



**AN ORDINANCE AMENDING THE CODE OF ORDINANCES  
OF THE TOWN OF NAGS HEAD, NORTH CAROLINA AS IT PERTAINS TO CHAPTER 40  
TELECOMMUNICATIONS**

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Town of Nags Head, North Carolina, Town Code shall be amended as follows:

**PART I.** That Chapter 40 Telecommunications, be amended as follows:

**Chapter 40 TELECOMMUNICATIONS<sup>1</sup>**

**ARTICLE I. IN GENERAL**

~~Secs. 40-1—40-30. Reserved.~~

**ARTICLE II. CABLE SYSTEMS<sup>2</sup>**

*DIVISION 1. GENERALLY*

~~Sec. 40-31. Statement of intent and purpose.~~

- (a) ~~The town, pursuant to applicable federal and state law, is authorized to grant one or more nonexclusive franchises to construct, operate, maintain, and reconstruct cable systems within the incorporated areas of the town.~~
- (b) ~~The town board of commissioners of the town finds that cable service has become an integral part of its citizens' lives, and that evolving cable systems have the potential to play an even more dramatic role in the future, providing great benefits and advanced capabilities to the town. At the same time, the board further finds that the public convenience, safety, and general welfare can best be served by establishing regulatory powers that are vested in the town or such persons as the town designates.~~
- (c) ~~In order to ensure that the town and its residents receive state-of-the-art cable services and capabilities as this technology further evolves, all franchises granted pursuant to this article will be subject to periodic review and modifications to keep current with changing law, technology, and services. It is the intent of this article to help ensure that local cable operators provide the best possible cable service to residents of the town, and any franchises issued pursuant to this article shall be deemed to include this finding as an integral part thereof.~~
- (d) ~~Further, it is recognized that cable systems have the capacity to provide entertainment and information services to the town's residents, and may have the capacity to provide a variety of broadband, interactive communications services to the town, institutions and individuals. For these purposes, the following goals underlie the regulations contained in this article:~~
- ~~(1) Cable television services should be made available to all of the town's residents at the lowest reasonable cost.~~
  - ~~(2) The system should be capable of accommodating both the present and reasonably foreseeable future state-of-the-art cable television needs of the town.~~

<sup>1</sup>Cross reference(s) — Businesses and licensing, ch. 12; streets, sidewalks and other public places, ch. 36; utilities, ch. 44; zoning, UDO; electric, telephone, cable television and natural gas lines in subdivisions, UDO § 10.70.

<sup>2</sup>State law reference(s) — Authority to impose an annual franchise tax on cable television companies, G.S. 160A-214; authority to award a franchise for cable service. The Secretary of State is designated the exclusive franchising authority in this State for cable service provided over a cable system. This designation is effective January 1, 2007. After this date, a county or city may not award or renew a franchise for cable service, G.S. 66-351.

- (3) ~~The systems authorized by this article shall be responsive to the needs and interests of the local community, and shall provide the widest possible diversity of information sources and services to the public.~~
- (4) ~~Each of the goals described in subsection (d) of this section shall be sought to the maximum extent, taking into account the costs and benefits to the residents of the town.~~
- (e) ~~The board further finds that ongoing industry consolidation could result in less local accountability, and that, therefore, stringent customer service standards, including liquidated damages provisions, may be the only practical means of ensuring compliance and approximating the costs of franchise agreement noncompliance to the town and its residents.~~

**~~Sec. 40-32. Short title of article.~~**

~~This article shall be codified as article II, chapter 40 of this Code and known as the "Cable Services Regulatory Ordinance."~~

**~~Sec. 40-33. Definitions.~~**

~~The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~*Additional service* means any cable service other than basic service provided over the system.~~

~~*Basic cable service* means any cable service tier that includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by this article or a franchise agreement to be carried on the basic tier. Basic cable service as defined herein shall be consistent with 47 USC 543(b)(7) (1997), and shall include any signal of any television broadcast station that is provided by a grantee to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station. Additional signals may be added to the basic tier by the grantee.~~

~~*Board* means the Board of Commissioners of the Town of Nags Head, North Carolina or its delegates.~~

~~*Cable Act* means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, (codified at 47 USC 521-611 (1982 and Supp. V. 1987) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and the Telecommunications Act of 1996, Pub. L. No. 104-104 (1996) as may, from time to time, be amended.~~

~~*Cable internet service* means any cable service offered by a grantee whereby persons receive access to the internet or high-speed data information services through the cable system. Cable internet service shall be deemed cable service unless determined to the contrary by federal law or a court of competent jurisdiction.~~

~~*Cable service or service* means:~~

- ~~(1) The one-way transmission to subscribers of video programming or other programming service;~~
- ~~(2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service; and~~
- ~~(3) For purposes of this article, unless determined otherwise under applicable federal law, cable internet service shall be considered cable service.~~

~~*Cable television system or cable system* means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service to multiple subscribers within the franchise area, but such term does not include:~~

- ~~(1) A facility that serves only to retransmit the television signals of one or more television broadcast stations;~~
- ~~(2) A facility that serves subscribers without using any public right-of-way; or~~
- ~~(3) A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 USC 201-226, except that such facility shall be considered a cable system to the extent such facility, whether on a common carrier basis or otherwise, is used in the transmission of video programming directly to subscribers.~~

~~*Capital contribution* means a contribution provided by a grantee as determined in a franchise agreement that may at the town's discretion be utilized for the capital costs of the municipal access channel facilities, or to help defray the costs of an I Net.~~

~~*Capital costs* means costs associated with the purchase of assets, products or other resources that are designed to provide service for more than one year, whether incurred during initial construction or throughout the life of the system.~~

~~*Channel* means a portion of the electromagnetic frequency spectrum that is capable of carrying one standard video signal, in either analog or digital form. Consistent with future changes in technology~~

and/or applicable law, the parties may mutually agree to a different definition in an individual franchise agreement.

*Complaint* means any written or electronic inquiry, allegation, or assertion, made by a person regarding service.

*Control* means the holding of legal or financial control of or over the holder of the franchise, the service provider or system owner or operator, regardless of whether such control is direct or indirect, or is exercised or is permitted to be exercised directly or indirectly through other persons, holdings or entities. Control shall always be deemed to rest in the hands of any person or entity that has the right or authority to establish or change any policy or practice of the holder of the franchise or the service provider (including, but not limited to, the holder of 20 percent or more of the equity interest in the grantee), whether such control may be exercised directly, or indirectly through other persons, holdings or entities.

*Converter* means an electronic device that converts signals to a frequency not susceptible to interference within the television receiver of a subscriber and, through the use of an appropriate channel selector, permits a subscriber to view all authorized subscriber signals delivered at designated converter dial locations.

*Direct incremental costs* means the costs actually incurred by the grantee in meeting an obligation under its franchise which the grantee would not otherwise have incurred in order to either operate and conduct the business of its cable system or meet another obligation of the franchise.

*Downstream signal* means a signal originating from or provided by a system to a subscriber terminal or other terminal including video, audio, or digital signals or any other type of data or information for either programs or other uses such as security alert services, etc.

*Drop* means the cable or cables that connect users of the system to the distribution system in order to receive service.

*Educational access channels* means channels specially designated for locally produced noncommercial educational access programming use.

*Effective date* means the date a franchise becomes effective in accordance with the franchise and the rules and procedures of the town.

*Facilities* means any poles, buildings, conduits or equipment appurtenant to it owned or controlled by the grantee and associated with the cable system located within the cable service area.

*Fair market value* means the price that a willing buyer would pay to a willing seller for a going concern based on the system valuation prevailing in the industry at the time.

*FCC* means the Federal Communications Commission or a designated representative.

*Franchise* means the rights and obligations extended by the town pursuant to an initial authorization or a renewal thereof, to a person to own, lease, construct, maintain, or operate a cable system in the right-of-way within the franchise area for the purpose of providing cable services. Any such authorization, in whatever form granted, shall not mean or include:

- (1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the town required by the ordinances and laws of the town, including the provision of telecommunications services;
- (2) Any generally applicable nondiscriminatory permit, agreement, or authorization required in connection with operations in the right-of-way including, without limitation, permits and agreements for placing devices on or in poles, conduits, or other structures, whether owned by the town or a private entity, or for excavating or performing other work in or along the right-of-way.

*Franchise agreement* means that document which grants a franchise pursuant to this article.

*Franchise area* means the geographic area for which a franchise is granted under the authority of this article. If not otherwise specifically stated in the franchise agreement, the franchise area shall be the entire geographic area within the town as it is now, or may in the future be, constituted.

*Franchise fee* means any tax, fee, or assessment of any kind imposed by the town or other governmental entity on a grantee solely because of its status and activities as such. The term "franchise fee" does not include:

- (1) Any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment that is unduly discriminatory against cable operators or cable subscribers);
- (2) Capital costs that are required by a franchise agreement to be incurred by a grantee for public access channels equipment and facilities;
- (3) Costs associated with the construction and operation of an I-Net;

~~(4) Requirements or charges incidental to the award or enforcement of a franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, compliance audits, penalties, or liquidated damages; or~~

~~(5) Any fee imposed under Title 17 of the United States Code.~~

~~*Government access channels* means channels specially designated for locally produced noncommercial governmental access programming use.~~

~~*Grantee* means a person who is granted a franchise or that person's lawful successors, transferees, or assignees.~~

~~*Grantor* means the town.~~

~~*Gross revenues* means any and all revenue, whether received in the form of cash, credits, barter, trade, property or consideration of any kind or nature, arising from, attributable to, or in any way derived by the grantee from the operation of a grantee's system to provide cable service, whether such revenue is received by the grantee, its affiliates, or any person in which the grantee has a financial interest, or by any other person who operates the system, directly or indirectly. This definition is intended to reach as broadly as possible to encompass all revenue. Gross revenue includes, by way of illustration and not limitation, amounts charged for basic service; optional premium, per channel, per program services; cable programming services; audio services; launch fees; channel guide subscriptions; internet access or service; installation, disconnection, reconnection, and changes in service; equipment sales or rentals; leased channel fees; late fees and administrative charges of any type; consideration received from programmers; advertising revenue; franchise fees (if elected by the town from time to time); and revenue from the sale of subscriber names and addresses. Gross revenues also includes the full value of complimentary services provided by the grantee, exclusive of complimentary services provided to employees of the grantee, nonprofit corporations or as required by a franchise agreement, or any revenues earned by use of the cable system to provide any services other than cable services, unless the Cable Act is amended to specifically authorize the imposition of franchise fees on such other services. To the extent that the grantee receives revenue from cable services provided to a subscriber for a fixed price that also includes noncable services (i.e., those services are "bundled"), the grantee shall allocate an appropriate portion of those revenues for inclusion in gross revenues. If the fixed price of the bundled services is lower than the aggregate of the prices of those services if purchased individually, then the appropriate amount of the revenue to be allocated to each service shall be proportional to the individual price of that service when compared to the aggregate of the individual prices of those services when unbundled. Gross revenues shall not include:~~

~~(1) Bad debt except to the extent that bad debts are recovered.~~

~~(2) The revenue of any person including, without limitation, a supplier of programming to the grantee to the extent that such revenue is also included in gross revenue of the grantee.~~

~~(3) Pass through payments received by the grantee from third party programmers to purchase services from entities other than the grantee, which services benefit only the third party programmers and for which the grantee neither received nor provides any consideration.~~

~~(4) Any taxes on services furnished by the grantee which are imposed directly on any subscriber by the state, the town or other governmental unit and which are collected by the grantee on behalf of such governmental unit. A franchise fee is not such a tax.~~

~~To the extent the scope of gross revenues is limited by federal law or judicial action, the definitions in this section shall be so amended.~~

~~*Headend* means the electronic control center of the system including components that amplify, filter, and convert incoming broadcast and other television and electronic signals for distribution over the cable system.~~

~~*Institutional network* or *I-Net* means capacity, fibers or both, from both within the primary cable network and/or separately constructed networks that are dedicated to municipal users or other governmental and educational users as determined by the town for two-way, broadband, noncommercial, noncompetitive, not for profit communications. The I-Net includes all equipment and maintenance of equipment required to make the capacity available including but not limited to fiber, cable modems, coaxial cable, and all switching, routing, transmitting and receiving equipment necessary for the use of the I-Net as determined in the individual franchise agreement.~~

~~*Institutional network services* means the provision of an I-Net by a grantee to municipal users and other governmental and educational users as determined by the town, pursuant to the terms of a franchise agreement for noncommercial, noncompetitive, not for profit applications including but not limited to, two-way dedicated voice, data, video, Internet and telephony channels connecting and interconnecting user facilities; computerized traffic control systems; GIS systems; and the interconnection of facilities serving police, fire and other public safety systems.~~

~~*Lockout device* means a mechanical or electrical accessory to a subscriber's terminal that inhibits the video or audio portions of a certain program or certain channels provided by way of a cable system.~~

*Noncommercial* means channels or programming that are operated on a not-for-profit basis.

*Normal business hours* means those hours during which most similar businesses in the community are open to serve customers; provided, however, that normal business hours must include some evening hours, at least one night per week, and/or some weekend hours.

*Normal operating conditions* means any and all situations or conditions that are ordinarily within the control of a grantee including, but not limited to, management or corporate decisions; employee conduct; staffing levels; special promotions; pay per view events; rate increases; regular peak or seasonal demand periods; electronic and video equipment; and maintenance, repair or upgrade of the cable system, and any associated computer or software systems. Those conditions that are not within the control of a grantee include, but are not limited to, natural disasters; civil disturbances; power outages; telephone network outages; and severe or unusual weather conditions. A condition shall not be deemed to be beyond the grantee's control if committed or omitted by a corporation or other business entity which the grantee controls.

*Other programming service* means information that a grantee makes available to all subscribers generally.

*Person* means any corporation, partnership, limited partnership, limited liability company, proprietorship, individual, organization, company, governmental entity or any natural person or any other business organization.

*Reasonable notice* means written notice addressed to the town or the grantee at such location as the parties have designated in the franchise agreement as the address to which notice shall be transmitted to it, which notice shall be sent by certified mail and postmarked not less than seven business days prior to that day in which the party giving such notice shall commence any action which requires the giving of notice. In computing such seven days, holidays recognized by the town shall be excluded.

*Resident* means any person owning property or residing in the town.

*Right of way* means each of the following which have been, or are hereafter, dedicated to the public and maintained by any public authority or by others and located within the town, including without limitation, the surface and space within, above and below any real property in which the town has an interest in law or equity, whether held in fee, or other estate or interest, or as a trustee for the public, including, but not limited to, any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, swale, river, tunnel, viaduct, bridge, park, or any other place, area, easements, rights of way and similar public property and areas, or real property owned by or under the control of the town.

*School* means any state-accredited public or nonprofit educational institution including primary and secondary schools, both public and private.

*Service interruption* means the loss of picture or sound on one or more channels on the system, or the degradation of the picture and/or sound quality on such channels to the extent that the subscriber is unable to use the signals, regardless of the cause, for any reason whatsoever.

*Standard installation* means any service drop not exceeding 150 feet from a single point or pedestal attachment to the subscriber's residence.

*State-of-the-art* means the addition of new services and associated equipment as they are developed, available and when economically feasible and marketable to subscribers as specifically required under the terms of a franchise agreement.

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

*System* means a grantee's cable system operated pursuant to a franchise agreement within the franchise area.

*Town* means Town of Nags Head, North Carolina, as it is now, or may in the future be, constituted.

*Trained representative* means employees of the grantee who have the authority and capability while speaking with a subscriber to, among other things, answer billing questions, adjust bills, and schedule service and installation calls.

*Upstream signal* means a signal originating from a subscriber's terminal to the head end of the system including video, audio, or digital signals or any other type of data or information for either programs or other uses such as security alert services, etc.

**Secs. 40-34—40-50. Reserved.**

## ***DIVISION 2. FRANCHISE REQUIREMENTS***

---

**Sec. 40-51. Unlawful to operate without a franchise.**

It shall be unlawful for any person to construct, operate or maintain a cable system or to provide cable service in the town without a franchise. Any such person shall be subject to a civil penalty as outlined in the regularly adopted schedule of the town. The payment of such civil penalty notwithstanding, all such violators shall be subject to all other applicable provisions of this article including, but not limited to, the payment of a franchise fee.

(Code 1990, § 10-204)

**Sec. 40-52. Franchises nonexclusive.**

Any franchise granted pursuant to this article shall be nonexclusive. The grantor specifically reserves the right to grant, at any time, such additional franchises for a cable system or any component thereof, to any other person including itself, as it deems appropriate, subject to applicable federal and state law.

**Sec. 40-53. Franchises nondiscriminatory.**

If the town grants more than one franchise or similar authorization for the construction, operation, or maintenance of any cable system to a qualified person in the town, the town shall grant the franchises on terms that are nondiscriminatory and competitively neutral, provided that nothing herein shall be construed as requiring the use of identical terms or conditions, in accordance with federal law.

(Code 1990, § 10-206)

**Sec. 40-54. Term of the franchise.**

A franchise agreement shall establish the term of each individual franchise.

(Code 1990, § 10-207)

**Sec. 40-55. Federal, state, and town jurisdiction.**

- (a) The town shall exercise appropriate regulatory authority under the provisions of this article, the Cable Act, and all applicable laws. This authority shall be vested in the town's board of commissioners and administered through the town manager or his designee in order to provide day-to-day administration and enforcement of the provisions of this article and any franchise granted under this article, and to carry out the town's responsibilities with regard to cable service.
- (b) This article shall be construed in a manner consistent with all applicable federal and state laws.
- (c) If the federal or state government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, grantor may, if it so elects, adopt rules and regulations in these areas to the extent permitted by law, provided that the same do not materially alter the rights and obligations of a grantee under any existing franchise.
- (d) The grantee's rights are subject to the police powers of the town to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. The grantee shall comply with all applicable general laws and ordinances enacted by the town pursuant to that power.
- (e) The provisions of this article shall apply to all franchises granted or renewed after the effective date of this article (January 3, 2001). This article shall also apply to all existing franchises, to the extent not inconsistent with the terms of any such franchise or applicable law. In the event of any conflict between the terms and conditions of a franchise agreement and the provisions of this article, and other generally applicable regulatory ordinances of the town, the specific terms of the article shall control. A franchise agreement (including all of the grantee's particular rights, powers, protections, privileges, immunities and obligations associated therewith as the same exist on the date hereof) shall constitute a legally binding contract between the town and the grantee, and as such, cannot be amended, modified or changed by the town without the consent of the grantee in any manner whatsoever, whether by ordinance, rule, regulation or otherwise, to impose on the grantee more stringent or burdensome requirements or conditions; provided, however, that nothing herein contained shall preclude the town from the proper exercise of its police powers, or its powers of eminent domain.
- (f) In the event of a change in state or federal law which by its terms would require the town to amend this article, the parties shall modify the existing franchise in a mutually agreed upon manner.
- (g) The grantee shall not be relieved of its obligation to comply with any of the provisions of this article or a franchise agreement by reason of any failure of the town to enforce prompt compliance.

---

**Sec. 40-56. Rights reserved to grantor.**

In addition to any rights specifically reserved to grantor by this article or a franchise agreement, grantor reserves to itself every right and power that is required to be reserved by a provision of any other ordinance or under any other franchise.

(Code 1990, § 10-209)

**Sec. 40-57. Franchise agreement.**

- (a) Every grantee shall agree to the terms and provisions of a franchise agreement as negotiated between the grantee and the grantor.
- (b) In addition to those matters required elsewhere in this article to be included in the franchise agreement, each franchise agreement must contain the following express representations by each grantee:
  - (1) The grantee has examined all of the provisions of this article and accepts and agrees to all of the provisions of this article, as it exists as of the effective date of the grantee's franchise agreement, except as set forth in section 40-56, and any supplementary specifications as to construction, operation, or maintenance of the system which the town may include in the franchise agreement.
  - (2) The grantee recognizes the right of the town to adopt such additional regulations of general applicability as it shall find necessary in the exercise of its police power.
- (c) Every franchise agreement shall contain such further conditions or provisions as may be negotiated between the town and a grantee, except that no such conditions or provisions shall be such as to conflict with any provisions of state or federal law. In case of any conflict or of any ambiguity between any terms or provisions of a franchise agreement and this article, the provisions of the article shall control.

**Sec. 40-58. Initial and renewal franchise applications.**

Any person desiring an initial franchise or the renewal of a franchise for a cable system shall file an application with the town. An application for a franchise for a cable television system shall contain, where applicable:

- (1) A statement as to the proposed franchise area;
- (2) Resume of prior history of applicant, including the legal, technical, and financial expertise of applicant in the cable television field;
- (3) List of the partners, general and limited, of the applicant, if a partnership, or a list of the principals of the applicant, if a limited liability company, or the percentage of stock owned or controlled by shareholders holding ten percent or greater, if a corporation;
- (4) List of officers, directors, and managing employees of applicant, together with a description of the background of each such person;
- (5) The names and addresses of any parent or subsidiary of applicant or any other business entity owning or in control of applicant, in whole or in part, or owned or controlled in whole or in part by the applicant;
- (6) A current financial statement of applicant verified by a CPA audit or otherwise certified to be true, complete, and correct to the reasonable satisfaction of the town;
- (7) Proposed preliminary construction and cable service schedule; and
- (8) Any additional information that the town may require for the administration of the franchise.

**Sec. 40-59. Consideration of initial applications.**

- (a) Upon receipt of any application, negotiated franchise agreement and application fee for an initial franchise, the town manager shall prepare a report and make his or her recommendations respecting such application to the board.
- (b) A public hearing shall be held prior to any initial franchise grant, at a time and date approved by the board. Within a reasonable time after the close of the hearing, the board shall make a decision based upon the information provided by the applicant as to whether or not the franchise should be granted, and, if granted, subject to any conditions imposed by the board. In considering whether to grant the franchise agreement, the board shall consider whether the application and franchise agreement meet the intent and requirements of this article and meet the community's cable-related needs.

---

**Sec. 40-60. Franchise renewal.**

- (a) Franchise renewals shall be in accordance with applicable law including, but not limited to, the Cable Communications Policy Act of 1984, as amended. The grantor and a grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise.
- (b) Upon receipt of any application, negotiated franchise agreement and application fee for a franchise renewal, the town manager shall prepare a report and make his recommendations respecting such application to the board.
- (c) A public hearing shall be held prior to any renewal of a franchise, at a time and date approved by the board. Within a reasonable time after the close of the hearing, the board shall make a decision based upon the information provided by the applicant as to whether or not the franchise should be renewed, and, if renewed, subject to any conditions imposed by the board. In considering whether to renew the franchise agreement, the board shall consider whether the application and franchise agreement meet the intent and requirements of this article and meet the community's cable-related needs.

**Sec. 40-61. Grant of additional franchise and competing service.**

Competing or overlapping franchises may have an adverse impact on the public rights-of-way and on the quality and availability of services to the public. In considering whether to grant one or more additional franchises, the town shall specifically consider the impact that competing or overlapping systems may have on the public ways.

**Sec. 40-62. Permits for nonfranchised entities.**

- (a) The town may issue a license, easement, or other permit to a person other than the grantee to permit that person to traverse any portion of the grantee's franchise area within the town in order to provide service outside, but not within the town. Such license or easement, absent a grant of a franchise in accordance with this article, shall not authorize nor permit such person to provide cable service to any subscriber within the town nor render any other service within the town.
- (b) The granting of such license, easement or permit shall be conditioned upon the payment of fee for occupancy of the public right-of-way to the extent permitted by applicable law.

**Sec. 40-63. Review for competition.**

The town recognizes that the cable television and telecommunications industries are in a period of convergence, that the technologies and services provided by these industries are rapidly changing, and that the Telecommunications Act of 1996 promoted and encouraged competition between and among these formally discrete industries. At this time it is premature to know fully the extent to which there will be changes in law, technology or services that may impact entities that have been or may be granted franchises or licenses to use the town's rights-of-way. It is the desire of the town to be a communications friendly town, that encourages the development of competitive advanced communications capabilities for the benefit of all its citizens. For this reason the regulatory ordinances and franchises of the town should not impede or restrict the fair opportunity to compete, but rather are intended to provide uniform and consistent requirements for all similarly situated providers.

**Sec. 40-64. Application and renewal.**

- (a) An application fee shall not be deemed to be "franchise fees" within the meaning of section 622 of the Cable Act (47 USC 542), and such payments shall not be deemed to be "payments in kind" or any involuntary payments chargeable against the compensation to be paid to the town by the grantee, or part of the compensation to be paid to the town by the grantee pursuant to this article or a franchise agreement.
- (b) All applicants for an initial franchise grant shall submit an application and the required fee, as published, from time to time in the regularly adopted fee schedule of the town. Consistent with the Cable Act, all such fees shall not constitute or be credited towards a grantee's franchise fee obligations.
- (c) The town reserves the right, unless prohibited by applicable law, to require a grantee to provide a proposal for renewal under the current rules of the FCC and to pay a cable television franchise renewal fee as published, from time to time in the regularly adopted fee schedule of the town. Consistent with the Cable Act, all such fees shall not constitute or be credited towards a grantee's franchise fee obligations.

**Secs. 40-65—40-80. Reserved.**

***DIVISION 3. DESIGN PROVISIONS***

**Sec. 40-81. System design.**

- (a) ~~Generally.~~ Every grantee shall offer service that meets the current and future needs of the town, taking into account the costs of meeting those needs. The franchise agreement shall incorporate a description of the grantee's proposal including the general design and capabilities of the system to identify for the town how the system will meet the current and future cable service needs of the town.
- (b) ~~State-of-the-art review.~~ The franchise agreement shall include provisions to ensure cable service and cable system compatibility with changes in law, technology, and programming and services to maintain a state-of-the-art system throughout the franchise term.

**Sec. 40-82. The system.**

Every system shall pass by every single family dwelling unit and multiple family dwelling unit within the franchise area in accordance with line extension policies set forth in this article. Service shall be provided to subscribers in accordance with the schedules and line extension. Unless specified otherwise, service shall also be extended to commercial buildings on a consistent basis with the residential line extension policies.

**Sec. 40-83. Drops to public buildings.**

- (a) ~~Every grantee shall provide installation of at least one cable drop, and provide monthly basic cable service, without charge, to public buildings in accordance with the line extension policies of this article, or as otherwise specified in the applicable franchise agreement. Accredited schools shall also receive one cable drop and basic cable service at no charge. Following the town's designation of additional buildings to receive one drop and at the minimum, basic cable service, and upon the town's request, a grantee shall complete construction of the drop and outlet within 30 days.~~
- (b) ~~All such cable service outlets shall not be utilized for commercial purposes.~~
- (c) ~~In instances where the drop to the public building exceeds 300 feet, the grantee may charge for the actual and reasonable cost of its labor and materials for the installation in excess of 300 feet.~~
- (d) ~~Every grantee that offers two-way interactive broadband services to subscribers within the town shall provide and install courtesy interactive cable modems at every school, all public libraries and all public buildings, within the franchise area that are passed by the portions of the grantee's cable system that are capable of supporting such two-way services.~~

**Sec. 40-84. Use of the grantee facilities.**

The town shall have the right to install and maintain town equipment on the grantee's facilities, at the actual cost for the space, not including cost for existing space. Cost will be limited to any incremental cost for any wire or fixtures. This applies to the excess space upon the poles and within the underground pipes and conduits of a grantee, any wires and fixtures desired by the town to the extent that such installation and maintenance does not interfere with existing operations of a grantee. The town will relinquish its use of such poles and conduits upon 90 days' notice from a grantee that town's use interferes with company's actual or anticipated use of the same.

**Sec. 40-85. Upgrade of system.**

Every grantee shall upgrade its system (referred to in this article as the "system upgrade"), if required, as set forth in its respective franchise agreement.

**Sec. 40-86. Nondiscriminatory access to cable system.**

The grantee may be required to allow nondiscriminatory access to its cable system if federal law shall require such. Prior to the enactment of any such requirement, a grantee shall be provided with reasonable notice and an opportunity to be heard, including the right to present evidence with respect to the need for such a requirement. The grantee reserves, and has not waived, any right it may have, or may later be determined to have, to challenge the town's implementation of an open access requirement.

**Secs. 40-87—40-110. Reserved.**

***DIVISION 4. INSTITUTIONAL NETWORK, AND PUBLIC EDUCATIONAL AND GOVERNMENTAL ("PEG") ACCESS***

**Sec. 40-111. Institutional network, access channels.**

- (a) Every grantee shall, to the extent required by the town, provide institutional networks as a condition of an initial grant, renewal, or transfer of a franchise. To the extent that a grantee is obligated to provide such support pursuant to its franchise agreement, such obligation will be implemented in a

---

competitively neutral manner, on a per-subscriber basis with respect to any other franchises granted after the adoption of this article (January 3, 2001).

- (b) ~~Every grantee shall provide a channel or channels, bandwidth capacity, service, and funding for separate educational, and government access channels, as specified in its franchise agreement. All such access channels shall be available to all subscribers as part of basic cable service.~~
- (c) ~~Oversight and administration of the access channels shall be set forth in the franchise agreement.~~

~~Secs. 40-112-40-130. Reserved.~~

~~**DIVISION 5. TECHNICAL STANDARDS AND CUSTOMER SERVICE PRACTICES**~~

~~**Sec. 40-131. General technical standards and customer service practices.**~~

- (a) ~~This article incorporates technical standards and establishes customer service practices with which a grantee must comply. In addition, a grantee shall comply with any additional or stricter requirements established by FCC regulations, or other federal regulation that may be adopted or amended from time to time.~~
- (b) ~~A grantee shall maintain such equipment and keep such records as are required to enable the grantor to determine whether the grantee is in compliance with all standards required by the regulations of this chapter and other applicable laws.~~
- (c) ~~Books and records available to the grantor are as follows:~~
  - (1) ~~The grantee shall maintain an office centrally located within the service area. The town shall have the right to inspect and copy or transcribe at any time during normal business hours, all books, records, maps, plans, financial records, service complaint logs, performance test results and other like materials of the grantee kept or maintained by the grantee or under its control concerning the operations, finances, affairs, transactions or property of the grantee when necessary to ascertain the grantee's compliance with this article or the franchise agreement. Access to such records shall not be denied by the grantee on the basis that such records contain "proprietary" information.~~
  - (2) ~~If any of such maps or records are not kept in the town, or upon reasonable request made available in the town, and if the town shall determine that an examination of such records is necessary or appropriate, all reasonable expenses necessarily incurred in making such examination shall be paid by the grantee.~~
- (d) ~~Reports required. The grantee shall file with the town, upon reasonable notice:~~
  - (1) ~~*Regulatory communications.* All reports required by the Federal Communications Commission (FCC) including, but not limited to, annual proof of performance tests and results, Equal Employment Opportunity (EEO) reports, and all petitions, applications and communications of all types submitted by the grantee to the FCC, the Security and Exchange Commission (SEC), or any other federal or state regulatory commission or agency, having jurisdiction over any matter affecting operation of the grantee's system.~~
  - (2) ~~*Facilities report.* An annual report setting forth the physical miles of plant construction and plant in operation at the end of the fiscal year will be made available at the local office of the grantee for review by the town.~~
  - (3) ~~*Rebuild/upgrade/construction reports.* Such reports shall be sent to the town 30 days after the initial franchise agreement is awarded and monthly thereafter until construction is completed as specified in this article or the franchise agreement.~~
  - (4) ~~*Proof of performance tests.* Proof of performance test results performed as required by the FCC shall be supplied to the town.~~
  - (5) ~~*Test required by town.* Tests required by town as specified in this article shall be submitted within 30 days of notification.~~
  - (6) ~~*The grantee rules.* The grantee's schedule of charges, regular subscriber service policy regarding the processing of subscriber complaints, delinquent subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the grantee's policy in connection with its subscribers shall be in accordance with applicable state and federal laws, rules or regulations.~~
  - (7) ~~*Proof of bonds and insurance.* The grantee shall submit to the town the required performance bond, or a certified copy thereof, and insurance certificates as required under the terms and conditions described in this article.~~
  - (8) ~~*Financial and ownership reports.* The following financial reports for the franchise area shall be submitted to the town, upon reasonable notice and as required by the town:~~

- a. A statement verifying the amount of gross annual revenues derived from the franchise, certified by the vice president for finance or a duly authorized officer or manager of the grantee.
  - b. An annual list of officers and members of the board of directors of the grantee and of the grantee's parent corporation, if applicable.
- ~~(9) *Additional reports.* The grantee shall prepare and furnish to the town at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions or property, as may be reasonably necessary and appropriate to ascertain the grantee's compliance with this article or the franchise agreement.~~

**~~Sec. 40-132. Technical standards.~~**

The technical standards used in the operation of a system shall comply, at a minimum, with the technical standards promulgated by the FCC relating to cable systems pursuant to the FCC's rules and regulations found in Title 47, sections 76.601 to 76.617, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference. The results of any tests required by the FCC, or a franchise agreement shall be made available to the town within 30 days of written request.

**~~Sec. 40-133. Test and compliance procedure.~~**

- ~~(a) *Tests.* Tests for a system shall be performed periodically in a manner so as to conform with FCC specifications. The grantee shall notify the town at least three business days prior to conducting such tests. Representatives of the town may witness the tests and written test reports shall be made available to the town upon request. If any test locations fail to meet such specifications, the grantee shall be required to indicate what corrective measures have been or will be taken. The grantee shall have the site retested on a timely basis as needed.~~
- ~~(b) *Complaints.* Whenever there have been similar complaints made or when there exists other evidence, which, in the reasonable judgment of the town, casts doubt on the reliability or quality of the grantee's system, the town shall have the right and authority to compel the grantee to test, analyze, and report on the performance of its system. The town may require additional tests, full or partial repeat tests, different test procedures, or tests involving a specific subscriber's terminal. Reports on such tests shall be delivered to the town no later than 30 days after the town formally requests the tests and shall include the following information: the nature of the complaints which precipitated the special tests; what system component was tested; the equipment used, and procedures employed in such testing; the results of such tests; and methods by which such complaints were resolved. Such tests and analyses shall be supervised by an engineer or other trained technical specialist who shall sign all records of the special tests and forward same to the town with a report interpreting the results of the tests and recommending what actions should be taken by the town. All such tests conducted by the grantee shall be at the expense of the grantee.~~
- ~~(c) *Consultants.* The town shall have the right to employ or contract with qualified consultants and attorneys if necessary or desirable, to assist in the administration of this, or any other section of this article or the franchise agreement. If an independent qualified consultant makes a finding that the grantee's test results were inaccurate or the results furnished to the town differ by more than ten percent as reported to the FCC, the grantee shall reimburse the town for its reasonable costs associated with the testing.~~

**~~Sec. 40-134. Emergency requirements.~~**

Each grantee must provide emergency alert override capabilities in a manner consistent with the FCC's emergency alert system ("EAS") rules and consistent with any state and/or regional emergency alert system plans adopted in response to the FCC's EAS rules that are applicable to the franchise area.

**~~Sec. 40-135. Programming decisions.~~**

Each grantee shall provide programming from each of the broad programming categories identified in its franchise agreement. All programming decisions remain within the sole discretion of each grantee, provided that each grantee complies with federal law regarding notice to grantor and subscribers prior to any channel additions, deletions, or realignments, and further subject to the grantee's signal carriage obligations pursuant to 47 USC 531-536, as may be amended and subject to the town's rights pursuant to 47 USC 545, as may be amended. The grantee shall use its good faith efforts to ensure diversity of programming.

**~~Sec. 40-136. Customer service standards.~~**

Division 14 of this article sets out and defines the customer service standards which the grantee must comply.

---

**~~Sec. 40-137. Parental control.~~**

Every grantee shall make available to any subscriber upon request a "lockout" device for blocking both video and audio portions of any channel(s) of programming entering the subscriber's premises. Such device shall be provided at a reasonable charge, except to the extent that federal law specifically provides otherwise. The grantee may, however, require a reasonable security deposit for the use of such a device. This section shall not apply to channels that are on the basic or expanded basic tier of programming unless the subscriber receives service via a programmable terminal device, such as a converter.

**~~Sec. 40-138. Periodic subscriber survey.~~**

The franchise agreement shall provide terms for a periodic subscriber survey to assess the cable service needs of the community throughout the term of the franchise as well as procedures for review and implementation of changes identified through any such survey.

**~~Sec. 40-139. Installations exceeding standard installation.~~**

Service drops in excess of 150 feet and concealed wiring in the home shall be charged to the subscriber based upon time and material. In any installation, the desire of the subscriber as to the point of entry into the residence shall be observed whenever possible. Runs in building interiors shall be as unobtrusive as possible. The grantee shall use due care in the process of installation and shall repair any damage to the subscriber's property caused by such installation. Such restoration shall be undertaken within no more than ten days after the damage is incurred and shall be completed as soon as possible thereafter.

**~~Sec. 40-140. Service area.~~**

No grantee may discriminate in the build-out of its system to a particular area of the town in providing service to an individual or groups of residents on the basis of race, creed, religion or economic condition. Unless the franchise agreement provides otherwise, every grantee shall serve all areas of the town with populations of 15 residential dwelling units per cable mile as measured from a grantee's existing distribution system.

**~~Sec. 40-141. Town monitoring.~~**

In addition to free cable service required by the article, the grantee shall provide one service feed to the town administrative offices (unless otherwise specified by town) that shall receive without charge all basic and expanded basic cable programming provided by the grantee. Such service shall be provided in such a manner that the town may monitor the programming and use of the cable system for compliance with the franchise agreement and this article. The services provided pursuant to this requirement shall be in a secure office location, and not in a location open to public viewing.

**~~Sec. 40-142. Access to inside wiring.~~**

Access to, and ownership of, inside wiring shall be in accordance with section 76.800, et seq. of the FCC rules and regulations as the same may be amended from time to time.

**~~Secs. 40-143—40-160. Reserved.~~**

***~~DIVISION 6. CONSTRUCTION STANDARDS<sup>3</sup>~~***

**~~Sec. 40-161. Right-of-way construction.~~**

Prior to commencing any construction in the town, a grantee must obtain all necessary permits and licenses required by federal, state and generally applicable town laws, ordinances and rules, and pay all associated nondiscriminatory fees. Further, a grantee shall comply with all applicable laws, ordinances, rules, and standards relating to the construction, operation and maintenance of a cable system.

**~~Sec. 40-162. Compliance with laws.~~**

The construction, installation, and maintenance of the cable system shall be effectuated by the grantee in a manner that is consistent with the laws, ordinances and construction standards of the state, the Occupational Safety and Health Administration, the National Electrical Safety Code, National Electrical Code and the FCC, to the extent applicable, as well as all other laws, rules, regulations and ordinances that are generally applicable and promulgated pursuant to the town's lawful police power. All open connections on splitters, couplers and other devices shall be properly terminated.

**~~Sec. 40-163. Minimum interference.~~**

All of the grantee's construction, installation, operation, repair and maintenance, and the arrangement of its lines, cables and other appurtenances, on public or private property, shall be conducted in such a

---

<sup>3</sup>Cross reference(s)—Excavations, ch. 18; streets, sidewalks and other public places, ch. 36.

---

manner as to not unreasonably interfere with the rights and reasonable convenience of property owners that may be affected. If such work is not in accordance with applicable rules and regulations, the town may require the removal, within such period of time after notice as is reasonable under the circumstances, of the grantee's lines, cables and appurtenances from the public rights-of-way in question, at the sole expense of the grantee.

**Sec. 40-164. Repair of property.**

The grantee shall promptly repair and restore any town or private property which may be damaged as a result of the construction, installation, operation, repair, maintenance or removal of the cable system. Any such property damaged or destroyed shall be promptly repaired and restored by the grantee, at the grantee's sole cost and expense to the reasonable satisfaction of the town, to its condition prior to being damaged, or shall be replaced by the grantee with equivalent property. The town may inspect and approve the condition of the public rights-of-way and cables, wires, attachments, and poles after restoration. The liability, indemnity, insurance and performance bond as provided in this article shall continue in full force and effect during the period of any removal and until the grantee has fully complied with the terms and conditions of this article and the franchise agreement. In the event of a failure by the grantee to complete any restoration work required by the town within the time as may be established by the town and to the reasonable satisfaction of the town, the town may, following reasonable notice to the grantee, cause such work to be done and the grantee shall reimburse the town the cost thereof within 30 days after receipt of an itemized list of such cost, or the town may at its option recover such costs through the performance bond provided by the grantee. The town shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

**Sec. 40-165. Erection of poles.**

The grantee shall not erect any pole on or along any public rights-of-way in an existing aerial utility system without the advance written approval of the town. If additional poles in an existing aerial route are required, the grantee shall negotiate, as needed, with the owners thereof for the installation of the needed poles. The grantee shall negotiate the lease of pole space and facilities from the existing pole owners for all aerial construction, under mutually acceptable terms and conditions.

**Sec. 40-166. Reservations of street rights.**

Nothing in this article shall be construed to prevent the town from constructing storm or sanitary sewers, grading, paving, repairing or altering any public rights-of-way, or laying down, repairing or removing water mains, traffic signal control systems, town fiber plant, or constructing or establishing any public utility, service or other public work that the town may operate or undertake now or in the future. All such work shall be done, insofar as practicable, in such manner as not to obstruct, injure or prevent the free use and operation of poles, wires, conduits, conductors, pipes or appurtenances of the grantee. If town in its reasonable judgment shall determine that the grantee's facilities interfere with the construction location or repair of any public right-of-way or public improvement, then all such facilities of the grantee shall be removed or replaced, or temporarily disconnected, in such manner as shall be directed by the town so that the same shall not interfere with the public works of the town. Such removal or replacement shall be at the expense of the grantee; provided, however, that nothing in this article shall preclude the grantee from seeking reimbursement for removal or replacement costs from any public funds generally available to rights-of-way users for the reimbursement of such costs.

**Sec. 40-167. Underground installation.**

In those areas within the town where cable television, telephone, or electrical facilities are currently placed underground, all cable system facilities shall remain or be placed underground. In areas where either telephone or electric utility facilities are above ground at the time of installation, the grantee may install its cable system facilities above ground, provided that at such time as both electric and telephone utility facilities are placed underground, the grantee shall likewise place its cable system facilities underground without cost to the town. Nothing contained in this section shall require a grantee to construct, operate and maintain underground any ground-mounted appurtenances, except that the grantee shall take steps to minimize the number and visual impact of such facilities. If the grantor reimburses any utility for such relocation, the grantee shall be similarly reimbursed. This section shall not prevent the town or any of its agencies or joint agencies from requiring the installation or relocation of cable services facilities underground pursuant to a separate ordinance or regulation or requirement imposed in accordance with the exercise of the general police power or regulatory function of such agency or joint agency.

**Sec. 40-168. Conduit.**

(a) The town shall not be responsible for any cuts or damage to buried or underground facilities of a grantee that are not clearly marked or cannot be located through the state "one-call" service.

- (b) ~~The grantee shall provide the town detailed strand and trench maps in both paper and a mutually agreed upon electronic format of all new underground and buried cable facilities upon activation of such sections of the system.~~
- (c) ~~The grantee shall provide a contact number for the town to call in emergency situations requiring an immediate response on the part of the town. If the grantee does not properly and effectively identify the precise location of its facilities within 45 minutes of an emergency call from the town, the town shall not be responsible for damage to the grantee's facilities.~~

**~~Sec. 40-169. Clearing poles and cables.~~**

~~The grantee shall have the right to remove, trim, cut and to keep clear of its poles, cables, underground conduits and related equipment the trees in and along the public rights of way, but, in the exercise of such right, the grantee shall not cut such trees to any greater extent that is reasonably necessary for the construction, erection, installation, maintenance and use of cable system equipment. Except in emergency situations, the grantee shall not remove, trim or cut such trees from any public rights of way without first providing reasonable notice to the town stating its intention to do so, such notice to be delivered not less than ten days in advance. The grantee shall compensate the town or any private owners of such trees for any damage proximately caused by the grantee's negligent conduct.~~

**~~Sec. 40-170. Moving facilities.~~**

~~The grantee, on the request of the town, or any person holding a building permit issued by the town, or any permit issued by an appropriate state agency, shall temporarily move its wires, cables, poles or other cable system facilities to permit the moving of large objects, vehicles, buildings or other structures. The expense of such temporary moves shall be paid to the grantee by the person requesting the same, and the grantee shall have the authority to require such payment in advance. The grantee shall be given not less than 30 days' advance notice to arrange for such temporary moves.~~

**~~Sec. 40-171. Work performed by others.~~**

~~To the extent applicable, all provisions of this article shall apply to any subcontractors or others performing any work or services pursuant to the provisions of a franchise agreement on behalf of a grantee.~~

**~~Sec. 40-172. Duty to the grantee.~~**

~~Nothing contained in this article shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring the grantee's facilities while performing any work connected with grading, regarding or changing the line of any public rights of way or with the construction or reconstruction of any sewer or water system or utility system.~~

**~~Secs. 40-173—40-190. Reserved.~~**

**~~DIVISION 7. GENERAL FINANCIAL AND INSURANCE PROVISIONS~~**

**~~Sec. 40-191. Franchise fee.~~**

- (a) ~~The administration of this article or the franchise agreement imposes upon the town additional regulatory responsibility and expense, and in consideration of permission to use the rights of way of the town for the construction, operation and maintenance, of a cable system within the town, a grantee of any franchise under this article shall pay to the town a franchise fee in an amount as designated in the franchise agreement, up to the maximum amount allowed by applicable law. To the extent that applicable law changes the maximum authorized franchise fee, the town reserves the right to change the franchise fee as stated in the franchise agreement, by adopting an ordinance establishing the new franchise fee rate and allowing reasonable notice to the grantee for administration of the change.~~
- (b) ~~Payments due grantor under this section shall be computed quarterly, for the preceding quarter. Each quarterly payment shall be due and payable no later than 45 days after the end of the preceding quarter. Each payment shall be accompanied by a brief report by a grantee showing the basis for the computation and a "franchise fee worksheet" listing all of the sources of revenues attributable to the operation of the grantee's system in the town. All such payments shall be certified as correct by an officer of the grantee.~~
- (c) ~~No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim grantor may have for further sums payable under the provisions of this article or a franchise agreement. All amounts paid shall be subject to audit and recomputation by grantor or its designee at any time during any calendar year (but not more than once per calendar year) upon 20 calendar days' notice, which shall include a request for any documents sought to be reviewed. Audits shall be at the expense of the grantee if the additional amount due is greater than two percent of the amount paid. Any additional amount due to the town as a result of the audit shall be paid within 60~~

days following written notice to the grantee by the town which notice shall include a copy of the audit report. The grantor's right to audit and the grantee's obligation to retain records related to the franchise fee audit, shall expire three years from the date on which the most recent franchise fee payment by the grantee was due from the time of written notice.

- (d) If any franchise payment or recomputed amount is not made on or before the dates specified in this section, the grantee shall pay as additional compensation an interest charge, computed from such due date, at the annual rate equal to the commercial prime interest rate of the town's primary depository bank during the period that such unpaid amount is owed.
- (e) The town shall have the right to inspect the grantee's income records and the right to audit and to recompute any amounts determined to be payable under this article. Audits shall be at the expense of the grantee if the additional amount due is greater than two percent of the amount paid. Any additional amount due to the town as a result of the audit shall be paid within 30 days following written notice to the grantee by the town which notice shall include a copy of the audit report.

**Sec. 40-192. Security fund.**

Each grantee shall maintain a security fund with the town to ensure compliance with this article and the applicable franchise agreement, in an amount and in a manner as set forth in the grantee's franchise agreement.

**Sec. 40-193. Penalties procedure.**

- (a) Whenever grantor has reason to believe that a grantee has violated any material provision of a franchise agreement or this article, the grantor shall first notify the grantee of the material violation and demand correction within a reasonable time, which shall not be less than seven days in the case of the failure of a grantee to pay any sum or other amount due the grantor under a franchise agreement, and 30 days in all other cases. If a grantee fails to correct the violation within the time prescribed, or if a grantee is unable to correct the violation and fails to commence corrective action within the time prescribed and to diligently remedy such violation thereafter, the grantee shall then be given written notice of not less than 20 days of a public administrative hearing to consider evidence of the alleged violation.
- (b) At the hearing, the board shall hear and consider all relevant evidence and thereafter render findings and a decision based upon the evidence. Any such hearing must, at a minimum, provide the grantee a full and fair opportunity to be heard by the board.
- (c) If the board finds that a grantee has corrected the violation or promptly commenced correction of such violation after notice thereof from the grantor and is diligently proceeding to fully remedy the violation, or that no violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.
- (d) If the board finds that a violation exists and that a grantee has not corrected the same in a satisfactory manner or did not promptly commence and diligently proceed to correct the violation, the board may impose liquidated damages and collect the damages from the security fund, as set out in the franchise agreement or this article. The town shall have the following remedies: pursue all available remedies at law or in equity to include injunctive relief or assess liquidated damages as set out in this division which it may collect from the security fund.
- (e) If the board elects to assess liquidated damages, then such election shall constitute grantor's exclusive remedy for a period of 60 days. Thereafter, if a grantee remains in noncompliance, the grantor may pursue any other available remedy.
- (f) If a franchise is cancelled or terminated by reason of the default (as specified in section 40-31) of a grantee, the security fund deposited pursuant to a franchise agreement shall remain in effect and available to the grantor until all pending claims or penalties are resolved or settled, after which point any remaining amounts in the security fund shall revert to the grantee.
- (g) The rights reserved to grantor with respect to the security fund are in addition to all other rights of grantor, whether reserved by a franchise agreement, this article, or authorized by law, and no action, proceeding, or exercise of a right with respect to such security fund shall affect any other right the grantor may have.
- (h) In instances of repeated violations, whether remedied or not, the grantor shall serve special notice outlining additional remediation requirements. Failure to cure, as measured by repeated instances of the same violation, is evidence of an evasive practice and may lead to revocation under division 8 of this article.
- (i) The grantee acknowledges that noncompliance with the provisions of the franchise agreement and the article will harm subscribers and the town and the amounts of actual damages will be difficult or impossible to ascertain. The town may therefore assess civil penalties as specified in section 1-6, against the grantee for unexcused noncompliance with the requirements of the franchise agreement and the article.

(j) ~~Prior to the imposition of any civil penalties, the town shall follow the procedural provisions of this section.~~

**~~Sec. 40-194. Bonds, indemnification and insurance.~~**

~~Each grantee shall maintain bonds and insurance with the town in amounts and in a manner as set forth in the grantee's franchise agreement. Each grantee also shall be required to indemnify the town in a manner as set forth in the grantee's franchise agreement.~~

**~~Secs. 40-195—40-210. Reserved.~~**

**~~DIVISION 8. REVOCATION~~**

**~~Sec. 40-211. Grounds.~~**

~~The grantor reserves the right to revoke the franchise and all rights and privileges pertaining thereto, if the grantee is in default on any or all of the following:~~

- ~~(1) A grantee substantially violates any material provision of this article or a franchise agreement;~~
- ~~(2) A grantee attempts to evade any of the material provisions of this article or a franchise agreement;~~
- ~~(3) A grantee practices an act of fraud or deceit upon the grantor;~~
- ~~(4) A grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt;~~
- ~~(5) A grantee fails to provide or maintain in full force and effect the liability and indemnification coverage or the performance bond as required pursuant to its franchise; or~~
- ~~(6) A grantee violates any orders or rulings of any regulatory body having jurisdiction over the grantee relative to this article or the franchise and after notice thereof shall continue the violation and not remedy the same within 60 days.~~

**~~Sec. 40-212. Procedure.~~**

- ~~(a) Whenever the grantor has reason to believe that there may be grounds for revocation of a franchise, the grantor shall first notify the grantee in writing of its basis for believing grounds for revocation exist. Such notice shall indicate with reasonable specificity the grounds for revocation that are believed to exist so that the grantee may have a reasonable opportunity to cure or otherwise address the same. If a grantee fails to adequately cure or address the purported grounds for revocation within 30 days of such notice, then the grantor may, upon 30 days' written notice to the grantee, commence a public administrative hearing to determine whether there exists any ground for revocation.~~
- ~~(b) The administrative hearing shall be conducted before the board of commissioners or a designated panel of at least three members of the board of commissioners, which shall make a recommendation to the board of commissioners for a final decision. The process shall protect the full due process rights of the parties and provide for, at a minimum, the right to have counsel, the right to call and cross-examine witnesses, and the right to a full transcript of the proceedings.~~
- ~~(c) After the close of the hearing, the board of commissioners shall issue a written decision based on the record of the proceedings, stating with specificity the findings and reasons supporting the decision.~~
- ~~(d) Upon revocation, a grantee shall have a period of 120 days subsequent to the date of the formal adoption of a revocation of the franchise by the town within which to file an appeal with a court of competent jurisdiction.~~
- ~~(e) During the appeal period, the franchise shall remain in full force and effect.~~

**~~Secs. 40-213—40-230. Reserved.~~**

**~~DIVISION 9. FORECLOSURE, RECEIVERSHIP AND ABANDONMENT~~**

**~~Sec. 40-231. Foreclosure.~~**

~~Upon the foreclosure or other judicial sale of all or a part of a system, a grantee shall notify grantor of such fact and such notification shall be treated as a notification that a change in control of the grantee has taken place, and the provisions of this article governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.~~

**~~Sec. 40-232. Receivership.~~**

Apart from and supplemental to the right to revoke a franchise, the grantor shall have the right to cancel a franchise agreement 120 days after the appointment of a receiver or trustee to take over and conduct the business of a grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of such 120 days, or unless:

- (1) Within 120 days after its election or appointment, the receiver or trustee has fully complied with all the provisions of the grantee's franchise agreement and this article and remedied all defaults thereunder; and
- (2) Such receiver or trustee, within such 120 days, has executed an agreement, duly approved by a court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this article and the applicable franchise agreement.

**~~Secs. 40-233—40-250. Reserved.~~**

**~~DIVISION 10. PURCHASE OF SYSTEM~~**

**~~Sec. 40-251. Purchase by the grantor upon termination of franchise term or revocation of the franchise.~~**

The grantor may, in accordance with and to the extent permitted by 47 USC 547, upon the payment of a fair valuation, purchase, condemn, acquire, take over, and hold the property and plant of a grantee, in whole or in part, on the following conditions:

- (1) Upon revocation of a franchise, a fair valuation shall be an equitable value that shall not include any sum attributable to the value of the franchise itself, and plant and property shall be valued according to its book value at the time of revocation, or the system's initial cost less depreciation and salvage.
- (2) At the expiration of a franchise agreement, for any reason, a fair valuation shall be the fair market value of the plant and property, exclusive of the value attributed to the franchise itself.
- (3) If the grantor shall acquire a franchise pursuant to the provisions of this article or a franchise agreement, and commence operation of the system, the grantor shall reimburse the grantee for the fair market value of the system.

**~~Secs. 40-252—40-270. Reserved.~~**

**~~DIVISION 11. SALE OR TRANSFER~~**

**~~Sec. 40-271. Sale or transfer of franchise.~~**

(a) No grantee shall sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, an interest in or control of a franchise or cable system or any of the rights or privileges granted by a franchise agreement, without the prior consent of the grantor, which consent shall not be unreasonably denied or delayed and may be denied only upon a good faith finding by the grantor that the proposed transferee lacks the legal, technical, or financial qualifications to consummate the transaction and operate the system so as to perform its obligations under this article and the applicable franchise agreement. This section shall not apply to sales of property or equipment in the normal course of business. Consent from the grantor shall not be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness, or for a transfer to a corporation, partnership, or other entity controlling, controlled by, or under common control with a grantee.

(b) The following additional events shall be deemed to be a sale, assignment, or other transfer of an interest in or control of a grantee or its franchise or cable system requiring compliance with this section:

- (1) The sale, assignment, or other transfer of all or a majority of a grantee's assets;
- (2) The sale, assignment, or other transfer of capital stock or partnership, membership, or other equity interests in a grantee by one or more of its existing shareholders, partners, members, or other equity owners so as to create a new controlling interest in a grantee;
- (3) The issuance of additional capital stock or partnership, membership or other equity interest by a grantee so as to create a new controlling interest in a grantee; and
- (4) A grantee's agreement to transfer management or operation of the grantee or the system.

The term "controlling interest" as used in this section is not limited to major stockholders but includes actual working control in whatever manner exercised.

- ~~(c) In the case of any sale or transfer of ownership of an interest in or control of a grantee or its franchise or cable system, the town shall act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with FCC Regulations and the requirements of this article and the applicable franchise agreement, including information related to the legal, technical and financial qualifications, and the proposed transferee's ability to operate the system in accord with this article and the franchise agreement. Failure to provide all information reasonably requested by the town, as part of its review may be grounds for a denial of the proposed transfer.~~
- ~~(d) The consent or approval of the town to any transfer of the grantee shall not constitute a waiver or release of the rights of the town in and to the public rights of way, and any transfer shall, by its terms, be expressly subject to the terms and conditions of this article and the franchise agreement.~~
- ~~(e) In the absence of extraordinary circumstances, the town will not approve any transfer or assignment of the franchise prior to completion of construction of the proposed initial system.~~
- ~~(f) Any approval by a transfer shall be contingent upon the prospective new grantee becoming a signatory to the franchise agreement.~~
- ~~(g) The grantor may require the grantee to pay town's expenses, as determined at the sole discretion of the town, up to a maximum of \$5,000.00 in connection with the sale, assignment, or transfer of a franchise including, but not limited to, the grantor's costs of reviewing the qualifications of any proposed transferee.~~

~~Secs. 40-272—40-290. Reserved.~~

#### ***DIVISION 12. RIGHTS OF INDIVIDUALS PROTECTED***

##### ***Sec. 40-291. Prohibited discriminatory practices.***

~~No grantee shall deny service, deny access, or otherwise discriminate against subscribers, programmers, or general citizens on the basis of race, color, religion, national origin, sex, disability, or age. Every grantee shall strictly adhere to the equal employment opportunity requirements of state and federal law. Each grantee shall comply at all times with all other applicable federal, state, and local laws, and all executive and administrative orders relating to nondiscrimination.~~

##### ***Sec. 40-292. Subscriber privacy.***

~~The grantees shall at all times comply with the federal subscriber privacy requirements codified at 47 USC 551.~~

~~Secs. 40-293—40-310. Reserved.~~

#### ***DIVISION 13. MISCELLANEOUS PROVISIONS***

##### ***Sec. 40-311. Rate regulation.***

~~The town reserves the right to regulate rates for basic cable service and any other services offered over the cable system, to the extent permitted by federal or state law. The grantee shall be subject to the rate regulation provisions provided for in this section, and those of the Federal Communications Commission (FCC) at 47 CFR, part 76.900, subpart N. The town shall follow the rules relating to cable rate regulation promulgated by the FCC at 47 CFR, part 76.900, subpart N. To the extent required by applicable federal or state law, the grantee shall establish rates that are nondiscriminatory within the same general class of subscribers and which must be applied fairly and uniformly to all subscribers in the franchise area for all services. Nothing contained in this section shall prohibit the grantee from offering:~~

- ~~(1) Discounts to commercial and multiple family dwelling subscribers billed on a bulk basis;~~
- ~~(2) Promotional discounts;~~
- ~~(3) Reduced installation rates for subscribers who have multiple services;~~
- ~~(4) Discounts for senior citizens and/or low income residents; or~~
- ~~(5) Reduced rates to subscribers who receive noncable services in addition to cable services.~~

##### ***Sec. 40-312. Rights reserved to grantor.***

- ~~(a) Upon either the expiration or revocation of a franchise, the grantor may permit and/or require a grantee to continue to operate the cable system for an extended period of time not to exceed three months from the date of such expiration or revocation. A grantee shall continue to operate the system under the terms and conditions of this article and the applicable franchise agreement and to provide cable service and any and all other services which the grantee had been providing.~~
- ~~(b) The grantor shall have the right to compel continued operation of the cable system whether by the grantee or a trustee or receiver or by the grantor, and to ensure that such operation is consistent~~

with the public interest as determined by a court of competent jurisdiction. The grantee may not remove equipment or documents necessary for continued operation of the system.

- (c) At all reasonable times, the grantee shall permit examination by the system, together with any appurtenant property of the grantee situated within or without the town when necessary to ascertain the grantee's compliance with this article, the franchise agreement, and all applicable laws.
- (d) The town shall have the right of intervention in any suit or proceeding to which the grantee is a party relative to the grantee's operations in the town, and the grantee shall not oppose such intervention by the town.
- (e) Except as otherwise provided by applicable law, the grantee shall have no recourse whatsoever against the town or its officials, boards, commissions, agents, or employees for any loss, cost, expense, or damage arising out of any provision or requirements of this article or the franchise agreement, or of their enforcement.

**Sec. 40-313. Nonenforcement by the town.**

The grantee shall not be relieved of its obligation to comply with any of the provisions of this article or the franchise agreement by reason of any failure of the town to enforce prompt compliance.

**Sec. 40-314. Governing law and choice of forum.**

Any dispute arising with respect to this article or a franchise agreement granted pursuant to it, shall be governed by the laws of the state. Exclusive jurisdiction of such disputes shall be vested in the state and federal courts having primary jurisdiction in the town.

**Sec. 40-315. Publication of notices.**

All public notices required to be published by the grantor under this article or any franchise agreement shall be published in a manner consistent with the public notice laws of the state.

**Sec. 40-316. System construction capabilities and schedule.**

- (a) The cable system shall generally conform to the system design and channel capacity specifications set forth by the grantee in its application for a franchise submitted to the town. At a minimum, the grantee shall construct a system with equivalent technical capabilities to a hybrid fiber coax [HFC] 750 MHz cable system. The grantee is permitted to modify its design and implementation plan, pursuant to the conditions provided in this division, to accommodate technological innovations and refinements that enhance system reliability and capacity.
- (b) The initial construction required under initial franchise agreement shall be completed in compliance with a schedule specified therein. If the grantee shows that, notwithstanding its due diligence, that it has been unable to extend service to a specified area because the acts or omissions of a third party (excluding the grantee's subcontractors or agents) or other factors have caused a delay in construction beyond that reasonably expected during the course of construction, and the grantee proposes a reasonable alternative deadline for extension of service to that area, the town shall grant reasonable extensions of time to complete construction.

**Secs. 40-317—40-340. Reserved.**

***DIVISION 14. CUSTOMER SERVICE STANDARDS***

**Sec. 40-341. Enumeration.**

- (a) The grantee shall at all times comply with the more stringent of the customer service and consumer protection provisions of this chapter, the franchise agreement or the FCC.
- (b) The grantee will at all times comply with the town's customer service standards in addition to compliance with the FCC standards (47 CFR, part 76 (cable television service), subpart H (general operating requirements), as amended.
- (c) The town's customer service standards are as follows:
  - (1) The customer service standards as set forth in this subsection (c) are the standards set for all affected cable operators. This provision is the town's notice of its intent to enforce the standards.
  - (2) Effective July 1, 1993, a grantee shall be subject to the following customer service standards:
    - a. Cable system office hours and telephone availability:
      - 1. The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

- ~~i. Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.~~
    - ~~ii. During normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.~~
  - ~~2. During normal business hours, telephone answer time by a customer representative, including wait time, shall not exceed 30 seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed 30 seconds. These standards shall be met no less than 90 percent of the time under normal operating conditions, measured on a quarterly basis.~~
  - ~~3. The grantee is required to have equipment or perform surveys to measure compliance with the telephone answering standards of this section.~~
  - ~~4. During normal business hours, the customer will receive a busy signal less than three percent of the time.~~
  - ~~5. Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.~~
- ~~b. Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than 95 percent of the time measured on a quarterly basis:~~
  - ~~1. Standard installations will be performed within seven business days after an order has been placed.~~
  - ~~2. Excluding conditions beyond the control of the operator, the cable operator will begin working on service interruptions promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.~~
  - ~~3. The "appointment window" alternatives for installations, service calls and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal operating hours if allowed by the customer.)~~
  - ~~4. An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.~~
  - ~~5. If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted by the grantee. The appointment will be rescheduled, as necessary, at a time that is convenient for the customer.~~
  - ~~6. Complaint log: The cable operator shall establish a complaint log. Such log will be provided to the town, upon reasonable request for the purpose of ascertaining compliance with the article and franchise agreement. The complaint log shall be available for review for the current and past two years.~~
- ~~c. Communications between cable operators and cable subscribers.~~
  - ~~1. Notifications to subscribers:~~
    - ~~i. The cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:~~
      - ~~Products and services offered;~~
      - ~~Prices and options for programming services and conditions of subscription to programming and other services;~~
      - ~~Installation and service maintenance policies;~~
      - ~~Instruction on how to use the cable service;~~
      - ~~Channel positions of programming carried on the system; and~~
      - ~~Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.~~
    - ~~ii. Customers will be notified of any changes in rates, programming service or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers a minimum of 30 days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall~~

notify subscribers 30 days in advance of any significant changes in the other information required by the preceding paragraph.

2. Billing:

- i. Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations, including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
- ii. In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days.

3. Refunds. Refund checks will be issued promptly, but no later than either:

- i. The customer's next billing cycle following resolution of the request of 30 days, whichever is earlier; or
- ii. The return of the equipment supplied by the cable operator if service is terminated.

4. Credits. In the case of an outage, multiple or single, in excess of 24 hours, the grantee shall make every effort to credit the subscriber's account based on the period of outage, reasons for outage and general good business practices. Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

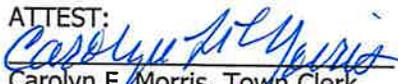
(d) Late payment for cable service:

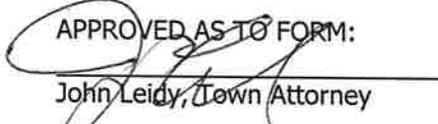
- (1) If the grantee assesses a processing fee for late payments, each bill shall specify on its face in a fashion emphasizing same such as bold face type, underlined type or a larger font): "For payments received after (date) a \$\_\_\_\_\_ processing fee for late payment may be charged."
- (2) No processing fees for late payment, however denominated, shall be added to a subscriber's bill less than 15 calendar days after the date printed on mailing of the bill to the subscriber, and shall not exceed the amount permitted under applicable law.

**PART II. Effective Date.**

This ordinance shall be in full force and effect upon the date of adoption by the Board of Commissioners.

  
 \_\_\_\_\_  
 Benjamin Cahoon, Mayor  
 Town of Nags Head

ATTEST:  
  
 Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:  
  
 John Leidy, Town Attorney

Date adopted: August 2, 2023

Motion to adopt by Commissioner \_\_\_\_\_  
 Motion seconded by Commissioner \_\_\_\_\_  
 Vote: \_\_\_\_\_ AYES    \_\_\_\_\_ NAYS

