

CHAPTER 112: CABLE TELEVISION

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GENERAL PROVISIONS

§ 112.01 PURPOSE.

Haywood County finds that the development of cable television Systems has the potential of having great benefit and impact upon the people in the unincorporated areas of Haywood County. Because of the complex and rapidly changing technology associated with cable television, the County further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the County or such persons as the County shall designate. It is the intent of this Ordinance and subsequent amendments to provide for and specify the means to advance and protect the public interest in these matters, and any Franchise issued pursuant to this Ordinance shall be deemed to include this finding as an integral part thereof.

Further, it is recognized that cable television Systems have the capacity to provide entertainment and information services to the County's residents, and may have the capacity to provide a variety of broad band, interactive communications services to institutions and individuals.

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

- (1) Cable television services should be provided to the maximum number of County residents at the most reasonable cost.
- (2) The System should be capable of accommodating both the present and reasonably foreseeable future State-of-The-Art cable television needs of the County.
- (3) The Systems authorized by this Ordinance shall be responsive to the needs and interests of the local community, and shall provide the widest possible diversity of information sources and services to the public.
- (4) Each of the goals enumerated in (1) – (3) above shall be sought taking into account the costs and benefits to the residents of Haywood County.

§ 112.02 TITLE OF ORDINANCE.

This Ordinance shall be known and may be cited as "Haywood County's Cable Television Ordinance," and it shall become a part of the ordinances of the County.

This Ordinance shall take effect and be in force from and after its adoption for the grant of any new franchise or renewal of any franchise existing at the time of adoption.

All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed, specifically Chapter 112: Cable Television of the Haywood County Code.

This Ordinance shall be governed by and subject to the Communications Act of 1934, as amended, including any future amendments relating to telecommunications and cable television communications, and other applicable laws.

§ 112.03 DEFINITIONS.

For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein unless otherwise defined by Federal or State law. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number. The word “shall” is mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

ADDITIONAL SERVICE. Any cable service other than Basic Service provided over the System.

ACCESS CHANNELS. Any channels on the System provided herein by the operator for access use by the County, its agencies, and citizens, in accordance with the Cable Act.

BASIC SERVICE. A separately available tier to which subscription is required for access to any other tier of service. Basic Service tier shall, at a minimum, consist of the following: all signals carried in fulfillment of the Cable Act, Sections 614 and 615; any public, educational, and governmental access programming required in this Ordinance or the Franchise; any signal of any television broadcast station that is provided by the cable operator to any Subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station. Additional signals may be added to the basic tier by the Grantee.

CABLE ACT. See Communications Policy Act below.

CABLE SERVICE. The one-way transmission to subscribers of Video Programming or Other Programming Service, together with subscriber interaction, if any, which is required for selection or use of such Video Programming or Other Programming Service.

CABLECAST SIGNAL. A nonbroadcast signal that originates within the facilities of the System.

CHANNEL. A 6 Megahertz (Mhz) frequency band, which is capable of carrying either one standard video signal, a number of audio, digital or other nonvideo signals or some combination of such signals. One channel of high definition television may utilize more than 6 Mhz.

COMMERCIAL SUBSCRIBER. A Subscriber who receives a service in a place of business where the service may be utilized in connection with a business, trade or profession.

BOARD. The Haywood County Board of Commissioners.

COMMUNICATIONS POLICY ACT or CABLE ACT. The Cable Communications Policy Act of 1984 and the Telecommunications Consumer Protection and Competition Act of 1992 as they may be amended or succeeded.

CONVERTER. An electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber, and any channel selector which permits a Subscriber to view all signals delivered at designated converter dial locations at the set.

COUNTY. The County of Haywood, North Carolina, a political subdivision of the State of North Carolina.

DISCRETE CHANNEL. A channel which can only be received by the person and/or institution intended to receive signals on such channel.

DOWNSTREAM SIGNAL. A signal originating from or provided by System to a Subscriber terminal or other terminal including video, audio, or digital signals or any other type of data or information for either programs or other uses such as security alert services, etc.

DROP. A coaxial, fiber, or other connection from Feeder cable to the Subscriber/user residence or place of business.

EDUCATIONAL ACCESS CHANNEL. Any channel designated for educational access use, in accordance with the Cable Act.

FAIR MARKET VALUE. The price that a willing buyer would pay to a willing seller for a going concern based on the System valuation prevailing in the industry at the time.

FCC. The Federal Communications Commission and any legally appointed successor.

FRANCHISE. The nonexclusive rights granted pursuant to this Ordinance to construct, operate and maintain a System along the Public Rights-Of-Way within all or a specified area in the County. Any such authorization, in whatever form granted, shall not mean or include any license or permit required for the privilege of transacting and carrying on a business within the County as required by other ordinances and laws of the County, State or Federal governments.

FRANCHISE AREA. The entire County for which a Franchise is granted under the authority of this Ordinance. If not otherwise stated in the Franchise, the Franchise area shall be the entire County, including all territory within the corporate limits of any municipality, not served by their own franchise, but excluding any municipality served by their own franchise.

FRANCHISE FEE. The percentage, as specified by the County, of the Franchisee's Gross Annual Revenues from all sources payable (as permitted by the Cable Act) in exchange for the rights granted pursuant to this Ordinance and the Franchise agreement.

FRANCHISEE or GRANTEE. The natural person(s), partnership(s), domestic and foreign corporation(s), association(s), joint venture(s), or organization(s) of any kind which has been legally granted a Franchise by the County and its lawful successor, transferee or assignee.

GOVERNMENT ACCESS CHANNEL. Any channel specifically designated or dedicated for government access use, in accordance with the Cable Act

GRANTOR. Haywood County as represented by the Board acting within the scope of its jurisdiction.

GROSS ANNUAL REVENUES. All receipts received directly or indirectly by the Grantee, from providing Cable Services within the County, including, but not limited to, basic Subscriber and additional service monthly fees, pay cable fees, installation and reconnection fees, leased channel fees, converter rentals, and advertising revenues; provided, however, that this shall not include any taxes or copyright fees on services furnished by the Grantee.

HEADEND. The electronic control center of the System including components that amplify, filter, and convert incoming broadcast and other television and electronic signals for distribution over the cable System.

INSTALLATION. The connection of the System from the drop cable to Subscribers' terminals.

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

NARROWCASTING. The ability to distribute cable programming to a particular segment or segments of the cable Subscribers.

PERSON. An individual, partnership, association, organization, corporation or any lawful successor or transferee of said individual, partnership, association, organization or corporation.

PLANT MILE. A linear mile of cable as measured on the street or easement from pole to pole or pedestal to pedestal.

PUBLIC ACCESS CHANNEL. Any channel designated or dedicated for access use by the general public or noncommercial organizations, in accordance with the Cable Act, which is made available for use without charge, on a nondiscriminatory basis, in accordance with the rules and regulations specified in the Franchise and over which Grantee has no editorial control.

PUBLIC WAY or PUBLIC RIGHTS-OF-WAY. The surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkways, waterways, utility easements or other public right-of-way now or hereafter held by the County which shall entitle the County and the Grantee to the use thereof for the purpose of installing and maintaining the System. No reference herein, or in any Franchise, to the

“public way” shall be deemed to be a representation or guarantee by the County that its title to any property is sufficient to permit its use for such purpose, and the Grantee shall, by its use of such terms, be deemed to gain only such rights to use property in the County as the County may have the undisputed right and power to give or as granted by Federal or State law.

REASONABLE NOTICE. Written notice addressed to the Grantee at its principal office within the County or such other office as the Grantee has designated to the County as the address to which notice shall be transmitted to it, which notice shall be certified and postmarked not less than seven (7) business days prior to that day in which the party giving such notice shall commence any action which requires the giving of notice. In computing said seven (7) days, holidays recognized by the County shall be excluded.

RESIDENT. Any person residing in the County as otherwise defined by applicable law.

RESIDENTIAL SUBSCRIBER. A Subscriber who receives a service in an individual dwelling unit where the service is not to be utilized in connection with a business, trade, or profession.

SALE. Includes any sale, exchange, barter or offer for sale.

SCHOOL. Any state accredited public or nonprofit educational institution including primary and secondary schools, colleges and universities, both public and private.

SERVICE AREA. The entire geographic area within the Franchise Area.

STATE. The State of North Carolina.

STATE-OF-THE-ART. Means that the Franchisee shall construct, install and maintain its System in a manner which will continue to enable it to add new services and associated equipment as they are developed, available and when economically feasible and marketable to subscribers to the reasonable satisfaction of the Franchisee.

SYSTEM. Also referred to as “System,” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include any of the following: (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (b) a facility that serves only Subscribers in one or more multiple dwelling units under common ownership, control, or management, unless such facility or facilities uses any public rights-of-way; (c) a facility of a common carrier which is subject in whole or in part to the provision of Title II of the Cable Act, except that such facility shall be considered a cable System to the extent that such facility is used in the transmission of video programming directly to Subscribers; or (d) any facilities of any electric utility used solely for operating its electric utility Systems.

TRANSFER. The disposal by the Grantee, directly or indirectly, by gift, assignment, voluntary sale, assets acquisition, merger, consolidation, or otherwise, of fifteen (15%) or more at one time of the

ownership or controlling interest in the System, or twenty-five (25%) cumulatively over the term of the Franchise of such interest to a corporation, partnership, limited partnership, trust or association, or person or group of persons acting in concert.

TRUNK LINE. The major distribution cable used in cable communications, which divides into Feeder lines which are tapped for service to Subscribers.

UPSTREAM SIGNAL. A signal originating from a Subscriber terminal to another point in the System including video, audio, or digital signals or any other type of data or information for either programs or other uses such as security alert services, etc.

USER. A person or organization utilizing channel or equipment and facilities for purpose of producing and/or transmission of material, as contrasted with receipt thereof in a Subscriber capacity.

FRANCHISE

§ 112.20 GRANT OF FRANCHISE.

(A) **Grant.** In the event that County shall grant to the Grantee a nonexclusive, revocable for cause Franchise to construct, operate, and maintain a System within the County said Franchise shall constitute both a right and an obligation to provide the services of a System as regulated by the provisions of this Ordinance and the Franchise.

(B) **Event of Conflict.** The Franchise shall be granted under the terms and conditions contained herein, consistent with and subject to all applicable statutory requirements. In the event of conflict between the terms and conditions of this Ordinance, the Franchise, or the terms and conditions on which the County can grant a Franchise, statutory requirements shall control.

(C) **Generally Applicable Ordinances.** Any Franchise granted by the County is hereby made subject to the general ordinance provisions now in effect and hereafter made effective. Nothing in the Franchise shall be deemed to waive the requirements of the various codes and ordinances of the County or other applicable law regarding permits, fees to be paid, or manner of construction.

§ 112.21 USE OF PUBLIC RIGHTS OF WAY.

Insofar as permitted by law and for the purpose of operating and maintaining a System in the County, the Grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the public ways within the County such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and

equipment as are necessary to the operation of the Systems, provided, however, that Grantee complies with all design, construction, safety, and performance provisions contained in this Ordinance, the Franchise agreement, and other applicable local ordinances.

§ 112.22 USE OF GRANTEE FACILITIES.

No poles shall be erected by the Grantee on public property without prior approval of the County which shall not be unreasonably withheld, with regard to location, height, type and any other pertinent aspect. However, no location of any pole on public property of the Grantee shall be a vested right and such poles shall be removed or modified by the Grantee on public property at its own expense whenever the County reasonably determines that the public convenience would be enhanced thereby. Grantee shall utilize existing poles and conduits, where possible. The County shall have the right, during the life of the Franchise, to install and maintain free of charge upon the poles owned by the Grantee, any wire and pole fixtures that do not unreasonably interfere with the Cable System operations of the Grantee; provided the County shall at all times indemnify and hold Grantee harmless against any and all claims which might arise as a result of the County's use.

(Am. Ord. passed 11-18-02)

§ 112.23 FRANCHISE REQUIRED.

No System shall be allowed to operate in the County without a Franchise.

§ 112.24 TERM OF FRANCHISE.

The term of any Franchise granted pursuant to this Ordinance shall be stated in the Franchise.

§ 112.25 FRANCHISE NONEXCLUSIVE.

The Franchise discussed herein is nonexclusive. The County specifically reserves the right to grant at any time such additional Franchises for a System it deems appropriate.

§ 112.26 TIME IS OF THE ESSENCE.

Whenever this ordinance or an agreement shall set forth any time for an act to be performed by or on behalf of the Grantee, such time shall be deemed of the essence and any failure of the Grantee to perform within the time allotted shall always be sufficient grounds for the County to invoke an appropriate penalty including possible revocation of the Franchise.

§ 112.27 LAW GOVERNS.

In any controversy or dispute under this Ordinance, the law of the State of North Carolina, or Federal law shall apply and venue shall be in state or federal court for Haywood County, North Carolina.

§ 112.28 SEVERABILITY.

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

§ 112.29 TRANSFER OF OWNERSHIP OR CONTROL.

(A) **Transfer of Franchise.** Any Franchise granted hereunder cannot in any event be sold, transferred, leased, assigned or disposed of, including but not limited to, by force or voluntary sale, merger, consolidation, receivership or other means without the prior consent of the County, which shall not be unreasonably withheld.

(B) **Transfer Threshold.** The Grantee shall promptly notify the County of any actual or proposed change in or transfer of, or acquisition by any other party of, control of the Grantee. The word “control” as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the disposal by the Grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of fifteen percent (15%) or more, at one time, of the ownership or controlling interest in the System, or twenty-five percent (25%) cumulatively over the term of the Franchise of such interest to a corporation, partnership, limited partnership, trust or association, or person or group of persons acting in concert. The County shall exercise its power to approve a transfer of ownership or control in a manner consistent with Section 617 of the Communications Act (47 U.S.C. 537).

(C) **Process.** Every transfer, sale, lease, assignment or disposition of, including but not limited to, by force or voluntary sale, merger, consolidation, receivership or other means or acquisition of control of the Grantee shall make the Franchise subject to cancellation unless and until the County shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such transfer, sale, lease, assignment or disposition of, including but not limited to, by force or voluntary sale, merger, consolidation, receivership or other means or acquisition of control of the Grantee the County may inquire into the legal, financial, character, technical and other public interest qualifications of the prospective controlling party, and the Grantee shall assist the County in any such inquiry. Failure to provide all information reasonably requested by the County as part of said inquiry may be grounds for denial of the proposed transfer, sale, lease, assignment or disposition of, including but not limited to, by force or voluntary sale, merger, consolidation, receivership or other

means or acquisition of control of the Grantee. After considering the legal, financial, technical, and any other proper qualifications of the applicant, which affect the public interest, the County will transfer and assign the rights and obligations of such Franchise. The consent of the County to such transfer shall not be unreasonably withheld.

(D) **Assumption of Control.** The County agrees that any financial institution having a pledge of the Franchise or its assets for the advancement of money for the construction and/or operation of the System, after notification of the County, shall have the right to take control and operate the System, per the pledge agreement. Further, said financial institution shall also submit a plan for such operation that will insure continued service and compliance with all Franchise obligations during the term the financial institution exercises control over the System. The financial institution shall not exercise control over the System for a period exceeding one year, unless extended by the County at its discretion and during said period of time it shall have the right to petition for transfer of the Franchise to another Grantee.

(E) **Regulation of Transfer.** The consent or approval of the County to any transfer of the Grantee shall not constitute a waiver or release of the rights of the County in and to the streets, rights-of-way, or areas appurtenant thereto, and any transfer shall, by its terms, be expressly subject to the terms and conditions of this Ordinance and the Franchise.

(F) **Construction Requirement.** In the absence of extraordinary circumstances, the County will not approve any transfer or assignment of the Franchise prior to completion of construction of the proposed initial System or planned upgrade/rebuild or expansion of a current operating System.

(G) **Signatory Requirement.** Any approval by the County of Transfer shall be contingent upon the prospective controlling party becoming a signatory to the Franchise.

(H) **Exceptions.** Notwithstanding anything to the contrary no such consent shall be required for any transfer to any person controlling, controlled by or under the same common corporate control of the Grantee so long as the Grantee continues to guarantee the performance, under the terms of the Ordinance and the Franchise Agreement, of the Transferee.

(I) **Fees.** Per the then current FCC policy, the County shall be reimbursed for administrative, legal and consultant fees paid, by the County, in connection with the transfer.

§ 112.30 FRANCHISE RENEWAL.

The Grantee shall own the System, but shall have no right to use of Public Rights-of-Way upon the completion of the Franchise term. The County shall grant or deny renewal of the Franchise of a Grantee in accordance with Section 626 of the Communications Act (47 U.S.C. 546) or other applicable law.

*OPERATION***§ 112.40 POLICE POWERS.**

(A) **Acknowledgments.** In accepting the Franchise, the Grantee acknowledges that its rights hereunder are subject to the police power of the County to adopt and enforce general ordinances necessary to the safety and welfare of the public, and it agrees to comply with all applicable general laws and ordinances enacted by the County pursuant to such power.

(B) **Conflict.** Any conflict between the provisions of this Ordinance or the Franchise and any other present or future lawful exercise of the County's general police powers shall be resolved in favor of the County's general police power, except that any such exercise that is not of general application in the jurisdiction or applies exclusively to Grantee or Systems which contains provisions inconsistent with this Ordinance shall prevail only if, upon such exercise, the County finds an emergency exists constituting a danger to health, safety, property or general welfare and such exercise is mandated by law.

§ 112.41 FORFEITURE OR REVOCATION.

(A) **Grounds for Revocation.** The County reserves the right to revoke any Franchise granted hereunder and rescind all rights and privileges associated with the Franchise in accordance with the Communications Act and with the procedures set forth herein in the following circumstances, each of which represents a default and breach under the Ordinance and the Franchise grant:

(1) If the Grantee shall default in the performance of any of the material obligations under this Ordinance or under such documents, contracts and other terms and provisions entered into by and between the County and the Grantee, including timely payment of any amounts owed.

(2) If the Grantee shall fail to provide or maintain in full force and effect the liability insurance coverage, indemnification and performance bond requirements.

(3) If the Grantee shall violate any orders or rulings of any regulatory body having jurisdiction over the Grantee relative to this Ordinance or the Franchise and after notice thereof, shall continue the violation and not remedy the same within sixty (60) days.

(4) If the Grantee practices any fraud or engages in any unfair or deceptive act or practice with regard to the County or Subscribers under the laws of the State.

(5) The Grantee's construction schedule is delayed later than the schedule contained in the Franchise or beyond any extended date set by the County.

(6) The Grantee becomes insolvent, unable or unwilling to pay its debts or is adjudged bankrupt.

(7) The Grantee fails to restore service after ninety-six (96) consecutive hours of interrupted service, except when written approval of such interruption is obtained from the County, or except in cases of a major Act of God, in which case service shall be restored as soon as is practically possible.
(Am. Ord. passed 11-15-02)

(8) The Grantee misrepresents a material fact in the application for or negotiation of the Franchise or any extension or renewal thereof.

(9) The Grantee ceases to provide cable services for any reason that is within the control of the Grantee over the System.

(B) Effect of Circumstances Beyond Control of Grantee. The Grantee shall not be declared at fault or be subject to any sanction under any provision of this Ordinance in any case, in which performance of any such provision is prevented or delayed due to an Act of God for reasons beyond the Grantee's control. A fault shall not be deemed to be beyond the Grantee's control if committed by a corporation or other business entity in which the Grantee holds a controlling interest, whether held directly or indirectly.

(C) Court Order. Grantor and Grantee will abide by the terms of any stay order issued by a court of competent jurisdiction.

(D) Procedure Prior to Revocation.

(1) The County shall make written demand that the Grantee comply with any such material requirement, limitation, term, condition, rule or regulation or correct any action deemed cause for revocation. If the failure, refusal or neglect of the Grantee continues for a period of thirty (30) days following such written demand, the County shall place its request for termination of the Franchise upon a regular Board meeting agenda. The County shall cause to be mailed by certified mail with return receipt requested to such Grantee at least fifteen (15) days prior to the date of such Board meeting, a written notice of intent to request termination and the reason therefor, and the time and place of the meeting, notice of which shall be published by the Clerk to the Board of Commissioners at least once, ten (10) days before such meeting in a newspaper of general circulation within the County.
(Am. Ord. passed 11-18-02)

(2) The Board shall hear any persons interested therein, and shall determine in its discretion, whether or not any failure, refusal or neglect by the Grantee was with just cause.

(3) If such failure, refusal or neglect by the Grantee was with just cause, as reasonably defined by the County, the Board shall direct the Grantee to comply with the terms of the written demand within such time and manner and upon such terms and conditions as are reasonable.

(4) If the Board shall determine such failure, refusal, or neglect by the Grantee was without just cause, then the Board shall, by resolution, declare that the Franchise of the Grantee shall be terminated and bond forfeited either conditionally or unconditionally.

(5) If the Revocation of the Franchise depends upon a finding of fact, such finding of fact shall be made by the County only after an administrative hearing, providing the Grantee with a full and fair opportunity to be heard, including without limitations the right to introduce evidence, the right to production of evidence and right to question witnesses. A transcript shall be made of such hearings. The Grantee shall have the right to appeal any such administrative decision to a court of competent jurisdiction.

(E) **Disposition of Facilities.** In the event a Franchise is revoked or otherwise terminated, the County may, in its sole discretion, do any of the following:

(1) Purchase the System under the procedures set forth in this Ordinance, at a Fair Market Price.

(2) Transfer the System under the procedures set forth in this Ordinance, at a Fair Market Price. (Am. Ord. passed 11-18-02)

(3) Order the removal of the System facilities required by public necessity from the County within a reasonable period of time as determined by the County or require the original Grantee to maintain and operate its System for a period of six (6) months or until such further time as is mutually agreed upon.

(F) **Restoration of Property.** In removing its System, or part thereof, the Grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good a condition or better as that existing prior to the Grantee's removal of its System without affecting the electrical or telephone cable, wires, or attachments. The County may inspect and approve the condition of the public ways and cables, wires, attachments, and poles after removal. The liability, indemnity, insurance and performance bond as provided herein shall continue in full force and effect during the period of removal and until the Grantee has fully complied with the terms and conditions of this Ordinance and the Franchise.

(G) **Restoration by County: Reimbursement of Costs.** In the event of a failure by the Grantee to complete any restoration work required by the County within the time as may be established by the County and to the satisfaction of the County, the County may, following reasonable notice to the Grantee, cause such work to be done and the Grantee shall reimburse the County the cost thereof within thirty (30) days after receipt of an itemized list of such cost, or the County may at its option recover such costs through the performance bond provided by Grantee. The County shall be permitted to seek legal and equitable relief to enforce the provisions of this Section.

(H) **Extended Operation.** Upon either the denial of renewal or revocation of a Franchise, the County may require the Grantee to continue to operate the System for a period of six (6) months from the date of such denial or revocation, or until such time beyond six (6) months as is mutually agreed

upon. The Grantee shall, as trustee for its successor in interest, continue to operate the System under the terms and conditions of this Ordinance and the Franchise. The County shall be permitted to seek legal and equitable relief to enforce the provisions of this Section.

§ 112.42 RECEIVERSHIP AND FORECLOSURE.

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

(1) Such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Ordinance and the Franchise granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all defaults under the Franchise; and

(2) Such receivers, or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the Court having jurisdiction whereby such receivers or trustees assume and agree to be bound by the terms of the Franchise.

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

(1) The County shall have approved the transfer of the Franchise as provided by this Ordinance, and

(2) Such successful bidder shall have covenanted and agreed with the County to assume and be bound by every term, provision, and conditions of the Franchise herein granted.

§ 112.43 EQUAL OPPORTUNITY POLICY.

Equal opportunity employment shall be afforded by the Grantee to all qualified persons, and no person shall be discriminated against in employment because of race, color, religion, age, national origin, sex, or handicap. Grantee shall comply with all equal opportunity provisions enacted by Federal, State and local authorities, and in particular Section 634 of the Communications Act (47 U.S.C. 554), as well as all such provisions contained in this Ordinance and the Franchise.

§ 112.44 NOTICES.

All notices from Grantee to the County pursuant to this Ordinance and the Franchise shall be to the County Manager or his/her designee. Grantee shall maintain with the County, throughout the term of the Franchise, an address for service of notices by mail which address shall be noted in the Franchise Agreement.

§ 112.45 FAILURE OF COUNTY TO ENFORCE THIS FRANCHISE, NO WAIVER OF THE TERMS THEREOF.

The Grantee shall not be excused from complying with any of the terms and conditions of this Ordinance or the Franchise by any failure of the County upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

§ 112.46 RIGHTS RESERVED TO THE GRANTOR.

(A) **Right of Inspection of Records.** The County shall have the right to inspect all books, records, reports, maps, plans, financial statements, and other like materials of the Grantee, upon 24 hours notice at any time during normal business hours, when necessary to ascertain the Grantee's compliance with this Ordinance, the Franchise and all applicable laws.
(Am. Ord. passed 11-18-02)

(B) **Right of Inspection of Construction.** The County shall have the right to inspect all construction or installation work performed subject to the provisions of the Franchise and to make such tests as it shall find necessary to ensure compliance with the terms of this Ordinance and all applicable laws.

(C) **Right of Inspection of Property.** At all reasonable times, Grantee shall permit examination by any duly authorized representative of the County of the System, together with any appurtenant property of Grantee situated within or without the County when necessary to ascertain the Grantee's compliance with this Ordinance, the Franchise and all applicable laws.

(D) **Right of Intervention.** The County shall have the right of intervention in any suit or proceeding to which the Grantee is party, and the Grantee shall not oppose such intervention by the County.

§ 112.47 NO RECOURSE AGAINST THE GRANTOR.

Except when seeking equitable relief, the Grantee shall have no recourse whatsoever against the County or its officials, boards, commissions, agents, or employees for any loss, cost, expense or damage arising out of any provision or requirements of the Franchise or because of the enforcement of this Ordinance or the Franchise.

§ 112.48 PENALTIES.

Failure to comply with the provisions of this ordinance shall subject the Grantee to all penalties provided by law and as enumerated in the Franchise Agreement.

§ 112.49 REGULATORY AUTHORITY.

(A) The County shall exercise appropriate regulatory authority under the provisions of this Ordinance, the Communications Act, and all applicable law. This authority shall be vested in the Haywood County Board of Commissioners and administered through the County Manager or his/her designee in order to provide day-to-day administration and enforcement of the provisions of this Ordinance and any Franchise granted hereunder, and to carry out the County's responsibilities with regard to cable television.

(B) Notwithstanding any other provisions of this Ordinance to the contrary, the Grantee shall at all times comply with all laws and regulations of the local, state and federal government. In the event that any actions of the state or federal government or any agency thereof, or any court of competent jurisdiction upon final adjudication, substantially reduce in any way the power or authority of the County under this Ordinance or the Franchise, or if in compliance with any local, state, or federal law or regulation, the Grantee finds conflict with the terms of this Ordinance, the Franchise, or any law or regulation of the County, then as soon as possible following knowledge thereof, the Grantee shall notify the County of the point of conflict believed to exist between such law or regulation and the laws or regulations of the County, this Ordinance and the Franchise. The County or the Grantee may notify the other party that it wishes to renegotiate those provisions which are affected in any way by such modification in regulations or other statutory authority. Thereafter, the Grantee and the County shall negotiate in good faith in the development of alternate provisions which shall fairly restore the County to the maximum level of authority and power permitted by law.

(C) The County reserves the right to exercise the maximum plenary (full) authority, as may at any time be lawfully permissible, to regulate the System, the Franchise and the Grantee. Should applicable legislative, judicial or regulatory authorities at any time permit regulation not presently permitted to the County, the County may, following good faith negotiations, engage in any such additional regulation as may then be permissible, whether or not contemplated by this Ordinance or the Franchise, including without limitation, regulation regarding Franchise Fees, taxes, programming, rates charged to Subscribers and users, consumer protection, or any other matter. The County shall have the right to modify any of the provisions to such reasonable extent as may be necessary to carry out the full intent and purpose of this Ordinance and the Franchise in accordance with Federal and State law, provided, however, no modifications shall increase the obligation of the Grantee or limit the rights of the Grantee hereunder.

§ 112.50 SUPERVISION OF THE FRANCHISE.

(A) The County shall have the following regulatory responsibility:

(1) Administration and enforcement of the provisions of this Ordinance and any Franchise granted hereunder to the full extent necessary to assure compliance with the Ordinance and the Franchise Agreement.

(2) Award, renewal, extension or termination of a Franchise pursuant to the provisions of this Ordinance, the Franchise, and other applicable law.

(3) Consent prior to Transfer of any Franchise granted hereunder.

(4) Performance evaluation of the Grantee.

(5) Rate and service regulation, if applicable.

(B) The County also reserves the right to perform the following functions:

(1) Develop objectives and coordinate activities related to the operation of Government Access Channels.

(2) Approve procedures and standards for Public, Educational and Government access operations and services, including the use of dedicated channels and sharing of public facilities.

(3) Coordinate plans for expansion, interconnection and growth of cable services.

(4) Analyze the possibility of integrating cable communications with other County, State or regional Cable Television networks.

(5) Formulate and recommend long-range Cable Television policy for the County, and determine the County's view of the future cable-related needs and interests of the community.

(6) Provide the administrative effort necessary for the conduct of performance evaluations, and any other activities required for the administration of the Franchise.

(7) Monitor Grantee's process for handling citizen complaints and periodically inspect and analyze the records related to such complaints.

(8) Receive applications for rate increases, if applicable, and provide staff assistance in the analysis and recommendations thereto.

(9) Monitor Grantee's adherence to operational standards, service requirements and line extension policies.

(10) Assure compliance with applicable laws and ordinances.

(11) Arrange tests and analysis of equipment and performance, as needed to insure compliance with this Ordinance and the Franchise.

(12) Assure continuity in service.

(13) Receive for examination all data and reports required by this Ordinance.

(C) **Cable TV Advisory Committee.** The County may in its discretion establish a cable advisory committee. The duties of this committee may be reposed in an existing committee. The responsibilities of the Committee shall include, but not be limited to, the following:

(1) Monitor and advise the Board and County administration on the provisions of this Ordinance and related ordinances.

(2) Serve as an advisory body for the Public, Educational, and Governmental Access channels of cable television and any institutional programming that may be developed.

(3) Advise the County government of objectives to be obtained in the County's System based upon its continued evaluation of the County's cable television Franchise, cable technology, and the future cable-related needs and interests of the community.

(4) Prepare an annual report to the Board.

(5) Cooperate with the County and the Grantee in fulfilling its responsibilities herein.

(D) **Interconnectivity.** Upon the request of the County, the Grantee shall interconnect its System, for the purpose of sharing Public, Education or Government Access Channels with any other like cable television facility operating in the County. The Grantee further agrees that it will bear its share of the cost of any interconnection. Such costs will be allocated between and among the Systems being interconnected in an equitable manner. The Grantee may not construct any physical facilities to provide an interconnection with other cable communications or data Systems until the plans for such interconnection have been approved by the Board.

§ 112.51 PERFORMANCE EVALUATIONS.

(A) **Scheduled Performance Evaluations.** The County and the Grantee may, at the discretion of the County, hold scheduled performance evaluation sessions. All such evaluation sessions shall be open to the public, to the extent required by law.

(B) **Special Evaluation Sessions.** Special evaluation sessions shall be held at any time during the term of the Franchise at the request of the County.

(C) **Notice of Public Hearings on Performance.** All evaluation sessions before the Board shall be open to the public and announced once in a newspaper of general circulation and announced for five consecutive days on the Government Access Channel.

(D) **Items for Review.** Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, System performance and construction, Grantee compliance with this Ordinance and the Franchise, customer service and complaint response, Subscriber privacy, services provided, programming offered, service rate structures, Franchise Fees, penalties, free or discounted services, applications of new technologies, judicial and FCC filings, and line extension policies.

(E) **Cooperation.** During the review and evaluation by the County, the Grantee shall fully cooperate with the County and shall provide such information and documents as the County may need to reasonably perform its review.

§ 112.52 AUTHORITY TO CONSTRUCT.

(A) **Authorization to Commence Construction and Application Procedures.** Within thirty (30) days of the acceptance by the Grantee of an initial Franchise, the Grantee shall apply for any needed contracts for use of poles. Within thirty (30) days after completion of the make-ready survey identifying the routes of the System facility, the Grantee shall apply for all additional licenses from the State, County, or other necessary parties, such as the railroads for crossing under or over their property. In any event, all necessary applications for permits, licenses, certificates and authorizations shall be applied for in a timely fashion so that such filing and processing shall not interfere with or cause delay with the construction scheduled as outlined in the Franchise. Failure to make such timely application and timely filing shall constitute a substantial violation of this Ordinance.

(B) **Power to Contract.** Upon grant of the Franchise and in order to construct, operate and maintain a cable System in the County, the Grantee may enter into contracts with any public utility companies or any other owner or lessee of any poles or underground areas located within the County; obtain right-of-way permits from appropriate County, State, City, and Federal officials necessary to cross or otherwise use highways or roads under their respective jurisdiction; obtain permission from the Federal Aviation Administration to erect and maintain antennas; and obtain whatever other permits a County, City, State or Federal agency may require.

§ 112.53 CONSTRUCTION AND TECHNICAL STANDARDS.

(A) **Compliance with Construction and Technical Standards.** Grantee shall construct, install, operate and maintain its System in a manner consistent with all laws, ordinances, construction standards, governmental requirements and FCC technical standards. The Grantee, through the System, shall provide uniform, strong signals which are free from any significant distortion and interference. The System shall be designed, constructed, operated and maintained for 24-hours-a-day continuous operation. The System shall produce, for reception on Subscribers' receivers which are in good

working order, either monochrome or color pictures (providing the receiver is color capable) which are free from any significant interference or distortion which would cause any material degradation of video or audio quality. Off air channels shall be delivered in accordance with the applicable technical specifications, rules and standards set forth in Part 76, Subpart K and Part 78 of the Federal Communications Commission's rules, as such rules may be amended from time to time.

(Am. Ord. passed 11-18-02)

(B) System Design. Any System operating within the County shall at a minimum meet the following:

(1) The System will be spaced to permit a minimum operation, which shall be stated in the Franchise Agreement and will be capable of utilizing State-of-The-Art technology.

(2) The System will utilize converters which will make the System adaptable for the development of future services.

(C) Poles. Grantee will comply with the existing permitting process for use of the public ways.

(D) Contractor Qualifications. Any contractor or subcontractor proposed for work of construction, installation, operation, maintenance, and repair of System equipment must be properly licensed under laws of the State, and all local ordinances.

(E) System Equipment. The System erected by the Grantee within the County shall be so located as to cause minimum interference with the proper use of the public ways, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways. No pole or other fixtures placed in any public ways by the Grantee shall be placed in such a manner as to interfere with normal travel on such public way.

(F) Maps. The County does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures. In public rights-of-way, where necessary, the location shall be verified by excavation. Grantee may make use of ULOCO or some other utilities location service and at Grantee's expense.

(G) Quality of Construction. Construction, installation, operation, and maintenance of the System shall be performed in an orderly and workmanlike manner, in accordance with then current technological standards. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

(H) Construction Standards. Grantee shall at all times comply with: (1) National Electrical Safety Code (National Bureau of Standards); (2) National Electrical Code (National Bureau of Fire Underwriters); (3) Bell System Code of Pole Line Construction; (4) applicable FCC or other Federal, State and local regulations; and standards as set forth in the Franchise.

(I) **Non-interference.** In any event, the System shall not endanger or interfere with the safety of persons or property in the Franchise area or other areas where the Grantee may have equipment located.

(J) **Antennas.** Any antenna structure used in the System shall comply with construction, marking, and lighting of antenna structure standards as required by Federal and State law or regulation.

(K) **OSHA.** All worker facilities, conditions, and procedures that are used during construction, installation, operation, and maintenance of the cable System shall comply with the standards of the Occupational Safety and Health Administration.

(L) **Standby Power.** The Grantee shall maintain equipment capable of providing standby power for a minimum of twenty-four (24) hours for the headend.

§ 112.54 USE OF STREETS.

(A) **Underground Installation.** All installations shall be underground in those areas of the County where public utilities providing telephone and electric service are underground at the time of installation. In areas of the County where either telephone or electric utility facilities are above ground at the time of installation, Grantee may install its service above ground, provided that at such time as those facilities are required to be placed underground by the County or are placed underground, the Grantee shall likewise place its services underground without direct additional cost to the County or to the individual Subscribers so served within the County. Where not otherwise required to be placed underground by this Ordinance or the Franchise, the Grantee's System shall be located underground at the request of the adjacent property owner, provided that the excess cost over the aerial location shall be borne by the property owner making the request.

(B) **Approvals.** Prior to construction or alteration, Grantee will obtain all required construction permits.

(C) **Interference with Persons, Improvements, Public and Private Property and Utilities.** The System shall be located, erected and maintained so that such facilities shall:

- (1) Not endanger or interfere with the health, safety or lives of persons;
- (2) Not interfere with any improvements the County, City or State may deem proper to make;
- (3) Not interfere with the free and proper use of public ways except to the minimum extent possible during actual construction or repair;
- (4) Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction or repair; and

(5) Not obstruct, hinder or interfere with any gas, electric, water or telephone facilities, easements, property rights, or other utilities facilities' easements located within the County.

(D) **Restoration to Prior Condition.** In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the County, replace and restore all paving, sidewalk, driveway, landscaping, or surface of any street or alley disturbed, consistent with the practices of local utilities. Such restoration shall be undertaken within no more than 10 business days after the damage is incurred and shall be completed as soon as possible thereafter. Such closing shall be at the expense of the Grantee.

(E) **Private Property.** Grantee shall be subject to all laws, ordinances or regulations regarding private property or regulations regarding private property in the course of constructing, installing, operating or maintaining the System. Grantee shall promptly repair or replace all private property, both real and personal, damaged or destroyed as a result of the construction, installation, operating, or maintenance of the System at its sole cost and expense.

(F) **Relocation of the Facilities.** In the event that at any time during the period of the Franchise, the County or State shall lawfully elect to alter, or change, the grade of any street, alley or other public ways, the Grantee, upon reasonable notice by the proper authority, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own cost and expense.

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

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

RATES

§ 112.60 FRANCHISE FEES.

(A) Because the County finds that:

(1) The public ways of the County and State to be used by the Grantee in the operation of its System within the boundaries of the Franchise area are valuable public properties acquired and maintained at great expense to its taxpayers, and

(2) The grant to the Grantee to the said public ways is a valuable property right without which the Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, and

(3) The administration of this Ordinance or the Franchise imposes upon the County additional regulatory responsibility and expense.

A Grantee of any Franchise hereunder shall pay to the County a Franchise Fee in an amount as designated in the Franchise Agreement. The County reserves the right to change the Franchise Fee as stated in the Franchise Agreement, by adopting an ordinance establishing the new Franchise Fee rate and allowing reasonable notice to the Grantee for administration of the change. This Franchise Fee payment shall be in addition to any other fee and commence as of the effective date of the Franchise. The County shall be furnished a statement of said payment by the Grantee, reflecting the total amounts of Gross Annual Revenues and computations for the period covered by the payment

(B) Franchise Fee in addition to Other Tax. This payment shall be in addition to any other tax or payment of general applicability owed by the Grantee to other units of government or taxing jurisdictions. Payment of the Franchise Fee made by Grantee to the County shall be in addition to any and all taxes of general applicability which are now or may be required hereafter to be paid by any Federal, State, or Local law.

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

(D) Failure to Make Required Payment. In the event that any Franchise payment or recomputed amount is not made on or before the dates specified herein, Grantee shall pay as additional compensation an interest charge, computed from such due date, at the annual rate equal to the commercial prime interest rate of the County's primary depository bank plus 3% during the period that such unpaid amount is owed.

(E) Quarterly Payments. The Franchise Fee and any other costs, charges, or damages assessed shall be payable quarterly to the County. The Grantee shall file a complete and accurate verified statement of all Gross Annual Revenue within the Franchise area during the period for which said quarterly payment is made, and said payment shall be made to the County not later than forty-five (45) days after the expiration of each calendar quarter. Quarterly computation dates are the last day in the months of March, June, September and December.

(F) Audits. The County shall have the right to inspect the Grantee's income records and the right to audit and to recompute any amounts determined to be payable under this Ordinance. Audits shall be at the expense of the Grantee if the additional amount due is greater than two percent (2%) of the amount paid. Any additional amount due to the County as a result of the audit shall be paid within thirty (30) days following written notice to the Grantee by the County which notice shall include a copy of the audit report.

§ 112.61 RATES AND CHARGES.

(A) **Schedule Filings.** Grantee shall file with the County schedules which shall describe all services offered, all rates and charges of any kind, and all terms and conditions relating thereto. Grantee shall notify County and Subscribers in writing at least thirty (30) days prior to the implementation of any change in services offered, rate charges, or terms and conditions related thereto, as may be required by law.

(B) **Nondiscriminatory Rates.** To the extent required by applicable Federal or State Law, Grantee shall establish rates that are nondiscriminatory within the same general class of subscribers which must be applied fairly and uniformly to all subscribers in the Franchise area for all services. Nothing contained herein shall prohibit the Grantee from offering (i) discounts to commercial and multiple family dwelling subscribers billed on a bulk basis; (ii) promotional discounts; (iii) reduced installation rates for subscribers who have multiple services; or (iv) discounts for senior citizens and/or low income residents. To the extent required by federal, state, or local law or regulation, Grantee's charges and rates for all services shall be itemized on subscriber's monthly bills.

(C) **County Regulation.** To the extent that Federal or State law or regulation, and in particular Section 626 of the Communications Act (47 U.S.C. 543) and the regulations of the FCC, may now, or as the same may hereafter be amended to, authorize the County to regulate the rates for any particular service tiers, service packages, equipment, or any other services provided by Grantee, the County shall have the right to exercise rate regulation to the full extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the County.

(D) **Ability to Petition.** If applicable, the County shall have the right to petition the FCC or other appropriate agency or organization to obtain rate regulation authority or to petition the federal body to review or regulate rates in the County.

ADMINISTRATION AND ENFORCEMENT**§ 112.70 PERFORMANCE BOND.**

(A) **Performance Bond.** Upon the effective date of the Franchise, the Grantee shall obtain and maintain during the entire term of the Franchise and any extensions and renewals thereof, at its cost and expense, and file with the County, a corporate surety bond in an amount no less than \$50,000, as specified in the Franchise Agreement to guarantee the faithful performance of the Grantee of all its obligations provided under this Ordinance and the Franchise. Failure to timely obtain, file and maintain said bond shall constitute a substantial violation within the meaning of this Section.

(B) **Conditions.** The performance bond shall provide the following conditions:

(1) There shall be recoverable by the County jointly and severally from the principal and surety, any and all fines and liquidated damages due to the County and any and all damages, losses, costs, and expenses suffered or incurred by the County resulting from the failure of the Grantee to: faithfully comply with the provisions of this Ordinance and the Franchise; comply with all orders, permits and directives of any County agency or body having jurisdiction over its acts or defaults; pay fees due to the County; pay any claims, liens or taxes due the County which arise by reason of the construction, operation, maintenance or repair of the cable System. Such losses, costs and expenses shall include, but not be limited to, attorney's fees and other associated expenses.

(2) The total amount of the bond shall be forfeited in favor of the County in the event:

(a) The Grantee abandons the cable System at any time during the term of the Franchise or any extension thereto; or

(b) The Grantee transfers the Franchise without the express written consent of the County.

(C) **Reduction of Bond.** Upon written application by the Grantee, the County may, at its sole option, permit the amount of the bond to be subject to the following conditions: Reductions granted or denied upon application by the Grantee shall be without prejudice to the Grantee's subsequent applications or to the County's right to require the full bond without notice at any time thereafter. However, no application for reduction shall be made by the Grantee within one (1) year of any prior application for reduction of within the first five (5) years of the franchise.

(D) **Use of Performance Bond.** Prior to drawing upon the performance bond for the purposes described in this Section, the County shall notify the Grantee in writing by certified or registered mail, return receipt requested, that payment is due and the Grantee shall make a full and complete payment. If the Grantee does not make the payment within ten (10) days from the mailing of the notice, the County may withdraw the amount thereof, with interest and penalties, from the performance bond.

(E) **Notification.** Within three (3) days of a withdrawal from the performance bond, the County shall send to the Grantee, by certified mail, return receipt requested, written notification of the amount, date and purpose of such withdrawal.

(F) **Replenishment of Performance Bond.** No later than thirty (30) days after mailing to the Grantee by certified mail notification as described in E above of a withdrawal pursuant to paragraph D above, the Grantee shall replenish the performance bond in an amount equal to the amount so withdrawn. Failure to make timely replenishment of such amount to the performance bond may constitute a substantial violation of this Ordinance.

(G) **Non-Renewal, Alteration, or Cancellation of Performance Bond.** The performance bond required herein shall be in a form satisfactory to the County and shall require thirty (30) days written notice of any non-renewal, alteration or cancellation to both the County and the Grantee. The Grantee

shall, in the event of any such cancellation notice, obtain, pay all premiums for, and file with the County, written evidence of the issuance of replacement bond or policies within thirty (30) days following receipt by the County or the Grantee of any notice of cancellation, and failure to do so constitutes a substantial violation of this Ordinance.

(H) **Inflation.** To offset the effects of inflation the amounts of the bond provided for herein, shall be increased by the annual rate of inflation at the end of every three (3) year period of the Franchise, applicable to the next three (3) year period, upon the request of the County.

§ 112.71 LIABILITY AND INSURANCE.

(A) **Certificate of Insurance.** Prior to commencement of construction, but in no event later than sixty (60) days after the effective date of the Franchise and thereafter, the Grantee shall continuously maintain insurance as defined by this Section and shall throughout the duration of the Franchise and any extensions or renewals thereof, the Grantee shall furnish to the County, certificates of insurance, approved by the County, for all types of insurance required under this Section. Failure to furnish said certificates of insurance in a timely manner shall constitute a violation of this Ordinance.

(B) **Filing.** Any insurance policy or certificate thereof obtained by the Grantee in compliance with this Section shall be filed and maintained with the County Manager or his/her designee during the term of the Franchise, and may be changed from time to time to reflect changing liability limits and/or to compensate for inflation. Grantee shall immediately advise the County of any litigation that may develop that would affect this insurance.

(C) **No Limit of Liability.** Neither the provisions of this Section nor any damages recovered by the County hereunder, shall be construed to or limit the liability of the Grantee under any Franchise issued hereunder or for damages.

(D) **Enforcement.** All insurance policies maintained pursuant to this Ordinance or the Franchise shall contain the following, or a comparable, endorsement:

“It is hereby understood and agreed that this insurance policy may not be canceled by the insurance company nor the intention not to renew be stated by the insurance company until thirty (30) days after receipt by the County Manager, by registered or certified mail, of a written notice of such intention to cancel or not to renew.”

(E) **Hold Harmless Clause.** All contractual liability insurance policies maintained pursuant to this Ordinance or the Franchise shall include the following hold harmless clause:

“The Grantee agrees to indemnify, save harmless and defend the County, its officials, agents, servants, and employees, and each of them against and hold it and them harmless from any and all lawsuits, claims, demands, liabilities, losses and expenses, including court costs and reasonable attorney’s fees, for or on account of any injury to any person, or any death at any time resulting from such injury, or any damage to any property,

which may arise or which may be alleged to have arisen out of or in connection with the work covered by the Franchise and performed or caused to be performed. The foregoing indemnity shall apply except if such injury, death or damage is caused by the negligence or other fault of the County, its agents, servants, or employees, or any other person indemnified hereunder.”

(F) **State Institution.** All insurance policies provided under the provisions of this Ordinance or the Franchise shall be written by companies authorized to do business in the State and approved by the State’s Commissioner of Insurance.

(G) **Named Insured.** At any time during the term of the Franchise, the County may request and the Grantee shall comply with such request, to name the County as an additional named insured for all insurance policies written under the provisions of this Ordinance or the Franchise.

(H) **Inflation.** To offset the effects of inflation and to reflect changing liability limits, all of the coverages, limits, and amounts of the insurance provided for herein will be increased at the end of every three (3) year period of the Franchise at the annual rate of inflation, applicable to the next three year period, upon the request of the County.

(I) **General Liability Insurance.** The Grantee shall maintain, and by its acceptance of any Franchise granted hereunder specifically agree that it will maintain throughout the term of the Franchise, general liability insurance insuring the Grantee in the minimum of:

- (1) \$2,000,000 for property damage per occurrence;
- (2) \$2,000,000 for property damage aggregate;
- (3) \$4,000,000 for personal bodily injury or death to any one person; and
- (4) \$5,000,000 bodily injury or death aggregate per single accident or occurrence.

(J) **Policy Inclusions.** Such general liability insurance must include, at a minimum, coverage for all of the following: comprehensive form, premises, operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, and personal injury.

(K) **Automobile Liability Insurance.** The Grantee shall maintain throughout the term of the Franchise, automobile liability insurance for owned, non-owned, or rented vehicles used by Grantee, its, agents, officials, or employees in the minimum amount of:

- (1) \$1,000,000 for bodily injury and consequent death per occurrence.
- (2) \$1,000,000 for bodily injury and consequent death to any one person.
- (3) \$500,000 for property damage per occurrence.

(L) **Worker’s Compensation and Employer’s Liability Insurance.** The Grantee shall maintain throughout the term of the Franchise, Worker’s Compensation and employer’s liability, valid in the State, in the minimum amount of:

- (1) Statutory limit for Worker's Compensation.
- (2) \$100,000 for employer's liability.

§ 112.72 INDEMNIFICATION.

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

(1) To persons or property, in any way arising out of or through the acts or omissions of Grantee, its servants, agents or employees, or to which Grantee's negligence shall in any way contribute unless caused solely by negligence or other fault of the County, its agents, servants or employees, or any other person indemnified hereunder.

(2) Arising out of any claim for invasion of the right of privacy, for defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation (excluding claims arising out of or relating to County programming).

(3) Arising out of Grantee's failure to comply with the provisions of any Federal, State, or local statute, ordinances, or regulation applicable to Grantee in its business hereunder.

(B) The foregoing indemnity is conditioned upon the following:

(1) The County shall give Grantee reasonable notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section. Nothing herein shall be deemed to prevent the County from cooperating with Grantee and participating in the defense of any litigation by its own counsel at its sole cost and expense. No recovery by the County of any sum by reason of the liquidated damages required by this Ordinance shall be subject to litigation by the Grantee, except that any sum so received by the County shall be deducted from any recovery which the County might have against the Grantee under the terms of this Section.

§ 112.73 EXTENSION OF SERVICE.

The Grantee shall provide service to all dwelling units where there are an average of twenty (20) homes per mile, within 300 feet of the pole line. In such cases where residential density does not meet the requirement, consideration will be made for line extensions based on the following policy:

(1) Line extension policy. Grantee shall extend its cable system and make cable service available to every existing residential area within the franchise area and within six (6) months for newly developed areas, whenever density of at least twenty (20) residential dwelling units per cable plant mile, as measured from the existing facilities of Grantee's cable system in the Franchise Area

(dwellings that are within the 20 homes per mile density, but who exceed the standard installation, as defined in Appendix A, shall be included in the density line count). For purposes of this section, density per cable mile shall be computed by dividing the number of residential dwelling units in the area by the length, in miles or fractions thereof, of the total length of aerial or underground cable necessary to make service available to residential dwelling units in such area in accordance with Grantee's system design parameters. The cable length shall be measured from the nearest point that is located within the Public streets or other Public property. The total cable length shall exclude the drop cable necessary to serve subscriber premises.

(2) Cost-sharing. In areas with less than twenty (20) homes per proposed cable mile, Grantee shall offer a cost-sharing arrangement to residents. Grantee shall bear its pro rata share of the current construction costs based upon the actual number of homes per mile. The cost-sharing arrangement shall consist of the following: On the request of a subscriber desiring service, Grantee shall prepare, at its cost, an engineering survey and cost analysis to determine the cost of the plant extension required to provide service to the subscriber from the closest usable point on the cable system. The cost of construction shall be allocated based on the following formula: If a request for extension into a residential area requires the construction of cable plant, which does not pass at least twenty (20) homes per mile, Grantee and subscribers will each bear their proportionate share of construction costs. For example, if there are ten (10) dwelling units per mile, Grantee's share will equal 10/20th of the construction cost. The remaining cost will be shared equally by each subscriber in the area to be constructed. The line extension formula shall also be applied to a portion of a mile meeting proportionate density requirements. For example, if there are five (5) dwelling units per one fifth mile, the Grantee shall construct the plant. The cost sharing described above would be utilized if there were less than the proportionate share of dwelling units per the portion of a mile needed to reach the dwelling units. Should additional subscribers request cable television service, subscribers utilizing the cost-sharing plan for extension shall be reimbursed pro-rata for their contribution or a proportional share thereof. In such case, the pro-rata shares shall be recalculated and each new subscriber shall pay the new pro-rata share, and all prior subscribers shall receive refunds. In any event, at the end of twenty-four (24) months from completion of the project, the subscribers are no longer eligible for refunds, and the amounts paid in construction costs will be credited to the plant account of the Grantee. The average cost of the line extension shall be recalculated annually and based upon the current costs of labor and material. Each person contributing toward the direct cost of the line extension agrees to waive all ownership interest in the line extension. All equipment and components of the line extension, including, but not limited to, cable wire, electronics and pedestals shall at all times remain the exclusive property of the Grantee.

(Am. Ord. passed 11-18-02)

§ 112.74 CONSTRUCTION REPORTING REQUIREMENTS.

(A) **Progress Report.** Within thirty (30) days of the granting of an initial Franchise Agreement pursuant to this Ordinance, the Grantee shall provide the County with a written progress report detailing initial construction work completed to date. Such report shall include a description of the progress in applying for any necessary agreements, licenses, or certifications and any other information the County

Manager may deem necessary. The content and format of the report will be determined by the County Manager and may be modified at his/her discretion.

(B) **Time Frame for Reports.** Such written progress reports shall be submitted to the County Manager's office on a monthly basis throughout the entire construction process. The County Manager or his/her designee may require more frequent reporting, if he/she determines it is necessary to better monitor the Grantee's progress.

(C) **Subscriber Information.** Prior to the commencement of initial System construction, the Grantee shall produce an informational document to be distributed to all residents of the area to be under construction, which shall describe the activity that will be taking place.

§ 112.75 TESTS AND PERFORMANCE MONITORING.

(A) **Tests.** All testing of the System shall be done in accordance with the rules and regulations of the FCC. In addition, the County, in its discretion may require other testing and reports as it determines to be necessary to protect the interests of the citizens of the County and when necessary to ascertain Grantee's compliance with this Ordinance and the Franchise Agreement.

(B) **FCC Reports.** A copy of any performance test reports required by the FCC shall be submitted to the County upon request and with reasonable notice.

(C) **Complaints.** Whenever there have been similar complaints made or when there exists other evidence, which, in the reasonable judgment of the County, casts doubt on the reliability or quality of the Grantee's System, the County shall have the right and authority to compel the Grantee to test, analyze, and report on the performance of its System. The County may require additional tests, full or partial repeat tests, different test procedures, or tests involving a specific Subscriber's terminal. Reports on such tests shall be delivered to the County no later than fourteen (14) days after the County formally notifies the Grantee and shall include the following information: the nature of the complaints which precipitated the special tests; what System component was tested; the equipment used, and procedures employed in said testing; the results of such tests; and methods by which said complaints were resolved. Said tests and analyses shall be supervised by an engineer who shall sign all records of the special tests and forward same to the County with a report interpreting the results of the tests and recommending what actions should be taken by the County. All such tests shall be at the expense of the Grantee.

(D) **Consultants.** The County shall have the right, at its expense, to employ or contract with qualified consultants and attorneys if necessary or desirable, to assist in the administration of this, or any other section of this Ordinance or the Franchise.

§ 112.76 GENERAL SERVICE STANDARDS.

The County reserves the right to enforce all relevant service rules and regulations as set forth by federal, state, and local governments. These rules and regulations include, but are not limited to, FCC

Customer Service Regulations, as hereafter amended by the FCC, and the County’s Rate and Service Regulation Ordinance, as hereafter amended by the County from time to time.

§ 112.77 SERVICES TO SUBSCRIBERS AND USERS.

(A) **Service.** Concurrently with the activation of the System in the County, the Grantee shall provide all services to subscribers as described herein and as specified in the Franchise Agreement at rates detailed in the rate schedule.

(1) The System shall carry the broad categories of programming and services listed in the Franchise. Should the Grantee desire to change the selection of programs or services offered on any of its tiers, it shall maintain the mix, quality and level of services provided over the System. Any such change in programs or services offered shall comply with the conditions and procedures contained in the Franchise, and shall be reported to the County at least thirty (30) days prior to the proposed implementation. The Grantee shall use its good faith efforts to ensure diversity of programming.

(2) Basic Service shall be offered to subscribers throughout the term of this Ordinance and the Franchise.

(3) The Grantee shall provide at the County’s request and maintain at Grantee’s sole cost, as specified in the Franchise Agreement, the following access channels:

- (a) “Government Access Channel”
- (b) “Educational Access Channel”
- (c) “Public Access Channel”

(4) The Grantee shall make available Leased Access channels, as required by Federal law.

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

(B) **Emergency Override.** The Grantee shall, without charge, provide, service and maintain public emergency override facilities to the County, as described in and prescribed by the Communications Act and the FCC.

§ 112.78 INSTALLATIONS, CONNECTIONS, AND OTHER GRANTEE SERVICES.

(A) **Standard Installations.** Standard installation shall consist of a service not exceeding three hundred (300) feet from a single point or pedestal attachment to the customer’s residence. Service drops in excess of three hundred (300) feet and concealed wiring in the home shall be charged to the subscriber based upon time and material. The desire of the Subscriber as to the point of entry into the residence shall be observed whenever possible. Runs in building interiors shall be as unobtrusive as possible. The Grantee shall use due care in the process of installation and shall repair any damage to the

Subscriber's property caused by said installation. Such restoration shall be undertaken within no more than ten (10) days after the damage is incurred and shall be completed as soon as possible thereafter.

(B) **Deposits.** Any deposit required by Grantee of Subscribers shall bear interest at a rate consistent with other service providers that require deposits, which interest shall belong to the subscriber.

(C) **Antennas and Antenna Switches.** The Grantee shall not, as a condition to providing cable service, require any subscriber or potential subscriber, to remove any existing antenna structures for the receipt of over-the-air television signals. The Grantee shall install, upon the request of the subscriber, a RF or antenna switch where required for the provision of services provided by the Grantee as required by Federal law.

(D) **Lockout Devices.** The Grantee shall provide to the potential subscriber, as part of its installation literature, information concerning the availability of a lockout device for use by a subscriber. The Grantee may require a reasonable deposit or purchase price for the use of this device, as set forth in the rate schedule. The lockout device described herein shall be made available to all subscribers requesting it beginning on the first day that any cable service is provided.

(E) **Reconnection.** Grantee shall restore service to subscribers wishing restoration of service provided subscriber shall first satisfy any previous obligations owed.

(F) **Free Disconnection.** Subscribers shall have the right to have cable service disconnected without charge. Such disconnection shall be made as soon as practicable and in no case later than fifteen (15) days following notice to Grantee of same. A refund of unused service charges shall be paid to the customer within thirty (30) days from the date of termination of service.

(G) **Delinquent Accounts.** Grantee shall use all reasonable efforts to collect on delinquent Subscriber accounts. In all cases, the Grantee shall provide the subscriber with at least ten (10) working days written notice prior to disconnection. The fee for reconnection shall not exceed the standard fee for a new connection.

(Am. Ord. passed 11-18-02)

§ 112.79 CUSTOMER SERVICE STANDARDS.

(A) The Grantee shall establish, operate and maintain in the County a manned business office and maintenance and repair facility for the purpose of receiving inquiries, requests and complaints concerning all aspects of the construction, installation, operation, and maintenance of the system and for the payment of subscribers' service charges.

(B) The Grantee shall have a listed, local, toll-free, or collect telephone number for service calls and such telephone service shall be available twenty-four (24) hours a day, seven (7) days a week according to FCC guidelines. Said number shall be made available to subscribers and the general public.

(C) The Grantee shall respond to and resolve subscribers' complaints or requests for service in connection with repairs and maintenance and malfunctions of system facilities. The Grantee shall respond as quickly as possible to such complaints and requests, but shall in any case respond within the guidelines published by the FCC. Complaints or requests which may pose a potential health and safety hazard will be responded to immediately, following notification of the Grantee. In connection with billing complaints, the Grantee shall respond within time frame established by the FCC.

(D) The Grantee shall prepare and file with the County copies of all of its rules and regulations in connection with the handling of inquiries, requests and complaints. The Grantee shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints and furnish information concerning the County office responsible for the administration of the Franchise, including, but not limited to, the address and telephone number of said office.

(E) The Grantee shall keep full records, as prescribed by the FCC, in connection with Customer Service Standards.

(F) The County may review and monitor unresolved customer complaints.

(G) Customer Service Standards are specified in Appendix A: Customer Service Standards.

§ 112.80 CONTINUITY OF SERVICE MANDATORY.

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

(B) In the event that the Grantee elects to rebuild, modify or sell the System, or the County gives notice of intent to terminate or fails to renew its Franchise, the Grantee shall cooperate with the County or new Grantee or operator in maintaining continuity of service to all subscribers for a period of six (6) months or such other time as mutually agreed upon. During such period, Grantee shall be entitled to the revenues for any period during which it operates the System, and shall be entitled to reasonable costs for the services when it no longer operates the System.

(C) Failure to Provide Continuity. In the event the Grantee fails to operate the System for seven (7) consecutive days without prior approval of the County or without just cause, the County may, at its option, operate the System or designate an operator until such time as Grantee restores service under conditions acceptable to the County or a permanent operator is selected. If the County is required to fulfill this obligation for the Grantee, the Grantee shall reimburse the County for all reasonable costs or damages incurred by the County as the result of the Grantee's failure to perform.

§ 112.81 PROTECTION OF SUBSCRIBER PRIVACY MANDATORY.

Grantee shall at all times protect the privacy of subscribers, as provided in this Ordinance and other applicable Federal, State, and Local laws, and in particular, Section 631 of the Communications Act (47 U.S.C. 551).

§ 112.82 RIGHTS OF INDIVIDUALS.

Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin, age, sex, or handicap, provided the Subscriber shall pay all applicable fees for the service desired. Grantee shall comply at all times with all other applicable Federal, State and Local laws and regulations, and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this Ordinance by reference.

§ 112.83 BOOKS AND RECORDS AVAILABLE TO THE GRANTOR.

(A) The Grantee shall maintain an office within the County. The County shall have the right to inspect at any time upon 24 hours notice during normal business hours, all books, records, maps, plans, income tax returns, financial statements, service complaint logs, performance test results and other like materials of the Grantee when necessary to ascertain the Grantee's compliance with this Ordinance or the Franchise Agreement. Access to the aforementioned records shall not be denied by the Grantee on the basis that said records contain "proprietary" information.

(B) Grantee shall permit any duly authorized representative of the County upon 24 hours notice to examine and copy or transcribe any and all maps and other records kept or maintained by Grantee or under its control concerning the operations, finances, affairs, transactions or property of Grantee. If any of such maps or records are not kept in the County, or upon reasonable request made available in the County, and if the County shall determine that an examination of such maps or records is necessary or appropriate to the performance of any of their duties, then all travel and maintenance expenses necessarily incurred in making such examination shall be paid by Grantee.

(Am. Ord. passed 11-18-02)

§ 112.84 REPORTS REQUIRED.

The Grantee shall file with the County, upon reasonable request:

(A) **Regulatory Communications.** All reports required by the Federal Communications Commission (FCC) including, but not limited to annual proof of performance tests and results, and Equal Employment Opportunity (EEO) reports, and all petitions, applications and communications of all types submitted by Grantee to the FCC, the Security and Exchange Commission (SEC), or any other

Federal or State regulatory commission or agency, having jurisdiction over any matter affecting operation of Grantee's System.

(B) **Facilities Report.** An annual report setting forth the physical miles of plant construction and plant in operation during the fiscal year will be made available at the local office of the cable operator for review by County officials as needed and upon reasonable request.

(C) **Construction Reports.** Construction reports shall be sent to the County thirty (30) days after the initial Franchise Agreement is awarded and monthly thereafter until construction is completed as specified in this Ordinance.

(D) **Proof of Performance Tests.** Proof of performance test results performed as required by the FCC shall be supplied to the County upon request.

(E) **Test Required by County.** Tests required by County as specified in this Ordinance shall be submitted within thirty (30) days of notification.

(F) **Grantee Rules.** The Grantee's schedule of charges, contract or application forms of regular subscriber service policy regarding the processing of subscriber complaints, delinquent subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its subscribers shall be in accordance with applicable state and federal laws, rules or regulations.

(G) **Proof of Bonds and Insurance.** Grantee shall submit to the County the required performance bond, or a certified copy thereof, and insurance certificates as required under the terms and conditions described in this Ordinance.

(H) **Financial and Ownership Reports.** The following financial reports for the Franchise area shall be submitted to the County, upon reasonable notice and as required by the County:

(1) A statement of Gross Annual Revenues verifying all revenues from the Haywood County Franchise as certified by the Vice President for Finance or an Officer of the Grantee.

(2) An annual list of officers and members of the Board of Grantee and of any parent corporation.

(I) **Additional Reports.** The Grantee shall prepare and furnish to the County at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions or property, as may be reasonably necessary and appropriate to ascertain Grantee's compliance with this Ordinance or the Franchise Agreement.

§ 112.85 RECORDS REQUIRED.

The County may, from time to time, impose reasonable requests for information, records and documents as may be reasonably necessary and appropriate to ascertain Grantee's compliance with this Ordinance or the Franchise Agreement.

§ 112.86 PUBLIC NOTICE.

Public notice of any public meeting relating to this Ordinance or the Franchise shall be in compliance with the County Board of Commissioners special call meeting notice of the Board of Commissioners.

§ 112.87 CAPTIONS.

The captions to sections throughout this ordinance are intended solely to facilitate reading and reference to the sections and provisions of this ordinance. Such captions shall not affect the meaning or interpretation of this ordinance.

§ 112.88 FRANCHISE APPLICATIONS.

(A) Applicants for an initial Franchise shall submit to the County, a written application utilizing the standard format provided by the County, at the time and place designated by the County for accepting applications. The application shall include, at a minimum, the following:

- (1) Applicant's proper business, corporate, or partnership name;
- (2) If a corporation, applicant shall also state the corporation's process agent address for service of notice, provide a certified copy from the North Carolina Secretary of State of authorization to do business in the State;
- (3) If a partnership, application shall also contain names and addresses of all partners, names and addresses of general partner(s) responsible for overseeing the management of the Franchise;
- (4) Financial statement certified by a Certified Public Accountant;
- (5) Insurance Bonds and Certificates;
- (6) Any other material required by this ordinance or reasonably requested by the County.

(B) In awarding a Franchise, the County: shall enter into agreement with Franchisee upon any reasonable conditions it may require and subject to the provisions of this ordinance and applicable law.

(C) An application fee in the amount of \$6000 shall be paid for each initial Franchise or Franchise Renewal at the time of application for Franchise/Renewal, which fee shall be in the form of cash, certified check, or money order to defer the cost of studying, investigating, and otherwise processing such application and which shall be in consideration thereof and not refundable or returnable in whole or in part. To offset the effects of inflation, the amount of the application fee provided for herein, is subject to reasonable increase in accord with the annual rate of inflation as decided by the Board.

§ 112.89 PUBLIC HEARINGS.

Whenever a public hearing is required by this Ordinance and related communications ordinances, the public hearing must be advertised in a newspaper with general circulation within the County at least ten (10) working days before the hearing, the hearing shall be open to the public and provide for public comment and any reliable, relevant evidence that is not unduly repetitive shall be admissible.

§ 112.90 SYSTEM CONSTRUCTION SCHEDULE.

The Franchise shall specify the construction schedule. Failure to comply with the construction schedule shall constitute a breach of the Franchise and this Ordinance.

This Ordinance adopted by the Board of County Commissioners, Haywood County, State of North Carolina, this the 12th day of January, 1998, to replace the present Chapter 112 of the Haywood County Code relating to cable television, all effective on adoption.

APPENDIX A: CUSTOMER SERVICE STANDARDS**1. Subscriber Privacy**

In accordance with Section 631 of the Federal Cable Act of 1984, the Grantee shall abide by the provisions of the Act; and no less than annually, provide notice in the form of a separate written statement to subscribers the provision of the Act.

2. Employee Identification

When calling in person, on subscribers or other residents, all employees or authorized representatives of the Grantee, including subcontractors, are required to display an employee identification card with their name, photograph and signature, and a telephone number that can be used for verification of the representative capacity with the Grantee. All vehicles, including subcontractors, shall display the name of the cable-telecommunication company and a local telephone number in easily distinguishable alpha numeric characters. The telephone number is to enable local residents to call and verify the validity of personnel, vehicles and other major equipment operated by or subcontracted to the Grantee.

3. Office and Telephone Availability

A. Knowledgeable, qualified Grantee representatives shall be available to respond to customer telephone inquiries Monday through Friday during normal business hours. Additionally, based on community needs, system shall staff telephone for supplemental hours on weekdays and/or weekends.

B. Under normal operating conditions, telephone answer time by a customer service representative, including wait time required to transfer the call, shall not exceed 30 seconds. This standard shall be met no less than ninety percent of the time measured on an annual basis.

C. Under normal operating conditions, the customer shall receive a busy signal less than three percent of the total time that the cable office is open for business.

D. Business office locations shall be open for transactions Monday through Friday during normal business hours and some evenings and/or Saturdays.

E. Grantee shall be responsible for adopting, publishing and implementing subscriber complaint procedures. The procedures shall be designed to resolve subscriber complaints in a timely and satisfactory manner; to develop sensitivity and responsiveness to subscriber needs on the part of the franchise management; and to improve the quality and dependability of services to subscribers by the Grantee.

F. Established Complaint Procedures shall include specific provisions for registering subscriber repair service complaints received by telephone twenty-four (24) hours each day and

seven (7) days each week; for permitting subscriber repair service complaints to be received at the Grantee's business office from 9:00 a.m. until 5:00 p.m. on Monday through Friday of each week; and the address of the Grantee's business office.

(Am. Ord. passed 11-18-02)

4. Installations, Outage and Service Calls

Under normal operating conditions, each of the following standards shall be met no less than 95% of the time measured on an annual basis:

A. Standard installation shall be performed within seven business days after an order has been placed. "Standard" installations are up to 188 feet from the existing distribution system.

B. Excluding those situations beyond the control of the Grantee, the Grantee shall respond to service interruptions promptly and no later than 24 hours after the interruption becomes known to the Grantee. Grantee must begin actions to correct service problems unrelated to outages the next business day after notification to the Grantee of the service problem.

C. The appointment window alternatives for installations, service calls and other installation activities shall be (a) morning, (b) afternoon, or (c) all day during normal business hours. Additionally, based upon community needs, the Grantee shall schedule supplemental hours during which appointments can be set.

D. If, at any time, an installer or technician is running late, an attempt to contact the customer shall be made and the appointment reschedule as necessary at a time which is convenient for the customer.

E. The Grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible.

F. Grantee shall receive customer calls twenty-four (24) hours per day and respond to single customer outage complaint calls until 9:00 p.m. on normal business days. After 9:00 p.m. on any day, trained technicians shall respond to calls if three (3) or more complaints are received by subscribers served by a common system.

5. Communication, Statements, Refunds and Credits

A. The Grantee shall provide written information in each of the following areas at the time of installation and at any future time upon request:

- products and services offered;
- prices and service options;
- installation and service policies;
- how to use the cable service

B. Statements (billing) shall be clear, concise and understandable. The itemized charges identified on the subscriber bill as the total charge for cable service must include all fees and costs.

C. Refund checks shall be issued promptly, but no later than the earlier of 45 days or the customer's next billing cycle following the resolution of the request, and the return of the equipment supplied by the cable company.

D. Customers shall be notified in writing of Grantee's choice, a minimum of 30 days in advance of any rate or channel change, provided the change is within the control of the Grantee.

E. Outage credit granted to subscribers as follows:

Should Grantee fail to correct a service problem, other than a service interruption, within 24 hours after having been provided notice, Grantee shall credit 1/30th of the monthly charge for the affected tier or premium service program to the subscriber for each 24-hour period or fraction thereof following the first 24-hour period during which the subscriber experiences reduced service.

6. Complaint - Appeals

A. Upon notification by a subscriber of an unresolved complaint, the County Manager or his designated representative, shall determine the facts of the complaint by obtaining information from the subscriber and the Grantee; and shall act to resolve the complaint in a manner consistent with the authority granted the County Manager by the Board and as prescribed by the current FCC regulations.

B. The County reserves the right to regulate the rates to the maximum extent allowed by law, to include the filing of complaints at the FCC, as may be permitted by applicable law.