

TOWN OF READFIELD, MAINE
Cable Television Ordinance

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Section 1. Introduction

The Select Board of the Town of Readfield, Maine adopts the following Cable Television Ordinance pursuant to the authority provided by Title 30-A, sections 3001 and 3008 of the Maine Revised Statutes.

Section 2. Statement of Intent and Purpose

The Town intends, by the adoption of this Ordinance, to facilitate the development and operation of cable systems within the Town. The following are statements of the Town's intent when granting or renewing a cable franchise:

- a) To provide for the installation and operation of cable systems offering cable services with features meeting the current and future cable-related needs and interests of the community considering the costs to subscribers and to any cable operator;
- b) To act expeditiously on any requests for a franchise or open video system agreement so as to allow the prompt provision of cable services while ensuring that the public interest is met and that residents are not discriminated against based on race, color, sex, sexual orientation, religion, national origin, age, handicap, income or the geographical area of the Town in which they live;
- c) Encourage the widest feasible scope and diversity of programming and other cable services to all Town residents that are consistent with community needs and interests, taking into account the cost of providing the programming and cable services;
- d) Provide for universally accessible cable services that are available to all Town residents, taking into consideration a cable operator's costs;
- e) Encourage prompt implementation of technical advances in communications technology;
- f) Provide for ample and fairly allocated access to cable and video systems for producers of PEG channel programming to meet the needs and interests of the community, taking into account the cost of providing such access; and
- g) Ensure that rates and charges for basic cable programming and equipment are fair, reasonable, and consistent with federal standards.

Section 3. Definitions

For purposes of this Cable Ordinance, the following terms, phrases, words, abbreviations, and their derivations shall have the meanings provided herein. When not inconsistent with context, words used in the present tense include the future tense; words in the plural number include the singular number; words in the singular number include the plural; and the masculine gender includes the feminine gender. Unless otherwise expressly stated, words not defined herein

or in other local law shall be given the meaning set forth in applicable law and, if not defined therein, the words shall be given their common and ordinary meaning. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory.

- a) “Affiliate” shall have the meaning ascribed in the Cable Act.
- b) “Applicable Law” shall mean any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary, or permanent), judgment, decree, or other order issued, executed, entered, or deemed applicable by a governmental authority of competent jurisdiction.
- c) “Cable Act” shall mean the Cable Communications Policy Act of 1984, as it may be amended.
- d) “Cable Operator” shall have the meaning ascribed in the Cable Act.
- e) “Cable Service” shall have the meaning ascribed in the Cable Act.
- f) “Cable Ordinance” shall mean this ordinance, as it may be amended.
- g) “Cable System” and “System” shall have the meanings ascribed in the Cable Act.
- h) “FCC” shall mean the Federal Communications Commission.
- i) “Franchise” shall have the meaning ascribed in the Cable Act and.
- j) “Franchise Agreement” shall mean any written contract entered into between a cable operator and the Town that sets forth the terms and conditions of the authorization provided by a Franchise for the construction and/or operation of a cable system.
- k) “Franchise Area” shall mean the area of the Town identified in a franchise agreement in which a cable operator is authorized to construct, maintain and operate a cable system or open video system.
- l) “Franchise Fees” shall have the meaning ascribed in section 542(g) of the Cable Act.
- m) “Gross Revenue” shall mean and shall be broadly construed to include any and all revenue derived by a cable operator and its Affiliates from the provision of cable service within the Town, including, without limitation:
 - (1) Monthly fees for cable services, regardless of whether such cable services are provided to residential or commercial customers;

- (2) Installation, reconnection, downgrade, upgrade, or similar charges or fees associated with changes in a Subscriber's cable service levels;
- (3) Fees paid to the Town for channels designated for commercial or leased access use;
- (4) Fees or charges associated with a Subscriber's use, rental, lease, or purchase of a converter, remote control, lockout device, or any other cable service equipment;
- (5) Advertising fees, rebates, and commissions, but excluding unaffiliated agency fees;
- (6) Late fees, convenience fees, and administrative fees;
- (7) Revenues from program guides;
- (8) Franchise fees; and
- (9) Commissions from home shopping channels and other revenue sharing arrangements.

Revenues derived from sales of advertising that run on the cable system shall be allocated on a *pro rata* basis using total cable service subscribers reached by the advertising. Gross revenues shall not include:

- (10) Actual bad debt write-offs, provided, however, that all or part of any such actual bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; and
- (11) Consistent with applicable law, any taxes on services furnished by a cable operator imposed by any municipality, state or other governmental unit, provided that franchise fees shall not be regarded as such a tax.

Bundled Services Revenue. To the extent revenues are received by a cable operator for the provision of a bundle of services that includes cable services and non-cable services, the cable operator shall calculate revenues to be included in Gross Revenues, including late fee revenue, using a methodology that allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of the most recent published rate card rate for the components, except it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing cable service from which a cable operator receives or derives revenues from the Town's residents and must be updated within sixty (60) days of the date any rate change for cable and/or non-cable services is implemented for a service package containing cable service or the date any rate change is implemented for any service included in a service package that contains cable service. The Town reserves its right to review and to challenge a cable operator's calculations.

- n) "PEG Channel(s)" shall mean public, educational and/or governmental access channel(s).

- o) "Person" shall mean an individual, partnership, association, joint stock company, trust, corporation or governmental entity, as defined within the Cable Act.
- p) "Public Way" or "Street" shall mean the surface of, and the space above and below, any public street, highway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Town in the Town which shall entitle the Company to the use thereof for the purpose of installing, operating, repairing, and maintaining the cable system. "Public Way" or "Street" shall also mean any easement now or hereafter held by the Town within the Town for the purpose of public travel, or for utility or public service use dedicated for public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Company to the use thereof for the purposes of installing or transmitting the Company's cable service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the cable system. Reference herein to "Public Way" or "Street" shall not be construed to be a representation or guarantee by the Town that its property rights are sufficient to permit its use for any purpose, or that the Town shall gain or be permitted to exercise any rights to use property in the Town greater than those already possessed by the Town.
- q) "Subscriber" shall mean any person that receives cable service via a cable system located within the Town. In the case of multiple office buildings or multiple dwelling units, the term "Subscriber" shall mean the lessee, tenant, or occupant.
- r) "Town" shall mean the Town of Readfield, Maine, its officers, officials, employees, and agents.
- s) "Video Programming" shall mean programming provided by, or generally considered comparable to programming provided by, a television broadcast system.

Section 4. General

4.1. Title

This Ordinance shall be known and cited as the "Cable Television Ordinance" or herein "this Ordinance."

4.2. Incorporation of Ordinance Into Any Franchise

The requirements of this Ordinance shall apply to the full extent of the terms herein and shall be limited in scope or application only to the extent as may be required by Applicable Law, including those changes in applicable law as may be hereinafter enacted. The provisions of this

Ordinance shall be deemed incorporated in each franchise agreement entered into. The failure of the Town to enforce any provision of this Cable Ordinance or of any franchise or franchise agreement, or the failure of any person to comply with any such provision, term or condition, shall not be a waiver of the Town's right to enforce the provision, term or condition.

4.3. Rights and Duties

Any rights granted pursuant to this Ordinance and pursuant to any franchise agreement authorized hereunder are subject to the authority of the Town to adopt and enforce ordinances necessary for the health, safety and welfare of the public. Cable operators shall be subject to and comply with all valid generally applicable ordinances enacted by the Town..

4.4. Open Records Law

Information required to be filed with the Town pursuant to this Ordinance shall be made available to the public in accordance with the Freedom of Access Act, Title 1, Chapter 13 of the Maine Revised Statutes.

4.5. Enforcement Rights of the Town

The Town shall be entitled to enforce the provisions of this Ordinance and any franchise agreement through all remedies lawfully available.

4.6. Franchise Required

No person may construct, operate, or maintain a cable system on, in or above the Town's public ways, or provide cable service within the Town's municipal boundaries, without first being awarded a franchise therefor and entering into a franchise agreement with the Town in accordance with this Ordinance. Such franchise agreement shall authorize only a cable operator's construction, operation, and maintenance of a cable system to provide cable service and shall not authorize the construction, operation, or maintenance of any communications facilities other than a cable system or the provision of any communications service other than cable service.

4.7. Franchise Agreement

The Town may on such terms, conditions, and fees as are in the best interest of the Town and its residents enter into franchise agreements with one or more cable operators for the construction, operation, and maintenance of a cable system within the Town's municipal boundaries. All franchise agreements shall be nonexclusive. The Town may not enter into any franchise agreement with a term in excess of 15 years and may not include within any franchise agreement a provision for the automatic renewal or extension of such term beyond 15 years.

All franchises granted by the Town shall comply with the requirements of this Ordinance and applicable laws rules and regulations. A franchise agreement may contain such additional terms and conditions as the Town and a cable operator deem appropriate, provided all additional terms and conditions are consistent with this Ordinance and applicable laws, rules and regulations. The obligations of a franchise agreement shall apply to any and all successors and assigns of the cable operator, unless the Town expressly and in writing agrees to release the successors and assigns from the franchise agreement or any portion thereof.

4.8. Reservation of Authority

All rights and privileges granted by a franchise agreement shall be subject to the Town's police power to adopt and enforce local laws, ordinances, rules, and regulations necessary to protect the public's health, safety, and general welfare. Any conflict between the terms of a franchise agreement and any present or future lawful exercise of the Town's police powers shall be resolved in favor of the Town's lawful exercise of its police powers.

4.9. Compliance with Applicable Law

Cable operators shall at all times comply with this Ordinance and applicable laws, rules and regulations. In the event a federal or state law, regulation, or decision by a court of competent jurisdiction renders a provision of a franchise agreement void or otherwise unenforceable, the provision shall be considered preempted only for as long as the law, regulation, or decision is effective. If the law, regulation, or decision is subsequently repealed, rescinded, amended, voided, overturned or otherwise changed so that the preemption is nullified, the provision shall thereupon return to full force and effect as provided by such proceeding and shall be binding and enforceable in accordance with the terms thereof.

4.10. Construction Standards

Cable systems shall be constructed in compliance with all ordinances of the Town and applicable laws, rules, and regulations. Cable operators must obtain all permits and licenses required by the Town to construct a cable system in the public ways. A franchise or franchise agreement does not relieve a cable operator from obtaining all such necessary permits and paying all necessary permit and license fees.

4.11. Franchise Application Process

4.11.1. Initial Franchise Application

An application for an initial franchise may be submitted to the Town at any time and shall contain the following information:

- a) The applicant's name;
- b) The names of the applicant's officers and directors;
- c) The business address of the applicant;
- d) The name and contact information of a designated contact for the applicant;
- e) A description of the geographic area that the applicant proposes to serve;
- f) The PEG channel capacity and capital support proposed by the applicant;
- g) Whether the applicant holds any existing authorization to access the Town's public ways in the subject franchise service area;
- h) The amount of the franchise fee the applicant offers to pay;

- i) The names and business addresses of any person having, controlling, or being entitled to have or control at least 15.00% of the ownership of the applicant;
- j) The names and business addresses of any affiliate of the applicant;
- k) A detailed description of all previous experience of the applicant in constructing, operating, and maintaining a cable system and providing cable service;
- l) A statement identifying any other franchises awarded to the applicant or its parent, affiliates, or subsidiaries in the State of Maine and the status of such franchises;
- m) A detailed description of the design of the proposed cable system, including, without limitation, a detailed description of proposed equipment and technologies to be used in constructing and operating the cable system, channel capacity, channel uses, access programming facilities, subscriber privacy, and interconnection;
- n) A statement or schedule of the applicant's rates and charges it proposes to be made available to potential Subscribers; and
- o) Any additional information required by applicable State or local laws; and
- p) Such other information as is required by the Town and is related to the Town's evaluation of the application.

An application submitted to the Town but deficient with respect to any of the above requirements shall be deemed incomplete and shall not be deemed to have been received by the Town until such time as all of the above information has been provided to and accepted by the Town.

4.11.2. Renewal of Cable Franchise

Renewal of any existing cable franchise shall be conducted in accordance with the Cable Act and Title 30-A, §3010(5-C).

4.11.3. Public Hearing

No franchise or franchise renewal may be granted without a public hearing before the Town's Select Board to review the applicant's legal, financial, and technical qualifications, the applicant's ability to meet the Town's current and future cable-related needs and interests, and the adequacy of the applicant's qualifications to construct and/or operate a cable system, notice of which must be posted at least seven (7) days prior to the date of the public hearing.

4.11.4. Application Fee

The Town shall assess an applicant reasonable fees to defray the costs incurred by the Town in noticing the public hearing required by this Ordinance and reviewing and acting upon the applicant's application.

4.12. Additional Franchises

The Town may not grant a franchise or enter into a franchise agreement that is materially more favorable or less burdensome than an existing franchise or franchise agreement granted pursuant to this Ordinance.

4.13. Non-Cable Services

To the extent permitted by law, the Town shall retain the authority to regulate and receive compensation for the provision of non-cable services over any part of a cable system. If a cable operator is permitted by law and chooses to provide non-cable services over any part of its cable system, the cable operator and the Town shall negotiate the terms and fees therefor in accordance with applicable law.

Section 5. Cable System Performance Standards

5.1. Technical Standards

All cable systems shall be constructed and maintained in accordance with operating and technical standards established by the FCC.

5.2. Performance Testing

Cable operators shall perform all tests necessary to demonstrate compliance with the requirements of their franchise agreement and other performance standards established by applicable law.

5.3. Inspection; Special Testing

The Town shall have the right to inspect all construction and installation work performed by a cable operator. In addition, the Town may require special testing of a location or locations within a cable system if there is a particular matter of controversy or unresolved complaints regarding the cable system's construction, operations, or installation work pertaining to such location or locations, and the cable operator has not corrected such issues within thirty (30) days of written notice from the Town of the issues and applicable location or locations. Such tests shall be limited to the location or locations in question.

A cable operator shall provide the Town with at least two (2) business days' prior written notice of any special tests being conducted pursuant to this Section 5.3 and provide the Town an opportunity to observe such tests. All special testing results shall be submitted to the Town within fourteen (14) days of a special test's completion. If any test indicates that any part of component of a cable system fails to meet applicable requirements, the cable operator shall take corrective action, retest the location or locations, and advise the Town of the action taken and the subsequent results achieved.

5.4. Emergency Alert System

All cable systems shall incorporate emergency audio override capabilities in accordance with the FCC's Emergency Alert System (EAS) standards.

Section 6. Insurance and Indemnification

6.1. Insurance

All cable operators shall maintain during the full term of a franchise agreement such insurance as will protect it and the Town from any claims that may arise directly or indirectly or result from a cable operator's ownership, construction, repair, operation, or maintenance of the cable operator's cable system, whether such activities are performed by the cable operator or any of its affiliates, agents, subcontractors, or other associated persons. The insurance policies required under this Section shall not be in an amount less than:

- a) \$3,000,000 for personal injury, death, or property damage of any one person per occurrence;
- b) \$5,000,000 for excess liability (in umbrella form); and
- c) \$1,000,000 for automobile liability per occurrence.

Insurance policies required under this Section shall name the Town as an additional insured and shall contain a statement on a policy's face that the insurer will not cancel the policy or fail to renew the policy, whether at the cable operator's request, for nonpayment of premium, or otherwise, except after sixty (60) days' advance written notice has been provided to the Town. During the term of a franchise agreement, the cable operator shall not cancel any insurance policy required under this Section without prior submission of proof that the cable operator has obtained alternative insurance that complies with this Ordinance and is satisfactory to the Town.

Upon the granting of any franchise and as a condition of a franchise agreement becoming effective, the cable operator shall deliver to the Town certificates of insurance for those policies obtained or maintained pursuant to this Section.

6.2. Indemnification

A cable operator shall indemnify and hold harmless the Town and its officers, boards, committees, commissions, elected and appointed officials, employees, volunteers, and agents (collectively the "Town's Personnel") from and against any and all liability, damages, and penalties which they may be legally required to pay as a result of the Town's enforcement of the cable operator's franchise agreement except that a cable operator shall not be required to indemnify the Town for negligence or misconduct committed by the Town, its officers, officials, employees, or agents.

Section 7. Franchise Administration and Enforcement

7.1. Records and Right to Inspection

A cable operator shall at all times during the term of a franchise agreement maintain and provide to the Town upon written request:

- a) Records of all written complaints for a period of two (2) years after receipt by the cable operator. The term "complaint" refers to complaints about any aspect of the cable operator's service operations. Complaints recorded will not be limited to complaints requiring an employee service call.;

- b) Records of area outages for a period of two (2) years after occurrence, indicating date, duration, and the number of subscribers affected, type of area outage, and cause;
- c) Records of service calls for repair and maintenance for a period of two (2) years after resolution by the cable operator, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;
- d) Records of installation and reconnection requests, and requests for service extension for a period of two (2) years after the request was received by the cable operator, indicating the date of request, date of acknowledgment, and the date and time service was extended; and a map showing the area of coverage for the provisioning of cable services.

Upon reasonable written notice to a cable operator, the Town shall have the right, during normal business hours, to inspect and copy such books and records of a cable operator as are reasonably necessary to ensure compliance with the material terms of a franchise agreement, this Ordinance, and applicable laws. Such inspections shall occur within five (5) business days of receipt of the Town's written request, unless the cable operator shows good cause that a longer amount of time will be needed. Such written notice from the Town shall specifically reference the section or subsection of the franchise or Ordinance which is under review, so that the cable operator may organize the necessary books and records for appropriate access by the Town.

A cable operator shall not be required to maintain any books and records for longer than the applicable statute of limitations. A cable operator shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose any of its books and records not relating to the provision of cable service in the Town. The Town shall treat any information disclosed by a cable operator as confidential and may only disclose such information as required by applicable law.

This Section may not be interpreted to require disclosure of subscriber information protected by the Cable Act or other applicable laws. Notwithstanding the foregoing, the Town shall have the right to receive anonymized or aggregated subscriber information.

7.2. Annual Report

No later than April 1 of each year during the term of a franchise agreement, the cable operator shall submit an annual report to the Town for the prior calendar year, which report shall include at a minimum:

- a) Total number of subscribers;
- b) The increase or decrease in the number of subscribers over the prior calendar year for the Town
- c) Total miles of new cable plant installed, including, without limitation, a specific description of any line extensions in the Town in the prior calendar year;
- d) Total number of service calls indicating number of dispatches and number repaired;

- e) Listing of all charges and fees for cable or cable-related services and any price or programming changes in the prior year;
- f) A description of any technological upgrades or enhancements in cable service over the past year
- g) All area outages, including date and duration;
- h) An itemized statement of the cable operator's gross revenue, upon which franchise fee payments are based (broken down by major category);
- i) The total franchise fee for the year;
- j) Equipment or equivalent funding provided to the PEG channels (if any);
- k) Other information the cable operator chooses to include.

After delivery of the annual report, the cable operator shall, at the request of the Town, attend a meeting with the Town to review and discuss any issues or questions raised in the Town's review of the annual report.

7.3. Supplemental Reporting

Upon written request of the Town, a cable operator shall provide not more than annually, a report listing the following:

- a) A summary of the cable operator's most recent FCC proof of performance tests and measurement records interpreted in laymen's language describing the cable system's compliance or lack of compliance with the FCC Technical Standards, identifying any instances of non-compliance and describing all measures taken or under way to achieve compliance;
- b) A list of any material violations by the cable operator of the technical rules of the FCC, including but not limited to violations of rules and regulations regarding signal quality and safety during the past 12 months, and describing all measures taken or underway to achieve compliance; and
- c) A copy of the cable operator's most recent Securities and Exchange Commission Forms 10-K and 10-Q.

7.4. Franchise Fees

Franchise fee payments to the Town shall be made in accordance with the following requirements:

- a) Every cable operator shall pay to the Town a franchise fee, as determined by a resolution of the Select Board, in an amount of up to five percent (5%) of its annual gross revenue from the operation of its cable system, subject to such adjustments as may be permitted by applicable law;
- b) In the event of any change to the franchise fee applicable to cable operators, the Town shall provide each cable operator with 90-days' written notice to implement the new fee.
- c) The franchise fee and any payments in support of the Town's PEG channels shall be due monthly and payable within 30 days after the close of the preceding

month. Each payment shall be accompanied by a brief report prepared by a representative of a cable operator showing the basis for the computation, in a form acceptable to the Town;

- d) The period of limitation for recovery of any franchise fee payable hereunder shall be the applicable statute of limitations from the date on which payment by a cable operator is due;
- e) Payment of a franchise fee shall be considered is a material requirement of each franchise agreement.

7.4.1. Late Payments

In the event a cable operator fails to remit any payment due to the Town on or before a date fixed in the cable operator's franchise agreement or this Ordinance, interest due on such payment shall accrue from the date due at one and one-half percent (1.50%) per month.

7.4.2. Acceptance of Payment

Acceptance of payments by the Town shall not be construed as accord that an amount paid is the correct amount. The Town reserves its rights to inspect relevant books and records and seek any underpayments due.

7.5. Fee Auditing

7.5.1. Charges for Audits or Tests

If an inspection or audit of a cable operator's books and records shows that the cable operator underpaid for any payment period, the cable operator shall reimburse the Town for all reasonable costs, including, without limitation, expert fees arising from the inspection or audit, and any additional inspection or audit until it is determined that the cable operator is in full compliance.

If it is determined that a cable operator has not materially complied with FCC standards, the Town shall, to the extent permitted by federal law, have the right to charge all costs arising from these tests, including, without limitation, expert fees, to the cable operator until it is determined that the cable operator is in full compliance. Notwithstanding the foregoing, the obligation to pay the Town's costs for tests of the performance of a cable system shall only arise if the Town's test is (1) a test of an area where the cable operator has represented that it has corrected a problem, and the problem was not in fact corrected; (2) a second test of an area by the Town, where the cable operator had been notified of the problem and been given an opportunity to cure it; or (3) where the cable operator challenged the validity of a Town test, and the Town agrees to retest, and the re-test confirms the validity of the initial Town test. These charges are incidental to the enforcement of the franchise agreement, and they do not limit any right the Town may have to exercise any other remedy.

7.6. Rate Regulation

The Town reserves the right to regulate the rates of every cable operator to the extent permitted by applicable law.

7.7. Performance Bond

Concurrent with the award of any franchise, the cable operator shall file with the Town a performance bond in the amount deemed necessary by the Town Treasurer to guarantee the faithful performance by the cable operator of all of its obligations under its franchise agreement. The performance bond shall be so conditioned that in the event of the cable operator's breach of any one or more material provisions of the franchise agreement or this Ordinance the Town may recover from the surety any penalties assessed in accordance with this Ordinance and any damages or costs suffered or incurred by the Town as a consequence of such breach. The cable operator shall maintain such performance bond in full force and effect at its own cost and expense for the duration of the term of its franchise agreement.

A cable operator shall provide the Town at least thirty (30) days' prior written notice of the cable operator's or the surety's intent to cancel, materially change, or not to renew the performance bond or security fund.

In the event that the Town recovers against any portion of the performance bond, the cable operator shall be required to replenish the original bond in an amount equal to the amount recovered by the Town within thirty (30) days. Failure to post an additional bond on a timely basis shall constitute a violation of a material provision of its franchise agreement and violation of this Ordinance.

7.8. Franchise Compliance

7.8.1. Amount

A cable operator found to be in violation of this Ordinance shall be subject to a penalty of \$100 per day per violation.

7.8.2. Date of Violation, Notice

The initial date of a cable operator's violation shall be the date of written notice of the violation to the cable operator.

7.8.3. Procedure for Penalties

Before the Town may assess any penalties under this Section:

- a) The Town shall notify a cable operator in writing of the cable operator's alleged violation, which notice shall specify the alleged violation with reasonable particularity;
- b) The cable operator shall, within thirty (30) days after receipt of the notice or such longer period as the Town may specify in such notice, either cure the alleged failure or violation or, in a written response to the Town Manager, either present facts and arguments in refutation or excuse of such alleged failure or violation or state that the alleged failure or violation will be cured and set forth the method and time schedule for accomplishing such cure.

- c) Unless the Town Manager determines that the matter has been resolved, the cable operator's response shall be submitted to the Town to schedule a public hearing at which the Select Board shall determine: (i) whether a failure or violation has occurred; (ii) whether such failure or violation is excusable; (iii) whether such failure or violation has been or will be cured by the Town; and (iv) the appropriate remedy for the failure or violation.
- d) The Town shall provide thirty (30) days' written notice of the public hearing to the cable operator. During the public hearing, the cable operator shall have the right to appear and be heard, including the opportunity to present evidence, question witnesses, if any, and the hearing shall follow the procedures set forth for public hearings. If the Select Board determines that such failure has not occurred or that such failure either has been or will be cured in a manner and in accordance with a reasonable schedule satisfactory to the Select Board, or that the failure is excusable, such determination shall conclude the matter unless the cable operator fails to comply with the schedule for cure.

7.8.4. Non-Enforcement Not Waiver

Neither the Town nor any cable operator shall be excused from complying with any of the terms and conditions of a franchise agreement or this Ordinance by any failure of either party upon one or more occasions to insist upon or to seek compliance with any such terms or conditions. No course of dealing between a cable operator and the Town, nor any delay on the part of the Town or cable operator in exercising any rights granted by a franchise agreement or this Ordinance, shall operate as a waiver of any such rights thereof or acquiescence in the actions of the cable operator or Town in contravention of such right, except to the extent expressly waived by either party. No decision by the Town or cable operator to invoke any remedy under a franchise agreement, this Ordinance or under any statute, law or ordinance shall preclude the availability of any other such remedy.

7.9. Franchise Termination or Revocation

7.9.1. Right to Revoke or Terminate

In addition to all other rights and powers of the Town, the Town may revoke a franchise and all rights and privileges of the cable operator in the event the cable operator:

- a) Violates any material provision of the franchise agreement or this Ordinance where such violation remains uncured for a period of at least thirty (30) days following written notice to the cable operator by the Town that such violation is deemed to exist unless cure is not feasible in such time period in which event the parties shall meet and agree to a cure schedule;
- b) Attempts to evade any material provision of the franchise agreement or practices any fraud or deceit upon the Town; or
- c) Ceases to provide cable service over the cable system or fails to restore cable service after ninety-six (96) consecutive hours of interrupted service except in cases of *force majeure* or when approval of such interruption is obtained from the Town.

7.9.2. Procedures to Revoke or Terminate

The Town shall follow the following procedures in revoking a franchise:

- a) The Town shall provide to the cable operator the Town's notice of intent to revoke the franchise. The written notice shall be sent by certified mail and shall describe the specific violations of the franchise agreement or this Ordinance alleged to have occurred.
- b) The cable operator shall have ninety (90) days from receipt of the Town's notice to either correct the alleged violation or dispute the Town's allegations. In the event that by nature of the alleged violations such violation cannot be cured within such ninety (90) day period, the parties may agree to an alternative time to cure.
- c) If the cable operator fails to demonstrate the absence of the alleged violation or cure the alleged violation within the ninety (90) day period, the Select Board may, after a public hearing at which the cable operator shall have the right to participate and present evidence and witnesses, revoke the franchise by providing the cable operator written notice of revocation.

7.9.3. Judicial Review

The Select Board's decision to revoke a cable operator's franchise may be appealed by the cable operator to the Superior Court pursuant to Maine Rule of Civil Procedure 80B.

7.10. Abandonment

If a cable operator ceases providing cable service in the Town pursuant to 30-A M.R.S.A. § 3008(3)(B), the cable operator shall remove all of its supporting structures, poles, transmission, and distribution systems, and other appurtenances from the public ways and shall restore the areas to the Town's satisfaction. If such removal is not completed within six (6) months of such end of service, the Town may deem any property not removed as having been abandoned. Upon written request of the cable operator, the Town may waive this requirement for good cause shown.

7.11. Franchise Expiration

Upon expiration and non-renewal or revocation of a franchise, and exhaustion of all judicial appeals thereof, the cable operator's corresponding cable system shall be disposed of according to the Cable Act.

7.12. Franchise Amendment

A franchise agreement may not be amended or modified except by written agreement executed in the same manner as the franchise agreement. Where applicable, any amendment shall be consistent with the provisions of the Cable Act governing modification of franchise obligations.

7.13. Franchise Transfers

7.13.1. Cable Operator's Right to Transfer

A cable operator may not sell, transfer, or assign, in whole or in part, its interest or rights to its franchise or its corresponding cable system without first obtaining written approval from the Town, which may not be unreasonably withheld. A transfer or assignment of a franchise or control thereof between commonly controlled entities, between affiliated companies, or between parent and subsidiary corporation, shall not constitute a transfer or assignment of a franchise or control thereof.

7.13.2. Transfer Request and Review of Transfer Request

A cable operator shall provide a written request to the Town for approval of a proposed sale, transfer, or assignment of its franchise or cable system at least 90 days prior to the anticipated sale, transfer or assignment. Such request shall include:

- a) FCC Form 394, or successor form, and all identified attachments; and
- b) Certification by the transferee that it will accept the provisions of the cable operator's franchise for the remainder of the franchise agreement term.

If the Town fails to act upon the cable operator's request within 120 days, the Town shall be deemed to have approved the proposed sale, transfer or assignment.

7.13.3. Public Hearing

The Select Board may conduct a public hearing on a requested sale, transfer or assignment after receipt of a cable operator's request.

Section 8. Consumer Protection Requirements

8.1. Line Extension

Every franchise agreement renewed and/or granted after the effective date of this Ordinance shall require every franchised cable operator to extend its cable system to areas of the Town that have a population density of at least 15 households per linear strand mile of aerial cable, which the Town deems reasonable to meet the Town's needs in light of the costs to the franchised cable operator, and in the Town's best interests.

8.2. Standard Installations

Each cable operator shall perform standard installations within seven (7) business days of a subscriber's order therefor. "Standard" installations are those that are located up to 125 feet from a cable operator's existing cable system, excluding underground installations.

8.3. Annexation

Areas subsequently annexed by the Town shall be provided with cable availability and the Town's PEG Channels, if applicable, within twelve (12) months of the annexation election certification or within six (6) months of the effective date of the annexation, whichever occurs first. Franchise fees, if any, derived from the annexed area commencing on the effective date of the annexation shall be paid to the Town within ninety (90) days of the effective date of the annexation.

8.4. Universal Buildout

Each cable operator, including any successors in interest, shall be allowed a period of the lesser of fifteen (15) years or the term of the franchise agreement from the date of an initial franchise agreement to construct its cable system to be capable of providing cable service to all households in the Town.

Each cable operator, including any successors in interest, shall be allowed a period of five (5) years from the date of any renewed franchise agreement to become capable of providing cable service to all households in the Town. For the purposes of this section, a franchise agreement shall be considered to be renewed notwithstanding any lapse in time between the expiration of a prior franchise agreement and the execution of a subsequent franchise agreement provided the cable operator, or any successor in interest, has not discontinued cable service in the Town for a period of more than one year.

The Town deems each of the above periods to be a reasonable period of time for a cable operator to comply with this Section. Failure to comply with this Section shall be reasonable grounds for the Town's refusal of a cable operator's application for franchise renewal.

8.5. Public, Educational, and Governmental Access Channels

A cable operator shall carry PEG channels on the cable operator's basic cable or video service offerings or tiers. A cable operator may not separate PEG channels numerically from other local broadcast channels carried on the cable operator's basic cable or video service offerings or tiers and, in the event a cable operator sells, transfer or assigns its franchise or cable system, its successor shall use the same channel numbers for the PEG channels as used for those channels by the incumbent cable system operator, unless prohibited by federal law. After the initial designation of PEG channel numbers, a cable operator may not change the channel numbers without the agreement of the originator, unless the change is required by federal law.

8.5.1. Channel Restoration

A PEG channel may not be relocated without the Town's prior written consent, which may not be unreasonably withheld. If a PEG channel is relocated, the cable operator shall reimburse the Town or its PEG channel designee for costs associated with changing logos, letterhead, business card, etc. to reflect a new channel number.

8.5.2. PEG Channel Transmission

A cable operator shall retransmit PEG channel signals in the format in which they are received from the Town or its PEG channel designee and at the same signal quality as that provided to all Subscribers of the cable service for local broadcast channels. A cable operator may not diminish, down convert or otherwise tamper with the signal quality or format provided by the Town or its PEG channel designee. A cable operator shall deliver a PEG channel signals to the subscriber in a quality and format equivalent to the quality and format of local broadcast channel signals carried on the cable service if provided as such by the Town or its PEG channel designee. A cable operator shall carry each PEG channels in both a high definition format and a standard digital format in the same manner as that in which local broadcast channels are provided, unless prohibited by federal law.

8.5.3. Electronic Programming Guide Integration

Comment [FCA1]: Eric - This is the universal buildout requirement that I've crafted. It requires incumbents to provide a universal buildout within 5 years of any franchise renewal and other to complete their buildout within 15 years or the franchise agreement term, whichever is shorter. Let me know if you'd like to discuss.

A cable operator, when requested, shall assist in providing the Town or its PEG channel designee with access to the entity that controls the cable service's electronic program guide so that subscribers may view, select and record PEG channels in the same manner as that in which they view, select and record local broadcast channels. In addition, a cable operator shall identify PEG channels on the electronic program guide in the same manner as that in which local broadcast channels are identified. This subsection does not obligate a cable operator to list PEG channel content on channel cards and channel listings. If channels are selected by a viewer through a menu system, the cable operator shall display the PEG channel designations in a similar manner to that in which local broadcast channel designations are displayed.

8.5.4. PEG channel Phone Support

A cable operator shall make available to the Town or its PEG channel designee a toll-free telephone number with a direct line to a service technician who is familiar with the signal path and equipment associated with PEG channels on the cable system for resolution of a signal quality problem.

8.5.5. PEG Facilities and Equipment Support

A cable operator shall provide to the Town or its PEG channel designee adequate PEG channel facilities and equipment and equivalent financial support to meet the cable-related needs and interests of the Town and its communities (the "PEG Support").

To meet the cable-related needs and interests of the Town, the Town may require all cable operators to provide financial support, as permitted by the Cable Act, as a capital grant payable to the Town for PEG capital requirements in the amount up to three percent (3%) of a cable operator's gross revenue no more frequently than once every two years. The capital grant shall be included with the cable operator's franchise fee payment and may be passed through to subscribers in the same manner. The Town shall provide all cable operators with ninety (90) days' prior written notice for the implementation or modification of the capital grant.

8.5.6. PEG channel Signal Transport

Any and all equipment associated with the interconnection of PEG channel transmission facilities between a Town Hall or other designated location and a cable operator's head end within the cable operator's cable system as well as the formatting of PEG programming for transmission to a subscriber are considered capital costs, and the costs and maintenance thereof shall be borne by the cable operator.

- a) *PEG Channel Return Feeds.* Each cable operator shall install, maintain, and, as necessary to comply with this Ordinance, upgrade an activated direct fiber optic return feed, and supply and maintain all necessary transmission equipment, from any location designated by the Town, to the cable operator's head end. This fiber optic feed shall be adequate to permit the simultaneous transport of all PEG channels provided by the cable operator to the Town at least at a broadcast quality standard. The Town may not designate a different location for a fiber optic return feed more than once every three years.

To the extent necessary to make PEG channel programming available to all subscribers, all cable operators shall cooperate with one another, including, without limitation, making available a cable operator's fiber optic return feed for interconnection with another cable operator's cable system.

Upgrades to or the initial installation of a fiber optic return feed shall be completed within 60 days of commencement. In the event of a cable system rebuild, upgrade, or installation, such fiber optic return feeds shall be completed at the same time as the system rebuild.

- b) *PEG Channel Live Remote Return Feeds.* A cable operator shall also provide and maintain equipment and facilities, including, without limitation, DOCSIS modems and cable drops, to permit live programming from remote sites, through an MPEG2 or MPEG4 transport system, or in some other manner that provides broadcast quality carriage of a PEG channel's signal from a remote site to the location designated by the Town. New equipment and facilities will be made available within an agreed upon time frame.

8.5.7. Cooperation with Open Video Systems Operators

Each cable operator shall permit any open video system operator to connect with its PEG channel feeds. The open video system operator and the franchised cable operator may decide how to accomplish this connection, taking into consideration the physical and technical characteristics of the cable and the open video systems involved. If the franchised cable operator and the open video system operator cannot agree on how to accomplish the connection, the Town has the right to decide. The Town may require that the connection occur on Town-owned property or on public ways

8.6. Compliance with Applicable Customer Service Standards

Cable operators shall at all times comply with all customer service standards provided by federal and state law, including 30-A M.R.S.A. §3010, and this Ordinance.

8.7. Subscriber Complaints

Recording Subscriber complaints must be as follows:

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

- (5) If the complaint regards equipment malfunction or the quality of reception, a report indicating corrective steps taken, with the nature of the problem stated; and
- (6) Consistent with subscriber privacy provision in the Cable Act, every cable operator shall make the logs or records of complaints available to any authorized agent of the Town upon request during normal business hours for on-site review.

8.8. Employee Identification Cards

All of a cable operator's employees and subcontractors, including, without limitation, repair and sales personnel, entering private property shall be required to display an identification card issue or approved by the cable operator indicating that the employee or subcontractor is working on behalf of the cable operator.

8.9. Local Office

A cable operator shall maintain a conveniently-located local office within the Town which shall be open during normal business hours. This office shall accept payments, handle adjustments to subscriber bills, respond to installation, repair, and/or maintenance requests and other service calls.

8.10. Cooperation with Open Video Systems Operators

Each cable operator shall permit any open video system operator to connect with its PEG channel feeds. The open video system operator and the franchised cable operator may decide how to accomplish this connection, taking into consideration the physical and technical characteristics of the cable and the open video systems involved. If the franchised cable operator and the open video system operator cannot agree on how to accomplish the connection, the Town has the right to decide. The Town may require that the connection occur on Town-owned property or on public ways

Comment [FCA2]: Eric - We should discuss whether this is desirable. I do not know that larger ISPs are still accepting in-person payments at physical locations.

Section 9. Open Video Systems

9.1. Purpose

The purpose of this Section is to establish regulations for local exchange carriers providing cable service to subscribers in their telephone service area through an open video system.

9.2. Applicability

The provisions of this Section shall apply to an open video system operator certified by the Federal Communications Commission that intends to deliver cable service to consumers in the Town over an open video system as defined by 47 C.F.R. §76.1500(a).

9.3. OVS Application Required

- a) Before commencing the delivery of cable services to consumers in the Town over an open video system, the open video system operator shall file an application with the Town.
- b) That application shall include or be accompanied by the following, as applicable:

- (1) The identity of the applicant, including all Affiliates;
- (2) Copies of FCC Form 1275, all notices of intent filed under 47 C.F.R. § 76.1503(b)(1), and the order of the FCC, all of which relate to certification of the applicant to operate an open video system in the Town in accordance with § 653(a)(1) of the Communications Act and the FCC's rules;
- (3) A description of the cable services that will be offered over existing or proposed facilities;
- (4) A description of the transmission medium that will be used to deliver the cable services;
- (5) Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the ownership and operation of the open video system described in the application;
- (6) Financial statements, which shall not be considered public records pursuant to the Freedom of Access Act prepared in accordance with generally accepted accounting principles that demonstrate the applicant's financial ability to:
 - A. Construct, operate, maintain, and remove any new physical plant that is proposed to be constructed in the Town;
 - B. Comply with the Town's PEG channel requirements as specified in this Section; and
 - C. Comply with the Town's requirement that gross revenue fees be paid as specified in this subchapter;
- 7) An accurate map showing the location of any of the applicant's existing telecommunications facilities in the Town that the applicant intends to use;
- 8) If the applicant's operation of the open video system will require the construction of new physical plant and facilities in the Town, the following additional information be provided:
 - A. A preliminary construction schedule and completion dates; and
 - B. Preliminary engineering plans, specifications and a network map of any new facilities to be constructed in the Town; and
- 9) Additional information as may be requested by the Town.

9.4. Review of the Application

Upon receipt of an application filed under this subchapter, the Town shall give written notice to the applicant of the Town's intent to negotiate an agreement setting forth the terms and conditions under which the operation of the proposed open video system will be authorized by the Town.

9.5. Agreement Required

- a) No cable service may be provided in the Town by an open video system operator unless the operator and the Town have executed a written agreement setting forth the terms and conditions under which the operation of the proposed open video system will be authorized by the Town.
- b) Any agreement between the Town and the open video system operator shall contain the following terms and conditions, to the extent that these terms, conditions and subject matters are not preempted by federal law or regulations:
 - (1) The nature, scope and duration of the agreement, including provisions for its renewal or extension;
 - (2) A requirement that the open video system operator pay to the Town, at specified times and in lieu of the franchise fees required by this Ordinance, fees on the gross revenue received by the operator, as authorized by 47 C.F.R. §76.1511, equal to the franchise fee imposed by the Town on franchised cable operators.
 - (3) A requirement that the open video system operator comply with requirements relating to information collection and recordkeeping, accounting procedures, reporting, periodic audits and inspection of records in order to ensure the accuracy of the fees on the gross revenue;
 - (4) A requirement that the open video system operator meet the Town's existing requirements for cable operators with respect to PEG channel capacity, services, facilities and equipment, as provided for in 47 C.F.R. §76.1505. In this regard, the following standards and procedures shall apply:
 - A. The open video system operator must ensure that all subscribers receive all PEG channels within the Town;
 - B. The open video system operator shall satisfy the same PEG channel access obligations as a franchised cable operator. For in-kind contributions, such as cameras or production studios, the open video system operator may satisfy its statutory obligation by negotiating mutually agreeable terms with the franchised cable operator, so that PEG channel access services to the Town are

improved or increased. If these terms cannot be agreed upon, the open video system operator must pay to the Town the monetary equivalent of the franchised cable operator's depreciated in-kind contribution, or, in the case of facilities, the annual amortization value. Any matching contributions provided by the open video system operator must be used to fund activities arising under § 611 of the Communications Act; and

- C. The open video system operator shall be subject to the same rules and procedures that the Town imposes upon a franchised cable operator with regard to the open video system operator's use of channel capacity designated for PEG channel use when that capacity is not being used for these purposes.
 - D. All costs of connection to the franchised cable operator's PEG channel feed must be borne by the open video system operator. These costs will be counted towards the open video system operator's matching financial contributions set forth above; and
 - E. The open video system operator must adjust its open video system to comply with new PEG channel access obligations imposed on a franchised cable operator following renewal of the cable operator's franchise agreement, provided, however, that the open video system operator will not be required to displace other programmers using its open video system to accommodate PEG channels. The open video system operator must comply with the new PEG channel obligations whenever additional capacity is or becomes available, whether it is due to increased channel capacity or to decreased demand for channel capacity.
- (5) A requirement that, if the open video system operator intends to maintain an institutional network, as defined in § 611(f) of the Communications Act, PEG channels shall be designated on that institutional network to the same extent that those channels are designated on the institutional network of a franchised cable operator;
 - (6) A requirement that open video system operator shall comply with all applicable federal, state, and local statutes, ordinances and regulations relating to customer service standards;
 - (7) A requirement that, if a new physical plant is proposed to be constructed within the Town, the open video system operator shall comply with the any use and management responsibilities relating to public ways that are imposed upon other cable television and telecommunications service providers.

- (11) Acts or omissions constituting breaches or defaults of the agreement, and the applicable penalties, liquidated damages and other remedies, including fines or the suspension, revocation or termination of the agreement;
- (11) Requirements relating to the sale, assignment or transfer of the open video system;
- (12) Requirements relating to the open video system operator's compliance with and implementation of state and federal laws, rules, and regulations pertaining to the operation of the open video system; and
- (13) Additional requirements, conditions, terms policies and procedures as may be mutually agreed upon by the Town and the open video system operator and that will, in the judgment of the Town, best serve the public interest and protect the public health, welfare and safety.

9.6. PEG Channel Dispute Resolution

If the Town and the open video system operator cannot agree on the application of the FCC's rules regarding the open video system operator's obligations to provide PEG channel access under the provisions of this section, then either party may file a complaint with the FCC in accordance with the dispute resolution procedures set forth in 47 C.F.R. § 76.1514. No agreement will be executed by the Town until the dispute has been finally resolved

9.7. Extension of Facilities

Any open video system agreement approved by the Town shall contain a provision whereby the open video system operator agrees upon request to extend service to all areas of the Town. If the open video system operator determines that provision of cable service is not economically feasible, any person requesting service may appeal the decision to the governing body of the Town.