

**CHAPTER 221**  
**CABLE TELEVISION ORDINANCE**  
**TOWN OF GRAY MAINE**

*Proposed May 1, 2018, 2<sup>nd</sup> Reading May 15<sup>th</sup> 2018*  
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**Section 1. Designation of Ordinance.**

This Ordinance shall be known as the Town of Gray Cable Television Ordinance and is adopted by the Town Council pursuant to 30-A M.R.S.A. § 3008 and pursuant to the home rule authority granted to municipalities by 30-A M.R.S.A. § 3001 and by the Constitution of Maine, Article VIII, Part Second.

**Section 2. Definitions.**

For the purposes of this Ordinance, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number, and vice versa. The word "shall" is always mandatory and not merely directory.

**2.1 “Access” or “Access Cablecasting”:** Cablecasting on the Cable System’s access channels for the following purposes: (i) non-commercial and non-discriminatory use by the public; (ii) carriage of non-commercial educational programs or information; and (iii) non-commercial use for governmental purposes in accordance with the Cable Act.

**2.2 “Access Channel(s)”:** A video channel(s) which the Company shall make available to the Town of Gray, without charge, for the purpose of transmitting programming by/for members of the public, Town departments, boards and agencies, public schools, educational, institutional, non-profit and similar organizations in accordance with the Cable Act.

**2.3 “Affiliate” or “Affiliated Person”:** An entity that owns or controls is owned or controlled by, or is under common ownership with a Cable Operator, herein defined as “Company”.

**2.4 “Alphanumeric”:** Consisting of a combination of letters and numbers, used in reference to keyboards permitting communication in such form and in reference to Channels or Programs transmitting information in such form.

**2.5 “Area Outage”:** An area outage occurs when cable or equipment is damaged, fails or otherwise malfunctions (collectively called malfunctions”), and

ten or more Subscribers receiving services from that section of cable or that equipment receive unusable or no service as a result of that malfunction.

**2.6 “Basic Service”:** The minimum service transmitted to all Subscribers which includes, at a minimum, (1) all signals of domestic television broadcast stations entitled to “must carry” status under FCC rules, (2) any Public, Educational and Governmental programming required by a Franchise Agreement to be carried on the basic tier, and (3) any additional video programming signals added to the basic tier by the Company in its sole discretion.

**2.7 “Broadcast”:** Over-the-air transmission by a television station.

**2.8 “Cable Act”:** The Cable Communications Policy and Communications Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, and as further amended.

**2.9 “Cablecast”:** Programming (exclusive of broadcast signals) carried on the Cable System.

**2.10 “Cable Programming Service”:** Any video programming provided over a Cable System, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than (1) video programming carried on the Basic Service tier, and (2) video programming offered on a pay-per-channel or pay-per-program basis.

**2.11 “Cable Service”:** The one-way transmission to Subscribers of video programming or other programming services, together with Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming services.

**2.12 “Cable System”:** A facility serving the Town, which is owned, constructed, installed, operated and maintained by Company, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service, including video programming, to multiple Subscribers within a head-end service area as defined in accordance with Section 602 of the Cable Act. Such term does not include (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (b) a facility that serves subscribers without using any public 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 Cable Act, except that such facility shall be considered a cable system (other than for purposes of section 621(c) of the Cable Act) 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; or (d) an open video system that complies with section 653 of this title, or (e) any facilities of any electric utility used solely for operating its electric utility systems.

**2.13 “Channel” or “Video Channel”:** A portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel (as defined by the FCC by regulation).

**2.14 “Company”:** Any Person or Persons owning, controlling, operating, managing or leasing a Cable System within the Town, pursuant to this Ordinance, and pursuant to any Franchise granted to it by the Town. This term shall include any lawful successor(s) to the interest of such Person or Persons where consent to such successor(s) is approved under the provisions of this Ordinance and under any applicable terms of a Franchise Agreement entered into pursuant to this Ordinance.

**2.15 “Completion of Construction”:** That point when the Company has provided written documentation to the Town that a Cable System serving Gray has been fully upgraded in accordance with any applicable requirements of this Ordinance and a Franchise Agreement, and service has been made available to Subscribers and potential Subscribers pursuant to the Franchise Agreement.

**2.16 “Contractor or Subcontractor or Agent”:** Any person or entity who or which directly or indirectly works for or is under the direction of “The Company” for the purpose of installation or repair of any portion of the Company’s Cable system in the Town.

**2.17 “Converter”:** A special tuner or device attached to the Subscriber’s television set which expands reception capacity and/or unscrambles coded signals distributed over the Cable System.

**2.18 “Designated Access Provider”:** The entity or entities which may be designated from time to time by the Town to provide PEG access to the residents of the Town of Gray.

**2.19 “Downstream Channel”:** A Channel over which signals travel from the Cable System Headend or Sub-headend to an authorized recipient of programming.

**2.20 “Downstream Transmissions”:** Signals traveling from a Cable System distribution point to an authorized location.

**2.21 “Drop” or “Cable Drop”:** The interconnection between each home or building and the feeder line of the Cable System.

**2.22 “FCC”:** The Federal Communications Commission or any successor agency.

**2.23 “Feeder Cable”:** The cable, connected to trunk cable, from which cable television signal service is distributed to Subscribers, as distinguished from trunk

cable (which distributes cable television service throughout the Franchise area) and drop cable.

**2.24 “Franchise Authority”:** The Gray Town Council.

**2.25 “Franchise”:** The non-exclusive Cable Television License to be granted to the Company to include the right, privilege and franchise to construct, operate and maintain a Cable System, and appurtenances or parts thereof, in the Streets, roads, alleys, and other Public Ways of the Town.

**2.26 “Franchise Agreement”:** The contract entered into between the Company and the Town governing the terms and conditions of the Company’s use of the Franchise granted to the Company.

**2.27 “Gross Annual Revenues”:** Revenue of any form or kind received by the Company from the carriage of Cable Service including, without limitation: the distribution of any Cable Service over the System; Basic Service monthly fees; all other Cable Service fees; fees paid for pay and/or pay-per-view services, installation, reconnection, downgrade, upgrade and any other similar fees; fees paid for channels designated for commercial use; converter, remote control and other equipment rentals, and/or leases and/or sales; all home shopping service(s) revenues; and advertising revenues. Gross Annual Revenue shall not include any taxes or fees other than franchise fees on services furnished by the Company imposed directly on any Subscriber or user by any governmental unit and collected by the Company for such governmental unit. In the event that an Affiliate is responsible for advertising on the Cable System in the Town, advertising revenues shall be deemed to be the pro-rata portion of advertising revenues excluding commissions and/or applicable agency fees, paid to the Company by an Affiliate for said Affiliate’s use of the Cable System for the carriage of advertising. It is the intention of the parties here to that Gross Annual Revenues shall only include such revenue of Affiliates and/or Persons relating to the provision of Cable Service over the Cable System and not the gross revenues of any such Affiliate(s) and/or Person(s) itself, where unrelated to Cable services. Gross Annual Revenue shall be computed in accordance with Generally Accepted Accounting Principles.

**2.28 “Headend”:** A company owned or leased facility through which Broadcast and cablecast signals are electronically acquired, translated, or modified for distribution over the Cable System.

**2.29 “Interactive Service”:** Any service that offers to Subscribers the capability of both transmitting and receiving Signals of any kind.

**2.30 “Leased Channel” or “Leased Access”:** A video and/or audio or data Channel which the Company shall make available pursuant to Section 612 of the Cable Act.

- 2.31 “Local Origination”:** Local programming produced by the Company.
- 2.32 “Origination Point”:** A connection to the cable system which is provided to allow for live or recorded programming to be transmitted from that location Upstream to the Head-end and from there Downstream to the Subscribers over one or more access channels, also referred to in this Agreement as a return feed.
- 2.33 “Other Programming Service”:** Services that the Company may make available to all Subscribers generally.
- 2.34 “Outlet”:** An interior cable connection that connects a Subscriber or User to the Cable System.
- 2.35 “Parent”:** When used in reference to the Company, any Person holding direct or indirect ownership or control of thirty percent (30%) or more of the rights of control of the Company; and any Person holding such ownership or control of a Parent to the Company.
- 2.36 “Pay Cable” or “Premium Service”:** Optional additional Program services, provided to Subscribers at a monthly charge in addition to the charge for Basic Service.
- 2.37 “Pay-Per-View”:** Programming delivered for a fee or charge to Subscribers on a per-program or time basis, in addition to the charge or fee to Subscribers for Basic Service, or for such other service tier required by applicable law.
- 2.38 “PEG”:** The acronym for Public, Educational and Governmental, used in conjunction with Access Channels, support and facilities.
- 2.39 “Person”:** Any corporation, partnership, limited partnership, association, trust, organization, other business entity, individual or group of individuals acting in concert.
- 2.40 “Public Building”:** All State-accredited public schools, police and fire stations, public libraries, Town Hall, and other public buildings owned or leased by the Town, but shall not include buildings owned by the Town but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed.
- 2.41 “Video Programming”:** Programming provided by, or generally considered comparable to Programming provided by, a television broadcast station.
- 2.42 “Signal”:** Any transmission of electromagnetic or optical energy that carries Cable Services from one location to another.
- 2.43 “State”:** The State of Maine.

**2.44 “Street” or “Public Way”:** 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. “Street” or “Public Way” 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.

**2.45 “Sub-headend”:** A signed distribution point for part of the Cable System linked to the Headend by fiber optic cable, coaxial supertrunk or microwave, and also referred to as a “Hub.”

**2.46 “Subscriber”:** Any person, firm, corporation, or other entity who or which elects to subscribe to for any purpose, a Cable Service provided by the Company by means of, or in connection with, the Cable Television System.

**2.47 “Subscriber Network”:** The 750 MHz bi-directional-capable network to be owned and operated by the Company, over which Cable Service(s) can be transmitted to Subscribers.

**2.48 “Town”:** The Town of Gray organized and existing under the laws of the State of Maine and all territory within its existing and future territorial corporate limits.

**2.49 “Two-way Capability”:** The ability to transmit audio and video signals upstream and downstream on the Cable System.

**2.50 “Upstream Channel”:** A Channel over which signals travel from an authorized location to a Cable System distribution point.

**2.51 “Upstream Transmissions”:** Signals traveling from Subscribers or other originating points on the Cable System to a cable distribution point.

### **Section 3. Franchise Required.**

No Person, firm or corporation shall install, maintain or operate within the Town or any of its Public Ways or Streets or other public areas any equipment or facilities for the operation of a Cable System unless a Franchise authorizing the use of said Public Ways or Streets or areas has first been granted pursuant to the provisions of this Ordinance and unless a Franchise Agreement with the Cable Company is in full force and effect.

### **Section 4. Franchise Agreement.**

**4.1** The Town Council or its designee may enter into Franchise Agreements on such terms, conditions and fees as are in the best interest of the Town and its residents with one or more Cable Companies for the operation of a Cable System(s) within the Town.

**4.2** Prior to issuing a request for proposals to any Cable Company for Franchise Agreements or renewals, the Town shall hold a public hearing or conduct some other process to determine any special local needs or interests with respect to Cable Service and shall allow a reasonable period for public comment on the request for proposals.

**4.3** Franchise Agreement applications, including renewal applications, and any submittals in response to a request for proposals or solicitation of bids and related documents, are public records. Upon the filing of such documents, the Town shall provide reasonable notice to the public that such documents are open to public inspection during reasonable hours.

**4.5** Each Franchise Agreement between the Town and a Company shall contain, at a minimum, the following provisions:

- (a) A statement of the area or areas to be served by the Company;
- (b) A line extension policy;
- (c) A provision for renewal, the term of which may not exceed ten (10) years;
- (d) Procedures for the investigation and resolution of Subscriber complaints by the Company;
- (e) An agreement to comply with the requirements of 30-A M.R.S.A. §3010 regarding consumer rights and protection and any amendments thereto;

- (f) A franchise fee to be paid by the Company to the Town in accordance with Section 9 of this Ordinance;
- (g) A provision for access to, and facilities to make use of, one or more local PEG Access Channels;
- (h) A provision for the assessment of reasonable fees to defray the costs of public notice, advertising and other expenses incurred by the Town in acting upon applications for initial and renewal Franchise Agreements;
- (i) A provision whereby the Company agrees to defend, indemnify and hold harmless the Town and its agents from claims and liabilities arising out of the Company's construction, ownership, operation, maintenance, repair and control of the Cable System; and
- (j) Any other terms and conditions that are in the best interests of the Town.

## **Section 5. Town's Retained Rights and Authority.**

**5.1 Right to Grant Additional Franchises.** The Town expressly reserves the right to grant other such Franchises in the Town of Gray on such terms as it deems appropriate and to operate a Town-owned Cable System.

**5.2 Eminent Domain.** No privilege or power of eminent domain is bestowed upon a Company by the granting of a Franchise.

**5.3 Exercise of Police Power.** All rights and privileges associated with the grant of any Franchise are subject to the police power of the Town to adopt and enforce local laws, ordinances, rules and regulations necessary to the health, safety and general welfare of the public. Expressly reserved to the Town is the right to adopt, in addition to the provisions of any Franchise Agreement, this Ordinance and any other existing laws, ordinances and regulations (collectively "laws"), such additional laws as it may find necessary in the exercise of its police power. Any conflict between the terms of any Franchise Agreement and any present or future exercise of the Town's police and regulatory powers, including this Ordinance, shall be resolved in favor of the latter.

**5.4 Use of Public Ways.** The right to use and occupy the Streets, Public Ways and public places granted in any Franchise Agreement shall not be exclusive, and the Town reserves the right to grant similar or other uses of the said Streets, Public Ways and public places to any Persons at any time during the term of any Franchise Agreement.



**5.5 Conflict With Public Works.** The rights and privileges associated with the grant of any Franchise shall not be in preference or hindrance to the right of the Town or any other governmental agency, improvement district or other authority having jurisdiction, to perform or carry on any public works or public improvement, including without limitation any Streets and Public Ways. Should a Company's Cable System in any way interfere with the construction, maintenance or repair of such public works or improvements, including without limitation any Streets and Public Ways, the Company shall, at its own expense, protect or relocate its Cable System or part thereof, as directed by the Town or other authority having jurisdiction.

**5.6 Removal and Relocation.** The Town shall have the power at any time to order and require a Company to remove or relocate any pole, wire, cable or other structure machinery or equipment located within a public way that is dangerous to life or property. In the event that a Company, after notice, fails or refuses to act within a reasonable time, the Town shall have the power to remove or relocate the same at the sole cost and expense of the Company.

## **Section 6. Bonds and Insurance.**

**6.1 Performance Bond to Town.** Upon the award of any Franchise, and annually thereafter during the entire term of the Franchise, a Company shall maintain in full force and effect at its own cost and expense a performance bond in the amount of at least \$100,000 to guarantee the faithful performance by the Company of all of its obligations under its Franchise Agreement and shall provide evidence of the same to the Town Clerk. The performance bond shall be so conditioned that in the event that the Company shall breach any one or more material provisions of this Ordinance or of the Franchise Agreement, and subsequent to any notice and opportunity to cure provision of this Ordinance and/or the Franchise Agreement, the Town may recover from the surety any penalties assessed in accordance with Section 10 of this Ordinance and any damages or costs suffered or incurred by the Town as a consequence of such breach. Said conditions shall be a continuing obligation during the entire term of the Franchise Agreement. Not less than thirty (30) days' prior notice to the Town shall be provided of the Company's or the surety's intention to cancel, materially change, or not to renew the performance bond or security fund. Failure to post a bond on a timely basis shall constitute a violation of a material provision of this Franchise Agreement.

**6.2 Insurance.** Company shall maintain during the full term of this Franchise Agreement such insurance as will protect it and The Town from any claims which may arise directly or indirectly or result from Company's ownership, construction, repair, operation or maintenance of Company's cable system serving Gray, whether such activities are performed by Company, or by anyone for whose acts Company may be liable, under the following policies:

- (a) Workers' Compensation and any other legally required employee benefits, shall be supplied in such amounts as required by law;
- (b) Property insurance, all risk, replacement cost basis, on all insurable Company assets in the Town;
- (c) Commercial General Liability insurance shall be supplied in the following amount: combined single limit for bodily injury, personal injury, death or property damage in the amount of at least \$3,000,000 per occurrence;
- (d) Excess liability (in umbrella form) in the amount of at least \$5,000,000; and
- (e) Automobile liability insurance in the amount of at least \$1,000,000 per occurrence.

**6.3 Non-waiver.** Neither the provisions of this Section, nor any bonds accepted by the Town pursuant hereto, nor any damage recovered by the Town thereunder, shall be construed to excuse unfaithful performance by the Company or limit the liability of the Company under this Ordinance or the Franchise Agreement for damages, either to the full amount of the bond or otherwise.

## **Section 7. Application.**

**7.1** Any application for a cable television Franchise in the Town must contain the following information, except that in the case of a renewal Franchise, only the information listed under this Section 7.1(a) through 7.1(b)(1), 7.1(b)(2) and 7.1(b)(3) shall be required:

- (a) The name, address, and telephone, number of the applicant.
- (b) The most recent 10-Q or 10-K of the Company or its ultimate parent company as filed with the Securities and Exchange Commission. In the event the Company does not, at the time of application, file 10-Q or 10-K filings with the Securities and Exchange Commission, it shall instead file a detailed statement of the corporate or other business entity organization of the applicant and any other information required by the Town, including without limitation:
  - (1) The names and business addresses of all officers and directors of the applicant.
  - (2) The names and business addresses of all officers, Persons and entities having, controlling, or being entitled to have or

control 15% or more of the ownership of the applicant and each Parent, Affiliate or subsidiary of the applicant and the respective ownership share of each such person or entity.

- (3) The names and addresses of any Parent, Affiliate or subsidiary of the applicant; namely, any other business entity owning or controlling applicant in whole or in part or owned or controlled in whole or in part by the applicant, and a statement of the nature of any such Parent, Affiliate or subsidiary business entity, including but not limited to Cable Systems owned or controlled by the applicant, its Parent, Affiliate and subsidiary and the areas served thereby.
  - (4) A detailed description of all previous experience of the applicant in providing Cable Service and in related or similar fields.
  - (5) A detailed and complete financial statement of the applicant, its Parents, Affiliates and its subsidiaries, prepared by a certified public accountant, for the fiscal year next preceding the date of the application hereunder, or a letter or other acceptable evidence in writing from a recognized lending institution or funding source, addressed to both the applicant and the Town Council, setting forth the basis for a study performed by such lending institution or funding source to provide whatever capital shall be required by the applicant to construct and operate the proposed Cable System in the Town, or a statement from a certified public accountant certifying that the applicant has available sufficient free, net and uncommitted cash resources to construct and operate the proposed Cable System in the Town.
  - (6) A statement identifying, by place and date, any other cable television Franchise(s) awarded to the applicant, its Parent, Affiliate or subsidiary, the status of said Franchise(s) with respect to completion thereof; the total cost of completion or such Cable System(s); and the amount of applicant's and its Parent's, Affiliate's or subsidiary's resources committed to the completion thereof.
- (c) In the case of an application for an initial Franchise for a new Cable System serving the Town, the applicant shall provide a detailed description of the proposed plan of operation of the applicant which shall include, but not be limited to, the following:

- (1) A detailed map indicating all areas proposed to be served, and a proposed construction time schedule for the installation of all equipment necessary to become operational throughout the entire area to be served, and the time of commencement of construction and anticipated operation date.
- (2) A statement or schedule setting forth all proposed classifications of rates and charges to be made against Subscribers and all rates and charges to be made against Subscribers and all rates and charges as to each of said classifications, including installation charges and service charges and deposit agreement.
- (3) A detailed, informative, and referenced statement describing the actual equipment and operational standards proposed by the applicant. In no event shall said operational and performance standards be less than those contained in the FCC's regulations, 47 C.F.R. §§ 76.601, *et seq.*, as may be amended from time to time, and shall in addition comply with Section 13 herein.
- (4) A copy of the form of any agreement, undertaking, or other instrument proposed to be entered into between the applicant and any Subscriber and between the applicant and any lessee of any Channel, including provisions for reimbursement in the event of interruption of service.
- (5) A detailed statement setting forth in its entirety any and all agreements and undertakings, whether formal or informal, written, oral, or implied, existing or proposed to exist between the applicant and any Persons, firm, or corporation which materially relate or pertain to or depend upon the application and the granting of the contract.
- (6) A detailed statement setting forth in its entirety the proposed Cable System design. Such statement shall include proposals concerning system architecture, Channel capacity, Channel uses, access, programming facilities, studio location, point to point service, two-way service, Subscriber privacy, and interconnection.
- (7) Such other information as required by the Town at the time of the Franchise application.

**7.2 Notice.** No Franchise, including any Franchise renewals, will be granted hereunder without notice to the public and a public hearing pursuant to Section 8.3 of this Ordinance.

## **Section 8. Contract Term; Renewal.**

**8.1 Term.** Any Franchise awarded by the Town Council under this Ordinance shall be for a term of not more than fifteen (15) years.

**8.2 Renewal.** Any renewal of a Franchise shall be upon such terms and conditions as the Town and the Company may mutually agree upon in accordance with the Cable Act and applicable federal law. Such renewal shall be for a period of not more than fifteen (15) years from the expiration of the previous Franchise.

**8.3 Public Hearing.** Before authorizing the issuance of any Franchise or renewal of a Franchise, the Town Council shall review, in accordance with federal law, the applicant's legal, financial and technical qualifications, the proposed agreement's ability to meet current and future cable-related needs and interests of the Town in light of the costs of meeting those needs and interests, and the adequacy and feasibility of the applicant's qualifications to operate a Cable System within the Town, and shall conduct a public hearing thereon with at least seven (7) days' advertised notice prior to said public hearing. Such public hearing shall provide a reasonable opportunity for public input on the proposed Franchise or renewal.

**8.4 Requests for Information.** Any Company operating a Cable System in the Town shall maintain adequate personnel and resources to respond to requests from the Town for renewal information and review of draft franchise agreements in a timely manner.

## **Section 9. Fees.**

**9.1 Franchise Fee.** As compensation for the rights and privileges associated with any Franchise awarded pursuant to the provisions of this Ordinance, the Company shall pay to the Town a franchise fee based on a percentage of the Company's Gross Annual Revenues, in accordance with federal law. The franchise fee may be changed by the Town on 90 days' notice to the Company, but not more frequently than once each calendar year, to an amount within the then-applicable maximum allowed under federal law.

**9.2 Method of Computation.** Payments due the Town under the terms of the Ordinance shall be computed quarterly as of March 31, June 30, September 30 and December 31 for the preceding three months and shall be paid on or before the forty-fifth calendar day from each said computation date at the office of the Town Treasurer during regular business hours. The Town shall be furnished a statement with each payment, prepared by a financial representative of the Company, and verified as correct, reflecting the total amount of Gross Annual

Revenues generated by all activities within the Town, and the above charges, deductions and computations, for the three month payment period covered by the payment. The Company shall prepare and maintain financial information and records in accordance with generally accepted accounting principles and generally accepted auditing standards in the cable television industry. At the Town's option, the information provided by the Company shall be subject to audit by an outside firm of certified public accountants selected by The Town. Any such audit shall be at the Town's expense except unless such audit shall disclose an underpayment of any franchise fees of more than four percent (4%) payable for the period of the audit, in which event the Company shall reimburse the Town for the expense of such audit. Repeated failure to pay the franchise fee on a timely basis may be grounds for revocation of the Franchise under this Ordinance. Interest shall accrue on any and all overdue franchise fees at the rate of twelve percent (12%) simple interest per annum.

**9.3 Rights of Recomputation.** No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the Town may have for further or additional sums payable as a franchise fee under this Ordinance or for the performance of any other obligation hereunder. However, there shall be an accord and satisfaction with respect to any payment not subject to an audit within thirty-six (36) months following the close of the fiscal year to which such payment relates.

## **Section 10. Penalties.**

**10.1 Assessment.** If a Company fails to comply with any provision of this Ordinance, the Town may assess the Company a monetary penalty in accordance with the Schedule of Penalties set forth in Section 10.8 through Section 10.12 of this Ordinance. Such assessment shall not constitute a waiver by the Town of any other right or remedy it may have under this Ordinance or the Franchise Agreement, or under any other applicable law, including, without limitation, its right to recover from the Company such additional damages, losses, costs and expenses as may have been suffered or incurred by the Town by reason of or arising out of such breach of this Ordinance or the Franchise Agreement; provided, that any penalties collected by the Town from the Company pursuant hereto shall be applied against, and reduce accordingly, the amount of any recoveries due the Town pursuant to this sentence for the failure to perform for which such penalties were assessed.

**10.2 Notification.** Upon the Town's assessing a penalty pursuant to Section 10.1, notice of such assessment shall be sent to the Company, with a concise statement of the reasons therefor.

### **10.3 Procedures.**

- (a) Within ten (10) days after receipt of a notice pursuant to Section 10.2, the Company may request a hearing before the Town

Council. In the event of such a request, the Town shall provide thirty (30) days' written notice of the public hearing to the Company.

- (b) During the public hearing, Company 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 before the Town Council.
- (c) Following the hearing, the Town Council shall determine (i) whether a failure or violation has occurred; (ii) whether such failure or violation is excusable; and (iii) whether such failure or violation has been or will be cured by the Company; and (iv) the appropriate remedy for the failure or violation.
- (d) If the Town Council 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 Town Council or that the failure is excusable, such determination shall conclude the matter, unless Company fails to comply with the schedule for cure.

**10.4 Payment.** Except as provided in Section 10.3, the Company shall pay the full amount of any penalty to the Town within ten (10) days after receipt of a notice pursuant to Section 10.2 and the cure period has expired.

**10.5 Default.** Subsequent to the notice and opportunity to cure provision herein, upon failure of the Company to make timely payment of an assessed penalty, the Town may recover the amount of any such penalty from the performance bond or security fund pursuant to Section 6.1 of this Ordinance. Failure of the Company to make timely payment of an assessed penalty is a violation of this Ordinance.

**10.6 Disposition.** Amounts received by the Town as penalties assessed against a Company may be used by the Town for any purpose it deems fit.

**10.7 Schedule of Penalties.** Pursuant to Sections 10.1, 10.2 and 10.3, the following monetary penalties shall apply, and liability therefore shall accrue from the date of receipt of notice pursuant to Section 10.2, and upon failure to cure within the time period specified below, if any opportunity to cure is provided.

**10.8 Minor Per-Day Penalty.** The penalty for the following violations shall be \$50.00 per day until the violation is cured:

- (a) Abandonment of service or a portion of that service without having obtained the written consent of the Town Council or having

provided the Town with at least six (6) months' prior written notice of abandonment.

- (b) Failure to maintain the Company's required insurance pursuant to Section 6.2, with the penalty beginning thirty (30) days after Company receives written notification of the violation.
- (c) Failure to make timely payment of the franchise fee pursuant to Section 9, with the penalty beginning thirty (30) days after Company receives written notification of the violation.
- (d) Violation of the privacy restrictions in Sections 12.7(d) of this Ordinance. This penalty shall be assessed with the penalty beginning seven (7) days after Company receives written notification of the violation.
- (e) Failure to restore damaged property within the specified period pursuant to Section 11.11, with the penalty beginning five (5) days after Company receives written notification of the violation.
- (f) Failure to make and maintain records as required by Section 13.6 with the penalty beginning thirty (30) days after Company receives written notification of the violation. This penalty shall be assessed for each such record not maintained.
- (g) Failure to obtain and maintain the performance bond or security fund pursuant to Section 6.1 with the penalty beginning thirty (30) days after Company receives written notification of the violation.
- (h) Failure to remove, relocate or protect the Company's system pursuant to Sections 5.5, 5.6 and 11.17 with the penalty beginning seven (7) days after Company receives written notification of the violation.
- (i) Failure to eliminate objectionable interference pursuant to Section 11.18 with the penalty beginning fourteen (14) days after Company receives written notification of the violation.
- (j) Failure to provide reports within the time required by Section 18 assessed for each report not provided with the penalty beginning fourteen (14) days after Company receives written notification of the violation.

**10.9. Per Subscriber Penalty.** The penalty for the following violations shall be \$5.00 per Subscriber affected by the violation per day until the violation is cured:



- (a) Failure to respond to a request for repair or adjustment within the time required by Section 13.4. This penalty shall begin twenty-four (24) hours after the Town notifies the Company in writing of the violation.
- (b) Failure to commence service to a Subscriber within the time required by Section 14 beginning two (2) days after the Town notifies Company in writing of the violation.
- (c) Failure to pay a refund due a Subscriber upon termination within the time required by Section 15.6. This penalty shall begin five (5) days after the Town notifies the Company in writing of the violation.
- (d) Failure to respond to a billing complaint within the time required by Section 16.3. This penalty shall begin two (2) days after the Town notifies the Company in writing of the violation.
- (e) Failure to respond to a service complaint within the time required by Section 16.4. This penalty shall begin two (2) days after the Town notifies the Company in writing of the violation.
- (f) Failure to pay a rebate or apply a credit for service loss within the time required by Section 13.5. This penalty shall begin 5 days after the Town notifies the Company in writing of the violation.

**10.10. Major Per Day Penalty.** The penalty shall be \$500.00 for the following violations beginning sixty (60) days after the Town notifies the Company in writing of the violation until the violation is cured.

- (a) Failure to complete any system rebuild as required by Section 11.1 and the terms of the Franchise Agreement. This penalty shall be assessed per day until compliance is achieved.
- (b) Failure to make service available to unserved areas within the time required by this Ordinance and the terms of the Franchise Agreement. This penalty shall be assessed per day until compliance is achieved.
- (c) Failure to provide access channels, facilities and equipment funding as required by this Ordinance and the terms of the Franchise Agreement. This penalty shall be assessed per day until compliance.

**10.11. Violation of Subscriber Privacy.** The penalty for a violation of Section 12.7(e) is \$1,000 per occurrence of selling or disclosing subscriber lists, viewing

habits or personally identifiable information (and not per day or per affected subscriber).

**10.12. Failure to Provide Emergency Override Capabilities.** The Cable System shall incorporate emergency audio override capabilities in accordance with FCC Emergency Alert System (EAS) standards and as required by Section 11.3. The penalty for a failure of the system to perform as described in the event of a public emergency or vital public information situation, shall be \$1,000 assessed per occurrence, except to the extent the Cable System is rendered non-functional due to damage caused by factors outside of the Company's reasonable control.

**10.13. Force Majeure.** The Company shall not be assessed any penalties under this Ordinance for any delay or failure to comply with the provisions of the Ordinance if doing so is prevented by Act of God, the inability to secure materials despite the use of all commercially reasonable efforts by the Company, flood, storm, fire, explosions, strikes, riots, wars whether or not declared, insurrections, epidemics, or any law, rule or act of any court of competent jurisdiction or instrumentality of government or any other occurrence outside of the control of the Company when using all commercially reasonable efforts.

**10.14. Further Recourse.** In addition to the foregoing penalties, upon the failure, refusal or neglect of the Company to cause any work or other act required by law or by this Ordinance or the Franchise Agreement to be properly completed in, on, over or under any Street or Public Way within any time prescribed, the Town may (but shall not be required to) cause such work or other act to be performed or completed in whole or in part and upon so doing shall submit to the Company an itemized statement of the costs thereof. The Company shall, within thirty (30) days after receipt of such statement, pay to the Town the entire amount thereof.

## **Section 11. Construction and Operation of Facilities**

**11.1 Design.** Except as otherwise provided for in the Franchise Agreement, any Cable System serving Gray shall in any event be designed and built for technical quality in conformance with the highest state of the art in the cable television industry for Cable Systems of comparable size. Not later than one year from the effective date of the Franchise, the Cable System shall be designed and built for operation at a minimum of 750 MHz and a minimum eighty (80) video channel capacity, with full bi-directional capability. All downstream and upstream channels shall be activated by such date.

**11.2. Emergency Power.** The Cable System shall incorporate equipment capable of providing standby powering of the Headend and all Sub-headends for a minimum of four hours.

**11.3. Emergency Override.** The Cable System shall incorporate emergency audio override capabilities in accordance with FCC Emergency Alert System (EAS) standards.

**11.4. Subscribers' Antennae.** Notwithstanding a required disconnection of a Subscriber's existing broadcast antennae and downloads to receivers connected to the Cable System, the Company shall not remove or suggest to the Subscriber the removal of such antennae and downloads. The Company shall furnish to each Subscriber so requesting, at reasonable cost, an A/B switch permitting the Subscriber to change from cable reception to home antenna reception, and back, at the option of the Subscriber. Installation of such switches at the time of initial installation of service to a Subscriber shall be without charge other than for such purchase cost.

**11.5. Switching.** The Headend or Sub-headend shall have the capability of accepting programming on the upstream channels of the Cable System and simultaneously transmitting such programming on the downstream channels of the Cable System.

**11.6. VCR/Cable Compatibility.** In order that Subscribers to the Cable System have the capability to simultaneously view and tape any channel and set their VCR to record multiple channels remotely, the Company shall provide to any Subscriber, upon request, an A/B switch, installed at reasonable cost.

**11.7 General Construction Requirements.** In the construction, reconstruction, maintenance and repair of the Cable System, the Company shall utilize materials of good and durable quality and shall perform or cause to be performed all work so associated with the system in a safe, thorough and reliable manner.

**11.8. Live Programming Origination Points.** To facilitate live programming within the Town of Gray each Company shall install Origination Points at the public buildings and public locations as are designated in the Franchise Agreement.

**11.9. Compliance With Regulations.** All work, including all working conditions and facilities, associated with the construction, operation, maintenance, repair and removal of the Cable System shall comply with:

- (a) All applicable Federal and State laws, rules and regulations;
- (b) All applicable laws, codes, ordinances, rules and regulations of the Town; and

- (c) The National Electric Code, National Electrical Safety Code, the National Cable Television Association Standard Code, and the National Safety Code.

**11.10. Town Rights.** The Town reserves the right to inspect all construction and installation work and to make such tests as it shall deem necessary to ensure compliance with applicable laws, codes, ordinances and regulations and with provisions of this Ordinance and the applicable Franchise Agreement, and may order corrections of any violations.

**11.11. Restoration of Damage.** The Company, at its sole expense, shall restore all damage to property, both public and private, caused by the construction, operation, maintenance or repair of the Cable System, so as to return the damaged property to a condition as good as before the damage was done. Such restoration shall be made as soon as practicable after completion of work necessitating the restoration, and shall be done in a manner approved by the owner or tenant in possession. In no event shall such restoration be made later than ten (10) days, weather permitting and subject to force majeure, after the Company's receipt of notification from the owner of the property so damaged unless otherwise mutually agreed by the Company and the property owner; provided, that if any such damage involves streets, water-mains, storm or sanitary sewers, or other public facilities, such damage shall be repaired within forty-eight (48) hours or as soon as practicable. If the Company fails to make such restoration on a timely basis, the Town may fix a reasonable time for such restoration and repairs and shall notify the Company in writing of the restoration and repairs required and the time fixed for performance hereof. Upon failure of the Company to comply within the specified time period, the Town may cause proper restoration and repairs to be made and the Company shall pay the reasonable expense of such work upon demand by the Town.

**11.12. Identification.** Each Company shall ensure that all of its vehicles are clearly identified to the general public as being associated with the Company, and that all of its employees, and the employees of any agents or contractors, who enter upon private property wear an employee identification card issued by the Company, which card shall bear a picture of said employee and shall be worn in a conspicuous place.

**11.13. Public Ways Hazards.** Any openings or obstructions in streets or other municipal or public property made by any Company shall be guarded and protected at all times by the placement of adequate barriers, fences, boarding or other protective devices at the sole expense of the Company. During the periods of dusk and darkness, the protective devices shall be clearly designated by warning lights.

**11.14. Location of Physical Facilities.** Within sixty (60) days after the effective date of any Franchise Agreement, the Company shall provide the Town with

strand maps of the Town of Gray clearly showing the location of all distribution lines (indicating underground, where applicable), tower, antennae, receivers, headend, and sub-headends. Revised and corrected strand maps shall be submitted to the Town not later than ninety (90) days after such changes or additions are made.

**11.15. Cable Location.** Insofar as practicable, the distribution system (trunk and feeder cable) shall run along public rights-of-way. Where the cable or wire facilities of all public utilities are installed underground, the Company shall install its cable distribution system underground. Vaults and pedestals shall be suitably landscaped, such landscaping to be subject to the approval of the owner or tenant in possession, which approval shall not be unreasonably withheld. In all areas where public utility lines are aerially placed, if subsequently during the term of the Franchise Agreement all such utility lines are relocated underground pursuant to applicable law under the Town's police powers, the Company shall similarly relocate its cable distribution system underground at its sole expense. Wherever possible, the distribution system shall use the existing facilities of the public utilities. Poles shall not be installed for the sole purpose of supporting a portion of the distribution system without written justification and approval of the Town, which approval shall not be unreasonably withheld, pursuant to the Town's law, ordinances, rules and regulations.

**11.16. Location of Construction.** All lines, cables and distribution structure, and equipment, including poles and towers, erected, installed or maintained by any Company within the Town of Gray shall be located so as not to obstruct or interfere with the proper use of Streets and Public Ways and to cause minimum interference with the rights of property owners who abut any of the said Streets and Public Ways, and not to interfere with existing public utility installations. A Company shall not place new poles, towers or other obstructions in Streets or Public Ways, or relocate existing poles, towers or other obstructions, without first obtaining the Town's approval, which approval shall not be unreasonably withheld. A Company shall have no vested right in any location, and the Company shall remove such construction at its own cost and expense whenever the Town determines that there is a restriction, obstruction or interference with the operation or location or any future operation or location of said Streets or Public Ways.

**11.17. Grade or Location Changes.** If at any time during the term of a Franchise the Town shall elect to alter, or change the grade or location of any Street, or shall engage in any construction, reconstruction, widening, repairs or other public works in, on or under the Streets, any Company shall, upon reasonable notice by the Town, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures ("Fixtures") at its own expense, and in each instance comply with the Town's standards and specifications.

**11.18. No Interference.** A Company shall not place Fixtures above or below ground where the same will interfere with any gas, electricity, telephone fixtures, water hydrants, or other utility use, and all such Fixtures placed in or upon any Street shall be so placed as to comply with all requirements of the Town or other applicable authority, and fully comply with local regulations, including zoning ordinances. Each Cable System shall be constructed, operated and maintained so that there will be no objectionable interference with television reception, radio reception, telephone communications or other electronic installations in the Town of Gray or with the operation of any public fire, police, rescue or safety communications system. Should any such interference occur, the Company shall promptly eliminate it.

**11.19. Temporary Relocation.** A Company shall, on request of any Person holding a permit issued by the Town or other appropriate authority, temporarily move its Fixtures to permit the moving or erection of buildings or other objects, with the expense of any such temporary removal to be paid in advance by the Person requesting same, and the Company shall be given reasonable notice to arrange for such temporary relocation. A Company shall bear any expense to temporarily move its Fixtures to permit the moving or erection of Town- owned or constructed buildings or other public infrastructure.

**11.20. Tree Trimming.** Each Company shall have the authority to trim any trees upon and overhanging the Town's Streets or Public Ways to the minimum extent necessary to prevent the branches of such trees from coming in contact with the wires and cables of the Cable System; provided that, except for incidental trimming done by the Company employees in the course of performing their other duties, any tree trimming done by the Company shall be subject, in all respects, to the Town's prior approval. Except in an emergency, the Company will notify the abutting property owner(s) prior to starting tree trimming work. In performing tree trimming, the Company shall employ best management practices, shall use its best efforts to avoid any unnecessary damage or injury to trees, and shall comply in all respects with any Town ordinances governing tree trimming. Except for incidental trimming performed by a Company's employees in the course of performing their other duties, the Town may elect to perform tree trimming directly or by agents under the Town's supervision and direction, at the Company's expense.

**11.21. Drops.** In areas where the cable distribution is located underground, drop connections to Subscriber's structure shall be underground; in other areas the drop connection shall be aerial unless the Subscriber requests underground installation and elects to pay the cost thereof. Insofar as practicable, the Company shall adhere to the Subscriber's desire with regard to point of entry of the drop connection into the structure. Within the Subscriber's structure, drop or cable runs shall be made as unobtrusively as possible. Each drop shall be grounded at the Subscriber's structure, or, at the Company's option, at such other location as may be permitted by the National Electrical Safety Code.

**11.22. Zoning and Building Codes.** Any and all construction performed by or under the auspices of the Company, and any and all facilities used or operated by the Company, shall comply with all applicable zoning and building ordinances, codes or laws of the Town.

**11.23. Contractors, Subcontractors and Affiliates.** All contractors, subcontractors and affiliates of a Company must be properly licensed under all applicable federal, state and local laws and regulations. Each Company shall be solely and completely responsible for all acts or omissions of any such contractor, subcontractor or affiliate, or any employee or agent of any such contractor, subcontractor or affiliate in the construction, reconstruction, installation, maintenance, operation or removal of the Company's cable system.

**11.24. Completion of Work by the Town.** Upon failure of a Company to commence, pursue or complete any work required by this Ordinance, other applicable law or by the provisions of the Franchise Agreement in any Street or other public place within the time prescribed and to the satisfaction of the Town, the Town may, at its option, cause such work to be done with reasonable expenditures therefore and the Company shall pay to the Town the cost thereof in the itemized amounts reported by the Town to the Company within thirty (30) days after receipt of such itemized report.

**11.25. Lockout Key.** Each Company shall make available to any Subscribers so requesting, for lease or sale, a "parental control device" or "lockout key" which will permit the Subscriber, at his or her option, to eliminate comprehensible reception of any or all of the Basic Service or pay cable Channels. If requested, a lockout key will be installed within twenty (20) days of request.

## **Section 12. Operation, Service and Maintenance of System.**

**12.1** Each Company shall construct, maintain and operate its Cable System safely and render efficient service to Subscribers during the term of any Franchise.

**12.2** Each Company shall construct, upgrade, install, operate, maintain and remove its Cable System in conformance with Occupational Safety and Health Administration regulations, the Maine Electrical Code, the National Electric Code, the NCTA Safety Manual, the National Electric Safety Code, the Bell Telephone System Code of Pole Line Construction, the rules and regulations of the FCC, all building and zoning codes, and all land use restrictions as they may now exist or may be amended or adopted hereafter.

**12.3** Any tower constructed for use in a Company's Cable System shall comply with the standards contained in "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures", TIA/EIA-222-F as published by the Telecommunications Industry Association, 2500 Wilson Blvd., Arlington, VA 22201.

**12.4** Installation and physical dimensions of any tower constructed for use in a Company's Cable System shall comply with all appropriate Federal Aviation Agency regulations, including, but not limited to, "Objects Affecting Navigable Airspace", 14 C.F.R. §§ 77.1, *et seq.*, as may be amended from time to time.

**12.5** Any antenna structure used, in a Company's Cable System shall comply with "Construction, Marking, and Lighting of Antenna Structures", 47 C.F.R. §§ 17.1, *et seq.*, as may be amended from time to time.

**12.6** Each Company shall install and maintain its wire, cable, mixers and other equipment in accordance with the requirements of the generally applicable ordinances of the Town as may be amended, and in such a manner which shall not interfere with any installations of the Town or any public utility serving the Town.

**12.7 Privacy.**

- (a) The Company shall respect the rights of privacy of every Subscriber of the Cable Television System and, pursuant to applicable federal law, shall not violate such rights through the use of any device or Signal associated with the Cable Television System, and as hereafter provided.
- (b) The Company shall comply with all privacy provisions contained in this Ordinance and all other applicable federal and State laws including, but not limited to, the provisions of Section 631 of the Cable Act.
- (c) The Company shall be responsible for carrying out and enforcing the Cable System's privacy policy, and shall at all times maintain adequate physical, technical and administrative security safeguards to ensure that personal subscriber information is handled and protected strictly in accordance with this policy.
- (d) Except as otherwise permitted by applicable law, the Company shall not tap, monitor, arrange for the tapping or monitoring, or permit any other person to tap or monitor, any cable, line, Signal, input device, or subscriber Outlet or receiver for any purpose, without the prior written authorization of the affected Subscriber; provided, however, that the Company may conduct system-wide or individually addressed "sweeps" solely for the purpose of verifying System integrity, checking for illegal taps, controlling return-path transmission, or billing for Pay Services. The Company shall report to the affected parties any instances of monitoring or tapping of the Cable Television System, or any part thereof, of which it has knowledge, whether or not the Company has authorized such activity, other than as permitted herein. The Company shall not record or retain any information transmitted between a Subscriber and any third party, except as



required for lawful business purposes. The Franchisee shall destroy all subscriber information of a personal nature after a reasonable period of time except as authorized not to do so by the affected Subscriber.

- (e) Except as otherwise permitted by applicable law, the Company shall not sell, disclose, or otherwise make available, or permit the use of, lists of the names or addresses of its Subscribers or any list or other information which identifies by name or address, Subscribers viewing habits, to any Person or agency for any purpose whatsoever without the prior written consent of the Subscriber; provided that the Company may make such lists available to Persons performing services for the Company in connection with lawful business purposes hereunder (e.g. a billing service) where the availability of such lists is necessary to the performance of such services. A Subscriber may withdraw said consent by providing written notice to the Company. Every Company shall provide annual notice to each Subscriber of the right to withdraw such authorization. In no event shall such authorization be obtained as a condition of service or continuation thereof, except as necessary to adequately provide particular services.
- (f) Upon request, the Company shall make available for inspection by a Subscriber at a reasonable time and place all personal subscriber information that the Company maintains regarding said Subscriber. A Subscriber may obtain from the Company a copy of any or all of the personal subscriber information regarding him or her maintained by the Company.
- (g) A Subscriber may challenge the accuracy, completeness, retention, use or dissemination of any item of personal subscriber information. Such challenges and related inquiries about the handling of subscriber information shall be directed to the Company's General Manager.

## **12.8 Performance Standards**

- (a) **Technical Standards.** Subject to Section 10.13 above, all signals, including PEG signals, carried on a Cable System shall be transmitted to Subscribers without material degradation and with a quality no less than that prescribed by rules of any Federal or State regulatory agencies having jurisdiction. Anything contained in a Franchise Agreement to the contrary notwithstanding, the technical specifications, operation and performance of the system shall, at minimum, conform at all time to the specifications established by any Federal or State regulatory agencies having jurisdiction thereof, and such specifications existing on the effective date hereof, whichever is of the higher quality.

- (b) **Performance Testing.** At such time as the performance monitoring and testing, conducted pursuant to requirements of any Federal or State regulatory agencies having jurisdiction, provides evidence that the Cable System's transmissions do not meet the prescribed standards, the performance monitoring and testing shall be repeated for all segments of the Cable System which do not meet such prescribed standards, upon completion of the necessary repair or adjustment, notwithstanding the lack of such requirement by the Federal or State agencies, and a report of the second test submitted to the Town; provided, that the Company shall not be required to furnish any such reports with respect to technical problems discovered in the course of the Company's routine maintenance testing, except as may be specifically requested by the Town in each instance. The Company shall provide and keep accurately calibrated test equipment on hand at all times for the testing of all services and operational standards outlined in this Franchise Agreement.

### **Section 13 – Maintenance and Repair.**

**13.1 Maintenance Policy.** Each Company shall promulgate and adhere to a preventative maintenance policy directed toward maximizing the reliability (mean-time-between-malfunctions) and maintainability (mean-time-to-repair) of its Cable System with respect to its delivery of Cable Service to Subscribers at or above the performance standard set forth herein. Whenever it is necessary to interrupt service for the purpose of making scheduled maintenance or repairs, adjustments, installations or other maintenance activities, the Company shall do so at such a time as will cause the least inconvenience to Subscribers. Except in an emergency, and except for interruptions of five minutes or less which may occur during the course of normal maintenance, and except during the rebuild of the Cable System, service is to be interrupted for planned or scheduled maintenance or repairs between the hours of midnight and 7:00 a.m. where practicable.

**13.2 Repair.** Each Company shall maintain a repair department comprising qualified technicians, service vehicles and equipment to provide prompt and efficient repair service within the parameters set forth below.

**13.3 Notice.** Except in an emergency, and except for interruptions of five minutes or less, each Company shall give Subscribers at least 24 hours' notice of any planned interruption of service for purposes of maintenance or repair. In an emergency, a Company shall give such notice as is reasonable in the circumstances. Notice given on the alphanumeric channels on Basic Service shall be considered sufficient. During any rebuild of the Cable System, a Company shall not be required to provide 24 hour notice of any interruption of service if such interruption is the direct result of rebuild work. However, a Company shall be required to provide written notification to Subscribers of planned rebuild work

schedules and when Subscribers may experience service interruptions. The Company shall use its best efforts to minimize the length of any service outage due to a rebuild.

**13.4 Repair Procedure.** Each Company shall have a toll free telephone number listed in the local area and so operated that requests for repairs or adjustments can be received at any time, twenty-four (24) hours per day, seven (7) days per week. A recording device or answering service may be used during non-business hours. A Company's responses to such requests shall occur no later than 24 hours after the Company's receipt of such a request; provided, the response time for service complaints other than complaints of no or unusable service shall be computed excluding Sundays and holidays.

A Company shall respond within four (4) hours to any area outage that occurs between the hours of 7:00 a.m. and 10:00 p.m. of any day, and by not later than the following 11:00 a.m. to any area outage that occurs between 10:00 p.m. and 7:00 a.m. If a Company responds to a service complaint as herein required and the Subscriber is not satisfied that the problem giving rise to the original complaint has been resolved, the Subscriber shall notify the Company thereof within forty eight (48) hours of the repair visit by the Company personnel, and the Company shall have an additional period of twenty-four (24) hours within which to correct the problem. If such second complaint is made to the Town instead of the Company, the Company shall have a period of twenty-four (24) hours after receipt of oral or written notice from the Town within which to make the correction. The requirements for maintenance and repair shall not apply to Subscribers' television or radio receivers or other Subscriber-owned equipment.

**13.5 Rebate or Credit for Service Loss.** Upon request, for every loss of service in excess of six (6) continuous hours, the Company shall grant a pro rata rebate or credit of the regular monthly charge to the Subscriber. In the event a Subscriber reports a loss of service to the Company, and such outage exceeds six (6) continuous hours, the Company shall grant the credit or rebate whether or not the Subscriber specifically requests it. The credit shall be pro-rated by multiplying the applicable monthly service rate by a fraction whose numerator equals the number of days of the outage and whose denominator equals the number of days in the month of the outage. In no case shall the refund be less than twenty-four (24) hours' credit. For purposes of this paragraph, loss of Basic Service shall be considered a Subscriber's receipt of less than two-thirds of the respective available channels, and loss of pay Cable Service shall be considered the loss of signal on any pay Channel. The Company shall give the Subscriber a credit no later than the next billing cycle. The Company shall include on each Subscriber bill for service, a notice regarding the Subscriber's right to a pro rata credit or rebate for interruption of service upon request in accordance with this Section. The notice must include a toll-free telephone number and a telephone number accessible by a teletypewriter device or TTY for contacting the Company to request the pro rata credit or rebate for service interruption. The notice must be

in nontechnical language, understandable by the general public and printed in a prominent location on the Customer bill in boldface type.

**13.6 Records.** Each Company shall maintain records of all oral and written complaints regarding quality of service, equipment malfunctions, billing procedure, and similar matters that requires further action on the part of the Company. Such records shall show the exact date and time of receipt of all such customer complaints, identifying the Subscriber, the nature of the complaint and the exact time action was taken by the Company in response thereto, together with a description of such action. Each Company shall also maintain a record of all whole or partial system outages, including the date, approximate time and duration, type and probable cause of each outage, except for outages caused by routine testing or maintenance. Such records shall be available at the Company's local office for at least two (2) years, for inspection by the Town as it may from time to time request, during regular business hours and upon reasonable notice, subject to any privacy restrictions imposed by law. The Company shall, within ten (10) days after receiving a written request therefore, send a written report to the Town with respect to any complaint. Such report shall provide a full explanation of the investigation, finding(s) and corrective steps taken.

#### **Section 14 - Time of Installation.**

Service to any Subscriber served by a standard aerial Drop shall commence by not later than seven (7) business days after service is requested; service to any Subscriber served by a standard underground Drop shall commence by not later than forty-five (45) days after service is requested unless additional time is required by severe weather or other circumstances outside of Company's control. The Company shall exert every reasonable effort to commence service to a Subscriber served by a non-standard Drop as expeditiously as possible. A standard Drop, for which the Subscriber shall be charged the Company's standard installation fee, is a drop running not more than one hundred fifty (150) feet from feeder cable to the Subscriber's structure; provided, that any installation which requires Company to cross a street underground shall be considered a non-standard installation. An aerial Drop in excess of one hundred fifty (150) feet in length shall be considered a non-standard installation. If the Company schedules an appointment with a Subscriber for an installation, repair or other service call, and the Company fails to arrive at the Subscriber's premises within one (1) hour of the scheduled time or scheduled window of time (which window shall not exceed four (4) hours) for reasons not caused by the Subscriber unless rescheduled in advance by the Company, the Company shall, in the case of an appointment for a standard installation, make no charge to the Subscriber for the standard installation, and in the case of a repair or other service call, shall apply a minimum twenty dollar (\$20.00) credit to the Subscriber's account to reduce the cost of any make-up or late repair or service call.

#### **Section 15 – Subscriber Rates and Charges.**

**15.1 Regulation.** The Town shall have the right to regulate charges to Subscribers for Cable Service to the extent allowed by law.

**15.2 Rate or Service Discriminations: Special Classifications.** No Company shall subject any person to any prejudice or disadvantage, preference or advantage in connection with rates, charges, service facilities, rules or regulations. Nothing herein shall prohibit the establishment of a graduated scale of rates for classified schedules to which any Subscribers within such classification shall be entitled.

**15.3 Connection Charges.** Subscribers shall be assessed no special connection charges other than standard installation charges for cable drops from any Company's distribution plant up to one hundred fifty (150) feet. Subscribers requiring drops over one hundred fifty (150) feet shall be charged only for the incremental cost of extending the drop beyond one hundred fifty (150) feet.

**15.4 Rates and Programming.**

- (a) Each Company shall give the Town and each Subscriber thirty (30) days' written notice of any change in Subscriber rates or charges. At the Town's request, exercised by the Town giving the Company at least ten (10) days' notice thereof, the Company shall attend, and respond to questions, at any public meeting held by the Town concerning the rate increase. Notice to Subscribers of rate changes shall be by mail. Each Company shall also provide each Subscriber at least annually with a detailed explanation of downgrade and upgrade policies and the manner in which Subscribers may terminate Cable Service. Subscribers shall have at least thirty (30) days from receipt of notification of any rate increase to either downgrade service or terminate altogether without any charge.
- (b) Each Company shall give the Town and each Subscriber thirty (30) days written notice of any change, including additions or deletions, or change in Channel position, in the programming carried on the Cable System, as well as any re-tiering of such programming, and any other changes in the programming service offered by each Company. At the request of the Town, with at least ten (10) days' notice, each Company shall meet with the Town at a public meeting to discuss programming issues and options and to hear and consider the input of the Town and the public.
- (c) Each Company shall use its best efforts to provide a wide diversity of programming options to its Subscribers. Each Company shall provide the following broad categories of programming:
  - (1) public broadcasting programming;
  - (2) educational programming;

- (3) news programming;
- (4) music programming;
- (5) sports programming;
- (6) children's programming;
- (7) religious programming;
- (8) arts and/or cultural programming; and
- (9) family programming.

(d) Rate schedules shall be provided to Subscribers annually.

**15.5 Billing Practices.** Each Company shall set forth, in writing its billing and collection practices and policies, and procedures for ordering changes in or termination of services and refund policies, and shall furnish a copy thereof to each new Subscriber and to the Town, and thereafter to the Town and all Subscribers at such time as there is a change in such policies.

**15.6 Pro-Rated Service.** In the event a Subscriber's service is terminated, monthly charges for service shall be pro-rated on a daily basis and, where advance payment has been made by a Subscriber, the appropriate refund shall be made by the Company to the Subscriber within thirty (30) days of such termination.

**15.7 Disconnection for Non-Payment.** The Company shall have the right to disconnect a Subscriber for failure to pay an overdue account; provided, that:

- (a) The Company's billing practices and policy statement set forth the conditions under which an account will be considered overdue;
- (b) At least twelve (12) days prior to the proposed disconnection, the Company mails to the Subscriber written notice of intent to disconnect for delinquency in payment;
- (c) The Subscriber's account is at least sixty (60) days delinquent at the time said notice is mailed, and
- (d) The disconnection occurs at least twelve (12) days, and not more than sixty (60) days, after the mailing of the above written notice.

**15.8 Notice of Rates and Programming.** All rates and charges associated with the provision of Cable Service and the lease of Channel space shall be published.

A written schedule of all such rates currently in effect, including special and promotional rates, shall be available and obtainable in person or by mail upon request during business hours at each Company's business office.

- (a) At least once each calendar year, each Company shall provide to each Subscriber and the Town a complete schedule of all services, rates and charges for Cable Service provided by the Company and of the programming offered and channel alignment. Such information shall also be provided to all new or prospective Subscribers prior to installation or commencement of service.
- (b) Such information shall be written in plain English and shall include, but shall not be limited to, the following: all services, tiers and rates, deposits, if applicable, installation costs, additional television set installation charges, service upgrade or downgrade charges, stolen or lost converter charges, charges for lockout devices and for connecting video cassette recorders to the Cable System.

**15.9 General Customer Service.** Each Company shall comply with any and all customer service standards provided under Maine law, Federal law, FCC regulations, including those regulations found at 47 C.F.R. § 76.309, and as promulgated by the cable industry (such as NCTA standards), as well as with the provisions of the applicable Franchise Agreement. To the extent there is any conflict in the requirements of this Ordinance, the Franchise Agreement, State and federal law, FCC regulations and/or cable industry standards, the strictest of such standards shall govern.

## **Section 16 – Subscriber Complaints.**

**16.1 Complaint Policy.** Any Company issued a Franchise under this Ordinance shall promulgate, within one hundred twenty (120) days of issuance, a written policy statement setting forth the procedure for reporting and resolving Subscriber complaints, and shall furnish a copy thereof to each new Subscriber and to the Town, and thereafter, annually, to the Town and all Subscribers. Such notice shall comply in all respects with the Cable Act, FCC Regulations, Maine law and this Ordinance.

**16.2 Company Response.** Each Company shall receive Subscriber complaints at its business office serving the Town and shall handle all such complaints promptly but in no event later than as set forth below.

**16.3 Billing Complaints.** In the case of a billing complaint, the Company shall respond to the complainant no later than five (5) business days following receipt of the complaint.

**16.4 Service Complaints.** In the case of a service complaint not requesting repair or adjustment, the Company shall respond to complainant within five (5) business days following receipt of the complaint.

## **Section 17. Preferential or Discriminatory Practices Prohibited.**

The Company shall not, as to rates, charges, service, service facilities, rules, regulations, or in any other respect, make or grant any undue preference or advantage to any person, nor subject any person to any prejudice or disadvantage.

## **Section 18. Reports and Records.**

**18.1 General Report Filing Requirements.** The Town may require each Company to maintain and file such reports, contracts and statements which are reasonably necessary to monitor compliance with this Ordinance and the Franchise Agreement, including but not limited to ownership, accounting, auditing and operating statements, engineering reports, and other data, which the Town shall deem necessary or appropriate to administer the provisions of this Ordinance.

Records to be available for inspection and review by the Town shall include, but not be limited to:

- (a) All correspondence among the Company and any of his agents, and all regulators or other government agencies pertaining to the operation of the Cable System in the Town necessary to monitor compliance.
- (b) All reports, applications, and other documents sent to, or required by, any government agency pertaining to the operation of the Cable System in the Town necessary to monitor compliance.
- (c) All oral and written complaints received by the Company or its agents from the Subscribers in the Town for the preceding two (2) years of the term of the Franchise, and the disposition thereof.
- (d) All financial records reasonably necessary to determine compliance with and carry out the provisions of this Ordinance and any Franchise Agreement necessary to monitor compliance.

**18.2 Annual Report.** No later than April 1 of each year during the term of a Franchise Agreement, each Company 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 in Gray, including a breakdown of Subscribers taking basic Cable Service, Cable Programming Service and premium services as of December 31 of the prior calendar year.



- (b) The increase or decrease in the number of Subscribers over the prior calendar year for Gray.
- (c) A specific description of any line extensions in Gray in the prior calendar year.
- (d) Any price or programming changes in the prior year.
- (e) A description of any technological upgrades or enhancements in Cable Service over the past year.
- (f) A listing of any system outages in Gray over the prior year in excess of one hour, including the affected locations, the date, time, duration, cause of the outage, and steps taken to address the outage.
- (g) A summary of customer complaint records for the prior year, including an identification of any significant customer service issues raised in Gray in the prior year and any resolution or changes in service resulting.

After delivery of the Annual Report, each Company shall, at the request of the Town, attend a meeting with the Town to review and discuss any issues or questions raised in the grantor's review of the Annual Report.

**18.3 Supplemental Reporting.** Upon written request of the Town, the Company shall provide, not more than annually a report listing the following:

- (a) A summary of the 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 set forth in 76 C.F.R. §§ 76.601, *et seq.*, as may be amended from time to time, 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 Company 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 Company's most recent S.E.C. Forms 10 K and 10Q.

## **Section 19. Rights Reserved to the Town.**

**19.1** Nothing herein shall be deemed or construed to impair or affect, in any way, to any extent, the right of the Town to acquire the property of the Company, either by purchase or through the exercise of the right of eminent domain and nothing

herein contained shall be construed to contract away or to modify or abridge, whether for a term or in perpetuity, the Town's right of eminent domain.

**19.2** Neither the awarding of a Franchise nor any provision hereof shall constitute a waiver or bar to the exercise of any governmental right or power of the Town.

**19.3** The Town Manager is hereby authorized and empowered to adjust, settle, or compromise any controversy or charge arising from the operations of the Company under this Ordinance on behalf of the Town.

**19.4** The Town shall have the right to inspect all construction of installation work for a Cable System and to make such inspections as it shall find necessary to insure compliance with the terms of this Ordinance, and Franchise awarded pursuant hereto, and any other pertinent provisions of the law.

**19.5** Upon revocation or denial of a renewal under the formal process of the Cable Act of any Cable Franchise, the Town shall have the right to require the Company to remove at its own expense all portions of the Cable System from all Streets and Public Ways within the Town.

**19.6** Nothing in this Ordinance or the Franchise shall encumber or prohibit the Town from the collection of property taxes, of whatsoever kind, allowed by state law.

## **Section 20. Rules, Regulations and Procedures.**

**20.1** The Town Council shall, either directly or through its designees, conduct public hearings and issue such appropriate orders as it may deem necessary to enforce the provisions of this Ordinance, including the revocation of a Franchise and the assessment of penalties for violations, as well as to correct any deficiencies in the operation of the Cable System.

**20.2** Any such order adopted by the Town Council shall not be in conflict with any orders adopted by the Federal Communications Commission (FCC) for the operation of such Cable Systems, except that unless preempted, such ordinances, regulations, rules and orders may be more detailed, more strict or more restrictive than applicable FCC regulations.

**20.3** As part of its enforcement authority, the Town Council has the authority to bring legal action for damages, penalties and for injunctive relief on behalf of the Town against a Company. In the event that the Town brings a legal action to enforce the provisions of this Ordinance or the Franchise Agreement, and the Town prevails in the action, the Town shall be entitled to recover its costs, including reasonable attorney's fees, incurred in the prosecution of any such action.

**20.4** The Company shall have the right to appeal any decision of the Town Council under this Ordinance within thirty (30) days of the date of the decision or ruling to the Maine Superior Court pursuant to M.R. Civ. P. 80B.

## **Section 21. Revocation.**

**20.1 Notice and Hearing.** The Town Council may revoke any Franchise awarded pursuant to the provisions of this Ordinance and federal law upon thirty (30) days written notice to the Company and after hearing, in the event that the Company:

- (a) violates any material provision of its Franchise Agreement, where such violation remains uncured for a period of thirty (30) days;
- (b) ceases to provide service over the Cable System or fails to restore 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;
- (c) fails to provide or maintain in full force and effect the insurance coverages and the performance bond as required by this Ordinance and under the terms of the Franchise Agreement, where such violation remains uncured for a period of thirty (30) days;
- (d) violates any rule, order or determination of the Town made pursuant to the Franchise Agreement or this Ordinance where such violation remains uncured for a period of thirty (30) days; or
- (e) violates any other provision of law.

**20.2 Procedures.** The Town shall follow the following procedures in revoking a franchise:

- (a) The Town shall provide the Company with notice of intention to revoke the Franchise. The written notice shall be sent by certified or overnight mail and shall describe in reasonable detail the specific violations alleged to have occurred.
- (b) The Company shall have thirty (30) days from receipt of the notice either to correct the alleged violation or dispute the Town's allegations in writing. In the event that, by nature of the alleged violation, such violation cannot be cured within such thirty (30) day period, the parties shall meet in good faith and agree to a reasonable cure schedule.
- (c) If the Company disputes the Town's allegations, the Town Council shall conduct a public hearing within thirty (30) days of receipt of notice that the Company disputes the allegations. The hearing shall

follow the procedures set forth for public hearings before the Town Council and the Company shall have the right to present evidence, and question witnesses, if any.

- (d) Following the public hearing, the Town Council shall make a determination as to whether to revoke the Franchise, and shall issue a written decision containing its findings.