



Town of Lake Lure

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Incorporated 1927

MINUTES OF THE REGULAR MEETING OF THE LAKE LURE TOWN COUNCIL HELD TUESDAY, JULY 9, 1996, 9:30 A.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
Sam Karr, Finance Director

ABSENT: N/A

CALL TO ORDER

Mayor Lehner called the meeting to order at approximately 9:30 a.m.

Mayor Lehner requested that a board appointment for the Board of Adjustment/Lake Structures Appeals Board be added to the agenda under new business. Therefore, Commissioner Cobb moved, seconded by Bush, to add to the agenda under new business the board appointment for the Board of Adjustment/Lake Structures Appeals Board. The vote of approval was unanimous.

INVOCATION

Town Manager Strutner gave the invocation.

AUDIENCE OF CITIZENS

No persons requested to speak under audience of citizens.

APPROVAL OF MINUTES

Commissioner Cobb moved, seconded by Commissioner Schichtel, to approve the minutes of Tuesday, June 25, 1996 Regular Council meeting and the Closed Session minutes as written and presented by the Clerk. The vote of approval was unanimous.

**PUBLIC HEARING -- RECEIVE PUBLIC COMMENTS ON 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 Rose moved, seconded by Commissioner Cobb, to enter into the public hearing to receive public comments on the draft ordinance reflecting a cable television franchise agreement with Northland Cable. The vote of approval was unanimous.

Dave Harris, representing Custom Communications, and John Carr, Regional Manager for Northland Cable were present to answer the public's questions.

Mr. Harris gave a summary of the proposed ordinance granting a cable television franchise agreement between the Town of Lake Lure and Northland Cable. Mr. Harris recommended that Council approve the ordinance at the first reading on July 9, 1996 and at a second reading on July 23, 1996. Mr. Harris also recommended that Council waive the first reading aloud of the Ordinance and adopt it as written.

Mr. Harris said that a second reading of the draft will take place at a public hearing on July 23, 1996 at 7:30 p.m. at the Lake Lure Municipal Center.

Mayor Lehner invited citizens who wanted to speak during the public hearing. No one requested to speak during the public hearing.

Commissioner Bush moved, seconded by Commissioner Schichtel, to waive the first 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.

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

Page 3 - Minutes of the July 9, 1996 Regular Council Meeting

Commissioner Bush moved, seconded by Commissioner Rose, 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. The vote of approval was unanimous. (Ordinance attached).

PRESENT AWARD TO OFFICER MICHAEL SOUTHER

Police Chief Jake Gamble presented an award to Lake Lure Police Officer Michael S. Souther in appreciation for service to the Lake Lure Police Department from July 1, 1992 -- July 7, 1996.

Mr. Gamble also introduced Steve Thorn, who will be filling the police officer position of Michael Souther. Mr. Thorn has been a telecommunicator with the Rutherford County's Communication Center and has served as reserve officer with the Town of Lake Lure for 10 months.

Council members expressed their appreciation to Officer Souther for his service to the Town of Lake Lure Police Department.

OLD BUSINESS

a. Other Old Business

There was no other old business for discussion.

NEW BUSINESS

a. Discuss use of Town Property

Town Council discussed the use of Town property located on 64/74-A adjacent to Jimmy's Original Restaurant.

It was the consensus of Town Council to authorize Town Manager John Strutner to talk with Mr. Jim Hinkle, Town Attorney Chris Callahan, and others regarding the use of Town property located on 64/74-A adjacent to Jimmy's Original Restaurant being currently used by customers and report back to Council for more discussion.

NEW BUSINESS

**b. Board Appointment -- Board of Adjustment
/Lake Structures Appeals Board**

Council received a letter of resignation dated June 17, 1996, from Carl Sisson, regular member of the Board of Adjustment/Lake Structures Appeals Board. Mr. Sisson stated that he has enjoyed the experience of serving on these boards, but personal considerations require that he tender his resignation effective immediately.

Commissioner Bush moved, seconded by Commissioner Cobb, to appoint Riley Hardy, an alternate member, to complete the term of Carl Sisson as a regular member to the Board of Adjustment/Lake Structures Appeals Board. The vote of approval was unanimous.

Town Council voted by ballots on the following nominees to serve as alternate on the Board of Adjustment/Lake Structures Appeals Board to replace Riley Hardy:

- | | |
|--------------------|----------------------------|
| 1. Ken West | 3. Richard (Dick) Lorenzen |
| 2. Robert L. Beach | |

Town Manager Strutner announced that after counting the ballots, Richard (Dick) Lorenzen received three votes and Robert Beach received one vote. Therefore, Mr. Lorenzen was appointed to serve as the alternate on the Board of Adjustment/Lake Structures Appeals Board to replace Riley Hardy.

NEW BUSINESS:

c. Other New Business

After discussion regarding the lowering of the lake level for 1997, Commissioner Cobb moved, seconded by Commissioner Schichtel, to lower the lake level starting on November 1, 1996 and raise the lake level beginning on March 1, 1997.

It was the consensus of Council to authorize the Town Manager to get proposals from dredging companies and apply to the US Corps. of Engineers for a permit to remove lake silt.

Council members requested that an article be placed in the August issue of the Lake Lure Newsletter announcing the dates of lowering and raising the lake level for 1996-97.

STAFF REPORTS

Town Manager Strutner reported that he had received a call from District Conservationist Albert Moore, Natural Resources Soil Conservation Service, advising that they have received funding to do a water shed study and will be commencing the study on approximately August 26, 1996 and hope to have the report completed by November 1, 1996.

COUNCIL COMMENTS

Mayor Lehner requested that Council members receive a final monthly report showing the figures for the end of this fiscal year (1995-1996).

Mayor Lehner stated that he would like to come up with a goal for the golf course department regarding the up coming year and at the next regular Council meeting ask for a consensus of opinion as to what the goals should be as far as a satisfactory operation of the golf course.

Commissioner Cobb, liaison to the Lake Lure Golf Course Committee, told Council members that she had suggested to the Committee the possibility of appointing a female member to the Golf Course Committee.

Mayor Lehner requested that a board appointment to the Lake Lure Golf Course Committee be put on the next regular Council meeting agenda for discussion.


Commissioner Cobb requested that notices be posted for the Golf Course meetings.

ADJOURNMENT

With no further items of discussion, Commissioner Schichtel moved, seconded by Commissioner Cobb, to adjourn the meeting at 11:05 a.m. The vote of approval was unanimous.

ATTEST:


Mary A. Black, CMC/AE
Town Clerk


Mayor Max E. Lehner

Carl Sisson
128 Jonathan Lane
Lake Lure, NC 28746
June 17, 1996

The Honorable Max Lehner
Mayor of Lake Lure
P.O. Box 255
Lake Lure, NC 28746

Dear Mayor Lehner:

Effective this date, I am submitting my resignation as a member of the Lake Lure Board of Adjustment and the Lake Structures Appeals Board.

I have enjoyed the experience of serving on these boards but personal considerations require that I take this action.

Very truly yours,


Carl Sisson

COUNCIL REPORT

DATE: May 30, 1996

TO: Honorable Mayor and Town Council
Town of Lake Lure

THRU: Town Manager

FROM: Custom Communications

SUBJECT: Franchise Agreement Between the Town of Lake Lure and Northland

BACKGROUND:

The Town of Lake Lure finds that the development of a cable television franchise agreement with Northland Cable has the potential of having great benefit and impact on the citizens of Lake Lure. The Town has further determined that the public convenience, safety and general welfare can best be served by establishing certain regulatory powers which are vested in the Town.

On October 24, 1995 the Town Council held a public hearing to determine the cable-related needs of the community and to issue specific guidance as to the content of the proposed franchise agreement. Custom Communications, Kernersville, North Carolina, under contract to the Town to assist with the preparation of the agreement, drafted a model franchise agreement and began negotiations with Phoenix Cable, the then, cable operator. During the negotiations process, the Council approved the transfer of the franchise from Phoenix to Northland Cable. Negotiations were delayed while the transfer took place and the new management became familiar with the new system and the cable-related community needs. The final draft of the cable television franchise agreement is attached to this report for approval by the Council.

SUMMARY OF THE AGREEMENT:

The agreement is a non exclusive, revokable for cause, agreement with a term of 10 years with provisions for a 5 year extension, if the Council deems appropriate. A performance review may be conducted in open hearing before the Town Council at any time, but is specifically provided for at the end of 5 years in order to examine current technology changes.

The agreement provides for the consent by the Council in the event of sale or transfer of the franchise; revocation of the agreement under certain specific conditions; sets construction standards; and provides for a performance bond and one million dollars of insurance, holding the Town harmless.

Under the terms of the agreement all government buildings and public schools are furnished a cable outlet and free cable service; customer service standards are outlined; and the Town will

receive a 5% franchise fee. In the event service is extended to newly annexed areas, cable service will be provided to areas with 20 homes per mile. Northland has agreed to provide service to the Boys Camp Road area on a cost share basis, if at least 40 homes (subscribers) pay a \$200 refundable deposit by November 1, 1996. The cost per subscriber for extension of cable service, if 40 homes are reached, is \$600.00.

Cable in the class room will be provided to each school under the terms of the "X-Press" service, providing that service is commercially reasonable.

An office will be maintained in the Town of Lake Lure offering at least six hours of service per business day.

Improvements to the system include:

- * Within 12 months the system will be upgraded to provide 6 additional channels.
- * Within 24 months the system will be upgraded to provide a 54 channel capacity
- * Fiber optic technology will be used in the upgrade.
- * In the transfer, Northland agreed to provide a micro wave link between Lake Lure and Forest City to improve reception. Should this project be delayed beyond July 1, 1996, Northland agrees to provide one month of a premium channel, at no cost, to every subscriber for each month of delay for a period of six months.

Northland Cable has agreed to the terms of the attached franchise agreement.

RECOMMENDATION:

That the Council approve the Cable Television Franchise Agreement with Northland Premier Cable at a first reading on June 25, 1996 and at a second reading on July 23, 1996.

Inclosure: Final Draft of the Cable Television Franchise Agreement between the Town of King and Northland Cable.

ORDINANCE NO. _____

**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 BOARD OF 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 made and entered into as of this 25 th day of June 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.

SECTION 3. EFFECTIVE DATE OF FRANCHISE

The effective date of this franchise shall be July 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 prior cable television franchise ordinances/agreements, with Northland are hereby rescinded.

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 this franchise.

(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.

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 only subscribers in one (1) or more multiple-unit dwellings under common ownership, control or agreement, unless such facility or facilities uses 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; or
- (d) Any facilities of any electric utility used solely for operating its electric utility systems.

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.

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”)

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, as 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 and/or other applicable 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.

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 (45th) 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, contacts 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 Chairman, Town Council 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.