To the extent allowable by law, any cable franchises granted by the town shall contain similar terms and conditions with respect to franchise fees, gross revenue base and service area.

(Ord. No. 04-009, § 6-11, 8-26-2004)

**Sec. 9-51. Time is of the essence.**

Whenever the franchise agreement shall set forth any time for an act to be performed by or on behalf of the grantee, such time shall be deemed of the essence and any failure of the grantee to materially perform within the time allotted shall be sufficient ground for the town to invoke an appropriate penalty, including possible revocation of the franchise, subject to notice and a time to cure.

(Ord. No. 04-009, § 6-12, 8-26-2004)

**Sec. 9-52. Law governs.**

In any controversy or dispute under this chapter, the law of the state or federal law, as appropriate, shall apply.

(Ord. No. 04-009, § 6-12, 8-26-2004)

**Sec. 9-53. Severability.**

If any section, subsection, sentence, clause, phrase or portion of this chapter or the franchise is for any reason held invalid or unconstitutional by any court of competent jurisdiction, or by any federal, state, or local statute or regulation, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(Ord. No. 04-009, § 6-14, 8-26-2004)

**Sec. 9-54. Transfer of ownership or control.**

(a) Any franchise granted hereunder cannot in any event be sold, transferred, leased, assigned or disposed of, including but not limited to, by force or voluntary sale, merger, consolidation, receivership or other means without the prior consent of the town.

(b) The grantee shall promptly notify the town of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the grantee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the disposal by the grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of 50 percent or more at one time of the ownership or controlling interest in the grantee.

(c) Every change, transfer, or acquisition of control of the grantee requiring consent of the town shall make the franchise subject to cancellation unless and until the town shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the town may inquire into the legal, financial, and technical qualifications of the prospective controlling party, and the grantee shall assist the town in any such inquiry.

(d) The town agrees that any financial institution having a pledge of the franchise or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the town that it or its designees satisfactory to the town will take control and operate the cable system. Further, said financial institution shall also submit a plan for such operation that will insure continued service and compliance with all franchise obligations during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one year, unless extended by the town at its discretion and during said period of time it shall have the right to petition for transfer of the franchise to another grantee. If the town finds that such transfer, after considering the legal, financial and technical qualifications of the applicant are satisfactory, the town will transfer and assign the rights and obligations of such franchise as in the public interest. The consent of the town to such transfer shall not be unreasonably withheld.

(e) The consent or approval of the town to any transfer of the grantee shall not constitute a waiver or release of the rights of the town in and to the streets, and any transfer shall, by its terms, be expressly subject to the terms and conditions of this chapter and the franchise.

(f) The town will approve any transfer or assignment of the franchise prior to completion of construction of the proposed system, if guarantees for timely and quality construction are provided by the transferee, as may be reasonably requested by the town.

(g) Notwithstanding anything to the contrary, the prior approval of the town shall not be required for any assignment to any person controlling, controlled by or under the same common control as the grantee.

(h) Any approval by the town of the assignment or transfer of the franchise shall be contingent upon the prospective grantee becoming a signatory to the franchise.

(Ord. No. 04-009, § 6-15, 8-26-2004)

**Sec. 9-55. Franchise renewal.**

Upon completion of the term of any franchise granted under this chapter, the town may grant or deny renewal of the franchise of the grantee in accordance with the provisions of the communications act. The grantee shall own the cable system, but shall have no property right in the public rights-of-way upon the completion of the franchise term.

(Ord. No. 04-009, § 6-16, 8-26-2004)

**Sec. 9-56. Police powers.**

(a) In accepting the franchise, the grantee acknowledges that its rights hereunder are subject to the police power of the town (as provided in G.S. 160A-174) to adopt and enforce general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the town pursuant to such power.

(b) Any conflict between the provisions of this chapter or the franchise and any other present or future lawful exercise of the town's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction or applies exclusively to grantee or cable systems which contains provisions inconsistent with this chapter shall prevail only if, upon such exercise, the town finds an emergency exists constituting a danger to health, safety, property or general welfare and such exercise is mandated by law.

(Ord. No. 04-009, § 6-17, 8-26-2004; Ord. No. 2010-Code-02, 3-10-2010)

**Sec. 9-57. Franchise fees.**

(a) Because the town finds that:

- (1) The streets of the state and town to be used by the grantee in the operation of its system within the boundaries of the franchise area are valuable public properties acquired and maintained by the state and town at great expense to its taxpayers; and
- (2) The grant to the grantee to the said streets is a valuable property right without which the grantee would be required to invest substantial capital in rights-of-way costs and acquisitions; and
- (3) The administration of this chapter or the franchise imposes upon the town additional regulatory responsibility and expense;

a grantee of any franchise hereunder shall pay to the town a franchise fee of five percent of gross annual revenues. This annual franchise payment shall be in addition to any other generally applicable, nondiscriminatory fee and commence as of the effective date of the franchise. The town shall be furnished a statement of said payment by a certified public accountant or officer of the grantee, reflecting the total amounts of gross annual revenues and the above charges and computations for the period of July 1 to June 30 as provided in section 9-205(9) of this chapter.

(b) If grantee's subscribers are offered what is, in effect, a discount or discounts for "bundled" services (i.e., cable service and some other, noncable goods or service), grantee shall not disproportionately discount the fees charged for cable service, relative to the discount in the fees charged for the other, noncable goods or services with the intent to minimize franchise fees payable to the town. This provision is only meant to apply where an overall discount on bundled services, or discounts on both cable service and other, noncable goods or services, is offered. Therefore, this provision does not apply when only a discount is offered on a noncable good or service, without any discount in the cable service. This provision is also not intended to prevent grantee from giving reasonable discounts for cable service, including, but not limited to, any discounts offered to new subscribers or to subscribers who upgrade the cable service they receive.

(c) This payment shall be in addition to any other generally applicable, nondiscriminatory lawful tax or payment owed to the governments or other taxing jurisdiction by the grantee. Payment of the franchise fee made by grantee to the town shall be in addition to any and all taxes which are now or may be required hereafter to be paid by any federal, state, or local law.

(d) Acceptance by the town. No acceptance of any payment by the town shall be construed as a release or as an accord and satisfaction of any claim the town may have for further or additional sums payable as a franchise fee under this chapter or for the performance of any other obligation of the grantee.

(e) Failure to make required payment. In the event that any franchise payment or recomputed amount is not made on or before the dates specified herein, grantee shall pay as additional compensation an interest charge, computed from such due date, at the annual rate equal to the commercial prime interest rate of the town's primary depository bank during the period that such unpaid amount is owed.

(f) The franchise fee shall be payable quarterly to the town of Cary. The grantee shall file a complete and accurate statement, certified by an officer of the grantee, of all gross revenue within the town during the period for which said quarterly payment is made, and said statement and payment shall be made to the town not later than 45 days after the expiration of each calendar quarter. Quarterly computation dates are the last day in the months of March, June, September and December.

(g) The town shall have the right to inspect the grantee's books and records pertinent to the computation of the franchise fee and the right to audit and to recompute any amounts determined to be payable under this chapter. Audits shall be conducted by town staff or an independent auditor chosen by the town. If, after audit and recomputation, an undisputed unpaid fee is owed to the town, it shall be paid within 30 days following written notice of the grantee by the town which notice shall

include a copy of the audit report. The town's audit expenses shall be borne by the town unless the audit discloses an underpayment of franchise fees in an amount equal to or exceeding five percent of the total franchise fee payment for the audit period, in which case the costs of the audit shall be borne by the grantee as a cost incidental to the enforcement of this franchise. Any additional undisputed amounts due to the town as a result of an audit shall be paid by the grantee to the town within 60 days following written notice to the grantee by the town of the underpayment, which notice shall include a copy of the audit report.

(Ord. No. 04-009, § 6-18, 8-26-2004)

**Sec. 9-58. Forfeiture or revocation.**

(a) *Grounds for revocation.* The town reserves the right, subject to the provisions of subsection (b) and (c) of this section 9-58, to revoke any franchise granted hereunder and rescind all rights and privileges associated with the franchise in the following circumstances, each of which shall represent a default and breach under this chapter and the franchise grant:

- (1) If the grantee shall default in the performance of any of the material obligations under this chapter or the franchise.
- (2) If the grantee shall fail to provide or maintain in full force and effect the liability and indemnification coverage or the performance bond as required herein.
- (3) If the grantee shall violate any orders or rulings of any regulatory body having jurisdiction over the grantee relative to this chapter or the franchise which results in a default of any of the material obligations under this chapter or the franchise.
- (4) If the grantee practices any fraud upon the town or pattern of fraud on cable subscribers.
- (5) The grantee's construction schedule is delayed later than the schedule contained in the franchise or beyond any extended date set by the town or is not remedied through liquidated damages.
- (6) The grantee becomes insolvent, unable or unwilling to pay its debts or is adjudged bankrupt.
- (7) Failure to restore system-wide or area specific service after 96 consecutive hours of interrupted service, except when approval of such interruption is obtained from the town or if the grantee ceases to operate and provide services for any reason within the control of the grantee.
- (8) Material misrepresentation of fact in the application for or negotiation of the franchise or any extension or renewal thereof.

(b) *Effect of circumstances beyond control of grantee.* The grantee shall not be declared at fault or be subject to any sanction under any provision of this chapter in any case, in which performance of any such provision is prevented for reasons beyond the grantee's control. A fault shall not be deemed to be beyond the grantee's control if committed by a corporation or other business entity in which the grantee holds a controlling interest whether held directly or indirectly.

(c) *Procedure prior to revocation.*

- (1) The town shall make written demand that the grantee comply with any such requirement, limitation, term, condition, rule or regulation or correct any action deemed cause for revocation. If the failure, refusal or neglect of the grantee continues for a period of 30 days following such written demand or, in any case where such compliance cannot reasonably be completed within 30 days, other such longer period of time as reasonably set by the town, the town shall place its request for termination of the franchise upon a regular council meeting agenda. The town shall cause to be served upon such grantee at least seven business days prior to the date of such council meeting, a written notice of this intent to request such termination, and the time and place of the meeting, notice of which shall be published by the town clerk at least once, seven business days before such meeting in a newspaper of general circulation within the town.
- (2) The council shall hear any persons interested therein, and shall determine in its reasonable judgment, whether or not any failure, refusal or neglect by the grantee was with just cause.
- (3) If such failure, refusal or neglect by the grantee was with just cause, as defined by the town in its judgment reasonably exercised, the council shall direct the grantee to comply within such time and manner and upon such terms and conditions as are reasonable.
- (4) If the council shall determine such failure, refusal, or neglect by the grantee was without just cause, then the council may, by resolution, declare that the franchise of the grantee shall be terminated and bond forfeited unless there be compliance by the grantee within 90 days.

(d) *Disposition of facilities.* In the event a franchise renewal is denied (and all appeals exhausted), is revoked or otherwise terminated, the town may require grantee to remove its facilities from town rights-of-way.

(e) *Restoration of property.* In the event grantee removes its plant, structures and equipment, the grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public property, rights-of-ways, private property, and places in as reasonably good condition as that prevailing prior to the grantee's removal of its equipment and appliances without affecting the electrical or telephone cable wires or attachments. The town shall inspect and approve the condition of the public rights-of-ways and public places and cables, wires, attachments, and poles after removal. The liability, indemnity, insurance and performance bond as provided herein shall continue in full force and effect during the period of removal and until full compliance by the grantee with the terms and conditions of this subsection, this chapter and the franchise.

(f) *Restoration by town; reimbursement of costs.* In the event of a failure by the grantee to complete any work required by sections 9-46 and 9-47 and/or (e) above, or any other work required by town law or ordinance within the time as may be established and to the satisfaction of the town, the town may cause such work to be done and the grantee shall reimburse the town the cost thereof within 30 days after receipt of an itemized list of such costs, or the town may recover such costs through the performance bond or letter of credit provided by grantee. The town shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

(g) *Extended operation.* Upon either the denial or renewal (including the exhaustion of all appeals) or revocation of a franchise, the town may negotiate with the grantee to continue to operate the system for a period of time from the date of such expiration or revocation, or until such time as is mutually agreed upon. The grantee shall, as trustee for its successor in interest, continue to operate the cable system under the terms and conditions of this chapter and the franchise and to provide the regular subscriber service and any and all of the services that may be provided at the time.

(Ord. No. 04-009, § 6-19, 8-26-2004)

**Sec. 9-59. Receivership and foreclosure.**

(a) *Termination by insolvency.* The franchise granted hereunder shall, at the option of the town, cease and terminate 120 days after the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of the grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days, or unless:

- (1) Such receivers or trustees shall have, within 120 days after their election or appointment, fully complied with all the terms and provisions of this chapter and the franchise granted pursuant hereto, and the receivers or trustees within said 120 days shall have remedied all defaults under the franchise; and
- (2) Such receivers, or trustees shall, within said 120 days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the franchise herein granted.

(b) *Termination by judicial action.* In the case of a foreclosure or other judicial sale of the plant, property and equipment of the grantee or any part thereof, including or excluding the franchise, the town may serve notice of termination upon the grantee and the successful bidder at such sale, in which event the franchise and all rights and privileges of the grantee granted hereunder shall cease and terminate 30 days after service of such notice, unless:

- (1) The town shall have approved the transfer of the franchise, in the manner this chapter provides; and
- (2) Such successful bidder shall have covenanted and agreed with the town to assume and be bound by all the terms and conditions of the franchise.

(Ord. No. 04-009, § 6-20, 8-26-2004)

**Sec. 9-60. Equal opportunity policy.**

Grantee shall comply with all equal opportunity provisions enacted by federal and state authorities, as well as all such provisions contained in this chapter and the franchise.

(Ord. No. 04-009, § 6-21, 8-26-2004)

**Sec. 9-61. Notices.**

All notices from grantee to the town pursuant to this chapter and the franchise shall be to the town manager or his/her designee. Grantee shall maintain with the town, throughout the term of the franchise, an address for service of notices by mail. Grantee shall also maintain with the town a local office and telephone number for the conduct of matters related to the franchise during normal business hours. The grantee shall be required to advise the town of such address(es) and telephone numbers and any changes thereof.

(Ord. No. 04-009, § 6-22, 8-26-2004)

**Sec. 9-62. Failure to enforce, no waiver.**

The grantee shall not be excused from complying with any of the terms and conditions of this chapter or the franchise by any failure of the town upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

(Ord. No. 04-009, § 6-23, 8-26-2004)

**Sec. 9-63. Rights reserved to the grantor.**

(a) *Right of inspection of records.* The town shall have the right to inspect the books, records, reports, maps, plans and financial statements of the grantee relating to operations within the town as reasonably necessary to the enforcement of the chapter and the franchise on reasonable notice during normal business hours.

(b) *Right of inspection of construction.* The town shall have the right to inspect all construction or installation work performed subject to the provisions of the franchise and to make such tests as it shall find necessary to ensure compliance with the terms of this chapter and other pertinent provisions of the law, provided that such inspections and/or tests shall be conducted in a manner which minimizes interference with the grantee's normal operations. The grantee shall make a good faith effort to assist the town with such inspections and/or tests.

(c) *Right of inspection of property.* At all reasonable times, grantee shall permit examination by any duly authorized representative of the town of the cable system, together with any appurtenant property of grantee situated within or without the town.

(d) *Right of intervention.* The town shall have the right of intervention in any suit or proceeding to which the grantee is a party and in which the town shall have a material interest. The grantee shall not oppose such intervention by the town.

(e) *Right to require removal of property.* Upon denial of renewal (and exhaustion of all appeals) of the franchise, or upon its revocation or expiration, as provided for herein, the town shall have the right to require the grantee to remove, at its own expense, all portions of the cable system required by public necessity from all streets and public ways within the town.

(Ord. No. 04-009, § 6-24, 8-26-2004)

**Sec. 9-64. Limits on recourse against the grantor.**

The provisions of 47 USC 555a shall apply in any court proceeding involving any claim against the town, or any official, member, employee, or agent of the town's, arising from the regulation of cable service or from a decision of approval or disapproval with respect to a grant, renewal, transfer or amendment of a franchise.

(Ord. No. 04-009, § 6-25, 8-26-2004)

**Secs. 9-65—9-86. Reserved.**

## DIVISION 3. REGULATION OF FRANCHISE

**Sec. 9-87. Regulatory authority.**

(a) The town shall exercise appropriate regulatory authority under the provisions of this chapter and applicable law. This authority shall be vested in the town council and administered through the town manager or designee in order to provide day-to-day administration and enforcement of the provisions of this chapter and any franchise granted hereunder, and to carry out the town's responsibilities with regard to cable service and cable systems.

(b) The town reserves the right to exercise the maximum plenary authority allowed by state and federal law, regarding rates, technical standards and consumer protection.

(Ord. No. 04-009, § 6-26, 8-26-2004)

**Sec. 9-88. Supervision of the franchise.**

(a) The town shall have the following regulatory responsibility:

- (1) Administration and enforcement of the provisions of this chapter and any franchise granted hereunder.
- (2) Award, renewal, extension or termination of a franchise pursuant to the provisions of this chapter, the franchise, and other applicable law.
- (3) Consent prior to sale or transfer of any franchise granted hereunder.
- (4) Performance evaluation.

(b) The town also reserves the right to perform the following functions:

- (1) Develop objectives and coordinate activities related to the operation of government channels.
- (2) Approve procedures and standards for public, government and educational access operations and services, including the use of dedicated channels and sharing of public facilities.
- (3) Review and make recommendations on plans for expansion, interconnection and growth of cable services.

- (4) Review and make recommendations on the possibility of integrating cable systems with other town, state or regional telecommunications networks.
- (5) Formulate and recommend long-range telecommunications policy for the town, and determine the future cable-related needs and interests of the community.
- (6) Provide the administrative effort necessary for the conduct of performance evaluations, and any other activities required for the administration of this chapter or the franchise.
- (7) Monitor grantee's process for handling citizen complaints and periodically inspect and analyze the records related to such complaints.
- (8) Receive applications for rate increases if applicable and provide staff assistance in the analysis and recommendations thereto.
- (9) Monitor grantee's adherence to operational standards, service requirements and line extension policies.
- (10) Assure compliance with applicable laws and ordinances.
- (11) Arrange tests and analysis of equipment and performance, as needed to insure compliance with this chapter and the franchise.
- (12) Assure continuity in service.
- (13) Receive for examination all data and reports required by this chapter.

(c) There may be established a citizen's advisory commission entitled the cable television advisory commission, which shall consist of between three and seven members representing the population characteristics of the residents of the town. Members may be appointed by the town council for terms up to three years. No person shall be appointed as a member of the commission for more than two consecutive terms. The commission shall adopt bylaws governing its procedures and actions on matters coming before it.

(d) The responsibilities of the cable television advisory commission may, as set by the town, include but not be limited to the following:

- (1) Monitor and advise the town council and town administration on the provisions of the town's cable television services ordinance and related ordinances.
  - (2) Prepare an annual report to the council.
  - (3) Cooperate with the town and the grantee in fulfilling its responsibilities herein.
- (Ord. No. 04-009, § 6-27, 8-26-2004)

#### **Sec. 9-89. Rates and charges.**

(a) *Authority to regulate.* The town may regulate grantee's rates and charges consistent with applicable federal and state law. The term "regulate" means the town may take any step consistent with applicable federal and state law.

(b) *Manner of regulation.* Without limiting the foregoing, and except as inconsistent with applicable law:

- (1) The town may require grantee to submit to the town current rates as of the effective date.
- (2) The grantee may not change a rate or charge that is subject to the town's regulation without the town's prior approval, except as applicable law otherwise provides.

(c) *Rate and services schedule.* The grantee shall maintain on file with the town an up-to-date rate schedule of all subscriber and user rates, fees and charges for all cable services and products provided. The schedule shall be updated any time there is a change in the rate schedule. grantee shall file any revised rate schedule with the town clerk in accordance with the requirements of this chapter. In addition, the grantee shall give the town 30 days advance written notice of any change in services offered or rates.

(Ord. No. 04-009, § 6-28, 8-26-2004)

**Sec. 9-90. Performance evaluation.**

(a) Special evaluation sessions may be held at any time during the term of the franchise at the request of the town.

(b) All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with public notice, as provided by this Code.

(c) Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to system performance and construction, grantee compliance with this chapter and the franchise, customer service and complaint response, subscriber privacy, services provided, programming offered, service rate structures, franchise fees, penalties, free or discounted services, applications of new technologies, judicial and FCC filings, and line extensions.

(d) During the review and evaluation by the town, the grantee shall fully cooperate with the town and shall provide such information and documents prepared by grantee in the ordinary course of business as the town may need to reasonably perform its review.

(Ord. No. 04-009, § 6-29, 8-26-2004)

**Secs. 9-91—9-108. Reserved.**

DIVISION 4. BONDS, INSURANCE AND INDEMNIFICATION

**Sec. 9-109. Performance bond and letter of credit.**

(a) *Performance bond.* The town may require the grantee, as part of a franchise agreement, to obtain and maintain during the entire term of the franchise and any extensions and renewals thereof, at its cost and expense, and file with the town, a corporate surety bond in an amount specified in this chapter or the franchise to guarantee the faithful performance of the grantee of all its obligations provided under this chapter and the franchise. Failure to timely obtain, file and maintain said bond shall constitute a substantial violation within the meaning of this section.

(b) *Conditions.* The performance and/or payment bond shall provide the following conditions:

- (1) There shall be recoverable by the town jointly and severally from the principal and surety, any and all fines and liquidated damages to the town and any and all damages, losses, costs, and expenses' suffered or incurred by the town resulting from the failure of the grantee to: faithfully comply with the provisions of this chapter and the franchise; franchise fee not in dispute; pay any claims, liens or generally applicable, nondiscriminatory taxes due the town which arise by reason of the construction, operation, maintenance or repair of the Cable System. Such losses, costs and expenses shall include but not be limited to attorney's fees and other associated expenses.
- (2) The total amount of the bond shall be forfeited in favor of the town in the event:
  - a. The grantee abandons the cable system at any time during the term of the franchise or any extension thereto; or
  - b. The grantee assigns the franchise without appropriate, lawful consent of the town, when such consent is required.

(c) *Reduction of bond.* Upon written application by the grantee, the town may, at its sole option, permit the amount of the bond to be reduced or waive the requirements for a performance bond subject to the conditions set forth below. Reductions granted or denied upon application by the grantee shall be without prejudice to the grantee's subsequent applications or to the town's right to require the full bond at any time thereafter. However, no application shall be made by the grantee within one year of any prior application.

(d) *Letter of credit.* The town may require the grantee, as part of a franchise agreement, to obtain, maintain and file with the town an irrevocable letter of credit from a financial institution licensed to do business in the state in an amount specified in the franchise, naming the town as beneficiary. The form and contents of such letter of credit shall be approved by the town and shall be released only upon expiration of the franchise or upon the replacement of the letter of credit by a successor grantee. Failure to obtain the letter of credit within the time specified within the franchise shall constitute a substantial violation within the meaning of this section.

(e) *Conditions.* The town may draw upon the letter of credit if the grantee fails to: faithfully comply with the material provisions of this chapter and the franchise; comply with all lawful orders, permits and directives of any town agency or body having jurisdiction over its acts or defaults pursuant to the franchise; pay fees due to the town; or pay any lawful claims, liens or generally applicable, nondiscriminatory taxes due the town which arise by reason of the construction, operation, maintenance or repair of the cable system.

(f) *Use of performance bond and letter of credit.* Prior to drawing upon the letter of credit and/or the performance bond for the purposes described in this section, the town shall notify the grantee in writing that payment is due and the grantee shall have ten days from the receipt of such written notice to make a full and complete payment or request a hearing before council. If the grantee does not make the payment within ten days or request a hearing before council, the town may withdraw the amount thereof, with interest and penalties, from the letter of credit and the performance bond.

(g) *Notification.* Within three days of a withdrawal from the letter of credit and/or performance bond, the town shall send to the grantee, by certified mail, return receipt requested, written notification of the amount, date and purpose of such withdrawal.

(h) *Replenishment of letter of credit and performance bond.* No later than 30 days after mailing to the grantee by certified mail notification of a withdrawal pursuant to subsection (f) above, the grantee shall replenish the letter of credit and/or performance bond in an amount equal to the amount so withdrawn. Failure to make timely replenishment of such amount to the letter of credit and/or performance bond shall constitute a substantial violation of this chapter.

(i) *Nonrenewal, alteration, or cancellation of letter of credit or performance bond.* The performance bond and/or letter of credit required in the franchise shall be in a form satisfactory to the town and shall require 30 days written notice of any nonrenewal, alteration or cancellation to both the town and the grantee. The grantee shall, in the event of any such cancellation notice, obtain, pay all premiums for, and file with the town, written evidence of the issuance of replacement bond or policies within 30 days following receipt by the town or the grantee of any notice of cancellation.

(j) *CPI increase.* To offset the effects of inflation, the amounts of the bond and letter of credit provided for herein are subject to reasonable CPI increases at the end of every three-year period of the franchise, applicable to the next three-year period, upon the determination of the town. (Ord. No. 04-009, § 6-30, 8-26-2004)

#### **Sec. 9-110. Liability and insurance.**

(a) Prior to commencement of construction, but in no event later than 60 days after the effective date of the franchise and thereafter continuously throughout the duration of the franchise and any extensions or renewals thereof, the grantee shall furnish to the town certificates of insurance, approved by the town, for all types of insurance required under this section. Failure to furnish said certificates of insurance in a timely manner shall constitute a violation of this chapter.

(b) Certificates of insurance obtained by the grantee in compliance with this section shall be filed and maintained with the town clerk during the term of the franchise.

(c) Neither the provisions of this section nor any damages recovered by the town hereunder shall be construed to or limit the liability of the grantee under any franchise issued hereunder for damages.

(d) All insurance policies maintained pursuant to this chapter or the franchise shall contain the following, or a comparable, endorsement:

It is hereby understood and agreed that this insurance policy may not be cancelled by the insurance company nor the intention not to renew be stated by the insurance company until 30 days after receipt by the town manager, by registered mail, of a written notice of such intention to cancel or not to renew.

(e) All contractual liability insurance policies maintained pursuant to this chapter or the franchise shall include the provision of the following hold harmless clause:

The grantee agrees to indemnify, save harmless and defend the town, its agents, servants, and employees, and each of them against and hold it and them harmless from any and all lawsuits, claims, demands, liabilities, losses and expenses, including court costs and reasonable attorney's fees for or on account of injury to any person, or any death at any time resulting from such injury, or any damage to any property, which may arise or which may be alleged to have arisen out of or in connection with the work covered by this agreement and performed or caused to be performed by grantee. The foregoing indemnity shall apply except if such injury, death or damage is caused by the negligence or other fault of the town, its agents, servants, or employees or any other person indemnified hereunder.

(f) All insurance policies provided under the provisions of the franchise shall be written by companies authorized to do business in the state, and approved by the state board of insurance.

(g) At any time during the term of the franchise, the town may request and the grantee shall comply with such request, to name the town as an additional named insured for all insurance policies written under the provisions of this chapter or the franchise.

(h) To offset the effects of inflation and to reflect changing liability limits, all of the coverages, limits, and amounts of the insurance provided for herein are subject to reasonable CPI increases at the end of every three-year period of the franchise, applicable to the next three-year period, upon the determination of the town; provided, however, in no event shall the town require amounts in excess of what is customarily provided by cable system operators in North Carolina.

(i) General liability insurance. The grantee shall maintain, and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain throughout the term of the franchise, general liability insurance insuring the grantee in the minimum of:

- (1) Five hundred thousand dollars for property damage per occurrence;
- (2) One million dollars for property damage aggregate;
- (3) One million dollars for personal bodily injury to any one person; and
- (4) Two million dollars bodily injury aggregate per single accident or occurrence.

(j) Such general liability insurance must include coverage for all of the following: comprehensive form, premises-operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, and personal injury.

(k) Automobile liability insurance. The grantee shall maintain, and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain throughout the term of the franchise, automobile liability insurance for owned, nonowned, or rented vehicles in the minimum amount of:

- (1) One million dollars (for bodily injury and consequent death per occurrence.
- (2) One million dollars for bodily injury and consequent death to any one person.

(3) Five hundred thousand dollars for property damage per occurrence.

(l) Worker's compensation and employer's liability insurance. The grantee shall maintain and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain throughout the term of the franchise, worker's compensation and employer's liability, valid in the state, in the minimum amount of:

(1) Statutory limit for worker's compensation.

(2) One hundred thousand dollars for employer's liability.  
(Ord. No. 04-009, § 6-31, 8-26-2004)

**Sec. 9-111. Indemnification.**

(a) Grantee shall, at its sole cost and expense, fully indemnify, defend and hold harmless the town, its officers, boards and commissions, and town employees against any and all claims, suits, actions, liability and judgments for damages (including but not limited to expenses for reasonable legal fees and disbursements and liabilities assumed by the town in connection therewith):

(1) To persons or property, in any way arising out of or through the acts or omissions of grantee, its servants, agents or employees, or which shall be caused by grantee's negligence pursuant to the provisions of the franchise.

(2) Arising out of any claim for invasion of the right of privacy, for defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation (excluding claims arising out of or relating to public, educational, and government access programming) with the respect to services provided or caused to be provided by grantee.

(3) Arising out of grantee's failure to comply with the provisions of any federal, state, or generally applicable, nondiscriminatory local statute ordinances or regulation applicable to grantee in its business hereunder.

(b) The foregoing indemnity is conditioned upon the town:

(1) Promptly notifying grantee of any claim or legal proceeding which gives rise to such right;

(2) Affording grantee the opportunity to participate in and fully control any defense, compromise, settlement, resolution or disposition of such claim or proceeding; and

(3) Fully cooperating in the defense of such claim and making available to grantee all such information under its control relating thereto.

(Ord. No. 04-009, § 6-32, 8-26-2004)

**Secs. 9-112—9-135. Reserved.**

## DIVISION 5. DESIGN AND CONSTRUCTION PROVISIONS

**Sec. 9-136. Authority to construct.**

Within 90 days of the adoption of an initial franchise agreement, Franchisee shall meet with the town Manager and/or his/her designee to review the status of the initial system's construction plan and 18 month construction schedule. Within 30 days following this meeting, the grantee shall apply for any needed contracts for use of poles. Within 30 days after completion of the make-ready survey identifying the routes of the system facility, the grantee shall apply for all additional licenses from the state, town, or other necessary parties, such as the railroads for crossing under or over their property. In any event, all necessary applications for permits, licenses, certificates and authorizations shall be applied for in a timely fashion so that such filing and processing shall not interfere with or cause delay with the construction scheduled as outlined in the franchise. Failure to make such timely application and timely filing shall constitute a substantial violation of this chapter.

(Ord. No. 04-009, § 6-33, 8-26-2004)

**Sec. 9-137. Construction and technical standards.**

(a) Grantee shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements and FCC technical standards. The grantee, through the system, shall provide uniform, strong signals which are free from any significant distortion and interference. The system shall be designed, constructed, operated and maintained for 24 hours a day continuous operation. The system shall produce, for reception on subscribers' receivers which are in good working order, either monochrome or color pictures (providing the receiver is color capable) which are free from any significant interference or distortion which would cause any material degradation of video or audio quality.

(b) The grantee shall construct, install, operate and maintain its system in accordance with the following minimum standards:

- (1) The system will be spaced to permit a minimum of 750 MHz operation.
- (2) The grantee shall maintain its cable system in a manner which will continue to enable it to add new services and associated equipment.

(c) Prior to the erection of any towers, poles or conduits, the grantee shall make available to the town and other appropriate parties for approval a concise description of the facilities proposed to be erected or installed, including engineering drawings, if required, together with a map and plans indicating the proposed location of all such facilities. No erection or installation of any tower, pole, underground conduit, or fixture shall be commenced by any person until approval thereof has been received from the town, consistent with all generally applicable, nondiscriminatory town ordinances and regulations and timeframes, including articles VI and VII of chapter 28 of the town's code of ordinances in effect as of the date of any franchise granted pursuant to the provisions hereof.

(d) Any contractor proposed for work of construction, installation, operation, maintenance, and repair of system equipment must be properly licensed under laws of the state, and all generally applicable, nondiscriminatory local ordinances, and shall be subject to the terms of this chapter, and all applicable federal and state laws.

(e) The grantee's system and associated equipment erected by the grantee within the town shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places. No pole or other fixtures placed in any public ways by the grantee shall be placed in such a manner as to interfere with normal travel on such public way.

(f) The town does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures. In public rights-of-way, where necessary, the location shall be verified by excavation.

(g) Construction, installation, operation, upgrade, and maintenance of the cable system shall be performed in an orderly manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

(h) Grantee shall at all times comply with:

- (1) National Electrical Safety Code (National Bureau of Standards);
- (2) National Electrical Code (as adopted by the state);
- (3) Applicable FCC or other federal, state and generally applicable, nondiscriminatory local regulations; and standards as set forth in this chapter or the franchise;
- (4) Manual on Uniform Traffic Control Devices; and
- (5) The relevant sections in the town of Cary's Design Specifications and Detail Manual in effect as of the date of any franchise granted pursuant to the provisions hereof.

In no event shall grantee or its contractors leave open any excavation within the town but outside the town's rights-of-ways for more than ten days from when the excavation was made. Further, grantee shall bury all drops or other cable within ten days, except when ground conditions do not permit grantee to do so. When grantee is unable to comply with this deadline due to ground conditions, grantee shall bury the drop or other cable as soon as ground conditions permit grantee to do so.

(i) In any event, the system shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the grantee may have equipment located.

(j) Any antenna structure used in the cable system shall comply with construction, marking, and lighting of antenna structure standards as required by federal and state law or regulation.

(k) All worker facilities, conditions, and procedures that are used during construction, installation, operation, and maintenance of the cable system shall comply with the standards of the occupational safety and health administration.

(l) RF leakage shall be checked at reception location for emergency radio services to prove measurable interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no measurable interference to airborne navigational reception in the normal flight pattern. FCC rules and regulations shall govern.

(m) The grantee shall maintain equipment capable of providing standby power for a minimum of eight hours for the headend.

(Ord. No. 04-009, § 6-34, 8-26-2004)

**Sec. 9-138. System construction schedule.**

The franchise shall specify the initial construction schedule which shall be approved by the town before initial construction begins.

(Ord. No. 04-009, § 6-35, 8-26-2004)

**Sec. 9-139. Extension of service.**

The franchise shall specify extension of service requirements.

(Ord. No. 04-009, § 6-36, 8-26-2004)

**Sec. 9-140. Use of streets.**

(a) *Underground installations.* All installations shall be underground in those areas of the town where required by a generally applicable, nondiscriminatory town ordinance. While grantees are encouraged to always place plant underground, in areas where either telephone or electric utility facilities are above ground at the time of installation, grantee may install its service above ground, provided that at such time as those facilities are required to be placed underground by the town or are placed underground, the grantee shall likewise place its services underground without additional cost to the town or to the individual subscriber so served with the town. If the town compensates any other person for relocating or moving its facilities in any way then grantee shall be similarly compensated, in a proportionate manner. Where not otherwise required to be placed underground by this chapter or the franchise, the grantee's system shall be located underground at the request of the adjacent property owner, provided that the excess cost over the aerial location shall be borne by the property owner making the request. All cable passing under the roadway shall be installed in conduit.

(b) *Permits.* Prior to construction or alteration, however, the grantee shall obtain all required permits.

(c) *Interference with persons, improvements, public and private property and utilities.* The grantee's system and facilities, including poles, lines, equipment and all appurtenances, shall be located, erected and maintained so that such facilities shall:

- (1) Not endanger or interfere with the health, safety or lives of persons;
- (2) Not interfere with any improvements the town, county or state may deem proper to make;

- (3) Not interfere with the free and proper use of public streets, alleys, bridges, easements or other public rights-of-ways, places or property, except to the minimum extent possible during actual construction or repair;
- (4) Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction or repair; and
- (5) Not obstruct, hinder or interfere with any gas, electric, water or telephone facilities or other utilities located within the town.

(d) *Restoration to prior condition.* In case of any disturbance of public or private pavement, sidewalk, driveway, lawn, landscape, or other surfacing, the grantee shall, at its own cost and expense and in a manner approved by the town and consistent with the franchise, replace and restore all paving, sidewalk, driveway, landscaping, or surface of any street or alley disturbed, in as reasonably good a condition as, or better than, before said work was commenced and in a good workmanlike, timely manner in accordance with standards for such work set by the town in the franchise. Unless prevented by circumstances beyond the grantee's control, such restoration shall be completed within no more than ten business days after the damage is incurred.

(e) *Relocation of the facilities.* In the event that at any time during the period of the franchise, the town, county or state shall lawfully elect to alter or change the grade of any street, alley or other public ways, the grantee, upon reasonable notice by the proper authority, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense as detailed in the franchise agreement. If the town compensates any person for relocating or moving its facilities in any way, then grantee shall be similarly compensated, in a proportionate manner.

(f) *Cooperation with building movers.* The grantee shall, on the request of any person holding a building moving permit issued by the town, temporarily raise or lower its wire to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the grantee shall have the authority to require such payment in advance. The grantee shall be given not less than 15 working days' advance notice to arrange for such temporary wire changes.

(g) *Tree trimming.* The grantee shall have the authority, except when in conflict with existing town ordinances, to trim any trees upon and overhanging public rights-of-way so as to prevent the branches of such trees from coming in contact with the cable system, except that at the option of the town, such trimming may be done by it, or under its supervision and direction, at the reasonable expense of the grantee.

(h) *Easements.* All necessary easements over and under private property shall be arranged for by the grantee.

(Ord. No. 04-009, § 6-37, 8-26-2004)

**Sec. 9-141. Erection, removal and common use of poles.**

(a) No poles shall be erected by the grantee without prior approval of the town with regard to location, height, types and any other pertinent aspect. However, no location of any pole or wireholding structure of the grantee shall give rise to a vested interest and such poles or structures shall be removed or modified by the grantee at its own expense whenever the town determines that the public convenience would be enhanced thereby.

(b) Where poles already exist for use in serving the town are available for use by grantee, but it does not make arrangements for such use, the town may require grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to grantee are just and reasonable as reasonably determined by grantee. (Ord. No. 04-009, § 6-38, 8-26-2004)

**Sec. 9-142. Construction reporting requirements.**

(a) Within 30 days of the granting of an initial franchise pursuant to this chapter, the grantee shall provide the town with a written progress report detailing work completed to date. Such report shall include a description of the progress in applying for any necessary agreements, licenses, or certifications and any other information the town manager may deem necessary. The content and format of the report will be determined by the town manager and may be modified at his/her discretion. Other reports may be required in the franchise.

(b) Such written progress reports shall be submitted to the town on a quarterly basis throughout the entire construction process. The town manager may require more frequent reporting if he/she determines it is necessary to better monitor the grantee's progress.

(c) Not more than 72 hours and not less than 24 hours prior to the commencement of any system construction, the grantee shall provide door hangers or similar direct notice to all residents of the area to be under construction, which shall describe the activity that will be taking place. (Ord. No. 04-009, § 6-39, 8-26-2004)

**Sec. 9-143. Tests and performance monitoring.**

(a) The grantee shall conduct technical tests of the cable system as required by the FCC, and shall provide copies to the town within 60 days of completion of such tests.

(b) Such periodic tests shall be made at the test points as shall be required by the FCC and the franchise.

(c) Whenever there have been multiple, similar complaints made or when there exists other evidence, which, in the judgment of the town, casts doubt on the reliability or quality of the grantee's system, the town shall have the right and authority to compel the grantee to test, analyze, and report on the performance of its system. The grantee shall reasonably determine the nature and extent of testing required to make an adequate evaluation of system performance. Reports on such tests shall be delivered to the town no later than 14 days after the town formally notifies the grantee and shall include the following information: the nature of the complaints which precipitated the special tests; what system component was tested; the equipment used, and procedures employed in said testing; the results of such tests; and methods by which said complaints were resolved. Said tests and analyses shall be performed by qualified system personnel. Qualified system personnel shall certify all records of the special tests and forward same to the town with a report interpreting the results of the tests and recommending what actions should be taken by the grantee. The town shall bear the costs of all special tests unless the tests reveal items of noncompliance with FCC technical standards. If the cause of the problem has not been identified by the tests or resolved, and complaints continue, the grantee shall use its best efforts to resolve the problem in a timely manner.

(d) The town shall have the right to employ qualified consultants if necessary or desirable at the town's expense to assist in the administration of this or any other section of this chapter or the franchise.

(Ord. No. 04-009, § 6-40, 8-26-2004)

**Secs. 9-144—9-169. Reserved.**

DIVISION 6. SERVICE PROVISIONS

**Sec. 9-170. Services to subscribers and users.**

(a) Concurrently with the activation of the cable system in the town, the grantee shall provide all services to subscribers as described herein and in the franchise.

(b) The grantee shall provide and maintain service on the basic tier, at a minimum, the following access channel(s) whose purposes are outlined below according to the terms of the franchise:

- (1) Government access channel which shall be a specifically designated channel for local noncommercial governmental use and shall be managed, scheduled and programmed exclusively by the town.
- (2) Educational channel which shall be a specifically designated channel for noncommercial use by regional public and private school authorities, and shall be managed, scheduled and programmed exclusively by them.
- (3) Public access channel, which will be a specifically designated channel available on a first-come, first-served, nondiscriminatory basis for noncommercial use.

(c) The grantee shall fully provide, at a minimum, services, facilities and equipment for public, educational and government access as indicated in the franchise.

(d) Emergency override. The grantee shall comply with the EAS requirements of the FCC.  
(Ord. No. 04-009, § 6-41, 8-26-2004)

**Sec. 9-171. Installations, connections and other grantee services.**

(a) *Standard installations.* Standard installation shall consist of a service not exceeding 125 aerial feet from a single point or pedestal attachment to the customer's residence. Standard installations will be performed within seven business days after an order has been placed. Service in excess of 125 aerial feet and concealed wiring shall be charged for the costs which exceed those of a standard installation. The desire of the subscriber as to the point of entry into the residence shall be observed whenever reasonably possible. Runs in building interiors shall be as unobtrusive as reasonably possible. The grantee shall use due care in the process of installation and shall repair any damage to the subscriber's property caused by said installation. Such restoration shall be completed within no more than ten business days after the damage is incurred.

(b) *Deposits.* The grantee shall comply with any state or federal regulations regarding interest on any deposit required by the grantee.

(c) *Antennas and antenna switches.* The grantee shall not, as a condition to providing cable service, require any subscriber or potential subscriber, to remove any existing antenna structures for the receipt of over-the-air television signals. The grantee shall install, upon the request of the subscriber a RF or antenna switch for a reasonable charge or a fee set by the FCC.

(d) *Parental control devices.* The grantee shall provide to the potential subscriber, as part of its promotional literature, information concerning the availability of a parental control device for use by a subscriber. The grantee reserves the right to require a reasonable deposit for the use of this device, as set forth in the rate schedule. The lockout device parental control capability described herein shall be made available to all subscribers requesting it beginning on the first day that any cable service is provided.

(e) *Reconnection.* grantee shall restore service to customers wishing restoration of service provided customer shall first satisfy any previous obligations owed, including any established reconnect fee.

(f) *Free disconnection.* Subscribers shall have the right to have cable service disconnected without charge unless otherwise provided by applicable law. A refund of unused service charges shall be paid to the customer within 45 days from the date of termination of service.

(g) *Delinquent accounts.* grantee shall use its best efforts to collect on delinquent subscriber accounts. At the grantee's option, service will not be disconnected if a delinquent customer agrees at any time to be placed on a regular payment plan to clear the account. In all cases, the grantee shall provide the customer with at least ten business days written notice prior to disconnection. (Ord. No. 04-009, § 6-42, 8-26-2004)

#### **Sec. 9-172. Service calls and complaint procedures.**

Grantee shall maintain a convenient bill payment location in the town for receiving subscriber payments and handling billing questions, which shall be appropriately staffed to handle such tasks. The grantee shall comply with the standards and requirements for customer service set forth below and shall comply with all applicable regulations relating to customer service obligations, including 47 CFR 76.1602 and any amendments to 47 CFR 76.309 during the term of this franchise, that impose higher or additional customer service standards on a cable operation.

(1) *Cable system office hours and telephone availability:*

- a. Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week:
  1. Trained grantee 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 grantee representative on the next business day.
- b. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed 30 seconds when the connection is made.

If the call needs to be transferred, transfer time shall not exceed 30 seconds. These standards shall be met no less than 90 percent of the time under normal operating conditions, measured on a quarterly basis.

- c. Grantee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
  - d. Under normal operating conditions, the customer will receive a busy signal less than three percent of the time.
  - e. Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.
- (2) *Outages and service calls.* Under normal operating conditions, each of the following standards will be met no less than 95 percent of the time measured on quarterly basis:
- a. Excluding conditions beyond the control of grantee, grantee will begin working on "service interruptions" as follows: (i) on such interruptions affecting less than 12 subscribers promptly and in no event later than 24 hours after the interruption becomes known; and (ii) on such interruptions affecting 12 or more subscribers promptly and in no event later than six hours after the interruption becomes known. grantee must begin actions to correct other service problems the next business day after notification of the service problem.
  - b. 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. Grantee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.
  - c. Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
  - d. If grantee'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.
- (3) *Communications between grantee and subscribers:*
- a. *Refunds.* Refund checks will be issued promptly, but no later than either:
    - 1. The subscriber's next billing cycle following resolution of the request or 30 days, whichever is earlier, or
    - 2. The return of the equipment supplied by grantee if cable service is terminated.
  - b. *Credits.* Credits for service will be issued no later than the subscriber's next billing cycle following the determination that a credit is warranted.
- (4) *Review by town.* The town may review and monitor unresolved customer complaints.  
(Ord. No. 04-009, § 6-43, 8-26-2004)

**Sec. 9-173. Continuity of service mandatory.**

(a) It shall be the right of all subscribers to receive continuous, uninterrupted service insofar as their financial and other obligations to the grantee are honored.

(b) In the event that the grantee elects to rebuild, modify or sell the system, or the town gives notice of intent to terminate or fails to renew its franchise, the grantee shall cooperate with the town or new grantee or operator in maintaining continuity of service to all subscribers. During such period, grantee shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for the services when it no longer operates the system.

(c) Failure to provide continuity. In the event the grantee fails to operate the system for seven consecutive days without prior approval of the town or without just cause, the town may, at its option, operate the system or designate an operator until such time as grantee restores service under conditions acceptable to the town or a permanent operator is selected. If the town is required to fulfill this obligation for the grantee, the grantee shall reimburse the town for all reasonable costs or damages in excess of revenues from the system received by the town that are the result of the grantee's failure to perform.

(Ord. No. 04-009, § 6-44, 8-26-2004)

**Sec. 9-174. Protection of subscriber privacy.**

Protection of subscriber privacy mandatory. grantee shall at all times protect the privacy of subscribers, as required by applicable federal and state laws and the franchise.

(Ord. No. 04-009, § 6-45, 8-26-2004)

**Sec. 9-175. Rights of individuals.**

Nondiscrimination required. grantee shall comply at all times with all other applicable federal and state laws and regulations, and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this chapter by reference.

(Ord. No. 04-009, § 6-46, 8-26-2004)

**Secs. 9-176—9-203. Reserved.**

## DIVISION 7. BOOKS, RECORDS AND REPORTS

**Sec. 9-204. Books and records available to the grantor.**

(a) The town shall have the right to inspect at any time during normal business hours, pertinent books, records, maps, plans, gross revenues, service complaint logs, performance test results and other like materials of the grantee which relate to the enforcement of the franchise.

(b) grantee shall permit any duly authorized representative of the town to examine any "as built" maps and other records kept or maintained by grantee or under its control concerning the operations, affairs, transactions or property of grantee which are pertinent to the enforcement of the franchise.

(c) If any of such maps or records are not kept in the town, grantee shall, upon request, have the maps or records delivered to the town or grantee's local office for such inspection. (Ord. No. 04-009, § 6-47, 8-26-2004)

**Sec. 9-205. Reports required.**

The grantee shall file with the town at the end of the grantee's fiscal year unless otherwise specified:

- (1) *Regulatory communications.* Any material filings with the FCC and any technical reports required by the FCC, including but not limited to annual proof of performance tests and results; and any material filings with any other federal or state regulatory commission or agency having jurisdiction over any matter affecting operation of grantee's system shall be submitted upon request to the town.
- (2) *Facilities report.* A report setting forth the physical miles of plant construction and plant in operation during the fiscal year shall be submitted to the town upon request. Such report shall also contain any necessary revisions to the system maps filed with the town. Such maps shall provide detailed drawings of where the cable strand is located within the town.
- (3) *Construction reports.* Quarterly construction reports shall be sent to the town until construction of the initial cable system is completed as specified in section 9-140(a) and (b) of this chapter.
- (4) *Proof of performance tests.* Proof of performance test results shall be supplied to the town upon request.
- (5) *Tests required by town.* Tests required by the town as specified in section 9-143(c) of this chapter shall be submitted within 30 days of notification.
- (6) *Change in service.* A report on any change in programming service or channel or other service shall be provided to the town 30 days prior to implementation.
- (7) *Proof of bonds, letter of credit and insurance.* grantee shall initially submit to the town any performance bond, letter of credit and certificate of insurance required by this chapter or the franchise and shall also provide written notice of renewal or change in the performance bond, letter of credit or insurance.
- (8) *Shareholder report.* If the grantee is a publicly traded company, then grantee shall provide, a copy of its annual shareholder report.
- (9) *Financial and ownership reports.* The following financial reports for the franchise area shall be submitted, upon request to the town:
  - a. An ownership report, indicating all persons, who at any time during the preceding year did control or benefit from an interest in the franchise of ten percent or more.
  - b. An initial list of the officers and members of the board of directors of grantee and of any parent corporation and notification of any changes.

(10) *Franchise fee report.* A report prepared by a certified public accountant on the grantee's gross revenues, detailed by category and franchise fees for the period July 1 to June 30, shall be provided to the town annually by August 15.

(11) *Operational reports.* An annual report regarding the total number of subscribers, with a breakdown of subscribers for basic and standard tiers if not included in any other reports, and a summary of new services offered, and a summary of complaints received and how they were handled.

(Ord. No. 04-009, § 6-48, 8-26-2004)

**Sec. 9-206. Records required.**

The grantee shall at all times maintain for inspection a set of plans, records and "as built" maps showing the exact location of all cable system equipment installed or in use in the town, exclusive of subscriber service drops.

(Ord. No. 04-009, § 6-49, 8-26-2004)

**Secs. 9-207—9-235. Reserved.**

DIVISION 8. MISCELLANEOUS PROVISIONS

**Sec. 9-236. Public notice.**

Public notice shall be provided as required by state law.

(Ord. No. 04-009, § 6-50, 8-26-2004)

**Sec. 9-237. Franchise applications.**

(a) Applicants for a franchise or OVS license shall submit to the town a written application utilizing the standard format provided by the town, at the time and place designated by the town for accepting applications. The application shall be complete and shall include all applicable fees.

(b) In awarding a franchise, the town shall allow the applicant's cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area and may require adequate assurance that the cable operator will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support; and qualifications to provide cable service.

(c) A fee in the amount of \$7,000.00 shall be paid by each applicant at the time of application for an initial franchise which fee shall be in the form of cash, certified check, or money order to defer the cost of studying, investigating, and otherwise processing such application and which shall be in consideration thereof and not refundable or returnable in whole or in part. To offset the effects of inflation, the amount of the fee provided for herein is subject to reasonable increase in accord with the annual rate of inflation per the CPI.

(Ord. No. 04-009, § 6-52, 8-26-2004)

**Sec. 9-238. Remedies.**

(a) If the town, in its judgment, determines that a grantee has breached or violated any provision of a franchise agreement or ordinance, or this chapter, the town shall give the grantee written notice of the breach or violation. The notice shall inform the grantee of the possible application of the relevant liquidated damages listed in subsection (b) below.

(b) Subject to the provisions of subsection (f) below, the town may impose the following liquidated damages against a grantee for a breach or violation of any provision of a franchise agreement or ordinance, or this chapter:

- (1) Failure to restore damaged property to better or original condition, \$500.00 per day plus cost of restoration if not completed within ten business days from receipt of notice from the town.
- (2) Failure to bury drops or other cables as required in section 9-137(h) of this chapter, \$500.00 per day from two business days after the date of notice by the town.
- (3) Failure to complete system construction or conversion as outlined in the franchise, \$250.00 per day, up to \$5,000.00 per month.
- (4) Failure to complete all plant extensions as required by this franchise, \$100.00 per day beginning two business days from receipt of notice from the town.
- (5) Failure to resolve multiple similar unresolved customer complaints, unless beyond the franchisee's control, \$500.00 per day in the aggregate beginning two business days from receipt of notice from the town.
- (6) Failure to remove or relocate affected cable system before construction begins due to change in street grade or lines or water/wastewater/storm water lines, \$500.00 per day beginning two business days from receipt of notice from the town.
- (7) Failure to comply with the material provisions of this chapter, franchise, or applicable state or federal law, \$500.00 per day beginning two business days from receipt of notice from the town.

(c) Such liquidated damages may be chargeable against grantee's performance bond or letter of credit.

(d) The town retains the right to reduce or waive any of the above-listed liquidated damages.

(e) The imposition of any liquidated damages shall be in addition to and not a limitation upon the other penal provisions of the Town Code of Ordinances or other applicable law, including revocation of a franchise pursuant to this chapter, or other statutorily or judicially imposed penalties. No decision by the town to invoke any remedy under the franchise, this chapter, or any statute, law or ordinance shall preclude the availability of any other such remedy.

(f) Any grantee who receives notice of violation of a provision of this chapter or franchise or that liquidated damages may be imposed for failure to remedy a breach or violation by the relevant time frame set forth in subsection (b) above may, within ten days of receipt of such notice, appeal the notice of violation or decision to impose liquidated damages to the town council. No action to collect

any liquidated damages, including charging them against a performance bond or letter of credit, shall be commenced during that ten day period. The appeal must be made in writing to the town attorney, and must state the grounds upon which grantee believes there was no material breach or violation, and that liquidated damages should not be imposed. The town council will hear and make the final administrative determination on any such appeal. If an appeal is timely filed, no action to collect any liquidated damages, including charging them to a performance bond or letter of credit, will be taken until the town council has ruled on the merits of the appeal and grantee has failed to appeal or take other legal action regarding the liquidated damages before a court of competent jurisdiction, which grantee must do within 60 days of the town council's decision.

(Ord. No. 04-009, § 6-53, 8-26-2004)