

CHAPTER 221
CABLE ORDINANCE
TOWN OF GRAY, MAINE

Cable TV Ordinance Adopted January 22, 2019, Effective March 1, 2019
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Table of Contents

Section 1. Declaration of Findings.....	1
Section 2. Statement of Intent and Purpose	1
Section 3. Definitions.....	2
Section 4. General.....	5
4.1. Title	5
4.2. Incorporation of Ordinance Into Any Franchise	5
4.3. Rights and Duties	5
4.4. Open Records Law	6
4.5. Enforcement Rights of the Town	6
4.6. Franchise Required.....	6
4.7. Franchise Agreement.....	6
4.8. Reservation of Authority	6
4.9. Compliance with Applicable Law.....	7
4.10. Construction Standards	7
4.11. Franchise Application Process	7
4.11.1. Initial Franchise Application	7
4.11.2. Renewal of Cable Franchise	8
4.11.3. Public Hearing	9
4.11.4. Application Fee.....	9
4.12. Additional Franchises.....	9
4.13. Non-Cable Services.....	9
Section 5. Cable System Performance Standards	9
5.1. Technical Standards	9
5.2. Performance Testing	9
5.3. Inspection; Special Testing	10
5.4. Emergency Alert System.....	10
Section 6. Insurance and Indemnification.....	10
6.1. Insurance	10

6.2. Indemnification	11
Section 7. Franchise Administration and Enforcement	11
7.1. Records and Reports.....	11
7.2. Annual Report	12
7.3. Supplemental Reporting.....	13
7.4. Franchise Fees	13
7.4.1. Late Payments.....	14
7.4.2. Acceptance of Payment	14
7.5. Fee Auditing.....	14
7.5.1. Charges for Audits or Tests.....	14
7.6. Rate Regulation.....	14
7.7. Performance Bond.....	14
7.8. Franchise Compliance	15
7.8.1. Amount	15
7.8.2. Date of Violation, Notice.....	15
7.8.3. Procedure for Penalties.....	15
7.8.4. Non-Enforcement Not Waiver.....	16
7.9. Franchise Termination or Revocation	16
7.9.1. Right to Revoke or Terminate	16
7.9.2. Procedures to Revoke or Terminate	17
7.9.3. Public Hearing	17
7.9.4. Judicial Review.....	17
7.10. Abandonment	17
7.11. Franchise Expiration	17
7.12. Franchise Amendment.....	18
7.13. Franchise Transfers	18
7.13.1. Cable Operator’s Right to Transfer	18
7.13.2. Municipality’s Right to Approve.....	18
7.13.3. Notice to Municipality.....	18
7.13.4. Time to Review	18
7.13.5. Public Hearing	18
7.13.6. No Waiver or Release.....	18

Section 8. Consumer Protection Requirements	18
8.1. Line Extension.....	19
8.2. Standard Installations	19
8.3. Annexation	19
8.4. Universal Buildout	19
8.5. Public, Educational, and Governmental Access Channels.....	19
8.5.1. Channel Restoration	19
8.5.2. Access Channel Transmission.....	20
8.5.3. Electronic Programming Guide Integration	20
8.5.4. Access Channel Phone Support.....	20
8.5.5. PEG Facilities and Equipment Support.....	20
8.5.6. Access Channel Signal Transport.....	21
8.6. Broad Categories of Programs and Services	21
8.7. Compliance with Applicable Customer Service Standards.....	22
8.8. Rights of Users	22
8.9. Late Fees	22
8.10. Subscriber Complaints	22
8.11. Credits and Refunds for Interruption of Service	23
8.12. Service Disconnection.....	23
8.13. Subscriber Communications	23
8.13.1. Notices to Subscribers Regarding Quality of Service	23
8.13.2. Notice on Subscriber Bills; Credits and Refunds	24
8.14. Privacy.....	24
8.15. Employee Identification Cards.....	24
Section 9. Open Video Systems.....	24
9.1. Purpose.....	24
9.2. Applicability.....	24
9.3. OVS Application Required	25
9.4. Review of the Application.....	26
9.5. Agreement Required	26
9.6. Extension of Facilities.....	30

**CABLE ORDINANCE
TOWN OF GRAY, MAINE**

Section 1. Declaration of Findings

The Town Council for the Town of Gray, Maine, finds and declares that:

- (a) The Town encourages competition in the provision of Cable Services to the Town's residents and businesses and all cable franchise agreements entered into by the Town shall be non-exclusive;
- (b) It is in the public interest to permit the use of rights-of-way and easements for the construction, maintenance, and operation of Cable Systems under the terms of this chapter and a Franchise adopted by the Town;
- (c) It is in the public interest to ensure that providers of Cable Service do not discriminate as to the persons who have access to their service because of race, color, sex, sexual orientation, religion, national origin, age, handicap, income or the geographical area of the Town in which they live, ;
- (d) In order to meet community needs, Cable Service must be available throughout the Town, including extension of existing Cable Systems to underserved and unserved areas of the Town, , providing access to public, educational, and governmental access channels throughout the Town, and providing Cable Service to schools and government buildings;
- (e) Requiring providers to obtain a Franchise prior to constructing a Cable System and/or providing Cable Service, while requiring the Town to act expeditiously on any franchise request, allows the Town to ensure that it can properly manage and control use of the Public Ways and ensure that the public interest is served while also ensuring the prompt provision of Cable Service; and
- (f) It is the Town's intent to apply the ordinances of the Town, including this chapter, to all Persons seeking to offer Cable Service in the Town and to use the Public Ways to construct, maintain, and operate a Cable System or an Open Video System within the boundaries of the Town. All Persons shall be required to apply for and receive a Franchise from, or Open Video System agreement with, the Town before offering Cable Service in the Town.

Section 2. Statement of Intent and Purpose

The Town intends, by the adoption of this chapter, to facilitate the development and operation of Cable Systems and Open Video Systems in the Town. This type of development can contribute significantly to meeting the needs and desires of many individuals, associations and institutions. The following are statements of the Town's intent when granting or renewing a cable Franchise or entering into an Open Video System agreement:

- 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 public, educational and governmental public service 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) "Access Channel(s)" shall mean public, educational and/or governmental access channel(s).
- b) "Affiliate" shall have the meaning ascribed in the Cable Act.

- c) “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.
- d) “Cable Act” shall mean the Cable Communications Policy Act of 1984, as it may be amended.
- e) “Cable Operator” shall have the meaning ascribed in the Cable Act.
- f) “Cable Service” shall have the meaning ascribed in the Cable Act.
- g) “Cable Ordinance” shall mean this ordinance, as it may be amended.
- h) “Cable System” and “System” shall have the meanings ascribed in the Cable Act.
- i) “FCC” shall mean the Federal Communications Commission.
- j) “Franchise” shall have the meaning ascribed in the Cable Act and may from time to time refer collectively to a Franchise and a Franchise Agreement.
- k) “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.
- l) “Franchise Area” shall mean the area of the Town identified in a Franchise in which a Cable Operator is authorized to construct, maintain and operate a Cable System or Open Video System.
- m) “Franchise Fees” shall have the meaning ascribed in the Cable Act.
- n) “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.

- o) “Person” shall have the meaning ascribed in 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) “Public Ways Ordinance” shall mean any and all Applicable Laws promulgated by the Town addressing the use of its Public Ways, including, without limitation, the construction, maintenance, operation, restoration, and/or relocation of facilities in the Public Ways and, including, without limitation, Vehicular Use (Chapter 501), Parking (Chapter 502), Public Safety (Chapter 203), Street (Chapter 400), Subdivision (Chapter 401), Zoning (Chapter 402), and Shoreland Zoning (Chapter 403).
- r) “Subscriber” shall mean any Person that lawfully receives Cable Service via a Cable System with a Cable Operator’s express permission. In the case of multiple office buildings or multiple dwelling units, the term “Subscriber” shall mean the lessee, tenant, or occupant.
- s) “Town” shall mean the Town of Gray.
- t) “Video Programming” shall have the meaning ascribed in the Cable Act.

Section 4. General

4.1. Title

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

4.2. Incorporation of Ordinance Into Any Franchise

The requirements of this chapter 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 chapter shall be deemed incorporated in each Franchise granted and 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 chapter and pursuant to any Franchise 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 chapter that is subject to inspection and copying by the public pursuant to the Freedom of Access Act, 1 M.R.S. §§ 400 *et seq.*, shall be made available to the public in accordance with the Act.

4.5. Enforcement Rights of the Town

The Town shall be entitled to enforce the provisions of this chapter and any Franchise through all remedies lawfully available.

4.6. Franchise Required

No Person may construct, operate, or maintain a Cable System using the Town's Public Ways, or provide Cable Service within the Town's municipal boundaries, without first receiving a Franchise therefor in accordance with this Cable Ordinance. Such Franchise 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. The Franchise shall be nonexclusive.

The obligations of a Franchise 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 or any portion thereof.

4.7. Franchise Agreement

The Town may contract on such terms, conditions, and fees as are in the best interest of the Town and its residents with one or more Cable Operators for the construction, operation, and maintenance of a Cable System within the Town's municipal boundaries, including, without limitation, the granting of a nonexclusive Franchise Agreement. The term of any Franchise Agreement shall not exceed 15 years. Every Franchise Agreement shall be nonexclusive. Any provision granting an automatic renewal or other provision for extending a Franchise Agreement is prohibited and such a provision shall be deemed null and void.

All Franchises granted by the Town shall comply with the requirements of the Cable Ordinance. A Franchise may contain additional terms and conditions as the Town and a Cable Operator deem appropriate, provided the additional terms and conditions are consistent with Applicable Law.

4.8. Reservation of Authority

All rights and privileges granted by a Franchise 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 and any present or future lawful exercise of the Town's police powers, including, without limitation, any conflict

between a Franchise Agreement and this Cable Ordinance, 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 Applicable Law. In the event a federal or state law, regulation, or decision by a court of competent jurisdiction renders a provision of a Franchise void or otherwise unenforceable, the provision shall be considered preempted. This preemption will last 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

Every Cable Operator shall 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. A Cable Operator shall comply with all Applicable Law in constructing its Cable System.

4.11. Franchise Application Process

4.11.1. Initial Franchise Application

An application for an initial Franchise may, consistent with Applicable Law, 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 the information identified above in Section 2.6.1(a) through Section 2.6.1(p) has been received by the Town and deemed to comply with this Section 2.6.1.

All applications and related documents submitted to the Town shall be public records open to inspection by the public during reasonable hours.

4.11.2. Renewal of Cable Franchise

Renewal of any existing Cable Franchise shall be conducted in accordance with 47 United States Code, Section 546, 30-A M.S.R. § 3010, and this subsection.

- a) A Cable Operator shall maintain adequate personnel and resources to respond to the Town's requests for information related to renewal in a timely manner. Failure to respond in a timely manner is a violation of the Maine Unfair Trade Practices Act.
- b) If an automatic renewal provision exists in a Franchise having an effective date on or before June 15, 2020, the automatic renewal provision remains in effect until that Franchise expires. The Cable Operator shall notify the franchising authority of the automatic renewal no later than 36 months in advance of the expiration of the Franchise.

- c) The Town may require maps, diagrams, annual reports and Franchise Fee statements together with such other information as the Town deems necessary at renewal, which the Cable Operator shall make available upon reasonable notice. If information is proprietary, the Town may execute a nondisclosure agreement with the cable system operator.

4.11.3. Public Hearing

No Franchise, whether initial or renewal, may be granted without notice to the public and approval of the Franchise at a public hearing conducted by the Town Council. Such a public hearing may be conducted on at least seven (7) days' advertised notice and shall provide a reasonable opportunity for public input on a proposed Franchise.

At any public hearing conducted under this Section 4.11.3, the Town shall, in accordance with Applicable Law, review the applicant's legal, financial, and technical qualifications, the proposed Franchise'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.

4.11.4. Application Fee

The Town shall assess an applicant reasonable fees to defray the costs incurred by the Town in acting upon the applicant's application.

4.12. Additional Franchises

The Town may not grant a Franchise that is materially more favorable or less burdensome than an existing Franchise granted pursuant to this Cable Ordinance, applicable state law, and the Cable Act. This Section shall apply only where the new Franchise provides authority to construct, operate and maintain a Cable System as well as authority to provide Cable Service.

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 the Cable System. If a Cable Operator is permitted by law and chooses to provide non-Cable Services over any part of the 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 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 serving the Town, 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, 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 Cable Ordinance and is satisfactory to the Town.

Upon the granting of any Franchise and as a condition of a Franchise becoming effective, the Cable Operator shall deliver to the Town certificates of insurance for those policies obtained or maintained pursuant to this Section 6.1.

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 except that a Cable Operator shall not be required to indemnify the Town or the Town’s Personnel for negligence or misconduct committed by the Town or the Town’s Personnel, respectively.

Section 7. Franchise Administration and Enforcement

7.1. Records and Reports

Upon reasonable written notice to a Cable Operator, the Town shall have the right to inspect a Cable Operator’s books and records during normal business hours and on a nondisruptive basis, as are reasonably necessary to ensure compliance with the material terms of a Franchise, including any federal, state, laws or regulations, or generally applicable ordinances referenced herein. Records should be produced within five (5) business days of receipt of written request, unless the Cable Operator responds that a longer amount of time will be needed for good cause. Such written notice from the Town shall specifically reference the section or subsection of the Franchise or Cable 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 Franchise or Cable Ordinance compliance purposes longer than the applicable statute of limitations. Notwithstanding anything to the contrary set forth herein, but subject to Applicable Law, 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. Subject to section 4.4 (Open Records Law) and Applicable Law, the Town shall treat any information disclosed by a Cable Operator as confidential and shall only disclose it to employees or agents bound by a confidentiality and non-disclosure agreement reasonably acceptable to the Cable Operator, or as may be necessary to enforce the provisions hereof.

A Cable Operator shall not be required to provide Subscriber information in violation of 47 U.S.C. § 551.

A Cable Operator shall at all times after the effective date 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” as used in this Section 7.1 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.

The Town reserves its right to copy books and records as allowed under FCC regulation.

7.2. Annual Report

No later than April 1 of each year during the term of a Franchise, 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 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) The total revenues upon which a Franchise Fee is paid (broken down by major category);
- i) The total Franchise Fee for the year;
- j) Equipment or equivalent funding provided to the PEG Access 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 set forth in 76 C.F.R. § 76.601 *et seq.* as the same may be modified in the future, 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 the same franchise fee, which shall be established by the Town by resolution or regulation, in an amount of up to 5 percent (5%) of its annual Gross Revenue, or such other amount as may be allowed by applicable law;
- b) This franchise fee may be reviewed every two years by the Town. In the event the franchise fee is increased or decreased, the Town shall give the Cable Operator a 90-day notice to implement the new fee. In accordance with the Cable Act, the 12-month period applicable under the franchise for the computation of the franchise fee shall be a calendar year;
- c) The franchise fee and any payments in support of the Town's Access 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 required by the Town, and which may be modified upon mutual consent by a Cable Operator and the Town, provided, however, each Cable Operator shall be required to provide the same information regardless of the form required by the Town. Payments shall be deposited to a Town account electronically;
- 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) All amounts due and owing under this chapter and a franchise and not paid by the dates specified herein shall bear interest at the prime rate listed in the Wall Street Journal on the date payment was due and compounded daily and calculated daily from the date due until the date of actual payment; and
- f) The franchise fee obligation herein is a material requirement of a franchise and is considered payment by a Cable Operator for use of rights-of-way.

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, 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 by four percent (4.00%) or more 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, 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 Clerk and shall thereafter annually during the entire term of such Franchise 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 Cable Operator of all of its obligations under its Franchise. The performance bond shall be so conditioned that in the event that the Cable Operator shall breach any one or more material provisions of the Franchise or this Cable Ordinance and subsequent to any notice and opportunity to cure provision of the Franchise or this Cable Ordinance, the Town may recover from the surety any penalties assessed 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.

A Cable Operator shall provide 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 this Cable Ordinance.

7.8. Franchise Compliance

7.8.1. Amount

For failure to comply with a Franchise or this Cable Ordinance, a Cable Operator shall be subject to a penalty of \$50 (minimum) to \$500 (maximum) per day per violation.

7.8.2. Date of Violation, Notice

The initial date of a Cable Operator's violation shall be the date the Cable Operator receives written notice of the violation.

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 failure or Violation, which notice shall specify the alleged failure or 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 Council to schedule a public

hearing at which the Council 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 Town Council determine 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 Council, 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 thereof 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 or this Cable Ordinance, shall operate as a waiver of any such rights thereof or acquiescence in the actions of the Company or Municipality in contravention of such right, except to the extent expressly waived by either party or expressly provided for in a Franchise or this Cable Ordinance. No decision by the Town or Cable Operator to invoke any remedy under a Franchise or this Cable Ordinance or under any statute, law or ordinance shall preclude the availability of any other such remedy. This Section 5.7.4 does not extend any applicable statute of limitations.

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 or any rule, order, or determination of the Town made pursuant thereto, 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 or practices any fraud or deceit upon the Town; or
- c) Arbitrarily 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 or overnight mail and shall describe in reasonable detail the specific violations of the Franchise 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 shall meet and agree to a cure schedule.
- c) If the Cable Operator disputes the Town's allegations, the Town shall review the dispute and make its determination as to whether a violation has occurred.
- d) If the Town continues to maintain that a violation did occur, the Town shall notify the Cable Operator in writing. The Cable Operator shall then either remedy the violation within ninety (90) days or notify the Town in writing that the Cable Operator continues to dispute the allegations.
- e) Upon the Cable Operator's failure to remedy the violation within the time period prescribed or upon receipt of the Cable Operator's written position pursuant to Section 5.8.2(d) above, the Town may revoke the Franchise by providing the Cable Operator written notice of revocation.

7.9.3. Public Hearing

The Town may conduct a public hearing on the revocation. The Cable Operator shall have the right to participate in such hearing, present witnesses, and the Town shall issue a written determination of its findings. Such public hearing must take place no less than thirty (30) days prior to the decision to revoke.

7.9.4. Judicial Review

A Cable Operator shall have the right to seek judicial review of the Town's determination to revoke.

7.10. Abandonment

If a Cable Operator ceases providing Cable Service in the Town pursuant to 30-A M.R.S. § 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 consistent with the Public Ways Ordinance. 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 Franchise's corresponding Cable System shall be disposed of according to 47 U.S.C. § 546 and the Franchise.

7.12. Franchise Amendment

A Franchise shall not be amended or modified except by written agreement executed in the same manner as the Franchise. Where applicable, the amendment shall be consistent with the provisions of 47 U.S.C. § 545.

7.13. Franchise Transfers

7.13.1. Cable Operator's Right to Transfer

A Franchise and corresponding Cable System may, collectively or concurrently, be sold, assigned or otherwise transferred (a "Franchise Transfer") in accordance with the procedure set forth in federal law and this Cable Ordinance.

7.13.2. Municipality's Right to Approve

Pursuant to 47 U.S.C. § 537, the Town reserves its right to approve or disapprove any Franchise Transfer. The Town's approval shall 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. An "affiliated company" is any Person that directly or indirectly or through one or more intermediaries controls, is controlled by, or is under common control with another Person.

7.13.3. Notice to Municipality

A Cable Operator shall provide to written notice to the Town of a proposed Franchise Transfer ("Franchise Transfer Notice"). The contents of a Franchise Transfer Notice 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's term.

7.13.4. Time to Review

The Town shall have 120 days from receipt of a Franchise Transfer Notice to take action on the proposed Franchise Transfer. If the Town fails to act upon a Franchise Transfer Notice within 120 days, the Franchise Transfer Notice shall be deemed granted unless the Town and requesting Cable Operator otherwise agree to an extension of time.

7.13.5. Public Hearing

The Town may conduct a public hearing on a proposed Franchise Transfer no later than 90 days after receipt of a Franchise Transfer Notice.

7.13.6. No Waiver or Release

The consent or approval of the Town to any Franchise Transfer shall not constitute a waiver or release of the rights of the Town in and shall, but its terms, be expressly subordinate to the terms and conditions of a transferred Franchise.

Section 8. Consumer Protection Requirements

8.1. Line Extension

Every cable franchise renewed and/or granted after the effective date of this Cable Ordinance shall require every franchised Cable Operator, subject to Section 8.4 (Universal Buildout) below, to extend its Cable System to areas of the Franchise Area that have a population density of at least fifteen (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

Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to **150 feet** from a Cable Operator's existing Cable System.

8.3. Annexation

Areas subsequently annexed 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 and PEG Support, 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

Every franchised Cable Operator, including its predecessor's in interest, shall be allowed a period of fifteen (15) years from its initial grant of a cable franchise by the Town to construct its Cable System to become capable of providing Cable Service to all households in the Franchise Area, which the Town deems a reasonable period of time.

8.5. Public, Educational, and Governmental Access Channels

A Cable Operator shall carry Access Channels on the Cable Operator's basic cable or video service offerings or tiers. A Cable Operator may not separate Access 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 of a Franchise transfer, shall use the same channel numbers for the Access Channels as used for those channels by the incumbent cable system operator, unless prohibited by federal law. After the initial designation of Access 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

Consistent with 30-A M.R.S. § 3010(5-A), a Cable Operator shall restore a public, educational or governmental Access Channel that was moved without the consent of the Town or its Access Channel designee.

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

8.5.2. Access Channel Transmission

A Cable Operator shall retransmit public, educational and governmental Access Channel signals in the format in which they are received from the Town or its Access 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 Access Channel designee. A Cable Operator shall deliver a public, educational or governmental Access Channel signal 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 Access Channel designee. A Cable Operator shall carry each public, educational or governmental Access Channel 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

A Cable Operator, when requested, shall assist in providing the Town or its Access Channel designee with access to the entity that controls the Cable Service's electronic program guide so that subscribers may view, select and record public, educational and governmental Access Channels in the same manner as that in which they view, select and record local broadcast channels. In addition, a Cable Operator shall identify public, educational and governmental Access 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 public, educational and governmental Access 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 Access Channel designations in a similar manner to that in which local broadcast channel designations are displayed.

8.5.4. Access Channel Phone Support

A Cable Operator shall make available to the Town or its Access 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 public, educational and governmental Access Channels on the Cable System for resolution of a signal quality problem.

8.5.5. PEG Facilities and Equipment Support

Pursuant to Applicable Law, a Cable Operator shall provide to the Town or its access channel designee adequate Access 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 by each Cable Operator to the Town for PEG capital requirements in the amount up to two percent (2%) of Cable Operator's Gross Revenue, as determined by the Town no more frequently than once every two years. The capital grant shall be payable by each Cable Operator with the Franchise Fee payment as required by this chapter and may be itemized and passed through to subscribers in the same manner. The Town shall require the same percentage fee of all Cable Operators or shall

not impose the fee on any Cable Operator. The Town shall provide all Cable Operators with 90 days' prior written notice for the implementation or modification of the capital grant.

8.5.6. Access Channel Signal Transport

With respect to any Access Channel subject to 30-A MRSA §3010(5), any and all equipment associated with the interconnection of Access 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) *Access Channel Return Feeds.* Each Cable Operator shall install, maintain, and, as necessary to comply with Section 8.5.2 above, upgrade an activated direct fiber optic return feed, and supply and maintain all necessary transmission equipment, from Town Hall (located at 24 Main Street, Gray, ME 04039) and any other locations designated by the Town, such as Gray-New Gloucester Middle School (located at 31 Libby Hill Road), Gray-New Gloucester High School (located at 10 Libby Hill Road), and the Gray Public Library (located at 5 Hancock Street), to the Cable Operator's head end. This fiber optic feed shall be adequate to permit the simultaneous transport of all Access 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 Access 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) *Access 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 an Access Channel's signal from a remote site to the location designated under Section 8.5.6(a) above. New equipment and facilities will be made available within an agreed upon time frame.

8.6. Broad Categories of Programs and Services

Consistent with federal law, a Cable Operator shall provide or enable the provision of at least the following broad categories of programming to the extent the categories are reasonably available on commercially reasonable terms:

- a) Local news, weather and information;
- b) Educational programming;
- c) Sports;
- d) General entertainment (including movies);
- e) Children/family-oriented;
- f) Arts, culture and performing arts;
- g) Food;
- h) Foreign language based on population;
- i) Science/documentary;
- j) National, state and local government affairs;
- k) Access programming, as provided by a franchise;
- l) Program channel guide; and
- m) National news, weather and information

8.7. Compliance with Applicable Customer Service Standards

Cable Operators shall at all times comply with all applicable customer service standards, including, without limitation, 47 C.F.R. §§ 76.309 (Customer Service Obligations), 76.1602 (Customer Service – General Information), 76.1603 (Customer Service – Rate and Service Changes) and 76.1619 (Information on Subscriber Bills); 30-A M.R.S. §§ 3008 (Ordinances Relating to Cable Television Systems) and 3010 (Consumer Rights and Protection Relating to Cable Television Service); and those customer service standards identified in this Cable Ordinance.

8.8. Rights of Users

A Cable Operator may not deny Cable Service, deny access or otherwise discriminate against Subscribers, channel users or general citizens on the basis of age, race, religion, sex, physical handicap or country of natural origin.

8.9. Late Fees

A Cable Operator may not charge a late fee or other penalty or charge for late payment of any bill that exceeds one and one-half percent (1.50%) per month of the amount due in the bill. If the bill includes separate charges for different levels of service, a late fee or other penalty or charge must be calculated on the total amount overdue for all levels of service and may not be calculated separately for each level of service. A payment is not late under this subsection until at least thirty (30) days after those services to which the late fee applies have been received by a Subscriber.

8.10. 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.

8.11. Credits and Refunds for Interruption of Service

Credits and refunds for interruption of Cable Service shall be as follows:

- a) In the event Cable Service to any Subscriber is interrupted for 6 or more consecutive hours in a 30-day period, the Cable Operator will, upon request, grant that Subscriber a *pro rata* credit or rebate;
- b) An office of a Cable Operator must be open during usual business hours, have a listed toll-free telephone, and be capable of receiving complaints, requests for adjustments, and service calls; and
- c) Cable Operators shall provide Subscribers with thirty (30) days' advance written notice of any increase in rates, changes in billing practices, or the deletion of a channel.

8.12. Service Disconnection

Cable Operators must discontinue billing a Subscriber for a service within ten (10) working days after the Subscriber requests that service disconnection unless the Subscriber unreasonably hinders access by a Cable Operator to equipment of the Cable Operator on the premises of the Subscriber to which the Cable Operator must have access to complete the requested disconnection.

8.13. Subscriber Communications

8.13.1. Notices to Subscribers Regarding Quality of Service

Notice to Subscribers regarding quality of service must be as follows:

- a) For each new Subscriber, and annually thereafter, every Cable Operator shall cause to be mailed to each of its Subscribers a notice that:
 - (1) Informs Subscribers of how to communicate their views and complaints to the Cable Operator, the proper municipal official, and the Attorney General;
 - (2) States the responsibility of the Department of the Attorney General to receive consumer complaints concerning matters other than channel selection and rates;
 - (3) States the policy regarding and method by which Subscribers may request rebates or *pro rata* credits as described above in Section 8.11; and

- (4) Informs Subscribers of their right to request basic-tier, nonpremium programming service and the cost of that service.
- b) The notice must be in nontechnical language, understandable by the general public, and in a convenient format. On or before January 30th of each year, each Cable Operator shall certify to the Town and to the Department of the Attorney General that the Cable Operator has distributed the notice during the previous calendar year as required by this Section.

8.13.2. Notice on Subscriber Bills; Credits and Refunds

All Cable Operators 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 Section 6.6 above. The notice must include a toll-free telephone number and a telephone number accessible by a teletypewriter device or TTY for contacting the Cable Operator 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 bill in boldface type.

8.14. Privacy

A Cable Operator may not intrude upon the privacy of a Subscriber by installing or using any equipment that allows the Cable Operator to observe or to listen to what is occurring in an individual Subscriber's household or to monitor the viewing habits of the Subscriber without express, prior written consent of the subscriber.

A Cable Operator may 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 that identifies by name or address Subscribers or Subscriber viewing habits, to any person or agency for any purpose whatsoever without the prior written consent of the Subscriber except that the Cable Operator may make such lists available to Persons performing services for the Cable Operator in connection with its business or operations, such as a billing service, when the availability of such lists is necessary to the performance of such services if, in either case, the Persons or entity receiving such lists agree in writing that they will not permit them to be made available to any other party.

8.15. 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.

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. § 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 public, educational, and governmental access 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) The agreement between the Town and the Open Video System Operator may contain terms and conditions that relate to the following subject matters, 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) The obligation of the Open Video System Operator to pay to the Town, at specified times and in lieu of the Franchise Fees permitted under § 622 of the Communications Act, fees on the gross revenue received by the operator, as authorized by 47 C.F.R. § 76.1511, in accordance with the following standards and procedures:
 - A. The amount of the fees on the gross revenue will be the rate imposed by the Town on incumbent franchised cable operators;
 - B. Solely for purposes of this Section, the term “gross revenue” has the meaning set forth in 47 C.F.R. § 76.1511, and includes:
 - i. All gross revenue received by an Open Video System Operator or its Affiliates, including all revenue received

from subscribers and all carriage revenue received from unaffiliated video programming providers; and

- ii. All advertising revenue received by the operator or its Affiliates in connection with the provision of Video Programming, where the revenue is included in the calculation of the Franchise Fee paid to the Town by a Cable Operator.
- (3) The term gross revenue does not include revenue, such as subscriber or advertising revenue, collected by unaffiliated video programming providers.
 - (4) The obligation of the Open Video System Operator to 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;
 - (5) The obligation of the Open Video System Operator to meet the Town's requirements with respect to public, educational, and governmental access 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 is subject to the same public, educational, and governmental access requirements that apply to incumbent franchised Cable Operators;
 - B. The Open Video System Operator must ensure that all subscribers receive all public, educational, and governmental access channels within the Franchise Area in which the Town's subscribers are located;
 - C. The Open Video System Operator may negotiate with the Town to establish the operator's obligations with respect to public, educational, and governmental access channel capacity, services, facilities, and equipment. These negotiations may include the Town's any franchise Cable Operator if the Town, the Open Video System Operator, and the franchised Cable Operator so desire; and
 - D. If the Open Video System Operator and the Town are unable to reach an agreement regarding the operator's obligations with respect to public, educational, and governmental access channel capacity, services, facilities, and equipment within the Town's jurisdiction, then the following obligations will be imposed:

- i. The Open Video System Operator must satisfy the same public, educational, and governmental access obligations as a franchised Cable Operator by providing the same amount of channel capacity for public, educational, and governmental access and by matching the franchised Cable Operator's annual financial contributions in support of public, educational, and governmental access services, facilities and equipment that are actually used by the Town. 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 public, educational, and governmental 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
- ii. The Town will impose upon the Open Video System Operator the same rules and procedures that it imposes upon a franchised Cable Operator with regard to the Open Video System Operator's use of channel capacity designated for public, educational, and governmental access use when that capacity is not being used for these purposes.
- iii. A franchised Cable Operator is required under federal law to permit the Open Video System Operator to connect with its public, educational, and governmental access 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;
- iv. All costs of connection to the franchised Cable Operator's public, educational, and governmental access 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 in Section 9.5(b)(5)(D)(i) above;

- v. The Town will not impose upon the Open Video System Operator any public, educational, or governmental access obligations that are greater than those imposed upon a franchised Cable Operator; and
 - vi. The Open Video System Operator must adjust its Open Video System to comply with new public, educational, and governmental access obligations imposed on a franchised Cable Operator following renewal of the Cable Operator's Franchise, provided, however, that the Open Video System Operator will not be required to displace other programmers using its Open Video System to accommodate public, educational, and governmental access channels. The Open Video System Operator must comply with the new public, educational, and governmental access obligations whenever additional capacity is or becomes available, whether it is due to increased channel capacity or to decreased demand for channel capacity.
- (6) 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 public, educational, and governmental 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;
- (7) If the Open Video System Operator intends to maintain an institutional network, as defined in § 611(f) of the Communications Act, the Town shall require that educational and governmental Access Channels be designated on that institutional network to the same extent that those channels are designated on the institutional network of a franchised Cable Operator;
- (8) The authority of an Open Video System Operator to exercise editorial control over any public, educational, or governmental use of channel capacity will be restricted in accordance with the provisions of 47 C.F.R. § 76.1505(f).
- (9) The Open Video System Operator shall comply with all applicable federal, state, and local statutes, ordinances and regulations relating to customer service standards;

- (10) If a new physical plant is proposed to be constructed within the Town, the obligation of the Open Video System Operator to comply with the following Public Ways use and management responsibilities that are also imposed by the Town upon other cable television and telecommunications service providers in a nondiscriminatory and competitively neutral manner:
 - A. Compliance with all applicable Town codes, including those applicable to excavation, encroachment, and construction in the Public Ways, including permits and inspection, and the payment of permit and inspection fees;
 - B. The coordination of construction activities with the Town and with other users of the Public Ways;
 - C. Compliance with established standards and procedures for constructing facilities across private property;
 - D. Compliance with all applicable insurance and indemnification and performance bond requirements imposed on franchised cable operators and other users of the Public Ways;
 - E. The repair and resurfacing of construction-damaged streets; and
 - F. Compliance with all public safety requirements that are applicable to cable television and telecommunications service providers using public property or Public Ways.
- (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. 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 Cable 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.