

Incorporated 1927

# Town of Lake Lure

P. O. Box 255 • Lake Lure, NC 28746-0255 • 704/625-9983 • FAX 704/625-8371

## **MINUTES OF THE REGULAR MEETING OF THE LAKE LURE TOWN COUNCIL HELD TUESDAY, JULY 23, 1996, 7:30 P.M. AT THE LAKE LURE MUNICIPAL CENTER**

**PRESENT:** Mayor Max E. Lehner  
Commissioner Bill Bush  
Commissioner Carolyn Cobb  
Commissioner Beth Rose  
Commissioner Bud Schichtel

John R. Strutner, Town Manager  
J. Christopher Callahan, Town Attorney

**ABSENT:** N/A

### **CALL TO ORDER**

Mayor Lehner called the meeting to order at approximately 7:30 p.m.

### **INVOCATION**

Attorney Chris Callahan gave the invocation.

### **AUDIENCE OF CITIZENS**

No persons requested to speak under audience of citizens.

### **APPROVAL OF MINUTES**

Commissioner Schichtel moved, seconded by Commissioner Cobb, to approve the minutes of the Tuesday, July 9, 1996 Regular Council meeting as written and presented by the Clerk. The vote of approval was unanimous.

**PUBLIC HEARING -- RECEIVE PUBLIC COMMENTS ON THE SECOND  
READING OF THE DRAFT CABLE TELEVISION FRANCHISE RENEWAL  
AGREEMENT WITH NORTHLAND CABLE**

Notice of the Public Hearing was duly given within the legal classified advertising section of the Monday, June 24, 1996 issue of the Forest City Daily Courier newspaper.

Commissioner Bush moved, seconded by Commissioner Cobb, to enter into the public hearing to receive public comments on the second reading of the draft ordinance reflecting a cable television franchise agreement with Northland Cable. The vote of approval was unanimous.

Commissioner Bush moved, seconded by Commissioner Schichtel, to waive the second reading aloud of the proposed ordinance between the Town of Lake Lure and Northland Premier Cable and enter the ordinance into the record as written and presented. The vote of approval was unanimous.

Town Attorney Chris Callahan outlined the changes and additions that were made in the proposed ordinance.

Mayor Lehner invited citizens who wanted to speak during the public hearing. The following citizens requested to speak:

1. Walter L. Gilbert, resident of Yacht Island Drive, asked what is the current basic cable rate with the new franchise? Mr. Gilbert asked if there is any kind of program that provides part-time rates without having to pay a reconnection fee and recommended that a program of this type be implemented?

James Carr, Regional Manager for Northland Cable, said that basic cable rate is \$26.00 and \$25.00. Mr. Carr also stated that in the past they had a similar program regarding part-time users and had problems with this program.

Mayor Lehner requested that Mr. Carr look into the possibility of a part-time users program and report back to Council.

2. Jack Donovan, a Lake Lure resident, said that he pays by the year and asked will he still be able to pay on an annual basis?

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Marlene Wilson, a representative of Northland Cable, responded by saying that customers will still be able to pay on an annual basis.

3. Jack Powell, a Lake Lure resident, asked what provisions are there regarding the quality of service to be provided under the franchise and what are the remedies if those quality of standards are not met?

Mayor Lehner responded by stating that there are several pages in the agreement that address Mr. Powell's questions and are available for his review.

4. Truman Cobb, a Lake Lure resident, asked when will there be more channels added and wanted to know why three new channels were not added by June 1st as promised?

Attorney Callahan said that the agreement says within twelve months of the effective date of this agreement Northland will upgrade the system adding six new channels. Within twenty-four months of the effective date of this franchise agreement Northland agrees to upgrade the system to a fifty-four channel capacity system.

5. Nancy McNary, a Lake Lure resident, asked will the North Carolina Educational channel be provided to residents of Lake Lure?

Mayor Lehner said the reason why Lake Lure residents didn't receive this educational channel was due to the fact that the nearest one to the vicinity has to be selected which is the South Carolina Educational channel and because of copy rights.

Mayor Lehner said that a list would be provided to Northland Cable in regards to unburied cable.

Commissioner Schichtel asked if the blockage where cabling runs through the culvert at Fairfield has been corrected?

Mr. James Carr said that they would have someone look into the problem at Fairfield.

Commissioner Bush said that he would also like to see a program implemented for part-time cable users.

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Commissioner Rose said that she had received calls from residents of the Apple Valley area complaining about the poor quality of reception now as compared to what it was when Phoenix Cable serviced this area. Ms. Rose also stated she had received a call from a resident on Whitney Blvd. complaining that every time the wind blows the cable goes out.

Mr. James Carr responded by saying that he hired the same people and said that some areas the cable goes out because of lightening.

Commissioner Cobb said that she lives in the Apple Valley area and the quality of her cable reception was just as good or better than before.

With no further items of discussion, Commissioner Bush moved, seconded by Commissioner Rose, to come out of the public hearing and re-enter the regular session of the meeting. The vote of approval was unanimous.

**ADOPT ORDINANCE -- GRANTING A CABLE TELEVISION FRANCHISE  
AGREEMENT TO NORTHLAND PREMIER CABLE**

Commissioner Bush moved, seconded by Commissioner Schichtel, to adopt the proposed ordinance by the Town of Lake Lure granting a cable television franchise agreement to Northland Premier Cable Limited Partnership ("Northland") as written with noted correction on page 19 (under number of homes subscribing 70 -- installation cost share change from \$240.00 to \$340.00). The vote of approval was unanimous. (Ordinance attached).

**OLD BUSINESS**

**a. Other Old Business**

There was no other old business for discussion.

**NEW BUSINESS**

**a. Discuss Recommendation from the Lake Advisory Committee Regarding the  
Leniency of 20 ft. Boat Length**

Robert Washburn, Chairman of the Lake Advisory Committee, presented Council members with a memorandum dated July 10, 1996 stating that he had received a call from a gentleman who was unable to put his boat on the lake this year because the boat was nine inches longer than the 20' limit. Mr. Washburn said to the best of his recollection, the Lake

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Advisory Committee was asked to look at this situation about four years ago. At that meeting, the committee recommended that a lenient approach be taken with the length of the runabouts since very few are exactly 20', but no boats of 21' in length or greater should be allowed. After polling the members of the Lake Advisory Committee by telephone, the consensus of opinion was unanimously the same as it was four or five years ago. Mr. Washburn alleged that this matter had been discussed by a previous Town Council approximately 4 or 5 years ago and that the administration had been authorized to exercise leniency on boat lengths.

Council members were also provided a copy a letter of July 10, 1996 addressed to the Town Manager from Mr. Michael Cole requesting that his boat which is 20'-9" be grandfathered since he had been permitted to purchase boat permits for 1987, 1988, and 1989.

Commissioner Cobb recommended to Council members that they consider grandfathering Mr. Michael Cole's boat.

Mr. Walter Gilbert, a Lake Lure resident, cautioned Council that by increasing the boat length may be allowing boats that would create problems on the lake.

After considerable discussion, it was the consensus of Council to ask the Lake Advisory Committee to report back with their recommendations regarding whether or not to change the Town Ordinance regarding boats over 20' in length.

Mr. Washburn read aloud a memorandum of July 16, 1996 addressed to Town Council regarding the Lake Advisory Committee's recommended date for lowering the lake this year and asked that Town Council reconsider changing the date to begin lowering the lake starting on November 15 instead of November 1. This would allow property owners and visitors to enjoy the early weeks of November on the water.

Council members took no action on changing the date of lowering the lake level. The lowering of the lake level for 1997 will begin starting on November 1, 1996 and will begin raising the lake level on March 1, 1997.

**NEW BUSINESS**

- b. Resolution No. 96-07-23 -- Amend Resolution No. 93-12-14 which Created a Golf Course Advisory Committee**

Commissioner Schichtel moved, seconded by Commissioner Cobb, to adopt the following Resolution No. 96-07-23 as amended with noted changes (amending Resolution No. 93-12-14 which created a Golf Course Advisory Committee) The vote of approval was unanimous.

**RESOLUTION NO. 96-07-23**

**A RESOLUTION TO AMEND RESOLUTION NO. 93-12-14 WHICH CREATED A GOLF COURSE ADVISORY COMMITTEE TO ADVISE COUNCIL OF MATTERS RELATING TO THE SAFE AND ENJOYABLE USE OF THE LAKE LURE MUNICIPAL GOLF COURSE**

**WHEREAS**, the aforesaid Resolution No. 93-12-14 was duly adopted by the Town Council of Lake Lure, North Carolina on December 14, 1993 in order to establish a Golf Course Advisory Committee and set forth its duties and responsibilities; and

**WHEREAS**, Town Council has reviewed and considered the number of members to be appointed to this committee under the provisions of Resolution No. 93-12-14 and found it desirable to ~~increase~~ **modify** the membership of this Golf Course Advisory Committee from its current ~~five (5) to six (6) members structure~~;

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF LAKE LURE, NORTH CAROLINA:**

**Section 1.** That Section 3. of Resolution No. 93-12-14 is hereby deleted and replaced with the following text:

**Section 3.** That the Committee shall consist of ~~six~~ **five members and one alternate** each appointed by a majority vote of Town Council.

Duly passed and approved this the 23rd day of July 1996.

\_\_\_\_\_  
Max E. Lehner, Mayor

ATTEST:

\_\_\_\_\_  
Mary A. Flack, Town Clerk

**NEW BUSINESS**

**c. Board Appointment -- Lake Lure Golf Course Committee**

Commissioner Cobb moved, seconded by Commissioner Schichtel, to appoint Lee Moirano to serve as an alternate member on the Lake Lure Golf Course Committee. The vote of approval was unanimous.

**NEW BUSINESS**

**d. Resolution No: 96-07-23A -- Authorizing the Advertisement to Dispose of Certain Surplus Property of the Town**

Town Manager John Strutner recommended that Council adopt the proposed Resolution No. 96-07-23A (authorizing the advertisement to dispose of certain surplus property of the Town). Mr. Strutner said that a public notice would be published in the legal classified advertising section of the Thursday, July 25, 1996 issue of the Forest City Daily Courier and the Asheville Citizen-Times newspaper.

Commissioner Rose moved, seconded by Commissioner Cobb, to adopt Resolution No. 96-07-23A (authorizing the advertisement to dispose of certain surplus property of the Town). The vote of approval was unanimous.

**NEW BUSINESS**

**e. Tax Refunds**

Commissioner Rose moved, seconded by Commissioner Bush, to approve the following list of tax refunds totalling \$78.00 as furnished by Tax Collector Betty Hinson. The vote of approval was unanimous.

**TAX REFUNDS**

<b><u>YEAR</u></b>	<b><u>NAME</u></b>	<b><u>REASON</u></b>	<b><u>AMOUNT</u></b>
1994	Fred Williams	Value Reduced by County	\$39.00
1995	Fred Williams	Value Reduced by County	<u>\$39.00</u>

**TOTAL TAX REFUNDS     \$78.00**

**NEW BUSINESS:**

**f. Other New Business**

There was no other new business for discussion.

**STAFF REPORTS**

Town Manager Strutner reported that ten buoys have been ordered to replace missing ones. Mr. Strutner said that the dredge did not operate two weeks before the 4th of July because the dredge operator had to raise and lower the cable numerous times to let boat traffic through and when the dredge operator started the dredge back up the seals blew on the hydraulic pump. The dredge should be repaired within another week.

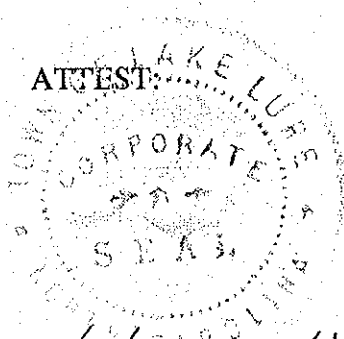
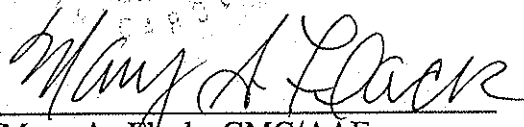
**COUNCIL COMMENTS**


Commissioner Rose asked Town Manager Strutner to give an up-to-date status on the Town's new computer system including hardware/software, and training. Mr. Strutner said that Police Department has received all of their software and training. Training for employees in Town Hall will begin sometime in September 1997.

**ADJOURNMENT**

With no further items of discussion, Commissioner Schichtel moved, seconded by Commissioner Bush, to adjourn the meeting at 8:40 p.m. The vote of approval was unanimous.

ATTEST:

  
  
Mary A. Flack, CMC/AEE  
Town Clerk

  
Mayor Max E. Lehner



**RESOLUTION NO. 96-07-23**

**A RESOLUTION TO AMEND RESOLUTION NO. 93-12-14 WHICH CREATED A GOLF COURSE ADVISORY COMMITTEE TO ADVISE COUNCIL OF MATTERS RELATING TO THE SAFE AND ENJOYABLE USE OF THE LAKE LURE MUNICIPAL GOLF COURSE**

**WHEREAS**, the aforesaid Resolution No. 93-12-14 was duly adopted by the Town Council of Lake Lure, North Carolina on December 14, 1993 in order to establish a Golf Course Advisory Committee and set forth its duties and responsibilities; and

**WHEREAS**, Town Council has reviewed and considered the number of members to be appointed to this committee under the provisions of Resolution No. 93-12-14 and found it desirable to modify the membership of this Golf Course Advisory Committee from its current structure;


**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF LAKE LURE, NORTH CAROLINA:**


**Section 1.** That Section 3. of Resolution No. 93-12-14 is hereby deleted and replaced with the following text:

**Section 3.** That the Committee shall consist of five members and one alternate each appointed by a majority vote of Town Council.

Duly passed and approved this the 23rd day of July 1996.



  
Max E. Lehner, Mayor

  
Mary A. Flack, Town Clerk

**RESOLUTION NO: 96-07-23A**

**Resolution Authorizing the Advertisement for Sealed Bids  
for the Sale of Certain Property**

WHEREAS, the Town Council of the Town of Lake Lure, North Carolina desires to dispose of certain surplus property of the Town;

NOW, THEREFORE, BE IT RESOLVED by the Town Council that:

1. The following described property is hereby declared to be surplus to the needs of the Town: A navy blue 1992 Ford Crown Victoria (Police package) used as an unmarked police car. Mileage is 78,000.

2. The Town Manager is authorized and directed to receive in behalf of the Town Council sealed bids for the purchase of the property described above.

3. Sealed bids may be submitted to the Town Manager's office to be opened on August 5, 1996 at 10:00 a.m. at this location.

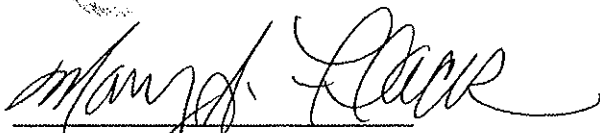
4. The Town Clerk shall cause a notice of this resolution to be published in accordance with G. S. 160A-268.

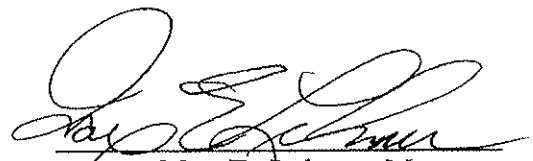
5. Bids will not be accepted unless, upon time of filing, they are accompanied by a deposit of cash, cashier's or certified check, or bid bond equal to 5% of the amount bid.

6. The Town Council reserves the right to reject any or all bids.

Adopted this 23rd day of July, 1996.



  
Mary A. Flack, Town Clerk

  
Max E. Lehner, Mayor

**RECORD COPY**  
**CABLE TELEVISION FRANCHISE AGREEMENT**  
**BETWEEN**  
**THE TOWN OF LAKE LURE**  
**AND**  
**NORTHLAND PREMIER CABLE**

*Effective date: August 1, 1996*

ORDINANCE NO. 96-07-23

**AN ORDINANCE BY  
THE TOWN OF LAKE LURE, NORTH CAROLINA  
GRANTING A CABLE TELEVISION FRANCHISE AGREEMENT TO  
NORTHLAND PREMIER CABLE LIMITED PARTNERSHIP ("NORTHLAND")**

WHEREAS, the Town of Lake Lure(Town) has entered into a cable television franchise agreement with Northland Premier Cable Limited Partnership ("Northland") which expires on or about August 24, 1997; and

WHEREAS, the Town deems it appropriate to continue the cable television franchise agreement with Northland; and

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL, TOWN OF LAKE LURE, NORTH CAROLINA, THAT THE CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN THE TOWN AND NORTHLAND PREMIER CABLE LIMITED PARTNERSHIP ("NORTHLAND") IS APPROVED AS FOLLOWS:

**FRANCHISE AGREEMENT**

THIS AGREEMENT is effective the 1 st day of August 1996, by and between the Town of Lake Lure, Post Office Box 325, Lake Lure, North Carolina 28746 hereinafter referred to as "Town" and Northland Premier Cable Limited Partnership, hereinafter referred to as "Northland" located at 1201 Third Avenue, Suite 3600, Seattle, Washington 98101.

**SECTION 1. GRANT OF FRANCHISE.**

(a) Northland is hereby granted for itself and its successors and assignees, subject to the terms and conditions of this franchise, the right, privilege, and authority to construct, operate, maintain, and reconstruct a cable communications system within the streets, alleys, and public ways of the Town for the purpose of providing cable television service as defined by the N.C.G.S. 160A-319(b) and including such other services as Northland may legally provide on its cable television system, subject to current and future State, Federal, and local laws and the payment of any applicable fees, services or other compensation directly or indirectly to the Town. Northland shall provide a state-of-the-art, Town-wide cable communications system to the residents and institutions of the Town in accordance with this franchise. Services to residents will be uniformly available, in accordance with Section 25(a) of this franchise.

(b) Nothing in this franchise shall be deemed to waive the various codes and ordinances of the Town regarding permits, fees to be paid, or manner of construction.

(c) For the purpose of operating and maintaining a cable communications system in the Town, Northland may erect, in, over, under, or upon, across, and along the public streets, alleys, and ways within the Town such wires, cables, fiber optics, conductors, ducts, conduits, vaults, manholes, amplifiers,

appliances, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of the cable communications system in the Town and in accordance with this franchise and the cable ordinance.

## **SECTION 2. RIGHT OF TOWN TO ISSUE FRANCHISE.**

Northland acknowledges and accepts the legal right of the Town to issue this franchise and the Town warrants and represents that it has the legal right to issue this franchise pursuant to 160A of the North Carolina General Statutes.

## **SECTION 3. EFFECTIVE DATE OF FRANCHISE**

The effective date of this franchise shall be August 1, 1996, subject to acceptance by Northland, which acceptance shall be received by the Town not more than thirty (30) days after passage of this ordinance. All previous agreements with Northland are being replaced by this Ordinance/Agreement.

## **SECTION 4. FRANCHISE TERM AND EXTENSION.**

(a) This franchise shall take effect and be in full force from its effective date for a period of ten (10) years. Northland shall have the option to request an extension of this franchise for an additional term of five (5) years not more than two (2) years prior to the expiration of the initial ten (10) year term.

(b) Should the Franchisee desire to exercise this five(5) year option, it shall notify the Town in writing not more than two (2) years prior to the expiration of this franchise. Upon exercise of this option by Franchisee the Town shall conduct a full, open and public hearing upon prior notice and opportunity for all interested parties to be heard. The Town may consider the performance of Franchisee under this franchise and any factors deemed relevant in determining whether to extend this franchise. If this franchise is extended by the Town, all the terms and provisions contained herein shall be controlling during the extended term except to the extent that said terms and provisions are modified by the Town or unless the franchise is superseded by a new franchise.

## **SECTION 5. FRANCHISE NONEXCLUSIVE.**

(a) **FRANCHISE NONEXCLUSIVE.** Consistent with the requirements of the ordinance, this franchise shall not be construed as any limitation upon the right of the Town to grant to other persons, rights, privileges, or authorities equivalent to the rights, privileges, and authorities herein set forth, in the same or other streets, alleys, or other public ways or public places. The Town specifically reserves the right to grant at any time during the term of this franchise or renewal thereof, if any, such additional franchises for a cable communications system as it deems appropriate, provided, however, no other franchise or similar grant of authority shall be on terms and conditions more favorable or less burdensome than those of this franchise.

(b) **CONDITIONS.** Any additional cable television franchises granted by the Town shall contain equivalent terms and conditions as this franchise, including without limitation provisions of public benefit with similar cost, taking into account the size and population of the franchised areas. Northland agrees to indemnify the Town and to hold the Town harmless from all claims against it by third parties arising out of its compliance with the most-favored nations provision set forth herein to the extent that such claims are not barred by Section 635A of the Cable Television Consumer Protection and Competition Act 1992 (Limitation of Franchise Authority Liability), or by any other provision of law.

**SECTION 6. DEFINITIONS.** For purposes of this article, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common or ordinary meanings. Any definition inconsistent with Federal Regulations shall be consistent with the Federal Regulations, as may be changed from time-to-time.

Basic subscriber television services means all subscriber services provided by the grantee in one (1) or more service tiers, including the delivery of broadcast signals, public, educational and government access channels, and local origination channels, covered by the regular monthly charge paid by all subscribers to a particular service tier.

Cable communications system or cable television system, also referred to as "system," means a facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designated to provide cable service which includes video programming and which is provided to multiple subscribers within a community; but such term does not include:

- (a) A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
- (b) A facility that serves subscribers without using any public rights-of-way.
- (c) A facility of a common carrier which is subject, in whole or in part, to the provision of Title II of the Cable Act, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand service; or
- (d) An open video system that complies with Section 653 of the Communications Act; or
- (e) Any facilities of any electric utility used solely for operating its electric utility systems.

Cable Service means the one-way transmission to subscribers of video programming or other programming service; and, subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. For the purposes of this definition, "video programming" is programming provided by, or generally considered comparable to programming provided by, a television broadcast station; and, "other programming service" is information that a cable operator makes available to all subscribers generally.

Communications Policy Act or Cable Act (the "ACT") means the Communications Act of 1934, as it may be amended or succeeded.

Channel means a six Megahertz (MHZ) frequency band which is capable of carrying either one (1) standard video signal, a number of audio, digital or other nonvideo signals, or some combination of signals.

Converter means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber and any channel selector which permits a subscriber.

Council means the Town of Lake Lure as represented by the Town Council acting within the scope of its

jurisdiction.

Drop shall mean a coaxial connection from feeder cable to the subscriber/user television set, radio or other terminal.

Educational channel or educational access channel means any channel where educational programs are the only designated use.

Fair market value means the price that a willing buyer would pay to a willing seller for a going concern.

FCC means the Federal Communications Commission or any legally appointed or elected successor.

Franchise means the nonexclusive rights, granted pursuant to this ordinance, to construct, operate or maintain a cable communications system along the public ways within all or a specified area in the Town. Any such authorization, in whatever form granted, shall not mean or include any license or permit required for the privilege of transacting and carrying on a business within the Town, as required by other ordinances and laws of the Town or any other government authority.

Franchise area means the entire Town, or portions thereof, for which a franchise is granted under the authority of this franchise. If not otherwise stated in the franchise agreement, the franchise area shall be the corporate limits of the Town.

Franchise fee means an amount not to exceed 5%, as specified, of the grantee's gross annual receipts from the operation of the system pursuant to the agreement.

Government channel or government access channel means any channel specifically designated or dedicated for use by the grantor.

Grantee or Franchisee means Northland Premier Cable Limited Partnership ("Northland") and any successors or assignees.

Gross subscriber revenues means all receipts derived directly or indirectly from subscribers by Grantee from the provision of cable television services in the incorporated areas of the Town of Lake Lure, North Carolina. Beginning on the first anniversary of the effective date of this franchise, the term gross subscriber revenue shall also include: (a) a prorata amount of the receipts derived by the Grantee from the sale of the interstitial advertising time availabilities (i.e., ads cablecast between program segments) on the channels carried by the cable system; and (b) a prorata amount of the receipts actually derived by the Grantee from the lease of access channels on the cable system. The prorata amounts described in (a) and (b) above shall be determined by multiplying the aggregate advertising receipts and leased channel receipts by a fraction, the numerator of which is the number of equivalent subscribers served by the cable system that are located within the franchise area of the Town of Lake Lure and the denominator of which is the total number of the equivalent subscribers served by the Grantee's cable television system distribution facilities (i.e., the cable facility headend which serves the Town of Lake Lure). The term gross subscriber revenue shall not include any regulatory fees, franchise fees or any other exclusion permitted by the FCC rules or any general utility tax which may be imposed by the Town or refunds credited to subscribers.

House shall mean any single family dwelling unit (house, apartment, mobile home, trailer, rented room or otherwise), but shall not mean an abandoned dwelling or building otherwise uninhabitable.

Installation shall mean the connection of the system from feeder cable to subscribers' terminals.

Leased access channel or commercial leased channel means any channel designated or dedicated for use by persons unaffiliated with the grantee in accordance with the Cable Act.

Monitoring means observing a communications signal, or the absence of a signal, where the observer is not a party to the communications, whether the signal is observed by visual or electronic means, for any purpose whatsoever.

Person means an individual, partnership, association, organization, corporation or any lawful successor, or transferee of said individual, partnership, association, organization or corporation.

Plant Mile means a linear mile of strand-bearing cable as measured on the street or easement from pole to pole or pedestal to pedestal.

Programmer means any person or entity who or which produces or otherwise provides program material or information for transmission by video, audio, digital or other signals, either live or from recorded traces or other storage media, to users or subscribers by means of the cable communications system.

Public access channel or community access channel means any channel designated or dedicated for use by the general public or noncommercial organizations which is made available for use without charge on a first-come, first-served, nondiscriminatory basis.

Public property shall mean any real property owned by the Town, other than a street.

Public way or public right-of-way means the surface, the air space above the surface and the area below the surface of any public street, highway, lane path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkways, waterways, utility easements or other public right-of-way hereafter held by the Town, which shall entitle the Town and the grantee to the use thereof for the purpose of installing and maintaining a cable television system. No reference herein, or in any franchise, to the "public way" shall be deemed to be a representation or guarantee by the Town that its title to any property is sufficient to permit its use for such purpose, and the grantee shall, by its use of such terms, be deemed to gain only such rights to use property in the Town as the Town may have the undisputed right and power to give.

Reasonable notice shall be written notice addressed to either Town or grantee at its respective principal office within the Town or such other office as the Town or Grantee has designated to the other as the address to which notice shall be transmitted to it, which notice shall be by certified mail and postmarked not less than thirty (30) days prior to that day in which the party giving such notice shall commence any action which requires the giving of notice.

Resident means any person residing in the Town, unless otherwise defined by applicable law.

Residential subscriber means a subscriber who receives a service in an individual dwelling unit where the service is not to be utilized in connection with a business, trade or profession.

Sale shall include any sale, exchange, barter or offer for sale.

School means any public educational institution, including primary and secondary schools, colleges and universities.



Service area means the present incorporated area of the Town, as of the effective date of this franchise agreement, receiving service from the Grantee's cable TV system on the effective date of this franchise agreement.

State means the State of North Carolina.

State-of-the-Art shall mean that the grantee shall construct, install, operate and maintain its system in a manner which will continue to enable it to add new services and associated equipment as they are developed, available, and when proved economically feasible and marketable to subscribers.

Street shall include each of the following, which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the Town limits; streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public ways and extensions and additions thereto, together with such other public property and area that the Town shall permit to be included within the definition of street from time to time.

System facilities means the cable communications system constructed for use within the Town, without limitation, the headend, antenna, cables, wires, lines, towers, amplifiers, converters, health and property security systems, equipment or facilities located within the corporate limits of the Town, designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing by coaxial cable, fiber optics, microwave or other means, audio and visual radio, television and electronic signals to and from subscribers in the Town and any other equipment or facilities located within the corporate limits of the Town intended for the use of the system; provided, however, such system facilities exclude buildings, contracts, facilities and equipment where primary use is for providing service to other system facilities located outside the Town limits.

Transfer means the disposal by the grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, except publicly traded issue, not in control of the grantee, of twenty-five (25) percent or more at one time of the ownership or controlling interest in the system, or twenty-five (25) percent cumulatively over the term of the franchise of such interests to a corporation, partnership, limited partnership, trust or association, or person or group of persons acting in concert. Transfers to any affiliate of Grantee shall be permitted.

Trunk line means the major distribution cable used in cable communications, which divides into feeder lines which are tapped for service to subscribers.

User means a person or organization utilizing channel or equipment and facilities for the purpose of production and/or transmission of material, as contrasted with receipt thereof in a subscriber capability.

## **SECTION 7. GRANT OF FRANCHISES; TERRITORY.**

(a) The Town herein grants to the grantee a nonexclusive, revocable-for-cause as provided herein, franchise to construct, operate and maintain a cable communication system within the Town, said franchise shall constitute both a right and an obligation to provide the services of a cable communications system, as regulated by the provisions of this agreement.

(b) The franchise shall be granted under the terms and conditions contained herein, consistent with the Town Charter or other governmental statutory requirements. In the event of conflict between the terms and

conditions of this franchise, the Charter and/or statutory requirements shall control.

(c) Nothing in the franchise shall be deemed to waive the requirements of the various codes and ordinances of the Town regarding permits, fees to be paid or manner of construction.

(d) The franchise area shall be the entire incorporated area of the Town.

#### **SECTION 8. USE OF PUBLIC STREETS AND WAYS, TOWN AND GRANTEE FACILITIES.**

(a) **PUBLIC STREETS AND WAYS.** For the purpose of operating and maintaining a cable communications systems in the Town, the grantee may erect, construct, repair, replace, reconstruct and/or retain in, on over, under, upon, across and along the public streets and ways within the Town such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary to the operation of the cable communications system; provided however, that the grantee complies with this franchise agreement and other applicable laws, codes and ordinances, including the Town Code of Ordinances, as amended.

(b) **GRANTEE FACILITIES.** No poles shall be erected by the grantee without prior approval of the Town with regard to location, height, type and any other pertinent aspect. However, no location of any pole of the grantee shall be a vested right, and such poles shall be removed or modified by the grantee at its own expense whenever the Town reasonably determines the public convenience would be enhanced thereby. The grantee shall utilize existing poles and conduits, where possible. The Town shall have the right, during the life of the franchise, to install and maintain upon the poles owned by the grantee, at fair market value, any wire and pole fixture that do not reasonably interfere with the cable system operations of the grantee.

#### **SECTION 9. ACCEPTANCE.**

(a) By accepting this franchise, the grantee agrees to be bound by all the terms and conditions in this franchise.

(b) By accepting the franchise, the grantee acknowledges that it is has not been induced to enter into the franchise by any understanding or promise or other statement not expressed therein, whether oral or written, concerning any term or condition of the franchise, regardless of whether such statement was made by or on behalf of the Town.

(c) By accepting the franchise, the grantee acknowledges that it has carefully read the terms and conditions of the franchise agreement.

(d) **SEVERABILITY.** If any section, subsection, sentence, clause, phrase or portion of this franchise is for any reason held invalid or unconstitutional by any court of competent jurisdiction, or by any federal, state or local statute or franchise, such portion shall be deemed a separate, distinct and independent provision and shall be excised as such; and such holding shall not affect the validity of the remaining portions hereof.

#### **SECTION 10. TRANSFER OF OWNERSHIP OR CONTROL.**

(a) The franchise granted hereunder cannot in any event be sold, transferred, leased, assigned or disposed of, including but not limited to by force or voluntary sale, receivership or other means, without the

prior consent of the Town, which consent shall be not be unreasonably withheld, and then under such reasonable conditions as the Town may establish; provided, however, Grantee shall have the right to hypothecate, mortgage and assign its interest in this franchise to its senior lender(s) from time to time in connection with the financing and refinancing of its business.

(b) The grantee shall promptly notify the Town of any actual or proposed change in, transfer of, or acquisition by any other party of control of the grantee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the disposal by the grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of five (5) percent or more at one time of the ownership or controlling interest in the system, or twenty-five (25) percent cumulatively over the term of the franchise, of such interests to a corporation, partnership, limited partnership, trust or association, or person or group of persons acting in concert.

(c) Every change, transfer or acquisition of control, as defined above, of the grantee shall make the franchise subject to cancellation unless approved in this franchise or until the Town shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the Town may inquire into the legal, financial, character, technical and other public interest qualifications of the prospective controlling party. Failure to provide all information reasonably requested by the Town as part of said inquiry shall be grounds for denial of the proposed change, transfer or acquisition of control.

(d) The Town agrees that any financial institution having a pledge of the franchise or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the Town that it, or its designees satisfactory to the Town, will take control and operate the cable television system. Further, said financial institution shall also submit a plan for such operation that will ensure continued service and compliance with all franchise obligations during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one (1) year, unless extended by the Town at its discretion, and during said period of time it shall have the right to petition for transfer of the franchise to another grantee. If the Town finds that such transfer, after considering the legal, financial, character, technical and other public interest qualifications of the applicant, is satisfactory, the Town will transfer and assign the rights and obligations of such franchise as are in the public interest. The consent of the Town to such transfer shall not be unreasonably withheld.

(e) 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 streets and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this franchise and the franchise agreement.

(f) Any approval by the Town of transfer of ownership or control shall be contingent upon the prospective controlling party becoming a signatory to this franchise agreement.

#### **SECTION 11. POLICE POWERS.**

(a) In accepting this franchise, the grantee acknowledges that its rights hereunder are subject to the powers of the Town to adopt and enforce reasonable general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the Town pursuant to such power.

(b) Any conflict between the provisions of this franchise and any other present or future lawful

exercise of the Town's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction, or applies exclusively to the grantee or cable communications systems, which contains provisions inconsistent with this franchise shall prevail only if, upon such exercise the Town finds an emergency exists constituting a danger to health, safety, property or general welfare and such exercise is mandated by law or unless Grantee consents.

## **SECTION 12. FRANCHISE FEES.**

(a) During the term of this franchise, the Franchisee shall pay to the Town for use of its streets, public places, and other facilities, as well as the maintenance, improvements, and supervision thereof, an annual franchise fee in the amount of five (5%) percent of the annual Gross Subscriber Revenues received by it from operations conducted within the Town.

(b) Method of computation shall be as follows: Fees levied directly on a per subscription basis and collected by Grantee as a pass through shall be deducted from the Gross Subscriber Revenues before computation of sums due the Town is made. Payments due the Town under the terms of this franchise agreement shall be computed quarterly as of September 30, December 31, March 31 and June 30 for the preceding quarter and shall be paid on or before the forty-fifth (45<sup>th</sup>) calendar day from each said computation date at the Office of the Town Clerk during regular business hours. The Town shall be furnished a statement with each payment, certified as correct by an officer of the Franchisee, reflecting a total amount of Gross Subscriber Revenues, and the above charges, deductions and computations, for the three months' payment period covered by the payment. With the payment each year for the quarter ending December 31, a statement certified by an officer of the company and shall be submitted certifying that the statement filed and payments made by the Franchisee for the preceding year was correct.

(c) **RIGHTS OF RECOMPUTATION.** For a period of three years no acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the Town may have for further or additional sums payable as a franchise fee under this franchise agreement or for the performance of any other obligation hereunder.

(d) **FAILURE TO MAKE PAYMENT** Failure to pay any fees required by this section may result in action of the Town per Section 13 of this franchise agreement. Payment of the delinquent fee or fee plus any interest or penalties may be required by the Town.

## **SECTION 13. FORFEITURE OR REVOCATION.**

(a) The Council reserves the right to revoke the franchise granted hereunder and rescind all rights and privileges associated with the franchise in the following circumstances, each of which, following reasonable notice and a reasonable opportunity to cure, shall represent a default and breach under this franchise.

(1) If the grantee shall default in the performance of any of the material obligations under this franchise or under such documents, contracts and other terms and provisions entered into by and between the Town and the grantee;

(2) If the grantee shall fail to provide or maintain in full force and effect the liability and indemnification coverage or the performance bond as required herein pursuant to the franchise agreement.

(3) If the grantee's construction schedule is delayed later than the schedule contained in the franchise agreement, if any, or beyond any extended date set by the Council;

(4) If the grantee becomes insolvent or unable to pay its debts or is adjudged bankrupt;

(5) If the grantee fails to restore service after ninety-six (96) consecutive hours of interrupted "system-wide" service, except when such service interruption is caused by forces beyond the grantee's control (including but not limited to subscribers), or when approval of such interruption is obtained from the Town Manager or his designee;

(6) If there has been intentional material misrepresentation of fact in the application for or negotiation of the franchise or any extension of renewal thereof.

(b) The grantee shall not be declared at fault or be subject to any sanction under any provision of this franchise in any case in which performance of any such provision is prevented for reasons beyond the grantee's control. A fault shall not be deemed to be beyond the grantee's control if committed by a corporation or other business entity in which the grantee holds a controlling interest, whether held directly or indirectly.

(c) Procedure prior to revocation.

(1) In the event the Town believes that the grounds for revocation exist or have occurred, the Town shall notify the grantee in writing noting the facts on which such belief is grounded. The Town shall make written notice, by certified mail, return-receipt requested, that the grantee comply with any such requirement, limitation, term, condition, rule or regulation or correct any action deemed cause for revocation. If, within thirty(30) days following said written notice, grantee has not furnished reasonably satisfactory evidence that corrective action has been taken or is being actively and expeditiously pursued, or that the alleged violation did not occur, or that the alleged violation, except those involving financial matters were beyond the grantee's control, the Town shall provide the grantee an opportunity to present evidence, at a public hearing, that the just cause or non-compliance identified in the written notice has been remedied or that the significance thereof does not warrant revocation. Town shall cause to be served upon the grantee, at least thirty (30) days prior to the date of such public hearing, a written notice of this intent to request such revocation, and the time and place of the meeting, notice of which shall be published by the Town Clerk, in accordance with North Carolina state law, before such meeting, in a newspaper of general circulation within the Town, including the Lake Lure News.

(2) TheTown Council shall hear any persons interested therein, including the grantee, and shall determine in its discretion whether or not any failure, refusal or neglect by the grantee was with just cause.

(3) If such failure, refusal or neglect by the grantee was with just cause, as defined by the Town, the Board shall direct the grantee to comply within such time and manner and upon such terms and conditions as are reasonable.

(4) If the Council shall determine such failure, refusal or neglect by the grantee was without just cause, then the Board shall, by resolution, declare that the franchise of the grantee shall be revoked, unless there is compliance by the grantee within ninety (90) days.

(d) In the event this franchise is revoked or otherwise terminated, the Town may, in its sole discretion, do any of the following:

(1) Purchase the system at fair market value; or

- (2) Award renewal, extension or termination of this franchise pursuant to the provisions of this franchise and other applicable law;
  - (3) Consent prior to sale or transfer of this franchise;
  - (4) Technical performance evaluations pursuant to the Act.
- (b) The Town also reserves the right to perform the following functions:
- (1) Analyze the possibility of integrating cable communications with other Town, state or regional telecommunications networks;
  - (2) Formulate and recommend long-range telecommunications policy for the Town and provide for the determination of future cable-related needs and interests of the community;
  - (3) Provide the administrative effort necessary for the conduct of performance evaluations pursuant to this franchise and any other activities required for the administration of the franchise;
  - (4) Monitor the grantee's process for handling citizen complaints and periodically inspect and analyze the records related to such complaints (excluding any personal identification items which are precluded by federal, state or local law) and upon five(5) business days advance written notice to the Grantee;
  - (5) Monitor the grantee's adherence to operational procedure and line-extension policies;
  - (6) Assure compliance with applicable laws and ordinances;
  - (7) Provide for reasonable continuity in service;
  - (8) Receive for examination all data and reports required by this franchise.

#### **SECTION 19. RATES AND CHARGES.**

Upon request the grantee shall file with the Town schedules which shall describe all services offered, all rates and charges of any kind, and all terms and conditions relating thereto. In addition, the Town shall have the right to regulate rates per federal, state and local laws.

#### **SECTION 20. PERFORMANCE EVALUATION.**

- (a) Special evaluation sessions may be held at any time during the term of the franchise at the request of the Town, upon reasonable notice to the grantee. The intent of this paragraph is to provide an opportunity for the Town to air any performance problems at a public forum after all other negotiation processes have resulted in no agreement or solution.
- (b) All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with public notice to include the Lake Lure News Letter.
- (c) Topics which may be addressed at any scheduled or special evaluation session may include, but not limited to, system performance, grantee compliance with this franchise, customer service and complaint response, subscriber privacy, franchise fees, penalties, applications of new technologies, judicial and FCC

filings, and line extensions. At the five year anniversary of this agreement, a specific review may be scheduled at the request of the franchise authority or the cable operator, in open Board session, to discuss the cable-related needs of the community and technology issues.

(d) During the review and evaluation by the Town, the grantee shall cooperate with the Town and shall provide such information and documents as the Town may need to reasonably perform its review. The grantee will be required to provide those documents which are normally available to the grantee. The intent is that the Town can not ask the Grantee to spend extra time and money to formulate documents which are not in a system-wide format.

## **SECTION 21. PERFORMANCE BOND.**

(a) **PERFORMANCE BOND.** No later than forty-five (45) days after the effective date of the franchise, the grantee shall obtain and maintain during the entire term of the franchise and any extensions and renewals thereof, at its cost and expense, and file with the Town a corporate surety bond or letter of credit, in the amount of \$25,000.00, to guarantee the faithful performance of the grantee of all its obligations provided under this franchise. Failure to timely obtain, file and maintain said bond shall continue a substantial violation of this franchise.

(b) **CONDITIONS.** The performance bond shall provide the following conditions:

(1) There shall be recoverable by the Town, jointly and severally from the principal and surety, any and all fines and penalties due to the Town and any and all damages, losses, costs and expenses suffered or incurred by the Town resulting from the failure of the grantee to: faithfully comply with the provisions of this franchise; comply with all applicable orders, permits and directives of any Town agency or body having jurisdiction over its acts or defaults; pay any claims, liens or taxes due the Town, which arise by reason of the Grantee's negligence in the construction, operation, maintenance or repair of the cable system.

(2) The grantee assigns the franchise without the express written consent of the Town not including affiliate transfers as defined in this ordinance.

(3) **REDUCTION OF BOND.** Upon written application by the grantee, the Town may, at its sole option, permit the amount of the bond to be reduced or waive the requirements for a performance bond. Reductions granted or denied upon application by the grantee shall be without prejudice to the grantee's subsequent applications or to the Town's right to require the full bond at any time thereafter. However, no application shall be made by the grantee within ninety (90) days of any prior application.

(4) **USE OF PERFORMANCE BOND.** Prior to drawing upon the performance bond for the purposes described in this section the Town shall notify the grantee in writing that payment is due, and the grantee shall have thirty (30) days from the receipt of such written notice to make a full and complete payment of undisputed amounts. If the grantee does not make the payment within thirty (30) days, the Town may withdraw the amount thereof from the performance bond.

(5) **NOTIFICATION.** Within thirty (30) days of a withdrawal from the performance bond, the Town shall send to the grantee, by certified mail, return receipt requested, written notification of the amount, data and purpose of such withdrawal.

(6) **REPLENISHMENT OF PERFORMANCE BOND.** No later than thirty (30) days after

receipt by the grantee of certified mail notification of a withdrawal pursuant to paragraph (e) above, the grantee shall replenish the performance bond in an amount equal to the amount so withdrawn. Failure to make timely replenishment of such amount to the performance bond shall constitute a substantial violation of this franchise.

(7) **NONRENEWAL, ALTERATION OR CANCELLATION OF PERFORMANCE BOND.** The performance bond required herein shall be in a form satisfactory to the Town and shall require thirty (30) days written notice of any nonrenewal, alteration or cancellation to both the Town and the grantee. The grantee shall, in the event of any such cancellation notice, obtain, pay all premium for, and file with the Town, written evidence of the issuance of a replacement bond within thirty (30) days following receipt by the Town or the grantee of any notice of cancellation.

## **SECTION 22. LIABILITY AND INSURANCE.**

(a) As of the effective date of this franchise, the grantee shall file with the Town a certificate of insurance and thereafter maintain in full force and effect at all times for the full term of the franchise, at the expense of the grantee, comprehensive general liability insurance policy, naming the Town as additional insured, written by a company authorized to do business in the state of North Carolina, protecting the Town against liability for loss or bodily injury and property damage occasioned by Grantee's negligent acts in connection with the installation, removal, maintenance or operation of the cable communications system by the grantee in the following minimum amounts:

(1) One million dollars (\$1,000,000.00) combined single limit, bodily injury and for the property damage in any one (1) occurrence;

(2) One million dollars (\$1,000,000.00) aggregate.

(b) The grantee shall also file with the Town a certificate of insurance for a comprehensive automobile liability policy written by a company authorized to do business in the state of North Carolina, for all owned, nonowned, hired and leased vehicles operated by the grantee, with limits no less than one million dollars (\$1,000,000.00) each accident, single limit, bodily injury and property damage combined, or evidence of self-insurance.

(c) **WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE.** The grantee shall maintain, and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain throughout the term of the franchise, worker's compensation insurance and employer's liability, valid in the state, in the minimum amount of the statutory limit for worker's compensation insurance, and one million dollars (\$1,000,000.00) for employer's liability.

(d) All liability insurance required in this section shall be kept in full force and effect by the grantee during the existence of the franchise and until after the removal of all poles, wires, cables, underground conduits, manholes, and other conductors and fixtures installed by the grantee incident to the maintenance and operation of the cable communications system as defined in this franchise. All policies shall be endorsed to give the Town of Lake Lure thirty (30) days written notice of the intent to amend, cancel or nonrenewal by either the grantee or the insuring company.

(e) **LIABILITY AND INSURANCE.** The grantee agrees and binds itself to indemnify, keep and hold free and harmless the Town from any and all liability or costs, including attorneys' fees and court costs pertaining thereto, arising from any negligent activities herein of Grantee, in that the grantee shall pay, and



by its acceptance of the franchise the grantee specifically agrees that it will pay, all damages and penalties which the Town may be legally require to pay as a result of such activities. These damages or penalties shall include but shall not be limited to damages arising out of copyright infringements and all other damages arising out of installation, operation or maintenance of the cable communications system authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this franchise.

### **SECTION 23. AUTHORITY TO CONSTRUCT.**

(a) Authorization to commence new construction and application procedures. If the grantee plans to construct new plant within the corporate limits of the Town, grantee shall apply for all necessary licenses from the state, Town or other necessary parties, such as the railroads, for crossing under or over their property. In any event, all necessary applications for permits, licenses, certificates and authorizations shall be applied for in a timely fashion so that such filing and processing shall not interfere with or cause delay with the upgrade of the system. Failure to make such timely application and timely filing shall constitute a substantial violation of this franchise.

(b) POWER TO CONTRACT. Upon grant of the franchise and in order to construct, operate and maintain a cable system in the Town, the grantee may enter into contracts with any public utility companies or any other owner or lessee of any poles or underground areas located within or without the Town; obtain rights-of-way permits from appropriate Town, county, state, and federal officials necessary to cross or otherwise use highways or roads under their respective jurisdiction; obtain permission from the Federal Aviation Administration to erect and maintain antennas; and obtain whatever other permits a Town, county, state or federal agency may require.

### **SECTION 24. CONSTRUCTION AND TECHNICAL STANDARDS.**

(a) COMPLIANCE WITH CONSTRUCTION AND TECHNICAL STANDARDS. The grantee shall construct, reconstruct, install, operate and maintain its system in a manner consistent with all applicable laws, ordinances, construction standards, governmental requirements, and FCC technical standards. The system will be designed, constructed, operated and maintained for twenty-four (24) hours-a-day continuous operation.

(b) CONTRACTOR QUALIFICATIONS. Any contractor proposed for work on construction, reconstruction, installation, operation, maintenance and repair of system equipment must be properly licensed under the laws of the state and all local ordinances.

(c) The Town does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing facilities. In public rights-of-way, where necessary, the location may be verified by excavation.

(d) Construction, reconstruction, installation, operation and maintenance of the cable communications system shall be performed in an orderly and workmanlike manner in accordance with then-current technological standards. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

(f) Grantee shall at all times comply with:

(1) Occupational Safety and Health Administration (OSHA) Franchise;

- (2) National Electric Code;
- (3) National Electrical Safety Code (NESC);
- (4) National Cable Television Standards Code;
- (5) All federal, state and municipal construction requirements including FCC rules and regulations for utility construction and requirements;
- (6) All local building and zoning codes, and all land use restrictions as the same exist or may be amended hereafter.
- (h) Any antenna structure used in the cable communications system shall comply with construction, marking, and lighting of antenna structure standards as required by federal and state laws and franchise.
- (i) All worker facilities, conditions and procedures that are used during construction, installation, operation and maintenance of the cable system shall comply with the applicable standards of the Occupational Safety and Health Administration.
- (j) The grantee shall maintain equipment capable of providing portable standby power for a minimum of either four (4) hours for the headend and two (2) hours for transportation and any one trunk amplifier.

#### **SECTION 25. EXTENSION OF SERVICE.**

(a) The grantee shall provide service to all persons requesting such within any area of the Town, contiguous to grantee's existing system, as long as it is "economically feasible" to do so. As used herein "economically feasible" shall mean: there are at least eighteen (18) subscribers per mile and this number of subscribers shall be derived/determined based upon a measurement taken from the outermost extremity of the potential extension area back through and measured along the shortest usable path of available streets, alleys, public rights of ways and public places now laid out or dedicated for such, inclusive of limited access and private easements.

(b) Grantee shall extend service to all residences within newly annexed areas of the Town where the density of homes is at least per cable mile within ninety (90) days of a request, unless all applicable permits have not been received. Grantee shall apply for such permits in a timely manner. In the event that such new area is served by another cable operator at the time of such request, Grantee shall have the option but not the obligation to provide the service.

(c) In areas with less than eighteen (18) subscribers per proposed cable mile, Grantee shall offer a cost-sharing arrangement to residents. Grantee shall bear its pro rata share of the current construction costs based upon the actual number of homes per mile. The cost-sharing arrangement shall consist of the following:

1. On the request of a subscriber desiring service, Grantee shall prepare, at its cost, an engineering survey and cost analysis to determine the cost of the plant extension required to provide service to the subscriber from the closest usable point on the cable system.

2. The cost of construction shall be allocated based on the following formula: If a request for

extension into a residential area requires the construction of cable plant, which does not pass at least eighteen (18) subscribers per mile, Grantee and subscribers will each bear their proportionate share of construction costs. For example, if there are ten(10) dwelling units per mile, Grantee's share will equal 10/18th of the construction cost. The remaining cost will be shared equally by each subscriber in the area to be constructed. The line extension formula shall also be applied to a portion of a mile meeting proportionate density requirements. The cost sharing described above would be utilized if there were less than the proportionate share of dwelling units per the portion of a mile needed to reach the dwelling units.

3. Should additional subscribers request cable television service, subscribers utilizing the cost-sharing plan for extension shall be reimbursed pro-rata for their contribution or a proportional share thereof. In such case, the pro-rata shares shall be recalculated and each new subscriber shall pay the new pro-rata share, and all prior subscribers shall receive refunds. In any event, at the end of three (3) years from completion of the project, the subscribers are no longer eligible for refunds, and the amounts paid in construction costs will be credited to the plant account of the Grantee.

4. The average cost of the line extension shall be recalculated annually and based upon the current costs of labor and material.

(d) Each person contributing toward the direct cost of the line extension agrees to waive all ownership interest in the line extension. All equipment and components of the line extension, including, but not limited to, cable wire, electronics and pedestals shall at all times remain the exclusive property of the Grantee.

(e) Grantee shall install a CATV service drop to subscribers of the home requesting such. The cost of the service line installation will be at the rate specified in Grantee's prevailing schedule of installation charges.

(f) Any subscriber who requests that their cable be under grounded from Grantee's service pole to the subscriber's home and who would normally be entitled to aerial service, but will be charged at Grantee's prevailing hourly service charge to underground the cable.

(g) A specific provision of this franchise agreement provides for the extension of cable related services to the areas commonly referred to as Boys Camp Road, Rock Creek, Cuttaway Road, Burnt Ridge Road and Burnt Road West, specifically the area bounded by the north shore line of Lake Lure as a southern boundary; the northern boundary being a general line one hundred and fifty (150) feet north of Boys Camp Road; the western boundary being a general line one hundred and fifty (150) feet west of Boys Camp Road and joining the northern boundary just north of Rock Creek Road; and the eastern boundary being a general line connecting to the northern boundary one hundred and fifty (150) feet north of the northern most point of Burnt Ridge-West Road, running in a general southerly direction one hundred and fifty (150) feet east of Burnt Ridge-West Road and ending at the northern shoreline of Lake Lure (specific map is located at Appendix C). The cost-sharing arrangement shall consist of the following:

(1) Northland has calculated the total cost to provide service to the approximately 80 homes in the described area at \$80,000.

(2) Northland and the Town agree to the following cost sharing formula:

a. Northland agrees to pay \$56,000.00 of the total cost.

b. The subscribers within the Boys Camp Road area will pay the following cost share which is based on a percentage of total homes subscribing to cable services. The number of homes subscribing to cable service will be determined, by Northland, on November 1, 1996. Northland will determine the number of homes based on the receipt of a two hundred (\$200) dollar refundable deposit from the subscriber committing to said cable service, said deposit to be paid to Northland not later than November 1, 1996. If, on November 1, 1996, there are not a minimum of 40 paid subscribers, Northland is not obligated to construct the area known as Boys Camp Road. In this event the deposits will be returned to the potential subscribers not later than December 1, 1996. Should forty (40) homes be reached by November 1, 1996, the remainder of the subscriber cost, as described below, will be due and payable to Northland, by the subscriber, upon billing, but not earlier than March 15, 1997. It will be the responsibility of the Grantee to use the most effective marketing process to notify potential subscribers of the options for subscribing. Northland may adjust the billing and deposit dates to dates later than November 1, 1996 and March 15, 1997, after consultation with the Town Manager:

<u>Number of Homes Subscribing</u>	<u>Installation Cost Share*</u>
80	\$300.00
70	3 <del>\$240.00</del>
60	\$400.00
50	\$480.00
40	\$600.00

\* Installation includes all necessary cable and other equipment necessary to install a cable drop to a residence for 300 feet aerial and 150 feet under ground.

(3) If, as of November 1, 1996, there are not 40 paid subscribers as indicated in (2) above, Northland may, when economically feasible, build the Boys Camp Road area at its option and at a time of its choosing, unless Northland has extended the date per Section 25 (g) (2)b above.

(4) In areas described in Section 25(g) above, Northland agrees to extend service within twelve (12) months of the effective date of this franchise agreement providing that the forty (40) home limit provision is reached by November 1, 1996.

(5) The service areas described in Section 25 (g) above includes existing homes or any home constructed within thirty six (36) months of the effective date of this franchise agreement. Any home constructed after the 36th month from the effective date of this franchise agreement will pay the then normal service charges for installation (for purposes of this agreement the construction start date will be the date a building permit is issued by the approving authority).

(6) Should additional subscribers request cable television service, subscribers utilizing the cost-sharing plan for extension they shall be reimbursed pro-rata for their contribution or a proportional share thereof. In such case, the pro-rata shares shall be recalculated and each new subscriber shall pay the new pro-rata share, and all prior subscribers shall receive refunds. In any event, at the end of three (3) years from completion of the project, the subscribers are no longer eligible for refunds, and the amounts paid in construction costs will be credited to the plant account of the Grantee.

(7) The average cost of the line extension shall be recalculated annually and based upon the current costs of labor and material.

(8) Each person contributing toward the direct cost of the line extension agrees to

waive all ownership interest in the line extension. All equipment and components of the line extension, including, but not limited to, cable wire, electronics and pedestals shall at all times remain the exclusive property of the Grantee.

(h) In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give the grantee reasonable notice of such construction or development and of the particular date on which open trenching will be available for the grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at the grantee's expense. The grantee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner. Except for the notice of the particular date on which trenching will be available to the grantee, any notice provided to the grantee by the Town of a preliminary plant request shall satisfy the requirement of reasonable notice if sent to the local general manager or system engineer of the grantee prior to approval of the preliminary plant request.

## **SECTION 26. USE OF STREETS.**

(a) In areas where either telephone or electric utility facilities are above ground at the time of installation, the grantee may install its device above ground, provided that, at such time as those facilities are required to be placed underground by the Town or are placed underground, the grantee shall likewise place its services underground without additional cost to the Town or to the individual subscriber so served.

Where not otherwise required to be placed underground by this franchise the grantee's system shall be located underground at the request of the property owner, provided that the cost of the underground installation shall be borne by the property owner making the request. All new cable passing under the roadway shall be installed in conduit no less than eighteen (18) inches from the top of the conduit to the surface of the ground or as per local, state or federal mandates.

(b) **INTERFERENCE WITH PERSONS, IMPROVEMENTS, PUBLIC AND PRIVATE PROPERTY AND UTILITIES.** The grantee's system and facilities, including poles, lines, equipment on all appurtenances, shall be located, erected and maintained so that such facilities shall:

- (1) Not endanger or interfere with the health, safety or lives of persons;
- (2) Not interfere with any improvements the Town, town or state may deem proper to make;
- (3) Not interfere with the free and proper use of public streets, alleys, bridges, easements or other public ways, places or property, except to the minimum extent possible during actual construction or repair;
- (4) Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent reasonably possible during actual construction or repair; and
- (5) No obstruct, hinder or interfere with any gas, electric, water or telephone facilities or other utilities located within the Town.

(c) **RESTORATION TO PRIOR CONDITION.** In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the grantee shall, at its own cost and expense and in a manner approved by the Town, replace and restore all paving, sidewalk, driveway, landscaping or surface of any street or alley disturbed, and in a good workmanlike, timely manner in accordance with standards for such work set by the

Town. Such restoration shall be undertaken within no more than ten (10) business days after the disturbance is incurred and shall be completed as soon as possible thereafter, weather permitting.

(d) **RELOCATION OF THE FACILITIES.** In the event that at any time during the period of this franchise the Town, town or state shall lawfully elect to site or change the grade of any street, alley or other public ways, the grantee, upon reasonable notice by the proper authority, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and the fixtures at its own expense.

(e) **COOPERATION WITH BUILDING MOVERS.** The grantee shall, on the request of any person holding a building moving permit issued by the Lake Lure Building Inspector, temporarily raise or lower its wire to permit the moving of building. The expense of such temporary removal, raising or lowering of wires shall be paid 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 fifteen (15) working days advance notice to arrange for such temporary wire changes.

(f) **TREE TRIMMING.** The grantee shall have the authority, except when in conflict with existing Town ordinances or other utility agreements, to trim any trees upon and overhanging public right-of-way so as to prevent the branches of such trees from coming in contact with system facilities.

(g) **EASEMENTS.** All necessary easements over and under private property shall be arranged for by the grantee.

(h) **WORK WITHIN RIGHTS-OF-WAY.** Consistent with any State or Town's policy for temporary street closings, the closing of any part of a publicly maintained street or right-of-way must be approved by the appropriate agency and shall be prohibited during peak travel hours. During repairs or improvements, traffic on streets must be maintained. Where full closing of the street is required, the request for approval must be submitted to the appropriate agency within the established time lines.

(i) **Removal of Town property.** No Town property is to be removed from a right-of-way, including signing on utility poles, without proper permission from the Town.

## **SECTION 27. ERECTION, REMOVAL AND COMMON USE OF POLES.**

(a) No poles shall be erected by the grantee without prior approval of the Town; in so far as the Town has the legal authority to do so, with regard to location, height, types and any other pertinent aspect. However, no location of any pole or wire-holding structure of the grantee shall give rise to a vested interest, and such poles and structures shall be removed or modified by the grantee at its own expense whenever the Town determines that the public convenience would be enhanced thereby.

(b) Where poles already in existence for use in serving the Town are available for use by the grantee, the Town may require the grantee to use such poles and structures, if it determines that the public convenience would be enhanced thereby and the terms of the use available to the grantee are just and reasonable.

(c) Where a public utility serving the Town desires to make use of the poles or other wire-holding structures of the grantee, but agreement thereof with the grantee cannot be reached, the Town may require the grantee to permit such use for such consideration and upon such terms as the Town shall determine to be just and reasonable, if the Town determines that the use would enhance the public convenience and would not unduly interfere with the grantee's operation.

**SECTION 28. TESTS AND PERFORMANCE MONITORING.** The grantee will comply with all FCC rules and the Act regarding tests and performance monitoring of its cable tv system. Grantee will provide copies of its results to the Town, upon reasonable notice, and in the absence of such rules the grantee shall comply with the following:

(a) Such tests shall be performed by or under the supervision of a qualified registered professional engineer or an engineer with proper training and experience. A copy of said engineer's report shall be submitted to the Town, upon reasonable notice, describing test results, instrumentation, calibration and test procedures and the qualification of the engineer responsible for the tests.

(b) System monitor test points shall be established at or near the output of the last amplifier in the longest feeder line, at or near trunk line extremities. Such periodic tests shall be made at the test points as shall be required by the FCC.

(c) The Town shall have the right to employ, at the Town's expense, qualified consultants, if necessary or desirable, to assist in the administration of this or any other section of this franchise or the franchise agreement.

**SECTION 29. SERVICES TO SUBSCRIBERS AND USERS.**

(a) Should the grantee desire to change the selection of programs or services offered on any of its tiers, it shall use its best efforts to maintain the mix, quality and level of services provided over the system. Any such change in programs or services offered shall comply with the FCC rules and regulations and shall be reported to the subscribers at least thirty (30) days prior to the proposed implementation.

(b) A basic service tier shall be offered to subscribers throughout the term of this franchise, or as required by FCC rules.

(c) The grantee shall provide, when standard aerial installation is possible, basic and tier service and one (1) free outlet to each of the following public facilities located within three hundred (300) feet of existing service lines of the grantee: all courthouses, libraries, police and fire stations, municipal office buildings and public schools. The grantee shall notify the Town in writing when standard installation is not possible. No monthly service fee shall be charged for the first outlet installed. The grantee shall provide service to new construction hereafter for the above public facilities, provided they are within three hundred (300) feet of the existing service lines of the grantee. Installation costs and fees for additional outlets and equipment shall be charged to the Town at the grantee's prevailing rates for other subscribers.

(d) Northland agrees to add "X-Press service" to the cable system within eighteen (18) months from the effective date of this franchise, subject to Northland's negotiating a commercially reasonable contract. "X-Press service" currently provides:

(1) **CABLE IN THE CLASSROOM.** X-Press provides teacher support materials for CNN Newsroom and C-Span Short Subject which are transmitted via X-Change directly to the classroom and free lesson plans prepared by teacher interns encompassing a variety of subject matter and grade levels.

(2) X-Press has ongoing teacher support programs to include: student contests, quarterly newsletters for educators, teacher training sessions and national conferences.

(3) X-Press also provides in-home computer network system which provides family-oriented services such as, but not limited to, stock market access, money managers and a wide variety of software.

(e) Northland agrees to continue its office in the Town of Lake Lure. The office shall be open during normal business hours, but no less than six (6) hours per business day. The office may be co-located and will be staffed to receive payment for cable services and receive requests for service.

### **SECTION 30. INSTALLATIONS, CONNECTIONS, OTHER GRANTEE SERVICES.**

(a) STANDARD INSTALLATIONS. Standard installation shall consist of a subscriber connection not exceeding one hundred fifty (150) feet from a single point or pedestal attachment to the customer's residence. Service in excess of one hundred fifty (150) feet and of a nonstandard nature will be billed to the requestor. The desire of the subscriber as to the point of entry into the residence shall be observed whenever possible, subject to the grantee's good-faith judgment in regard to, but limited to, safety, efficiency and system performance. The grantee shall use due care in the process of installation and shall repair any damage to the subscriber's property caused by said installation. Such restoration shall be undertaken within a reasonable time after the damage is incurred and shall be completed as soon as possible thereafter, said time not to exceed fifteen (15) days, weather permitting.

(b) ANTENNAS AND ANTENNA SWITCHES. The grantee shall not, as a condition to providing cable communications service, require any subscriber or potential subscriber to remove any existing antenna structures for the receipt of over-the-air television signals.

(c) LOCKOUT DEVICES. The grantee shall provide to the potential subscriber, as part of its promotional literature, information concerning the availability of a lockout device for use by a subscriber. The grantee reserves the right to require a reasonable deposit for the use of this device. The lockout device described herein shall be made available to all subscribers requesting it, beginning with the passage of this franchise.

(d) RECONNECTION. The grantee shall restore service to customers wishing restoration of service, provided the customer shall first satisfy any previous obligations owed. Further, any such Reconnection may be on terms and conditions established by the grantee.

(e) FREE DISCONNECTIONS. Subscribers shall have the right to have their entire cable service disconnected without charge therefor. Such disconnection shall be made as soon as practicable. Upon request by a subscriber a pro-rata refund of unused service charges shall be paid to the customer within thirty (30) days from the date of termination of service.

(f) DELINQUENT ACCOUNTS. The grantee shall use its best efforts to collect delinquent subscriber accounts. Whenever possible, the grantee shall provide the customer with at least seven (7) working days written notice prior to disconnection.

(g) OPEN SYSTEM. The system of the grantee shall be operated in a manner consistent with the principle of accessibility of its facilities, equipment, channels, studios and other services to the Town public schools and community colleges having a legitimate use of the system; allocation of use of said facilities shall be made according to rules or decisions of regulatory agencies affecting the same, or by resolution of the Board.

(h) EMERGENCY USE OF FACILITIES. The grantee shall, in the case of any emergency or



disaster, make its entire system available, at no cost, to the Town or any other governmental or civil defense agency the Town shall designate. Grantee agrees to furnish emergency alert system as provided for in the Cable Act.

### **SECTION 31. CUSTOMER SERVICES**

Grantee will meet the customer service as established in Appendix A, as may be amended from time-to-time by the FCC.

### **SECTION 32. RIGHTS OF INDIVIDUALS.**

(a) **NONDISCRIMINATION REQUIRED.** The grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin, age, sex, or physical or mental handicaps, provided the subscriber shall pay all applicable fees for the service desired. The grantee shall comply at all times with all applicable federal, state and local laws and franchise relating to nondiscrimination which is hereby incorporated and made part of this franchise by reference.

(b) **INFORMATION ACCESSIBILITY.**

(1) Each individual shall have the right to information concerning the provision of this franchise and the rules formulated pursuant to it by the Board, agent or entity created hereunder.

(2) Each document required to be maintained, prepared, filed or submitted under the provisions of this franchise or pursuant to it, except those required and designated confidential by the grantee or the FCC, shall be a public document, available for public inspection and copying at the requestor's expense, at the office of the grantee during normal business hours. The charge for such copying shall approximate the cost of mechanical reproduction and shall not include a charge for labor.

(3) Each individual shall have the right to representation on such boards, commissions, agencies or other entities created hereunder or hereafter by the Board pursuant to the provisions of this franchise. Such representation by citizens of the Town shall be in the manner and form as the Board may determine.

### **SECTION 33. REPORTS REQUIRED.**

The grantee shall file with the Town, when requested and upon reasonable notice:

(a) **REGULATORY COMMUNICATIONS.** All reports required by the Federal Communications Commission (FCC), including, but not limited to, annual proof of performance tests and results.

(b) **FACILITIES REPORT.** An annual report setting forth the physical miles of plant construction and plant in operation during the fiscal year.

(c) **GRANTEE RULES.** The grantee's schedule of charges, contract or application forms of regular subscriber policy regarding the processing of subscriber complaints, delinquent subscriber disconnect or reconnect procedures and any other terms and conditions adopted as the grantee's policy in connection with its system subscribers.

(d) **PROOF OF BONDS AND INSURANCE.** The grantee shall submit to the Town the required performance bond, or a certified copy thereof, and written evidence of payment of required premium, and certification of policies of insurance required by this franchise, and written notice of payment of required premium.

(e) **FINANCIAL REPORTS.** The financial reports, specified herein, for the grantee shall be submitted annually to the Town.

(f) **OPERATIONAL REPORTS.** The following system and operational reports shall be submitted to the Town, upon written notification, and after reasonable notification:

(1) A report on the system's technical tests and measurements as set forth in the FCC's rules;

(2) A summary of the previous year's activities, including, but not limited to, new services offered;

#### **SECTION 34. RECORDS REQUIRED.**

(a) The grantee shall at all times maintain and make available to the Town, upon written notice and reasonable request, a: full and complete set of plans, records and "as-built" maps showing the exact location of all cable communication system equipment installed or in use in the Town, exclusive of subscriber service drops. These plans, records and "as built maps" will be treated as proprietary information and will be maintained and viewed at the cable operator's office.

(b) Other records. The Town may impose reasonable requests for additional information, records and documents from time to time.

#### **SECTION 35. IMPROVEMENTS TO THE EXISTING SYSTEM.**

Northland agrees to make certain improvements to the cable system as follows:

(a) Phase 1. Within twelve (12) months of the effective date of this franchise agreement:

(1) Upgrade the system to 330 MHZ and add six (6) new channels. Channels selected will be based on a survey of a reasonable sample of subscribers conducted by Northland and at Northland's expense.

(b) Phase 2. Within twenty-four (24) months of the effective date of this franchise agreement:

(1) Northland agrees to upgrade the system to a 54 channel capacity system. Any channel added to the cable line up for the Town will be based on a survey of a representative sample of subscribers conducted by Northland at Northland's expense.

(2) Northland agrees to install a fiber optic backbone consisting of approximately sixteen miles of fiber optic cable within the cable system.

(c) Northland agrees to construct a 40-channel capacity, 10 watt, microwave link between Lake Lure and Forest City and to offer the Northland News Program not later than June, 1996. Northland to provide a monthly status report on the progress of this project beginning June 26, 1996, to the Town

Manager Should weather or other factors, not under the control of Northland, prevent the completion of this project by July 1, 1996, Northland will report to the Board the reasons for delay and projected completion date(s). Should Northland's negligence be the cause of the projects delay beyond July 1, 1996, then Northland will provide one month of a premium channel, at no cost, to every subscriber within the Lake Lure franchise area, for each month of delay beyond July 1, 1996, for a maximum of six (6) months. If the project is delayed because of Northland's negligence, beyond January 1, 1997, then revocation procedures may be initiated or other remedies negotiated.

(d) Northland agrees to provide a construction schedule which will describe the major components of the upgrade and tentative time lines for completion. Construction schedule to be published at Appendix B, not later than January 1, 1997.

#### **SECTION 36. WAIVER**

The failure of the Town at any time to require performance by Northland of any provision hereof shall in no way affect the right of the Town hereafter to enforce the same. Nor shall the waiver by the Town of any breach of any provision hereof be taken to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself.

#### **SECTION 37. CUMULATIVE PROVISIONS**

The rights and remedies reserved to the Town by this franchise are cumulative and shall be in addition to and not in derogation of any other rights or remedies which the Town may have with respect to the subject matter of this franchise, and a waiver thereof at any time shall have no effect on the enforcement of such rights or remedies at a future time.

#### **SECTION 38. CAPTIONS**

Captions to sections throughout this franchise are solely to facilitate the reading and reference to the sections and provisions of the franchise. Such captions shall not affect the meaning or interpretation of the franchise

#### **SECTION 39. NO JOINT VENTURE**

Nothing herein shall be deemed to create a joint venture or principle-agent relationship between the parties, and neither party is authorized to, no shall either party act toward third persons or the public, in any manner which would indicate any such relationship with the other.

#### **SECTION 40. ENTIRE AGREEMENT.**

This agreement and all attachments hereto, as incorporated herein, represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, supersede all prior oral negotiations between the parties, and can be amended, supplemented, modified, or changed only by a written document executed by the parties.

#### **SECTION 41. FORCE MAJEURE**

Notwithstanding any provision of the contrary contained herein, neither the Town nor the grantee shall be held liable for or suffer any penalty or detriment for, any failure to comply with any provision of this

franchise agreement if such failure to comply accrues from any act of God or any other condition not within the reasonable control of such non-complying person; provided, however, that this provision shall not apply to grantee's financial obligations hereunder.

#### **SECTION 42. NOTICES**

All notices and other communications hereunder shall be in writing and shall be deemed to have been given on the date of actual delivery, by registered or certified mail, return receipt requested, postage prepaid. The address for service of notice to the grantee shall be addressed to Northland Premier Cable Limited Partnership, located at 1201 Third Avenue, Suite 3600, Seattle, Washington 98101, attention: John S. Whetzell and James A. Penney with a copy to Northland at 1022 West Main Street, Forest City, North Carolina 28043, Attention: System Manager. Notices to the Town shall be addressed to the Town Clerk, Town of Lake Lure, Post Office Box 255, Lake Lure, North Carolina 28746. Either the Town or the grantee may change the address to which all notices shall be sent by addressing a notice of such change in the manner provided in this section.

EFFECTIVE THIS THE 1ST DAY OF AUGUST, 1996, after being read and adopted at a first reading on July 9, 1996 and read and adopted at a second reading on July 23, 1996.



By: *Greg E. Lure*  
Mayor, Town of Lake Lure

DATE: 7-23-96

ATTEST:

BY: *Mary A. Flack*  
Town Clerk

DATE: 7-23-96

Approved as to form and legal sufficiency:

BY: *Cliff Pelt*  
Town Attorney

DATE: 7-23-96

Northland Premier Cable Limited Partnership

By: Northland Communications Corporation, General Partner

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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## APPENDIX A

### Customer Service Standards

#### 1. Subscriber Privacy

In accordance with the ACT, the company shall abide by the provisions of the Act; and no less than annually, provide notice in the form of a separate written statement to subscribers the provision of the Act.

#### 2. Employee identification

When, calling in person, on subscribers or other residents, all employees or authorized representatives of the grantee, including subcontractors, are required to display appropriate identification and a telephone number that can be used for verification of the representative capacity with the grantee. All vehicles shall display the name of the cable-telecommunication company.

#### 3. Office and Telephone Availability

- A. Knowledgeable, qualified company representatives shall be available to respond to customer telephone inquiries Monday through Friday during normal business hours. Additionally, based on community needs, system shall staff telephone for supplemental hours on weekdays and/or weekends.
- B. Under normal operating conditions, telephone answer time by a customer service representative, including wait time required to transfer the call, shall not exceed 30 seconds. This standard shall be met no less than ninety percent of the time measured on an annual basis.
- C. Under normal operating conditions, the customer shall receive a busy signal less than three percent of the total time that the cable office is open for business.
- D. Customer service center location shall be open for transactions Monday through Friday during normal business hours in order to receive service calls, complaints and accept payments. The service center may be co-located with another business.
- E. Grantee shall be responsible for adopting, publishing and implementing subscriber complaint procedures. The procedures shall be designed to resolve subscriber complaints in a timely and satisfactory manner; to develop sensitivity and responsiveness to subscriber needs on the part of the franchise management; and to improve the quality and dependability of services to subscribers by the Grantee. Established Complaint Procedures shall include specific provisions for registering subscriber repair service complaints received by telephone twenty-four (24) hours each day and seven (7) days each week; for permitting subscriber repair service complaints to be received by the Grantee's business office from 8:00 a.m. until 5:00 p.m. on Monday through Friday of each week; and the address of the Grantee's business office.

#### 4. Installations, Outage and Service Calls

Under normal operating conditions, each of the following standards shall be met no less than 95% of the time measured on an annual basis.

- A. Standard installation shall be preformed within seven business days after an order has been placed. "Standard" installations are up to one hundred and fifty (150) feet from the existing distribution system.
- B. Excluding those situations beyond the control of the Grantee, the Grantee shall respond to service interruptions promptly and no later than 24 hours after the interruption becomes known to the Grantee. Grantee must begin actions to correct service problems unrelated to outages the next business day after notification to the Grantee of the service problem.
- C. The appointment window alternatives for installations, service calls and other installation activities shall be (a) morning, (b) afternoon, or (c) all day during normal business hours. Additionally, based upon community needs, the Grantee shall schedule supplemental hours during which appointments can be set.
- D. If, at any time, an installer or technician is running late, an attempt to contact the customer shall be made and the appointment reschedule as necessary at a time which is convenient for the customer.
- E. The Grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible.
- F. Grantee shall receive customer calls twenty-four (24) hours per day and respond to single customer outage complaint calls until 9:00 p.m. on normal business days. After 9:00 p.m. on any day, trained technicians shall respond to calls if three (3) or more complaints are received by subscribers served by a common system.

5. Communication, Statements, Refunds and Credits

- A. The cable company shall provide written information in each of the following areas at the time of installation and at any future time upon request:
  - products and services offered;
  - prices and service options;
  - installation and service policies;
  - how to use the cable service
- B. Statements (billing) shall be clear, concise and understandable.
- C. Refund checks shall be issued promptly, but no later than the earlier of 45 days or the customer's next billing cycle following the resolution of the request, and the return of the equipment supplied by the cable company.
- D. Customers shall be notified in writing a minimum of 30 days in advance of any rate or channel change, provided the change is within the control of the Grantee.
- E. Outage credit granted to subscribers as follows:
  - Should Grantee fail to correct a service problem, other than a service interruption, within 24 hours after having been provided notice, Grantee shall credit 1/30th of the monthly charge for the affected tier or premium service program to the subscriber for each 24-hour period or fraction thereof following the first 24-hour period during which the subscriber experiences reduced service.

6. Complaint - Appeals

- A. Upon notification by a subscriber of an unresolved complaint, the Town Manager shall determine the facts of the complaint by obtaining information from the subscriber and the franchise; and shall act to resolve the complaint in a manner consistent with the authority granted the Town Manager by the Council.
- B. The Town may file a rate complaint with the FCC within 180 days of the effective date of a rate increase on the cable operator's cable programming services (basic) tier if within 90 days of that increase the local franchise authority receives more than one subscriber complaint concerning the increase.



- C. Before filing a rate complaint with the FCC, the Town Manager must first give the cable operator written notice, including a draft FCC Form 329, of the local franchise authority's intent to file the complaint. The Local Franchise Authority must give an operator a minimum of 30 days to file with the local franchise authority the relevant FCC forms that must be filed to justify a rate increase, or where appropriate, certification that the operator is not subject to rate regulation. The operator must file a complete response with the local franchise authority within the time period specified by the local franchise authority. The local franchise authority shall file with the FCC the complaint and the operator's response to the complaint. If the operator's response to the complaint asserts that the operator is exempt from rate regulation, the operator's response can be filed with the local franchise authority without filing specific FCC Forms.

APPENDIX B

SUMMARY OF CONSTRUCTION SCHEDULE

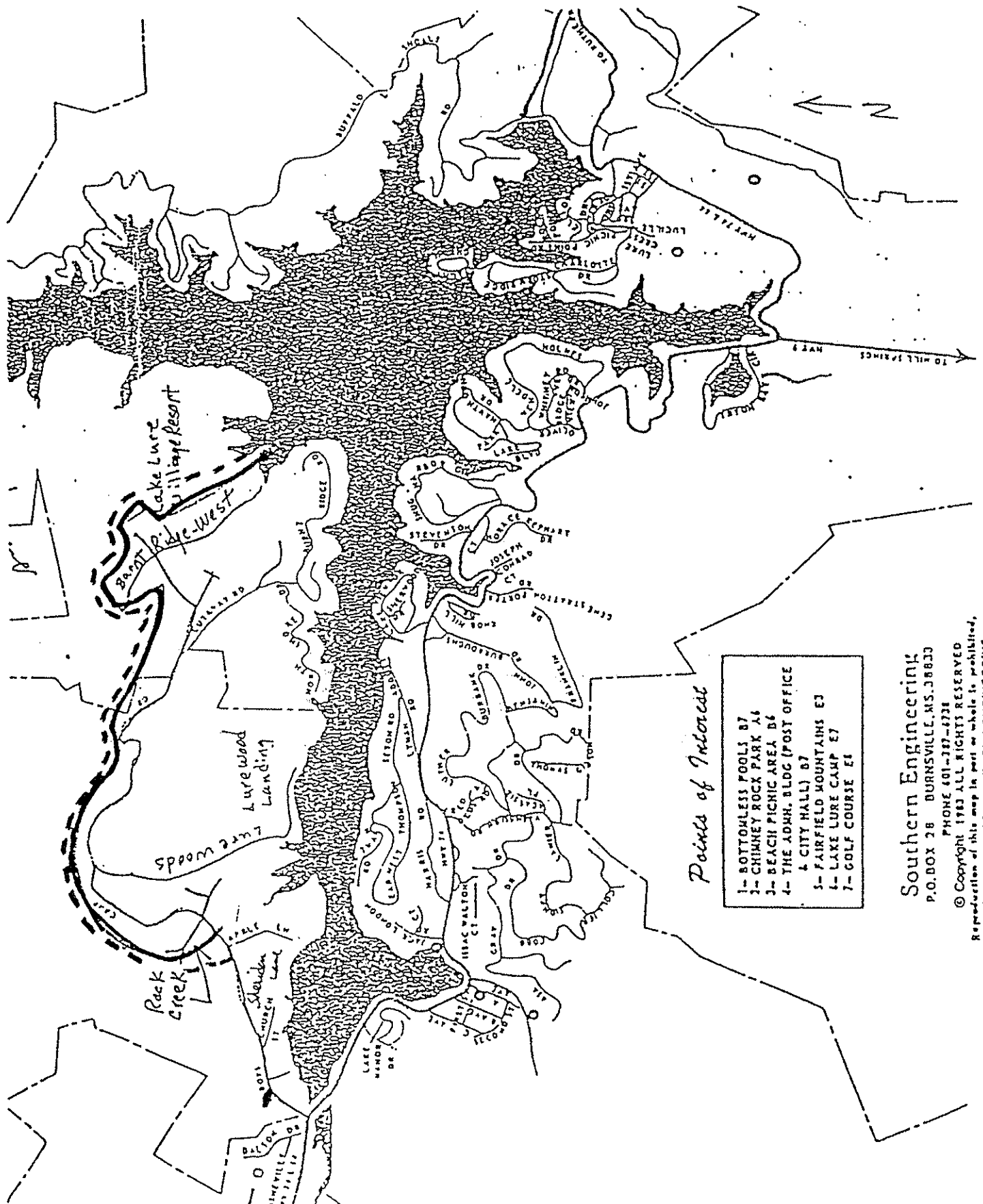
THIS IS INTENDED TO LIST THE TENTATIVE CONSTRUCTION OR REBUILD SCHEDULE AND ANY OTHER THING HAVING AN IMPACT ON THE TOWN. SEE SECTION 36.

(To Be Published)

APPENDIX C

MAP OF BOYS CAMP ROAD AREA

MAP OF BOYS CAMP ROAD AREA



Southern Engineering  
P.O. BOX 28 BURNSVILLE, MS. 38833

PHONE 401-227-1731  
© Copyright 1983 ALL RIGHTS RESERVED  
Reproduction of this map in part or whole is prohibited,  
unless approved by SOUTHERN ENGINEERING,  
where additional copies are available.

# Memorandum to Town Manager from Lake Advisory Committee

July 10, 1996

I received a call yesterday from a gentleman who was unable to put his boat on the lake this year because his boat was several inches longer than the 20' limit.

To the best of my recollection ( I haven't taken time to dig back through the committee minutes ), the Lake Advisory Committee was asked to look at this situation about four years ago. At that meeting, the Committee recommended that a lenient approach be taken with the length of the runabouts since very few are exactly 20', but no boats of 21' in length or greater should be allowed.

After polling the members of the Lake Advisory Committee by telephone this morning, the consensus of opinion was unanimously the same as it was four or five years ago.

Hopefully this recommendation will help you and your staff with these situations when they arise in the future.

Respectfully submitted by Robert H. Washburn, Chairman

## Memorandum to Town Council from Lake Advisory Committee

July 16, 1996

At the June 3 meeting of the Lake Advisory Committee the following recommendation to Council was discussed and unanimously approved by Committee. You were advised of this in a memorandum dated June 10.

- The date for lowering the lake this year should be November 15. This would allow property owners and visitors to enjoy the usually beautiful early weeks of November on the water. The Committee understands that the lake would then come up in mid to late March.

It is the Committee's understanding that Town Council has set November 1 as the date for lowering the lake. Please read over the following topics that were discussed on this issue at the June 3 meeting to expand on the reasons for our recommendation of waiting until November 15.

- Property owners enjoy the lake more for boating and fishing activities in mid November than they do in March.
- The fall foliage usually reaches its peak in mid-November which draws thousands of visitors to the Lake Lure area at that time. Lowering the lake November 1 would impact the area businesses more than keeping it down until March 15.
- The fishing in early to mid November is better than any other time of the year.
- Keeping the lake down until mid to late March would not impact the spawning of the fish.
- Most seasonal property owners wait until after Thanksgiving to close their lake houses for the winter. November 15 would be a compromise between the two dates.

We sincerely hope that you will reconsider setting the lowering date to November 15.

Respectfully submitted by Robert H. Washburn, Chairman.

1541 Hiatus Road  
Pembroke Pines, Fla. 33026  
(954) 450-1998

7/10/96

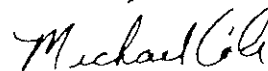
Lake Lure  
59 Ridge Road

Mr. Strutner,

In late 1986 I purchased openfisherman style boat to be used in Lake Lure and South Florida. I used the boat in Lake Lure and purchased permits for 1987, 1988, and 1989. Since 1989 I have not been able purchase a lake permit because of the new city ruling regarding the size limits. According to the boat registration the boat is 20'-9" in length, which is 9" over the new regulations. I have been very frustrated by not being able to put my boat back on the Lake.

Since the city regulations were established in April 25, 1989 which is well after my boat had already been on the lake with proper permits. I am requesting that my boat be Grandfathered In regarding this new regulation.

Sincerely,

A handwritten signature in cursive script that reads "Michael Cole".

Michael Cole