

## Appendix E

### Section 7 Cable Television Ordinance (Relocated from Chapter 6)

An Ordinance of the Town Council of the Town of Bucksport, Maine, repealing in its entirety the Town of Bucksport Cable Television Ordinance adopted on October 11, 1979, and adopting the Bucksport Cable Communications Regulatory Code, which revises 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.

#### **SEC. 7-100 GENERAL PROVISIONS**

##### **7-101 Title**

This Ordinance shall be known and may be cited as the “Bucksport Cable Television Communications Regulatory Ordinance.”

##### **7-102 Purpose**

The Town of Bucksport finds that the development of cable television systems has the potential of greatly benefiting and having a positive impact on the people of Bucksport. Cable technology is rapidly changing, and cable is expected to play an essential role as part of the Town’s basic infrastructure. Cable television systems 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 that provide services to the public, 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. In light of the foregoing, the following goals and the State policies set forth at 30-A M.R.S.A. Section 3008 (1), among others, underlie the provisions set forth in this Ordinance:

- a. Cable should be available to as many Town residents as possible.
- b. A Cable System should be capable of accommodating both the present and reasonably foreseeable future cable-related needs of the community, to the extent economically feasible.
- 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 that is economically feasible into existing system facilities.
- d. A Cable System should be responsive to the needs and interests of the local community.

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.

## **SEC. 7-200 DEFINITIONS AND WORD USAGE**

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, Chapter 5, Subchapter V-A, 47 U.S.C. Subsection 521 et seq., as amended, and, if not defined therein, their common and ordinary meaning.

### **7-201 Affiliate**

Any Person who owns or controls, is owned or controlled by, or is under common ownership or control with a Grantee.

### **7-202 Basic Cable Service**

Any Service Tier that includes the retransmission of local television broadcast signals.

### **7-203 Cable Act**

The Cable Communications Policy Act of 1984, 47 U.S.C. Subsection 521 et seq., as amended by the Cable Competition and Consumer Protection Act of 1992, the Telecommunications Act of 1996, and as it may be further amended from time to time.

### **7-204 Cable Programming Service**

Any video programming provided over a Cable System, regardless of Service Tier, including installation or rental of equipment used for the receipt of such video programming, other than (A) video programming carried on the Basic Cable Service Tier; and (B) video programming offered on a per-channel, or per-program basis.

### **7-205 Cable Service**

This term shall have the meaning given it by the Cable Act, as amended.

### **7-206 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 Right-of-Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that

such facility shall be considered a Cable System to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with federal law; or (5) any facilities of any electric utility used solely for operating its electric utility systems. A reference to a Cable System refers to any part thereof, including, without limitation, facilities located in the interior of a Subscriber's residence or other premises.

**7-207 The Town**

The Town of Bucksport, Maine, and any agency, department, or agent thereof.

**7-208 FCC**

The Federal Communications Commission, its designee, or any successor governmental entity thereto.

**7-209 Franchise**

The non-exclusive authorization granted in accordance with this Ordinance to construct, operate, and maintain a Cable System along the Public Rights-of-Way within the Town. Any such authorization, in whatever form granted, shall not mean or include any 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.

**7-210 Franchise Agreement**

A contract entered into in accordance with the provisions of this Ordinance between the Town and a Grantee that sets forth, subject to applicable state and federal law, the terms and conditions under which a Franchise will be exercised.

**7-211 Franchise Area**

The term "franchise area" for any franchise granted under this Ordinance shall mean the whole of the Town of Bucksport. All new or renewal franchise agreements granted under this Ordinance shall require the grantee, within a reasonable period after the effective date of the franchise agreement, to extend service to all areas of the Town that meet density requirements to be set out in the franchise agreement. No franchise or renewal franchise approved under this Ordinance shall contain density requirements that are less restrictive than the density requirements of franchise agreements with other grantees that are then in force.

**7-212 Grantee**

The natural Person(s), partnership(s), domestic or foreign corporation(s), association(s), joint venture(s), or organization(s) of any kind which has or have been granted a cable television Franchise by the Town.

### **7-213 Gross Revenues**

Those items within the scope of the term “gross revenues” as used in the Cable Act, as amended, including any and all cash, credits, or other consideration of any kind or nature received directly or indirectly by a Grantee, an Affiliate of a Grantee, or any Person in which a Grantee has a five percent (5%) or greater financial interest, or by any other entity that is a cable operator of a Cable System arising from, attributable to, or in any way derived from the operation of a Grantee’s Cable System to provide Cable Service, including the facilities associated therewith. Gross Revenues include, but are not limited to, monthly fees charged Subscribers for any basic, optional, premium, per-channel, or per-program service; installation, disconnection, reconnection, and change-in-service fees; leased channel fees; late fees; payments, or other consideration received from programmers for carriage of programming on the System; revenues from converter rentals or Sales; advertising revenues; barter; revenues from program guides; and revenues from home shopping channels. “Gross Revenues” do not include reimbursed expenses unless the expense is separately claimed. Gross Revenues earned on a System-wide basis shall be allocated to the Town on the basis of the ratio of the subscribers in the Town to the total subscribers in all the franchising authorities served by the System. Gross Revenues shall be the basis for computing the Franchise Fee under this Ordinance. Gross Revenues shall not include: (1) to the extent consistent with generally accepted accounting principles, actual bad debt write-offs, provided, however that all or part of any such actual bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (2) the value of free cable services provided to Grantee’s employees or to the Town; (3) revenues received by an Affiliate from the Grantee on which the Grantee has already paid the Franchise fee; (4) any taxes on services furnished by a Grantee which are imposed directly on any Subscriber or user by the state, Town, or other governmental unit and which are collected by a Grantee on behalf of said governmental unit; and (5) revenues from the provision of telecommunications services.

### **7-214 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.

### **7-215 Public Right-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 in which the Town now or hereafter holds any property interest, or may lawfully grant the use of, 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 Grantee 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.

**7-216 Sale**

Any sale, exchange, or barter transaction.

**7-217 Service Tier**

A package of two or more Cable Services for which a separate charge is made by the Grantee, other than a package of premium and pay-per-view services that may also be sold on a true a la carte basis.

**7-218 Subscriber**

Any Person who legally receives Cable Service, whether or not a fee is paid for such service.

**7-219 Transfer**

Any transaction in which (1) an ownership or other interest in a Grantee, its Cable System, or any Person that is a cable operator of the Cable System is transferred from one Person or group of Persons to another Person or group of Persons so that control of a Grantee is transferred; or (2) the rights or obligations held by a Grantee under a Franchise Agreement are transferred or assigned to another Person or group of Persons. Control for these purposes means working control, in whatever manner exercised. By way of illustration and not limitation, the addition, deletion, or other change of any general partner of a Grantee, any person who owns or controls a Grantee, or a cable operator of a Cable System is such a change of control.

**7-220 User**

A Person or organization utilizing 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.

**SEC. 7-300 GRANT OF FRANCHISE**

**7-301 Grant of Franchise**

The Town may grant one or more cable television Franchises, and each such Franchise shall be awarded in accordance with and subject to the provisions of this Ordinance. In no event shall this Ordinance be considered a contract between the Town and a Grantee.

**7-302 Franchise Required**

No Person may construct or operate a Cable System without a Franchise granted by the Town unless otherwise authorized by law, and no Person may be granted a

Franchise without having entered into a Franchise Agreement with the Town pursuant to this Ordinance.

### **7-303 Franchise Characteristics**

#### **7-303-1 Authority Granted by Franchise**

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 within a Franchise Area, but does not expressly or implicitly authorize a Grantee 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. Section 541 (a) (2)), or to use publicly or privately owned conduits without a separate agreement with the owners.

#### **7-303-2 Term of Franchise**

The term of a Franchise may not exceed fifteen (15) years.

#### **7-303-3 Non-exclusivity**

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.

#### **7-303-4 Franchise Agreement Constitutes Contract**

Once a Franchise Agreement has been accepted and executed by the Town and a Grantee, such Franchise Agreement shall constitute a contract between the Grantee and the Town, and the terms, conditions, and provisions of such Franchise Agreement, subject to the Ordinance in effect as of the effective date of such Franchise Agreement and all other duly enacted and applicable laws, shall define the rights and obligations of the Grantee and the Town relating to the Franchise. Nothing in this Ordinance or a Franchise Agreement shall be deemed a waiver of or restriction on the Town's police powers, or a waiver of any of the terms of any Town ordinance regarding the use or management of the Public Rights-of-Way or intended to protect the public's safety.

#### **7-303-5 Use of Public Rights-of-Way**

All privileges prescribed by a Franchise shall be subordinate to any prior lawful occupancy of the Public Rights-of-Way, and the Town reserves the right to reasonably designate where a Grantee's facilities are to be placed within the Public Rights-of-Way. The rights and privileges granted pursuant to a Franchise shall not be in preference or hindrance to the right of the Town, or other governmental agency, improvement district or other authority having

jurisdiction, to perform or carry on any public works or public improvement, and should a Cable System in any way interfere with the construction, maintenance, or repair of such public works or improvements, the Grantee shall promptly, at its own expense, protect or relocate its System or part thereof, as directed by the Town or other authority having jurisdiction.

#### **7-303-6 Franchise personal to Grantee**

A Franchise shall be a privilege that is in the public trust and personal to the original Grantee. No Transfer of a Franchise shall occur without the prior consent of the Town and unless application is made by the Grantee and Town approval obtained, pursuant to this Ordinance and the Franchise Agreement; which approval shall not be unreasonably withheld, provided, however, that the Grantee may make assignments of collateral to a lender upon reasonable prior notice to the Town. No such assignment of collateral shall be deemed to permit any person to avoid any obligations under this Ordinance or a Franchise Agreement.

#### **7-303-7 Exclusive Contracts Unenforceable**

A Franchise holder may not enter into or enforce any exclusive contract with a Subscriber as a condition of providing or continuing service.

### **7-304 Grantee Subject to Other Laws, Police Power**

#### **7-304-1 Compliance With Laws**

A Grantee shall at all times be subject to and shall comply with all applicable federal, state, and local laws. A Grantee 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. Section 552.

#### **7-304-2 No Waiver of Town Rights**

No course of dealing between a Grantee and the Town, nor any delay on the part of the Town in exercising any rights hereunder, shall operate as a waiver of any such rights of the Town or acquiescence in the actions of a Grantee in contravention of rights except to the extent expressly waived by the Town or expressly provided for in a Franchise Agreement, or other applicable laws, rules or regulations.

#### **7-304-3 Town has Maximum Regulatory Authority**

The Town shall have the maximum plenary authority to regulate Cable Systems, Grantees, and Franchises as may now or hereafter be lawfully permissible; except where rights are expressly waived by a Franchise Agreement, they are reserved, whether expressly enumerated or not.

### **7-305 Interpretation of Franchise Terms**

#### **7-305-1 Provision to Town's Benefit Controlling**

In the event of a conflict between this Ordinance as effective on the effective date of a Franchise Agreement and that Franchise Agreement, the terms of this Ordinance as effective on the effective date of that Franchise Agreement shall control, except as otherwise provided in a Franchise Agreement.

**7-305-2 Liberal Construction**

To the extent permitted by law, the provisions of this Ordinance and a 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, except as otherwise provided in a Franchise Agreement.

**7-305-3 Governing Law**

Except as to matters that are governed solely by federal law or regulation, a Franchise Agreement will be governed by and construed in accordance with the laws of the State of Maine.

**7-306 Operation of a Cable System Without a Franchise**

Any Person who occupies Public Rights-of-Way for the purpose of operating or constructing a Cable System and who does not hold a valid Franchise from the Town shall be subject to all provisions of this Ordinance, including but not limited to its provisions regarding construction and technical standards and Franchise fees. In its discretion, the Town at any time may require such Person to enter into a Franchise Agreement within thirty (30) days of receipt of a written notice by the Town that a Franchise Agreement is required; require such Person to remove its property and restore the area to a condition satisfactory to the Town within such time period; 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 Franchise Agreement.

**7-307 Right of Condemnation Reserved**

Nothing in this Ordinance or any Franchise Agreement shall limit any right the Town may have to acquire by eminent domain or otherwise any property of Grantee.

**7-308 Acts at Grantee's Expense**

Any act that a Grantee is or may be required to perform under this Ordinance, a Franchise Agreement, or applicable law shall be performed at the Grantee's expense, unless expressly provided to the contrary in this Ordinance, the Franchise Agreement, or applicable law.



## **SEC. 7-400 APPLICATIONS FOR GRANT, RENEWAL, OR MODIFICATION OF FRANCHISES**

### **7-401 Written Application**

#### **7-401-1 Application Requirement**

A written application shall be filed with the Town for (1) grant of an initial Franchise; (2) renewal of a Franchise under 47 U.S.C. Section 546 (a)-(g); or (3) modification of a Franchise Agreement pursuant to this Ordinance or a Franchise Agreement. An applicant shall demonstrate in its application, compliance with all requirements of this Ordinance, any existing Franchise Agreement held by the applicant and all applicable laws.

#### **7-401-2 Acceptability for Filing**

To be acceptable for filing, a signed original of the application shall be submitted together with twelve (12) copies. The Town Manager may, in combination with neighboring communities, establish a joint application procedure, provided that any such procedure conforms with the standards of this Ordinance. The application must be accompanied by the required application filing fee as set forth in Article 7-406, 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 the applicant with respect to the application.

#### **7-401-3 Applications Available for Public Inspection**

All applications accepted for filing shall be made available by the Town for public inspection in the office of the Town Clerk during normal business hours.

#### **7-401-4 Town May Waive**

The Town Council may waive any of the provisions of this Section 7-400 by resolution, where application of the rule would cause manifest injustice, except for those provisions required by state or federal law. Any waiver granted shall explain the basis for the waiver and shall not unduly discriminate against any applicant.

### **7-402 Application for Grant of a Franchise, Other Than a Cable Act Renewal Franchise**

#### **7-402-1 Application**

A Person may apply for an initial Franchise by submitting an application containing the information required in Section 7-404 and requesting an evaluation of that application pursuant to Section 7-402-2. Prior to evaluating that application, the Town shall conduct such reasonable investigations as are necessary to determine whether the application satisfies the standards set forth in Section 7-402-2 and may seek additional applications.

### **7-402-2 Factors in Evaluating Application for Franchise or Renewal of Existing Franchise**

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 an 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 as part of Section 7-402-2 e, the applicant will provide adequate Public, Educational, and Governmental Access Channel capacity, facilities, or financial support, consistent with community needs and interests.
- 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 the applicant and its proposed facilities to meet the cable-related needs and interests of the community.
- g. Whether the applicant or an Affiliate of the applicant owns or controls any other Cable System in the Town, or whether grant of the application may eliminate or reduce competition in the delivery of Cable Service in the Town.

### **7-402-3 Town Determination**

If the Town finds that it is in the public interest to issue a Franchise after considering 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 within thirty (30) days 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 applicant 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. This Ordinance is not intended and shall not be interpreted to grant any applicant or existing

Grantee standing to challenge the issuance of a Franchise to another, except as provided by applicable State or Federal laws or regulations.

#### **7-402-4 Joint Review**

The Town may elect to delegate review of an application to a consortium of local governments or a formally constituted interlocal body of which the Town is a member. Any such entity shall review the application in accordance with the standards of Section 7-402-2 and make a recommendation to the Town. In such a case, the Town Council shall review the recommendation of the designated body and approve or reject it in accordance with the terms of Section 7-402-3.

#### **7-403 Application for Grant of a Cable Act Renewal Franchise**

Applications for renewal under the Cable Act shall be received and reviewed in a manner consistent with Section 626 of the Cable Act, 47 U.S.C. Section 546. If neither a Grantee nor the Town activates in a timely manner or can activate the renewal process set forth in 47 U.S.C. Section 546 (a)-(g) (including, for example, if the provisions are repealed), and except as to applications submitted pursuant to 47 U.S.C. Section 546 (h), the provisions of Section 7-402 shall apply and a renewal request shall be treated the same as any other request for a Franchise. The following requirements shall apply to renewal requests properly submitted pursuant to the Cable Act:

##### **7-403-1 Issuance of RFP**

If the provisions of 47 U.S.C. Section 546 (a)-(g) are properly invoked, the Town may issue an RFP after conducting a proceeding to review the applicant's past performance and to identify future cable-related community needs and interests. The Town Council, or the Town Council's designee, shall establish deadlines and procedures for responding to the RFP, may seek additional information from the applicant, and shall establish deadlines for the submission of that additional information. Following receipt of the application responding to that RFP (and such additional information as may be provided in response to requests), the Town will determine that the Franchise should be renewed, or make a preliminary assessment that the Franchise should not be renewed. That determination shall be in accordance with the time limits established by the Cable Act. The preliminary determination shall be made by Order. If the Town determines that the Franchise should not be renewed, and the applicant that submitted the renewal application notifies the Town, either in its RFP response or within ten (10) working days of the preliminary assessment, that it wishes to pursue any rights to an administrative proceeding it has under the Cable Act, then the Town shall commence an administrative proceeding after providing prompt public notice thereof, in accordance with the Cable Act. If the Town decides preliminarily to grant renewal, it shall prepare a final Franchise Agreement that incorporates, as appropriate, the commitments made by the applicant in the renewal application. If the applicant accepts the Franchise Agreement,

and the final agreement is ratified by the Town, the Franchise shall be renewed. If the Franchise Agreement is not so accepted and ratified within the time limits established by 47 U.S.C. Section 546 (c) (1), renewal shall be deemed preliminarily denied, and an administrative proceeding commenced if the applicant that submitted the renewal application requests it within ten (10) days of the expiration of the time limit established by 47 U.S.C. Section 546 (c) (1).

#### **7-403-2 Administrative Hearing**

If an administrative hearing is commenced pursuant to 47 U.S.C. Section 546 (c), the applicant's renewal application shall be evaluated considering such matters as may be considered consistent with federal law. The following procedures shall apply:

- a. The Town Council shall, by order, appoint an administrative hearing officer or officers (referred to hereafter as "hearing officer"). The Town Council may appoint itself as hearing officer.
- b. The hearing officer shall establish a schedule for proceeding which allows for documentary discovery and interrogatory responses, production of evidence, and cross-examination of witnesses. Depositions shall not be permitted unless the party requesting the deposition shows that documentary discovery and interrogatory responses will not provide it an adequate opportunity to require the production of evidence necessary to present its case. The hearing officer shall have the authority to require the production of evidence as the interests of justice may require, including to require the production of evidence by the applicant that submitted the renewal application and any entity that owns or controls or is owned or controlled by such applicant directly or indirectly. The hearing officer may issue protective orders to the extent permitted under applicable State law. Any order may be enforced by a court of competent jurisdiction or by imposing appropriate sanctions in the administrative hearing.
- c. The hearing officer may conduct a pre-hearing conference and establish appropriate pre-hearing procedures. Intervention by non-parties is not authorized except to the extent permitted by the Cable Act.
- d. The hearing officer may require the Town and the applicant to submit prepared testimony prior to the hearing. Unless the parties agree otherwise, the applicant shall present evidence first, and the Town shall present evidence second.
- e. Any reports or the transcript or summary of any proceedings conducted pursuant to 47 U.S.C. Section 546 (a) shall for purposes of the administrative hearing be regarded no differently than any other evidence. The Town and the applicant must be afforded full procedural protection regarding evidence related to these proceedings, including the right to refute any evidence introduced in those proceedings or sought to be introduced by the other party. Both shall have the opportunity to submit additional evidence related to issues raised in the proceeding conducted pursuant to 47 U.S.C. Section 546 (a).

- f. Following completion of any hearing, the hearing officer shall require the parties to submit proposed findings of fact with respect to the matters that the Town is entitled to consider in determining whether renewal should be granted. Based on the record of the hearing, the hearing officer shall then prepare written findings with respect to those matters, and submit those findings to the Town Council and to the parties (unless the hearing officer is the Town Council, in which case the written findings shall constitute the final decision of the Town), if permitted by applicable laws or rules.
- g. If the hearing officer is not the Town Council, the parties shall have thirty (30) days from the date the findings are submitted to the Town Council to file exceptions to those findings. The Town Council shall thereafter issue a written decision granting or denying the application for renewal, consistent with the requirements of the Cable Act and based on the record of such proceeding. A copy of that decision of the Town Council shall be provided to the applicant.
- h. The proceeding shall be conducted with due speed.
- i. In conducting the proceedings, and except as inconsistent with the foregoing, the hearing officer will follow the Maine Administrative Procedures Act or the successor statutes thereto unless otherwise governed by Federal law or regulations. The hearing officer may request that the Town Council adopt additional procedures and requirements as necessary in the interest of justice.

#### **7-403-3 Informal Renewal Applications**

This Article does not prohibit any Grantee from submitting an informal renewal application pursuant to 47 U.S.C. Section 546 (h), which application may be granted or denied in accordance with the provisions of 47 U.S.C. Section 546 (h).

#### **7-403-4 Consistency with Cable Act**

The provisions of this Ordinance shall be read and applied so that they are consistent with Section 626 of the Cable Act, 47 U.S.C. Section 546.

#### **7-404 Contents of Applications**

If issued by the Town, an RFP for the grant of a renewal Franchise under 47 U.S.C. Section 546 (c) shall require, and any application for an initial or renewal franchise (other than an application submitted pursuant to 47 U.S.C. Section 546 (h)) shall contain, at a minimum, the following information:

##### **7-404-1 Identification of Applicant and Its Ownership and Control**

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 controlling Affiliates of the applicant, and all Persons with five percent (5%) 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.

**7-404-2 Statement of Applicant's Technical Ability**

A demonstration of the applicant's technical ability to construct and/or operate the proposed Cable System, including identification of key personnel.

**7-404-3 Statement of Applicant's Legal qualifications**

A demonstration of the applicant's legal qualifications to construct and/or operate the proposed Cable System, including but not limited to a demonstration that the applicant meets the following criteria:

- a. The applicant must not have submitted an application for an initial or renewal Franchise to the Town, which was denied on the ground that the applicant failed to propose a System meeting the cable-related needs and interests of the community, or as to which any challenges to such licensing decision were finally resolved adversely to the applicant, within one (1) year preceding the submission of the application.
- b. The applicant must not have had any cable television Franchise validly revoked by any licensing authority within three (3) years preceding the submission of the application.
- c. The applicant must have the necessary authority under Maine law to operate a Cable System within Maine.
- d. The applicant shall not be issued a Franchise if it may not hold the Franchise as a matter of federal law. An applicant must have, or show that it is qualified to obtain any necessary federal approvals or waivers required to operate the System proposed.
- e. The applicant shall not be issued a Franchise if, 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 anti-competitive acts, fraud, racketeering, or other similar conduct.
- f. The applicant shall not be issued a Franchise if it files materially misleading information in its application or intentionally withholds information that the applicant lawfully is required to provide.
- g. The applicant shall not be issued a Franchise if an elected official of the Town holds a controlling interest in the applicant or is an Affiliate of the applicant.

Notwithstanding the foregoing, the Town shall provide an opportunity to an applicant to show that it would be inappropriate to deny it a Franchise under Section 7-404-3 b or e, 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 Television Systems.

**7-404-4 Statement of Applicant's Financial Qualifications**

A statement prepared by a certified public accountant regarding the applicant's financial ability to complete the construction and operation of the Cable System proposed.

**7-404-5 Description of Prior Experience**

A description of the applicant's 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 license or any interest therein, provided that, an applicant that holds a Franchise for the Town and is seeking renewal of that Franchise need only provide this information for other communities where its Franchise was scheduled to expire in the two (2) calendar years prior to and after its application was submitted.

**7-404-6 Identification of Area To Be Served**

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. All Grantees shall be bound and required to serve the same areas within the Town.

**7-404-7 Description of Physical Facilities**

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

**7-404-8 Description of Construction of Proposed System**

Where applicable, a description of the construction of the proposed System, including an estimate of plant mileage and its location, the proposed construction schedule, a description, where appropriate, of how services will be converted from existing facilities to new facilities, and information on the availability of space in conduits including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities.

**7-404-9 Proposed Rate Structure**

The proposed rate structure, including projected charges for each Service Tier, installation, converters, and other equipment or services.

**7-404-10 Demonstration of How Future Community Needs and Interests Will Be Met**

A demonstration of how the applicant will reasonably meet the future cable-related needs and interests of the community, including descriptions of how the applicant will meet the needs described in any recent community needs

assessment conducted by or for the Town, and how the applicant will provide adequate Public, Educational, and Governmental Access Channel capacity, facilities, or financial support to meet the community's needs and interests. The Town Manager may, in coordination with neighboring communities, establish procedures for conducting a joint needs assessment.

**7-404-11 Pro Forma Financial Projections**

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.

**7-404-12 Identification of Area of Overbuild**

If the applicant proposes to provide Cable Service to an area already served by an existing cable Grantee, the identification of the area where the overbuild would occur, the potential Subscriber density in the area that would encompass the overbuild, the ability of the Public Rights-of-Way and other property that would be used by the applicant to accommodate an additional System, and assurances that any existing facilities will not be disturbed by the proposed overbuild, except as necessary for make ready work.

**7-404-13 Other Information**

Any other information as may be reasonably necessary to demonstrate compliance with the requirements of this Ordinance.

**7-404-14 Information Requested by Town**

Information that the Town may reasonably request of the applicant that is relevant to the Town's consideration of the application.

**7-404-15 Certification of Accuracy**

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, in a format approved by the Town.

**7-405 Application for Modification of a Franchise**

An application for modification of a Franchise Agreement shall include, at a minimum, the following information:

- a. The specific modification requested;
- b. The justification for the requested modification, including the impact of the requested modification on Subscribers, and the financial impact on the applicant if the modification is approved or disapproved, demonstrated through, inter alia, submission of financial pro formas;
- c. A statement whether the modification is sought pursuant to Section 625 of the Cable Act, 47 U.S.C. Section 545, and if so, a demonstration that the



requested modification meets the standards set forth in 47 U.S.C. Section 545;

- d. Any other information that the applicant believes is necessary for the Town to make an informed determination on the application for modification; and
- e. 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.

#### **7-406 Filing Fees**

To be acceptable for filing, an application submitted after the effective date of this Ordinance shall be accompanied by a filing fee in the following amount to cover costs incidental to the awarding or enforcement of the Franchise, as appropriate:

- a. For an initial Franchise: \$500
- b. For renewal of a Franchise: \$500
- c. For modification of a Franchise Agreement: \$500

The Town may also elect to share the costs of reviewing an application with other communities served by the system of which an existing or proposed cable system in the Town is a part. In that case, the filing fees shown above shall not apply, and shall be replaced with combined filing fees for all communities with whom the Town is sharing expenses. The combined filing fees shall be Seven Thousand Dollars (\$7,000.00) for an initial grant or a modification, and Seven Thousand Dollars (\$7,000.00) for a renewal.

Combined filing fees shall be prorated among the participating communities on the basis of the number of residents in each community as of the most recent U. S. Census, or allocated according to some other mutually agreeable method.

Application fees for franchise renewals may be increased as necessary to recover the Town's additional cost of conducting any hearings required under 47 U.S.C. Section 546 (a)-(g), if the Grantee has invoked that procedure in its renewal application.

#### **7-407 Public Hearings**

An applicant shall be notified in writing at least ten (10) calendar days in advance 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. Reasonable notice to the public shall include causing notice of the time and place of such hearing to be published in a newspaper of general circulation in the proposed Franchise Area once a week for two consecutive weeks. The first publication shall be not less than fourteen (14) days before the day of the hearing. Nothing herein shall be deemed to prevent or limit communities in which the applicant has requested grant or renewal of a franchise from holding joint public hearings in a

location reasonably accessible to residents of each community which is the subject thereof.

## **SEC. 7-500 INSURANCE AND INDEMNITY**

### **7-501 Insurance Required**

A grantee shall maintain, and by its acceptance of a Franchise specifically agrees that it will maintain, throughout the entire length of the Franchise period, such insurance as will protect the Town and elected officials, employees and agents from any claims that may arise directly or indirectly or result from its acceptance of the Franchise or its activities under the Franchise, whether such activities are performed by the Grantee, or by anyone for whose acts the Grantee may be liable, including, but not limited to, the following:

- a. Worker's compensation, including disability benefits and any other legally required employee benefits, meeting all statutory amounts;
- b. Property insurance, all risk, replacement cost basis, on all of the Grantee's assets;
- c. General liability insurance, in the following minimum amounts:

Bodily injury or death	\$1,000,000 per person
Primary insurance	\$1,000,000 per occurrence
Umbrella insurance	\$5,000,000
Property damage	\$1,000,000.

The Town may review these amounts no more than once a year and may require reasonable adjustments to them consistent with the public interest. The Franchise Agreement may specify the procedures to be followed in the event that the Grantee objects to an increase in a policy limit and the parties are unable to agree on a mutually acceptable amount.

### **7-502 Qualifications of Sureties**

All insurance policies shall be with sureties qualified to do business in the State of Maine with an A or better rating of insurance by Best's Key Rating guide, Property/Casualty Edition, and in a form acceptable to the Town.

### **7-503 Evidence of Insurance**

A Grantee shall keep on file with the Town current certificates of insurance. A Grantee shall provide the Town with copies of all insurance policies in effect during the franchise period upon the written request of the Town.

### **7-504 Additional Insureds; Prior Notice of Policy Cancellation**

All general liability insurance policies shall name the Town, elected officials, 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 Grantee shall not cancel any required insurance policy without submission of proof that the Grantee has obtained alternative insurance satisfactory to the Town which complies with this Ordinance.

## **7-505 Indemnification**

### **7-505-1 Indemnification for Damages and Equitable Relief**

A Grantee shall, at its sole cost and expense, indemnify, hold harmless, and defend the Town, its inhabitants, elected officials, officers, boards, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of its Cable System; copyright infringements or a failure by the Grantee to secure consents from the owners, authorized distributors, or Grantees of programs to be delivered by the Cable System; the conduct of the Grantee's business in the Town; or in any way arising out of the Grantee's enjoyment or exercise of a Franchise granted hereunder, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this Ordinance or a Franchise Agreement.

### **7-505-2 Indemnification for Cable Act Claims**

A Grantee shall, at its sole cost and expense, 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 Section 638 of the Cable Act, 47 U.S.C. Section 558, arising out of or alleged to arise out of the installation, construction, operation, or maintenance of its System, including but not limited to any claim against the Grantee 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 public, educational, or government use, or channels leased pursuant to 47 U.S.C. Section 532, unless the Grantee was in any respect engaged in determining the editorial content of the program, or adopts a policy of prescreening programming for the purported purpose of banning indecent or obscene programming.

### **7-505-3 Attorneys' Fees**

The indemnity provision includes, but is not limited to, the Town's reasonable attorneys' fees incurred in defending against any such claim, suit, action or proceeding.

## **7-506 No Limit of Liability**

Neither the provisions of this Article nor any damages recovered by the Town shall be construed to limit the liability of a Grantee for damages under any Franchise issued hereunder.

## **7-507 No Recourse**

Without limiting such immunities as it may have under applicable law, the Town shall not be liable to the Grantee for any damages or loss that the Grantee may

suffer as the result of the Town's exercise of its lawful authority pursuant to this Ordinance, a Franchise Agreement, or other applicable law.

## **SEC. 7-600 PERFORMANCE BOND**

### **7-601 Requirement of Bond**

Prior to any construction, rebuild or upgrade of the Cable System requiring work in the Public Rights-of-Way other than installation of aerial facilities and utility poles, a Grantee shall establish in the Town's favor an irrevocable performance bond in an amount specified in the Franchise Agreement or otherwise determined as reasonable by municipal officers as necessary to ensure the Grantee's faithful performance of the construction, upgrade, or other work. The amount of such performance bond shall not exceed the lesser of ten percent (10%) of the total cost of the work being done in the Public Right-of-Way other than installation of aerial facilities and utility poles, or Fifty Thousand Dollars (\$50,000.00).

### **7-602 Recovery under Performance Bond**

In the event that a Grantee subject to such a performance bond fails to complete the Cable System construction, upgrade, or other work in the Public Rights-of-Way in a safe, timely (subject to the force majeure provision of Section 7-1702), and competent manner in accordance with the provisions of a Franchise Agreement, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the Town as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Grantee, or the cost of completing or repairing the System construction, upgrade, or other work in the Public Rights-of-Way, plus a reasonable allowance for attorney's fees, up to the full amount of the bond. The Town may also recover against the bond any amount recoverable against the security fund required under ~~Article~~ Section 7-700 of this Ordinance, where such amount exceeds that available under the security fund.

### **7-603 Elimination or Reduction of Bond**

Any performance bond shall remain in place for one full year after completion to the satisfaction of the Town of the work in the Public Right-of-Way.

### **7-604 New Bond for New Project**

The Town may subsequently require a new bond, for any subsequent construction, or other work in the Public Rights-of-Way other than installation of aerial facilities and utility poles, whose cost exceeds an amount specified in a Franchise Agreement. In the event a Grantee fails to complete the work secured by such a new performance bond in a safe, timely and competent manner, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the Town as a result, including the full amount of any compensation, indemnification, or cost of removal or

abandonment of any property of the Grantee, or the cost of completing or repairing the System construction, upgrade, or other work in the Public Rights-of-Way, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond. The Town may also recover against the bond any amount recoverable against the security fund required under Section 7-700 of this Ordinance, where such amount exceeds that available under the security fund. In any event, the total amount of the bond shall not exceed the lesser ten percent (10%) of the cost of the work being done in the Public Right-of-Way, or Fifty Thousand Dollars (\$50,000.00).

**7-605 Issuance of Bond; Notice of Cancellation Required**

Any performance bond shall be issued by a surety qualified to do business in the State of Maine, and having an A-1 or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the Town and shall contain the following endorsement:

"This bond may not be canceled, or allowed to lapse, until sixty (60) days after notice to the Town by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

**7-606 Forfeiture**

The total amount of any outstanding bond shall be forfeited in favor of the Town in the event that:

- a. The Grantee abandons the Cable System or any part thereof at any time during the term of the Franchise; or
- b. The Grantee fails to purchase and maintain insurance as required by Section 7-500 hereof; or
- c. The Franchise is revoked as provided in Section 7-802 hereof.

**SEC. 7-700 SECURITY FUND**

**7-701 Establishment of Security Fund**

- a. A Franchise Agreement may provide that, prior to the Franchise's becoming effective, the Grantee shall post with the Town a cash security deposit to be used as a security fund to ensure the Grantee's faithful performance of and compliance with all provisions of this Ordinance, the Franchise Agreement, and other applicable laws, and compliance with all orders, permits, and directions of the Town or any agency thereof having jurisdiction over the Grantee's acts or defaults under the Franchise, and the payment by the Grantee of any claims, liens, fees, or taxes due the Town which arise by reason of the construction, operation, or maintenance of the System. The amount of any security fund shall be specified in a Franchise Agreement.
- b. In lieu of a cash security fund, a Grantee may agree to file and maintain with the Town an irrevocable letter of credit with a bank having an office in the State of Maine in the amount specified in the preceding paragraph to serve the same purposes as set forth therein. Said letter of credit shall remain in

effect for the full term of the Franchise plus an additional six (6) months thereafter. The Grantee and its surety shall be jointly and severally liable under the terms of the letter of credit for the Grantee's failure to ensure its faithful performance of and compliance with all provisions of this Ordinance, the Franchise Agreement, and other applicable law, and compliance with all orders, permits, and directions of the Town, and the payment by the Grantee of any claims, liens, fees, or taxes due the Town which arise by reason of the construction, operation, or maintenance of the System. The letter of credit shall provide for thirty (30) days' prior written notice to the Town of any intention on the part of the Grantee to cancel, fail to renew, or otherwise materially alter its terms. Neither the filing of a letter of credit with the Town, nor the receipt of any damages recovered by the Town thereunder, shall be construed to excuse faithful performance by the Grantee or limit the liability of the Grantee under the terms of its Franchise for damages, either to the full amount of the letter of credit or otherwise.

#### **7-702 Use of Fund**

If a Grantee fails to make timely payment to the Town of any amount due as a result of Franchise requirements, fails to make timely payment to the Town of any amounts due under a Franchise Agreement or applicable law, fails to make timely payment to the Town of any taxes lawfully due, or fails to compensate the Town for any damages, costs, or expenses the Town suffers or incurs by reason of any act or omission of the Grantee in connection with its Franchise Agreement, the Town may withdraw the amount thereof from the security fund. To invoke the provisions of this Article, the Town shall give the Grantee written notice of the default in the Grantee's performance. If within thirty (30) calendar days following such written notice from the Town to the Grantee, the Grantee has not remedied the default to the satisfaction of the Town, the Town may proceed to withdraw the amount in question from the security fund, provided that, if by its nature the default cannot be remedied within thirty (30) days and the Grantee has demonstrated to the satisfaction of the Town that it is making a continuing good faith effort to remedy the default, the Town shall not draw on the security fund.

#### **7-703 Notification**

Within ten (10) business days of a withdrawal from the security fund, the Town shall mail, by certified mail, return receipt requested, written notification of the amount, date, and purpose of such withdrawal to the Grantee.

#### **7-704 Inadequate Fund Balance**

If at the time of a withdrawal from the security fund by the Town, the amount of the fund is insufficient to provide the total payment towards which the withdrawal is directed, the balance of such payment shall continue as the obligation of the Grantee to the Town until it is paid.

### **7-705 Replenishment**

No later than thirty (30 ) days after mailing of notification to the Grantee by certified mail, return receipt requested, of a withdrawal under the security fund, the Grantee shall deliver to the Town for deposit in the security fund an amount equal to the amount so withdrawn. Failure to make timely delivery of such amount to the Town shall constitute a material violation of the Franchise.

### **7-706 Disposition**

Upon termination of the Franchise under conditions other than those stipulating forfeiture of the security fund, the balance then remaining in the security fund shall be withdrawn by the Town and paid to the Grantee within ninety (90) days of such termination, provided that there is then no outstanding material default on the part of the Grantee.

### **7-707 Grantor Rights**

The rights reserved to the Town with respect to Sections 7-500, 7-600, and 7-700 hereof are in addition to all other rights of the Town, whether reserved by this Ordinance or authorized by other law or a Franchise Agreement, and no action, proceeding, or exercise of a right with respect to such sections shall affect any other right the Town may have.

## **SEC. 7-800 REMEDIES**

### **7-801 Available Remedies**

In addition to any other remedies available at law or equity, the Town may pursue the following remedies in the event a Grantee or any other person violates this Ordinance, its Franchise Agreement, or applicable state or federal law:

- a. Seek a determination from a court of competent jurisdiction that a provision of this Ordinance has been violated. If such a violation is found to exist by the Court the minimum fine imposed shall be Fifty Dollars (\$50.00) and the maximum fine imposed per violation shall be Two Hundred Fifty Dollars (\$250.00). Each day the violation is found to exist shall constitute a separate violation for which the above-indicated fine may be assessed. Any violation found to exist on the day of trial may be found, at a minimum, to have existed from the filing date of the complaint until the day of trial and the fine assessed accordingly, unless Grantee affirmatively proves that said violation did not exist during any part of or all of the aforementioned time period. If the Grantee is found by the Court to have been adjudicated in violation of any provision of this Ordinance on more than one occasion within two years, whether or not a violation of the same provision of this Ordinance, the minimum fine per violation shall be One Hundred Dollars (\$100.00) and the maximum fine per violation shall be Five Hundred Dollars (\$500.00).
- b. Seek legal or equitable relief from any court of competent jurisdiction.
- c. Apply any remedy provided for in a Franchise Agreement, including enforcing provisions, if any.

## **7-802 Revocation or Termination**

### **7-802-1 Town Right to Revoke Franchise**

The Town shall have the right to revoke the Franchise for a Grantee's substantial failure to construct or operate the Cable System as required by this Ordinance or a Franchise Agreement, for defrauding or attempting to defraud the Town or Subscribers, if the Grantee is declared bankrupt, or for any other material violation of this Ordinance or material breach of a Franchise Agreement. To invoke the provisions of this Article, the Town shall give the Grantee written notice of the default in its performance. If within thirty (30) calendar days following such written notice from the Town to the Grantee, the Grantee has not taken corrective action or corrective action is not being actively and expeditiously pursued to the satisfaction of the Town, the Town may give written notice to the Grantee of its intent to revoke the Franchise, stating its reasons; provided that no opportunity to cure shall be provided where the Grantee has defrauded or attempted to defraud the Town or its Subscribers, or in the event the Grantee is declared bankrupt. In the case of a fraud or attempted fraud, the Franchise may be revoked after the hearing required under Section 7-802-2; revocation for bankruptcy shall be governed by Section 7-802-3.

### **7-802-2 Public Hearing**

Prior to revoking a Franchise, the Town shall hold a public hearing, on thirty (30) calendar days' written notice, at which time the Grantee and the public shall be given an opportunity to be heard. Following the public hearing, the Town may determine to revoke the Franchise based on the information presented at the hearing, and other information of record. If the Town determines to revoke a Franchise, it shall issue a written decision setting forth the reasons for its decision. A copy of such decision shall be transmitted to the Grantee.

### **7-802-3 Revocation After Assignment for Benefit of Creditors or Appointment of Receiver or Trustee**

To the extent provided by law, any Franchise may, at the option of the Town following a public hearing, be revoked one hundred twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Grantee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding, unless within that one hundred twenty (120) day period:

- a. Such assignment, receivership, or trusteeship has been vacated; or
- b. Such assignee, receiver, or trustee has fully complied with the material terms and conditions of this Ordinance and a Franchise Agreement and has executed an agreement, approved by a court of competent jurisdiction, assuming and agreeing to be bound by the terms and conditions of this Ordinance and a Franchise Agreement, and such other



conditions as may be established or as are required under ~~Article~~ Section 7-1300 of this Ordinance.

- c. In the event of foreclosure or other judicial sale of any of the facilities, equipment, or property of a Grantee, the Town may revoke the Franchise, following a public hearing before the Town, by serving notice on the Grantee and the successful bidder at the sale, in which event the Franchise and all rights and privileges of the Franchise will be revoked and will terminate thirty (30) calendar days after serving such notice, unless the Town has approved the Transfer of the Franchise to the successful bidder, and 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 Section 7-900 of this Ordinance.

#### **7-802-4 Procedures on Revocation, Abandonment, and Termination**

If the Town revokes a Franchise, or if for any other reason a Grantee abandons, terminates, or fails to operate or maintain service to its Subscribers, the following procedures and rights are effective:

- a. The Town may require the former Grantee to remove its facilities and equipment located in the Public Rights-of-Way and on public premises at the former Grantee's expense. If the former Grantee fails to do so within a reasonable period of time, the Town may have the removal done at the former Grantee's and/or surety's expense. The foregoing provisions shall not apply if, within three (3) months after expiration, termination or revocation of the Franchise, the Grantee obtains certification from the FCC to operate an open video system or any other federal or state certification to provide telecommunications services.
- b. In the event of revocation, the Town, by written order, may acquire ownership of the Cable System at not less than fair market value, determined on the basis of the cable system valued as a going concern, but with no value allocated to the franchise itself, as specified at 47 U.S.C. Subsection 547 (a) (1).
- c. If a Cable System is abandoned by a Grantee or the Franchise otherwise terminates, the ownership of all portions of the Cable System in the Public Rights-of-Way shall revert to the Town and the Town may sell, assign, or Transfer all or part of the assets of the System. If a Grantee abandons a portion of its System, the ownership of the abandoned portions of the Cable System in the Public Rights-of-Way shall revert to the Town and the Town may sell, assign or transfer the abandoned facilities. A Cable System or a portion thereof shall be deemed "abandoned" if a Grantee (1) gives the Town written notice of its decision to abandon the System or the portion in question; or (2) fails to provide Cable Service to Subscribers served by the System or the relevant portion thereof on a continuous basis for a period of thirty (30) consecutive calendar days or more.

#### **7-802-5 Forfeiture for Failure to Comply With Franchise Obligation**

Notwithstanding any other provision of this Ordinance other than the force majeure clause of Subsection 7-1702, where the Town has issued a Franchise specifically conditioned in the Franchise Agreement on the completion of construction, System upgrade, or other specific obligation by a specified date, failure of the Grantee to complete such construction or upgrade, or to comply with such other specific obligations as required, will result in the automatic forfeiture of the Franchise without further action by the Town where it is so provided in the Franchise Agreement, unless the Town, at its discretion and for good cause demonstrated by the Grantee, grants an extension of time.

#### **7-803 Obligation of Compliance**

The Town's exercise of one remedy or a Grantee's payment of liquidated damages or penalties shall not relieve a Grantee of its obligations to comply with its Franchise. In addition, the Town may exercise any rights it has at law or equity.

#### **7-804 Relation to Insurance and Indemnity Requirements**

Recovery by the Town of any amounts under insurance, the performance bond, the security fund or letter of credit, or otherwise does not limit a Grantee's duty to indemnify the Town in any way; nor shall such recovery relieve a Grantee 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; provided that this section shall not be interpreted as permitting the Town to recover twice for the same damage. In addition, any civil fine imposed pursuant to Subsection 7-801 (a) or other applicable law shall not be treated as a recovery for purposes of this section.

### **SEC. 7-900 TRANSFERS**

#### **7-901 Town Approval Required**

No transfer shall occur without prior approval of the Town, provided, however, that no such approval shall be required for Transfers resulting from the transfer of ownership interests between existing holders of ownership interests in a Grantee, where such holders were also holders of ownership interests in the Grantee at the time of the original grant of the Franchise to the Grantee.

#### **7-902 Application**

An application for a Transfer shall provide complete information on the proposed transaction, including details on the legal, financial, technical, and other qualifications of the transferee, and on the potential impact of the Transfer on Subscriber rates and service. At a minimum, the information required under federal law and in Sections 7-404 1-4, 7-404 9-11, 7-404 13, and 7-404 15 of this Ordinance shall be provided with respect to the proposed transferee.

### **7-903 Determination by Town**

In making a determination as to whether to grant, deny, or grant subject to conditions an application for a Transfer of a Franchise, the Town shall not unreasonably withhold its consent, but shall first consider (1) the legal, financial, and technical qualifications of the transferee to operate the System; (2) whether the incumbent cable operator is in compliance with its Franchise Agreement and this Ordinance and, if not, the proposed transferee's commitment to cure such noncompliance; (3) whether the transferee owns or controls any other Cable System in the Town, or whether operation by the transferee may eliminate or reduce competition in the delivery of Cable Service in the Town; and (4) whether operation by the transferee or approval of the Transfer would adversely affect Subscribers, the Town's interest under this Ordinance, the Franchise Agreement or other applicable law, or make it less likely that the future cable-related needs and interests of the community would be satisfied at a reasonable cost. The Town reserves the right to review the purchase price of any Transfer or assignment of a Cable System. To the extent permitted by applicable law, any negotiated sale value which the Town deems unreasonable will not be considered in the rate base for any subsequent request for rate increases.

### **7-904 Transferee's Agreement**

No application for a Transfer of a Franchise shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this Ordinance and the Franchise Agreement, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known, and unknown, of the previous Grantee under this Ordinance and the Franchise Agreement for all purposes, including renewal, unless the Town, in its sole discretion, expressly waives this requirement in whole or in part.

### **7-905 Approval Does Not Constitute Waiver**

Approval by the Town of a Transfer of a Franchise shall 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.

### **7-906 Processing Fee**

As a condition of considering a Transfer, the Town may impose a fee on the transferee to cover its estimated out-of-pocket expenses in considering the application for Transfer of a Franchise. Any amount collected in excess of the estimated amount shall be returned to the transferee.

## **SEC. 7-1000 FRANCHISE FEE**

### **7-1001 Finding**

The Town finds that the Public Rights-of-Way of the Town, county, and state to be used by a Grantee for the operation of a Cable System are valuable public property acquired and maintained by the county, state, and Town at great expense to the taxpayers. The Town further finds that the grant of a Franchise to

use Public Rights-of-Way is a valuable property right without which a Grantee would be required to invest substantial capital.

#### **7-1002 Payment to Town**

As a compensation for use of the Public Rights-of-Way and in light of the scope of any Franchise, in addition to providing channels, facilities and other support for public, educational and governmental use of the Cable System, a Grantee shall pay the Town a Franchise fee. The amount of the fee shall be specified in a Franchise Agreement. The franchise fee shall be paid annually, provided that provisions for more frequent payments may be specified in a Franchise Agreement. At least once a year the Grantee shall provide the Town a report setting forth the total of Gross Revenues for the year or other period in question and identifying the amount of revenues attributable to each category of Gross Revenues received by the Grantee, including non-Subscriber Gross Revenues, and the number of Subscribers receiving each category of Cable Service offered by the Grantee.

#### **7-1002-1 Town Right to Request Audit**

The Town shall have the right to retain an independent auditor to: (1) audit the records of a Grantee to verify the computation of amounts payable under this Ordinance or a Franchise Agreement; and (2) recompute any amounts determined to be payable under this Ordinance or a Franchise Agreement, whether the records are held by the Grantee, an Affiliate, or any other entity that collects or receives funds related to the Grantee's operation in the Town, including, by way of illustration and not limitation, any entity that sells advertising on the Grantee's behalf. The Grantee shall be responsible for all reasonable costs associated with any such audit, including the auditor's fees, as a cost incidental to the enforcement of the Franchise, and shall have no control over the identity or selection of the auditor. The Town shall have sole discretion in selecting the auditor and shall not be responsible for any costs associated with the audit. The Town shall have the right to review the auditor's report and methodology, including the right to obtain an explanation of all of the auditor's assumptions and calculations, and the right to challenge and request changes to any such assumptions and calculations. The Town shall not, however, be permitted to obtain copies of documents received by the auditor, with the exception of documents voluntarily provided by the Grantee to the Town, or subject to copying by the Town pursuant to Section 7-1501. The Grantee shall be responsible for providing all such records to the auditor, without regard to by whom they are held. The records shall be maintained for at least three (3) years. Any additional amounts due to the Town as a result of an audit shall be paid within thirty (30) days following written notice to the Grantee by the Town of the underpayment, which notice shall include a copy of the audit report. The Town may exercise its audit right no more frequently than once per year, and only upon written notice to the Grantee.

### **7-1002-2 Maintenance of Records**

A Grantee shall maintain its fiscal and financial records and have all relevant fiscal and financial records maintained by others on its behalf in such a manner as to enable the Town (1) to determine the cost of assets of the Grantee which are used in providing services within the Town for purposes of assessing any personal property or other taxes and for purposes of verifying any filings that may be made in connection with any cost of service proceedings, and (2) to determine Gross Revenues. For purposes of assessing state and local taxes, the cost of assets shall be determined in accordance with any applicable provision of state law. For purposes of any cost of service proceedings, and for purposes of assessing state and local taxes, if state law does not provide a method, the cost of assets shall be determined in accordance with FCC rules pertaining to cost of service proceedings.

## **SEC. 7-1100 CONSTRUCTION PROVISIONS**

### **7-1101 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.

### **7-1102 Construction Standards**

#### **7-1102-1 Construction Shall Be in Accordance With All Applicable Laws**

The construction, operation, maintenance, and repair of a Cable System shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended, the National Electrical Safety Code, the National Electric Code, other applicable federal, state, or local laws and regulations that may apply to the operation, construction, maintenance, or repair of a Cable System, including, without limitation, local zoning and construction codes, and laws and accepted industry practices, all as hereafter may be amended or adopted.

#### **7-1102-2 Wires to Cause Minimum Inconvenience**

All wires, cable lines, and other transmission lines, equipment, and structures shall be installed and located to cause minimum interference with the rights and convenience of property owners.

#### **7-1102-3 Installation of Equipment to Be of Permanent Nature**

All installation of electronic equipment shall be of a permanent nature, using durable components.

#### **7-1102-4 Antennae**

Without limiting the foregoing, to the extent applicable, antennae and their supporting structures (towers) shall be painted, lighted, erected, and maintained in accordance with all applicable rules and regulations of the

Federal Aviation Administration and all other applicable state or local laws, codes, and regulations, all as hereafter may be amended or adopted.

#### **7-1102-5 Good Engineering Practices**

Without limiting the foregoing, all of a Grantee's plant and equipment, including, but not limited to, the antennae site, headend and distribution system, towers, house connections, structures, poles, wires, cable, coaxial cable, fiber optic cable, fixtures, and apparatuses shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained, and operated in accordance with good engineering practices, performed by experienced and properly trained maintenance and construction personnel so as not to endanger or interfere with improvements the Town shall deem appropriate to make or to interfere in any manner with the Public Rights-of-Way or legal rights of any property owner or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.

#### **7-1102-6 Safety Practices**

All safety practices required by law shall be used during construction, maintenance, and repair of a Cable System. A Grantee shall at all times employ reasonable care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public.

#### **7-1102-7 No Interference with Other Utilities**

A Grantee shall not place facilities, equipment, or fixtures where they will interfere with any gas, electric, telephone, water, sewer, or other utility facilities, or obstruct or hinder in any manner the various utilities serving the residents of the Town of their use of any Public Rights-of-Way.

#### **7-1102-8 Repair of Rights-of-Way**

Any and all Public Rights-of-Way, public property, or private property that are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, or construction of a System or otherwise, including installation, repair, maintenance or replacement of a Grantee's equipment shall be promptly repaired by the Grantee.

#### **7-1102-9 Removal of System Due to Conditions in Rights-of-Way**

A Grantee 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 of 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 the Grantee shall, in all such cases, have the privilege of abandoning any property in place.

**7-1102-10 Removal by Town Due to Emergency**

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 that portion of the Cable System. Unless the nature of the emergency or danger is such that immediate action is necessary to preserve life or property or to prevent physical harm to any individual, the Town shall provide telephonic notice to the Grantee prior to removing, relaying or relocating any portion of a Grantee's Cable System.

**7-1102-11 Raising or Lowering Wires to Permit Moving of Buildings**

A Grantee 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 the Grantee 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. The Grantee shall be given reasonable advance notice to arrange for such temporary wire changes, as provided in 35-A M.R.S.A. Section 2516.

**7-1102-12 Authority to Trim Trees**

A Grantee shall have the authority to trim trees that overhang a Public Right-of-Way of the Town so as to prevent the branches of such trees from coming in contact with the wires, cables and equipment of the Grantee. Except in emergencies, a Grantee shall notify the Town at least one (1) business day prior to performing any such trimming. At the option of the Town, such trimming may be done by the Town or under the Town's supervision and direction, at the expense of the Grantee.

**7-1102-13 Use of Existing Utility Facilities**

A Grantee shall use, with the owner's permission, existing underground conduits or overhead utility facilities whenever feasible and may not erect poles or support equipment in Public Rights-of-Way without the express permission of the Town. Copies of agreements for use of conduits or other facilities shall be filed with the Town as required by a Franchise Agreement or upon the Town's written request.

**7-1102-14 Undergrounding of Cable**

- a. In Public Rights-of-Way or other places where electrical and telephone utility wiring is located underground, either at the time of initial construction of a Cable System or at any time thereafter, a Grantee's Cable System also shall be located underground.

- b. Between a Public Right-of-Way and a Subscriber's residence, if either electric or telephone utility wiring is aerial, a Grantee may install aerial cable except where a property owner or resident requests underground installation and agrees to bear the additional cost of such installation over and above the cost of aerial installation. Where existing subdivision approvals, deed covenants, municipal zoning or other legal restrictions require underground location of utilities, Grantee's cable shall be located underground, and the Subscriber shall bear the additional cost of such installation on their property as a condition of receiving cable service.

#### **7-1102-15 Town Use of Grantee's Poles**

The Town shall have the right to install and maintain free of charge upon the poles owned by a Grantee any wire and pole fixtures that do not materially interfere with the Cable System operations of the Grantee.

#### **7-1102-16 Town Approval of Construction**

Prior to erection of any towers, poles, or conduits or the construction, upgrade, or rebuild of a Cable System authorized under this Ordinance or a Franchise Agreement, a Grantee shall first submit to the Town and other designated parties for approval a concise description of the Cable System proposed to be erected or installed, including engineering drawings, if required, together with a map and plans indicating the proposed location of all such facilities. No erection or installation of any tower, pole, underground conduit, or fixture or any rebuilding or upgrading of a Cable System shall be commenced by any Person until the Grantee has obtained all building permits, street operating permits or other approvals required by the Town under any ordinance, regulation or procedure generally applicable to such activities.

#### **7-1102-17 Contractors and Subcontractors**

Any contractor or subcontractor used for work or construction, installation, operation, maintenance, or repair of System equipment must be properly licensed under laws of the State and all applicable local ordinances. The Grantee must ensure that contractors, subcontractors and all employees who will perform work for it are trained and experienced. Each contractor and subcontractor must perform work in compliance with all applicable provision of law and a Franchise Agreement, and the Grantee shall implement a quality control program to ensure that the work is so performed.

#### **7-1103 Publicizing Proposed Construction Work**

Except in emergencies or to restore outages, Grantee shall publicize proposed construction work prior to commencement of that work by causing written notice of such construction work to be delivered to the Town and by notifying those Persons most likely to be affected by the work in at least two (2) of the following ways: by telephone, in person, by mail, by distribution of flyers to residences, by publication in a local newspaper of general circulation in the community, or in any



other manner reasonably calculated to provide adequate notice, including use of local informational channels. Whenever practicable, such notice shall be given at least one (1) week prior to commencement of the work concerned.

#### **7-1104 Continuity of Service**

##### **7-1104-1 Subscriber Right**

It is the right of all subscribers in a Grantee's Franchise Area to receive all services that a Grantee is then providing under the terms of a valid Franchise as long as their financial and other obligations to the Grantee are satisfied; provided, however, that to the extent a Grantee's agreements with its programming providers prohibit the Grantee from providing certain Cable Services to nonresidential Subscribers, the Grantee may exclude such services from its offerings to nonresidential Subscribers.

##### **7-1104-2 Assurance of Continuous Uninterrupted Service**

A Grantee shall ensure that all Subscribers receive continuous uninterrupted service. To this end, Grantee shall:

- a. In the event of a Sale or Transfer of its Franchise, cooperate with the Town to assure an orderly transition from it to another Grantee and take all steps necessary to maintain service to Subscribers until the Sale or Transfer has been completed;
- b. Not abandon service to the entire Town without having given twelve (12) months' prior notice to the Town; and
- c. Not abandon service to any portion of the Town (excepting termination of service to individual subscribers as otherwise permitted) without having given six (6) months' prior written notice to the Town.

Following such notice, the Grantee shall continue to be obligated to comply with the terms and conditions of its Franchise Agreement and applicable laws and regulations and shall cooperate with the Town to assure an orderly transition from it to another Grantee.

##### **7-1104-3 Abandonment of System**

If a Grantee abandons its System during the Franchise term, or fails to operate its System in accordance with this Section 7-1100 during any Transition Period, the Town, at its option, may operate the System, designate another entity to operate the System temporarily until the Grantee restores service under conditions acceptable to the Town or until the Franchise is revoked and a new Grantee selected by the Town is providing service, or obtain an injunction requiring the Grantee to continue operations. If the Town is required to operate or designate another entity to operate the Cable System, the Grantee 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. In addition, any abandonment of a System shall be subject to all of the provisions of 30-A M.R.S.A. Section 3008 (3) (B).

#### **7-1104-4 Injunctive Relief**

The Town shall be entitled to injunctive relief under the preceding paragraph if:

- a. The Grantee 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 as permitted pursuant to the force majeure clause of Section 7-1702; or
- b. The Grantee, 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.

### **SEC. 7-1200 SYSTEM FACILITIES, EQUIPMENT, AND SERVICES**

In addition to satisfying such requirements as may be established through the application process, every Cable System shall be subject to the following conditions, except as prohibited by federal law:

#### **7-1201 Provision of Service**

Each Franchise Agreement shall contain a line extension policy that shall govern a Grantee's obligation to extend service. Unless otherwise specified in a Franchise Agreement, after Cable Service has been established by activating trunk distribution cable for an area specified in a Franchise Agreement, a Grantee shall provide Cable Service to any household requesting Cable Service within that area, including each multiple dwelling unit in that area, except for multiple dwelling units to which it cannot legally obtain access. In providing services to multiple dwelling units, a Grantee shall comply with all applicable provisions of 14 M.R.S.A. Section 6041.

#### **7-1202 Full Video Service to Municipal Buildings; Facilities and Equipment**

A Franchise Agreement may require a Grantee to install, at no charge, at least one service outlet at all municipal buildings and public schools within the Franchise Area that can be reached by a standard drop, and may provide that the Grantee shall charge only its time and material costs for any additional service outlets to such facilities. A Franchise Agreement may also require a Grantee to provide Basic Cable Service and the lowest tier of Cable Programming Services to such buildings free of charge. Finally, a Franchise Agreement may provide that such service outlets shall be capable of providing the full range of non-cable electronic data and telecommunication services provided by a Grantee, and may require other facilities and equipment and channel capacity in accordance with the Cable Act, at rates and terms set out in the Franchise Agreement.

## **7-1203 Technical Standards**

### **7-1203-1 FCC Standards**

Any Cable System within the Town shall meet or exceed the technical standards set forth in 47 C.F.R. Section 76.601 and any other applicable technical standards, including any such standards as hereafter may be amended or adopted by the Town in a manner consistent with federal law.

### **7-1203-2 Facilities Shall not Interfere with Others' Signals or Facilities**

A Grantee shall not design, install, or operate its facilities in a manner that will interfere with the signals of any broadcast station, the facilities of any public utility, the Cable System of another Grantee, or individual or master antennae used for receiving television or other broadcast signals.

## **7-1707 Proof of Performance Tests**

At the times specified in a Franchise Agreement or as required by FCC rules, a Grantee shall perform proof of performance tests, and such other tests as may be specified in a Franchise Agreement, designed to demonstrate compliance with this Article, the Franchise Agreement, and FCC requirements. The Grantee shall provide the results of proof of performance tests promptly to the Town, upon the Town's written request. The Town shall have the right to inspect the Cable System during and after its construction to ensure compliance with this Article, the applicable Franchise Agreement, and applicable provisions of local, state and federal law, and may require the Grantee to perform additional tests based on the Town's investigation of Cable System performance or on Subscriber complaints.

## **SEC. 7-1300 CONSUMER PROTECTION PROVISIONS**

### **7-1301 Telephone and Office Availability**

#### **7-1301-1 Office; Hours of Operation; Telephone**

Each Grantee shall maintain an office at a location reasonably convenient to Subscribers that shall be open at least fifty (50) hours each week, including, during the hours of 8:30 a.m. to 5 p.m. Monday through Friday and 8:30 a.m. to 12 p.m. Saturday exclusive of all State and Federal holidays, to allow Subscribers to request service and conduct other business. Each Grantee shall ensure that its office shall meet all applicable access requirements of the Maine Human Rights Act and the Americans with Disabilities Act, and all other applicable federal and state laws and regulations. Each Grantee shall perform service calls, installations, and disconnects during at least the hours for which its office is open for business, provided that a Grantee shall respond to outages twenty-four (24) hours a day, seven (7) days a week. Each Grantee shall establish a publicly listed toll-free telephone number, and shall either ensure that its telephone service has TTY and TDD capabilities, or contract with a third party to provide Grantee with such services. The phone

must be answered by customer service representatives at least during the hours for which the Grantee's office is open for business, for the purpose of receiving requests for service, inquiries, and complaints from Subscribers; after those hours a Grantee shall arrange for the phone to be answered so that customers can register complaints and report service problems on a twenty-four (24) hour per day, seven (7) day per week basis, and so that the Grantee can respond to service outages as required herein.

#### **7-1301-2 Telephone Answering Time**

Telephone answering time shall not exceed thirty (30) seconds or four (4) rings, and the time to transfer the call to a customer service representative (including hold time) shall not exceed an additional thirty (30) seconds. This standard shall be met ninety (90) percent of the time, measured quarterly. When the business office is closed, an answering machine or service capable of receiving and recording service complaints and inquiries shall be employed. Any after-hours answering service used shall comply with the same telephone answer time standard set forth in this Section 7-1301. If required by its Franchise Agreement, a Grantee shall supply statistical data to verify it has met the standards set forth herein.

#### **7-1301-3 Staff**

A Grantee must hire sufficient staff so that it can adequately respond to customer inquiries, complaints, and requests for service in its office, over the phone, and at the Subscriber's residence.

### **7-1302 Scheduling Work**

#### **7-1302-1 Appointments**

All appointments for service, installation, or disconnection shall be specified by date. Each Grantee shall offer a choice of morning, afternoon, or all-day appointment opportunities. If at any time an installer or technician believes it impossible to make a scheduled appointment time, an attempt to contact the customer will be made prior to the time of appointment and the appointment rescheduled.

#### **7-1302-2 Missed Appointments**

Subscribers who experience a missed installation appointment due to the fault of a Grantee shall receive standard installation free of charge. If the installation was to have been provided free of charge, or for other appointments, the Subscriber shall receive one (1) month of the subscribed to Service Tier free of charge, or a credit of twenty dollars (\$20.00), whichever is greater.

#### **7-1302-3 Mobility-Limited Customers**

With regard to mobility-limited customers, upon Subscriber request, each Grantee shall arrange for pickup and/or replacement of converters or other

Grantee equipment at the Subscriber's address or by a satisfactory equivalent (such as the provision of a postage-prepaid mailer).

#### **7-1302-4 Acknowledgment of and Response to Customer Requests**

Requests for service, repair, and maintenance must be acknowledged by a Grantee within twenty-four (24) hours, or prior to the end of the next business day. A Grantee shall respond to all other inquiries (except billing inquiries) within five (5) business days of the inquiry or complaint. A Grantee shall acknowledge receipt of billing inquiries within five (5) days and provide a detailed response within thirty (30) days.

#### **7-1302-5 Completion of Work**

Repairs and maintenance for service interruptions and other repairs not requiring in-unit work must be initiated within twenty-four (24) hours and must be completed within sixty-two (62) hours. All other requests for service must be completed within three (3) days from the date of the initial request, except installation requests, provided that a Grantee shall complete the work in the shortest time possible where, for reasons beyond the Grantee's control, the work could not be completed in those time periods even with the exercise of all due diligence; the failure of a Grantee to hire sufficient staff or to properly train its staff shall not justify a Grantee's failure to comply with this provision. Except as federal law requires, no charge shall be made to the Subscriber for this service, except for the cost of repairs to the Grantee's equipment or facilities where it can be documented that the equipment or facility was damaged by a Subscriber.

#### **7-1302-6 Work Standards**

The standards of Sections 7-1302-4 and 7-1302-5 shall be met ninety-five percent (95%) of the time, measured on a quarterly basis.

### **7-1303 Notice to Subscribers**

#### **7-1303-1 Provision of Information to Subscribers**

A Grantee shall provide each Subscriber at the time Cable Service is installed, and at least annually thereafter, written instructions for placing a service call, filing a complaint, or requesting an adjustment. Each Grantee shall also provide a notice informing subscribers of how to communicate their views and complaints to the cable company, the proper municipal official and the State Attorney General; stating the responsibility of the State Attorney General to receive consumer complaints concerning matters other than channel selection and rates; and stating the policy regarding and method by which subscribers may request rebates or pro-rata credits as provided in this Ordinance or applicable federal or state law or regulation. In addition, all Grantees shall provide Subscribers to their services a schedule of rates and charges, a copy of the service contract, delinquent Subscriber disconnect and reconnect procedures, and a description of any other of the Grantee's policies

in connection with its Subscribers. Copies of these notices shall be proved to the Town. A Grantee shall provide the Town and each Subscriber at least thirty (30) days advance notice of any significant changes in any of the information required by this section.

#### **7-1303-2 Disclosure of Price Terms**

All Grantee promotional materials, announcements, and advertising of residential Cable Services 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 Grantee shall take appropriate steps to ensure that the customer service representatives clearly and accurately disclose price terms to potential customers in advance of taking the order.

#### **7-1303-3 Public File**

Each Grantee shall maintain a public file containing all notices provided to Subscribers under these customer service standards, as well as all written promotional offers made to Subscribers by the Grantee. Material in the file shall be retained for at least one (1) year after the later of the date of mailing or public announcement of the information contained in a notice.

#### **7-1304 Interruptions of Service**

A Grantee may intentionally interrupt service on the Cable System only for good cause and for the shortest time possible and, except in emergency situations, only after a minimum of forty-eight (48) hours prior notice to Subscribers and the Town of the anticipated service interruption; provided, however, that planned maintenance that does not require more than two (2) hours' interruption of service and that occurs between the hours of 12:00 a.m. and 6:00 a.m. shall not require such notice to Subscribers, and notice to the Town may be given no less than twenty-four (24) hours prior to the anticipated service interruption.

#### **7-1305 Billing**

##### **7-1305-1 Proration of First Billing Statement.**

A Grantee's first billing statement after a new installation or service change shall be prorated as appropriate and shall reflect any security deposit made or given by the Subscriber to the Grantee.

##### **7-1305-2 Itemization**

A Grantee's billing statement must itemize each category of service and equipment provided to the Subscriber and state clearly the charge therefor.

##### **7-1305-3 Payment Due Date**

A Grantee's billing statement must show a specific payment due date not earlier than ten (10) days after the date the statement is mailed. Any balance not received within thirty (30) days after the due date may be assessed a late fee not exceeding one and one-half percent (1.5%) of the amount due or any higher amount allowed by State law. The late fee shall appear on the following month's billing statement.

#### **7-1305-4 In Person Payments**

A Grantee must notify the Subscriber that he or she can remit payment in person at the Grantee's office in the greater Bangor area and inform the Subscriber of the address of that office.

#### **7-1305-5 No Late Fees for Failures by Grantee**

Subscribers shall not be charged a late fee or otherwise penalized for any failure by a Grantee, including failure to timely or correctly bill the Subscriber, or failure to properly credit the Subscriber for a payment timely made.

#### **7-1305-6 Credit for Lack or Impairment of Service**

Upon request, the account of any Subscriber shall be credited a prorated share of the monthly charge for the service if said Subscriber is without service or if service is substantially impaired for any reason for a period exceeding six (6) hours during any twenty-four (24) hour period, except where it can be documented that a Subscriber seeks a refund for an outage or impairment which that Subscriber caused, or in the case of a planned outage occurring between the hours of 12:00 midnight and 6:00 a.m. of which the Subscriber had prior notice.

### **7-1306 Disconnection/Downgrades**

#### **7-1306-1 Subscriber Termination**

A Subscriber may terminate service at any time.

#### **7-1306-2 Prompt Disconnection or Downgrade on Request Charges**

A Grantee shall promptly disconnect or downgrade any Subscriber who so requests from the Grantee's Cable System, unless the Subscriber unreasonably hinders access by the Grantee to equipment of the Grantee or the Subscriber's premise to which the Grantee must have access to complete the requested disconnection. No period of notice prior to voluntary termination or downgrade of service may be required of Subscribers by any Grantee. No charge may be imposed for any voluntary disconnection, and downgrade charges must comply with the requirements of federal law. So long as the Subscriber returns equipment necessary to receive a service within five (5) business days of the disconnection, no charge may be imposed by any Grantee for any Cable Services delivered after the date of the request to disconnect.

### **7-1306-3 Subscriber Return of Equipment**

A Subscriber may be asked, but not required, to disconnect a Grantee's equipment and return it to the business office; provided that if a Subscriber requests that a Grantee pick up the equipment, the Subscriber shall provide reasonable access to the Subscriber's premises during Grantee's business hours to allow the Grantee to retrieve the equipment.

### **7-1306-4 Refund of Security Deposit**

Any security deposit and/or other funds due the Subscriber shall be refunded on disconnected accounts after the converter has been recovered by the Grantee. The refund process shall take a maximum of thirty (30) days or the next billing cycle from the date disconnection was completed as required herein to the date the customer receives the refund.

### **7-1306-5 Disconnection for Failure to Pay Fee**

If a Subscriber fails to pay a monthly Subscriber or other fee or charge, a Grantee may disconnect the Subscriber's service outlet; however, such disconnection shall not be effected until at least forty-five (45) days after the due date of the monthly Subscriber fee or other charge and, after ten (10) days' advance written notice of intent to disconnect is given to the Subscriber in question. If the Subscriber pays all amounts due, including late charges before the date scheduled for disconnection, the Grantee shall not disconnect service. Subject to Section 7-1306-2, 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 Grantee shall promptly reinstate service.

### **7-1306-6 Disconnection for Damage to System or Equipment**

A Grantee may immediately disconnect a Subscriber if the Subscriber is damaging or destroying the Grantee's Cable System or equipment. After disconnection, the Grantee 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 reconnect fees, a reasonable security deposit, and amounts owed the Grantee for damage to its Cable System or equipment.

### **7-1306-7 Disconnection for Signal Leakage**

A Grantee may also disconnect a Subscriber that in any way, intentionally or otherwise, causes signal leakage in excess of Federal limits. It may do so in accordance with Federal rules and requirements or, if the Subscriber fails to take steps to correct the problem. It may also do so without notice in the event of a danger to the public safety, provided that the Grantee shall immediately notify the Subscriber of the problem and, once the problem is corrected, reconnect the Subscriber without charge.



### **7-1306-8 Removal of Grantee Property**

Except as federal law may otherwise provide, if a Subscriber terminates service, a Grantee may offer the Subscriber the opportunity to acquire any wiring located on the premises that is the property of Grantee at replacement cost. If the Subscriber declines to purchase the wiring, the Grantee must remove its property from the Subscriber's premises within seven (7) days, if requested by the Subscriber. If a Grantee fails to remove the wiring in that period, the Grantee shall make no further attempt to remove the wiring or restrict its use.

### **7-1307 Changes in Service**

In addition to rights reserved by the Town, Subscribers shall have rights with respect to alterations in service. The Grantee may not alter the service being provided to a class of Subscribers (including by retiering, restructuring or otherwise) without the express permission of each Subscriber, unless it complies with this Article. At the time the Grantee 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 within the thirty (30) day period following notice to opt to receive any combination of services offered by the Grantee. Except as Federal law otherwise provides, Subscribers may not be required to pay any charge (other than the properly noticed rates), including an upgrade or downgrade charge, in order to receive the services selected. No charge may be made for any service or product for which there is a separate charge that a Subscriber has not affirmatively indicated it wishes to receive. Payment of the regular monthly bill does not in and of itself constitute such an affirmative indication.

### **7-1308 Deposits**

A Grantee may require a reasonable, non-discriminatory deposit on equipment provided to Subscribers. Deposits shall be placed in an interest-bearing account, and the Grantee shall return the deposit, plus interest earned to the date repayment is made to the Subscriber. Interest will be calculated at the prevailing commercial savings rate on all late payments.

### **7-1309 Recording Subscriber Complaints**

A Grantee shall maintain a record of subscriber complaints in accordance with 30-A M.R.S.A. 3010 (4):

- a. Every Franchisee shall keep a record or log of all written complaints received regarding quality of service, equipment malfunctions, billing procedure, employee attitude and similar matters. These records shall be maintained for a period of two (2) years.
- b. The record shall contain the following information for each complaint received;
  - (1) Date, time and nature of the complaint;
  - (2) Name, address and telephone number of the person complaining;
  - (3) Investigation of the complaint;

- (4) Manner and time of resolution of the complaint;
- (5) If the complaint regards equipment malfunction or the quality of reception, a report indicating corrective steps taken, with the nature of the problem stated; and
- (6) Consistent with subscriber privacy provisions contained in the Cable Act and applicable FCC regulations, every Grantee shall make the logs or records of complaints available to any authorized agent of any franchising authority having a franchise with that Grantee or any authorized agent of a municipality considering a franchise with that Grantee upon request during normal business hours for on-site review.

#### **7-1310 Remedies for Violators**

In addition to the remedies set forth elsewhere in this Ordinance and in the Franchise Agreement, subscribers shall have available the remedies provided by 30-A M.R.S.A. Section 3010 (7).

### **SEC. 7-1400 RATE REGULATION**

#### **7-1401 Town May Regulate Rates**

The Town may regulate all rates and charges except to the extent it is prohibited from doing so by law, and if the Town does exercise its rate regulatory authority, no rate or charge may be imposed or increased without the prior approval of the Town except such rates and charges that the Town is prohibited from regulating. Subject to the foregoing, any change made without prior approval is an illegal change, and a Grantee is prohibited from requesting or requiring a Subscriber to pay an illegal rate as a condition of providing service. This section shall not be construed to mean that any Grantee has consented or will consent to subject itself to rate regulation.

**7-1402 Authority to Adopt Regulations** All rates that are subject to regulation by the Town must be reasonable. The Town may adopt such regulations, procedures, and standards as it deems necessary to implement rate regulation and may regulate rates by amendment to this Ordinance, by a separate resolution or ordinance, by amendment to a Franchise Agreement, or in any other lawful manner. This section shall not be construed to mean that any Grantee has consented or will consent to subject itself to rate regulation.

#### **7-1403 Rate Changes**

##### **7-1403-1 Advance Notice of Rate Changes**

At least thirty (30) days prior to implementing any increases in rates, or changes in channel positions, programming, or service terms or conditions, a Grantee shall provide the Town and each Subscriber with written notice describing any such changes it plans to make and the proposed effective dates for the changes. A Grantee shall not be required to provide thirty (30) days' notice of rate decreases or temporary promotional offers that result in

lower rates for Subscribers, provided that it has given the Town notice of such decreases and offers prior to implementation.

#### **7-1403-2 Explanation of Rate Changes**

In addition to the required notice, before it alters services or service terms or conditions, a Grantee must provide a reasonably simple and clear written notice explaining the substance and full effect of the alteration, including the effect on rates and service options and the effect of the change on the use of other consumer electronic equipment. Such written notice shall be provided to the Town at least thirty (30) days, and to Subscribers at least thirty (30) days, before the change.

#### **7-1707.1 Changes Made Without Required Notice Invalid**

Any change made without the required thirty (30) days' notice shall be of no force or effect, and a Grantee shall be obligated to refund any increased amount collected without the required thirty (30) days' notice, and to restore service to the prior existing status, at least until the required notice is provided. This subsection shall not limit the right of a Grantee to implement any rate decreases or temporary promotional offers that result in lower rates for Subscribers immediately upon providing written notice of these rate changes to the Town. This subsection shall not be interpreted to limit the Town's right to exercise its rate regulation authority under Section 7-1401 of this Ordinance, the availability of remedies under applicable laws or regulations, or rights under the customer service standards set forth in Section 7-1300 of this Ordinance.

### **SEC. 7-1500 RECORDS AND REPORTS**

#### **7-1501 Open Books and Records**

The Town shall have the right to inspect and copy at any time after reasonable notice during normal business hours at a Grantee's local office, all materials and records of the Grantee relevant to the Town's management of the Public Rights-of-Way and regulation of customer service and consumer affairs including all maps, plans, service complaint logs, performance test results, records of requests for service, computer records, codes, programs, and discs or other storage media and other like material which the Town reasonably deems appropriate in order to monitor compliance with the terms of this Ordinance, a Franchise Agreement, or applicable law. A Grantee shall make available to the Town, to the best of its ability, the same types of materials which the Town deems relevant and which are held by an Affiliate, a cable operator of the Cable System, and any contractor, subcontractor or any person holding any form of management contract for the Cable System. The Grantee is responsible for collecting, to the best of its ability, such requested information and producing it at its offices in the greater Bangor area, and as part of its application it must affirm that it can and will do so. The Town shall preserve the confidentiality on proprietary business information of a Grantee or another party provided to the

Town by the Grantee, to the extent permissible under Maine Law. To that end, the Grantee shall clearly identify any proprietary business information that it believes to be entitled to confidential treatment, so that the Town may establish appropriate safeguards against improper disclosure. The Town shall also have the right to inspect at any time after reasonable notice during normal business hours at a Grantee's local office all materials relevant to the financial condition of the Grantee, including all books, records, receipts, contracts, financial statements, computer records, codes, programs, and discs or other storage media and other like material which the Town reasonably deems appropriate in order to monitor compliance with the terms of this Ordinance, a Franchise Agreement, or applicable law. A Grantee shall make available for inspection by the Town, to the best of its ability, the same types of materials that the Town deems relevant and that are held by an Affiliate, a cable operator of the Cable System, and any contractor, subcontractor or any person holding any form of management contract for the Cable System. The Grantee is responsible for collecting, to the best of its ability, such requested information and producing it at its offices in the greater Bangor area, and as part of its application it must affirm that it can and will do so. The Town shall preserve the confidentiality of proprietary business information of a Grantee provided for inspection by the Town by the Grantee, to the extent permissible under Maine law. To that end, the Grantee shall clearly identify any proprietary business information that it believes to be entitled to confidential treatment, so that the Town may establish appropriate safeguards against improper disclosure.

#### **7-1502 Required Reports**

A Grantee shall file the following with the Town in a form acceptable to the Town:

##### **7-1502-1 Annual Construction Report**

An annual report setting forth the physical miles of plant construction and plant in operation during the fiscal year shall be submitted to the Town. Such report also shall contain any revisions to the System "as built" maps filed with the Town. The annual report shall be provided at the time specified in the Franchise Agreement.

##### **7-1502-2 Notices Instituting Civil or Criminal Proceedings**

A Grantee shall provide the Town with copies 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 Grantee, or any Affiliate of the Grantee, to the extent the same may affect or bear on operations in the Town. A notice that an Affiliate that has a management contract for the Cable System was not in compliance with FCC EEO requirements within the work unit serving the Town would be deemed to affect or bear on operations in the Town. This material shall be submitted to the Town at the time it is filed or within five (5) days of the date it is received.

### **7-1502-3 Bankruptcy Declarations**

Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the Grantee or by any partnership or corporation that owns or controls the Grantee directly or indirectly. This material shall be submitted to the Town at the time it is filed or within five (5) days of the date it is received.

### **7-1503 Reports to Be Provided on Request**

#### **7-1503-1 Reports Required by FCC**

Upon the Town's written request, a Grantee shall deliver to the Town copies of all reports required by the FCC, including, but not limited to, any proof of performance tests and results, Equal Employment Opportunity reports, and all petitions, pleadings, notices, and applications regarding the Cable System, or a group of Cable Systems of which the Grantee's Cable System is a part, submitted or received by the Grantee, an Affiliate, or any other Person on the behalf of the Grantee, either to or from the FCC, or any other federal or state regulatory commission or agency having jurisdiction over any matter affecting operation of the Grantee's System, for the time period specified in the Town's request.

#### **7-1707.1 Financial Reports**

The Town may request the following financial reports for the Franchise Area once per calendar year:

- a. An ownership report, indicating all Persons who at any time during the preceding year did control or benefit from an interest in the Franchise of five percent (5%) or more.
- b. An annual income statement showing Subscriber revenue from each category of service and every source of non-Subscriber revenue.
- c. A current annual statement of all capital expenditures, including the cost of construction and of equipment, used or placed within the Town.
- d. An annual list of officers and members of the Board of Directors of the Grantee and any Affiliates.
- e. An organizational chart showing what corporations or partnerships with more than a five percent (5%) interest own the Grantee, and the nature of that ownership interest (limited partner, general partner, preferred shareholder, etc.); and showing the same information for each corporation or partnership so identified and so on until the ultimate corporate and partnership interests are identified.
- f. An annual report of each entity identified in Section 7-1503-2 e which issues an annual report.

#### **7-1707.2 System and Operational Reports**

The following System and operational reports shall be submitted annually upon request of the Town:

- a. An annual summary of the previous year's activities including, but not limited to, Subscriber totals for each category of service offered, including number of pay units sold, new services offered, and the amount collected annually from other Users of the System and the character and extent of the service rendered thereto.
- b. An annual projection of System and service plans for the future.

#### **7-1504 Additional Reports**

The Grantee shall prepare and furnish to the Town, at a time reasonably prescribed by the Town, such additional reports with respect to its operation, affairs, transactions, or property as the Town may reasonably deem necessary and appropriate to the performance of any of the rights, functions, or duties of the Town in connection with this Ordinance or the Franchise Agreement.

#### **7-1505 Records Required**

##### **7-1505-1 Records to Be Maintained**

A Grantee shall at all times maintain, and shall deliver to the Town upon request, the following records:

- a. Records of all complaints maintained pursuant to Section 7-1309.
- 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. Records of outages, indicating date, duration, area, and the estimated number of Subscribers affected, type of outage, and cause.
- d. Records of service calls for repair and maintenance indicating the date and time service was required, the date of acknowledgment 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.
- e. Records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and the date and time service was extended.

##### **7-1505-2 Additional Information**

The Town may request and a Grantee shall promptly provide additional information, reports, records, and documents as may be reasonably required from time to time for the performance by the Town of any of its rights, functions, or duties in conversations with this Ordinance or a Franchise Agreement.

#### **7-1506 Performance Evaluation**

##### **7-1506-1 Town Discretion to Hold Public Sessions**

The Town may, at its discretion, hold scheduled performance evaluation sessions. All such evaluation sessions shall be open to the public.

### **7-1506-2 Announcement of Sessions**

All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in the community.

### **7-1506-3 Discussion Topics**

Topics that may be discussed at any scheduled or special evaluation session may include, but are not limited to, system performance and construction, Grantee compliance with this Ordinance and a Franchise Agreement, customer service and complaint response, Subscriber privacy, services provided, programming offered, service rate structures, if applicable, Franchise fees, penalties, free or discounted services, applications of new technologies, judicial and FCC filings, and line extensions.

### **7-1506-4 Grantee Cooperation**

During the review and evaluation by the Town, a Grantee shall fully cooperate with the Town and shall provide such information and documents as the Town may need to reasonably perform its review.

### **7-1507 Voluminous Materials**

If the books, records, maps or plans, or other requested documents are too voluminous, or for security reasons cannot be copied and moved, then a Grantee may request that the inspection take place at some other location, provided that (1) the Grantee must make necessary arrangements for copying documents selected by the Town after review; and (2) the Grantee must pay reasonable travel and additional copying expenses incurred by the Town in inspecting those documents or having those documents inspected by its designee, if done outside the greater Bangor area.

### **7-1508 Retention of Records; Relation to Privacy Rights**

Each Grantee shall take all steps required, if any, to ensure that it is able to provide the Town all information which must be provided or may be requested under this Ordinance or a Franchise Agreement, including by providing appropriate Subscriber privacy notices. Nothing in this Article shall be read to require a Grantee to violate 47 U.S.C. Section 551. Each Grantee shall be responsible for blacking out any data that federal or state law prevents it from providing to the Town.

## **SEC. 7-1600 RIGHTS OF INDIVIDUALS PROTECTED**

### **7-1601 Discriminatory Practices Prohibited**

#### **7-1601-1 Discrimination Prohibited**

A Grantee 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, age, physical handicap, or on any

other basis prohibited by federal or state law. This provision is not intended to require a Grantee to provide any equipment or service free of charge to any Subscriber, unless such equipment or service is provided free in a manner that discriminates among Subscribers in a manner that is prohibited by state or federal law, or unless the provision of free equipment or service is required by state or federal law.

#### **7-1601-2 Discrimination for Exercise of Right Prohibited**

A Grantee 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 Grantee require a Person to waive such rights as a condition of taking service.

#### **7-1601-3 Differential Rates Based on Subscriber Income Prohibited**

A Grantee shall not deny access or levy different rates and charges on the residents of any particular geographical area because of the income of the residents of that geographical area.

#### **7-1601-4 Rate Preferences Prohibited**

Except to the extent the Town may not enforce such a requirement, a Grantee 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 Grantee 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; A Grantee may offer discounts for the elderly, the handicapped, or the economically disadvantaged, and such other discounts as it is expressly entitled to provide under federal law, if such discounts are applied in a uniform and consistent manner; and a Grantee may enter into bulk service agreements with multiple dwelling unit owners, if the rates under such agreements are established and applied in a uniform and consistent manner. A Grantee shall comply at all times with all applicable federal, state, and Town laws, and all executive and administrative orders relating to non-discrimination.

#### **7-1602 Equal Employment Opportunity**

A Grantee 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, age, or any other basis prohibited by federal or state law. A Grantee shall comply with all federal, state, and local laws and regulations governing equal employment opportunities.



## **7-1603 Subscriber Privacy**

### **7-1603-1 Grantee Shall Protect Subscriber Privacy**

A Grantee shall at all times protect the privacy of all Subscribers pursuant to the provisions of Section 631 of the Cable Act, 47 U.S.C. Section 551, and 30-A M.R.S.A. Section 3010 (6-A). A Grantee shall not condition Subscriber service on the Subscriber's grant of permission to disclose information which, pursuant to federal or state law, cannot be disclosed without the Subscriber's explicit consent.

### **7-1707.1 Selling Subscriber Information Prohibited**

Neither a Grantee nor its agents or employees shall, without the prior and specific written authorization of the Subscriber involved, sell or otherwise make available for commercial purposes the names, addresses, or telephone numbers of any Subscriber or Subscribers, or any information that identifies the individual viewing habits of any Subscriber or Subscribers.

## **SEC. 7-1700 MISCELLANEOUS PROVISIONS**

### **7-1701 Compliance with Laws**

A Grantee shall comply with all applicable federal, state, and local laws and regulations as they become effective, unless otherwise stated.

### **7-1702 Force Majeure**

A Grantee shall not be deemed in default with provisions of its Franchise where performance was rendered impossible by war or riots, civil disturbances, floods, or other natural catastrophes beyond the Grantee's control, and a Franchise shall not be revoked or a Grantee penalized for such noncompliance, provided that the Grantee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its Franchise without unduly endangering the health, safety, and integrity of the Grantee's employees or property, or the health, safety, and integrity of the public, Public Rights-of-Way, public property, or private property.

### **7-1703 Connections to System; Use of Antennae**

#### **7-1703-1 Subscriber Right to Attach Devices**

Subscribers shall have the right to attach devices to a Grantee's System to allow them to transmit signals or services for which they have paid to VCR's receivers, and other terminals provided that such terminals are located within the Subscriber's premises, and provided that such transmissions do not result in interference with the operations of Grantee's System, or violations of signal leakage compliance standards. Subscribers also shall have the right to use their own legally acquired remote control devices and tuners, and other similar equipment, and a Grantee shall provide information to consumers

which will allow them to adjust such devices so that they may be used with the Grantee's System.

#### **7-1703-2 Requiring Disconnection of Antennae Prohibited**

A Grantee shall not, as a condition of providing service, require a Subscriber or potential Subscriber to remove any existing antenna, or disconnect an antenna except at the express direction of the Subscriber or potential Subscriber, or prohibit or discourage a Subscriber from installing an antenna switch, provided that such equipment and installations are consistent with applicable codes.

#### **7-1704 Calculation of Time**

Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder 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.

#### **7-1705 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 Grantee and the Town.

#### **7-1706 Captions**

The captions and headings of this Ordinance are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Ordinance.

#### **7-1707 Repeal**

The Town of Bucksport Cable Television Ordinance adopted on October 11, 1979, is hereby repealed, except that the repeal thereof shall not affect the validity of any franchise agreements issued pursuant thereto and except that said Ordinance shall remain in full force and effect for the trial and punishment of all past violations thereof and for recovery of penalties already incurred.

*Article 7 Cable Television Ordinance of Chapter 6 Business Licensing and Regulations was originally adopted on October 11, 1979. The original Ordinance was repealed and replaced in its entirety on September 25, 1997.*