

CHAPTER 11 – CABLE TELEVISION FRANCHISE ORDINANCE

SECTION 11.00 CABLE TELEVISION

Section 11.01 Authority

Pursuant to 66.0419 and 66.0422, Wis. Stats., the Town of West Point does hereby create an Ordinance regulating Cable Television in the Town of West Point (which ordinance is, collectively, hereinafter referred to as “Chapter”).

Section 11.02 Purpose

The purpose of this Chapter is to authorize the Town of West Point to grant a non-exclusive Franchise to one or more Grantees to install, maintain, and operate within the Town a Cable Television System for the distribution of television signals, frequency-modulated radio signals and any other electronic signals capable of being transmitted on a coaxial or fiber optic network including data transmission and closed circuit television programs, provided that the Grantee conforms to the conditions, limitations, and requirements of this Chapter.

Section 11.03 Short Title

This Chapter shall be known and may be cited as the “Town of West Point Cable Television Franchise Ordinance.”

Section 11.04 Definitions

For the purpose of this Chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number.

(A) Basic Service. Any Service Tier which includes, at a minimum, all signals of domestic television broadcast stations provided to any Subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station), any public, educational, and governmental programming required by the Franchise, and any additional Video Programming signals or service added to the tier by the Grantee.

(B) Cable Act. Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 151, et seq., and all other provisions of the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and the Telecommunications Act of 1996, Pub. L. No. 104-104.

(C) Cable Operator. Any Person or group of Persons who provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such a Cable System or who otherwise Controls or is responsible for, through any arrangement, the management and operation of such a Cable System.

(D) Cable Service. The one-way transmission to Subscribers of Video Programming or other programming service; and, Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service.

(E) Cable Television System, Cable System, or System. Any facility owned by a Cable Operator consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include: (i) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (ii) a facility that serves Subscribers without using any public right-of-way; (iii) 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, as amended, 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; (iv) an open video System that complies with Section 653 of the Cable Act, including any amendments thereto, or (v) any facilities of any electric utility used solely for operating its electric utility Systems.

(F) Channel. A portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel (as television Channel is defined in FCC regulations).

(G) Control. The power or authority to direct or cause the direction of the management and policies of the Grantee.

(H) Converter. An electronic device that will shift any television Channel(s) from one to another within the UHF or VHF frequency spectrum.

(I) Dwelling Unit. A building or that part of a building used as a home or residence.

(J) Internet Service. Any internet and email services provided over a Cable System, regardless of Service Tier, including installation or rental of equipment used for the receipt of such internet connection.

(K) Extended Basic 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: (i) Video Programming carried on the Basic Service Tier; (ii) Video Programming offered on a pay-per-Channel or pay-per-program basis; or (iii) A combination of multiple Channels of pay-per-Channel or pay-per-program Video Programming offered on a multiplexed or time-shifted basis so long as the combined service consists of commonly-identified Video Programming and is not bundled with any regulated tier of service.

(L) FCC. The Federal Communications Commission, its designee, or any successor thereto.

(M) Franchise. An initial authorization, or renewal thereof issued by the Town, as franchising authority, to a Grantee to construct or operate a Cable System.

(N) Franchise Agreement. A contractual Agreement entered into between the Town and any Grantee hereunder which is enforceable by the Town and said Grantee and which sets forth the rights and obligations between the Town and said Grantee in connection with the Franchise.

(O) Franchise Fee. Any tax, fee, or assessment the Town imposes on the Grantee solely because of the Grantee's status as such. The term "Franchise Fee" does not include: (i) any tax, fee, or assessment of general applicability (including any such tax for or assessment imposed on both utilities and Cable Operators or their services, but not including a tax, fee or assessment which is unduly discriminatory against the Grantee); (ii) Capital costs which are required by the Franchise to be incurred by Grantee for educational or governmental access facilities; (iii) requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or (iv) Any fee imposed under Title 17, United States Code.

(P) Grantee. A Person to whom a Franchise under this Chapter is granted and the lawful successors or assigns of such Person.

(Q) Gross Revenues. Any and all revenues derived directly or indirectly by a Grantee, its affiliates, subsidiaries, parents, or any Person in which the Grantee has a financial interest from or in connection with the operation of the Cable System pursuant to this Chapter. Further, annual Gross Revenues includes compensation in whatever form, derived from all Cable Services, cable operations, and cable-related activities within the Franchise area including, but not limited to, (i) revenues from Subscriber rates, pay television, premium Channels, Service Tiers, service clusters, institutional networks, on-air advertising, installations, reconnections, or similar fees; (ii) rebates or commissions received from travel, home shopping or similar services, or commercial access; and (iii) any, and all, compensation from all ancillary Cable Services, cable operations, and cable-related activities within the Franchise area.

(R) Normal Business Hours. Those hours during which similar businesses in the Town are open to service customers. In all cases, "Normal Business Hours" must include some evening hours, at least one night per week, and some weekend hours.

(S) Normal Operating Conditions. Those service conditions which are within the Control of the Cable Operator. Those conditions which are not within the Control of the Cable Operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the Control of the Cable Operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System

(T) Person. Any natural Person or any association, firm, partnership, joint stock company, limited liability company, joint venture, corporation, or other legally recognized entity, private or public, whether for-profit or not-for-profit.

(U) Public, Educational, or Governmental Access Facilities. Channel capacity designated for public, educational, or governmental use and the facilities and equipment for the use of such Channel capacity.

(V) Service Tier. A category of Cable Service or other services provided by a Cable Operator and for which a separate rate is charged by the Cable Operator.

(W) Street. The surface of and space above and below any public Street, road, highway, freeway, lane, alley, court, sidewalk, parkway or drive, or any public right-of-way, now or hereafter existing as such within the Town.

(X) Subscriber. Any Person legally receiving any service provided by a Grantee pursuant to this Chapter.

(Y) Video Programming. Programming provided by, or generally considered comparable to, programming provided by a television broadcast station.

(Z) Town. The Town of West Point, Wisconsin or any duly appointed designee thereof, including, but not limited to, the Town Board and all the area within the territorial limits of the Town and its future corporate boundaries.

(AA) Town Board of Supervisors. The present governing body of the Town or any successors to the legislative power of said body or any duly appointed designee thereof.

Section 11.05 Grant of Franchise

(A) Grant. Any franchise granted by the Town pursuant to the authority in Wis. Stats. § 66.0419 shall grant to a Grantee or renew a nonexclusive, revocable Franchise to construct, operate, maintain and reconstruct a Cable System within the Franchise area, said Franchise shall constitute both a right and an obligation to provide the service of a Cable System as required by this Chapter and by the terms of the Franchise Agreement.

(B) Franchise Required. Subject to federal and state law, no Cable Operator shall be allowed to occupy or use the Streets within the jurisdiction of the Town without a Franchise granted in accordance with the provisions of this Chapter.

(C) Franchise Nonexclusive. Any Franchise granted under this Chapter shall be revocable and nonexclusive. The Town reserves the right to grant a similar Franchise to any Person at any time.

(D) Revisions. Any Franchise granted under this Chapter is hereby made subject to any revisions of this Chapter and the general ordinances of the Town, provided that such revisions do not materially and adversely alter the Grantee's obligations or impair the Grantee's rights set out in any Franchise Agreement.

(E) Term. The term of any new or renewal Franchise granted under this Chapter shall be established in the Franchise Agreement; provided, however, that in no event shall any Franchise granted under this Chapter exceed the term of fifteen (15) years.

(F) Mortgage or Pledge of System. Nothing in this Chapter shall be deemed to prohibit a Grantee from mortgaging or pledging of its System or any part thereof. However, any such mortgage or pledge shall be subject to and subordinate to the right of the Town under this Chapter, any Franchise Agreement or applicable laws.

(G) Previous Rights Abandoned. The Franchise shall be in lieu of any and all other rights, privileges, powers, immunities, and authorities owned, possessed, Controlled or exercisable by the Grantee or any successor pertaining to the construction, operation, maintenance or reconstruction of a Cable System in the Town. The acceptance of the Franchise shall operate, as between the Grantee and the Town, as an abandonment of any and all of such rights, privileges, powers, immunities and authorities within the Town. All construction, operation, maintenance and reconstruction by the Grantee of any Cable System in the Town shall be under this Chapter and the Franchise Agreement and not under any other right, privilege, power, immunity or authority.

(H) Subject to Other Regulatory Agencies Rules and Regulations. The Grantee shall at all times during the life of the Franchise be subject to all lawful exercise

of the police power by the Town and other duly authorized regulatory state and federal bodies and shall comply with any and all Codes and Ordinances which the Town has adopted or shall adopt applying to the public generally and to other Grantees.

(I) Pole Use Agreements Required. The Franchise shall not relieve the Grantee of any obligation involved in obtaining pole- or conduit-use agreements from the gas, electric and telephone companies, or others maintaining poles or conduits in the Streets of the Town, whenever the Grantee finds it necessary to make use of such poles or conduits.

(J) No Right of Property. Anything contained herein to the contrary notwithstanding, the Franchise shall not impart to the Grantee any right of property in or on Town-owned property.

(K) Use of Grantee's Facilities. The Town shall have the right to install and maintain, free of charge, upon the poles and within the underground pipes and conduits of the Grantee, any wires and fixtures desired by the Town to the extent that such installation and maintenance does not interfere with existing and future operations of the Grantee.

(L) Franchise Binding. Anything contained herein to the contrary notwithstanding, all provisions of this Chapter shall be binding upon the Grantee, its successors, lessees or assignees.

Section 11.06 Application

(A) Application. All applicants for a Franchise under this Chapter shall prepare and file a written application with the Town in such form as the Town shall designate.

(B) Franchise Renewal Applicants. All applicants seeking to renew a Franchise under this Chapter shall seek such renewal in accordance with the Cable Act and Section 11.07 below.

(C) Review of Application. Upon receipt of an application under this Chapter, the Town shall review the same and make the application available for public inspection at such places as the Town Board shall designate. A decision shall be made on the application by the Town after evaluation thereof. The Town may grant one (1) or more Franchises, or may decline to grant any Franchise.

Section 11.07 Franchise Renewal

(A) Renewal Request. The Town shall determine whether to renew a Franchise granted under this Chapter in the event that the Grantee files a written request for such a renewal. The Grantee shall submit such a request at least thirty (30) -

but no sooner than thirty-six (36) months before the expiration of the Franchise. At the time of such request, the Town may revise this Chapter, reevaluate the needs of the community for Cable Service, and review the performance of the Grantee. The Town shall conduct any proceedings necessary to consider the renewal request in conformity with and pursuant to the Cable Act.

(B) Renewal Criteria Where Cable Act Applies. To the extent applicable, the Cable Act shall govern the procedures and standards for renewal of any Franchise awarded pursuant to this Chapter. Accordingly, the Town shall renew or extend a Franchise if the Town finds that:

(1) The Grantee has substantially complied with the material terms of this Chapter, the Franchise Agreement, and with applicable law, and its officers have not been convicted of a felony;

(2) The quality of the Grantee's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of Cable Services or other services provided over the System, has been reasonable in light of community needs;

(3) The Grantee has the legal, technical, and financial ability to provide the services, facilities, and equipment it proposes to provide;

(4) The service, facilities, and equipment the Grantee proposes to provide are reasonable in light of the community need for and cost of such services, facilities, and equipment; and

(5) The proposals contained in the renewal application are otherwise reasonable.

(C) Renewal Where Cable Act Does Not Apply. To the extent that the Cable Act is not applicable, the Town in its sole discretion and judgment shall have the right to grant, deny or conditionally grant renewal of a Franchise, provided that the Town shall not unreasonably refuse to renew the Franchise or unreasonably condition the renewal. The conditions the Town may place on its approval shall include, but are not limited to: remedy of historical or existing violations of the Franchise or ordinance; payment of all fees and penalties owed by the Grantee at the time of the renewal; acceptance of any updated ordinance; and acceptance of any updated Franchise Agreement.

Section 11.08 Revocation

(A) Town's Right to Revoke and Grounds Therefore. In addition to all other rights which the Town has pursuant to law or equity, the Town reserves the right to revoke, terminate or cancel any Franchise granted under this Chapter, in the

event that one or more of the following occur, each of which shall be deemed a material breach of the Franchise:

- (1) The Grantee violates any material provision of this Franchise or its Franchise Agreement with the Town; or
- (2) The Grantee violates any state or federal law applicable to the Grantee's operation within the Town; or
- (3) The Grantee practices any fraud or deceit upon the Town or a Subscriber; or
- (4) The Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged as bankrupt; or
- (5) The Grantee ceases to provide service over the Cable System for a period exceeding fourteen (14) days for any reason within the Grantee's Control or abandons the management and/or operation of the System; or
- (6) The Grantee materially misrepresents a fact in the application for or negotiation of, or renegotiation of, or renewal of, its Franchise.

(B) Notice and Opportunity to Cure Prior to Revocation. In the event that the Town determines that the Grantee has committed a material breach of the Franchise, the Town may make a written demand on the Grantee that the Grantee cure such breach and inform the Grantee that continued breach may be cause for revocation. If the breach is not cured to the satisfaction of the Town within thirty (30) days following such demand, the Town may revoke the Grantee's Franchise and terminate the Franchise Agreement pursuant to the revocation procedures set out in Section 11.08.

(C) Notice and Opportunity for Hearing. The Town shall not revoke any Franchise without giving the Grantee reasonable notice and opportunity for a public hearing before the Town Board.

(D) Revocation Resolution. In the event that the Town determines to revoke a Grantee's Franchise under this Section, the Town shall, by resolution, declare that the Grantee's Franchise is terminated and any security fund and bonds forfeited and shall undertake the revocation procedures set out in Section 11.08.

Section 11.09 Procedures on Revocation or Termination

(A) Removal of Facilities/Continued Operation. In the event that a Grantee's Franchise is revoked, expires, or is otherwise terminated, the Town may order the Grantee to remove its facilities from the Franchise area within ninety (90) days of the date of such order, or the Town may require the Grantee to continue

operating its Cable System for a period not to exceed twenty-four (24) months as indicated in Subsection (D) below.

(B) Restoration of Property. In removing its facilities from the Franchise area, the Grantee shall refill, at its own expense, any excavation it makes and shall leave all public ways and places in as good condition as that prevailing prior to the Grantee's removal of its facilities without affecting the electrical or telephone cables, wires, or attachments. The Grantee's insurance, indemnity obligations, performance bond(s) and security fund(s) required by this Chapter and by the Franchise Agreement shall continue in full force and effect during the period of removal and until full compliance by the Grantee with the terms and conditions of this Section.

(C) Restoration by Town. Reimbursement of Costs. If the Grantee fails to complete any work required by Subsections (A) and (B) above, or any other work required by the Town within thirty (30) days after receipt of written notice, and to the satisfaction of the Town, the Town may cause such work to be done and the Grantee shall reimburse the Town for the cost thereof within thirty (30) days after receipt of an itemized list of such costs, or the Town may recover such costs through the security fund or bonds provided by Grantee. The Town shall be permitted to seek legal and equitable relief to enforce the provisions of this Section.

(D) Extended Operation. Subject to federal, state and local law, upon either the expiration or revocation of a Franchise, the Town may require the Grantee to continue to operate the Cable System for a defined period of time not to exceed twenty-four (24) months from the date of such expiration or revocation. The Grantee shall, as trustee for its successor in interest, continue to operate the Cable System under the terms and conditions of this Chapter and the Franchise Agreement and to provide the regular Cable Service and any of the other services that may be provided at that time.

Section 11.10 Other Remedies

(A) Lesser Remedies. Nothing shall prohibit the Town from invoking lesser remedies than revocation for violations of the provisions of this Chapter or the Franchise Agreement, including imposing monetary damages as set out in 11.10(C) below.

(B) Notice and Opportunity to Cure Prior to Imposition of Monetary Damages. In the event that the Town determines that the Grantee has failed to perform any material obligation under this Chapter or the Franchise Agreement, the Town may make a written demand on the Grantee that the Grantee cure such breach and inform the Grantee that continued breach may be cause for the imposition of monetary damages. If the breach is not cured to the satisfaction of the Town

within thirty (30) days following such demand, the Town may impose monetary damages on the Grantee as set out in 11.10(C).

(C) Monetary Damages. If after notice to the Grantee and opportunity for hearing, the Town determines that the Grantee has failed to perform any material obligation under this Chapter or the Franchise Agreement, or fails to do so in a timely manner, the Town may at its option, and in its sole discretion assess monetary damages against the Grantee as provided in this Subsection (C). This provision for assessment of damages is intended to be separate and apart from the Town's right to enforce the provisions of the construction and performance bonds provided for in this Chapter and is intended to be in addition to any other remedies. This provision is intended to provide compensation to the Town for actual damages.

(1) For failure to comply with any of the customer service standards adopted by the Town in this Chapter or set out in the Franchise Agreement, the Grantee shall pay to the Town the sum of Two Hundred Dollars (\$200.00) for each day the Grantee fails to comply.

(2) For failure to furnish, maintain, or offer Cable Services to any potential Subscriber within the territorial limits of the Town in accordance with Section 11.13 of this Chapter or upon order of the Town, the Grantee shall pay to the Town the sum of Two Hundred Dollars (\$200.00) for any such occurrence for each day the Grantee fails to comply.

(3) For failure to obtain or file evidence of required insurance or other required financial security, the Grantee shall pay to the Town the sum of Three Hundred Dollars (\$300.00) for any such occurrence for each day the Grantee fails to comply.

(4) For failure to provide access to data documents, records or reports to the Town as required by this Chapter, the Grantee shall pay to the Town the sum of One Hundred Dollars (\$100.00) for any such occurrence for each day the Grantee fails to comply.

(5) For failure to comply with applicable construction, operation, or maintenance standards, the Grantee shall pay to the Town the sum of Three Hundred Dollars (\$300.00) for any such occurrence for each day the Grantee fails to comply.

(6) Failure to comply with a rate decision or refund order issued by the Town, the Grantee shall pay to the Town the sum of Five Hundred Dollars (\$500.00) for any such occurrence for each day the Grantee fails to comply.

Section 11.11 Purchase of System by Town

(A) Purchase of System by Town on Revocation. If the Town revokes the Franchise for cause, the Grantee shall first offer the System for sale to the Town at an equitable price under the following procedures:

(1) If the determination of an equitable price cannot be negotiated or determined by the Town and the Grantee, the price shall be determined by an impartial appraisal procedure, wherein the Grantee and the Town shall each choose an appraiser and the appraisers chosen shall choose a third appraiser and the price determined by such appraisers shall be considered the equitable price at which the System will be offered to the Town. The determination of the price of the System shall be decreased by the amount of any and all damages sustained by the Town in connection with revocation, including without limitation, payment made by the Town to another Person or entity to operate the System for a temporary period after revocation. The cost of the appraisal procedure shall be shared equally by the Town and the Grantee.

(2) The Town shall have ninety (90) days commencing on the day the equitable price of the System is determined either through negotiation or the appraisal procedure to exercise its option to purchase. If the Town does not exercise its option to purchase, and the System is not sold to another operation who has obtained a Franchise from the Town, the Grantee, upon request by the Town, shall promptly remove all its facilities from the Franchise area. While transfer of the System and Franchise is being negotiated, arranged or ordered, the Grantee may be required to continue service to the public.

(B) Purchase of System by Town on Nonrenewal. If the Town determines not to renew a Grantee's Franchise, the Grantee shall first offer the System for sale to the Town at fair market value, determined on the basis of the System valued as a going concern but with no value allocated to the Franchise itself. The following procedures shall be followed:

(1) If the determination of fair market value cannot be negotiated or determined, the value shall be determined by an impartial appraisal procedure, wherein the Grantee and the Town shall each choose an appraiser and the appraisers chosen shall choose a third appraiser and the valuation determined by such appraisers shall be considered the fair market value at which the System will be offered to the Town. The determination of the value of the System shall be decreased by the amount of any damages sustained by the Town in connection with nonrenewal, including without limitation, payment made by the Town to another Person or entity to operate the System for a temporary period

after nonrenewal. The cost of the appraisal procedure shall be shared equally by the Town and the Grantee.

(2) The Town shall have ninety (90) days commencing on the day the fair market value of the System is determined either through negotiation or the appraisal procedure to exercise its option to purchase. If the Town does not exercise its option to purchase, and the System is not sold to another operator who has obtained a Franchise from the Town, the Grantee, upon request by the Town, shall promptly remove all its facilities. While transfer of the System and Franchise is being negotiated, arranged or ordered, the Grantee may be required to continue service to the public.

Section 11.12 Transfer of Ownership or Control

(A) Transfer of Franchise. Any Franchise granted under this Chapter shall be a privilege to be held for the benefit of the public. Any Franchise so granted cannot, in any event, be sold, transferred, leased, assigned or disposed of by any method, including, but not limited to, forced or voluntary sale, merger, or consolidation, either in whole or in part, without the prior written consent of the Town, and then only under such reasonable conditions as the Town may establish and subject to the Cable Act. Such consent as required by the Town shall be given or denied no later than one hundred and twenty (120) days following such request, and shall not be unreasonably withheld. Prior consent shall not be required when transferring the Franchise between wholly-owned subsidiaries of the same entity. The Board may, but is not is not required, to establish compensation in the form of a regular salary or a per diem allowance for persons appointed to standing committees. In addition, the Board may establish a policy for reimbursement of expenses incurred by committee members.

(B) Notice to Town on 20% Change of Ownership or Control. A Grantee shall promptly notify the Town in writing of any proposed change in, or transfer of, Control of the Grantee. For the purpose of this Subsection, a change in, or transfer of, Control shall occur on the acquisition or transfer by any Person of twenty (20) percent or more of the beneficial ownership interest in the Grantee.

(C) Consent of Town Required on 51 % Change of Ownership or Control. In the event that any Person or group of Persons acquires or transfers fifty-one (51) percent or more of the beneficial ownership interest in the Grantee, Grantee's Franchise shall be subject to cancellation unless and until the Town shall have consented in writing to the acquisition or transfer. The Town shall give or deny consent no later than one hundred and twenty (120) days after receiving written notice of the acquisition or transfer. The Town's consent shall not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of Control, the Town may inquire into the

qualifications of the prospective Controlling party, and the Grantee shall assist the Town in any such inquiry.

(D) Grantee's Responsibility. In seeking the Town's consent to any change in ownership or Control, the Grantee shall have the responsibility to do the following:

(1) To show to the Town's satisfaction, whether the proposed purchaser, transferee, or assignee (the "proposed transferee"), which in the case of a corporation, shall include all directors and all Persons having a legal or equitable interest of fifty-one (51) percent or more of the voting stock, (i) has ever been convicted of a felony or is presently under an indictment, investigation or complaint charging a felony; (ii) has ever had a judgment in an action for fraud, deceit or misrepresentation entered against it, her, him, or them by any court of competent jurisdiction; or (iii) has pending any legal claim, lawsuit or administrative proceeding arising out of or involving a Cable System.

(2) To establish to the Town's satisfaction, the financial solvency of the proposed transferee by submitting all current financial data for the proposed transferee which the Grantee was required to submit in its Franchise application, and such other data as the Town may request, where the same shall be audited, certified and qualified by a certified public accountant.

(3) To establish to the Town's satisfaction that the legal, financial and technical capability of the proposed transferee is such as shall enable it to maintain and operate the Cable System for the remaining term of the Franchise under the existing Franchise terms.

(E) Effect of Town's Consent to Transfer. The consent or approval of the Town to any transfer by the Grantee shall not constitute a waiver or release of the rights of the Town in and to the Streets, and any transfer shall by its terms, be expressly subject to the terms and conditions of any Franchise. The Grantee shall not be released from its obligations under this Chapter and the Franchise Agreement without the express written consent of the Town.

(F) Transfer Document to be Filed with Town. A Grantee, upon transfer, shall within sixty (60) days thereafter file with the Town a copy of the deed, Agreement or other written instrument evidencing such sale, transfer of ownership or Control or lease, certified and sworn to as correct by the Grantee.

(G) Town's Right to Purchase System. The Town shall be entitled to a right of first refusal of any written offer to purchase the Grantee's System, which offer the Grantee has accepted subject to the Town's rights under this Chapter. The price to be paid by the Town shall be the price of such offer on the same terms and

conditions as such offer. The Town shall notify the Grantee of its decision to purchase within ninety (90) days of the Town's receipt from the Grantee of a copy of the offer.

Section 11.13 Franchise Area

A Grantee's Franchise area shall be the territorial limits of the Town of West Point as they may exist now and in the future.

Section 11.14 Extension of Service

(A) Developed Areas. In developed areas of the Town, the Grantee shall, on request of a potential Subscriber, extend service to the potential Subscriber pursuant to the following requirements:

(1) To existing developed areas with a density of 17 Dwelling Units per strand mile.

(2) Without regard to density of Dwelling Units, the Grantee shall extend and make cable television service available to any Dwelling Unit within three hundred (300) feet of existing cable plant, within 120 days, weather permitting.

(3) Where the Dwelling Unit is not within three hundred (300) feet of existing cable plant, the Grantee shall provide to any potential Subscriber desiring service an estimate of the cost to extend service to the potential Subscriber. The Grantee and the potential Subscriber shall share the cost of the extension as follows: the Grantee shall pay one hundred (100) percent of the cost of the first three hundred (300) feet of the extension and shall pay sixty (60) percent and the potential Subscriber forty (40) percent of the cost of the next three hundred (300) feet of the extension, up to a maximum of six hundred (600) feet. For that part of an extension that is longer than six hundred (600) feet, the Grantee may charge the potential Subscriber for the Grantee's actual cost of that portion of the extension. Within one year, any amount paid by a Subscriber for an extension under this subsection shall be refundable to that Subscriber in the event the area subsequently reaches a density level of seventeen (17) Dwelling Units per strand mile. In no event shall the amount of the refund exceed the amount paid by the Subscriber for the extension.

(B) New Subdivisions/Newly Developed Areas. The Grantee shall, at its expense, extend its System so that Cable Service is available in all new subdivisions or newly developed areas in the Town. The Town may waive this requirement on a project basis on good cause shown by the Grantee.

(1) In a new subdivision or developing area where utility and cable facilities are to be above ground, the Town will forward to the Grantee an approved engineering plan of each project. The Grantee shall commence the design and construction process upon receipt of the plan. Upon notification from the Town that the area in the project has reached a density of 17 homes per strand mile, the Grantee shall have three (3) months to complete construction, unless the Town agrees to extend this time period.

(2) In a new subdivision or developing area where utility and cable facilities are to be placed underground, the Town shall give the Grantee at least thirty (30) days advance written notice of the date on which open trenching will be available for the Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at the Grantee's expense. The Grantee shall provide specifications as needed for trenching and shall place its facilities in the trenches on the date specified in the notice. Costs of trenching and easements required to bring Cable Service to the new subdivision shall be non-discriminatory and shall be paid by the Grantee.

(C) Special Agreements. Nothing in this Chapter shall be construed to prevent the Grantee from serving areas not covered under this Section upon agreement with developers, property owners, or residents, provided Gross Revenues derived from such service within the Franchise area are returned to the Town as required under Section 11.18 of this Chapter.

Section 11.15 Acceptance and Effective Date of Franchise

(A) Effective Date. Any Franchise awarded under this Chapter shall take effect thirty (30) days after the effective date of the Franchise Agreement between the Town and the Grantee provided that the Grantee has accepted the Franchise pursuant to Subsection (B). The Plan Commission shall at all times consist of seven (7) members composed of six (6) citizens of the Town of recognized experience and qualifications and a Town Board member appointed by the Town Board. All members, including the Town Board members, shall be voting members of the Commission.

(B) Acceptance. To accept a Franchise granted under this Chapter, a Grantee must file any required bonds, funds and proof of insurance, as well as written notice of acceptance, with the Town Clerk.

(C) Written Notice of Acceptance. The Grantee's written notice of acceptance shall include a certification that the Grantee agrees to the following:

(1) Grantee to Have No Recourse. The Grantee shall have no recourse whatsoever against the Town for any loss, cost, expense or damage

arising out of any provision or requirement of this Chapter or its regulation or from the Town's exercise of its authority to grant additional Franchises.

(2) Acceptance of Power and Authority of Town. The Grantee expressly acknowledges that in accepting the Franchise it has relied upon its own investigation and understanding of the power and authority of the Town to grant this Franchise.

(3) Inducements Not Offered. The Grantee acknowledges by acceptance of the Franchise that it has not been induced to enter into this Franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of the Town concerning any term or condition of this Franchise that is not included in this Chapter.

(4) Grantee Accepts Terms of Franchise. The Grantee acknowledges by the acceptance of the Franchise that it has carefully read its terms and conditions and it is willing to and does accept all the obligations of such terms and conditions and further agrees that it will not set up as against the Town the claim that any provision of this Chapter as adopted, is unreasonable, arbitrary, invalid or void, but shall be required to accept the validity of the terms and conditions of the Franchise in their entirety.

Section 11.16 Rate Regulation

(A) Town Reserves Right of Rate Regulation. Except as otherwise provided in Subsection (B), below, the Grantee shall establish rates for its services which shall be applied on a nondiscriminatory basis in the Franchise area. Pursuant to federal law, the Town reserves the right to assume regulation of rates paid by cable Subscribers; such rate regulation shall be performed by the Town Board in accordance with FCC rules and Regulations "Part 76, Subpart N." As specified by the FCC's Rules (Part 76, Subpart N), such rate regulation shall cover Basic Service rates and customer premises installations and equipment rates (including charges for, but not be limited to, Converter boxes, remote control units, connections for additional television receivers and other cable home wiring). The Town reserves the right to further regulate rates pursuant to any additional powers granted to it by either the FCC or federal or state law.

(B) Service Disconnection. A Subscriber shall have the right to have its service disconnected without charge, except for actual costs incurred by the Grantee or other charges that are allowable under FCC regulations, which shall include the removal of any equipment owned by the Grantee from the Subscriber's residence. Such disconnection shall be made as soon as practicable and in no case later than thirty (30) days following written notice to the Grantee of same. No Grantee shall enter into any agreement with a Subscriber which imposes any charge following disconnection of service, except for reconnection and subsequent monthly or periodic charges, and those charges shall be no greater

than charges for new customers. This Section shall not prevent a Grantee from refusing service to any Person because of the Grantee's prior accounts with that Person which remain due and owing.

Section 11.17 Protection of Individual Rights

(A) Discriminatory Practices Prohibited

(1) A Grantee shall not refuse cable television service or otherwise discriminate against any Person or organization who requests such service on the basis of race, color, religion, national origin, creed, sex, marital status, age or any other basis contrary to law. A Grantee shall not, as to rates, charges, service facilities, rules, regulations or in any other respect, make or grant any unreasonable preference or advantage, nor subject any Person to any prejudice or disadvantage. The Grantee shall comply at all times with the Cable Act and all other applicable federal, state and local laws and regulations, and all executive and administrative orders relating to non-discrimination which are hereby incorporated and made part of this Chapter by reference.

(2) This Section shall not be deemed to prohibit promotional rates for service introductions or temporary promotional discounts. This Section does not preclude a Grantee from offering special services or rates to senior citizens, or services to commercial Subscribers at rates different from those charged residential Subscribers, which shall include, but not be limited to, charges for installation on a time and material basis. The Grantee may also enter into separate contracts with multiple Dwelling Unit buildings and may charge discounted rates for services based upon single point billing or other contractual considerations.

(B) Fairness and Equal Access. A Grantee's System shall be operated in a manner consistent with the principles of fairness and equal access to its facilities, equipment, Channels, studios and other services for all citizens, businesses, public agencies or other entities having a legitimate use for the System and no one shall be arbitrarily excluded from its use. Allocation of use of such facilities shall be made according to the rules or decisions of regulatory agencies affecting the same, and where such rules or decisions are not effective to resolve a dispute between conflicting users or potential users, the matter shall be submitted for resolution by the Town.

(C) Equal Employment. A Grantee shall strictly adhere to the equal employment opportunity requirements of federal, state and local laws and regulations in effect on the date of the Franchise grant, and as amended from time to time.

(D) Discontinuation of Service. If a Subscriber fails to pay any proper fee or charge for any service provided by the Grantee, the Grantee may discontinue

said service, provided that the unpaid bill is at least forty-five (45) days past due and the Subscriber has been given at least ten (10) business days prior notice of the intention to discontinue service. If the Grantee receives payment of all outstanding fees and charges, including any late charges, before any service has been discontinued, then the Grantee shall not discontinue said service. After any service has been discontinued, upon request of the Subscriber accompanied by payment in full of all fees or charges due the Grantee and the payment of an appropriate reconnection charge, if any, the Grantee shall promptly reinstate said service. Subscribers shall retain the right to deactivate their terminals, but shall continue to be responsible for charges until the Grantee is notified to terminate service. The Subscriber shall not be charged any fee for the cancellation or downgrading of Cable Service, except in accordance with applicable FCC regulations.

(E) Rights of Residents

(1) An owner or operator of an apartment building, condominium, nursing home, mobile home park, or any other rental facility may not interfere with or charge a fee for the installation of Cable System facilities for the use of a lessee of said property or premises, except that such owner or operator may require: (1) installation to conform to reasonable conditions necessary to protect the safety, appearance and functioning of the premises; (2) the Grantee, occupant, or tenant to pay for the installation, operation, or removal of such facilities; and (3) the Grantee, occupant, or tenant to agree to indemnify the owner or operator for any damages caused by the installation, operation or removal of such facilities.

(2) It shall be unlawful for the Grantee to compensate or offer to compensate any Person, or for any Person to demand or receive compensation from the Grantee, for the placement upon the premises of such Person of Grantee's facilities necessary to connect such Person's premises to the distribution lines of Grantee to provide Cable Service to said premises.

(3) Except where there is a bulk rate agreement between a landlord and the Grantee, a landlord may not discriminate in the amount of rent charged to tenants or occupants who receive Cable Service and those who do not.

Section 11.18 Acceptance Fee

Upon the grant of a new Franchise, the Grantee shall reimburse the Town for all reasonable costs - including but not limited to attorney and consultant fees and expenses - incurred by the Town relating to the grant of the new Franchise.

Section 11.19 Franchise Fee

(A) Annual Franchise Fee. A Grantee shall pay to the Town an annual Franchise Fee in the amount designated in the Franchise Agreement. Such Franchise Fee shall not be less than 4% of the Grantee's annual Gross Revenues, or more than the maximum amount as allowed by law. In the event that a change in either state or federal law would allow the Town to increase the Franchise Fee above five (5) percent of the Grantee's annual Gross Revenues, the Grantee shall not be liable for such increase until the Town shall give Grantee 90 day written notice of such change in the law. The Franchise Fee payment shall be in addition to any other payment owed to the Town by the Grantee and shall not be construed as payment in lieu of municipal property taxes or other state, county or local taxes.

(B) Payment Schedule. The Franchise Fee shall be paid on a bi-annual basis according to the following schedule: revenues for January through June shall be reflected in an August 15th payment and revenues for July through December shall be reflected in a February 15th payment. Unless otherwise specified in the Franchise Agreement, the payment period shall commence as of the effective date of the Franchise or any renewal date.

(C) Financial Statement to be Provided by Grantee. With each February 15th Franchise Fee payment, a Grantee shall furnish to the Town an audited statement, reflecting the total amount of the Gross Revenues and all payments, deductions and computations for the period covered by the Franchise Fee payment. The Town shall have the right to conduct an independent audit of the Grantee's records, and if such audit indicates a Franchise Fee underpayment of five (5) percent or more, the Grantee shall assume all reasonable costs of such audit.

(D) Interest on Delinquent Payments. If any payment is not made as required, interest on the amount due shall accrue from the date of the required submittal at an annual rate of twelve (12) percent. The Grantee shall pay an additional compensation to the Town if the payment is late by forty-five (45) days or more. Such additional compensation shall be equal to an additional six (6) percent per annum in order to defray those additional expenses and costs incurred by the Town by reason of the delinquent payment.

In addition, Grantee shall reimburse the Town for all costs and expenses incurred in the collection of payments that are more than 45 days late, whether incurred before, during or after judgment, including reasonable attorneys' fees.

(E) Acceptance by the Town. No acceptance of any payment by the Town shall be construed as a release or as an accord and satisfaction of any claim the Town may have for further or additional sums payable as a Franchise Fee under this Chapter or for the performance of any other obligation of the Grantee.

(F) Alternative Fee Basis. In the event the Franchise Fee payment established under this Chapter is ruled unconstitutional or unenforceable, the Town may impose and collect an equivalent charge on any legally permissible basis, provided such charge does not exceed the previously allowed limit on Franchise Fee payments.

Section 11.20 Customer Service Standards

(A) Additional Standards May be Imposed. Nothing in this Chapter shall be construed to prohibit the Grantee and Town from agreeing to exceed the customer service standards set out in this Chapter or the establishment or enforcement of any state or local law or regulation concerning customer service or consumer protection that imposes customer service standards or consumer protection requirements that exceed the customer service standards set out in this Chapter or address matters not addressed in this Chapter.

(B) Local Payment Location. The Grantee shall maintain a local West Point drop box payment location, which shall be open during Normal Business Hours. This payment location shall accept Subscriber payments.

(C) Telephone Availability

(1) The Grantee shall maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven days a week. Trained representatives of the Grantee will be available to respond to customer telephone inquiries during Normal Business Hours. After Normal Business Hours, the access line may be answered by a service or an automated response System, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained representative of the Grantee on the next business day.

(2) Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under Normal Operating Conditions, measured on a quarterly basis.

(3) The Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless a historical record of complaints indicates a clear failure to comply.

(4) Under Normal Operating Conditions, the customer will receive a busy signal less than three (3) percent of the time.

(D) Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following four (4) standards shall be met by the Grantee no less than ninety-five (95) percent of the time measured on a quarterly basis:

(1) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to one hundred and fifty (150) feet from the existing distribution System.

(2) Excluding conditions beyond the Control of the Grantee, the Grantee shall begin working on service interruptions promptly and in no event later than twenty-four (24) hours after the interruption becomes known to the Grantee. The Grantee must begin actions to correct other service problems the next business day after receiving notification of the service problem.

(3) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during Normal Business Hours. (The Grantee may schedule service calls and other installation activities outside of Normal Business Hours for the express convenience of the customer.)

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

(E) Repair Standards. The Grantee shall maintain a repair force of technicians who, under Normal Operating Conditions, are capable of responding to Subscriber requests for service within the following time frames:

(1) System Service Interruption. Under Normal Operating Conditions, within two (2) hours, including weekends, of receiving Subscribers calls which by number identify a System service interruption of sound or picture on one (1) or more Channels, affecting all the Subscribers of the System or an interruption of all services to two (2) percent of all Subscribers.

(2) Isolated Service Interruption. Within twenty-four (24) hours, including weekends, of receiving requests for service identifying an isolated Service Interruption (less than two (2) percent of Subscribers) of sound or picture for one (1) or more Channels. This standard shall be met no less than ninety-five (95) percent of the time, measured on a quarterly basis.

(3) Inferior Reception Quality. Within forty-eight (48) hours, including weekends, of receiving a request for service identifying a problem concerning picture or sound quality.

The Grantee shall be deemed to have responded to a request for service under the provisions of this Section when a technician arrives at the service location or contacts the customer by telephone and begins work on the problem. In the case of a Subscriber not being home when the technician arrives, response shall be deemed to have taken place if the technician leaves written notification of arrival.

(F) Notification of Service Interruption to Town Clerk. The Grantee shall promptly notify the Town Clerk, in writing, or, if appropriate, by oral communication, of any significant interruption in the operation of the System. For the purposes of this Section, a "significant interruption in the operation of the System" shall mean any interruption of sound or picture on one (1) or more Channels of a duration of at least twenty-four (24) hours to at least 5% of the Subscribers.

(G) Subscriber Credit for Service Interruptions. Upon service interruptions of the Subscriber's Cable Service, the following shall apply:

(1) For service interruptions of over four (4) hours and up to seven (7) days, the Grantee shall provide a credit to the Subscriber of one-thirtieth (1/30) of one month's fee for affected service for each 24-hour period service is interrupted for four (4) or more hours.

(2) For service interruptions of seven (7) days or more in one month, the Grantee shall provide, a credit based on the hourly rate the Subscriber pays for all monthly service and the number of hours of the service interruption.

(H) Upgrading of Facilities and Service. The Grantee shall upgrade its facilities and service as Subscribers' demands dictate so that its System is as advanced as the current state of technology with field-proven equipment will allow.

Section 11.21 Technical Standards

(A) Standards. The Grantee's System shall be constructed and operated so as to meet those technical and performance standards required by the FCC's rules and regulations relating to Cable Television Systems and found in 47 C.F.R. §§ 76.601 to 76.618, as amended, from time to time.

(B) Tests and Compliance Procedures. Within sixty (60) days after the effective date of the Franchise Agreement, the Grantee shall, upon the Town's request, submit a detailed test plan describing the methods and schedules for testing its System on an ongoing basis to determine compliance with this Chapter and the Franchise Agreement. The test plan shall be subject to the approval of the Town,

which approval shall not be unreasonably withheld. The tests for basic Cable Service shall be performed at intervals of no greater than twelve (12) months. The tests may be witnessed by representatives of the Town, and the Grantee shall submit written test reports to the Town. If more than ten (10) percent of the locations tested fail to meet the performance standards, the Grantee shall be required to indicate what corrective measures have been taken, and the entire test shall be repeated. Grantee's failure to take corrective measures within thirty (30) days after the initial tests are performed may be considered a material breach of the Franchise.

(C) Additional Testing. At any time after commencement of service to Subscribers, the Town may require the Grantee to perform additional tests, full or partial repeat tests, or tests involving service to a specific Subscriber. Such additional tests will be made on the basis of complaints received or other evidence indicating an unresolved controversy or significant noncompliance with the FCC's technical standards.

(D) Costs of Tests. The costs of all tests required in Subsections (B) and (C) above, and retesting as necessary, shall be paid by the Grantee and may be passed through to Subscribers.

Section 11.22 Construction Standards

(A) Compliance with Safety Codes. All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970 and any amendments thereto as well as state and local codes where applicable.

(B) Compliance with Electrical Codes. All installation of electronic equipment shall be of a permanent nature, durable, installed and maintained in accordance with the applicable sections of the then-current edition of the National Electric Safety Code and all state and local codes where applicable.

(C) Compliance with Aviation Requirements. Antennas and their supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aeronautical Administration and all other applicable federal, state, or local laws, codes and regulations governing the erection and operation of supporting structures or television towers.

Section 11.23 Construction and Installation

(A) Approval of Proposed Construction

(1) The Grantee shall first obtain the Town's approval prior to commencing construction on the Streets, alleys, public grounds or places

of the Town. Applications for approval of construction shall be in a form provided by the Town.

(2) The right of construction, including easements, is not implied except on locations where the Town has the authority to grant such rights and easements and then only in conformity with the provisions of this Chapter. All other rights of construction, including easements, shall be the responsibility of the Grantee.

(B) Excavation Permits. The Grantee shall not open or disturb the surface of any Street, sidewalk, driveway, or public place for any purpose without first having obtained all necessary permits.

(C) Use of Existing Poles or Conduits. Nothing in this Chapter shall authorize the Grantee to erect and maintain in the Town, new poles where existing poles are servicing the area. The Grantee shall seek and obtain permission from the Town before erecting any new poles, underground conduit or appurtenances where none exist at the time the Grantee seeks to install or expand its System.

(D) Method of Installation

(1) All wires, cables, amplifiers and other property of the Grantee shall be constructed and installed in an orderly and workmanlike manner. All cables and wires shall be installed parallel with existing telephone and electric wires whenever possible. Multiple cable configurations shall be arranged in parallel and bundled, with due respect for engineering and safety considerations.

(2) All installations shall be underground in those areas of the Town where public utilities providing telephone and electric service are underground at the time of installation.

(3) In areas where telephone or electric utility facilities are above ground, the Grantee shall place its facilities underground without additional cost to the Town or to the residents of the Town (other than as may be reflected in rates charged to Subscribers) at such time as such telephone and electric facilities are required to be placed underground by the Town or are placed underground. The Town shall give Grantee at least six (6) months prior notice of any construction to place telephone or electric facilities underground.

Section 11.24 Proof of Compliance

Upon reasonable notice by the Town, the Grantee shall demonstrate compliance with any or all of the standards and requirements imposed by this Chapter. The Grantee shall provide sufficiently detailed information to permit the Town to readily verify the extent of compliance.

Section 11.25 Complaint Procedures

(A) Complaints to Grantee. A Grantee shall establish written procedures for receiving, acting upon and resolving Subscriber complaints without intervention by the Town. The procedures shall prescribe the manner in which a Subscriber may submit a complaint, either orally or in writing, to the Grantee. At the conclusion of the Grantee's investigation of a Subscriber complaint, but in no event more than ten (10) days after receiving the complaint, Grantee shall notify the Subscriber of the results of the investigation and its proposed action or resolution, if any. The Grantee shall also notify the Subscriber of the Subscriber's right to file a complaint with the Town in the event the Subscriber is dissatisfied with the Grantee's decision. The Town appoints the Town Chair or designee to receive inquiries or complaints about the Grantee's operations. The Grantee shall provide notice of the complaint procedures pursuant to Section 11.31(A).

(B) Complaints to the Town. A Subscriber who is dissatisfied with the Grantee's proposed decision shall be entitled to have the complaint reviewed by the Town. The Subscriber shall initiate the review by filing a complaint, together with the Grantee's decision, if any, with the Town and by the Town notifying the Grantee of the filing. The Subscriber shall make such filing and notification within twenty (20) days of receipt of the Grantee's decision or, if no Grantee decision has been provided, within thirty (30) days after filing the original complaint with Grantee. The Town may extend these time limits for reasonable cause.

(C) Review by the Town. The Town shall determine, upon a review of a Subscriber complaint and the Grantee's decision, if any, whether further action is warranted. In the event the Town does not initiate further proceeding within fifteen (15) days of the filing of the complaint, the Grantee's proposed action or resolution shall be final. If the Town decides to initiate further investigation, the Town shall require the Grantee and the Subscriber to submit, within ten (10) days of notice thereof, a statement of the facts and arguments in support of their respective positions. The Town shall issue a written decision within fifteen (15) days of receipt of the statements or, if a hearing is requested, within fifteen (15) days of the conclusion of the hearing, setting forth the basis of the decision.

(D) Remedies for Violations. The Town may, as a part of a Subscriber complaint decision issued by the Town under the provision of this Chapter, impose monetary damages on the Grantee. Damages may be imposed only if the Town finds that the Grantee has arbitrarily refused or failed without reasonable justification to comply with the provisions of this Section.

Section 11.26 Complaint Files, Service Request Log, and Outage Log

(A) Complaint File. A Grantee shall keep an accurate and comprehensive file of any and all complaints regarding the Cable System. A Grantee shall establish a procedure to remedy complaints quickly and reasonably to the satisfaction of the

Town. A Grantee shall keep complete records of its actions in response to all complaints for a period of three (3) years. The Grantee shall make a copy of its complaint file available to the Town upon request.

(B) Service Request Log and Summary. The Grantee shall maintain a log and summary of all Subscriber service requests, identifying the number and nature of the requests and their disposition for a period of three (3) years. A copy of such log and summaries shall be made available to the Town upon request.

(C) Outage Log and Summary. A Grantee shall maintain a log and summary of all major service outages for a period of three (3) years. For the purposes of this Subsection, a “major service outage” shall mean any interruption of sound or picture on one (1) or more Channels of a duration of at least twenty-four (24) hours to at least two (2) Subscribers. A copy of such log and summaries shall be made available to the Town upon request.

Section 11.27 Authority for Use of Streets

(A) Use of Streets. For the purpose of constructing, operating, and maintaining a Cable System in the Town, a Grantee may erect, install, construct, repair, replace, relocate, reconstruct and retain in, on, over, under, upon, across and along the Streets within the Town such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the Grantee's System, provided that the Grantee applies for and obtains all applicable permits and otherwise complies with this Chapter and all other Town codes and ordinances.

(B) Filing of Plans with the Town. Prior to construction, reconstruction, upgrade, rebuild or any other major modification or change of the Grantee's System, other than routine repairs, the Grantee shall, in each case, file its plans for such work with the Town and shall not commence any such work until it receives written approval of its plans from the Town. The Town shall not unreasonably withhold its approval. Upon the Town's request, the Grantee shall provide written progress reports to the Town until the work is completed.

(C) Non-Interference/Notice. The Grantee shall construct, maintain, and operate its System so as not to interfere with other uses of the Streets. The Grantee shall individually notify all residents directly affected by the proposed work at least five (5) business days prior to the commencement of such work.

Section 11.28 Conditions on Use of Streets

(A) Facilities Not to be Hazardous or Interfere

(1) All wires, conduits, cables and other property and facilities of the Grantee shall be so located, constructed, installed and maintained as not to endanger any Person or unnecessarily interfere with the usual and customary trade, traffic and travel upon the Streets and public places of the Town.

(2) The Grantee shall keep and maintain all its property in good condition, order and repair. The Town reserves the right to inspect and examine at any reasonable time and upon reasonable notice the property owned or used, in part or in whole, by the Grantee.

(3) The Grantee shall keep accurate maps and records of all its facilities and furnish copies of such maps and records when requested by the Town.

(4) The Grantee shall not place poles or other equipment where they will interfere with the rights or reasonable convenience of adjoining property owners, or with any gas, electric or telephone fixtures or with any water hydrants or mains. All poles or other fixtures placed in a Street shall be placed in the right-of-way between the roadway and the property, as specified by the Town.

(B) Restoration and Reimbursement

(1) In the event of disturbance of any Street or private property by the Grantee, it shall, at its own expense and in a manner approved by the Town and the owner, replace and restore such Street or private property in as good a condition as before the work causing such disturbance was done.

(2) If the Grantee fails to perform such replacement or restoration, the Town or the owner shall have the right to do so at the sole expense of the Grantee. The Grantee shall make payment to the Town or owner for such replacement or restoration immediately upon demand. All requests for replacement or restoring of such Streets or private property as may have been disturbed must be in writing to the Grantee.

(C) Emergency Removal of Facilities. If, at any time, in case of fire or disaster in the Town, it shall become necessary in the reasonable judgment of the Town to cut or move any of the wires, cables, amplifiers, appliances or appurtenances thereto of the Grantee, such cutting or moving may be done and any repairs rendered necessary thereby shall be made by the Grantee, at its sole expense.

(D) Changes Required by Public Improvements. The Grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same Street or other public place, or remove from the Street or other public place, any property of the Grantee when required by the Town by reason of traffic conditions, public safety, Street vacation, Street construction, change or establishment of Street grade, installation of sewers, drains, water pipes, Town-owned power or signal lines, and tracts or any other type of structure or improvement by public agencies.

(E) Requests for Removal or Change. The Grantee shall, on the request of any Person holding a building moving permit, temporarily raise or lower its wires to permit the moving of such building. The expense of such temporary removal, raising or lowering the wires shall be paid by the Person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given notice not less than nine (9) business days prior to any move contemplated to arrange for temporary wire changes.

(F) Authority to Trim Trees. The Grantee shall have the authority to trim trees upon and overhanging Streets, alleys, sidewalks, and other public places of the Town so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee. All trimming is to be done under the supervision and direction of the Town after the explicit, prior written notification and approval of the Town and at the expense of the Grantee.

Section 11.29 Services

(A) Basic Cable Service. The Grantee shall provide basic Cable Service, which shall include any Service Tier which includes the retransmission of local television signals, to all Subscribers at the established monthly subscription rates.

(B) Public Educational and Government (PEG) Access Channel. Upon request by the Town, the Grantee shall provide at least two (2) Channels for use by the Town for PEG purposes.

(C) Cable Channel for Commercial Use. The Grantee shall designate Channel capacity for commercial use as required by the Cable Act and applicable law.

Section 11.30 Subscriber Privacy

(A) Use of Data From Subscribers. A Grantee, the Town or any other Person shall not initiate or use any form, procedure or device for procuring information or data from cable Subscribers' terminals by use of the Cable System, without prior written authorization from each Subscriber so affected.

(B) Subscriber Data. The Town, the Grantee or any Person shall not, without prior written valid authorization from each Subscriber so affected, provide any data identifying or designating Subscribers. Any data so authorized will be made available to the authorizing Subscriber in understandable fashion.

(C) Subscriber Agreements. Any agreement or contract such as is necessary for 11.30(A) and 11.30(B) above shall not be part of any other contract or agreement and shall not be a condition of subscribing to the System.

(D) Internal Use. The provisions of this Section shall not apply to any monitoring for Cable System integrity or to verify billing accuracy.

Section 11.31 Notices and Billing

(A) Operating Policies. The Grantee shall provide written information on each of the following areas at the time of installation of service, at least annually to all Subscribers, and at any time upon request:

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Installation and service maintenance policies;
- (4) Instructions on how to use the Cable Services;
- (5) Channel positions of programming carried on the Cable System;
- (6) The procedures for billing and making inquiries or complaints (including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed) and also furnish information concerning the Town office responsible for administration of the Franchise including the name and telephone number of the office. The written information shall also include a description of the Grantee's business hours, legal holidays and procedures for responding to inquiries after Normal Business Hours. The Grantee shall provide all Subscribers and the Town with written notice no less than thirty (30) days prior to any proposed change in any of the areas listed in this Subsection.

(B) Rates, Programming Service, and Channel Position. The Grantee shall provide the Town and Subscribers with written notice of any changes in rates, programming services, or Channel position at least thirty (30) days prior to implementing such change(s). Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the

rate change (e.g., inflation, changes in external costs or the addition/deletion of Channels). When the change involves the addition or deletion of Channels, each Channel added or deleted must be separately identified. Notices to Subscribers shall inform them of their right to file complaints about changes in cable programming Service Tier rates and services, shall state that the Subscriber may file the complaint within ninety (90) days of the effective date of the rate change, and shall provide the address and telephone number of the Town Clerk. Notwithstanding any other provision of this Chapter, the Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, or any other fee, tax, assessment or charge of any kind imposed by the Town or any federal or state agency on the transaction between the Grantee and the Subscriber.

(C) Billing. Bills shall be clear, concise, and understandable and shall include the Grantee's toll free or collect telephone number for Subscriber use. Bills shall be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills shall also clearly delineate all activity during the billing period, including optional charges, rebates and credits. In case of a billing dispute, the Grantee shall respond to a written complaint from a Subscriber within thirty (30) days. Refund checks will be issued promptly, and no later than either (i) the customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or (ii) the return of the equipment supplied by the Grantee if service is terminated. Credits for service shall be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(D) Copies to the Town. Copies of all notices provided to Subscribers shall be filed concurrently with the Town.

Section 11.32 Quality of Service

The overall quality of service provided by a Grantee to Subscribers may be subject to evaluation by the Town, at least annually. In addition, the Town may evaluate the quality of service at any time, based on Subscriber complaints received by the Grantee, and the Town, and the Grantee's response to those complaints. Upon determining that service quality is inadequate, the Town may order the Grantee to cure the inadequacies. The Grantee shall commence corrective action within thirty (30) days after receipt of written notice of such order. Failure to do so shall be deemed to be a material breach of the Franchise and subject to the remedies prescribed in this Chapter. The Town may use the performance bond and/or security fund provided for in this Chapter to remedy any such Franchise breach.

Section 11.33 Open Books and Records

The Town shall have the right to inspect, upon twenty-four (24) hours written notice, at any time during Normal Business Hours at the Grantee's regional office all

books, records, maps, plans, financial statements, all logs required under this Chapter, performance test results, record of requests for service and other like materials of the Grantee relating to the operation of the Franchise. If any such books or records are not kept in the regional office, and if the Town shall determine that an examination of such records is necessary or appropriate to the performance of any of the Town's duties, then the Grantee shall make such records available locally on ten (10) business days notice. When requested by the Grantee and to the extent allowed by law, the Town shall treat as confidential proprietary information or trade secrets obtained by the Town during such inspection; the Town shall make such information available only to those Persons who must have access to the information to perform their duties on behalf of the Town.

Section 11.34 Reports and Records

(A) Annual Submissions to the Town. The Grantee shall submit to the Town with each February 15th Franchise Fee payment a written annual report which shall include the following information:

- (1) A summary of the previous year's activities in development of the Cable System, including, but not limited to, services begun or discontinued during the reporting year, and the number of Subscribers for each class of service.
- (2) A Gross Revenues statement, certified as accurate by an officer of Grantee or Grantee's accountant.

(B) Submissions to the Town on Request. Upon the Town's request, the Grantee shall submit to the Town a written report which shall include the following information:

- (1) A list of Grantee's officers, members of its board of directors, and other principals of Grantee;
- (2) A list of stockholders or other equity investors holding five (5) percent or more of the voting interest in the Grantee and its parent, subsidiary and affiliated corporations and other entities, if any, unless the parent is a public corporation whose annual reports are publicly available;
- (3) A statement of projected construction, if any, for the next two (2) years; and
- (4) Accurate copies of maps and/or plats of the locations and character of all existing and proposed installations of the Grantee over, upon or under the Streets of the Town.
- (5) Grantee's Annual Report.

(C) Other Submissions. Copies of all petitions, applications and communications submitted by the Grantee to the FCC, Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matter affecting cable operation within the Franchise area shall also be submitted simultaneously to the Town.

(D) Records to be Kept on File. All records required by this Section shall be kept on file by the Grantee for the applicable periods under federal and state law.

Section 11.35 Performance and Construction Bonds

(A) Performance Bond Required for New Franchises. At the time a new Franchise is granted, the Grantee shall furnish and file with the Town a performance and payment bond, or a performance and payment bond together with such other security as is approved by the Town. The bond shall be in the amount of \$50,000 and shall run to the Town, who may be entitled to damages as a result of any occurrence in the operation of or termination of the Cable System operated under this Chapter and the Franchise Agreement. The bond shall be conditioned upon the faithful performance of the Grantee of all terms and conditions of the Franchise granted under this Chapter. The rights reserved to the Town with respect to the bond or other security are in addition to all other rights the Town may have under this Chapter or any other law.

(B) Performance Bond for Renewed Franchise. At the time a Franchise is renewed, the Town may require the Grantee to furnish and file with the Town a performance and payment bond, or a performance and payment bond together with such other security as is approved by the Town. The bond shall be in the amount specified in the Franchise Agreement and shall run to the Town, who may be entitled to damages as a result of any occurrence in the operation of or termination of the Cable System operated under this Chapter and the Franchise Agreement. The bond shall be conditioned upon the faithful performance of the Grantee of all terms and conditions of the Franchise granted under this Chapter. The rights reserved to the Town with respect to the bond or other security are in addition to all other rights the Town may have under this Chapter or any other law.

(C) Construction Bond. Prior to undertaking any construction work costing \$50,000 or more relating to the Franchise granted under this Chapter, the Grantee shall file with the Town a construction bond in the amount specified in the Franchise Agreement in favor of the Town and any other Person who may claim damages as a result of the breach of any duty by the Grantee assured by said bond. Such construction bond shall be in the form approved by the Town and issued by a company approved by the Town. In no event shall the amount of such construction bond be construed to limit the liability of the Grantee for damages. The Town may waive this requirement or permit consolidation of the construction bond with the performance bond specified above in 11.35 (A). The

Grantee must provide the Town with evidence that a new bond has been obtained, or the Town will have the right to take action on the bond to protect its interests.

(D) All bonds in this section shall include a provision requiring any surety used by the Grantee to provide the Town a 60 day written notice before cancellation or termination of the bond.

Section 11.36 Security Fund

The Town may require the Grantee to deposit into a bank account established by the Town, and maintain on deposit through the term of this Franchise, the sum specified in the Franchise Agreement, as security for the Grantee's faithful performance of all of its obligations under this Chapter and the Franchise Agreement and for the payment by the Grantee of any claims, liens, taxes and fees due to the Town which arise by reason of the construction, operation, or maintenance of the Grantee's System.

Section 11.37 Work Performed by Others

The Grantee shall give prior notice to the Town specifying the names and addresses of any entity, other than the Grantee, that, within one (1) calendar year, will perform services valued at \$10,000 or more relating to the Franchise, provided, however, that all provisions of the Franchise remain the responsibility of the Grantee. All provisions of any Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of the Franchise. Nothing in this Section shall be construed as allowing the transfer of any rights or responsibilities of the Grantee without written approval of the Town.

Section 11.38 Indemnity

(A) Extent of Indemnity. The Grantee shall, by acceptance of any Franchise granted, indemnify, defend and hold harmless the Town, its officers, boards, commissions, agents, and employees from any and all claims, suits, judgments, for damages or other relief, costs and attorneys fees in any way existing out of or through or alleged to arise out of or through: (1) the act of the Town in granting the Franchise (2) the acts or omissions of Grantee, its servants, employees, or agents including, but not limited to, any failure or refusal by Grantee, its servants, employees, or agents to comply with any obligation or duty imposed on Grantee by this Chapter or the Franchise Agreement or (3) the exercise of any right or privilege granted or permitted by this Chapter or the Franchise Agreement. Such indemnification shall include, but not be limited to, all claims arising in tort, contract, infringements of copyright, violations of statutes, ordinances or regulations or otherwise.

(B) Notifications of Claims. The Town shall notify the Grantee within thirty (30) business days after the presentation of any claim or demand, either by suit or otherwise, made against the Town.

(C) Defense of Claims. In the event any claims shall arise, the Town or any other indemnified party shall tender the defense thereof to the Grantee. Defense of any such claim shall be by counsel reasonably acceptable to the Town or other indemnified party. Provided, however, that the Town or other indemnified party in its sole discretion may participate in the defense of such claims as Grantee's sole expense, and in such event, such participation shall not relieve the Grantee from its duty to defend against liability or to pay any judgment entered against such party. Grantee shall not agree to any settlement of claims without Town approval.

(D) Town's Negligence. The Grantee shall not be required to indemnify the Town for negligence or willful misconduct on the part of the Town's officials, boards, commissions, agents or employees.

Section 11.39 Insurance

(A) Liability Insurance. The Grantee shall maintain throughout the term of the Franchise, and any extensions thereto, the insurance policies described below, which shall be written on an occurrence basis. Such policies shall name as an additional insured the Town, its officers, boards, commissions, agents and employees, shall be primary to any insurance carried by the Town, and shall be obtained from a company or companies approved by the Town and in a form satisfactory to the Town. Such policies shall be as follows:

(1) General Comprehensive Liability Insurance containing the following coverages: Premises/Operations; Products/Completed Operations; Broad Form Property Damage; Contractual Liability; Coverage for Explosion; Collapse and Underground Hazards; and Pollution Control Liability. The policy shall include limits of not less than \$2,000,000 for bodily injury (including death) and property damage for each occurrence of not less than \$3,000,000 in the aggregate.

(2) Worker's Compensation Insurance in compliance with Section 102.31 of the Wisconsin Statutes and in compliance with the laws of each state having jurisdiction over each employee.

(3) Comprehensive Automobile Liability including owned, non-owned, and hired vehicles with limits of not less than \$1,000,000 for bodily injury (including death) and \$1,000,000 for property damage for each occurrence.

(4) Umbrella Liability with limits of not less than \$8,000,000 which shall carry the following endorsement:

It is hereby understood and agreed that despite anything to the contrary where underlying insurance, as described herein, provides greater protection or indemnity to the insured than the terms and conditions of this policy, this insurance shall pay on behalf of the insured the same terms, conditions and coverages which apply to the basic underlying insurance. Where no such broader underlying insurance exists, this policy shall pay on behalf of the insured upon terms and conditions and limitations of the carrier's umbrella excess policy.

(B) Notice of Cancellation or Reduction of Coverage. The insurance policies mentioned above shall contain an endorsement stating that the policies are extended to cover the liability assumed by the Grantee under the terms of this Chapter and the Franchise Agreement and shall contain the following endorsement:

It is hereby understood and agreed that this policy may not be canceled nor the amount of coverage thereof reduced until 30 days after receipt by the Town Clerk by registered mail of 2 copies of a written notice of such intent to cancel or reduce the coverage.

(C) Evidence of Insurance Filed with Town Clerk. All policies of insurance or certified copies thereof and written evidence of payment of required premiums, shall be filed and maintained with the Town Clerk during the term of the Franchise or any renewal thereof.

(D) Town's Right to Revise Insurance Requirements. The Town reserves the right to revise the insurance requirements stated in this Chapter at any time during the term of any Franchise granted under this Chapter.

(E) No Waiver of Performance Bond. Neither the provisions of this Chapter nor any insurance accepted by the Town pursuant hereto, nor any damages covered by the Town thereunder, shall be construed to excuse faithful performance by the Grantee or limit the liability of the Grantee under this Franchise or for damages, either to the full amount of the bond or otherwise.

Section 11.40 Waiver of Charges

During the term of a Franchise and upon request by the Town, the Grantee shall provide free Basic, Extended Basic , and Internet Service to each municipality owned or leased building passed by the cable system and sued substantially for municipal purposes, as well as to any and all schools, whether private or public, within the Franchise territory. The Town may extend service within each building so served as

long as such extensions are in compliance with applicable FCC rules and regulations. Internet service will be at the highest speed available. In no event will there be a monthly service charge assessed to the Grantor at such locations.

Section 11.41 Protection of Non-Subscribers

A Grantee shall at all times keep its cables and other appurtenances used for transmitting signals shielded in such a manner that there will be no interference with signals received by radios or televisions not connected to the Grantee's service.

Section 11.42 Grantee Rules

A Grantee may promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under the Franchise and to assure uninterrupted service to all its Subscribers. However, such rules, regulations, terms and conditions shall not be in conflict with the provisions of this Chapter, the Franchise Agreement, or state or federal law.

Section 11.43 General

(A) Compliance with Laws, Rules, and Regulations. In the event any valid law, rule or regulation of any governing authority or agency having jurisdiction, including but not limited to the FCC, contravenes the provisions of this Chapter subsequent to its adoption, the provisions hereof shall be superseded by any such valid law, rule or regulation to the extent that the provisions hereof are in conflict and contrary to any such law, rule or regulation.

(B) Severability. Should any word, phrase, clause, sentence, paragraph, or portion of this Chapter or a Franchise be declared to be invalid by a court of competent jurisdiction, such adjudication shall not affect the validity of this Chapter and the Franchise as a whole, but shall only affect the portion thereof declared to be invalid; and the Town Board hereby expressly states and declares that it would nonetheless have passed this Chapter and granted the Franchise had it known that any such word, phrase, clause, sentence, paragraph or portion of said Chapter or Franchise were invalid.

(C) Waiver or Exemption. The Town reserves the right to waive provisions of this Chapter or exempt a Grantee from meeting provisions of this Chapter, if the Town determines that such waiver or exemption is in the public interest.

(D) Nonenforcement. Subject to the provisions of the Cable Act, a Grantee shall not be relieved of any obligation to comply with any of the provisions of this Chapter, the Franchise Agreement, or any rule, regulation, requirement or directive promulgated by the Town by reason of any failure of the Town or its

officers, agents or employees to enforce prompt compliance nor shall such be considered a waiver thereof.

(E) Force Majeure. Any delay, pre-emption, or other failure to provide Cable Service and to perform other duties contained in this Chapter and the Franchise Agreement by the Grantee caused by factors beyond the Grantee's Control, such as acts of nature, labor disputes, non-delivery by program suppliers, war, riots, government order or regulation, shall not result in a breach of the terms of this Chapter or the Franchise Agreement. Grantee shall exercise reasonable efforts to cure promptly any such delays and the cause thereof, and performance under the terms of this Chapter and Franchise Agreement shall be excused by Town for the period of time during which such factors continue.

History Note: Adopted 8/6/98.