



Town of Berwyn Heights

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ORDINANCE 106 – CABLE TV, COMCAST

	<u>Page</u>
1. <u>GENERAL PROVISIONS</u>	6
(a) <i>Title</i>	6
(b) <i>Effective Date and Repealer</i>	6
(c) <i>Findings and Purpose</i>	6
(d) <i>Delegation of Powers</i>	7
2. <u>DEFINITIONS AND WORD USAGE</u>	7
(a) <i>Definitions and Usage - General</i>	7
(b) <i>Access Channel</i>	7
(c) <i>Affiliate</i>	7
(d) <i>Basic Service</i>	7
(e) <i>Cable Act</i>	7
(f) <i>Cable Service</i>	7
(g) <i>Cable System or System</i>	7
(h) <i>Channel</i>	7
(i) <i>Converter</i>	7
(j) <i>Council</i>	7
(k) <i>Customer</i>	7
(l) <i>Educational Access Channel or Educational Channel</i>	7
(m) <i>FCC</i>	8
(n) <i>Franchise</i>	8
(o) <i>Franchise Agreement</i>	8
(p) <i>Franchise Area</i>	8
(q) <i>Franchisee</i>	8
(r) <i>Governmental Access Channel or Governmental Channel</i>	8
(s) <i>Installation</i> :.....	8
(t) <i>Leased Access Channel</i>	8
(u) <i>Mayor</i>	8
(v) <i>Net Profit</i>	8
(w) <i>Normal Business Hours</i>	8
(x) <i>Normal Operating Conditions</i>	8
(y) <i>OVS</i>	8

	(z) <i>Person</i>	8
	(aa) <i>Programmer</i>	8
	(bb) <i>Public Access Channel</i>	8
	(cc) <i>Public Rights-of-Way</i>	8
	(dd) <i>Security Fund</i>	9
	(ee) <i>Service Interruption</i>	9
	(ff) <i>Subscriber</i>	9
	(gg) <i>Town</i>	9
	(hh) <i>User</i>	9
<u>3.</u>	<u>GRANT OF FRANCHISE</u>	9
	(a) <i>Grant</i>	9
	(b) <i>Term of Franchise</i>	9
	(c) <i>Franchise Characteristics</i>	9
	(d) <i>Franchisee Subject to Other Laws, Police Power</i>	9
	(e) <i>Interpretation of Franchise Terms</i>	10
	(f) <i>Operation of a Cable System Without a Franchise</i>	10
	(g) <i>Acts at Franchisee's Expense</i>	10
	(h) <i>Eminent Domain</i>	10
<u>4.</u>	<u>FRANCHISE APPLICATIONS</u>	10
	(a) <i>Application Required</i>	10
	(b) <i>Application for Grant of an Initial Franchise</i>	11
	(c) <i>Contents of Application</i>	12
	(d) <i>Application for Grant of a Renewal Franchise</i>	13
	(e) <i>Application for Modification of a Franchise</i>	13
	(f) <i>Public Hearings</i>	13
	(g) <i>Acceptance of Franchise</i>	13
<u>5.</u>	<u>FILING FEES</u>	14
<u>6.</u>	<u>PROVISION OF CABLE SERVICE</u>	14
	(a) <i>Availability of Cable Service</i>	14
	(b) <i>Line Extension Requirement</i>	14
	(c) <i>Cost Sharing</i>	14
	(d) <i>Continuity of Service</i>	14
<u>7.</u>	<u>DESIGN AND CONSTRUCTION</u>	15
	(a) <i>System Construction Schedule</i>	15
	(b) <i>Construction Procedures</i>	15
	(c) <i>Restoration</i>	16
	(d) <i>Use of Public Property</i>	16
	(e) <i>Interference with Public Projects</i>	17

<u>8.</u>	<u>CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND GOVERNMENTAL USE</u>	17
	(a) <i>Management of Channels</i>	17
	(b) <i>Public Access Programming Rules</i>	17
	(c) <i>Use of Access Channels</i>	17
<u>9.</u>	<u>CONSUMER PROTECTION</u>	17
	(a) <i>General Provisions</i>	17
	(b) <i>Installations, Connections, and Other Franchisee Services</i>	18
	(c) <i>Telephone and Office Availability</i>	18
	(d) <i>Scheduling and Completing Service</i>	19
	(e) <i>Interruptions of Service</i>	20
	(f) <i>Notice to Subscribers</i>	20
	(g) <i>Billing</i>	21
	(h) <i>Disconnection/Downgrades</i>	22
	(i) <i>Changes in Service</i>	22
	(j) <i>Parental Control Option</i>	23
	(k) <i>Enforcement</i>	23
	(l) <i>Anticompetitive Acts Prohibited</i>	23
<u>10.</u>	<u>RATE REGULATION</u>	23
	(a) <i>General Authority</i>	23
	(b) <i>Nondiscrimination</i>	23
<u>11.</u>	<u>FRANCHISE FEE</u>	24
	(a) <i>Finding</i>	24
	(b) <i>Payment of Franchise Fee</i>	24
	(c) <i>Method of Payment</i>	24
	(d) <i>Not a Tax or in Lieu of Any Other Tax or Fee</i>	24
	(e) <i>Late Payments</i>	24
	(f) <i>Audit</i>	24
	(g) <i>No Accord or Satisfaction</i>	25
<u>12.</u>	<u>REPORTS AND RECORDS</u>	25
	(a) <i>Open Books and Records</i>	25
	(b) <i>Communication with Regulatory Agencies</i>	25
	(c) <i>Annual Report</i>	25
	(d) <i>Monthly Report</i>	26
	(e) <i>Special Reports</i>	27
	(f) <i>Additional Reports</i>	27
	(g) <i>Records Required</i>	27
	(h) <i>Performance Evaluation</i>	28
	(i) <i>Voluminous Materials</i>	28
	(j) <i>Retention of Records; Relation to Privacy Rights</i>	28

(k)	<i>Waiver of Reporting Requirements</i>	28
13.	<u>INSURANCE, SURETY, AND INDEMNIFICATION</u>	28
(a)	<i>Insurance Required</i>	28
(b)	<i>Endorsements</i>	29
(c)	<i>Qualifications of Sureties</i>	30
(d)	<i>Policies Available for Review</i>	30
(e)	<i>Additional Insureds; Prior Notice of Policy Cancellation</i>	30
(f)	<i>Failure Constitutes Material Violation</i>	30
(g)	<i>Indemnification</i>	30
(h)	<i>No Limit of Liability</i>	30
14.	<u>PERFORMANCE GUARANTEES AND PENALTIES</u>	30
(a)	<i>Penalties</i>	30
(b)	<i>Termination On Account of Certain Assignments or Appointments</i>	32
(c)	<i>Remedies Cumulative</i>	32
(d)	<i>Relation to Insurance and Indemnity Requirements</i>	32
15.	<u>TRANSFERS</u>	32
(a)	<i>Town Approval Required</i>	32
(b)	<i>Approval Does Not Constitute Waiver</i>	33
16.	<u>OPEN VIDEO SYSTEMS</u>	33
(a)	<i>Applicability of Ordinance</i>	33
(b)	<i>Fee In Lieu of Franchise Fee</i>	33
(c)	<i>Public, Educational, and Governmental Access Obligations</i>	33
(d)	<i>Right-of-Way Usage</i>	33
17.	<u>RIGHTS OF INDIVIDUALS PROTECTED</u>	33
(a)	<i>Discriminatory Practices Prohibited</i>	33
(b)	<i>Equal Employment Opportunity</i>	34
(c)	<i>Subscriber Privacy</i>	34
18.	<u>THEFT OF SERVICE</u>	35
19.	<u>ADMINISTRATION</u>	35
20.	<u>MISCELLANEOUS PROVISIONS</u>	35
(a)	<i>Compliance With Laws</i>	35
(b)	<i>No Recourse Against the Town</i>	35
(c)	<i>Rights and Remedies</i>	35

(d)	<i>Amendments to this Ordinance</i>	35
(e)	<i>Public Emergency.....</i>	35
(f)	<i>Connections to System; Use of Antennae.....</i>	35
(g)	<i>Calculation of Time</i>	36
(h)	<i>Severability</i>	36

ORDINANCE NO. 106 – CABLE TV

AN ORDINANCE OF THE COUNCIL OF THE TOWN OF BERWYN HEIGHTS, MARYLAND, AMENDING IN ITS ENTIRETY CURRENT ORDINANCE 106 TO REVISE THE PROCEDURES AND REQUIREMENTS RELATING TO CABLE TELEVISION FRANCHISES TO REFLECT CHANGES IN APPLICABLE LAW AND TO BETTER ENSURE THAT USE OF PUBLIC RIGHTS-OF-WAY BY CABLE SYSTEMS SERVES THE PUBLIC INTEREST.

Be it ordained by the Town of Berwyn Heights Council as follows:

1. GENERAL PROVISIONS

(a) *Title.*

This Ordinance shall be known and may be cited as the "Town Cable Communications Regulatory Code."

(b) *Effective Date and Repealer.*

This Ordinance shall take effect and be in force from and after passage. All prior ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

(c) *Findings and Purpose.*

(1) The Town of Berwyn Heights, Maryland ("Town") finds that the further development of cable communications may result in great benefits for the people of the Town. Cable technology is rapidly changing, and cable plays an essential role as part of the Town's basic infrastructure. Cable television systems occupy and extensively make use of scarce and valuable public rights-of-way, in a manner different from the way in which the general public uses them, and in a manner reserved primarily for those who provide essential services to the public subject to special public interest obligations, such as utility companies. The Town finds that public convenience, safety, and general welfare can best be served by establishing regulatory powers vested in the Town or such persons as the Town so designates to protect the public and to ensure that any franchise granted is operated in the public interest.

(2) Further, it is recognized that cable systems have the capacity to provide not only entertainment and information services to the Town's residents, but can provide a variety of broadband, interactive communications services to institutions and individuals.

(3) In light of the foregoing, the following goals, among others, underlie the provisions set forth in this Ordinance:

(A) Cable service should be available to as many Town residents as possible.

(B) A cable system should be capable of accommodating both present and reasonably foreseeable future cable-related needs of the Town.

(C) A cable system should be constructed and maintained during a franchise term so that changes in technology may be integrated to the maximum extent possible into existing system facilities.

(D) A cable system should be responsive to the needs and interests of the local community, and shall provide a diversity of information sources and service to the public.

(E) A cable operator should pay fair compensation to the Town for the use of local public rights-of-way.

(4) The Town intends that all provisions set forth in this Ordinance be construed to serve the public interest and the foregoing public purposes, and that any franchise issued pursuant to this Ordinance be construed to include the foregoing findings and public purposes as integral parts thereof.

(d) *Delegation of Powers.* The Town may delegate the performance of any act, duty, or obligation, or the exercise of any power, under this Ordinance or any franchise agreement to any employee, officer, department or agency, except where prohibited by applicable law.

2. DEFINITIONS AND WORD USAGE

(a) *Definitions and Usage - General.*

For the purposes of this Ordinance, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number, and words in the singular number include the plural number; and the masculine gender includes the feminine gender. The words "shall" and "will" are mandatory, and "may" is permissive. Unless otherwise expressly stated, words not defined herein shall be given the meaning set forth in Title 47 of the United States Code, as amended, and, if not defined therein, their common and ordinary meaning.

(b) *Access Channel:* Any channel on a cable system set aside by a franchisee for public, educational, or governmental use.

(c) *Affiliate:* Any person who owns or controls, is owned or controlled by, or is under common ownership or control with a franchisee.

(d) *Basic Service:* Any service tier that includes the retransmission of local television broadcast signals and/or public, educational, and governmental access signals.

(e) *Cable Act:* The Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended from time to time.

(f) *Cable Service:* (1) the one-way transmission to subscribers of video programming or other programming services; and (2) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(g) *Cable System or System:* A facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable television service which includes video programming and which is provided to multiple subscribers within the Town, 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 rights-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 if such facility is used in the transmission of video programming directly to subscribers; (4) an open video system that complies with 47 U.S.C. § 573; or (5) any facilities of any electric utility used solely for operating its electric utility system. A reference to a cable system refers to any part thereof, including, without limitation, converters. The foregoing definition of "cable system" shall not be deemed to circumscribe or limit the valid authority of the Town to regulate or franchise the activities of any other communications system or provider of communications services to the full extent permitted by law. Any franchise agreement shall define the services any franchisee is authorized to use the public rights-of-way to provide.

(h) *Channel:* A six Megahertz (MHz) frequency band, or equivalent capacity, which is capable of carrying either one standard video signal, a number of audio, digital or other non-video signals or some combination of such signals.

(i) *Converter:* An electronic device which may serve as an interface between a system and a subscriber's television receiver or other terminal equipment, and which may perform a variety of functions, including signal security, descrambling, electronic polling, frequency conversion and channel selection.

(j) *Council:* The governing body of the Town.

(k) *Customer:* Same as "Subscriber."

(l) *Educational Access Channel or Educational Channel:* Any channel on a cable system set aside by a franchisee for educational use.

(m) *FCC*: The Federal Communications Commission, its designee, or any successor governmental entity thereto.

(n) *Franchise*: A non-exclusive authorization granted pursuant to this Ordinance to construct, operate, and maintain a cable system along the public rights-of-way to provide cable service within all or a specified area of the Town. Any such authorization, in whatever form granted, shall not mean or include any general license or permit required for the privilege of transacting and carrying on a business within the Town as required by the ordinances and laws of the Town, or for attaching devices to poles or other structures, whether owned by the Town or a private entity, or for excavating or performing other work in or along public rights-of-way.

(o) *Franchise Agreement*: A contract entered into pursuant to this Ordinance between the Town and a franchisee that sets forth, subject to this Ordinance, the terms and conditions under which a franchise will be granted and exercised.

(p) *Franchise Area*: The area of the Town that a franchisee is authorized to serve by its franchise agreement.

(q) *Franchisee*: A natural person, partnership, domestic or foreign corporation, association, joint venture, or organization of any kind that has been granted a franchise by the Town.

(r) *Governmental Access Channel* or *Governmental Channel*: Any channel on a cable system set aside by a franchisee for government use.

(s) *Installation*: The connection of system services to subscribers' television receivers or other subscriber-owned or -provided terminal equipment.

(t) *Leased Access Channel* or *Commercial Access Channel*: Any channel on a cable system designated or dedicated for use by a person unaffiliated with the franchisee.

(u) *Mayor*: The Mayor of the Town of Berwyn Heights, Maryland, or his designee.

(v) *Net Profit*: the amount remaining after deducting from gross revenues all of the actual, direct and indirect, expenses associated with operating the cable system, including the franchise fee, interest, depreciation, and Federal or State income taxes.

(w) *Normal Business Hours*: Those hours during which most similar businesses in the community are open to serve customers, including some evening hours at least one night per week and/or some weekend hours.

(x) *Normal Operating Conditions*: Those service conditions that are within the control of a franchisee. Conditions that are not within the control of a franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe weather conditions. Conditions that are ordinarily within the control of a franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of a cable system.

(y) *OVS*: An open video system that complies with 47 U.S.C. § 653, as amended.

(z) *Person*: An individual, partnership, association, joint stock company, organization, corporation, or any lawful successor thereto or transferee thereof, but such term does not include the Town.

(aa) *Programmer*: Any person or entity that produces or otherwise provides program material or information for transmission by video, audio, digital or other signals, either live or from recorded traces or other storage media, to users or subscribers by means of a cable system.

(bb) *Public Access Channel*: Any channel on a cable system set aside by a franchisee for use by the general public, including groups and individuals, and which is available for such use on a non-discriminatory basis.

(cc) *Public Rights-of-Way*: 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, parkway, waterway, easement, or similar property within the Town, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a cable system. No

reference herein, or in any franchise agreement, to a "public Right-of-Way" shall be deemed to be a representation or guarantee by the Town that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a franchisee shall be deemed to gain only those rights to use as are properly in the Town and as the Town may have the undisputed right and power to give.

(dd) *Security Fund:* A performance bond, letter of credit, or cash deposit, or any or all of these, to the extent required by a franchise agreement.

(ee) *Service Interruption:* Loss of picture or sound on one or more cable channels, as described in FCC regulations as of December 1, 1998.

(ff) *Subscriber:* Any person who legally receives any service delivered over a cable system.

(gg) *Town:* The Town of Berwyn Heights, Maryland, and any agency, department, or agent thereof.

(hh) *User:* A person or organization using a channel or equipment and facilities for purposes of producing or transmitting material, as contrasted with the receipt thereof in the capacity of a subscriber.

3. GRANT OF FRANCHISE

(a) *Grant.*

(1) The Town may grant one or more cable franchises, and each such franchise shall be awarded in accordance with and subject to the provisions of this Ordinance.

(2) Franchises shall be granted by action of the Council pursuant to applicable law.

(3) No person may construct or operate a cable system without a franchise granted by the Town. No person may be granted a franchise without having entered into a franchise agreement with the Town pursuant to this Ordinance.

(b) *Term of Franchise.*

No franchise shall be granted for a period of more than fifteen (15) years, except that a franchisee may apply for renewal or extension pursuant to applicable law.

(c) *Franchise Characteristics.*

(1) A franchise authorizes use of public rights-of-way for installing cables, wires, lines, optical fiber, underground conduit, and other devices necessary and appurtenant to the operation of a cable system to provide cable service within a franchise area, but does not expressly or implicitly authorize a franchisee to provide service to, or install a cable system on, private property without owner consent (except for use of compatible easements pursuant to Section 621 of the Cable Act, 47 U.S.C. § 541(a)(2) and common law), or to use publicly or privately owned conduits without a separate agreement with the owners.

(2) A franchise shall constitute both a right and an obligation to provide the cable services regulated by the provisions of this Ordinance and the franchise agreement.

(3) A franchise is non-exclusive and will not explicitly or implicitly preclude the issuance of other franchises to operate cable systems within the Town; affect the Town's right to authorize use of public rights-of-way by other persons to operate cable systems or for other purposes as it determines appropriate; or affect the Town's right to itself construct, operate, or maintain a cable system, with or without a franchise.

(4) All privileges prescribed by a franchise shall be subordinate to (without limitation) the Town's use and any prior lawful occupancy of the public rights-of-way

(5) The Town reserves the right to reasonably designate where a franchisee's facilities are to be placed within the public rights-of-way and to resolve any disputes among users of the public rights-of-way.

(d) *Franchisee Subject to Other Laws, Police Power.*

(1) A franchisee shall at all times be subject to and shall comply with all applicable federal, state, and local laws. A franchisee shall at all times be subject to all lawful exercise of the police

power of the Town, including all rights the Town may have under 47 U.S.C. § 552. Nothing in a franchise agreement shall be deemed to waive the requirements of the various codes and ordinances of the Town regarding permits, fees to be paid, or manner of construction.

(2) No course of dealing between a franchisee and the Town, or any delay on the part of the Town in exercising any rights hereunder, or any acquiescence by the Town in the actions of a franchisee that are in contravention of such rights (except to the extent such rights are expressly waived by the Town) shall operate as a waiver of any such rights of the Town.

(3) The Town may, from time to time, issue such reasonable rules and regulations concerning cable systems as are consistent with applicable law.

(e) *Interpretation of Franchise Terms.*

(1) The provisions of this Ordinance and any franchise agreement will be liberally construed in favor of the Town in order to effectuate their purposes and objectives and to promote the public interest.

(2) Subject to federal law or regulation, a franchise agreement will be governed by and construed in accordance with the laws of the State of Maryland.

(f) *Operation of a Cable System Without a Franchise.*

Any person who occupies the public rights-of-way of the Town for the purpose of operating or constructing a cable system or an OVS and who does not hold a valid franchise (or other authority allowing such entity to be in the public rights-of-way to provide video services) from the Town shall nonetheless, to the extent allowable by law, be subject to all provisions of this Ordinance, including but not limited to its provisions regarding construction and technical standards and franchise fees. Such person shall apply for a franchise within thirty (30) days of receipt of a written notice by the Town that a franchise agreement is required. The Town may, in its discretion, require such person to remove its property and restore the area to a condition satisfactory to the Town within a reasonable time period, as the Town shall determine; remove the property itself and restore the area to a satisfactory condition and charge the person the costs therefor; and/or take any other action it is entitled to take under applicable law, including filing for and seeking damages under trespass. In no event shall a franchise be created unless it is issued by action of the Town and subject to a written franchise agreement.

(g) *Acts at Franchisee's Expense.*

Any act that a franchisee is or may be required to perform under this Ordinance, a franchise agreement, or applicable law, including but not limited to removal, replacement, or modification of the installation of any of its facilities and restoration to Town standards and specifications of any damage or disturbance caused to the public rights-of-way as a result of its operations or construction on its behalf, shall be performed at the franchisee's expense, unless expressly provided to the contrary in this Ordinance, the franchise agreement, or applicable law.

(h) *Eminent Domain.*

Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, the Town's rights of eminent domain to the extent to which they may apply to any public utility or cable system.

4. FRANCHISE APPLICATIONS

(a) *Application Required.*

(1) A written application shall be filed with the Town for grant of an initial franchise or modification of a franchise agreement pursuant to 47 U.S.C. § 545.

(2) To be acceptable for filing, a signed original of the application shall be submitted together with twelve (12) copies. The application must be accompanied by any required application filing fee, conform to any applicable request for proposals, and contain all required information. All applications

shall include the names and addresses of persons authorized to act on behalf of all applicants with respect to the application.

(3) All applications accepted for filing shall be made available by the Town for public inspection.

(b) *Application for Grant of an Initial Franchise.*

(1) A person may apply for an initial franchise by submitting an application containing the information required in Section 4(c). Upon receipt of such an application, the Town may either (a) evaluate the application pursuant to Section 4(b)(3), conducting such investigations as it deems necessary; or (b) issue a Request for Proposals ("RFP"), after conducting, if necessary, a proceeding to identify the future cable-related needs and interests of the community. Any such RFP shall be mailed to the person requesting its issuance and made available to any other interested party. The RFP may contain a proposed franchise agreement.

(2) An applicant shall respond to a RFP by filing an application within the time directed by the Town, providing the information and material set forth in Section 4(c). The procedures, instructions, and requirements set forth in the RFP shall be followed by each applicant. Any applicant that has already filed materials pursuant to subsection 4(b)(1) herein need not refile the same materials with its RFP response, but must amplify its application to include any additional or different materials required by the RFP. The Town or its designee may seek additional information from any applicant and establish deadlines for the submission of such information.

(3) In evaluating an application for a franchise, the Town shall consider, among other things, the following factors:

(A) The extent to which the applicant has substantially complied with the applicable law and the material terms of any existing cable franchise for the Town;

(B) Whether the quality of the applicant's service under any existing franchise in the Town, including signal quality, response to customer complaints, billing practices, and the like, has been reasonable in light of the needs and interests of the communities served;

(C) Whether the applicant has the financial, technical, and legal qualifications to provide cable service;

(D) Whether the application satisfies any minimum requirements established by the Town and is otherwise reasonable to meet the future cable-related needs and interests of the community, taking into account the cost of meeting such needs and interests;

(E) Whether, to the extent not considered under Section 4(b)(3)(D), the applicant will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support;

(F) Whether issuance of a franchise is warranted in the public interest considering the immediate and future effect on the public rights-of-way and private property that would be used by the cable system, including the extent to which installation or maintenance as planned would require replacement of property or involve disruption of property, public services, or use of the public rights-of-way; the effect of granting a franchise on the ability of cable to meet the cable-related needs and interests of the community; and the comparative superiority or inferiority of competing applications.

(G) What effects a grant of the application may have on competition in the delivery of cable service in the Town.

(4) If the Town finds that it is in the public interest to issue a franchise considering without limitation the factors set forth above, and subject to the applicant's entry into an appropriate franchise agreement, it shall issue a franchise. If the Town denies a franchise, it will issue a written decision explaining why the franchise was denied. Prior to deciding whether or not to issue a franchise, the Town may hold one or more public hearings or implement other procedures under which comments from the public on an application may be received. The Town also may grant or deny a request for a franchise

based on its review of an application without further proceedings and may reject any application that is incomplete or fails to respond to an RFP. This Ordinance is not intended and shall not be interpreted to grant any party standing to challenge the denial of an application or the issuance of a franchise unless such standing is necessary to enforce a party's rights under its Franchise Agreement or applicable law.

(c) *Contents of Application.*

An RFP for the grant of an initial franchise shall require, and any such application shall contain, at a minimum, the following information:

(1) Name and address of the applicant and identification of the ownership and control of the applicant, including: the names and addresses of the ten (10) largest holders of an ownership interest in the applicant and affiliates of the applicant, and all persons with five (5) percent or more ownership interest in the applicant and its affiliates; the persons who control the applicant and its affiliates; all officers and directors of the applicant and its affiliates; and any other business affiliation and cable system ownership interest of each named person.

(2) A demonstration of the applicant's technical ability to construct and/or operate the proposed cable system, including identification of key personnel.

(3) A demonstration of the applicant's legal qualifications to construct and/or operate the proposed cable system, including but not limited to the following factors:

(A) The Town shall consider whether an applicant has had previous requests for a franchise denied by the Town or other franchising authorities.

(B) The applicant must have the necessary authority under Maryland law to operate a cable system.

(C) The applicant must have the necessary authority under federal law to hold the franchise and operate a cable system. An applicant must have, or show that it is qualified to obtain, any necessary federal franchises or waivers required to operate the system proposed.

(D) The Town shall consider whether, at any time during the ten (10) years preceding the submission of the application, the applicant was convicted of any act or omission of such character that the applicant cannot be relied upon to deal truthfully with the Town and the subscribers of the cable system, or to substantially comply with its lawful obligations under applicable law, including obligations under consumer protection laws and laws prohibiting anticompetitive acts, fraud, racketeering, or other similar conduct.

(E) The Town shall consider whether an applicant files materially misleading information in its application or intentionally withholds information that the applicant lawfully is required to provide.

(F) The Town shall consider whether any elected official of the Town holds a controlling interest in the applicant or an affiliate of the applicant.

The Town shall provide an opportunity to an applicant to show that it would be inappropriate to deny it a franchise by virtue of the particular circumstances surrounding the matter and the steps taken by the applicant to cure all harms flowing therefrom and prevent their recurrence, the lack of involvement of the applicant's principals, or the remoteness of the matter from the operation of cable systems.

(4) A demonstration of financial qualifications to complete the construction and operation of the cable system proposed.

(5) A description of any prior experience in cable system ownership, construction, and operation, and identification of communities in which the applicant or any of its principals have, or have had, a cable franchise or any interest therein.

(6) Identification of the area of the Town to be served by the proposed cable system, including a description of the proposed franchise area's boundaries.

(7) A detailed description of the physical facilities proposed, including channel capacity, technical design, performance characteristics, headend, and access facilities.

(8) Where applicable, a description of the construction of the proposed system, including an estimate of plant mileage and its location; the proposed construction schedule; and a description, where appropriate, of how services will be converted from existing facilities to new facilities.

(9) A demonstration of how the applicant will reasonably meet the future cable-related needs and interests of the community, including public, educational, and governmental access channel capacity, facilities, or financial support to meet the community's needs and interests.

(10) If necessary at the Town's discretion, pro forma financial projections for the proposed franchise term, including a statement of projected income, and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules.

(11) Any other information that may be reasonably necessary to demonstrate compliance with the requirements of this Ordinance.

(12) Any additional information that the Town may reasonably request of the applicant that is relevant to the Town's consideration of the application.

(13) An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, acknowledging the enforceability of application commitments, and certifying that the application meets all federal and state law requirements.

(14) The Town may, at its discretion and upon request of an applicant, waive in writing the provision of any of the information required by this Section 4(c).

(d) *Application for Grant of a Renewal Franchise.*

The renewal of any franchise to provide cable service shall be conducted in a manner consistent with Section 626 of the Cable Act, 47 U.S.C. § 546, as from time to time amended.

(e) *Application for Modification of a Franchise.*

An application for modification of a franchise agreement shall include, at minimum, the following information:

(1) The specific modification requested;

(2) The justification for the requested modification, including the impact of the requested modification on subscribers and others, and the financial impact on the applicant if the modification is approved or disapproved, demonstrated through, inter alia, submission of financial pro formas;

(3) A statement whether the modification is sought pursuant to Section 625 of the Cable Act, 47 U.S.C. § 545, and, if so, a demonstration that the requested modification meets the standards set forth in 47 U.S.C. § 545;

(4) Any other information that the applicant believes is necessary for the Town to make an informed determination on the application for modification; and

(5) An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, and certifying that the application is consistent with all federal and state law requirements.

(f) *Public Hearings.*

An applicant shall be notified of any public hearings held in connection with the evaluation of its application and shall be given an opportunity to be heard. In addition, prior to the issuance of a franchise, the Town shall provide for the holding of a public hearing within the proposed franchise area, following reasonable notice to the public, at which every applicant and its applications shall be examined and the public and all interested parties afforded a reasonable opportunity to be heard.

(g) *Acceptance of Franchise.* Following approval by the Town, any franchise granted pursuant to this Ordinance, and the rights, privileges and authority granted by a franchise agreement, shall take effect

and be in force from and after the first date on which both the franchisee and the Town have accepted and signed the franchise agreement.

5. FILING FEES.

(a) To be acceptable for filing, any application of the type listed below submitted after the effective date of this Ordinance shall be accompanied by a nonrefundable filing fee of \$5,000, payable to the Town, to cover costs incidental to the awarding or enforcement of the franchise, as appropriate:

- (1) Application for an initial franchise or for issuance of an RFP
- (2) Application for renewal of a franchise
- (3) Application for modification of a franchise agreement
- (4) Application for approval of a transfer

(b) To the extent consistent with applicable law:

(1) the Town may require the franchisee, or, where applicable, a transferor or transferee, to reimburse the Town for its reasonable out-of-pocket expenses in considering the application, including consultants' fees;

(2) no payments made hereunder shall be considered a franchise fee, but fall within one or more of the exceptions in 47 U.S.C. § 542(g)(2).

6. PROVISION OF CABLE SERVICE

(a) *Availability of Cable Service.* A franchisee shall construct and operate its system so as to provide service to all parts of its franchise area having a density of at least twenty (20) residences per mile of system. In addition, all areas which reach such density at any time during the franchise term shall be provided service upon reaching the minimum density.

(b) *Line Extension Requirement.* Except as federal law may otherwise require, and subject to the minimum density requirement specified in Section 6(a), a franchisee shall, upon request: (i) extend its trunk and distribution system to any subscriber located within two hundred fifty feet of a main distribution cable located in the public rights-of-way at its standard installation charge, unless the franchisee demonstrates to the Town's satisfaction that extraordinary circumstances exist; and (ii) extend its trunk and distribution system to any potential subscriber outside the two hundred fifty foot limit, provided that the franchisee may charge the potential subscriber for the cost of the actual length of the installed drop, or the shortest distance to the point where the franchisee would be required to extend its distribution system, whichever is shorter, except where the franchisee has demonstrated to the Town's satisfaction that extraordinary circumstances exist. In areas where the minimum density requirement is not met, or where extraordinary circumstances exist, a franchisee shall, upon request, extend its cable system to a potential subscriber, provided that the subscriber shall pay the additional extension costs.

(c) *Cost Sharing.*

(1) "Additional extension costs" as used in subsection 6(b) herein shall mean a subscriber's pro rata share of: a franchisee's total construction costs at the actual density of affected potential subscribers, less the total construction costs that the franchisee would incur if it were extending its system to make service available to the same number of potential subscribers at a density of twenty (20) residences per mile.

(2) "Total construction costs" are defined for purposes of this subsection 6(c) as the actual turnkey cost to construct the entire extension including electronics, pole make-ready charges, and labor, but not the cost of the house drop.

(d) *Continuity of Service.*

(1) It is the right of all subscribers in the franchise area to receive all available services from a franchisee, as those services become available, as long as their financial and other obligations to the franchisee are satisfied.

(2) A franchisee shall ensure that all subscribers receive continuous uninterrupted service. At the Town's request, a franchisee shall, as trustee for its successor in interest, operate its system for a temporary period (the "Transition Period") following the termination, sale, or Transfer of its franchise as necessary to maintain service to subscribers, and shall cooperate with the Town to assure an orderly transition from it to another franchisee.

(3) During such Transition Period, a franchisee shall not sell any of the system assets, nor make any physical, material, administrative or operational change that would tend to reduce the quality of service to subscribers, decrease the system's income, or materially increase expenses without the express permission, in writing, of the Town.

(4) The Town may seek legal and/or equitable relief to enforce the provisions of this Section.

(5) The Transition Period shall be no longer than the reasonable period required to ensure that cable service will be available to subscribers, and shall not be longer than thirty-six (36) months, unless extended by the Town for good cause. During the Transition Period, a franchisee will continue to be obligated to comply with the terms and conditions of the agreement and applicable laws and regulations.

(6) If a franchisee abandons its system during the franchise term, or fails to operate its system in accordance with the terms of its franchise agreement during any Transition Period, the Town, at its option, may operate the system, designate another entity to operate the system temporarily until the franchisee restores service under conditions acceptable to the Town or until the franchise is revoked and a new franchisee selected by the Town is providing service, or obtain an injunction requiring the franchisee to continue operations. If the Town is required to operate or designate another entity to operate the cable system, the franchisee shall reimburse the Town or its designee for all reasonable costs and damages incurred that are in excess of the revenues from the cable system.

(7) A franchisee shall forfeit its rights to notice and hearing, and the Council may by resolution declare its franchise immediately terminated, in addition to any other relief or remedies it may have under its franchise agreement, this Ordinance, or other applicable law, if:

(A) The franchisee fails to provide cable service in accordance with its franchise over a substantial portion of the franchise area for ninety-six (96) consecutive hours, unless the Town authorizes a longer interruption of service or the failure is due to *force majeure* as characterized in its franchise agreement; or

(B) The franchisee, for any period, willfully and without cause refuses to provide cable service in accordance with its franchise over a substantial portion of the franchise area.

7. DESIGN AND CONSTRUCTION

(a) System Construction Schedule.

Every franchise agreement shall specify the construction schedule that will apply to any required construction, upgrade, or rebuild of the cable system.

(b) Construction Procedures.

(1) A franchisee shall construct, operate and maintain its cable system in strict compliance with all applicable laws, ordinances, rules and regulations, including but not limited to the National Electrical Safety Code and the National Fire Protection Association National Electrical Code, as such may be amended from time to time.

(2) The system, and all parts thereof, shall be subject to the right of periodic inspection by the Town.

(3) No construction, reconstruction, installation, or relocation of the system or any part thereof within the public rights-of-way shall be commenced until all applicable written permits have been obtained from the proper Town officials. In any permit so issued, such officials may impose such conditions and regulations as a condition of the granting of the permit as are necessary for the purpose of protecting any structures in the public rights-of-way and for the proper restoration of such public rights-of-way and structures, and for the protection of the public and the continuity of pedestrian and vehicular traffic.

(4) A franchisee shall, by a time specified by the Town, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the Town by reason of traffic conditions; public safety; public Right-of-Way construction; public Right-of-Way maintenance or repair (including resurfacing or widening); change of public Right-of-Way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned communications system, public work or improvement or any government-owned utility; public-Right-of-Way vacation; or for any other purpose where the convenience of the Town would be served thereby; provided, however, that a franchisee shall, in all such cases, have the privilege of abandoning any property in place, after obtaining permission from the Town.

(5) If any removal, relaying, or relocation is required to accommodate the construction, operation, or repair of the facilities of another person that is authorized to use the public rights-of-way, a franchisee shall, after reasonable advance written notice, take action to effect the necessary changes requested by the responsible entity. The Town may resolve disputes as to responsibility for costs associated with the removal, relaying, or relocation of facilities as among entities authorized to install facilities in the public rights-of-way if the parties are unable to do so themselves, and if the matter is not governed by a valid contract between the parties or a state or federal law or regulation.

(6) In the event of an emergency, or where a cable system creates or is contributing to an imminent danger to health, safety, or property, the Town may remove, relay, or relocate any or all parts of that cable system without prior notice.

(7) A franchisee shall, on the request of any person holding a building moving permit issued by the Town, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting same, and a franchisee shall have the authority to require such payment in advance, except in the case where the requesting person is the Town, in which case no such payment shall be required. A franchisee shall be given not less than seventy-two (72) hours' advance notice to arrange for such temporary wire changes.

(8) A franchisee shall participate in any "Ms. Utility" program active in its franchise area with regard to giving and receiving notice of the location of facilities and excavations.

(c) *Restoration:* Any and all public rights-of-way, public property or private property that is disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or construction of a cable system shall be repaired, replaced and restored, as appropriate, in substantially the same condition and in a good workmanlike, timely manner, in accordance with the standards for such work set by the Town. With respect to damage or disturbances to public rights-of-way or public property, all repairs and restoration shall be performed in accordance with applicable law. All repairs, replacements and restoration shall be undertaken within no more than thirty (30) days after the damage is incurred, and shall be completed as soon as reasonably possible thereafter. A franchisee shall guarantee and maintain such restoration for at least one year against defective materials or workmanship.

(d) *Use of Public Property.*

(1) Should the grades or lines of the public rights-of-way that the franchisee is authorized by a franchise to use and occupy be changed at any time during the term of a franchise, the franchisee shall, if necessary, relocate or change its system so as to conform with the new grades or lines.

(2) Any alteration to the water mains, sewerage or drainage system or to any Town, state or other public structures in the public rights-of-way required on account of the presence of a franchisee's system in the public rights-of-way shall be made at the sole cost and expense of the franchisee. During any work of constructing, operating or maintaining of a system, the franchisee shall also protect any and all existing structures belonging to the Town and any other person. All work performed by the franchisee shall be done in the manner prescribed by the Town or other officials having jurisdiction therein.

(e) *Interference with Public Projects.*

Nothing in this Ordinance or any franchise agreement shall be in preference or hindrance to the right of the Town and any board, authority, commission or public service corporation to perform or carry on any public works or public improvements of any description, and should a franchisee's system in any way interfere with the construction, maintenance or repair of such public works or public improvements, the franchisee shall protect or relocate its system, or part thereof, as reasonably directed by any Town official, board, authority, commission or public service corporation.

8. CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND GOVERNMENTAL USE.

(a) *Management of Channels:* The Town may designate one (1) or more entities, including a non-profit access management corporation, to perform any or all of the following functions:

- (1) to manage any necessary scheduling or allocation of capacity on the Institutional Network; and/or
- (2) on the Town's behalf, to program any public, educational, or governmental access channel.

Educational and public access channels shall not be managed by the same entity, provided, however, that until such entities have been designated, the Town shall be responsible for these functions.

(b) *Public Access Programming Rules:* For any public access channel, the entity managing such channel shall establish (i) rules that prohibit the presentation of any advertising material designed to promote the sale of commercial products or services (including advertising by or on behalf of candidates for public office), lottery information, and obscene matter; (ii) rules requiring first-come, nondiscriminatory access; and (iii) rules permitting public inspection of the complete record of the names and addresses of all persons and groups requesting access time. Such a record shall be retained for a period of two (2) years.

(c) *Use of Access Channels:* Governmental Access Channel(s) shall be for the noncommercial use of the Town and/or other governmental entities. Educational Access Channel(s) shall be for the noncommercial use of the educational community.

9. CONSUMER PROTECTION

(a) *General Provisions.*

This Section 9 sets forth customer service standards that a franchisee must satisfy. In addition, the franchisee shall at all times satisfy any additional or stricter requirements established by FCC regulations, or other applicable federal, state, or local law or regulation, as the same may be amended from time to time.

- (1) Nothing in this Ordinance may be construed to prevent or prohibit:

(A) the Town and a franchisee from agreeing to customer service requirements that exceed the standards set forth in this ordinance;

(B) the Town from enforcing, through the end of a franchise term, pre-existing customer service requirements that exceed the standards set forth in this Ordinance and are contained in current franchise agreements;

(C) the Town from enacting or enforcing any customer service or consumer protection laws or regulations; or

(D) the Town from waiving, for good cause, requirements established in this Section 9.

(2) Nothing in this Ordinance in any way relieves a franchisee of its obligation to comply with other applicable consumer protection laws and its franchise agreement.

(b) *Installations, Connections, and Other Franchisee Services.*

(1) **Installation of Drops.** A subscriber's preference as to the point of entry into a residence shall be observed whenever feasible. Runs in building interiors shall be as unobtrusive as possible. A franchisee shall use due care in the process of installation and shall repair any damage to a subscriber's property caused by said installation. Such restoration shall be undertaken within thirty (30) days after the damage is incurred and shall be completed as soon as reasonably possible thereafter.

(2) **Location of Drops.** In locations where a franchisee's system must be underground, drops must be placed underground as well. In all cases where new developments and subdivisions are to be constructed and to be served in whole or in part by underground power and telephone utilities, the owner or developer of such areas shall provide reasonable notice to the franchisee of the availability of trenches, backfill and specifications of all necessary substructures in order that the franchisee may install all necessary cable facilities. In no event shall such undergrounding be at any cost or expense to the Town.

(3) **Time for Extension/Installation.** Where a franchisee is required under Section 6 to provide service to a person that resides within two hundred fifty (250) feet from the franchisee's distribution system, the franchisee must provide such service within seven business days of the person's request. If the person resides more than one hundred twenty-five (125) feet from the franchisee's distribution system, the Town may waive this seven-day requirement upon a showing of good cause by the franchisee and provided the franchisee specifies the time period within which service will be provided. This standard shall be met 95% of the time, measured on a quarterly basis.

(4) **Antennas and Antenna Switches.** A franchisee shall adhere to FCC regulations regarding antenna switches. A franchisee 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.

(5) **Delinquent Accounts.** A franchisee shall use its best efforts to collect on delinquent subscriber accounts before terminating service. In all cases, the franchisee shall provide the customer with at least ten (10) working days' written notice prior to disconnection.

(c) *Telephone and Office Availability.*

(1) Each franchisee shall maintain offices at convenient locations within Prince George's County, as specified in its franchise agreement, that shall be open during normal business hours to allow subscribers to request service, pay bills, and conduct other business.

(2) Each franchisee will maintain at least one local, toll-free or collect call telephone access line which will be available to subscribers 24 hours a day, seven days a week. Trained representatives of a franchisee shall be available to respond to subscriber telephone inquiries during normal business hours.

(3) Each franchisee shall be subject to the following standards, except that such franchisee shall not be subject to penalty as long as it meets such standards under normal operating conditions at least ninety (90) percent of the time, measured quarterly.

(A) Telephone answering time shall not exceed thirty (30) seconds, and the time to transfer the call to a customer service representative (including hold time) shall not exceed an additional thirty (30) seconds.

(B) A customer will receive a busy signal less than three percent (3%) of the time.

(C) When the business office is closed, an answering service where a person receives and records service complaints and inquiries shall be employed. Inquiries received after hours must be responded to by a trained representative of a franchisee on the next business day. To the extent possible, the after-hours answering service shall comply with the same telephone answer time standard set forth in this Section.

(4) In any case, at all times a franchisee shall provide an answering machine so that callers will have the option to leave messages.

(5) A franchisee must hire sufficient competent customer service representatives and repair technicians so that it can adequately respond to customer inquiries, complaints, and requests for service in its office, over the phone, and at a subscriber's residence; provide prompt and effective service to subscribers; and, as a rule, complete repairs within a subscriber's home upon a single visit.

(d) *Scheduling and Completing Service.* Under normal operating conditions, each of the following standards shall be met by all franchisees at least 95% of the time, as measured on a quarterly basis:

(1) **Prompt Service.** Excluding conditions beyond the control of the franchisee, repairs and maintenance for service interruptions must begin promptly and in no event later than twenty-four (24) hours after the subscriber reports the problem to the franchisee or its representative or the interruption or need for repairs otherwise becomes known to the franchisee. All such work must be completed within three (3) days from the date of the initial request, except installation requests, provided that a franchisee shall complete the work in the shortest time possible where, for reasons beyond the franchisee's control, the work could not be completed in those time periods even with the exercise of all due diligence; the failure of a franchisee to hire sufficient staff or to properly train its staff shall not justify a franchisee's failure to comply with this provision.

(2) **Service Times.** Each franchisee shall perform service calls, installations, and disconnects at least during normal business hours. In addition, maintenance service capability enabling the prompt location and correction of major system malfunctions shall be available Monday through Friday from the end of normal business hours until 12:30 a.m., and from 8:00 a.m. until 12:30 a.m. on Saturdays, Sundays, and holidays.

(3) **Appointments.** The appointment window for installations, service calls, and other installation activities will be either a specific time or, at maximum, a 2-hour time block during normal business hours, or such greater time as the Town may authorize. Where a subscriber cannot conveniently arrange for a service call or installation during normal business hours, a franchisee shall also schedule service and installation calls outside normal business hours for the express convenience of the subscriber.

(4) **Cancellations.** A franchisee may not cancel an appointment with a subscriber after the close of business on the business day preceding the appointment. If a franchisee's representative is running late for an appointment with a subscriber and will not be able to keep the appointment as scheduled, the subscriber will be contacted, and the appointment rescheduled, as necessary, at a time which is convenient for the subscriber.

(5) **Emergency Maintenance.** A franchisee shall keep an emergency system maintenance and repair staff, capable of responding to and repairing system malfunctions or interruptions, on a twenty-four (24) hour basis.

(6) **Other Inquiries.** Under normal operating conditions, billing inquiries and requests for service, repair, and maintenance not involving service interruptions must be acknowledged by a trained customer service representative within twenty-four (24) hours, or prior to the end of the next business day, whichever is earlier. A franchisee shall respond to all other inquiries within five (5) business days of the inquiry or complaint.

(7) If a subscriber experiences a missed appointment due to the fault of a franchisee, the franchisee shall credit the subscriber's account twenty (20) dollars for each missed appointment, or grant the subscriber such other equivalent remedy as the subscriber and franchisee may agree. This is in addition to any other penalties or liquidated damages.

(8) Upon subscriber request, each franchisee shall arrange for pickup and/or replacement of converters or other franchisee equipment at the subscriber's address or by a satisfactory equivalent (such as the provision of a postage-prepaid mailer). At a subscriber's request, a franchisee shall make such pickup or replacement at the same time as any disconnection or other related service call, so as to avoid an additional visit. If a franchisee charges a fee for such pickup or replacement, such fee shall be clearly disclosed at the time of the subscriber's request.

(e) *Interruptions of Service.*

(1) A franchisee shall, when practicable, schedule and conduct maintenance on its cable system so that interruption of service is minimized and occurs during periods of minimum subscriber use of the cable system. The franchisee shall provide reasonable prior notice to subscribers and the Town before interrupting service for planned maintenance or construction, except where such interruption is expected to be one hour or less in duration. Such notice shall be provided by methods reasonably calculated to give subscribers actual notice of the planned interruption.

(2) A franchisee may intentionally interrupt service on the cable system after 7:00 a.m. and before 1:00 a.m. only with good cause and for the shortest time possible and, except in emergency situations, only after publishing notice of service interruption at least twenty-four (24) hours in advance of the service interruption. Service may be intentionally interrupted between 1:00 a.m. and 7:00 a.m. for routine testing, maintenance, and repair, without notification, any night except Friday, Saturday, or Sunday, or the night preceding a holiday.

(f) *Notice to Subscribers.*

(1) Unless otherwise provided for herein, a franchisee shall provide the following materials to each subscriber at the time cable service is installed, at least annually thereafter, and at any time upon request. Copies of all such materials provided to subscribers shall also be provided to the Town.

(A) a written description of products and services offered, including a schedule of rates and charges, a list of channel positions, and a description of programming services, options, and conditions;

(B) a written description of the franchisee's installation and service maintenance policies, delinquent subscriber disconnect and reconnect procedures, and any other of its policies applicable to its subscribers;

(C) written instructions on how to use the cable service;

(D) written instructions for placing a service call;

(E) a written description of the franchisee's billing and complaint procedures, including the address and telephone number of the Town office responsible for receiving subscriber complaints;

(F) a copy of the service contract, if any (at installation or on request, but need not be provided annually);

(G) notice regarding subscribers' privacy rights pursuant to 47 U.S.C. § 551;

(H) notice of the availability of universal remote controls and other compatible equipment (a list of which, specifying brands and models, shall be provided to any subscriber upon request).

(2) Subscribers will be notified of any changes in rates, programming services or channel positions, and any significant changes in any other information required to be provided by this section, as soon as possible in writing, unless such notice is waived by operation of applicable law. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is

within the control of the cable operator. Notwithstanding the above, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any federal agency, state, or franchising authority on the transaction between the operator and the subscriber.

(3) All franchisee promotional materials, announcements, and advertising of residential cable service to subscribers and the general public, where price information is listed in any manner, shall clearly and accurately disclose price terms. In the case of pay-per-view or pay-per-event programming, all promotional materials must clearly and accurately disclose price terms and in the case of telephone orders, a franchisee shall take appropriate steps to ensure that price terms are clearly and accurately disclosed to potential customers before the order is accepted.

(4) Copies of all notices provided to subscribers under these customer service standards, as well as all promotional or special offers made to subscribers, and of any agreements used with subscribers, shall be filed promptly with the Town.

(g) *Billing.*

(1) Bills shall be clear, concise, and understandable. Bills must be fully itemized with itemizations including, but not limited to, basic service, cable programming service, and premium service charges and all equipment charges. Bills shall clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

(2) Refund checks to subscribers shall be issued promptly, but no later than the later of

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(1) the subscriber's next billing cycle, or thirty (30) days, following resolution of the refund request, whichever is earlier; or

(2) the return of all equipment supplied by the franchisee, if service is terminated.

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

(4) A franchisee's first billing statement after a new installation or service change shall be prorated as appropriate and shall reflect any security deposit.

(5) Late fees will not be assessed for payments after the due date until 45 days after the beginning of the service period for which the payment is to be rendered. In addition, subscribers will receive the benefit of any change in the late fee amount, and of any increases in the time allowed before assessment of late fees, that may result from litigation over late fees pending as of the effective date of this Ordinance.

(6) A franchisee must notify the subscriber that he or she can remit payment in person at the franchisee's business office and inform the subscriber of the address of that office.

(7) Subscribers shall not be charged a late fee or otherwise penalized for any failure by a franchisee, including failure to timely or correctly bill the subscriber, or failure to properly credit the subscriber for a payment timely made.

(8) A subscriber who asks a franchisee for credit for an outage shall receive credit for the actual time period of the outage as a pro rata fraction of the monthly charges for any outage lasting between two and six hours, without reference to the time the subscriber contacts the franchisee. A subscriber shall receive credit for one full day's monthly charges for any outage of between six and twenty-four hours, whether or not the subscriber reports such an outage, if the franchisee becomes aware of such outages, either through reports by subscribers or otherwise. Each franchisee shall place a message in subscribers' bills at least quarterly, explaining how to report an outage, how to obtain a credit, and under what conditions credits are available. A franchisee shall also establish a mechanism by which subscribers may reliably and immediately contact the franchisee by telephone and report an outage for credit purposes, either by ensuring that they can reliably and immediately reach a live person

or by another method (for example, by leaving a voice message or entering the subscriber's telephone number). Upon receiving such reports, the franchisee shall promptly contact the subscriber to confirm that the report has been received, and apply the credit to the subscriber's bill unless the franchisee reasonably concludes that the subscriber's report is false.

(9) Franchisee shall respond to all written billing complaints from subscribers within thirty (30) days.

(h) *Disconnection/Downgrades.*

(1) A subscriber may terminate service at any time.

(2) A franchisee shall promptly disconnect or downgrade any subscriber. No period of notice prior to voluntary termination or downgrade of service may be required of subscribers by any franchisee. So long as the subscriber returns, or permits the franchisee to retrieve, any equipment necessary to receive a service within five (5) business days of the disconnection, no charge may be imposed by any franchisee for any cable service delivered after the date of the disconnect request.

(3) A subscriber may be asked, but not required, to disconnect a franchisee's equipment and return it to the business office.

(4) Any funds due the subscriber shall be refunded on disconnected accounts after any customer premises equipment provided by the franchisee has been recovered by the franchisee. The refund must be made within thirty (30) days or by the end of the next billing cycle, whichever is earlier, from the date disconnection was requested (or, if later, the date on which any customer premises equipment provided by the franchisee is returned).

(5) If a subscriber fails to pay a monthly subscriber fee or other fee or charge, a franchisee may disconnect the subscriber's service; however, such disconnection shall not be effected until at least forty-five (45) days after the bill is due, plus at least ten (10) days' advance written notice to the subscriber in question of intent to disconnect, but in no event before the date when the franchisee would be entitled to charge a late fee. If the subscriber pays all amounts due, including late charges, before the date scheduled for disconnection, the franchisee shall not disconnect service. After disconnection, upon payment by the subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if any, the franchisee shall promptly reinstate service.

(6) A franchisee may immediately disconnect a subscriber if the subscriber is damaging or destroying the franchisee's cable system or equipment. After disconnection, the franchisee shall restore service after the subscriber provides adequate assurance that it has ceased the practices that led to disconnection, and paid all proper fees and charges, including any reconnect fees and amounts owed the franchisee for damage to its cable system or equipment.

(7) A franchisee may also disconnect a subscriber that causes signal leakage in excess of federal limits. A franchisee may disconnect a subscriber without notice where signal leakage is detected originating from the subscriber's premises in excess of federal limits, provided that the franchisee shall immediately notify the subscriber of the problem and, once the problem is corrected, reconnect the subscriber.

(8) The disposition of cable home wiring in residential single-family homes shall be governed by FCC rules regarding cable home wiring as of December 1, 1998.

(9) A franchisee shall reconnect service to customers wishing restoration of service, provided such a customer shall first satisfy any previous obligations owed.

(i) *Changes in Service.*

(1) At the time a franchisee alters the service it provides to a class of subscribers, it must provide each subscriber thirty (30) days' notice, explain the substance and full effect of the alteration, and provide the subscriber the right to opt to receive any combination of services thereafter offered by franchisee.

(2) No charge may be made for any service or product that the subscriber has not affirmatively indicated it wishes to receive.

(j) *Parental Control Option.*

A franchisee shall make available to any subscribers upon request the option of blocking the video or audio portion of any channel or channels of programming entering the subscriber's home. The control option described herein shall be made available to all subscribers requesting it when any cable service is provided, or reasonably soon thereafter.

(k) *Enforcement.*

(1) A franchisee shall keep such records as are necessary to show compliance with these customer service standards and FCC customer service standards.

(2) The Town shall have the right to observe and inspect a franchisee's customer service procedures.

(3) Except as prohibited by federal law, a franchisee shall be subject to penalties, forfeitures and any other remedies or sanctions available under federal, state or local law, including without limitation this Ordinance and a franchisee's franchise with the Town, if it fails to comply with the standards herein.

(4) A franchisee shall not be subject to penalties or liquidated damages as a result of any violations of these customer service standards that are due to *force majeure* as characterized in its franchise agreement.

(1) *Anticompetitive Acts Prohibited.*

(1) No franchisee or OVS operator shall demand the exclusive right to provide cable service to a person or location as a condition of extending cable service or a cable system. This provision is not intended and shall not be interpreted a) to prohibit voluntary exclusive agreements to provide cable service; b) to create any private cause of action for any person; or c) to prohibit exclusive agreements permitted by federal law.

(2) No franchisee or OVS operator shall engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor, as defined in federal law, from providing cable service or services similar to cable service in the Town. This provision does not apply to methods, acts or practices allowed by federal or state law. Any allegation that a franchisee has engaged in methods, acts or practices that would be prohibited by this paragraph will be considered by the Town only after exhaustion of federal remedies. This paragraph is not intended to create a private cause of action.

10. RATE REGULATION

(a) *General Authority:* The Town reserves the right to regulate all rates and charges except to the extent it is prohibited from doing so by law.

[Rules for review of rate filings are currently in effect in Berwyn Heights (section 19 of current Ordinance 106). It will be necessary to preserve those existing rules, pending any amendment. Thus, any general repealer when this Ordinance is adopted should *exclude* the currently existing rate regulation provisions, wherever in the Code they are found; such provisions may be codified at this point if they are currently found among the cable provisions.]

(b) *Nondiscrimination*

(1) Nondiscriminatory Rates. Subject to applicable law, a franchisee shall establish rates that are nondiscriminatory within the same general class of subscribers and which must be applied fairly and uniformly to all subscribers in the franchise area for all services. Nothing contained herein shall

prohibit a franchisee from offering, by way of illustration and not limitation, (i) discounts to senior citizens or economically disadvantaged groups; (ii) discounts to commercial and multiple family dwelling subscribers billed on a bulk basis; (iii) promotional discounts; or (iv) reduced installation rates for subscribers who have multiple services.

(2) *Applicability.* The provisions of this Section 10(b) shall apply to all rates, whether or not they are otherwise subject to rate regulation, except to the extent specifically prohibited by law.

11. FRANCHISE FEE

(a) *Finding.* The Town finds that public rights-of-way of the Town to be used by a franchisee for the operation of a cable system are valuable public property acquired and maintained by the Town. The Town further finds that the grant of a franchise to use public rights-of-way is a valuable property right without which a franchisee would be required to invest substantial capital.

(b) *Payment of Franchise Fee.* Each franchisee shall pay a franchise fee of five percent (5%) of gross revenues.

(c) *Method of Payment.* The franchisee shall file with the Town, within thirty (30) days after the expiration of each of the franchisee's fiscal quarters, a financial statement clearly showing the gross revenues received by the franchisee during the preceding quarter. The quarterly portion of the franchise fee shall be payable to the Town at the time such statement is filed.

(d) *Not a Tax or in Lieu of Any Other Tax or Fee.*

(1) Payment of the franchise fee shall not be considered in the nature of a tax or in lieu of other taxes or fees of general applicability imposed by the Town.

(2) The franchise fee is in addition to all other taxes and payments that a franchisee may be required to pay under its franchise agreement or any federal, state, or local law, and to any other tax, fee, or assessment imposed by utilities and cable operators for use of their services, facilities, or equipment, including any applicable amusement taxes, except to the extent that such fees, taxes, or assessments must be treated as a franchise fee under Section 642 of the Cable Act, 47 U.S.C. § 522.

(3) No franchisee may designate the franchise fee as a tax in any communication to a subscriber.

(e) *Late Payments.* In the event any franchise fee payment or recomputation amount is not made on or before the required date, the franchisee shall pay additional compensation and interest charges computed from such due date, at an annual rate equal to the commercial prime interest rate of the Town's primary depository bank during the period such unpaid amount is owed, in addition to any applicable penalties or liquidated damages.

(f) *Audit.*

(1) The Town shall have the right to inspect records, to require a franchisee to provide copies of records at the Franchisee's expense, and to audit and to recompute any amounts determined to be payable, whether the records are held by the franchisee, an affiliate, or any other entity that collects or receives funds related to the franchisee's operation in the Town, including, by way of illustration and not limitation, any entity that sells advertising on the franchisee's behalf, for a period of five years from the date a payment was made or, if no payment was made, from the date the Town believes payment was owed, after which time all payments are final.

(2) A franchisee shall be responsible for providing to the Town all records necessary to confirm the accurate payment of franchise fees, without regard to by whom they are held. Such records shall be made available pursuant to the requirements of this Ordinance. The franchisee shall maintain such records for the term of its franchise agreement, and any renewals or extensions thereof.

(3) The Town's audit expenses shall be borne by the Town unless the audit discloses an underpayment of five percent (5%) or more of the amount due, in which case the costs of the audit shall be borne by the franchisee as a cost incidental to the enforcement of the franchise. Any additional amounts

due to the Town as a result of the audit shall be paid within thirty (30) days following written notice to the franchisee by the Town of the underpayment, which notice shall include a copy of the audit report. If re-computation results in additional revenue to be paid to the Town, such amount shall be subject to a 10 percent (10%) interest charge.

(g) *No Accord or Satisfaction.*

No acceptance of any payment by the Town shall be construed as a release or an accord and satisfaction of any claim the Town may have for further or additional sums due or for the performance of any other obligation of a franchisee, or as an acknowledgement that the amount paid is the correct amount due.

12. REPORTS AND RECORDS.

(a) *Open Books and Records.*

(1) The Town shall have the right to inspect records and to require a franchisee to provide copies of records at the franchisee's expense at any time during normal business hours at the Town cable system office for all books, receipts, maps, plans, contracts, service complaint logs, performance test results, records of requests for service, computer records, disks or other storage media and other like material which the Town deems appropriate in order to monitor compliance with the terms of this Ordinance, its franchise agreement, or applicable law. This includes not only the books and records of a franchisee, but any books and records the Town reasonably deems relevant held by an affiliate, a cable operator of the cable system, or any contractor, subcontractor or any person holding any form of management contract for the cable system. A franchisee is responsible for collecting the information and producing it at the location specified above, and by accepting its franchise it affirms that it can and will do so. A franchisee will be given reasonable advance written notice of any inspection request, which shall serve as notice that any or all of the above materials may be inspected.

(2) A franchisee shall maintain financial records that allow analysis and review of its operations in each individual franchise area.

(3) Access to a franchisee's records shall not be denied by such franchisee on the basis that said records contain "proprietary" information. Refusal to provide information required herein to the Town shall be grounds for revocation. All confidential information received by the Town shall remain confidential insofar as permitted by law.

(4) A franchisee shall maintain a file of records open to public inspection in accordance with applicable FCC rules and regulations.

(6) Each report filed by a franchisee pursuant to this Ordinance shall be certified by a corporate officer as accurate or complete.

(b) *Communication with Regulatory Agencies.*

(1) If and to the extent requested by the Town, a franchisee shall file with the Town in a form acceptable to the Town all reports and materials submitted to the FCC, the Security and Exchange Commission, or any other federal or state regulatory commission or agency, including, but not limited to, any proof of performance tests and results, Equal Employment Opportunity reports, and all petitions, applications, and communications of all types regarding the cable system, or a group of cable systems of which the franchisee's cable system is a part, submitted by the franchisee, an affiliate, or any other person on the behalf of the franchisee.

(2) Materials filed with the Town pursuant to Section 12(b)(1) shall be filed as follows: Materials submitted by the franchisee, an affiliate, or any other person on the behalf of a franchisee shall be filed with the Town at the time they are submitted to the receiving agency.

(c) *Annual Report.* Unless this requirement is waived in whole or in part by the Town, by April 1 of each year for the previous calendar year, a franchisee shall submit a written report to the Town, in a form directed by the Town, which shall include:

(1) a summary of the previous year's activities in development of the cable system, including but not limited to descriptions of services begun or dropped, the number of subscribers gained or lost for each category of service, the number of pay units sold, the amount collected annually from users of the system and the character and extent of the services rendered to such users, including leased access channel users;

(2) a summary of complaints, identifying both the number and nature of the complaints received and an explanation of their dispositions, to the extent such records are kept by the franchisee. Where complaints involve recurrent system problems, the nature of each problem and the corrective measures taken shall be identified;

(3) A report showing the number of service calls received by type during the prior quarter, and the percentage of service calls compared to the subscriber base by type of complaint;

(4) A certification of compliance with applicable customer service standards. If a franchisee is in non-compliance with any standard during any calendar quarter, it shall include in its annual filing a statement specifying areas of non-compliance, the reason for the non-compliance and a remedial plan;

(5) A copy of the franchisee's rules and regulations applicable to subscribers of the cable system;

(6) An annual statement showing the yearly gross revenues, prepared and audited by a Certified Public Accountant acceptable to the Town;

(7) An annual financial report for the previous calendar year, audited and certified by an independent certified public accountant, including year-end balance sheet; income statement showing subscriber revenue from each category of service and every source of non-subscriber revenue, line item operating expenses, depreciation expense, interest expense, and taxes paid; statement of sources and applications of funds; capital expenditures; and depreciation schedule;

(8) An annual list of officers and members of the Board of Directors or similar controlling body of the franchisee and any affiliates;

(9) An organizational chart showing all corporations or partnerships with more than a five (5) percent ownership interest in the franchisee, and the nature of that ownership interest (limited partner, general partner, preferred shareholder, etc.); and showing the same information for each corporation or partnership that holds such an interest in the corporations or partnerships so identified and so on until the ultimate corporate and partnership interests are identified;

(10) An annual report and SEC 10(k) filing for each entity identified in subsection 12(c)(8) of this Section that generates such documents;

(11) A summary of the results of, and/or, at the franchisee's option, copies of the system's technical tests and measurements performed during the past year;

(12) A detailed copy of updated maps depicting the location of all cable plant, showing areas served and locations of all trunk lines and feeder lines in the Town, and including changes in all such items for the period covered by the report;

(13) a full schedule of all subscriber and other user rates, fees and charges;

(14) such other information as the Town may direct.

(d) *Monthly Report.* Unless this requirement is waived in whole or in part by the Town, no later than 10 days after the end of each month, a franchisee shall submit a written report to the Town regarding the preceding month, in a form acceptable to the Town, which shall include:

(1) the active system plant in miles, specifying aerial and underground mileage;

(2) the new system segments built, in miles, if any, specifying aerial and underground mileage;

(3) the number of subscribers and the penetration rate for each type of service and equipment offered;

- (4) the number of disconnects;
- (5) the number of outages, identifying separately: a) each outage; whether planned or unplanned; the time it occurred, its duration, when the franchisee responded and when the outage was corrected; the estimated area and a description of the subscribers affected; b) in addition, for each unplanned outage: its cause, the number of subscribers affected; and c) the total hours of outages as a percentage of total hours of cable system operation;
- (6) the number of cases in which installation was not provided within the time established in this Ordinance;
- (7) the average telephone answering and hold times, and the number of instances in which those telephone answering and hold times exceeded the time limits established in this Ordinance;
- (8) the percentage of customer calls that received a busy signal;
- (9) the average and minimum number of customer service representatives on the franchisee's staff for telephone answering purposes;
- (10) the number of times in which interruptions of service under Section 9.(e) was not in compliance with the times established in this Ordinance;
- (11) the number of times scheduling and completing customer service did not occur in accordance with Section 9.(d)(3)

(e) *Special Reports.* Unless this requirement is waived in whole or in part by the Town, the franchisee shall deliver the following special reports to the Town:

(1) A franchisee shall submit quarterly construction reports to the Town after the franchise is awarded for any construction undertaken during the term of the franchise until such construction is complete, including any rebuild that may be specified in the franchise. The franchisee must submit to the Town as part of the quarterly construction report, or make available for inspection with notice of their availability as part of the quarterly construction report, updated as-built system design maps depicting construction completed in the previous quarter. The maps shall be developed on the basis of post-construction inspection by the franchisee and construction personnel to assess compliance with system design. Any departures from design must be indicated on the as-built maps, to assist the Town in assessing operator compliance with its obligations.

(2) A franchisee must submit a copy of any notice of deficiency, forfeiture, or other document issued by any state or federal agency instituting any investigation or civil or criminal proceeding regarding the cable system, the franchisee, or any affiliate of the franchisee, to the extent the same may affect or bear on operations in the Town. This material shall be submitted in accordance with the deadlines specified in Section 12(b)(2) herein.

(3) The franchisee must submit a copy of any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the franchisee or by any partnership or corporation that owns or controls the franchisee directly or indirectly. This material shall be submitted in accordance with the deadlines specified in Section 12(b)(2) herein.

(f) *Additional Reports.* A franchisee shall provide such other information or reports as the Town may request for the purpose of enforcing any provision of the franchise agreement or this Ordinance.

(g) *Records Required.*

(1) The franchisee shall at all times maintain:

(A) Records of all complaints received. The term "complaints" as used herein and throughout an agreement refers to complaints about any aspect of the cable system or the franchisee's operations, including, without limitation, complaints about employee courtesy. Complaints recorded may not be limited to complaints requiring an employee service call.

(B) A full and complete set of plans, records, and "as built" maps showing the exact location of all system equipment installed or in use in the Town, exclusive of subscriber service drops.

(C) A comprehensive record of all personnel transactions and utilization of contractors, subcontractors, vendors, and suppliers by race and sex.

(D) Records of outages, indicating date, duration, area, and the subscribers affected, type of outage, and cause.

(E) Records of service calls for repair and maintenance indicating the date and time service was required, the date of acknowledgement and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was solved.

(F) Records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and the date and time service was extended.

(G) A public file showing its plan and timetable for construction of the cable system.

(h) *Performance Evaluation.*

(1) The Town may, at its discretion, hold performance evaluation sessions. All such evaluation sessions shall be open to the public. The franchisee may be required by the Town to notify subscribers of all such evaluation sessions by announcement on a designated local access channel on the system between the hours of 9:00 a.m. and 9:00 p.m. for five (5) consecutive days preceding each session.

(2) Topics that may be discussed at any evaluation session may include, but are not limited to, system performance and construction, franchisee compliance with this Ordinance and its franchise agreement, 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.

(3) During the evaluation process, the franchisee shall fully cooperate with the Town and shall provide such information and documents as the Town may need to reasonably perform its review, including information and documents that may be considered proprietary or confidential.

(i) *Voluminous Materials.* If any books, records, maps or plans, or other requested documents are too voluminous, or for security reasons cannot be copied and moved, then the franchisee may request that the inspection take place at some other location, provided that (1) the franchisee must make necessary arrangements for copying documents selected by the Town after review; and (2) the franchisee must pay all travel and additional copying expenses incurred by the Town in inspecting those documents or having those documents inspected by its designee.

(j) *Retention of Records; Relation to Privacy Rights.*

The franchisee shall take all steps that may be required to ensure that it is able to provide the Town all information which must be provided or may be requested under this Ordinance or its franchise agreement, including by providing appropriate subscriber privacy notices. Nothing in this Section shall be read to require the franchisee to violate 47 U.S.C. § 551. Each franchisee shall be responsible for redacting any data that federal law prevents it from providing to the Town. The Town retains the right to question any such redaction and to challenge it in any forum having jurisdiction over such a challenge. Records shall be kept for at least five (5) years.

(k) *Waiver of Reporting Requirements.* The Town may, at its discretion, waive in writing the requirement of any particular report specified in this Section 12.

13. INSURANCE, SURETY, AND INDEMNIFICATION.

(a) *Insurance Required.*

(1) The franchisee shall maintain, and by its acceptance of the franchise specifically agrees that it will maintain, throughout the entire length of the franchise period, at least the following liability insurance coverage insuring the Town and the franchisee: worker's compensation and employer liability insurance to meet all requirements of Maryland law and comprehensive general liability insurance

with respect to the construction, operation, and maintenance of the cable system, and the conduct of the franchisee's business in the Town, in the following minimum amounts, but in any event no less than the liability limits specified by the Local Government Tort Claims Act:

- (A) \$500,000 for property damage resulting from any one accident; \$1,000,000 for property damage aggregate;
- (B) \$1,000,000 for personal bodily injury or death for one person; \$2,000,000 for bodily aggregate per single accident and occurrence;
- (C) A general comprehensive public liability policy indemnifying, defending and saving harmless the Town, its officers, boards, commissions, agents or employees, from any and all claims by any person whatsoever on account of injury to or death of a person or persons occasioned by the operations of the franchisee under the franchise herein granted or alleged to have been so caused or occurred, with a minimum liability of One Million Dollars (\$1,000,000) per personal injury or death of any one person and Two Million Dollars (\$2,000,000) for personal injury or death of two or more persons in any one occurrence;
- (D) \$2,000,000 for all other types of liability; and
- (E) automobile liability insurance for owned or leased vehicles in the minimum amount of \$2,000,000 for bodily injury and consequent death per occurrence, \$1,000,000 for bodily injury and consequent death to any one person, and \$500,000 for property damage per occurrence.

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

(3) The Town may review these amounts no more than once a year and may require reasonable adjustments to them consistent with the public interest.

(b) *Endorsements:*

(1) All insurance policies and certificates maintained pursuant to a franchise agreement shall contain the following endorsement:

It is hereby understood and agreed that this insurance coverage may not be canceled by the insurance company nor the intention not to renew be stated by the insurance company until thirty (30) days after receipt by the Town's Secretary or Clerk, by registered mail, of a written notice of such intention to cancel or not to renew.

(2) All contractual liability insurance policies and certificates maintained pursuant to a franchise agreement shall include the provision of the following Hold Harmless clause:

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

(c) *Qualifications of Sureties.* All insurance policies shall be with sureties qualified to do business in the State of Maryland, with an A-1 or better rating of insurance by Best's Key Rating Guide, Property/Casualty Edition, and in a form acceptable to the Town.

(d) *Policies Available for Review.*

All insurance policies shall be available for review by the Town, and the franchisee shall keep on file with the Town certificates of insurance.

(e) *Additional Insureds; Prior Notice of Policy Cancellation.*

All general liability insurance policies shall name the Town, its officers, boards, commissions, commissioners, agents, and employees as additional insureds and shall further provide that any cancellation or reduction in coverage shall not be effective unless thirty (30) days' prior written notice thereof has been given to the Town. A franchisee shall not cancel any required insurance policy without submission of proof that it has obtained alternative insurance satisfactory to the Town which complies with its franchise agreement.

(f) *Failure Constitutes Material Violation.* Failure to comply with the insurance requirements set forth in this Section shall constitute a material violation of a franchise.

(g) *Indemnification.*

(1) A franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the Town, its officials, boards, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages arising out of the construction, maintenance, or operation of its cable system; copyright infringements or a failure by the franchisee to secure consents from the owners, authorized distributors, or franchisees of programs to be delivered by the cable system; the conduct of the franchisee's business in the Town; or in any way arising out of the franchisee's enjoyment or exercise of the franchise, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this Ordinance or its franchise agreement.

(2) Specifically, a franchisee shall fully indemnify, defend, and hold harmless the Town, and in its capacity as such, the officers, agents, and employees thereof, from and against any and all claims, suits, actions, liability, and judgments for damages or otherwise subject to 47 U.S.C. § 558, arising out of or alleged to arise out of the installation, construction, operation, or maintenance of the system, including but not limited to any claim against the franchisee for invasion of the right of privacy, defamation of any person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark, or patent, or of any other right of any person, firm, or corporation. This indemnity does not apply to programming carried on any channel set aside for PEG use, or channels leased pursuant to 47 U.S.C. § 532, except that this indemnity shall apply to any actions taken by a franchisee pursuant to 47 U.S.C. § 531(e) or 47 U.S.C. § 532(c)(2) concerning the programming carried on PEG or leased access channels or an institutional network.

(3) The indemnity provision includes, but is not limited to, the Town's reasonable attorneys' fees incurred in defending against any such claim, suit, or proceeding, in addition to the reasonable value of any services rendered by the Town Attorney or Town staff or employees.

(h) *No Limit of Liability.*

Neither the provisions of this Section nor any damages recovered by the Town shall be construed to limit the liability of the franchisee for damages under the franchise.

14. PERFORMANCE GUARANTEES AND PENALTIES

(a) *Penalties.*

(1) For violation of provisions of this Ordinance or a franchise agreement entered into pursuant to this Ordinance, penalties shall be assessable against a franchisee and shall be chargeable to the franchisee's security fund in any amount up to the limits specified below, at the Town's discretion:

(A) For failure to submit any required plans indicating expected dates of installation of various parts of the system: \$400/day for each violation for each day the violation continues;

(B) For failure to commence operations in accordance with the requirements of the franchise agreement: \$1,000/day for each violation for each day the violation continues after a thirty-day cure period, if the franchisee has not undertaken substantial corrective action to cure the violation within that thirty-day period;

(C) For failure to substantially complete construction in accordance with a franchisee's franchise agreement: \$1,000/day for each violation for each day the violation continues after a thirty-day cure period, if the franchisee has not undertaken substantial corrective action to cure the violation within that thirty-day period;

(D) For transferring the franchise without approval: \$2,000/day for each violation for each day the violation continues;

(E) For failure to comply with requirements for public, educational, and governmental use of the system: \$1,000/day for each violation for each day the violation continues after a fourteen-day cure period, if the franchisee has not undertaken substantial corrective action to cure the violation within that fourteen-day period;

(F) For failure to supply information, reports, or filings lawfully required under the franchise agreement or applicable law or by the Town: \$500/day for each violation for each day the violation continues after a thirty-day cure period, which shall begin to run on the due date of any regularly scheduled report and on the date of a deadline reasonably set by the Town for any report or information request not regularly scheduled, unless the Franchisee shows that it was not in fact aware of the requirement in question, in which case the thirty-day cure period shall begin to run upon written notice of such requirement by the Town to the franchisee;

(G) For violation of customer service standards, or failure to file a compliance certification or noncompliance statement as required herein: \$200 per day or per event, as applicable;

(H) For failure to pay franchise fees or liquidated damages: \$100 per day, in addition to any monetary payment due under a franchise agreement or this Ordinance, for each violation for each day the violation continues after a seven-day cure period, if the franchisee has failed to make payment within that seven-day period, provided that these penalties shall be in addition to any late fees that may apply;

(I) For failure to file, obtain or maintain any required security fund in a timely fashion: \$200 per day;

(J) For failure to restore damaged property: \$200 per day, in addition to the cost of the restoration and any other penalties or fees as required elsewhere herein or in a franchise agreement, for each day the violation continues after a thirty-day cure period, if the franchisee has not undertaken substantial corrective action to cure the violation within that thirty-day period;

(K) For violation of technical standards established by the FCC: \$100 per day for each day the violation continues after a thirty-day cure period after the Town gives the Franchisee notice of such violation;

(L) For knowingly and intentionally signing a false report or statement: \$1,000 per report or document;

(M) For any other violations of this Ordinance, a franchise agreement, or other applicable law: \$500/day for each violation for each day the violation continues.

(2) The franchisee shall pay any penalty assessed in accordance with this Ordinance within fourteen (14) days after receipt of notice from the Town of such penalty.

(3) To the extent that penalties are applied to a franchisee under this Section 14(a), a franchisee shall not be subject to liquidated damages payable to the Town for the same violation.

(4) The Town may reduce or waive any of the above-listed penalties for good cause shown.

(5) Pending litigation or any appeal to any regulatory body or court having jurisdiction over a franchisee shall not excuse the franchisee from the performance of its obligations under this Ordinance or its franchise agreement unless a stay is obtained or the franchisee is otherwise excused from performance by operation of law. Failure of the franchisee to perform such obligations because of pending litigation or petition, in the absence of a stay issued by a forum of competent jurisdiction, may result in forfeiture or revocation pursuant to the provisions of this Ordinance and/or its franchise agreement.

(b) *Termination On Account of Certain Assignments or Appointments*

(1) Any franchise shall be deemed revoked one hundred twenty calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of a franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding. Provided, however, that a franchise may be reinstated at the Town's sole discretion if, within that one hundred twenty-day period:

(A) Such assignment, receivership or trusteeship has been vacated; or

(B) Such assignee, receiver, or trustee has fully complied with the terms and conditions of this Ordinance and the applicable franchise agreement and has executed an agreement, approved by a court of competent jurisdiction, under which it assumes and agrees to be bound by the terms and conditions of this Ordinance and the applicable franchise agreement, and such other conditions as may be established or as are required by applicable law.

(2) Notwithstanding the foregoing, in the event of foreclosure or other judicial sale of any of the facilities, equipment, or property of a franchisee, the Town may revoke the franchise, following a public hearing, by serving notice on the franchisee and the successful bidder, in which event the franchise and all rights and privileges of the franchise will be revoked and will terminate thirty calendar days after serving such notice, unless:

(A) The Town has approved the transfer of the franchise to the successful bidder; and

(B) The successful bidder has covenanted and agreed with the Town to assume and be bound by the terms and conditions of the franchise agreement and this Ordinance, and such other conditions as may be established or as are required pursuant to this Ordinance or a franchise agreement.

(c) *Remedies Cumulative.*

All remedies under this Ordinance and the franchise agreement are cumulative unless otherwise expressly stated. The exercise of a remedy or the payment of liquidated damages or penalties shall not relieve a franchisee of its obligations to comply with its franchise or applicable law.

(d) *Relation to Insurance and Indemnity Requirements.*

Recovery by the Town of any amounts under insurance, the security fund, the performance bond, or letter of credit, or otherwise does not limit a franchisee's duty to indemnify the Town in any way; nor shall such recovery relieve a franchisee of its obligations under a franchise, limit the amounts owed to the Town, or in any respect prevent the Town from exercising any other right or remedy it may have.

15. TRANSFERS

(a) *Town Approval Required.*

(1) A franchise granted under this Ordinance shall be a privilege to be held in personal trust by the franchisee.

(2) No transfer of a franchise, franchisee, or cable system, or of control over the same (including, but not limited to, transfer by forced or voluntary sale, merger, consolidation, receivership, or any other means) shall occur unless prior application is made by the franchisee to the Town and the Town's

prior written consent is obtained, pursuant to this Ordinance and the franchise agreement, and only then upon such terms and conditions as the Town deems necessary and proper. Any such transfer without the prior written consent of the Town shall be considered to impair the Town's assurance of due performance. The granting of approval for a transfer in one instance shall not render unnecessary approval of any subsequent transfer.

(b) *Approval Does Not Constitute Waiver.*

Approval by the Town of a transfer does not constitute a waiver or release of any of the rights of the Town under this Ordinance or a franchise agreement, whether arising before or after the date of the transfer.

16. OPEN VIDEO SYSTEMS

(a) *Applicability of Ordinance.*

(1) This Ordinance shall apply to open video systems that comply with 47 U.S.C. § 573, to the extent permitted by applicable law, except that the following sections shall not apply: § 3(a)-3(c) (regarding grant of franchise), § 4 (franchise applications), § 5 (filing fees), § 6 (provision of service), § 7(a) (construction schedule), § 10 (rate regulation), § 11(b)-11(c) (regarding franchise fees), § 13(f) (failure to comply with insurance requirements a material violation of franchise), § 14(a)(1)(B)-14(a)(1)(C) and 14(a)(1)(H) (certain penalties), § 14(b) (franchise termination due to bankruptcy).

(2) In applying this Ordinance to an open video system, "franchisee" shall be taken to refer to the open video system operator, "cable system" to the open video system, and similar terms shall apply similarly.

(b) *Fee In Lieu of Franchise Fee.* An open video system operator shall pay to the Town a fee in lieu of the franchise fee required in Section 11(b) of this Ordinance, pursuant to the procedures and conditions specified in section 11 and generally herein.

(c) *Public, Educational, and Governmental Access Obligations.* An open video system operator shall be subject to obligations pertaining to public, educational, and governmental access pursuant to applicable law and to the requirements herein.

(d) *Right-of-Way Usage.* An open video system operator shall be subject to all requirements of state and local law regarding authorization to use or occupy the public rights-of-way, except to the extent specifically prohibited by federal law. FCC approval of an open video system operator's certification pursuant to 47 U.S.C. § 573 shall not be taken to confer upon such operator any authority to use or occupy the public rights-of-way that such operator would not otherwise possess.

17. RIGHTS OF INDIVIDUALS PROTECTED

(a) *Discriminatory Practices Prohibited.*

(1) A franchisee shall not deny service, deny access, or otherwise discriminate against subscribers, programmers, or residents of the Town on the basis of race, color, religion, national origin, sex, or age.

(2) A franchisee shall not discriminate among persons or take any retaliatory action against a person because of that person's exercise of any right it may have under federal, state, or local law, nor may the franchisee require a person to waive such rights as a condition of taking service.

(3) A franchisee shall not deny access or levy different rates and charges on any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.

(4) Subject to applicable law and except to the extent the Town may waive such a requirement, a franchisee is prohibited from discriminating in its rates or charges or from granting undue preferences to any subscriber, potential subscriber, or group of subscribers or potential subscribers; provided, however, that a franchisee may offer temporary, bona fide promotional discounts in order to

attract or maintain subscribers, so long as such discounts are offered on a non-discriminatory basis to similar classes of subscribers throughout the Town; and a franchisee may offer discounts for the elderly, the handicapped, non-for-profit persons or organizations, or the economically disadvantaged, and other discounts in conformance with federal law, if such discounts are applied in a consistent and nondiscriminatory manner, and provided that a franchisee may provide such other bulk discounts as are permitted by the cable uniform rate structure provisions of federal law as they may exist from time to time. A franchisee shall comply at all times with all applicable federal, state, and Town laws, and all executive and administrative orders relating to non-discrimination.

(5) **Information Accessibility:** Each document required to be maintained, filed or submitted under the provisions of this Ordinance or a franchise agreement, except those specifically designated as confidential by a franchisee, subject to the Town's review, pursuant to applicable law, is a public document, available for public inspection and copying at the requestor's expense, at the office of the franchisee or the Town during normal business hours.

(b) *Equal Employment Opportunity.*

A franchisee shall not refuse to employ, discharge from employment, or discriminate against any person in compensation or in terms, conditions, or privileges of employment because of race, color, religion, national origin, sex, or age. A franchisee shall comply with all federal, state, and local laws and regulations governing equal employment opportunities, as the same may be from time to time amended.

(c) *Subscriber Privacy.*

(1) A franchisee shall at all times protect the privacy rights of all subscribers, including but not limited to those rights secured by the provisions of Section 631 of the Cable Act, 47 U.S.C. § 551.

(2) The franchisee shall not permit the transmission of any signal, aural, visual or digital, including "polling" the channel selection, from any subscriber's premises without first obtaining such subscriber's valid authorization. Neither the franchisee nor any other person shall initiate in any form the discovery of any information on or about an individual subscriber's premises without prior valid authorization from the subscriber potentially affected. This provision is not intended to prohibit the transmission of signals useful only for the control or measurement of system performance or for detection of theft of service.

(3) The franchisee shall not permit the installation of any special terminal equipment in any subscriber's premises that will permit transmission from such subscriber's premises of two-way services utilizing aural, visual or digital signals without such subscriber's prior valid authorization.

(4) The franchisee shall strictly observe and protect the rights of privacy and property rights of subscribers and users at all times. Individual subscriber preferences of any kind, viewing habits, political, social or economic philosophies, beliefs, creeds, religions or names, addresses or telephone numbers shall not be revealed to any person, governmental unit, police department or investigating agency unless upon the authority of a court of law, a valid search warrant or subpoena, or upon prior voluntary valid authorization of the subscriber or as may be permitted by operation of law.

(5) The franchisee shall not tabulate any test results that would reveal the commercial product preferences or opinions of individual subscribers, members of their families or their invitees, licensees, or employees, nor permit the use of the system for such tabulation, without the subscriber's prior valid authorization.

(6) A subscriber may at any time revoke any valid authorization to release information by delivering to the franchisee in writing, by mail or otherwise, the subscriber's decision to revoke the authorization. Any such revocation shall be effective upon receipt by the franchisee.

(7) A franchisee shall not condition subscriber service on the subscriber's valid authorization or grant or denial of permission to collect, maintain or disclose personally identifiable information, except to the extent that such information is necessary for credit check or billing purposes.

18. THEFT OF SERVICE

It shall be unlawful for any person to attach or affix or to cause to be attached or affixed any equipment or device that allows access or use of the cable system without lawful payment to the franchisee for same.

19. ADMINISTRATION

[Any necessary administrative provisions may be inserted here.]

20. MISCELLANEOUS PROVISIONS

(a) *Compliance With Laws.*

(1) Each franchisee shall comply with all federal, state, and local laws and regulations heretofore and hereafter adopted or established during the entire term of its franchise.

(b) *No Recourse Against the Town.*

Without limiting such immunities as the Town or other persons may have under applicable law, a franchisee shall have no recourse whatsoever against the Town or its officials, boards, commissions, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of this Ordinance or because of the enforcement of this Ordinance or the Town's exercise of its authority pursuant to this Ordinance, a franchise agreement, or other applicable law, unless the same shall be caused by criminal acts or by willful or gross negligence.

(c) *Rights and Remedies.*

(1) The rights and remedies reserved to the Town by this Ordinance are cumulative and shall be in addition to and not in derogation of any other rights and remedies which the Town may have with respect to the subject matter of this Ordinance.

(2) The Town hereby reserves to itself the right to intervene in any suit, action or proceeding involving any provision of this Ordinance or a franchise agreement.

(3) Specific mention of the materiality of any of the provisions herein is not intended to be exclusive of any others for the purpose of determining whether any failure of compliance hereunder is material and substantial.

(4) No franchisee shall be relieved of its obligation to comply with any of the provisions of this Ordinance or a franchise agreement by reason of any failure of the Town to enforce prompt compliance. Nor shall any inaction by the Town be deemed to waive or void any provision of this Ordinance or a franchise agreement.

(d) *Amendments to this Ordinance.* Notwithstanding any other provision in this Ordinance or a franchise agreement, nothing in this Ordinance or a franchise agreement shall preclude the Town from exercising its police powers to enact, amend or supplement any law or regulation governing cable communications within the Town.

(e) *Public Emergency.*

In the event of a major public emergency or disaster as determined by the County Executive of Prince George's County, a franchisee shall immediately make the entire cable system, employees, and property, as may be necessary, available for use by the Town or other civil defense or governmental agency designated by the Town to operate the system for the term of such emergency or disaster for the emergency purposes. In the event of such use, a franchisee shall waive any claim that such use by the Town constitutes a use of eminent domain, provided that the Town shall return use of the entire system, employees, and property to the franchisee after the emergency or disaster has ended or has been dealt with.

(f) *Connections to System; Use of Antennae.*

(1) Subscribers shall have the right to attach devices to a franchisee's system and the right to use their own remote control devices and converters and other similar equipment, consistent with

FCC equipment compatibility rules and other applicable law, and a franchisee shall provide information to consumers which will allow them to adjust such devices so that they may be used with the franchisee's system.

(2) A franchisee shall not, as a condition of providing service, require a subscriber or potential subscriber to remove any existing antenna or disconnect an antenna, or prohibit or discourage a subscriber from installing an antenna switch, provided that such equipment and installations are consistent with applicable codes and technically able to shield the cable system from any interference.

(g) *Calculation of Time.*

Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this Ordinance or any franchise agreement, and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of duration time.

(h) *Severability.*

If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the Town and shall thereafter be binding on the franchisee and the Town.

Adopted: 3/10/1999

Effective: 3/30/1999

