

## CHAPTER 5

### Franchises and Communication Systems

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## ARTICLE 1

### Cable Television Franchise

#### *Division 1*

#### *Definitions and Appendices*

#### **Sec. 5-1-10. Definitions.**

For the purposes of this Franchise, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word *shall* is always mandatory and not merely directory.

*Activated* means the status of any capacity or part of the cable system in which any cable service requiring the use of that capacity or part is available without further installation of system equipment, whether hardware or software.

*Affiliate*, when used in connection with the Grantee, means any person who owns or controls, is owned or controlled by or is under common ownership or control with the Grantee.

*Bad debt* means amounts lawfully billed to a subscriber and owed by the subscriber for cable service and accrued as revenues on the books of the Grantee, but not collected after reasonable efforts have been made by the Grantee to collect the charges.

*Basic service* means any cable service tier which includes, at a minimum, the retransmission of local television broadcast signals and local access programming.

*Broadcast signal* means a television or radio signal transmitted over the air to a wide geographic audience, and received by a cable system by antenna, microwave, satellite dish or any other means.

*Cable Act* means the Title VI of the Communications Act of 1934, as amended and codified at 47 U.S.C. § 151 et seq.

*Cable internet service* means any cable service offered by the Grantee whereby persons receive access to the internet through the cable system.

*Cable operator* means any person or groups of persons, including the Grantee, who provides cable service over a cable system and directly or through one (1) or more affiliates owns a significant interest in such cable system or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

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

*Cable system* means any facility, including the Grantee's, consisting of a set of closed transmissions 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:

- a. A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
- b. A facility that serves subscribers without using any right-of-way;
- c. A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Federal Communications Act (47 U.S.C. § 201 et seq.), except that such facility shall be considered a cable system (other than for purposes of Section 621(c) (47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- d. An open video system that complies with federal statutes; or
- e. Any facilities of any electric utility used solely for operating its electric utility systems.

*Channel* means a portion of the electromagnetic frequency spectrum which is used in the cable system and which is capable of delivering a television channel (as *television channel* is defined by the FCC by regulation).

*Commercial subscribers* means any subscribers, including governmental subscribers, but excluding residential subscribers.

*Designated access provider* means the entity designated now or in the future by the Town to manage or co-manage access channels and facilities. The Town may be a designated access provider.

*Downstream* means carrying a transmission from the headend to remote points on the cable system or to Interconnection points on the cable system.

*Dwelling unit* means any building, or portion thereof, which has independent living facilities, including provisions for cooking, sanitation and sleeping, and which is designed for residential occupancy. Buildings with more than one (1) set of facilities for cooking shall be considered multiple dwelling units unless the additional facilities are clearly accessory.

*Expanded basic service* means the tier of optional video programming services which is the level of cable service received by most subscribers above basic service, and does not include premium services.

*FCC* means the Federal Communications Commission.

*Fiber optic* means a transmission medium of optical fiber cable, along with all associated electronics and equipment, capable of carrying cable service by means of lightwave impulses.

*Franchise* means the document in which this definition appears; i.e., the contractual agreement executed between the Town and the Grantee, containing the specific provisions of the authorization granted to use the streets, alleys, public places or other rights-of-way of the Town, including references, specifications, requirements and other related matters.

*Franchise area* means the area within the jurisdictional boundaries of the Town, including any areas annexed by the Town during the term of this Franchise.

*GAAP* means generally accepted accounting principles.

*Generally applicable* means, when referenced to ordinances, laws or regulations, legal obligations that are not limited solely to the Grantee.

*Grantee* means US Cable of Coastal-Texas, L.P., or its lawful successor, transferee or assignee.

*Gross revenues* means any and all revenue received by the Grantee, or by any other entity, including the Grantee's affiliates, that is a cable operator of the cable system, from the operation of the Grantee's in this Franchise cable system to provide cable services area. *Gross revenues* include, by way of illustration and not limitation, monthly fees charged subscribers for basic service; any expanded tiers of cable service; optional premium services; installation, disconnection, reconnection and change-in-service fees; leased access channel fees; remote control rental fees; all cable service lease payments from the cable system; revenues from rentals or sales of converters or other cable system equipment used to receive cable service; advertising revenues; the fair market value of consideration received by the Grantee for use of the cable system to provide cable service and accounted for as revenue under GAAP; revenues from program guides; revenue from the sale or carriage of other cable services on the cable system; and revenue from home shopping, bank-at-home channels and other revenue-sharing arrangements. *Gross revenues* shall not include:

- a. Tax exempt entities;
- b. Payments or other consideration received by the Grantee from programmers for carriage of programming on the cable system to the extent that the Grantee's books and records consistent with GAAP indicate that all such payments are utilized for payments by the Grantee for advertising or promotion which are contractually required by programmers;
- c. To the extent consistent with GAAP, bad debt; provided, however, that all or part of any such bad debt that is written off but subsequently collected shall be included in gross revenues in the period collected;
- d. The Capital Contribution specified in Section 5-1-370 of this Article; or
- e. Any taxes on services furnished by the Grantee which are imposed directly on any subscriber or user by the State, Town or other governmental unit and which are collected by the Grantee on behalf of said governmental unit. The franchise fee is not such a tax.

The parties intend for the definition of *gross revenues* to be as inclusive as possible consistent with existing applicable law. If there is a change in federal law subsequent to the effective date of

this Franchise, such change shall not impact this gross revenues definition except to the extent it allows franchise fees for internet services or VoiP. If a change occurs that allows franchise fees for internet services or VoiP, the definition of *gross revenues* shall be expanded to include such revenue sources and franchise fees shall be payable on such revenues at the maximum level allowed by law.

*Headend* means any facility for signal reception and dissemination on a cable system, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators and processors for broadcast signals.

*Institutional network* or *I-Net* means that part of the cable system facilities or capacity designed principally as a private communications network governed by this Franchise and the Cable Act, to be utilized by the Town.

*Interconnect* or *interconnection* means the linking of the cable system or I-Net with another cable system, communications system or I-Net, including technical, engineering, physical, financial and other necessary components to accomplish, complete and adequately maintain such linking, in a manner that permits the transmission and receiving of electronic or optical signals between the cable system and other cable system, communications system or I-Net; or the necessary components to accomplish, complete and adequately maintain pathways that permit the transmission and receiving of electronic or optical signals between locations connected to portions of the cable system outside the franchise area and those portions of the cable system inside the franchise area.

*Leased access channel* means any channel or portion of a channel of the cable system available to the public in a manner consistent with 47 U.S.C. § 532 for commercial use by persons other than the Grantee, for a fee or charge.

*Node* means an exchange point in the signal distribution system portion of the cable system, where optical signals are converted to RF signals.

*PEG access channel* means any channel, or portion thereof, designated for PEG access purposes or otherwise made available to facilitate or transmit PEG access programming or services.

*Public, educational, and governmental access* or *PEG access* means the availability of channel capacity on the cable system for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including the Town and its designees, including, but not limited to:

a. *Public access* means access where community-based, noncommercial organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users.

b. *Educational access* means access where schools are the primary users having editorial control over programming and services. For purposes of this definition, *school* means any state-accredited educational institution, public or private, including, for example, primary and secondary schools, colleges and universities.

c. *Government access* means access where governmental institutions or their designees are the primary users having editorial control over programming and services.

*Person* means any individual, sole proprietorship, partnership, association or corporation, or any other form of entity or organization.

*Premium service* means programming choices (such as movie channels, pay-per-view programs, video on demand or a package of digital tier services) offered to subscribers on a per-channel, per-program or per-event basis.

*Residential subscriber* means any person who receives cable service delivered to dwelling units or multiple dwelling units, excluding such multiple dwelling units billed on a bulk-billing basis.

*Right-of-way* means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the franchise area: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements, rights-of-way and similar public property and areas.

*State* means the State of Colorado.

*Subscriber* means any person who elects to subscribe to, for any purpose, cable service provided by the Grantee by means of or in connection with the cable system and whose premises are physically wired and lawfully activated to receive cable service from the Grantee's cable system.

*Subscriber network* means that portion of the cable system used primarily by the Grantee in the transmission of cable services to residential subscribers.

*Telecommunications* means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. § 153(43)).

*Telecommunications service* means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used (as provided in 47 U.S.C. § 153(46)).

*Tier* means a group of channels for which a single periodic subscription fee is charged.

*Town* means the Town of Severance, Colorado, a body politic and corporate under the laws of the State of Colorado, and all of the area within its boundaries, as such may change from time to time, and any of its legally established enterprises.

*Town Administrator* means the person designated by the Town who is responsible for the Town's administrative affairs.

*Town Board* means the Town Board of Trustees, or its successor, the governing body of the Town of Severance, Colorado.

*Two-way* means capable of providing both upstream and downstream transmissions.

*Upstream* means carrying a transmission to the headend from remote points on the cable system or from interconnection points on the cable system. (Ord. 2006-06 §1.1)

**Sec. 5-1-15. Appendices.**

The following documents, which are occasionally referred to in this Franchise, are formally incorporated and made a part of this Franchise by this reference:

- (1) Appendix 5-A, entitled "Customer Service Standards."
- (2) Appendix 5-B, entitled "Credits to Customers." (Ord. 2006-06 §1.2)

*Division 2  
Grant of Franchise*

**Sec. 5-1-30. Grant.**

(a) The Town hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct, operate, maintain, reconstruct, rebuild and upgrade a cable system in, along, among, upon, across, above, over, under or in any manner connected with public ways within the service area, for the purpose of providing telecommunications and cable services subject to the terms and conditions set forth in this Franchise and in any prior utility use agreements entered into with regard to individual property. This Franchise shall constitute both a right and an obligation to provide the cable services required by, and to fulfill the obligations set forth in, the provisions of this Franchise. In the event of adoption by the state or federal government of a statewide or national franchise process, the Grantee shall have the right to terminate this Franchise upon three (3) months' prior written notice to the Town and to provide its communication services in the Town subject to the state and/or federal franchising procedures.

(b) Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable Town ordinance existing as of the effective date, as defined in Section 5-1-40.

(c) Each and every term, provision or condition herein is subject to state law, federal law and Town ordinances and regulations enacted pursuant thereto.

(d) This Franchise shall not be interpreted to prevent the Town from imposing additional lawful conditions, including additional compensation conditions for use of the rights-of-way, should the Grantee provide service other than cable service.

(e) The Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any person who is a cable operator of this cable system in the franchise area, or directly involved in the management or operation of the cable system in the franchise area, will also comply with the terms and conditions of this Franchise.

(f) No rights shall pass to the Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the Town that may be required by the ordinances and laws of the Town;

(2) Any permit, agreement or authorization required by the Town for right-of-way users in connection with operations on or in rights-of-way or public property, including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of the Town or private entities to which access is not specifically granted by this Franchise, including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

(g) This Franchise is intended to convey limited rights and interests only as to those rights-of-way in which the Town has an actual interest. It is not a warranty of title or interest in any right-of-way; it does not provide the Grantee with any interest in any particular location within the right-of-way; and it does not confer rights other than as expressly provided in the grant hereof.

(h) This Franchise does not relieve the Grantee of any obligation it may have to obtain from the Town an authorization to construct telecommunications facilities, or relieve the Grantee of its obligation to comply with any such authorizations that may be lawfully required. (Ord. 2006-06 §2.1)

**Sec. 5-1-35. Use of rights-of-way.**

Subject to the Town's supervision and control, the Grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the rights-of-way within the Town such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a cable system within the Town. The Grantee, through this Franchise, is granted extensive and valuable rights to operate its cable system for profit using the Town's rights-of-way in compliance with all applicable Town construction codes and procedures. As trustee for the public, the Town is entitled to fair compensation to be paid for these valuable rights throughout the term of this Franchise. (Ord. 2006-06 §2.2)

**Sec. 5-1-40. Effective date and term of franchise.**

This Franchise and the rights, privileges and authority granted hereunder shall take effect on August 2, 2006 (the "effective date"), and shall terminate on August 2, 2021, unless terminated sooner as hereinafter provided. (Ord. 2006-06 §2.3)

**Sec. 5-1-45. Franchise nonexclusive.**

This Franchise shall be nonexclusive, and subject to all rights, interests, easements or licenses granted by the Town to any person to use any property, right-of-way, right, interest or license for any purpose whatsoever, including the right of the Town to use the same for any purpose it deems fit, including the same or similar purposes allowed the Grantee hereunder. The Town may at any time grant authorization to use the rights-of-way for any purpose not incompatible with the Grantee's authority under this Franchise and for such additional franchises for cable systems as the Town deems appropriate on the same terms and conditions, so long as, in the reasonable discretion of the Town,

such additional franchises contain terms and conditions which, taken as a whole, are neither more favorable nor less burdensome than this Franchise. (Ord. 2006-06 §2.4)

**Sec. 5-1-50. Police powers.**

(a) The Grantee's rights hereunder are subject to the police powers of the Town to adopt and enforce ordinances necessary to the safety, health and welfare of the public, and the Grantee agrees to comply with all generally applicable laws and ordinances enacted, or hereafter enacted, by the Town or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The Town shall have the right to adopt, from time to time, such generally applicable laws and ordinances as may be deemed necessary in the exercise of its police power; provided that such ordinances shall be reasonable and not destructive of the rights granted in this Franchise.

(b) The Town reserves the right to exercise its police powers, notwithstanding anything in this Franchise to the contrary, and any conflict between the provisions of this Franchise and any other present or future lawful exercise of the Town's police powers shall be resolved in favor of the latter. (Ord. 2006-06 §2.5)

**Sec. 5-1-55. Familiarity with Franchise.**

The Grantee and the Town each acknowledges and warrants by acceptance of the rights, privileges and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms and conditions herein. (Ord. 2006-06 §2.6)

**Sec. 5-1-60. Effect of acceptance.**

By accepting this Franchise, the Grantee:

- (1) Acknowledges and accepts the Town's legal right to issue and enforce this Franchise;
- (2) Accepts and agrees to comply with each and every provision of this Franchise subject to applicable law and that, as of the effective date, this Franchise is consistent with federal and state law; and
- (3) Agrees that this Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary. (Ord. 2006-06 §2.7)

*Division 3  
Franchise Fee Payment and Financial Controls*

**Sec. 5-1-80. Franchise fee.**

(a) As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use the Town's rights-of-way, the Grantee shall pay as a franchise fee to the Town, throughout the duration of this Franchise, an amount equal to five percent (5%) of the Grantee's annual gross revenues. Accrual of such franchise fee shall commence as of the effective date of this Franchise.

(b) Whenever cable services (which are includable in gross revenues and subject to the franchise fee) are bundled (included) with noncable services (which are not includable in gross revenues) and are billed to customers, such cable services revenues shall be calculated in the following manner and included in gross revenues subject to franchise fees. Notwithstanding the foregoing, the Grantee shall be permitted a twenty-four-month moratorium of this Subsection, beginning upon the effective date of this Franchise, so as to provide the Grantee with the opportunity to gain cable television subscribers in an established market. For the twelve (12) months immediately following the initial twenty-four-month moratorium, the Grantee shall be allowed an additional modified moratorium, during which, for purposes of franchise fee calculation, the resulting discounted price for cable services in Step 6 shall not be lower than nineteen dollars (\$19.00).

Step 1: Calculate the total price for all cable services using the a la carte prices for each.  
Example:  $\$10 + \$25 + \$5 = \$40$ .

Step 2: Calculate the total price for all noncable services using the a la carte price for each.  
Example:  $\$20 + \$40 = \$60$ .

Step 3: Add the amounts calculated in Steps 1 and 2. Example:  $\$40 + \$60 = \$100$ .

Step 4: Compare the amount calculated in Step 3 with the price for the bundled services; if the bundled price is less than the amount calculated in Step 3, go to Step 5. Example: bundled price = \$75.

Step 5: Calculate the price discount percentage to be applied to both cable and noncable revenues by dividing the amount of discount by the total a la carte price from Step 3. Example: discount ( $\$100 - \$75 = \$25$ ) divided by a la carte price total from Step 3 ( $\$100$ ) = 25%.

Step 6: Multiply the cable services total price from Step 1 by the discount percentage from Step 5. Example:  $\$40 \text{ times } 25\% = \$30$ .

Step 7: Include the amount calculated in Step 6 with gross revenues reported for franchise fee purposes.

In no event shall the amount allocated to cable services under the foregoing calculation exceed (1) the total amount of combined revenue actually received by the operator; or (2) the net revenues derived when mandatory tariff rates, if any, imposed by a governmental authority for components of the combined service are deducted from the combined revenue. (Ord. 2006-06 §3.1)

#### **Sec. 5-1-85. Payments.**

In accordance with the Cable Act, the twelve-month period applicable under this Franchise for the computation of the franchise fee shall be a calendar year. The franchise fee payment shall be due quarterly. Each payment shall be due and payable no later than February 1, May 1, August 1 and November 1 of each year. (Ord. 2006-06 §3.2)

**Sec. 5-1-90. Acceptance of payment and recomputation.**

No acceptance of any payment shall be construed as an accord by the Town that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the Town may have for further or additional sums payable or for the performance of any other obligation of the Grantee. (Ord. 2006-06 §3.3)

**Sec. 5-1-95. Franchise fee reports.**

The Grantee shall, with each franchise fee payment, furnish to the Town a statement stating the total amount of gross revenues for the quarter and all payments, deductions and computations for the period. Such statement shall be certified by an officer of the Grantee or its designee, prior to submission to the Town. (Ord. 2006-06 §3.4)

**Sec. 5-1-100. Audits.**

On an annual basis, upon thirty (30) days' prior written notice, the Town, including the Town's auditor or his or her authorized representative, shall have the right to conduct an independent audit of the Grantee's records reasonably related to the administration or enforcement of this Franchise, in accordance with GAAP. If the audit shows that franchise fee payments have been underpaid by three percent (3%) or more, the Grantee shall reimburse the total out-of-pocket cost of the audit, such cost not to exceed six thousand five hundred dollars (\$6,500.00). The Town's right to audit and the Grantee's obligation to retain records related to a franchise fee audit shall expire three (3) years after each franchise fee payment has been made to the Town. Reimbursement is due to the Town within thirty (30) days of mailing of an invoice to the Grantee. (Ord. 2006-06 §3.5)

**Sec. 5-1-105. Late payments.**

In the event any payment due annually is not received within sixty (60) days from the end of the calendar year, the Grantee shall pay interest on the amount due, at the rate of ten percent (10%) per annum compounded daily, calculated from the date the payment was originally due until the date the Town receives the payment. (Ord. 2006-06 §3.6)

**Sec. 5-1-110. Underpayments.**

If a net franchise fee underpayment is discovered as the result of an audit, the Grantee shall pay interest at the rate of eight percent (8%) per annum, compounded quarterly, calculated from the date each portion of the underpayment was originally due until the date the Grantee remits the underpayment to the Town. (Ord. 2006-06 §3.7)

**Sec. 5-1-115. Alternative compensation.**

In the event the obligation of the Grantee to compensate the Town through franchise fee payments is lawfully suspended or eliminated, in whole or part, then the Grantee shall pay to the Town compensation equivalent to the compensation paid to the Town by other similarly situated users of the Town's rights-of-way for the Grantee's use of the Town's rights-of-way, provided that in no event shall such payments exceed the equivalent of five percent (5%) of the Grantee's gross revenues (subject to the other provisions contained in this Franchise). (Ord. 2006-06 §3.8)

**Sec. 5-1-120. Additional commitments not franchise fee payments.**

No term or condition in this Franchise, including the funding required by Division 9 of this Article, shall in any way modify or affect the Grantee's obligation to pay franchise fees.

Although the total sum of franchise fee payments and additional PEG access commitments set forth elsewhere in this Franchise may total more than five percent (5%) of the Grantee's gross revenues in any twelve-month period, the Grantee agrees that the additional PEG access commitments herein are not franchise fees as defined under any federal law, nor are they to be offset or credited against any franchise fee payments due to the Town, nor do they represent an increase in franchise fees to be passed through to subscribers pursuant to any federal law. (Ord. 2006-06 §3.9)

**Sec. 5-1-125. Tax liability.**

Subject to applicable law, the franchise fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the Town, the State or the United States, including, without limitation, sales, use and other taxes, business license fees or other payments. Payment of the franchise fees under this Franchise shall not exempt the Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of the Grantee that may be lawfully imposed by the Town. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against the Grantee solely because of its status as a cable operator, or against subscribers, solely because of their status as such. (Ord. 2006-06 §3.10)

**Sec. 5-1-130. Financial records.**

The Grantee agrees to meet with a representative of the Town upon request to review the Grantee's methodology of recordkeeping, financial reporting, the computing of franchise fee obligations and other procedures, the understanding of which the Town deems necessary for reviewing reports and records. (Ord. 2006-06 §3.11)

**Sec. 5-1-135. Payment on termination.**

If this Franchise terminates for any reason, the Grantee shall file with the Town within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the gross revenues received by the Grantee since the end of the previous fiscal year. The Town reserves the right to satisfy any remaining financial obligations of the Grantee to the Town by utilizing the funds available in the letter of credit or other security provided by the Grantee. (Ord. 2006-06 §3.12)

*Division 4  
Administration and Regulation*

**Sec. 5-1-150. Authority.**

(a) The Town is vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest or to delegate that power and right, or any

part thereof, in its sole discretion, to the extent permitted under state and local law; provided, however, that the Grantee shall have the right of appeal to the legislative body of the Town any adverse determination made by a delegate of the Town. (Ord. 2006-06 §4.1)

(b) Nothing in this Franchise shall limit or expand the Town's right of eminent domain under state law. (Ord. 2006-06 §4.1)

**Sec. 5-1-155. Rates and charges.**

All of the Grantee's rates and charges related to or regarding telecommunications or cable services shall be subject to regulation by the Town to the full extent authorized by applicable federal, state and local laws. (Ord. 2006-06 §4.2)

**Sec. 5-1-160. Rate discrimination.**

All the Grantee's rates and charges shall be nondiscriminatory as to all persons and organizations of similar classes, under similar circumstances and conditions, pursuant to Section 623 of the Cable Act, federal regulations promulgated thereunder and any other applicable federal, state or local law. (Ord. 2006-06 §4.3)

**Sec. 5-1-165. Filing of rates and charges.**

(a) Throughout the term of this Franchise, the Grantee shall maintain on file with the Town a complete schedule of all applicable rates and charges for cable services provided under this Franchise. Nothing in this Section shall be construed to require the Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns. As used in this Section, no rate or charge shall be considered temporary if subscribers have the ability over a period greater than one (1) year (or such other period as may be approved by the Town) to purchase cable services at such rate or charge.

(b) Upon written request of the Town, the Grantee shall provide a complete schedule of current rates and charges for leased access channels, or portions of such channels, provided by the Grantee. The schedule shall include a description of the price, terms and conditions if established by the Grantee for leased access channels. (Ord. 2006-06 §4.4)

**Sec. 5-1-170. Cross-subsidization.**

The Grantee shall comply with all applicable laws regarding rates for cable services and all applicable laws covering issues of cross-subsidization. (Ord. 2006-06 §4.5)

**Sec. 5-1-175. Reserved authority.**

The Grantee and the Town each reserve all rights and authority arising from the Cable Act and any other relevant provisions of federal, state or local law. (Ord. 2006-06 §4.6)

**Sec. 5-1-180. Time limits strictly construed.**

Whenever this Franchise sets forth a time for any act to be performed by the Grantee, such time shall be deemed to be of the essence. (Ord. 2006-06 §4.7)

**Sec. 5-1-185. Franchise amendment procedure.**

Either party may at any time seek an amendment of this Franchise by so notifying the other party in writing. Within thirty (30) days of receipt of notice, the Town and the Grantee shall meet to discuss the proposed amendment. If the parties reach a mutual agreement upon the suggested amendment, such amendment shall be submitted to the Town Board for its approval. If so approved by the Town Board and the Grantee, then the amendment shall be deemed part of this Franchise. If mutual agreement is not reached, there shall be no amendment. (Ord. 2006-06 §4.8)

**Sec. 5-1-190. Performance evaluations.**

(a) The Town may hold performance evaluation sessions within ninety (90) days of the annual anniversary dates of the effective date of this Franchise. All such evaluation sessions shall be conducted by the Town or its agents.

(b) Special evaluation sessions may be held at any time by the Town or its agents during the term of this Franchise, upon reasonable prior written notice to the Grantee.

(c) All evaluation sessions shall be open to the public and announced at least two (2) weeks in advance in a newspaper of general circulation in the Town. The Grantee shall also include with or on the subscriber billing statements, for the billing period immediately preceding the commencement of the session, written notification of the date, time and place of the regular performance evaluation session and any special evaluation session as required by the Town, provided that the Grantee receives appropriate advance notice.

(d) Topics which may be discussed at any evaluation session may include, but are not limited to, cable service rate structures; franchise fee payments; liquidated damages; free or discounted cable services; application of new technologies; cable system performance; cable services provided; programming offered; subscriber complaints; privacy; amendments to this Franchise; judicial and FCC rulings; line extension policies; and the Town's or the Grantee's rules; provided that nothing in this Section shall be construed as requiring the renegotiation of this Franchise.

(e) During evaluations under this Section, the Grantee shall fully cooperate with the Town or its agents and shall provide such information and documents as the Town or its agents may reasonably require to perform the evaluation; provided, however, that nothing herein shall require the Grantee to create documents unless the parties mutually agree to the terms and conditions thereof. (Ord. 2006-06 §4.9)

**Sec. 5-1-195. Late fees.**

(a) For purposes of this Section, any assessment, charge, cost, fee or sum, however characterized, that the Grantee imposes upon a subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with applicable law.

(b) Nothing in this Section shall be deemed to create, limit or otherwise affect the ability of the Grantee, if any, to impose assessments, charges, fees or sums other than those permitted by this Section, for the Grantee's other services or activities it performs in compliance with applicable law, including FCC law, rule or regulation.

(c) The Grantee's late fee and disconnection policies and practices shall be nondiscriminatory and such policies and practices, and any fees imposed pursuant to this Section, shall apply equally in all parts of the Town without regard to the neighborhood or income level of the subscriber. (Ord. 2006-06 §4.10)

**Sec. 5-1-200. Force majeure.**

(a) In the event the Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the control of the Grantee, the Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is reasonably satisfactory to the Town. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, labor unrest, lack of equipment or labor, telephone network outages and severe or unusual weather conditions which have a direct and substantial impact on the Grantee's ability to provide cable services in the Town and which were not caused and could not have been avoided by the Grantee using its reasonable best efforts in its operations to avoid such results.

(b) If the Grantee believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Franchise, the Grantee shall provide documentation as reasonably required by the Town to substantiate the Grantee's claim. If the Grantee has not yet cured the deficiency, the Grantee shall also provide the Town with its proposed plan for remediation, including the timing for such cure. (Ord. 2006-06 §4.11)

*Division 5*

*Financial and Insurance Requirements*

**Sec. 5-1-220. Indemnification.**

(a) General indemnification. The Grantee shall indemnify, defend and hold the Town, its officers, officials, boards, commissions, agents and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees or expenses, arising from any casualty or accident to person or property, including, without limitation, copyright infringement, defamation and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction or any other act done under this Franchise, by or for the Grantee, its agents or its employees, or by reason of any neglect or omission of the Grantee; provided, however, that the Grantee shall have no responsibility whatsoever to indemnify any actions or claims of any kind arising from or related to PEG programming. The Grantee shall reasonably consult and cooperate with the Town while conducting its defense of the Town.

(b) Indemnification for relocation. The Grantee shall indemnify the Town for any damages, claims, additional costs or expenses assessed against, or payable by, the Town arising out of, or resulting from, the Grantee's failure to remove, adjust or relocate any of its facilities in the rights-of-way in a timely manner in accordance with any relocation required by the Town.

(c) Additional circumstances. The Grantee shall also indemnify, defend and hold the Town harmless from any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees or expenses in any way arising out of:

(1) The lawful actions of the Town in granting this Franchise to the extent such actions are consistent with this Franchise and applicable law; or

(2) Damages arising out of any failure by the Grantee to secure consents from the owners, authorized distributors or licensees/licensors of programs to be delivered by the cable system, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise.

(d) Procedures and defenses. If a claim or action arises, the Town or any other indemnified party shall promptly tender the defense of the claim to the Grantee, which defense shall be at the Grantee's expense. The Town may participate in the defense of a claim in which it is named, at its own cost.

(e) Nonwaiver. The fact that the Grantee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to the Grantee's duty of defense and indemnification under this Section.

(f) Expenses. If separate representation to fully protect the interests of both parties is necessary, such as arising from a conflict of interest between the Town and the counsel selected by the Grantee to represent the Town, after all reasonable measures have been taken to prevent the necessity of hiring separate counsel for the Town, then the Grantee shall pay all reasonable expenses incurred by the Town in defending itself with regard to any action, suit or proceeding indemnified by the Grantee. The Town's expenses shall include all reasonable out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the Town Attorney, his or her assistants or any employees of the Town, but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided to the Town by the Grantee. (Ord. 2006-06 §5.1)

#### **Sec. 5-1-225. Insurance.**

(a) The Grantee shall maintain in full force and effect, at its own cost and expense, each of the following policies of insurance coverage:

(1) Commercial general liability insurance with limits of no less than one million dollars (\$1,000,000.00) per occurrence and one million dollars (\$1,000,000.00) general aggregate. Coverage shall be at least as broad as that provided by ISO CG 0001 1/96 or its equivalent, and include severability of interests. Such insurance shall name the Town, its officers, officials and employees as additional insureds per ISO CG 2026 or its equivalent. There shall be a waiver of subrogation and rights of recovery against the Town, its officers, officials and employees. Coverage shall apply as to claims between insureds on the policy, if applicable.

(2) Commercial automobile liability insurance with minimum combined single limits of one million dollars (\$1,000,000.00) each occurrence and one million dollars (\$1,000,000.00) aggregate with respect to each of the Grantee's owned, hired and nonowned vehicles assigned to or used in the operation of the cable system in the Town. The policy shall contain a severability of interests provision.

(b) Each policy shall provide that a certificate of insurance shall be provided to the Town stating that the insurance shall not be canceled or materially changed so as to be out of compliance with these requirements without thirty (30) days' written notice first provided to the Town, via certified mail, and ten (10) days' notice for nonpayment of premium. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this Section within the term of this Franchise, the Grantee shall provide a replacement coverage policy. The Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Franchise. (Ord. 2006-06 §5.2; Ord. 2007-07 §1)

**Sec. 5-1-230. Deductibles and certificate of insurance.**

(a) Any deductible of the policies shall not in any way limit the Grantee's liability to the Town.

(b) Endorsements. All policies shall contain, or shall be endorsed so that:

(1) The Town, its officers, officials, boards, commissions and employees shall be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, the Grantee under this Franchise or applicable law, or in the construction, operation, repair or ownership of the cable system;

(2) The Grantee's insurance coverage shall be primary insurance with respect to the Town, its officers, officials, boards, commissions, employees and agents. Any insurance or self-insurance maintained by the Town, its officers, officials, boards, commissions, employees and agents shall be in excess of the Grantee's insurance and shall not contribute to it; and

(3) The Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

(c) Acceptability of insurers. The insurance obtained by the Grantee shall be placed with insurers with a Best's rating of no less than "A VIII."

(d) Verification of coverage. The Grantee shall furnish the Town with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices.

(e) Self-insurance. In the alternative to providing a certificate of insurance to the Town certifying insurance coverage as required above, the Grantee may provide self-insurance in the same amount and level of protection for the Grantee and the Town, its officers, agents and employees as otherwise required under this Division. The adequacy of self-insurance shall be subject to the periodic review and approval of the Town. (Ord. 2006-06 §5.3)

**Sec. 5-1-235. Construction bond or letter of credit.**

(a) At the time this Franchise is accepted, the Grantee shall furnish and file with the Town a construction bond or letter of credit (security) at the Grantee's option. The security to the Town shall be in the amount of twenty-five thousand dollars (\$25,000.00). The security shall be conditioned

upon the faithful performance by the Grantee of all terms and conditions of the construction as contained in Section 5-1-590 of this Article. The rights reserved to the Town with respect to the security are in addition to all other rights the Town may have under this Franchise or any other law.

(b) Following the completion of the construction in accordance with Section 5-1-590, the requirement to maintain said security referred to in Subsection (a) above shall be extinguished and replaced by a new performance bond or letter of credit in the amount of twelve thousand dollars (\$12,000.00), to be deposited in an interest-bearing account, and shall be paid to the Grantee upon termination of this Franchise.

(c) The rights reserved by the Town with respect to the security are in addition to all other rights the Town may have under this Franchise or any other law. (Ord. 2006-06 §5.4)

**Sec. 5-1-240. Credit to customers.**

The Town may require the Grantee to provide credit to customers for violations of customer services standard in accordance with Appendix 5-B attached to this Chapter. (Ord. 2006-06 §5.5)

*Division 6  
Customer Service*

**Sec. 5-1-260. Customer Service Standards.**

The Grantee shall comply with customer service standards promulgated by the FCC as well as any reasonable customer service standards lawfully adopted by the Town, as the same may be amended from time to time by the Town Board acting by resolution or ordinance, and as mutually agreed between Town and the Grantee. The Town's current customer service standards are attached hereto as Appendix 5-A. The Grantee reserves the right to challenge any customer service ordinance that it believes is inconsistent with its contractual rights under this Franchise. (Ord. 2006-06 §6.1)

**Sec. 5-1-265. Subscriber privacy.**

The Grantee shall fully comply with any provisions regarding the privacy rights of subscribers contained in federal, state or local law. (Ord. 2006-06 §6.2)

**Sec. 5-1-270. Subscriber contracts.**

The Grantee shall not enter into a contract with any subscriber that is in conflict with the terms of this Franchise or any appendix hereto, or the requirements of any applicable customer service standard. Upon request, the Grantee will provide to the Town a sample of the subscriber contract or service agreement then in use. (Ord. 2006-06 §6.3)

**Sec. 5-1-275. Advance notice to Town.**

The Grantee shall use reasonable efforts to furnish any notices provided to subscribers or the media in the normal course of business to the Town in advance. (Ord. 2006-06 §6.4)

*Division 7*  
*Reports and Records*

**Sec. 5-1-290. Open records.**

The Town, including the Town's auditor or his or her authorized representative, shall have access to and the right to inspect any books and records of the Grantee and its parent corporations and affiliates, which are related to the administration or enforcement of the terms of this Franchise, subject to the provisions of Section 5-1-295 below and which are not subject to contractual confidentiality agreements or subscriber privacy requirements. The Grantee shall not deny the Town access to any such records on the basis that the Grantee's records are under the control of any affiliate or a third party. The Town may, in writing, request copies of any such records required under this Division, and the Grantee shall provide such copies within thirty (30) days of the receipt of such request. One (1) copy of all reports and records required under this or any other section shall be furnished to the Town, at the sole expense of the Grantee. If the requested books and records are too voluminous or for security reasons cannot be copied or removed, then the Grantee may request, in writing within ten (10) days of receipt of the Town's written request, that the Town inspect them at the Grantee's local offices. If any books or records of the Grantee are not kept in a local office, and if the Town reasonably determines that an examination of such records is necessary or appropriate for the performance of any of the Town's administration or enforcement of this Franchise, then the Grantee shall deliver the books or records for inspection locally. (Ord. 2006-06 §7.1)

**Sec. 5-1-295. Confidentiality.**

The Town agrees to treat as confidential any books or records that constitute proprietary, confidential or trade secret information under federal or state law, to the extent that the Grantee makes the Town aware of such confidentiality and why such information is confidential under state or federal law. If the Town believes it must release any such confidential books and records in the course of enforcing this Franchise or for any other reason, it shall advise the Grantee in writing at least ten (10) days in advance so that the Grantee may take appropriate steps to protect its interests. If the Town receives a demand from any person for disclosure of any information designated by the Grantee as confidential, the Town shall advise the Grantee and provide the Grantee with a copy of any written request by the party demanding access to such information as soon as reasonably possible, but in all cases prior to the release of the information. Until otherwise ordered by a court or agency of competent jurisdiction, the Town agrees that, to the extent permitted by state and federal law, it shall deny access to any of the Grantee's books and records marked confidential as set forth above to any person. The Grantee shall indemnify the Town and reimburse the Town for all reasonable costs and attorneys' fees incurred in any legal proceedings pursued under this Section. (Ord. 2006-06 §7.2)

**Sec. 5-1-300. Records required.**

(a) Except as otherwise indicated herein, the Grantee shall maintain and retain records for the period of time required by the FCC or other applicable governmental regulatory agency or, when there is no applicable governmental agency requirement, for five (5) years, and shall furnish to the Town upon written request:

(1) At the completion of the cable system or within thirty (30) days of completion of any new work after completion of the cable system, a complete set of maps showing the location of all cable system equipment and facilities in the right-of-way, but excluding detail on proprietary electronics contained therein and subscriber drops. As-built maps including proprietary electronics shall be available at the Grantee's offices for inspection by the Town's authorized representative or agent and made available to such upon reasonable notice during regular business hours, during the course of technical inspections as reasonably conducted by the Town. These maps shall be certified as accurate at the time they are prepared by an appropriate representative of the Grantee.

(2) A copy of all FCC filings on behalf of the Grantee and its affiliates which relate to the operation of the cable system in the Town.

(3) A current list of cable services, rates and channel line-ups.

(b) Subject to Section 5-1-295 above, all information furnished to the Town is public information and shall be treated as such, except for information involving the privacy rights of individual subscribers. (Ord. 2006-06 §7.3)

#### **Sec. 5-1-305. Annual reports.**

Upon written request, but no more often than annually, the Grantee shall submit to the Town a written report which shall include, but not necessarily be limited to, a summary of the previous year's activities in the development of the cable system, including but not limited to cable services begun or discontinued during the reporting year. (Ord. 2006-06 §7.4)

#### **Sec. 5-1-310. Copies of federal and state reports.**

Upon reasonable written request, the Grantee shall submit to the Town copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by the Grantee or its parent corporation to any federal, state or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of the Grantee's cable system within the Town. The Grantee shall submit such documents to the Town no later than thirty (30) days after receipt of written request. The Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, state or local law such documents have been determined to be confidential by a court of competent jurisdiction or a federal or state agency. With respect to all documents provided to any federal, state or local regulatory agency as a routine matter in the due course of operating the Grantee's cable system within the Town, the Grantee shall make such documents available to the Town upon reasonable written request. (Ord. 2006-06 §7.5)

#### **Sec. 5-1-315. Complaint file and reports.**

(a) The Grantee shall keep an accurate and comprehensive file of any and all complaints it receives regarding the cable system and the Grantee's actions in response to those complaints. Such files shall be kept in a manner consistent with the privacy rights of subscribers. These files shall remain open to the Town and the public during normal business hours. Within sixty (60) days of December 31 of each year, the Grantee shall provide to the Town a report in a mutually acceptable format, which shall include all customer complaints received by the Grantee, including customer

complaints referred by the Town to the Grantee, within the time period specified in the Town's request, but no greater than a one-year period.

(b) A log of all service interruptions shall be maintained and provided to the Town upon written request;

(c) The Grantee shall provide the Town such other reports as mutually agreed upon. (Ord. 2006-06 §7.6)

**Sec. 5-1-320. False statements.**

Any false statement or representation in any written report required by this Franchise (not including clerical errors or errors made in good faith) may be deemed a breach of this Franchise and may subject the Grantee to actual damages, including costs associated with the discovery of such false statement or representation, in the event actual damages can be established. The Grantee shall have notice and the opportunity to cure any such statement, which shall bar the assessment of liquidated damages. (Ord. 2006-06 §7.7)

*Division 8  
Programming*

**Sec. 5-1-340. Broad programming categories.**

The Grantee shall provide or enable the provision of at least the following initial broad categories of programming to the extent such categories are reasonably available:

- (1) Educational programming;
- (2) Colorado news, weather and information;
- (3) Sports;
- (4) General entertainment (including movies);
- (5) Children and family-oriented;
- (6) Arts, culture and performing arts;
- (7) Science and documentary; and
- (8) National news, weather and information. (Ord. 2006-06 §8.1)

**Sec. 5-1-345. Deletion or reduction of broad programming categories.**

(a) Subject to federal law, the Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without the prior written consent of the Town.

(b) In the event of a modification proceeding under federal law, the mix and quality of cable services provided by the Grantee on the effective date of this Franchise shall be deemed to be the mix and quality of cable services required under this Franchise throughout its term. (Ord. 2006-06 §8.2)

**Sec. 5-1-350. Parental control device.**

Upon request by any subscriber, the Grantee shall lease or sell a parental control or lockout device, traps or filters to enable a subscriber to prohibit viewing of a particular cable service during periods selected by the subscriber. The Grantee shall inform its subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. (Ord. 2006-06 §8.3)

**Sec. 5-1-355. Continuity of service mandatory.**

(a) It shall be the right of all subscribers to continue to receive cable service from the Grantee insofar as their financial and other obligations to the Grantee are honored. The Grantee shall use commercially reasonable efforts so as to ensure that all subscribers receive continuous, uninterrupted cable service regardless of the circumstances. For the purposes of this Section, *uninterrupted* does not include short-term outages of the cable system for maintenance or testing.

(b) In the event of a change of the Grantee, or in the event a new cable operator acquires the cable system in accordance with this Franchise, the Grantee shall reasonably cooperate with the Town, new franchisee or cable operator in maintaining continuity of cable service to all subscribers. During any transition period, the Grantee shall be entitled to the revenues for any period during which it operates the cable system, and shall be entitled to reasonable costs for its services when it no longer operates the cable system.

(c) Subject to the force majeure provision of this Franchise, failure of the Grantee to operate the cable system for four (4) consecutive days without prior approval of the Town Administrator or his or her designee, or without just cause may, be considered a material violation of this Franchise. (Ord. 2006-06 §8.4)

*Division 9*  
*Access*

**Sec. 5-1-370. Initial capital contribution.**

Upon ninety (90) days' written notice from the Town, prior to the beginning of production of access programming, the Grantee shall provide a capital contribution of five thousand dollars (\$5,000.00), which the Town shall use for video production and to purchase equipment to produce PEG access programming. On the one-year anniversary thereafter, the Grantee shall provide a second capital contribution of two thousand five hundred dollars, (\$2,500.00) which the Town shall use for video production and to purchase equipment to produce PEG access programming. (Ord. 2006-06 §9.1)

**Sec. 5-1-375. Management and control of access channels.**

(a) The Town shall have sole and exclusive responsibility for the operation and administration of the access channels, identifying the designated access providers and allocating the access resources under this Division. The Town may authorize designated access providers to control and manage the use of any and all access facilities provided by the Grantee under this Franchise, including, without limitation, the operation of access channels. To the extent of such designation by the Town, the designated access provider shall have sole and exclusive responsibility for operating and managing such access facilities and for compliance with laws regarding same. The Town may formulate rules for the operation of the access channels, consistent with this Franchise and the Grantee's reasonable technical requirements. The Grantee shall cooperate with the Town and designated access providers in the use of the cable system and access facilities for the provision of access, but nothing herein shall require the Grantee to expend capital or human resources in support of access beyond that specifically required by this Franchise. Nothing herein shall prohibit the Town from authorizing itself to be a designated access provider. Nothing herein shall prohibit the Town from assigning several designated access providers to share a single access channel.

(b) All assigned access channels can be used to transmit signals in any format which is technically compatible with the cable system, including, by way of example and not limitation, video, audio only, secondary audio and/or text messages. Such uses must be in furtherance of access purposes. (Ord. 2006-06 §9.2)

**Sec. 5-1-380. Initial access channel.**

As of the effective date, the Grantee shall provide one (1) downstream government and educational access channel on the cable system for the Town's exclusive use, which use shall be devoted to noncommercial programming by the Town or other governmental agencies and shall not be devoted to public request programming except as agreed to by the Town subject to state and federal laws. (Ord. 2006-06 §9.3)

**Sec. 5-1-385. Additional access channels.**

The Town may require the Grantee to activate, at the Grantee's expense, up to three (3) additional downstream access channels, for a maximum of four (4) access channels. Additional channels may, at the Town's direction, include access channels for Weld County or the Windsor/Severance Fire Authority. If the Town believes that additional access channel capacity is needed, and if the Grantee provides more than three (3) access channels to any of its other cable systems in Weld County, within ninety (90) days of receiving a request for an additional channel or channels from the Town, the Grantee shall provide such additional channel; provided, however, that the Grantee shall not be obligated to provide a greater total number of access channels to the Town than it provides to any other franchising authority in Weld County. Notwithstanding the foregoing, for each additional channel, the Town shall demonstrate the need for full-time channel prior to activation. The ability of the Town to provide, or cause to be provided, an additional eight (8) hours of nonduplicative programming per day shall be conclusive evidence of its need for activation of each additional channel. (Ord. 2006-06 §9.4)

**Sec. 5-1-390. Access channels on basic service.**

All access channels provided to subscribers under this Franchise shall be included by the Grantee, without limitation, as a part of basic service. (Ord. 2006-06 §9.5)

**Sec. 5-1-395. Access channel assignments.**

The Grantee will use commercially reasonable efforts to minimize the movement of access channel assignments. (Ord. 2006-06 §9.6)

**Sec. 5-1-400. Relocation of access channels.**

Unless mutually agreed upon by the Town and the Grantee, the Grantee shall provide the Town with a minimum of sixty (60) days' notice prior to the time any access channel designation is changed, unless the change is required by federal law, in which case the Grantee shall give the Town the maximum notice possible. The Grantee, at the Grantee's expense, will place the Town's notices of the channel change on or with its regular monthly billings, upon the Town's request. Any new channel designations for the access channels provided pursuant to this Franchise shall be in full compliance with FCC signal quality and proof-of-performance standards. (Ord. 2006-06 §9.7)

**Sec. 5-1-405. Technical quality.**

The Grantee shall maintain all access channels, interconnects and return lines at the same or better level of technical quality and reliability required by this Franchise and all other applicable laws, rules and regulations for other channels, services and interconnects. The Grantee shall provide routine maintenance and shall repair and replace all Grantee-owned transmission equipment as necessary to carry a quality signal from the access facilities provided under this Franchise to subscribers. (Ord. 2006-06 §9.8)

**Sec. 5-1-410. Change in technology.**

In the event the Grantee makes any change in the cable system and related equipment and facilities or in the Grantee's signal delivery technology, which affects the signal quality or transmission of access services or programming, the Grantee shall, at its own expense, take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment and training of access personnel, to ensure that the capabilities of access services are not diminished or adversely affected by such change. For example, this provision shall apply if the cable system is converted from an analog to a digital format, such that the access channels must also be converted to digital in order to be received by subscribers. (Ord. 2006-06 §9.9)

**Sec. 5-1-415. Information about access programming to subscribers.**

Upon request by the Town, the Grantee shall include information about access programming in the installation packet provided to subscribers. The Town shall supply the materials for insertion in the packet, in a format consistent with the Grantee's requirements. (Ord. 2006-06 §9.10)

*Division 10*  
*General Right-of-Way Use and Construction*

**Sec. 5-1-430. Right to construct.**

Subject to generally applicable laws, regulations, rules, resolutions and ordinances of the Town and the provisions of this Franchise, the Grantee may perform all construction in the rights-of-way for any facility needed for the maintenance, upgrade or extension of the Grantee's cable system. (Ord. 2006-06 §11.1)

**Sec. 5-1-435. Right-of-way meetings.**

Subject to receiving reasonable advance notice, the Grantee will regularly attend and participate in meetings of the Town, regarding right-of-way issues that may impact the cable system. (Ord. 2006-06 §11.2)

**Sec. 5-1-440. Joint trenching and boring.**

Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, the Grantee shall work with other providers, licensees, permittees and franchisees so as to reduce so far as possible the number of right-of-way cuts within the Town. (Ord. 2006-06 §11.3)

**Sec. 5-1-445. General standard.**

All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices. (Ord. 2006-06 §11.4)

**Sec. 5-1-450. Permits required for construction.**

Prior to doing any work in the right-of way or other public property, the Grantee shall apply for, and obtain, appropriate permits from the Town. The Grantee shall comply with the generally applicable ordinances, laws or regulations regarding Town rights-of-way as may be adopted from time to time pursuant to the Town's lawful police powers. The Grantee shall pay all generally applicable and lawful fees for the requisite Town permits received by the Grantee. (Ord. 2006-06 §11.5)

**Sec. 5-1-455. Emergency permits.**

In the event that emergency repairs are necessary, the Grantee shall immediately notify the Town of the need for such repairs. The Grantee may initiate such emergency repairs and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency. (Ord. 2006-06 §11.6)

**Sec. 5-1-460. Compliance with applicable codes.**

(a) Town construction codes. The Grantee shall comply with all applicable Town construction codes, including, without limitation, the adopted building code and other building codes, the adopted fire code, the adopted mechanical code, and zoning codes and regulations.

(b) Tower specifications. Antenna-supporting structures (towers) shall be designed for the proper loading as specified by the Electronics Industries Association (EIA), as those specifications may be amended from time to time. Antenna-supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable federal, state and local codes or regulations.

(c) Safety codes. The Grantee shall comply with all applicable federal, state and Town safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by applicable law during construction, operation and repair of its cable system. By way of illustration and not limitation, the Grantee shall comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards. (Ord. 2006-06 §11.7)

**Sec. 5-1-465. Mapping.**

The Grantee shall comply with any generally applicable ordinances, rules and regulations of the Town regarding mapping systems for users of the rights-of-way. Upon completion of the construction of the cable system, the Grantee shall provide to the Town Administrator a current, accurate and complete set of maps, excluding proprietary information, in digital format, compatible with the Town's mapping system. Such maps shall provide information indicating the horizontal and vertical location of the Grantee's system and equipment which the Grantee owns or controls, for all new installations, and horizontal location of all existing system and equipment located in the streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks and front yard rights-of-way. (Ord. 2006-06 §11.8)

**Sec. 5-1-470. Minimal interference.**

Work in the right-of-way, on other public property, near public property or on or near private property shall be done in a manner that minimizes interference with the rights and reasonable convenience of property owners and residents. The Grantee's cable system shall be constructed and maintained in such manner as not to interfere with sewers, water pipes or any other property of the Town, or with any other pipes, wires, conduits, pedestals, structures or other facilities that may have been laid in the rights-of-way by, or under, the Town's authority. The Grantee's cable system shall be located, erected and maintained so as not to endanger or unreasonably interfere with the lives of persons, to interfere with new improvements the Town may deem proper to make, or to unnecessarily hinder or obstruct the free use of the rights-of-way or other public property, shall not unreasonably interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic. In the event of such interference, the Town may require the removal or relocation of the Grantee's lines, cables, equipment and other appurtenances from the property in question at the Grantee's expense. (Ord. 2006-06 §11.9)

**Sec. 5-1-475. Safety and prevention of injury.**

The Grantee shall provide and use any equipment and facilities necessary to control and carry the Grantee's signals so as to prevent injury to the Town's property or property belonging to any person. The Grantee, at its own expense, shall repair, renew, change and improve its facilities to keep them in good repair and safe and presentable condition. All excavations made by the Grantee in the rights-of-way shall be properly safeguarded for the prevention of accidents by the placement of adequate

barriers, fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights. (Ord. 2006-06 §11.10)

**Sec. 5-1-480. Hazardous substances.**

(a) The Grantee shall comply with any and all applicable laws, statutes, regulations and orders concerning hazardous substances relating to the Grantee's cable system in the rights-of-way.

(b) The Grantee agrees to indemnify the Town against any claims, costs and expenses, of any kind, whether direct or indirect, incurred by the Town arising out of a release of hazardous substances caused by the Grantee's cable system. (Ord. 2006-06 §11.11)

**Sec. 5-1-485. Locates.**

Prior to doing any work in the right-of-way, the Grantee shall give appropriate notices to the Town and to the notification association established in Section 9-1.5-105, C.R.S. (Ord. 2006-06 §11.12)

**Sec. 5-1-490. Notice to private property owners.**

Except in the case of an emergency involving public safety or service interruptions to a large number of subscribers, the Grantee shall give notice to private property owners or legal tenants of work on private property in accordance with Appendix 5-A, as the same may be amended from time to time by the Town Board acting by ordinance. (Ord. 2006-06 §11.13)

**Sec. 5-1-495. Underground construction and use of poles.**

(a) Where electric, telephone and other above-ground utilities are installed underground at the time of cable system construction, when construction in new developments where utilities are required to be placed underground, or when all such wiring is subsequently placed underground, all cable system lines shall also be placed underground with other wireline service at no expense to the Town or subscribers unless funding is generally available for such relocation to all users of the rights-of-way. Related cable system equipment, such as pedestals, must be placed in accordance with the Town's applicable code requirements and rules. In areas where either electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation. Nothing contained in this Section shall require the Grantee to construct, operate and maintain underground any ground-mounted appurtenances.

(b) The Grantee shall utilize existing conduit wherever possible and commercially reasonable. The Town shall have no obligation to maintain ducts or conduits which are owned by the Grantee.

(c) This Franchise does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the Town or any other person.

(d) The Grantee and the Town recognize that situations may occur in the future where the Town may desire to place its own cable or conduit for fiber optic cable in trenches or bores opened by the Grantee. The Grantee agrees to cooperate with the Town in any construction by the Grantee that involves trenching or boring, provided that the Town has first provided reasonable notice to the

Grantee that it is interested in sharing the trenches or bores in the area where the Grantee's construction is occurring. The Grantee shall allow the Town to lay its cable, conduit and fiber optic cable in the Grantee's trenches and bores, provided that the Town shares in the cost of the trenching and boring on the same terms and conditions as the Grantee at that time shares the total cost of trenches and bores. The Town shall be responsible for maintaining its respective cable, conduit and fiber optic cable buried in the Grantee's trenches and bores under this Subsection.

(e) Only in areas where existing electric or telephone wiring is aerial, in the event the Grantee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement on commercially reasonable terms, and only in such event, then it shall be lawful for the Grantee to make all needed excavations in the rights-of-way for the purpose of placing, erecting, laying, maintaining, repairing and removing poles, supports for wires and conductors, and any other facility needed for the maintenance or extension of the Grantee's cable system. All poles of the Grantee shall be located as designated by the proper Town authorities. Nothing in this Subsection shall be construed to relieve the Grantee of its obligation to provide underground construction of its cable system in accordance with Subsection (a) above. Notwithstanding the foregoing, in the event of a physical obstruction whereby there are no poles or other means to attach, the Grantee shall have the right upon proper Town approval to erect necessary poles for the purpose of constructing its cable system. (Ord. 2006-06 §11.14)

**Sec. 5-1-500. Undergrounding of multiple dwelling unit drops.**

In cases of single-site multiple dwelling units, the Grantee shall minimize the number of individual aerial drop cables by installing multiple drop cables underground between the pole and the multiple dwelling unit where determined to be technologically feasible and commercially reasonable in agreement with the owners and/or owner's association of the multiple dwelling units. (Ord. 2006-06 §11.15)

**Sec. 5-1-505. Burial standards.**

(a) Depths. Unless otherwise required by law, the Grantee shall comply with the following burial depth standards. In no event shall the Grantee be required to bury its cable deeper than electric or gas facilities in the same portion of the right-of-way:

- (1) Underground cable drops for fiber optics from the curb shall be buried at a minimum depth of twelve (12) inches unless blocked by rock, terrain or other utilities.
- (2) Feeder lines and trunk lines for coaxial cable for fiber optics shall be buried at a minimum depth of twenty-four (24) inches unless blocked by rock, terrain or other utilities.
- (3) Fiber optic cable for all lines shall be buried at a minimum depth of thirty-six (36) inches, unless blocked by rock, terrain or other utilities.

(b) Timeliness. Cable drops installed by the Grantee to residences shall be buried according to these standards within two (2) calendar weeks of initial installation, or at a time mutually agreed upon between the Grantee and the subscriber. When freezing surface conditions or other weather conditions prevent the Grantee from achieving such timetable, the Grantee shall apprise the subscriber of the circumstances and the revised schedule for burial, and shall provide the subscriber

with the Grantee's telephone number and instructions as to how and when to call the Grantee to request burial of the line if the revised schedule is not met.

(c) Conduits. For any new installation within the Town, the Town Engineer has the option to participate at the Town's cost to install conduit to be installed at any hard surface crossing. (Ord. 2006-06 §11.16; Ord. 2007-07 §1)

**Sec. 5-1-510. Electrical bonding.**

The Grantee shall ensure that all cable drops are properly bonded to the electrical power ground at the home, consistent with applicable code requirements. All nonconforming or nonperforming cable drops shall be replaced by the Grantee as necessary. (Ord. 2006-06 §11.17)

**Sec. 5-1-515. Prewiring.**

Any ordinance or resolution of the Town which requires prewiring of residential developments in a joint trench for electrical and telephone service shall be construed to include the Grantee's obligation to provide wiring for cable systems, subject to compliance with Section 5-1-635 of this Article, upon thirty (30) days' prior written notice. (Ord. 2006-06 §11.18)

**Sec. 5-1-520. Repair and restoration of property.**

(a) The Grantee shall protect public and private property from damage. If damage occurs, the Grantee shall make all commercially reasonable attempts to promptly notify the property owner within twenty-four (24) hours in writing.

(b) Whenever the Grantee disturbs or damages any right-of-way, other public property or any private property, the Grantee shall promptly restore the right-of-way or property to at least its prior condition, normal wear and tear accepted, at its own expense.

(c) Rights-of-way and other public property. The Grantee shall warrant any restoration work performed by or for the Grantee in the right-of-way or on other public property for two (2) years, which two-year warranty shall not include landscaping materials. With respect to landscaping materials, the Grantee shall warrant such work and materials for one (1) year, provided that the party responsible for the landscaping material reasonably maintains it during the warranty period.

(d) Private property. Upon completion of the work that caused any disturbance or damage, the Grantee shall promptly commence restoration of private property and will use best efforts to complete the restoration within seventy-two (72) hours, considering the nature of the work that must be performed. (Ord. 2006-06 §11.19)

**Sec. 5-1-525. Use of conduits by Town.**

Subject to any applicable state or federal regulations or tariffs, the Town may install or affix and maintain wires and equipment owned by the Town for Town purposes in or upon any and all of the Grantee's ducts, conduits or equipment in the rights-of-way and other public places on mutually acceptable terms and conditions to the extent space therein or thereon is reasonably available, and pursuant to all applicable ordinances and codes; provided that:

- (1) Such use by the Town does not interfere with the current or future use by the Grantee;
- (2) The Town holds the Grantee harmless against and from all claims, demands, costs or liabilities of every kind and nature whatsoever arising out of such use, including but not limited to reasonable attorney fees and costs;
- (3) Such use by the Town is restricted to noncommercial municipal purposes;
- (4) The Town takes reasonable precautions to prevent any use of the Grantee's conduits, ducts or equipment in any manner that results in inappropriate use thereof, or any loss or damage to the conduit, ducts, equipment or the cable system; and
- (5) The Town does not use the conduits, ducts or equipment for any purpose that is in competition with the services offered by the Grantee. For the purposes of this Section, *Town purposes* includes, but is not limited to, the use of the structures and installations for Town fire, police, traffic, water, telephone and/or signal systems, but not for cable service in competition with the Grantee. The Grantee shall not deduct the value of such use of its facilities from its franchise fee payments or from other fees payable to the Town. (Ord. 2006-06 §11.20)

**Sec. 5-1-530. Common users.**

- (a) For the purposes of this Section:

*Attachment* means any wire, optical fiber or other cable, and any related device, apparatus or auxiliary equipment, for the purpose of voice, video or data transmission.

*Conduit or conduit facility* means any structure, or section thereof, containing one (1) or more ducts, conduits, manholes, handholes or other such facilities in the Grantee's cable system.

*Duct* means a single enclosed raceway for cables, fiber optics or other wires.

*Licensee* means any person licensed or otherwise permitted by the Town to use the rights-of-way.

*Surplus ducts or conduits* are conduit facilities other than those occupied by the Grantee or any prior licensee, unoccupied ducts held by the Grantee as emergency use spares, or other unoccupied ducts that the Grantee reasonably expects to use within two (2) years from the date of a request for use. One (1) extra duct installed for back up or expansion shall not be considered surplus.

- (b) The Grantee acknowledges that the rights-of-way have a finite capacity for containing conduits. Therefore, the Grantee agrees that whenever the Town determines that it is impracticable to permit construction of an underground conduit system by any other person who may at the time have authority to construct or maintain conduits or ducts in the rights-of-way, but excluding persons in competition with the Grantee, the Town may require the Grantee to afford to such person the right to use surplus ducts or conduits in common with the Grantee, pursuant to the terms and conditions of a mutually acceptable agreement for use of surplus ducts or conduits entered into by the Grantee and the licensee. Nothing herein shall require the Grantee to enter into an agreement with such person on

less than commercially reasonable terms and if, in the Grantee's reasonable determination, such an agreement could compromise the integrity of the cable system.

(c) A licensee occupying part of a duct shall be deemed to occupy the entire duct.

(d) The Grantee shall give a licensee a minimum of one hundred twenty (120) days' notice of its need to occupy a licensed conduit and shall propose that the licensee take the first feasible action as follows:

(1) Pay revised conduit rent designed to recover the cost of retrofitting the conduit with multiplexing, fiber optics or other space-saving technology sufficient to meet the Grantee's space needs;

(2) Pay revised conduit rent based on the cost of new conduit constructed to meet the Grantee's space needs;

(3) Vacate the needed ducts or conduit; or

(4) Construct and maintain sufficient new conduit to meet the Grantee's space needs.

(e) When two (2) or more licensees occupy a section of conduit facility, the last licensee to occupy the conduit facility shall be the first to vacate or construct new conduit. When conduit rent is revised because of retrofitting, space-saving technology or construction of new conduit, all licensees shall bear the increased cost.

(f) All attachments shall meet applicable local, state and federal clearance and other safety requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between the Grantee and the licensee. the Grantee may, at its option, correct any attachment deficiencies and charge the licensee for its costs. Each licensee shall pay the Grantee for any fines, fees, damages or other costs the licensee's attachments cause the Grantee to incur.

(g) In order to enforce the provisions of this Section with respect to the Grantee, the Town must demonstrate that it has required that all similarly situated users of the rights-of-way to comply with the provisions of this Section. (Ord. 2006-06 §11.21)

**Sec. 5-1-535. Discontinuing use or abandonment of cable system facilities.**

Whenever the Grantee intends to discontinue using any facility within the rights-of-way, the Grantee shall submit to the Town a complete description of the facility and the date on which the Grantee intends to discontinue using the facility. The Grantee may remove the facility or request that the Town permit it to remain in place. Notwithstanding the Grantee's request that any such facility remain in place, the Town may require the Grantee to remove the facility from the right-of-way or modify the facility to protect the public health, welfare, safety and convenience, or otherwise serve the public interest; provided, however, that this provision shall not apply to any facilities which used to provide telecommunications services. The Town may require the Grantee to perform a reasonable combination of modification and removal of the facility. The Grantee shall complete such removal or modification in accordance with a reasonable schedule set by the Town. Until such time as the Grantee removes or modifies the facility as reasonably directed by the Town, or until the rights to and

responsibility for the facility are accepted by another person having authority to construct and maintain such facility, the Grantee shall retain all liability for such facility and be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the right-of-way, in the same manner and degree as if the facility were in active use. If the Grantee abandons its facilities, the Town may choose to use such facilities for any purpose whatsoever, including but not limited to access purposes. If the Town chooses to utilize any such abandoned facilities, the Grantee's liability for those facilities shall cease. (Ord. 2006-06 §11.22)

**Sec. 5-1-540. Movement of cable system facilities for Town purposes.**

(a) The Town shall have the right to require the Grantee to relocate, remove, replace, modify or disconnect the Grantee's facilities and equipment located in the rights-of-way or on any other property of the Town in the event of an emergency or when reasonable public convenience requires such change (for example, without limitation, by reason of traffic conditions, public safety, right-of-way vacation, right-of-way construction, change or establishment of right-of-way grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by the Town for public purposes). Such work shall be performed at no cost to the Town. Except during an emergency, the Town shall provide reasonable notice to the Grantee, not to be less than sixty (60) days, and allow the Grantee the opportunity to perform such action. In the event of any capital improvement project exceeding five hundred thousand dollars (\$500,000.00) in expenditures by the Town which requires the removal, replacement, modification or disconnection of the Grantee's facilities or equipment, the Town shall provide at least ninety (90) days' written notice to the Grantee. Following notice by the Town, the Grantee shall relocate, remove, replace, modify or disconnect any of its facilities or equipment within any right-of-way, or on any other property of the Town. If the Town requires the Grantee to relocate its facilities located within the rights-of-way, the Town shall make a reasonable effort to provide the Grantee with an alternate location within the rights-of-way. If funds are generally made available to users of the rights-of-way for such relocation, the Grantee shall be entitled to its pro rata share of such funds.

(b) If the Grantee fails to complete this work within the time prescribed and to the Town's reasonable satisfaction, the Town may cause such work to be done and bill the actual cost of the work to the Grantee, including all out-of-pocket costs and expenses incurred by the Town due to the Grantee's delay. In such event, the Town shall not be liable for any damage to any portion of the Grantee's cable system unless the Town acted in a negligent manner. Within thirty (30) days of receipt of an itemized list of those costs, the Grantee shall pay the Town. (Ord. 2006-06 §11.23)

**Sec. 5-1-545. Movement of cable system facilities for other franchise holders.**

If any removal, replacement, modification or disconnection of the cable system is required to accommodate the construction, operation or repair of the facilities or equipment of another Town franchise holder, the Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. The Grantee may require that the costs associated with the removal or relocation be paid by the benefited party at no cost to the Town. (Ord. 2006-06 §11.24)

**Sec. 5-1-550. Temporary changes for other permittees.**

At the request of any person holding a valid permit and upon reasonable advance notice, the Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder, and the Grantee may require a reasonable deposit of the estimated payment in advance. (Ord. 2006-06 §11.25)

**Sec. 5-1-555. Reservation of Town use of right-of-way.**

Nothing in this Franchise shall prevent the Town or public utilities owned, maintained or operated by public entities other than the Town from constructing sewers; grading, paving, repairing or altering any right-of-way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of the Grantee's cable system. (Ord. 2006-06 §11.26)

**Sec. 5-1-560. Tree trimming.**

The Grantee may prune or cause to be pruned, using proper pruning practices, any tree in the Town's rights-of-way which interferes with the Grantee's cable system. The Grantee shall comply with any general ordinance or regulations of the Town regarding tree trimming. Except in emergencies, the Grantee may not prune trees at a point below thirty (30) feet above sidewalk grade until one (1) week's written notice has been given to the owner or occupant of the premises abutting the right-of-way in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at his or her own expense during this one-week period. The Grantee shall have no liability whatsoever for any acts or omissions by the owner or occupant of the abutting premises. If the owner or occupant fails to do so, the Grantee may prune such tree at its own expense. For purposes of this Section, emergencies exist when it is necessary to prune to protect the public or the Grantee's facilities from imminent danger only. (Ord. 2006-06 §11.27)

**Sec. 5-1-565. Inspection of construction and facilities.**

The Town may inspect any of the Grantee's facilities, equipment or construction at any time upon at least twenty-four (24) hours' notice or, in case of emergency, upon demand without prior notice. If the Grantee is out of compliance with its obligations hereunder, the Town, in addition to taking any other action permitted under applicable law, may order the Grantee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the Town reasonably establishes. The Town has the right to correct, inspect, administer and repair the unsafe condition if the Grantee fails to do so, and to reasonably charge the Grantee therefor. (Ord. 2006-06 §11.28)

**Sec. 5-1-570. Stop work.**

(a) On notice from the Town that any work is being performed contrary to the provisions of this Franchise, in an unsafe or dangerous manner as determined by the Town, or in violation of the terms of any generally applicable permit, laws, regulations, ordinances or standards, the work may immediately be stopped by the Town. The Grantee shall have the immediate right to challenge the

basis for the stop work order, including the right to seek equitable relief from the enforcement of such order.

- (b) The stop work order shall:
  - (1) Be in writing;
  - (2) Be given to the person doing the work, or posted on the work site;
  - (3) Be sent to the Grantee by overnight delivery or by facsimile at the address given herein;
  - (4) Indicate the nature of the alleged violation or unsafe condition; and
  - (5) Establish conditions under which work may be resumed. (Ord. 2006-06 §11.29)

**Sec. 5-1-575. Work of contractors and subcontractors.**

The Grantee's contractors shall be licensed and bonded in accordance with the Town's generally applicable ordinances, regulations and requirements. Work by contractors and subcontractors are subject to the same restrictions, limitations and conditions as if the work were performed by the Grantee. The Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, shall ensure that all such work is performed in compliance with this Franchise and other applicable law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is the Grantee's responsibility to ensure that contractors, subcontractors or other persons performing work on the Grantee's behalf are familiar with the requirements of this Franchise and other applicable laws governing the work performed by them. (Ord. 2006-06 §11.30)

*Division 11*

*Cable System Configuration, Technical Standards and Testing*

**Sec. 5-1-590. Subscriber network.**

(a) The Grantee shall install a fiber optic trunk to connect the cable system in the Town with the Grantee's headend facility at 1021 N. State Highway 287, LaPorte, Colorado, within six (6) months of the effective date of this Franchise and in accordance with this Franchise. The Grantee may change the headend location that feeds Town during the term of this Franchise. The Grantee shall design and construct the cable system bandwidth to a standard comparable to other systems in the region or at least 860 MHz throughout the franchise area. The Grantee intends to deploy fiber optics to nodes which serve no more than five hundred (500) subscribers per node, with amplifier cascades no longer than six (6) amplifiers. The Grantee may substitute another transmission material and/or modify its design, provided that the same technical benefits in reliability and picture quality are attained. The cable system shall be capable of supporting cable service and cable internet service. Upon completion, the cable system shall deliver no less than two hundred (200) channels of analog and/or digital video and audio programming services to subscribers.

(b) At such time as the Grantee has completed the installation of the cable system in accordance with Section 5-1-635 of this Article, the Grantee shall send written notice to the Town. The Town

shall have ninety (90) days from receipt of such notice to review the sweep analysis records kept by the Grantee which verify the completion of the cable system, and to complete such technical inspections as may be reasonably necessary to verify that the other components are complete. The Town Administrator may require the Grantee to provide additional facts and information, in his or her reasonably exercised discretion, necessary to verify the completion of the cable system. Upon its completion of this review and inspection, the Town shall notify the Grantee in writing of the Town's position concerning the completion of the cable system.

(c) Equipment must be installed so that all closed captioning programming received by the cable system shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards. The Grantee shall use commercially reasonable efforts to retransmit local broadcast signals received in stereo and/or secondary audio tracks.

(d) All construction shall be subject to the Town's permitting process.

(e) The Grantee and Town shall meet, at the Town's request, to discuss the progress of the cable system design plan and construction.

(f) The Grantee will take prompt corrective action if it finds that any facilities or equipment on the cable system are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Franchise or applicable law.

(g) The Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the franchise area.

(h) The Grantee shall provide a substantially similar channel line-up and service offerings in Town as it provides to other communities served from the Grantee's headend from which the cable system is fed. (Ord. 2006-06 §12.1)

**Sec. 5-1-595. Periodic evaluation.**

(a) Upon thirty (30) days' written notice to the Grantee, the Town may require an evaluation session. Evaluation sessions shall occur a minimum of once every five (5) years, beginning five (5) years from the effective date of this Franchise. All evaluation sessions shall be open to the public.

(b) Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, system performance, programming offered, access channels, facilities and support, municipal uses of cable, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics the Town and the Grantee deem relevant.

(c) As a result of a periodic review or evaluation session, the Town and the Grantee may develop such changes and modifications to the terms and conditions of this Franchise as are mutually agreed upon. (Ord. 2006-06 §12.2)

**Sec. 5-1-600. Standby power.**

The Grantee shall provide standby power generating capacity at the cable system headend which is rated to provide twelve (12) hours of emergency operation. The Grantee shall maintain standby power system supplies, rated for at least two (2) hours' duration, throughout the trunk and distribution networks, and rated for at least four (4) hours duration at all nodes and at all hubs. (Ord. 2006-06 §12.3)

**Sec. 5-1-605. Emergency alert capability.**

(a) The Grantee shall provide an operating Emergency Alert System ("EAS") in accordance with and as required by the provisions of FCC Regulations, 47 C.F.R. Part II, and as such provision may from time to time be amended, so that the Town may use the cable system to transmit an emergency alert signal, including the ability to override the audio and, to the extent required by federal law, video on all channels throughout the Town from the Weld County Communications Center or other location as may be designated by the Town, provided that the signal is made available to the Grantee at its headend pursuant to federal law. The Grantee shall test the EAS as required by federal law. Upon request, the Town shall be permitted to participate in and/or witness any EAS testing on a schedule formed in consultation with the Grantee. If the test indicates that the EAS is not performing consistent with FCC requirements, the Grantee shall make any necessary adjustment to the EAS, and the EAS shall be retested.

(b) The Grantee shall ensure that the EAS is functioning properly at all times. It will test the EAS periodically, in a manner consistent with sound operational practices for emergency systems in accordance with federal law. The Grantee will advise the Town of the testing schedule and the Town may be present for the tests. (Ord. 2006-06 §12.4)

**Sec. 5-1-610. Technical performance.**

The Grantee shall fully comply with FCC technical standards and procedures, including all required FCC tests and all requirements to maintain test results in its public file. The technical performance of the cable system shall meet or exceed all applicable technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The Town shall have the full authority permitted by applicable law to enforce compliance with these technical standards. Copies of such test results will be available to the Town upon written request. (Ord. 2006-06 §12.5)

**Sec. 5-1-615. Additional tests.**

Where there exists other evidence which in the judgment of the Town casts doubt upon the reliability or technical quality of cable service, the Town shall have the right and authority to require the Grantee to test, analyze and report on the performance of the cable system. The Grantee shall reasonably cooperate with the Town in performing such testing and shall prepare the results and a report, if requested, within thirty (30) days after testing. Such report shall include the following information:

- (1) The nature of the complaint or problem which precipitated the special tests;

- (2) The cable system component tested;
- (3) The equipment used and procedures employed in testing;
- (4) The method, if any, in which such complaint or problem was resolved; and
- (5) Any other information pertinent to said tests and analysis which may be required. (Ord. 2006-06 §12.6)

#### *Division 12*

#### *Service Availability, Interconnection and Service to Schools and Public Buildings*

#### **Sec. 5-1-630. Universal service.**

(a) By August 2, 2009, the Grantee shall provide cable service to all customers in the Town boundaries in accordance with this Franchise. The Grantee agrees to provide service to any area annexed to the Town in accordance with this Franchise, which service shall be available not later than sixty (60) days following issuance of a certificate of occupancy for any new residential or commercial structures within the annexed area, except for such delay as may be caused by events outside of the Grantee's control.

(b) The Grantee shall not arbitrarily refuse to provide cable services to any person within its franchise area. All dwelling units and multiple dwelling units in the franchise area shall have the same availability of cable services from the Grantee's cable system under nondiscriminatory rates and reasonable terms and conditions. The Town acknowledges that the Grantee cannot control the dissemination of particular cable services beyond the point of demarcation at a multiple dwelling unit. The Grantee may also charge for line extensions and nonstandard installations pursuant to Section 13.2 below. (Ord. 2006-06 §13.1)

#### **Sec. 5-1-635. Service availability.**

(a) In General. Except as otherwise provided herein, the Grantee shall use its commercially reasonable efforts to provide cable services requiring a standard installation within seven (7) business days of a request by any person within the Town, subject to payment of any required or owed fees or charges. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by the Grantee, receipt of a written request by the Grantee or receipt by the Grantee of a verified verbal request. The Grantee shall provide such service:

(1) With no line extension charge except as specifically authorized elsewhere in this Franchise.

(2) At a nondiscriminatory installation charge for a standard installation, consisting of a one-hundred-twenty-five-foot drop from the existing subscriber distribution system to the demarcation point, as that term is defined in federal law for residential subscribers, with additional charges for nonstandard installations computed according to a nondiscriminatory methodology for such installations, adopted by the Grantee and provided in writing to the Town.

(3) At nondiscriminatory monthly rates for residential subscribers.

(b) Whenever the Grantee receives a request for cable service from a customer in a contiguous unserved area where there are an average of at least thirty-five (35) residences within five thousand two hundred eighty (5,280) cable-bearing strand feet (one [1] cable mile) from the portion of the Grantee's trunk or distribution cable which is to be extended, it shall extend its cable system to such customer at no cost to said customer for the cable system extension, other than the published standard installation fees charged to all customers.

(c) Customer charges for extensions of service. No customer shall be refused service arbitrarily unless the customer does not meet the requirements of Subsection (b) above. However, for unusual circumstances, such as a customer's request to locate the cable drop underground in an overhead utility service line area, the customer shall bear actual cost of construction. Notwithstanding the above, and a drop exceeding one hundred twenty-five (125) feet in length from the distribution cable, the customer shall bear the additional cost to construct. A request from a customer in an area which does not meet the density requirement of Subsection (b) above, density of less than thirty-five (35) residences per five thousand two hundred eighty (5,280) cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction by the customer, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and customers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per five thousand two hundred eighty (5,280) cable-bearing strand feet of its trunk or distribution cable and whose denominator equals thirty-five (35). Customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential customers be paid in advance. (Ord. 2006-06 §13.2)

**Sec. 5-1-640. Interconnection with other cable systems.**

(a) The cable system shall be interconnected to the headend, pursuant to Section 5-1-590 of this Article, and may, at the Grantee's option, be interconnected with other area cable systems that are owned and operated by the Grantee or an affiliate.

(b) The Grantee shall explore with any public interconnection authority, regional interconnection authority or town, county, state or federal regulatory agency which may hereafter be established for the purpose of regulating, financing or otherwise providing for the interconnection of cable systems beyond the boundaries of the Town, the possibility of further interconnects. (Ord. 2006-06 §13.3)

**Sec. 5-1-645. Connection of public facilities.**

The Grantee shall, at no cost to the Town, provide one (1) outlet of basic service and expanded basic service to all Town-owned buildings, fire authority buildings, schools and public libraries where such service is available as of the effective date of this Franchise in accordance with Section 5-1-635 above. For purposes of this Section, *school* means all state-accredited K-12 public and private schools but does not include home schools. In addition, the Grantee shall provide, at no cost to the Town or other entity, one (1) outlet of basic and expanded basic service to additional owned or leased and occupied Town buildings, schools and libraries upon request if the drop line from the feeder cable to such building does not exceed one hundred twenty-five (125) feet or if the Town or other entity agrees to pay the incremental cost of such drop line in excess of one hundred twenty-five (125) feet,

including the cost of such excess labor and materials. Outlets of basic and expanded basic service provided in accordance with this Subsection may be used to distribute cable services throughout such buildings, provided that such distribution can be accomplished without causing cable system disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes, nor shall the outlets be used to entertain public groups or be used for commercial purposes. (Ord. 2006-06 §13.4)

**Sec. 5-1-650. Cable internet service to schools, libraries and Town-owned or Town-leased buildings.**

At such time as the Grantee offers cable internet service in the Town, the Grantee shall provide one (1) outlet of cable internet service, including one (1) modem, to any accredited K-12 public schools, public libraries and Town-owned or Town-leased buildings which are within one hundred twenty-five (125) feet of the cable system at the prevailing discounted commercial rate in accordance with Section 13.2 above. (Ord. 2006-06 §13.5)

*Division 13  
Franchise Violations*

**Sec. 5-1-670. Procedure for remedying franchise violations.**

(a) If the Town believes that the Grantee has failed to perform any obligation under this Franchise or has failed to perform in a timely manner, the Town shall notify the Grantee in writing, stating with reasonable specificity the nature of the alleged default. The Grantee shall have thirty (30) days from the receipt of such notice to:

(1) Respond to the Town, contesting the Town's assertion that a default has occurred, and requesting a meeting in accordance with Subsection (b) below;

(2) Cure the default; or

(3) Notify the Town that the Grantee cannot cure the default within the thirty (30) days because of the nature of the default. In the event the default cannot be cured within thirty (30) days, the Grantee shall promptly take all reasonable steps to cure the default and notify the Town in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the Town may set a meeting in accordance with Subsection (b) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether the Grantee's proposed completion schedule and steps are reasonable.

(b) If the Grantee does not cure the alleged default within the cure period stated above or by the projected completion date under Paragraph (a)(3) above, or denies the default and requests a meeting in accordance with Paragraph (a)(1), or the Town orders a meeting in accordance with Paragraph (a)(3), the Town shall set a meeting to investigate said issues or the existence of the alleged default. The Town shall notify the Grantee in writing of the meeting, and such meeting shall take place no less than thirty (30) days after the Grantee's receipt of notice of the meeting. At the meeting, the Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

(c) If, after the meeting, the Town determines that a default exists, the Town shall order the Grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time frame as the Town shall determine. In the event the Grantee does not cure within such time to the Town's reasonable satisfaction, the Town may avail itself of any legal or equitable remedy available under this Franchise or applicable law, including but not limited to:

- (1) Revoke this Franchise pursuant to the procedures in Section 5-1-675 below;
- (2) Take any other legal or equitable remedy available under this Franchise or any applicable law; or
- (3) Assert claims against any bond posted by the Grantee.

(d) The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the Town; provided that any such final determination may be subject to appeal to a court of competent jurisdiction under applicable law, to the extent such review is available under applicable law and subject to claims which may exist for frivolous pursuit of such review process. (Ord. 2006-06 §14.1)

#### **Sec. 5-1-675. Revocation.**

(a) In addition to revocation in accordance with other provisions of this Franchise, the Town may revoke this Franchise and rescind all rights and privileges associated with this Franchise in the following circumstances, each of which represents a material breach of this Franchise:

- (1) If the Grantee fails to perform any material obligation under this Franchise or under any applicable local law or ordinance;
- (2) If the Grantee willfully fails for more than forty-eight (48) consecutive hours to provide continuous and uninterrupted cable service;
- (3) If the Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the Town or subscribers;
- (4) If the Grantee becomes insolvent, the Grantee files for protection under the Bankruptcy code or if there is an assignment for the benefit of the Grantee's creditors; or
- (5) If the Grantee makes a material misrepresentation of fact in the application for or negotiation of this Franchise.

(b) Following the procedures set forth in Subsections 5-1-670 (a) and (b), above, and prior to forfeiture or termination of this Franchise, the Town shall give written notice to the Grantee of its intent to revoke this Franchise. The notice shall set forth the exact nature of the noncompliance.

(c) Any proceeding under Subsection (b) above shall be conducted by the Town Board or its designee and open to the public. The Grantee shall be afforded at least sixty (60) days' prior written notice of such proceeding.

(1) At such proceeding, the Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence and, to the extent otherwise permitted by law, to require production of evidence, compel the testimony of persons and question witnesses. A complete verbatim record and transcript shall be made of such proceeding, and the cost shall be shared equally between the parties. The Town Board or its designee shall hear any persons interested in the revocation, and shall allow the Grantee, in particular, an opportunity to state its position on the matter.

(2) Within ninety (90) days after the hearing, the Town Board shall determine whether to revoke this Franchise and declare that this Franchise is revoked and the letter of credit forfeited; or, if the breach at issue is capable of being cured by the Grantee, direct the Grantee to take appropriate remedial action within the time, in the manner and on the terms and conditions that the Town Board or its designee determines are reasonable under the circumstances. If the Town determines that this Franchise is to be revoked, the Town shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee. The Grantee shall be bound by the Town's decision to revoke this Franchise unless the Grantee appeals the decision to a court of competent jurisdiction within thirty (30) days of the date of the decision.

(3) The Grantee shall be entitled to such relief as the Court may deem appropriate.

(4) The Town Board may at its sole discretion take any lawful action which it deems appropriate to enforce the Town's rights under this Franchise in lieu of revocation of this Franchise. (Ord. 2006-06 §14.2)

**Sec. 5-1-680. Procedures in event of termination or revocation.**

(a) If this Franchise expires without renewal or is otherwise lawfully terminated or revoked, the Town may, subject to applicable law:

(1) Allow the Grantee to maintain and operate its cable system on a month-to-month basis or short-term extension of this Franchise for not less than six (6) months, unless a sale of the cable system can be closed sooner or the Grantee demonstrates to the Town's satisfaction that it needs additional time to complete the sale; or

(2) Purchase the Grantee's cable system in accordance with the procedures set forth in Section 5-1-685 below.

(b) In the event that a sale has not been completed in accordance with Paragraphs (a)(1) and/or (a)(2) above, the Town may order the removal of the above-ground cable system facilities and such underground facilities from the Town at the Grantee's sole expense within a reasonable period of time as determined by the Town. In removing its plant, structures and equipment, the Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all rights-of-way, public places and private property in as good condition as that prevailing prior to the Grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions and the letter of credit shall remain in full force and effect during the period of removal, and the Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefor.

(c) If the Grantee fails to complete any removal required by Subsection (b) above to the Town's reasonable satisfaction, after written notice to the Grantee, the Town may cause the work to be done and the Grantee shall reimburse the Town for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or the Town may recover the costs through the letter of credit provided by the Grantee.

(d) The Town may seek legal and equitable relief to enforce the provisions of this Franchise. (Ord. 2006-06 §14.3)

**Sec. 5-1-685. Purchase of cable system.**

(a) If at any time this Franchise is revoked, terminated or not renewed upon expiration in accordance with the provisions of federal law, the Town shall have the option to purchase the cable system.

(b) The Town may, within sixty (60) days of such events as described in Subsection (a) above, offer in writing to purchase the Grantee's cable system. The Grantee shall have thirty (30) days from receipt of a written offer from the Town within which to accept or reject the offer.

(c) In any case where the Town elects to purchase the cable system, the purchase shall be closed within one hundred twenty (120) days of the date of the Town's audit of a current profit and loss statement of the Grantee. The Town shall pay for the cable system in cash or certified funds, and the Grantee shall deliver appropriate bills of sale and other instruments of conveyance.

(d) For the purposes of this Section, the price for the cable system shall be determined as in accordance with fair market value and federal law. (Ord. 2006-06 §14.4)

**Sec. 5-1-690. Receivership and foreclosure.**

(a) At the option of the Town, subject to applicable law, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(1) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or

(2) The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise and have remedied all defaults under this Franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise.

(b) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of the Grantee, the Town may serve notice of revocation on the Grantee and to the purchaser at the sale, and the rights and privileges of the Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

(1) The Town has approved the transfer of this Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and

(2) The purchaser has covenanted and agreed with the Town to assume and be bound by all of the terms and conditions of this Franchise. (Ord. 2006-06 §14.5)

**Sec. 5-1-695. No monetary recourse against Town.**

The Grantee shall not have any monetary recourse against the Town or its officers, officials, boards, commissions or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Franchise or the enforcement thereof, in accordance with the provisions of applicable federal, state and local law. The rights of the Town under this Franchise are in addition to, and shall not be read to limit, any immunities the Town may enjoy under federal, state or local law. (Ord. 2006-06 §14.6)

**Sec. 5-1-700. Alternative remedies.**

No provision of this Franchise shall be deemed to bar the right of the Town to seek or obtain judicial relief from a violation of any provision of this Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the Town to recover monetary damages for such violations by the Grantee, or to seek and obtain judicial enforcement of the Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity. (Ord. 2006-06 §14.7)

**Sec. 5-1-705. Assessment of monetary damages.**

Unless caused by Acts of God or other acts beyond the control of the Grantee, the Town may require damages pursuant to Section 5-1-670(c) above and minimum compensation damages to customers in accordance with Appendix 5-B of this Chapter. (Ord. 2006-06 §14.8)

**Sec. 5-1-710. Effect of abandonment.**

If the Grantee abandons its cable system during this Franchise term, or fails to operate its cable system in accordance with its duty to provide continuous service unless caused by acts of God or other acts beyond the control of the Grantee, the Town may obtain an injunction requiring the Grantee to continue operations. If the Town is authorized by a court of competent jurisdiction to operate or designate another entity to operate the cable system, the Grantee shall reimburse the Town or its designee for all reasonable costs, expenses and damages incurred. (Ord. 2006-06 §14.9)

**Sec. 5-1-715. Constitution of abandonment.**

The Town shall be entitled to exercise its options in Section 5-1-710 above if:

(1) The Grantee fails to provide cable service in accordance with this Franchise over a substantial portion of the franchise area for four (4) consecutive days, unless the Town authorizes a longer interruption of service; or

(2) The Grantee, for any period, willfully and without cause refuses to provide cable service in accordance with this Franchise. (Ord. 2006-06 §14.10)

*Division 14*  
*Franchise Renewal and Transfer*

**Sec. 5-1-730. Renewal.**

The Town and the Grantee agree that any proceedings undertaken by the Town that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law. (Ord. 2006-06 §15.1)

**Sec. 5-1-735. Transfer of ownership or control.**

(a) No sale, transfer, lease or corporate change of or in the Grantee, including but not limited to the sale of a majority of the entity's assets, a merger, including the merger of a subsidiary and parent entity, consolidation or the creation of a subsidiary or affiliate entity, shall take place until the parties to the sale, transfer or corporate change file a written request with the Town for its approval and such approval is granted by the Town; provided, however, that said approval shall not be required where the Grantee grants a security interest in its Franchise and assets to secure an indebtedness.

(b) The Grantee shall promptly notify the Town of any actual or proposed change in, transfer of or acquisition by any other party of control of the Grantee. Any sale, transfer, exchange, lease or assignment of stock in the Grantee so as to create a new controlling interest in the system shall be subject to the requirements of this Section. The term *controlling interest* as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. As a minimum, *control* or *controlling interest* as used herein means a legal or beneficial interest (even though actual working control does not exist) of at least twenty-five percent (25%).

(c) The parties to the sale or transfer shall make a written request to the Town for its approval of a sale or transfer and furnish all information required by law and the Town.

(d) In seeking the Town's consent to any change in ownership or control, the proposed transferee shall indicate whether it:

(1) Has ever been convicted or held liable for acts involving deceit, including any violation of federal, state or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

(2) Has ever had a judgment in an action for fraud, deceit or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;

(3) Has pending any material legal claim, lawsuit or administrative proceeding arising out of or involving a cable system;

(4) Is financially solvent by submitting financial data, including financial statements that are audited by a certified public accountant who may also be an officer of the transferee, along with any other data that the Town may reasonably require; and

(5) Has the financial, legal and technical capability to enable it to maintain and operate the cable system for the remaining term of this Franchise.

(e) The Town shall act by ordinance on the request within one hundred twenty (120) days of the request, provided that it has received all requested information. Subject to the foregoing, if the Town fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Town agree to an extension of time.

(f) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the Town, the Grantee shall file with the Town a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by the Grantee and the transferee, and the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to applicable law. In the event of a change in control, in which the Grantee is not replaced by another entity, the Grantee will continue to be bound by all of the provisions of this Franchise, subject to applicable law, and will not be required to file an additional written acceptance.

(g) In reviewing a request for sale or transfer, the Town may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and the Grantee shall assist the Town in so inquiring. The Town may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate; provided, however, that any such terms and conditions so attached shall be related to the legal, technical and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Franchise by the Grantee. For purposes of this Section, *noncompliance* means issues that have been identified to the Grantee, which the Grantee has been given a reasonable opportunity to cure.

(h) Notwithstanding anything to the contrary in this Section, the prior approval of the Town shall not be required for any sale, assignment or transfer of this Franchise or cable system to an affiliate of the Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be reasonably determined necessary by the Town and must agree in writing to comply with all of the provisions of this Franchise. Further, the Grantee may pledge the assets of the cable system for the purpose of financing without the consent of the Town; provided that such pledge of assets shall not impair or mitigate the Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise. (Ord. 2006-06 §15.2)

*Division 15*  
*Miscellaneous Provisions*

**Sec. 5-1-750. Severability.**

If any section, subsection, paragraph, term or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such

determination shall have no effect on the validity of any other section, subsection, paragraph, term or provision of this Franchise, all of which will remain in full force and effect for the term of this Franchise. (Ord. 2006-06 §16)

**Sec. 5-1-755. Preferential or discriminatory practices prohibited.**

NO DISCRIMINATION IN EMPLOYMENT. In connection with the performance of work under this Franchise, the Grantee agrees not to refuse to hire, discharge, promote, demote or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status or physical or mental disability; and the Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise, the Grantee shall fully comply with all equal employment or nondiscrimination provisions and requirements of federal, state and local laws and, in particular, FCC rules and regulations relating thereto. (Ord. 2006-06 §17.1)

**Sec. 5-1-760. Notices.**

Throughout the term of this Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent postage prepaid to such respective address and such notices shall be effective upon the date of mailing. These addresses may be changed by the Town or the Grantee by written notice at any time. At the effective date of this Franchise:

The Grantee's address shall be:

US Cable of Coastal – Texas, L.P.  
ATTN: Dave Kavanagh, State Manager  
111 West South Street  
Johnstown, Colorado 80534

With a copy to:

US Cable Corporation  
Joseph Appio, V.P. of Operations  
28 West Grand Avenue  
Montvale, NJ 07645-2100

The Town's address shall be:

Town of Severance  
Attention: Town Administrator  
Town Hall  
Severance, Colorado 80547

And a copy to:

Greg Bell, Town Attorney  
Bell, Boge and Associates, P.C.

322 East Oak Street  
Fort Collins, Colorado 80524

(Ord. 2006-06 §17.2)

**Sec. 5-1-765. Descriptive headings.**

The headings and titles of the sections and subsections of this Franchise are for reference purposes only, and shall not affect the meaning or interpretation of the text herein. (Ord. 2006-06 §17.3)

**Sec. 5-1-770. Publication costs to be borne by Grantee.**

The Grantee shall reimburse the Town for all reasonable costs incurred in publishing this Franchise if such publication is required. (Ord. 2006-06 §17.4)

**Sec. 5-1-775. Binding effect.**

This Franchise shall be binding upon the parties hereto, their permitted successors and assigns. (Ord. 2006-06 §17.5)

**Sec. 5-1-780. No joint venture.**

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party, act toward third persons or the public in any manner which would indicate any such relationship with the other. (Ord. 2006-06 §17.6)

**Sec. 5-1-785. Waiver.**

The failure of the Town at any time to require performance by the Grantee of any provision hereof shall in no way affect the right of the Town hereafter to enforce the same. Nor shall the waiver by the Town of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision. (Ord. 2006-06 §17.7)

**Sec. 5-1-790. Reasonableness of consent or approval.**

Whenever under this Franchise "reasonableness" is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards as well as business and economic considerations. (Ord. 2006-06 §17.8)

**Sec. 5-1-795. Entire agreement.**

This Franchise and all appendices represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations between the parties. (Ord. 2006-06 §17.9)

## APPENDIX 5-A

### Customer Service Standards

#### SECTION 1. POLICY.

The Cable Operator shall be permitted to first resolve citizen complaints without delay and interference from the Franchising Authority.

Where a given complaint is not addressed by the Cable Operator to the citizen's satisfaction, the Franchising Authority may intervene if requested to do so by the citizen. In addition, if after written notice and a fifteen-day-thereafter opportunity to cure is provided to the Grantee, the Grantee has failed to cure the complaint, the Franchising Authority may prescribe a cure which complies with the Grantee's Franchise and its rights under applicable law and establish a thirty-day deadline for implementation of the cure. If the noncompliance is not cured within thirty (30) days, monetary sanctions may be imposed pursuant to the Grantee's Franchise to encourage compliance.

These Standards are intended to be of general application; however, the Cable Operator shall be relieved of any obligations hereunder if it is unable to perform due to a region-wide natural emergency or in the event of force majeure affecting a significant portion of the Franchise Area. The Cable Operator is free to exceed these Standards to the benefit of its Customers and such shall be considered performance for the purposes of these Standards.

#### SECTION 2. DEFINITIONS.

When used in these Customer Service Standards (the "Standards"), the following words, phrases, and terms shall have the meanings given below.

2.1 *Cable Operator* shall mean any grantee of a franchise to provide Cable Service over a Cable System and, directly or through one (1) or more affiliates, owns a significant interest in such Cable System or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System.

2.2 *Customer* shall mean any person who lawfully receives Cable Service from the Cable Operator.

2.3 *Customer Service Representative* (or *CSR*) shall mean any person employed by the Cable Operator to assist or provide service to Customers, whether by answering public telephone lines, writing service or installation orders, answering Customers' questions, receiving and processing payments, or performing other Customer service-related tasks.

2.4 *Franchising Authority* shall mean the Town acting by and through the Town Board or its designee.

2.5 *Normal business hours* shall mean those hours during which most similar businesses in the Town are open to serve Customers. In all cases, *normal business hours* must include some evening hours at least one (1) night per week and/or some weekend hours.

2.6 *Normal operating conditions* shall mean those service conditions which are within the control of the Cable Operator. Those conditions which are not within the control of the Cable Operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Cable Operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

2.7 *Service interruption* shall mean the loss of picture or sound on one (1) or more cable channels.

2.8 *Town* shall mean the Town of Severance, Colorado.

### **SECTION 3. CUSTOMER SERVICE.**

#### **3.1. Courtesy.**

All employees of the Cable Operator shall use their best efforts to be courteous, knowledgeable and helpful and to provide effective and satisfactory service in all contacts with Customers.

#### **3.2. Accessibility; cable system office hours and telephone availability.**

(A) The Cable Operator shall maintain a local, toll-free or collect-call telephone access line which will be available to its subscribers twenty-four (24) hours a day, seven (7) days a week.

(1) Trained company representatives will be available to respond to Customer telephone inquiries during normal business hours.

(2) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(B) Under normal operating conditions, telephone answer time by a Customer Service Representative, including wait time, shall not exceed forty-five (45) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed forty-five (45) seconds. These standards shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis.

(C) The Cable Operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards set forth above, unless a historical record of complaints indicates a clear failure to comply.

(D) Under normal operating conditions, the Customer will receive a busy signal less than three percent (3%) of the time.

(E) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

### **3.3. Responsiveness; installations, outages and service calls.**

(A) Under normal operating conditions, each of the following standards will be met no less than ninety five percent (95%) of the time measured on a quarterly basis:

(1) Standard installation will be performed within seven (7) business days after an order has been placed. *Standard installations* are those that are located up to one hundred twenty-five (125) feet from the existing distribution system.

(2) Excluding conditions beyond the control of the Cable Operator, the Cable Operator will begin working on *service interruptions* promptly, and in no event later than twenty-four (24) hours after the interruption becomes known. If the service interruption occurs on a weekend, the Grantee shall respond on the first business day thereafter unless three (3) or more subscribers are affected, in which case, the Grantee shall respond within twelve (12) hours. The Cable Operator must begin actions to correct other service problems the next business day after notification of the service problem.

(3) The *appointment window* alternatives for installations, service calls and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. The Cable Operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the Customer.

(4) The Cable Operator may not cancel an appointment with a Customer after the close of business on the business day prior to the scheduled appointment.

(5) If the Cable Operator's representative is running late for an appointment with a Customer and will not be able to keep the appointment as scheduled, the Customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the Customer.

(B) The Cable Operator shall meet the following standards for TV reception: The Cable Operator shall provide clear television reception that meets or exceeds technical standards established by the United States Federal Communications Commission (the "FCC"). The Cable Operator shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions for maintenance shall be preceded by notice and, to the extent reasonably possible, shall occur during periods of minimum use of the system, preferably between midnight and 6:00 a.m..

(C) The Cable Operator's Customer Service Representative shall have the authority to provide credit for interrupted service, to waive fee, and to schedule service appointments where appropriate. Any difficulties that cannot be resolved by the Customer Service Representative shall be referred to the appropriate supervisor, who shall contact the Customer and shall attempt to resolve the problem within forty-eight (48) hours or within such other time frame as is acceptable to the Customer and the Cable Operator.

(D) Billings, refunds and credits.

(1) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment

charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits. In case of a billing dispute, the Cable Operator must respond to a written complaint from a Customer within thirty (30) days.

(2) Refund checks will be issued promptly, but no later than either the Customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or the return of the equipment supplied by the Cable Operator if service is terminated.

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

(E) Treatment of public or private property.

(1) Nothing herein shall be construed as authorizing access or entry to private property, or any other property, where such right to access or entry is not otherwise provided by law. For major construction or installation projects, property owners or occupants shall also be notified forty-eight (48) hours prior to the commencement of construction. In the case of an emergency, the Cable Operator shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made.

(2) The Cable Operator personnel shall clean all areas surrounding any work site and ensure that all cable materials have been disposed of properly.

#### **3.4. Services for Customers with Disabilities.**

(A) For any Customer with a disability, the Cable Operator shall at no charge deliver and pick up converters at the Customers' homes. In the case of a malfunctioning converter, the technician shall provide another converter, hook it up and ensure that it is working properly, and shall return the defective converter to the Cable Operator.

(B) The Cable Operator shall provide assistance rendered by the Cable Operator's Customer Service Representatives for any hearing-impaired Customer at no charge.

(C) The Cable Operator shall provide free use of a remote control unit to mobility-impaired (if disabled, in accordance with Subsection (D) below) Customers.

(D) Any Customer with a disability may request the special services described above by providing the Cable Operator with a letter from the Customer's physician stating the need, or by making the request to the Cable Operator's installer or service technician, where the need for the special services can be visually confirmed.

#### **3.5. Notification to Subscribers.**

(A) The Cable Operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers and at any time upon request.

(1) Products and services offered;

- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Installation and service maintenance policies;
- (4) Instructions on how to use the cable service;
- (5) Channel positions programming carried on system; and
- (6) Billing and complaint procedures bearing the address and telephone number of the local franchise authority's cable office.

(B) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Cable Operator. In addition, the Cable Operator shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by Subsection (A) above. Notwithstanding any other provision herein, the Cable Operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee or any other fee, tax, assessment or change of any kind imposed by any federal agency, State or Franchising Authority on the transaction between the Cable Operator and the subscriber.

(C) All officers, agents, and employees of the Cable Operator or its contractors or subcontractors who are in personal contact with cable Customers shall wear on their outer clothing identification cards bearing their names and photographs. The Cable Operator shall account for all identification cards at all times. Every vehicle of the Cable Operator shall be clearly visually identified to the public as working for the Cable Operator. All CSRs shall identify themselves orally to callers immediately following the greeting during each telephone contact with the public.

### **3.6. Customer Privacy.**

(A) The Cable Operator shall not monitor cable television signals to determine the individual viewing patterns or practices of any Customer without prior written consent from that Customer, except as otherwise permitted by the Cable Franchise Agreement.

(B) The Cable Operator shall not sell or otherwise make available Customer lists or other personally identifiable Customer information without prior written Customer consent, except as otherwise permitted by the Cable Franchise Agreement. The Cable Operator is permitted to disclose such information if such disclosure is necessary to render, or conduct, a legitimate business activity related to a cable service or other service provided by the Cable Operator to its Customers.

### **3.7. Safety.**

The Cable Operator shall install and locate its facilities, cable system and equipment in compliance with all federal, state, local and company safety standards, and in such manner as shall not unduly interfere with or endanger persons or property. Whenever the Cable Operator receives notice that an unsafe condition exists with respect to its equipment, the Cable Operator shall

investigate such condition immediately, and shall take such measures as are necessary to remove or eliminate any unsafe condition.

## **SECTION 4. COMPLAINT PROCEDURE**

### **4.1. Complaints to Cable Operator.**

(A) The Cable Operator shall establish written procedures for receiving, acting upon and resolving Customer complaints, and crediting Customer accounts without interventions by the Franchising Authority, and shall publicize such procedures through printed documents at the Cable Operator's sole expense.

(B) Said written procedures shall prescribe a simple manner in which any Customer may submit a complaint by telephone or in writing to the Cable Operator that it has violated any provision of these Customer Service Standards, any terms or conditions of the Customer's contract with the Cable Operator, or reasonable business practices.

(C) At the conclusion of the Cable Operator's investigation of a Customer complaint, but in no event more than thirty (30) calendar days after receiving the complaint, the Cable Operator shall notify the Customer of the results of its investigation and its proposed action or credit.

(D) The Cable Operator shall also notify the Customer of the Customer's right to file a complaint with the Franchising Authority in the event the Customer is dissatisfied with the Cable Operator's decision, and shall thoroughly explain the necessary procedures for filing such complaint with the Franchising Authority.

(E) The Cable Operator's complaint procedures shall be filed with the Franchising Authority prior to implementation.

### **4.2. Complaints to Franchising Authority.**

(A) Any Customer who is dissatisfied with any proposed decision of the Cable Operator or who has not received a decision within the thirty-day period as required shall be entitled to have the complaint reviewed by the Franchising Authority or its designee.

(B) The Customer may initiate the review by filing a written complaint, together with the Cable Operator's written decision, if any, with the Franchising Authority.

(C) The Customer shall make such filing and notification within fifteen (15) days of receipt of the Cable Operator's decision or, if no decision has been provided, within forty (40) days after filing the original complaint with the Cable Operator. The Customer shall notify the Cable Operator that a complaint has been filed with the Franchising Authority by mailing a copy of the complaint to the Cable Operator by certified mail, return receipt requested.

(D) The Cable Operator shall file a written response to the complaint with the Franchising Authority within fifteen (15) days of receipt of a copy of the complaint from the Customer.

(E) If the Franchising Authority or its designee decides that further evidence is warranted, the Franchising Authority or its designee may require the Cable Operator and the Customer to submit,

within ten (10) days of notice thereof, a written statement of the facts and arguments in support of their respective positions.

(F) The Cable Operator and the Customer shall produce any additional evidence, including any reports from the Cable Operator, which the Franchising Authority or its designee may deem necessary to an understanding and determination of the complaint.

(G) The Franchising Authority or its designee shall issue a determination within thirty (30) days after examining the materials submitted, setting forth its basis for the determination.

(H) The Franchising Authority or its designee may extend these time limits for reasonable cause and may intercede and attempt to negotiate an informal resolution.

(I) If the Franchising Authority or its designee determines that the Customer's complaint is valid and that the Cable Operator did not provide the complaining Customer with the proper resolution and/or credit, the Franchising Authority or its designee may reverse any decision of the Cable Operator in the matter and/or require the Cable Operator to grant a specific resolution as determined by the Franchising Authority or its designee. If the Franchising Authority finds that the Customer's complaint has no validity, the complaint shall be dismissed with no further action being taken.

(J) Any decision by the Franchising Authority may be reviewed by a court of competent jurisdiction pursuant to C.R.C.P. 106.

#### **4.3. Verification of Compliance.**

The Cable Operator shall establish its compliance with any or all of the standards required through annual reports that demonstrate said compliance, or as requested by the Franchising Authority.

#### **4.4. Overall Quality of Service.**

The Franchising Authority may evaluate the overall quality of Customer service provided by the Cable Operator to Customers:

(1) In conjunction with any performance review provided for in the Cable Franchise Agreement; and

(2) At any other time, at its sole discretion based on the number of Customer complaints received by the Cable Operator and the Franchising Authority, and the Cable Operator's response to those complaints.

#### **4.5. Noncompliance with Customer Service Standards.**

Noncompliance with any provision of these Standards is a violation of these Standards.

#### **4.6 Procedure for Remedying Violations.**

If any Cable Operator is found to have violated any of these Customer Service Standards, such Cable Operator shall be subject to any appropriate damages, penalties or any other remedy as provided by Appendix 50B attached hereto.

## **SECTION 5. MISCELLANEOUS**

### **5.1. Severability.**

Should any section, subsection, paragraph, term or provision of these Standards be determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction with regard thereto, such determination shall have no effect on the validity of any other section, subsection, paragraph, term or provision of these Standards, each of the latter of which shall remain in full force and effect.

### **5.2. Nonwaiver.**

Failure to enforce any provision of these Standards shall not operate as a waiver of the obligations or responsibilities of the Cable Operator under said provision or any other provision of these Standards.

**APPENDIX 5-B**

**Credits to Customers**

**[TO BE INSERTED PRIOR TO EXECUTION]**