ORDINANCE NO. 02-02

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH ESTABLISHING THE CABLE TELEVISION FRANCHISE ORDINANCE, PROVIDING AUTHORITY AND PURPOSE; DEFINITIONS; FRANCHISE PROVISIONS; RIGHTS IN ORDINANCE; INITIAL PERFORMANCE GUARANTEE; RIGHTS TO USE STREETS NOT WARRANTED; OTHER AGREEMENTS, PERMIT AND EASEMENT REQUIREMENTS; NO PROPERTY RIGHTS CONVEYED; LIABILITY, INDEMNIFICATION; INSURANCE; BONDING REQUIREMENTS; FCC LICENSES; COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES; MINIMUM FACILITIES AND SERVICES; TECHNICAL STANDARDS; ACCESS CHANNELS AND FACILITIES; CUSTOMER SERVICE REQUIREMENTS; SUBSCRIBER PRIVACY; DISCRIMINATION PROHIBITED; CABLE SYSTEM CONSTRUCTION; USE OF STREETS; REPORTS AND RECORDS; ENFORCEMENT REMEDIES; RENEWAL OF FRANCHISE; TRANSFERS; REVOCATION OR TERMINATION OF FRANCHISE; CONTINUITY OF SERVICE MANDATORY; RATES; PERFORMANCE EVALUATION; ADMINISTRATION; FORCE MAJEURE; APPLICABILITY; MUNICIPAL CABLE SYSTEM OWNERSHIP AUTHORIZED; RESERVATION OF RIGHTS; SAVINGS; SEVERABILITY; APPLICABLE LAW; AND PROVIDING FOR AN EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

SECTION I. AUTHORITY AND PURPOSE

This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, 166, Florida Statutes, and other applicable provisions of law. This Ordinance is enacted for the purpose of providing procedures, requirements, regulations, conditions and provisions which shall apply:

1. To the granting, issuance, modification, transfer and renewal of nonexclusive franchises for the installation, operation, use and maintenance of cable television systems within the limits of the Town of Fort Myers Beach, Florida; and
2. To provide reasonable and adequate protection and control over the use of Town-owned easements and Town rights-of-way by Cable Television Franchisees; all in the interest of the public health, safety and welfare of the citizens and inhabitants of the Town of Fort Myers Beach, Florida.

SECTION II - DEFINITIONS

A. For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein unless the context clearly indicates that another meaning is intended. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural. The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined herein or in any Franchise Agreement that might be granted hereunder shall be given the meaning set forth in the Communications Act of 1934, 47 U.S.C. § 521 et seq., and the Telecommunications Act of 1996, and as those Acts may hereinafter be amended (collectively the "Communications Act"), and, if not defined therein, their common and ordinary meaning.

1. "Activated Channel" means those channels engineered at the head end of a cable system for the provision of services generally available to residential subscribers of the Cable System, regardless of whether such services actually are provided, including any channel designated for educational or governmental use.
2. "Access Channel" means any channel on a cable system set aside without charge by the Franchisee for non-commercial educational and/or local governmental use.
3. "Affiliate" means any person who directly or indirectly owns or controls a Franchisee, any person who a Franchisee directly or indirectly owns or controls, or any person under common ownership or control with a Franchisee.
4. "Analog Channel" means bandwidth in the electromagnetic spectrum capable of carrying one (1) standard television signal that is delivered in an analog format.
5. "Applicant" means any person submitting an application within the meaning of this Ordinance.
6. "Application" means any proposal, submission or request to (1) construct and operate a cable system within the Town; (2) transfer a franchise or control of the Franchisee; (3) renew a franchise; (4) modify a franchise; or (5) seek any other relief from the Town pursuant to this Ordinance, a Franchise Agreement, the Communications Act, or other applicable law. An application includes an applicant's initial proposal, submission or request, as well as any and all subsequent amendments or supplements to the proposal and relevant correspondence. The Franchise Agreement will represent the entire agreement.
7. "Basic Cable Service" or "Basic Service" means any service tier which includes the retransmission of local television broadcast signals, and educational or governmental access channels.
8. "Communications Act" means the Communications Act of 1934, 47 U.S.C. § 151 et seq., as that Act has been and may hereinafter be amended.
9. "Cable Service" means the transmission of video or other programming services over a cable system to subscribers together with any subscriber interaction, if any, which is required for the selection or use of such video programming or other cable services. Unless otherwise preempted by applicable law, cable internet services, or other cable services, provided by a Franchisee, its parent, affiliate or subsidiary over the Cable System shall be deemed "cable services" as permitted under Title VI of the Communications Act of 1934, as amended.
10. "Cable System," or "System," means any facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming, and which is provided to multiple subscribers within the Town. 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 right of way; (c) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201 et seq., except that such facility will be considered a cable system to the extent it is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on demand services; (d) an open video system that complies with SECTION 653 of the Telecommunications Act of 1996; or (e) any facilities of any electric utility used solely for operating its electric utility systems.

11. "Control of a Franchisee or Applicant" means possession of the ability to direct or cause the direction of the management or policies of a Franchisee, or applicant, or the operation of a Franchisee's system, either directly or indirectly, whether through ownership of voting securities, by contract or in any other manner.
12. "Fair Market Value" means the price that a willing buyer would pay to a willing seller for a going concern but with no value allocated to the franchise itself.
13. "FCC" means the Federal Communications Commission, or any successor governmental entity thereto.
14. "Franchise" means the right granted by the Town to a Franchisee in a Franchise Agreement to construct, maintain and operate a cable system under, on, and over Streets, roads and any other public ways, rights-of-ways, or easements within the Town. The term does not include any license or permit that may be required by this Code or other laws, ordinances or regulations of the Town for the privilege of transacting and carrying on a business within the Town or for disturbing or carrying out any work on any Street.
15. "Franchise Agreement" means a contract entered into in accordance with the provisions of this Code between the Town and a Franchisee that sets forth the terms and conditions under which the franchise will be exercised.
16. "Franchise Area" means that territory within the Town, as those limits may change from time to time through annexation or contraction, over which the terms of a Franchise Agreement shall extend.
17. "Franchisee" means any person granted a franchise pursuant to this Code who has entered into a Franchise Agreement with the Town.
18. "Gross Revenues" means all revenues derived by the Franchisee and, any Affiliates, subsidiaries or parent of the Franchisee from the operation of the Cable System to provide Cable Services in the Town. Gross Revenues include, but are not limited to, fees charged Subscribers for Basic Service; fees charged Subscribers for any optional, premium, per-channel or per-program service; fees charged Subscribers for any tier of service other than Basic Service; installation, disconnection, reconnection and change-in-service fees; late fees in excess of five dollars ($5.00); leased access fees, payments or other consideration from programmers for carriage of programming on the system (excluding marketing support to the extent such funds are not considered revenue under GAAP); revenue from converter, remote, modem or any other equipment rentals; revenues from leases of cable or fiber optic lines and other transmission devices and equipment revenues from cable modem and internet products and services to the extent included under Subsection 10 above; advertising revenues allocable to the Town based on a percentage of Subscriber Base in the Town divided by the Subscriber Base of the system. Such percentage shall then be

multiplied by the total advertising revenue of the system to determine the allocable gross revenue stemming from advertising; revenues from home shopping channels or other sources allocable to the Town, provided that where certain home shopping channel or other such revenue is allocable to more than one franchise area due to common zip codes, the Franchisee shall allocate the percentage of revenue to the Town which is equivalent to the percentage of the population of the unincorporated area of the Town divided by the total population for the allocable franchise areas in question. Gross Revenues shall be the basis for computing the franchise fee imposed pursuant to SECTION III (L)(1) hereof. Gross Revenues shall not include revenues directly generated by affiliated programmers for the provision of programming; any taxes on services furnished by the Franchisee which are imposed upon any Subscriber or user by the state or other governmental unit and collected by the Franchisee on behalf of said governmental unit and which the Franchisee passes on in full to the applicable tax authority. In addition, gross revenues shall not include the first Five Dollars ($5.00) of late fee payments; return check charges; returned equipment charges; or bad debt. However, it is hereby expressly provided that franchise fees shall be included in the calculation of Gross Revenues. Further, franchise fees shall not be paid on Subscriber deposits unless and until said deposits are applied to a customer account for services rendered. Revenue of an Affiliate, subsidiary or parent shall be Gross Revenue under this definition only to the extent such revenue is derived from the operation of the cable system to provide cable service by the Affiliate, subsidiary or parent acting in the capacity of a cable operator and not in the capacity of a television program provider.

19. "Institutional Network" means a dedicated closed network, or a functionally equivalent alternative acceptable to the Town, for use by the Town to provide Cable Services and non-Cable Services, including but not limited to bi-directional data transmission for educational and governmental use within the Town. The network shall be capable of providing one-way, two-way, interactive, and machine-to-machine transfer of audio, video, voice and data signals within the network as designated by the Town.
20. "Interconnection" means the electronic connection of two or more franchised cable systems for the purpose of sharing EG programming.
21. "Law" means all duly enacted and applicable federal and state laws and Town ordinances, codes, rules, regulations and orders.
22. "Leased Access Channel" means a channel designated in accordance with Section 612 of the Communications Act, 47 U.S.C. § 532, for commercial use by persons unaffiliated with the Franchisee.
23. "Open Video System" A facility consisting of a set of transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, provided that the FCC has certified that such a system complies with applicable FCC rules and regulations.
24. "Overbuild" means that portion of a cable system constructed to serve subscribers already served by an existing cable system.

25. "Person" means any individual, corporation, partnership, association, joint venture, organization or legal entity of any kind, and any lawful trustee, successor, assignee, transferee or personal representative thereof, but shall not mean the Town.
26. "Service Tier" means a category of multi-channel cable service provided by a Franchisee and for which a separate charge is made by the Franchisee.
27. "State-of-the-Art" means that level of cable system technical performance, capacity, equipment, components and service (without reference to the content of service) equal to that which has been developed and demonstrated to be generally acceptable and used in systems of the Franchisee within Lee County Florida, excluding Tests, and which is technically and commercially feasible on the Franchisee's system.
28. "Street or Streets" means the surface, the air space above the surface and the area below the surface of any public street, highway, road, boulevard, concourse, driveway, freeway, thoroughfare, parkway, sidewalk, bridge, tunnel, park, waterway, dock, bulkhead, wharf, pier, court, lane, path, alley, way, drive, circle, easement, or any other public right-of-way or public place, including public utility easements dedicated for compatible uses, or any other property in which the Town holds any kind of property interest or over which the Town exercises any type of lawful control, and any temporary or permanent fixtures or improvements located thereon, as may be ordinarily necessary and pertinent to construct and operate a cable system. The term includes any Rights-of-Way granted to the public or to any governmental body by way of conveyance, dedication, restriction, or by easement and any area within an easement given for governmental purposes.
29. "Subscriber" means any person who lawfully receives cable service delivered over the Cable System.
30. "Subscriber Base" means the total number of residential and commercial subscribers within the Town. For purposes of calculating subscribers under bulk or multi-user contracts, the Franchisee shall count each individual unit (e.g., in a multiple family dwelling, a unit will be defined as each subscriber unit within the structure) included within a contract for service as one subscriber. Franchisee may use reasonable equivalency measures provided it uses such measures uniformly for all franchise areas served by the System, and as provided for in a franchise agreement.
31. "System Malfunction" means any cable system equipment, facility or signal failure or malfunction that results in the loss of picture or sound, as defined as compliance with the FCC standards and the requirements of the Ordinance, on one or more channels to one or more subscribers that receive the cable signal from the same node. A system malfunction is major if it affects fifty (50) or more subscribers.
32. "Town" means the Town of Fort Myers Beach, Florida.
33. "Town Manager" means the Town Manager of the Town of Fort Myers Beach, Florida, or a designee, or any successor to the powers of the Town Manager.
34. "Transfer of a Franchise" means any transaction in which (1) any ownership or control of a Franchisee or its cable system is transferred from one person or group of persons to another person or group of persons so that control of a Franchisee is transferred; or (2) the rights and/or obligations held by a Franchisee under a Franchise Agreement are transferred or assigned to another person, group of persons or business entity. A transfer shall be considered "pro forma" when it involves a transfer to a

person, group of persons or business entity affiliated with the Franchisee and will not result in a change in the control or ownership of the Franchisee.

35. "Two-way Capability" means the incorporation into a cable system of all appropriate design and engineering characteristics and features so that two-way transmission, including but not limited to addressability, over the system can be implemented and activated.
36. "Video Channel or Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel, including the associated audio signal.

SECTION III - FRANCHISING PROVISIONS

A. Franchise Authority.

1. The Town may grant one or more non-exclusive franchises in accordance with this Ordinance.

B. Franchise Required.

1. Unless the Town is otherwise preempted from exercising franchising authority by applicable law, no person may construct or operate a cable system over, on, or under public streets in the Town without a franchise granted by the Town and no person may be granted a franchise without having entered into a Franchise Agreement with the Town pursuant to this Ordinance or other such Ordinance of the Town as may be applicable. All provisions of this ordinance shall be incorporated in any franchise as a condition of said franchise, unless otherwise expressly agreed to by the parties in a franchise agreement.

2. Any franchise granted pursuant to this Ordinance shall be solely for the provision of cable service and shall not be construed to authorize the provision of telephone, non-cable video or other telecommunications service.

3. Nothing in this ordinance shall prevent a Franchisee from applying for a separate franchise or such other authorization as may lawfully be required by the Town for the provision of telephone, non-cable video or other telecommunications service, pursuant to applicable law.

4. Any person desiring to install maintain or operate an Open Video System shall file and application with the Town Manager to obtain a franchise consistent with this Ordinance.

C. Franchise Characteristics.

1. A franchise authorizes use of Town streets for installing cables, wires, lines, optical fiber, underground conduit, ducts, conductors, amplifiers, vaults, and other facilities as necessary and pertinent to operate a cable system to serve subscribers within the Town, but does not expressly or implicitly authorize the Franchisee to provide service to, or install cables, wires, lines, underground conduit, or any other equipment or facilities upon private property without owner consent (except for use of compatible easements pursuant to Section 621 of the Communications Act, 47 U.S.C. § 541(a)(2) or as otherwise may be provided by binding law), or to use publicly or privately owned conduits without a separate agreement with the owners.

2. A franchise is nonexclusive, and will not expressly or implicitly preclude the issuance of other franchises to operate cable systems within the Town, or affect the Town's right to authorize use of Town streets to other persons to operate cable systems.

3. All privileges prescribed by a franchise shall be subordinate to any prior lawful occupancy of the Streets, and the Town reserves the right to reasonably designate where a

Franchisees' facilities are to be placed within the Streets. Such designation may include, but not be limited to, consideration of the availability of space in the rights of way.
4. A franchise shall be a privilege which is in the public trust. No transfer, excluding pro-forma transfers, as defined herein, mortgages and pledges of Franchisee's securities, of a franchise shall occur without the prior consent of the Town and unless application is made by the Franchisee, and Town approval is obtained, pursuant to SECTION XXV hereof and the Franchise Agreement.
5. A Franchise granted to an applicant pursuant to this Ordinance to construct, operate and maintain a cable system within the Town, shall be deemed to constitute both a right and an obligation on the part of the Franchisee to provide the services and facilities of a cable system as required by the provisions of this Ordinance and the Franchise. The Franchise Agreement shall constitute all of the terms and conditions of the Franchise that are finally negotiated and agreed upon by the Town and Franchisee. A Franchisee shall be bound by all documents or other portions of an Application which the Town relies upon as material and an inducement to granting a Franchise, and which are integrated by the Town and Franchisee as an exhibit to the Franchise. All oral representations made by an Applicant, or its representatives, before the Town Council and on which the Council explicitly relies in the grant of a franchise, shall be part of the record and binding upon the Franchisee.
6. Notwithstanding anything to the contrary, in the event that Franchisee, its parent, affiliate or subsidiary elects to offer to subscribers video programming services through any means or method not included within the definition of a Cable System, including but not limited to an "open video system", Franchisee shall remain subject to all terms and conditions of the cable Franchise granted pursuant to this Ordinance, with respect to its operation of the Cable System under the Franchise.
D. Franchise application procedure; information required.
All applications to construct, operate, or maintain Cable system in the Town or to traverse any portion of those areas for the transmitting or conveying of such service elsewhere, shall be filed with the Council or such office of the Town as the Council shall designate. A written application shall be filed with the Town for (a) grant of a new cable franchise or Open Video System; (b) renewal of a franchise, unless in compliance with Section 626 of the Communications Act, 47 U.S.C. 546; (c) modification of a Franchise Agreement; (d) a transfer of a franchise; or (e) any other relief from the Town pursuant to this Ordinance or a Franchise Agreement. To be acceptable for filing, a signed original of the application shall be submitted together with seven (7) copies, be accompanied by the required non-refundable application filing fee as set forth in **SECTION** III (E) hereof, conform to any applicable request for proposals, and contain all reasonably required information. Except in the case of an initial application, the Town Manager may waive submission of certain information required herein, upon request of the Franchisee. All applications shall include the names and addresses of persons authorized to act on behalf of the applicant with respect to the application.
1. All applications accepted for filing shall be made available by the Town for public inspection consistent with applicable law.
2. An application for the grant of a new franchise may be filed pursuant to a request for proposals issued by the Town or on an unsolicited basis. The Town, upon receipt of an unsolicited application, may issue a request for proposals. If the Town elects to issue a

request for proposals upon receipt of an unsolicited application, the applicant may submit an amended application in response to the request for proposals, or may inform the Town that its unsolicited application should be considered in response to the request for proposals, or may withdraw its unsolicited application. An application, including an unsolicited application which applicant has subsequently designated as responsive, which does not conform to the reasonable requirements of a request for proposals may be considered non-responsive and denied on that basis.

3. An application for the grant, renewal or transfer of a franchise shall contain, at minimum, the following information:

a. Name and address of the applicant and identification of the ownership and control of the applicant, including: the names and addresses of all persons with five percent (5%) or more ownership interest in the applicant, including the names and addresses of parents or subsidiaries holding such ownership interests directly or indirectly; the persons who control the applicant; all officers and directors of the applicant; and any other Cable system ownership or other communication ownership interest of each named person;

b. The names and addresses of any parent or affiliate, of the applicant and of any other business entity owning or controlling in whole or in part or owned or controlled in whole or in part by the applicant;

c. An indication of whether the applicant, or any person controlling the applicant, or any officer, or director or person with five percent (5%) or more ownership interest in the applicant, has been adjudged bankrupt, had a cable franchise or license revoked, or been found by any court or administrative agency to have violated a security or antitrust law, or to have committed a felony, or any crime involving moral turpitude; and, if so, identification of any such person and a full explanation of the circumstances;

d. A demonstration of the applicant's technical, legal and financial ability to construct and/or operate the proposed Cable System, including identification of key personnel;

e. A detailed and complete financial statement of the applicant, prepared by a certified public accountant, for the five (5) fiscal years immediately preceding the date of the application hereunder, or a letter or other acceptable evidence in writing from a reasonable lending institution or funding source, addressed to both the applicant and the Town, setting forth a clear statement of its intent as a lending institution or funding source to provide whatever capital shall be required by the applicant to construct and operate the proposed system in the Town. If the corporate or business entity organization of the applicant has not been in existence for a full five (5) years, applicant shall submit a certified financial statement for the period of its existence;

f. A description of the applicant's prior experience in Cable system ownership, construction and operation, and identification of communities in which the applicant or any person controlling the applicant or having more than a five percent (5%) ownership interest in applicant has, or has had, a cable franchise or license or any interest therein;

g. A description of the services and physical facilities proposed, including channel capacity, performance characteristics, headend, and access facilities; upon request, the applicant shall make information on technical design available for inspection;

h. A description of the construction of the proposed system, including an estimate of plant mileage and its location, a detailed map, the proposed construction schedule, a description, where appropriate, of how services will be converted from existing facilities

to new facilities, and information on the availability of space in conduits including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities;
i. For informational purposes, the proposed rate structure, including projected charges for each service tier, installation, converters, and other equipment or services, and the applicant's ownership interest in any proposed program services to be delivered over the Cable System;
j. A demonstration of how the applicant's proposal will reasonably meet the future cable-related needs and interests of the community, including a description of how the proposal will meet the needs described in any recent community needs assessment conducted by or for the Town and any surveys or other research conducted by Franchisee;
k. A description of the applicant's proposal to provide access channels, facilities, equipment, personnel and financing in support of the Town's education and government related activities and a comparison to provisions in other communities within the State of Florida, served by Franchisee, its parent, affiliate or subsidiaries in the State of Florida.
l. A description of any cable and non-cable telecommunications services offered or proposed to be offered by the applicant or its parent, affiliates or subsidiaries in the State of Florida and Franchisee's plan with respect to the availability of such services to subscribers in the Town;
m. Pro forma financial projections for the first five (5) years of the franchise term, including a statement of projected income, and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules;
n. If an applicant proposes to provide cable service to an area already served by an existing Cable Franchisee, the identification of the area where the overbuild would occur, the potential subscriber density in the area which would encompass the overbuild, and the ability of the Streets to accommodate an additional system;
o. If requested, a proposal to provide an I-Net to the Town;
and
p. An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application and certifying that the proposal meets all federal and state law requirements.
4. An application for modification including, but not limited to expansion of service area, of a Franchise Agreement shall include, at minimum, the following information:
a. The specific modification requested;
b. The justification for the requested modification, including the impact of the requested modification on subscribers and others, and the financial impact on the applicant if the modification is approved or disapproved;
c. A statement whether the modification is sought pursuant to Section 625 of the Communications Act, 47 U.S.C. § 545, and, if so, a demonstration that the requested modification meets the standards set forth in 47 U.S.C. § 545.
d. Any other reasonable information necessary for the Town to make an informed determination on the application for modification; and
e. An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, including those types of applications as defined in SECTION II hereof, and certifying that the application is consistent with all federal and state law requirements.

5. An application for renewal of a franchise shall comply with the requirements of SECTION XXIV hereof.
6. An application for approval of a transfer of a franchise shall comply with the requirements of SECTION XXV hereof.
E. Application Fee.
1. To be acceptable for filing, an application shall be accompanied by a non-refundable filing fee in the following amount, as appropriate:
a. For a new or initial franchise: $15,000.00
b. For renewal of a franchise: $2,500.00
c. For a transfer of a franchise: $2,500.00
d. For modification of a Franchise $ 2,500.00
e. For any other relief: $ 2,500.00
The purpose of the filing fee is to defray a portion of the Town's cost in processing an application. Such fee shall be credited against amounts due under section (E)(2) below.
2. Franchisee shall reimburse the Town for all costs and expenses incurred by the Town in considering and processing the application, including but not limited to consulting and legal costs, less the amount of the filing fee set pursuant to section (E)(1) above. Within five (5) calendar days prior to the planned date of the resolution approving or denying the Franchise Agreement or renewal or modification or transfer thereof by the Council, the Town shall advise the Franchisee of the amount of the processing fee and its method of calculation. If the processing fee is not paid to the Town within twenty (20) calendar days of the date of the Council resolution approving or denying the Franchise Agreement or a modification or transfer thereof, any approval granted by such resolution will be null and void without further action by Town.
F. Public Hearing on Applications.
1. Upon receipt of a completed application for a grant or modification of a franchise, including modifications, submitted under the provisions of this section and within one hundred twenty (120) days, or such extended period of time as the Council may approve upon request by the Town Manager, the Town Manager shall review the application for sufficiency and compliance with sections (d) and (e), hereinabove. If the Town Manager finds that the application is incomplete, he shall return it to the applicant with a letter describing any and all insufficiencies found in the application. The applicant may then reapply for a franchise upon correcting the deficiencies noted by the Town Manager. Upon receipt of the revised and amended application, the Town Manager shall review the application within one hundred twenty (120) day period. Upon review and after a final finding that the application is complete and in compliance with this section, the Town Manager shall forward said application to the Council for publication of a notice of public hearing in accordance with this Ordinance.
2. Upon receipt of an application for a franchise and after review by the Town Manager, the Council shall publish in a paper of general circulation in the Town a notice of consideration of a cable franchise. Said notice shall name the applicant, describe the proposed service area, invite objections to the establishment of a Cable System in the proposed service area from existing systems and the general public and set a time and date certain, at least fourteen (14) days prior to the scheduled meeting date, for the consideration of the application at public hearing.

3. The initial application and all subsequent applications received prior to the public hearing shall be a matter of public records.

G. Issuance of Franchise

1. The Council may issue one or more franchises from the applications filed and considered at a public hearing. The Council shall, prior to an issuance of a franchise, consider the information and criteria required by this Ordinance, and any other information it deems appropriate in making a determination to issue a franchise. During the public hearing the Town Council shall also consider, investigate, receive input, and make findings regarding the following:

a. The economic impact upon private property within the franchise area;

b. The public need for such a franchise, if any;

c. The capacity of public rights-of-way to accommodate the Cable System;

d. The present and future use of the Town rights-of-way to be used by the Cable System;

e. The potential for disruption of future service by competition due to the presence of too many competing companies based on the number of potential subscribers in the proposed service area;

f. The potential disruption to existing users of the Town to be used by the Cable System and the resultant inconvenience which may occur;

g. The financial ability of the franchise applicant to perform and to make the necessary investment to erect, operate and maintain the Cable System;

h. The experience of the applicant in the erection, operation and maintenance of a Cable system including compliance with local government rules, regulations and orders;

i. The location and type of permanent facilities proposed to be constructed for the Cable System;

j. The technical quality and completeness of the proposed plan for operation of the Cable System; indirectly but not limited to products and services to be made available and the level of customer service standards to be maintained;

k. The likelihood that the applicant's proposal will satisfy the future cable related needs and interests of the community;

l. The requisite legal, character, financial, technical and other qualifications necessary to construct, own and operate a cable television system; and

2. In considering the desirability of an additional or expanded cable franchise, the Town Council shall balance the desirability to promote competition in the cable television industry, so as to promote a diversity of information and the provision of high-quality cable services against the use and unreasonable disruption of private and public property by multiple cable operations. Furthermore, if the Town grants a franchise to an additional cable operator or expands a current operator's franchise, the Town may impose such conditions as it deems necessary and proper at the time of the grant consistent with applicable federal and state law.

3. The Town Council has the authority to retain an expert or consultant to conduct a study at any time, but no more frequently that annually, in order to assess the performance of the incumbent's operations. Any resulting fees or expenses of experts or consultants, incurred to conduct a performance evaluation, as a result of noncompliance with the Ordinance or Franchise Agreement are to be borne by the applicant. However, where the applicant is a current franchisee, the applicant shall be required to pay said costs and fees only in the event of non-compliance with this Ordinance or the Franchise Agreement.

4. The Council shall vote whether to grant or deny any application and thereafter notify in writing all applicants of its decision within thirty (30) days from the date of said vote. Unless a Franchise Agreement states otherwise, all of the statements and declarations contained in the application shall be incorporated as conditions and material representations of any franchise that is issued by the Council, and the breach of any such conditions and representations shall constitute cause for commencement of termination proceedings of the franchise by the Council.

H. Term of Franchise.

No franchise shall be issued for a term not longer than five (5) years. All current cable television-Franchise Agreements lawfully enforceable on the effective date hereof shall remain in effect until their respective date of expiration subject to the lawfully applicable provisions of this Ordinance. However, any Franchisee holding a current Franchise under any previous Ordinance or Franchise Agreement may file for a renewal of its Franchise pursuant to the terms of this Ordinance which shall require adequate notice to the public and opportunity to comment, and may have its franchise renewed for a period not to exceed fifteen (15) years on terms consistent with the provisions of this Ordinance and such other conditions as the Council determines are in the public interest at the time of the grant.

I. Effective Date of Franchise.

1. Any franchise granted pursuant to the provisions of this Ordinance shall become effective as provided herein.

2. Within thirty (30) calendar days after the passage of the Resolution awarding of a franchise, or within such extended period of time as the Council in its discretion may authorize, the Franchisee shall file with the Council its written acceptance of the franchise, together with the insurance policies and bonding documents required by sections X and XI hereof, and its agreement to be bound by and to comply with all requirements pursuant to the provisions of this Ordinance and the franchise. Such acceptance and agreement shall be acknowledged by the Franchisee before a notary public, and shall in form and content be satisfactory to and approved by the Council.

J. Business Authorization.

Any franchise granted pursuant to the provisions of this Ordinance shall authorize and permit the Franchisee to engage in the business of operating Cable System in the portion of the Town for which application was made and described therein, and for that purpose and that purpose only, subject to the approval of Town staff, to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any Public Rights-of-Way or street, such poles, wires, cable, conductors, ducts, conduits, vaults, manholes, amplifies, appliances, attachments, and other property as may be necessary and appurtenant to the Cable System; and in addition, subject to the approval of the Town Manager or his designee, pursuant to generally applicable procedures and requirements, to use, operate, and provide similar facilities or properties rented or leased from other persons, including but not limited to any public utility or other franchisee furnished or permitted to do business in the Town.

K. Changes to Franchise Terms and Conditions.

No changes in the terms of any franchise may be made without the prior written approval of the Council, unless otherwise expressly provided by law or the Franchise Agreement.

L. Franchise Fee.

1. A Franchisee, as compensation for the privilege granted under a Franchise for the use of the Town's streets to construct and operate a cable system, shall pay to the Town a Franchise fee in an amount up to a maximum of either:

a. In the event the Communications Act or other applicable law is amended to permit the Town to assess a Franchise fee; Five percent (5%) of the Franchisee's Gross Revenues derived directly or indirectly from the operation of its cable system within the Town to provide cable services during the term of its franchise; or

b. In the event the Communications Act or other applicable law is amended to permit the Town to assess a Franchise fee of a greater amount or on a broader revenue basis than that specified in subsection (1), above, the Franchisee agrees to pay to the Town the new amount after a public hearing in which the public and Franchisee are given an opportunity to comment on the impact of the higher fee. In no event shall a Franchisee pay a Franchise fee greater than the maximum permitted by applicable law.

2. Franchise fee payments are due on a quarterly basis.

Payments shall be payable to the Town within forty five (45) days after the close of each calendar quarter. Payments due hereunder shall be accompanied by a quarterly gross revenues audit report signed by a certified public accountant or a duly authorized officer of the Franchisee in a form acceptable to the Town. All amounts which are not paid when due and payable hereunder shall bear interest at the legal rate, as defined in Florida Statutes, until paid and shall be subjected to a late fee in the amount of One Hundred ($100.00) Dollars per day or part thereof that such violations continues.

3. Notwithstanding the requirements of subsection (L)(2) above, for delivery of an audit report by franchisee, the Town shall have the right and authority to inspect the Franchisee's revenue records under the franchise and the right of audit and recomputation of any and all amounts payable under this section. All costs associated with any such audit shall be borne by Franchisee when said audit indicates an underpayment by the Franchisee by more than two percent (2%) of the amount due.

4. No acceptance of a payment of a franchise fee shall be construed as a release or as an accord and satisfaction of any claim the Town may have for further sums payable under this Ordinance or for the performance of any other obligation hereunder. Furthermore, unless prohibited by applicable law, the franchise fee to be paid to the Town pursuant to this Ordnance shall not be deemed to be in the nature of a tax and shall be an addition to other taxes, fees or charges which a Franchisee may be required to pay to the Town or to any state or federal agency.

M. Franchise Restrictions.

1. Any franchise granted under this Ordinance shall be non-exclusive.

2. No privilege or exemption shall be granted or conferred by any franchise granted under this Ordinance broader than those prescribed herein unless expressly mandated by applicable state or federal law.

3. Any privilege claimed under any such franchise by a franchisee in any street or other public property shall be subordinate to any prior lawful occupancy of the streets or other public property.

SECTION IV - RIGHTS IN ORDINANCE

A. The right is hereby reserved to the Town to adopt, in addition to the provisions contained herein and in existing applicable agreements, such additional regulations of general applicability as it shall find necessary in the exercise of its police power:

provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the terms and conditions of the franchise and the rights herein granted; and, provided, further, that any such changes do not materially alter the rights and obligations of Franchisee under its existing Franchise Agreement.

B. The Town shall have the right during the term of any Franchise granted under this Ordinance to install and maintain free of charge upon the poles of the Franchisee all wire and pole fixtures necessary for a police alarm system, or traffic control system on the conditions that such wire and pole fixtures do not interfere with the present and future cable operation of the Franchisee.

C. Upon reasonable notice, the Town shall have the right to inspect at the Franchisee's business office the maps, plans, and other like materials of the franchises at any time during normal business hours where such maps, plans, and other materials are related to this ordinance or any franchise granted by the Town.

D. Subject to applicable law, except as may be specifically provided by this Ordinance or under the terms of a Franchise Agreement and subject to the Communications Act, the failure of the Town, upon one or more occasions, to exercise a right or to require compliance or performance under this ordinance or a Franchise Agreement shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance.

SECTION V - INITIAL PERFORMANCE GUARANTEE

A. Within twenty four months from the date of issuance of an initial franchise or the extension of a service area, the Franchisee shall accomplish construction of the proposed Cable System within said service area where the density is at least twenty-five 25 homes per required cable mile, so as to make available all services to all dwellings and business. Such period may be extended by the Council for good cause shown. Notwithstanding anything to the contrary, a franchisee shall be neither required to overbuild nor prohibited from overbuilding the facilities of another cable operator to comply with the requirements of this section.

B. A franchisee shall, at all times during the term of a franchise allow the Town to view its strand and trench maps of the Cable System. Upon request, of the Town, said maps shall be provided in a format to be reasonably approved by the Town staff.

SECTION VI - RIGHT TO USE STREETS NOT WARRANTED

It is understood that there may be from time to time within the Town various streets which the Town does not have the unqualified right to authorize Franchisee to use, because of reservations in favor of previous dedications or because of other legal impediments; therefore, in granting a franchise under this Ordinance, the Town does not warrant or represent as to any particular street or portion of a street that it has the right to authorize Franchisee to install or maintain portions of its system therein, and in each case the burden and responsibility for making such determination in advance of the installation shall be upon the Franchisee.

SECTION VII - OTHER AGREEMENTS, PERMIT AND EASEMENT REQUIREMENTS

The Town shall not be required to assume any responsibility for the securing of any rights-of-way, easements, or other rights which may be required by the Franchisee for the installation of a Cable System, nor shall the Town be responsible for securing any permits or agreements with other persons or utilities,

SECTION VIII - NO PROPERTY RIGHTS CONVEYED

Nothing in this Ordinance or in a Franchise shall grant to a franchisee any right of property in Town owned property or public rights-of-way as described in SECTION VI of this Ordinance, nor shall the Town be compelled to maintain any of its property or said public rights-of-way. any longer than, or in any fashion other than in the Town's judgment, as its own business or needs may require. In addition, the franchise holder shall not be entitled to any compensation for damages from the Town as a result of having to remove or relocate its property, lines and cables from said public property or public rights-of-way in the event the Town determines that a necessity exists for such removal or relocation.

SECTION IX - LIABILITY, INDEMNIFICATION

A. Liability in case of emergency.

If, at any time in case of fire, disaster, or other emergency, it shall appear necessary in the judgment of the Town to cut, move or otherwise interfere with any of the wires, cables, amplifiers, appliances or appurtenances thereto of the Franchisee, the Town shall not be liable for any injury or damage to such property and equipment of the Franchisee as a result of such cutting, moving or interference. However, Town agrees that it will make a good faith effort to contact Franchisee prior to cutting, moving or otherwise interfering with any of Franchisees facilities.

B. Indemnification.

1. By acceptance of the franchise granted under this Ordinance, Franchisee agrees to indemnify, defend and hold harmless the Town, its officers, boards, council members, agents and employees from any and all actions, claims, suits, penalties and judgments for damages at law or equity of any nature whatsoever arising out of or through:

a. The acts or omissions of the Franchisee, its servants, employees and agents; and/or b. The conduct of its business as a cable television communications service. However, Franchisee's obligation pursuant to this section shall not extend to claims arising from the negligence or willful misconduct of the Town, its employees, officers, Council Members and agents.

2. The Franchisee shall defend in the name of the Town, and pay all expenses incurred by the Town in defending itself, with regard to all damages and penalties the Town may legally be required to pay as a result of the franchise granted hereunder, excluding education and government channels required by a Franchise granted pursuant to this Ordinance, under the exclusive control of the Town. Damages and penalties shall include but not be limited to damages arising out of copyright infringement and all other damages arising out of the construction, installation, operation and maintenance of its cable communications system, whether or not any such act or omission is authorized, allowed or prohibited by this ordinance or the franchise granted hereunder. Expenses shall include all incidental expenses and costs including, but not limited to attorney fees and the reasonable value of any service rendered by the office of the Town attorney. In any action arising under this section, Franchisee shall have the right to defend the action and choose the attorney or law firm to defend the action with the Town Attorney having the right to approve the choice of counsel. Such approval shall be withheld only for good cause shown.

SECTION X - INSURANCE

A. Insurance Coverage Required.

1. Within thirty (30) days after the effective date of the franchise, the Franchisee shall provide proof of general liability insurance insuring against claims for liability and damages. The Franchisee shall maintain said insurance through out the term of the franchise and said insurance shall include, at a minimum, the following types of insurance coverage in amounts not less than shown:

a. Workers' Compensation: Coverage to apply to all employees for statutory limits in compliance with the applicable state and federal laws.

b. Comprehensive General Liability: Shall have minimum limits of One Million ($1,000,000.00) Dollars per occurrence combined single limit for bodily injury liability and property damage liability. This shall include premises and/or operations, independent contractors and subcontractors, and/or completed operations, broad form property damage, Excavation, Collapse and Underground Insurance (XCU) coverage, and a contractual liability endorsement.

C. Business Auto Policy: Shall have minimum limits of One Million ($1,000,000.00) Dollars per occurrence combined single limit for bodily injury liability and property damage liability. This shall include owned vehicles, hired and non-owned vehicles and employee non-ownership.

2. The insurance coverage obtained by the Franchisee in compliance with this section shall be on file with and approved by the Risk Management office during the term of the Franchise.

3. The insurance coverage and policy requirements may be changed and increased from time to time at the discretion of the Council to reflect changing liability exposure and limits.

4. Nothing herein is intended as a limitation to the extent of any legal liability of the Franchisee.

B. Insurance Policy Provisions.

1. Resident company and agent: All insurance policies and bonds as are required of a franchisee in this Ordinance shall be written by a company or companies authorized and qualified to do business in the State of Florida, and have a minimum rating of "A" in Best's Rating Guide.

2. Certificates and renewals: Certificates and renewals of all coverage required shall be promptly filed by the Franchisee with the director. Each policy shall require notice and the Franchisee shall notify the Town within thirty (30) days of any cancellation or modification of any insurance coverage required by this ordinance, which notice shall be sent by registered mail to the director. Renewal certificates shall be filed with the director no less than thirty (30) days prior to the policy expiration date.

3. Additional insured: The Town of Fort Myers Beach shall be included as an additional insured on the comprehensive general liability.

4. Premium payment: Companies issuing the insurance policies shall have no recourse against the Town for payment of any premiums or assessments, and same shall be the sole responsibility of the Franchisee.

5. No franchise granted under this Ordinance shall be effective unless or until each of the foregoing policies' certificates of insurance as required in this section have been delivered to the Town and approved by the Risk Management Office.

6. Neither the provisions of this section, nor the acceptance of any bonds by the Town pursuant to this ordinance, nor any damages received by the Town thereunder, shall be

construed to excuse performance by a franchisee or limit the liability of a franchisee for damages to the full amount of the bonds or otherwise.

SECTION XI - BONDING REQUIREMENTS

A. Construction Bond.

1. The Franchisee shall, within thirty (30) days after the effective date of an initial franchise granted under this ordinance, post with the Town a construction bond or letter of credit equal to the lesser of One Hundred Thousand ($100,000.00) Dollars or one hundred percent (100%) of the projected cost of construction and installation of the system. Said bond or letter of credit may be returned at the end of twelve (12) months after the system has been completed and approved by the Town, provided that the Franchisee has complied with all terms and conditions of the Franchise Agreement and all provisions of this ordinance as well as the rules and regulations herein required and permitted.

2. If the Franchisee shall fail to perform the obligations heretofore set out in this section, the Franchisee shall forfeit in total to the Town the hereinabove referenced construction bond or letter of credit.

3. Said construction bond or letter of credit shall not be in lieu of any other guarantee or indemnification required by this Ordinance and shall be in addition to the performance bond or irrevocable letter of credit required in SECTION XI (B).

B. Permanent performance and payment bond.

1. The Franchisee shall within thirty (30) days of the effective date of franchise granted under this ordinance or within thirty (30) days of the granting of a renewal or the transfer of a franchise existing prior to the effective date of this ordinance, furnish to the Town a cash deposit, performance bond or an irrevocable letter of credit issued by a Florida bank or a federally insured lending institution in the amount of Two Hundred Thousand ($200,000.00) Dollars. The deposit performance bond or letter of credit shall be used to guarantee the compliance with performance requirements and payment of all sums which may become due to the Town under this ordinance and/orany Franchise Agreement entered into by the Town and Franchisee. The deposit, performance bond or letter of credit shall be maintained in the full amount specified herein throughout the term of the franchise and for one year after the franchise expires or is terminated, without reduction or allowances for any amounts which are withdrawn or paid pursuant to this order the form of the security, whether cash, bond or guarantee, shall be determined by the Town Manager due expressly described in a Franchise Agreement.

2. The rights reserved to the Town with respect to the bond or the letter of credit are in addition to all other rights of the Town.

SECTION XII - FCC LICENSES

Failure of the Franchisee to obtain the necessary permits and licenses shall cause the franchise to become subject to revocation, consistent with the procedures set forth herein, unless the Franchisee petitions and the Council grants a request for an extension of time for good cause shown.

SECTION XIII - COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

The Franchisee shall at all times during the life of this ordinance be subject to all lawful exercise of the police power by the Town and to such lawful rules and regulations by the Town as the Town shall hereafter provide. The Franchisee shall comply with all laws, statutes, codes, ordinances, rules, or regulations applicable to its business, subject to Franchisee's lawful rights in its franchise.

SECTION XIV - MINIMUM FACILITIES AND SERVICES

A. Notwithstanding anything herein to the contrary, when reasonably practicable but no later than twelve (12) months after notice from the Town, a franchisee shall make such technically and commercially feasible improvements to its System as may be necessary to bring the System to the State-of-the-Art, as defined in SECTION II (A)(30). The Town may grant extensions of the time within which a Franchisee must comply with the obligations set forth herein, to accommodate the process to be afforded a franchisee hereunder, for good cause shown (including evidence that the Franchisee has commenced necessary measures to comply with the obligations herein), but in no event to exceed twelve (12) months.

1. Any Cable System that commences construction, including but not limited to initial construction, rebuild, upgrade, or reconstruction or is granted a franchise or renewal after the effective date of this Ordinance shall have a minimum capacity of at least 750 MHZ providing no less than seventy-eight (78) video channels available for immediate use. A Franchise Agreement may provide for a larger minimum channel capacity requirement.

2. The Town and a Franchisee may agree in a Franchise Agreement that a Franchisee provide access channels, facilities and other support for education and/or governmental use as determined by the Town.

3. Upon at least ninety (90) days prior written request of the Council, cablecasting of Council meetings live to all Subscribers located within the Town shall be carried by the Franchisee on a government access channel.

4. A Cable System shall provide leased access channels as required by federal law.

5. A Franchisee shall:

a. Upon prior written request, provide at least one cable television service outlet and when technically feasible and available in the area from franchisee, or its affiliate, parent or subsidiary, serving subscribers within the area served by the system, at least one standard installation connection to a cable on-line service, including a minimum of at least one (1) cable modem, outlet that is within one hundred twenty-five (125) feet of Franchisee's distribution plant for Basic Cable Service to each public elementary and secondary school, fire department or library within its franchise area that is passed by its cable system, and shall provide basic cable service and on-line cable internet service to those installations at no cost to the Town or school, fire department or library involved, and shall charge no more than its time and material costs for any additional cable service outlets (including cable internet service) to such facilities.

b. Upon request, provide at least one standard installation for basic cable television service to each and every Town government building within its franchise area that is passed by its cable system and shall provide basic cable service to those installations at no cost to the Town and shall charge no more than its costs for any additional basic cable service outlets to such facilities.

6. Design its system to allow the Town or other appropriate government body, to interrupt cable service in an emergency to deliver necessary information to subscribers, at minimum consistent with FCC regulations.

7. Make available to its subscribers information regarding equipment capable of decoding closed circuit captioning information for the hearing impaired.

8. Standard installation shall consist of a drop, not exceeding one hundred twenty five (125) feet from the cable plant to the nearest part of a Subscriber's residence; or, if a commercial subscriber, the nearest part of Subscriber's place of business.
9. Any and all rights which the Town may have, now or in the future, to regulate a franchisee's provision of or placement of facilities used for the provisions of cable Internet services are hereby reserved by the Town and may be exercised at any time throughout the term of the Franchise, unless otherwise prohibited by applicable law.
10. At all times during the term of a Franchise, maintain a State-of-the-Art Cable System within the Franchise Area, consistent with the provisions of Subsection A hereof and the Franchise Agreement.

B. A Franchisee shall make cable service available to every dwelling within the Franchise Area as defined in a Franchise Agreement unless prohibited by a private property owner from doing so; provided that such dwelling is in an area of density of at least twenty-five 25 dwelling units per required cable mile. Density per cable mile shall be computed by dividing the number of dwelling units in the area by the length, in miles or fractions thereof, of the total amount of aerial or underground cable necessary to make service available to the dwelling units in such area in accordance with the Franchisee's system design parameters.

SECTION XV -TECHNICAL STANDARDS

A. Any Cable System within the Town shall at minimum meet the technical standards of the FCC or other applicable federal or state technical standards.All television signals transmitted on a Cable System shall include any closed circuit captioning information for the hearing impaired received by the Franchisee's Cable System. Antennas, supporting structures, and outside plant used in the system shall be designed to comply with all generally accepted industry practices and standards and with all federal, state, Town and/or utility laws, ordinances, rules and regulations.

B. All construction, installation and maintenance shall comply with the National Electrical Safety Code, the National Electric Code, all applicable building codes, and all laws as hereinafter may be amended or changed.

C. As required by FCC rules, the Franchisee shall perform at its expense proof of performance tests designed to demonstrate compliance with FCC requirements. At any time during the term of a Franchise, the Town shall have the right to inspect the Cable System facilities in the streets during and after their construction to ensure compliance with the requirements of the Franchise Agreement, this Ordinance, and FCC standards.

D. The Franchisee shall notify the Town within ten (10) days of Franchisee's failure of proof of performance or other test required in subsection C above.

E. Inspection.Upon request, the Franchisee shall furnish the Town Manager with a written report of the results of Franchisees' annual system proof of performance tests, as required by the FCC.

F. A Franchisee shall not design, install or operate its facilities in a manner that will interfere with the signals of any broadcast station, the preexisting facilities of any public utility, the preexisting Cable System of another Franchisee, or individual or master antennas used for receiving television or other broadcast signals.

G. Franchisee shall provide access channels, facilities, and financial support, in accordance with the terms of a Franchise.

SECTION XVI -ACCESS CHANNELS AND FACILITIES

A. Applications for an initial grant or renewal of a franchise shall include proposals for the provision of education and government access channels and equipment, facilities and support relating to such channels sufficient to meet community needs as determined by the Town. Any Franchisee granted an initial or renewal Franchise on or after the effective date hereof, shall, at minimum, provide the Town for its exclusive use with two (2) activated education/government access channels for educational and/or governmental use, as determined by the Town.

B. At minimum, said applications shall include proposals to provide the following:

1. The live cablecasting of all Council meetings and certain other events.

2. Studio facilities with adequate space, lighting, audio and video equipment and personnel necessary for on-site videotaping, recording and transmission over the Cable System of educational and governmental programs.

3. Equipment, facilities and support in order to facilitate the Town's operation of educational and government access channels, as determined by the Town.

4. Trained personnel to assist the Town in production of live and video-taped municipal programs at locations, including but not limited to, the Town's studio, or Franchisee's studio as the case may be, or such location as may be designated by the Town.

C. A Franchisee shall provide to the Town access to the system for transmission of emergency messages and alerts in compliance with FCC rules and state law, and shall provide for character generated "crawl" information to be superimposed on all video channels for the hearing impaired. In the case of any emergency or disaster, as determined by the Town, a franchisee shall, upon request of the Town, make the override capacity available to the Town without charge for use during emergency or disaster period.

D. Applications for an initial grant, renewal or transfer of a franchise shall include proposal for the interconnection of Franchisee to any or all other franchised Cable Systems operating within the Town or in areas adjacent to the Town for the purpose of transmitting educational and government programming provided that interconnection is technically feasible and Franchisee and any other affected operator agree upon reasonable interconnection arrangements, including an allocation of the costs of interconnection between Franchisee and such other operator, that is reasonable in light of the relative benefits and burdens, including consideration of support provided for educational and governmental access purposes.

E. Consistent with Section 611(b) and (e) of the Communications Act any franchisee granted an initial franchise or renewal after the effective date hereof may be required to provide to the Town an Institutional Network (I-NET) or equivalent thereto providing bi-directional transmission of data among all government facilities located within the franchise area, as set forth in a franchise agreement. At such time as more than one franchise is granted for any specific area within the Town, the Town shall allow the financial obligation of the cost of the I-NET to be satisfied on a shared basis with obligations imposed in proportion to the number of subscribers served by each franchisee.

F. A Franchise Agreement may provide for a financial grant in lieu of some or all of the facilities, equipment, and services provided pursuant to SECTION XVI hereof. However any such grant shall be considered a capital grant for use in support of education and government cable and commission needs pursuant to Section 622(g)(2)(c) of the Communications Act and shall not be included in or otherwise credited against any franchise fee or tax.

SECTION XVII -CUSTOMER SERVICE REQUIREMENTS

A. A Franchisee shall at a minimum maintain all parts of its system in good condition and in accordance with FCC standards. Sufficient employees shall be retained to provide safe, adequate and prompt service for all of its customers and facilities, as set forth in this Ordinance and a Franchise Agreement. The customer service requirements set forth herein are applicable to all services subject to the Ordinance. Franchisee's failure to comply with this subsection may result in a fine in the amount of Fifty ($50.00) Dollars, per violation, per day or part thereof up to a maximum of Five Hundred ($500.00) Dollars.

B. Franchisee shall maintain a listed local, toll-free telephone number under the name by which Franchisee is doing business in the Town, and employ a sufficient number of telephone lines, personnel and answering equipment or service to allow reasonable access by Subscribers and members of the public to contact the Franchisee on a full-time basis, twenty-four (24) hours per day, seven (7) days per week including holidays. Knowledgeable, qualified Franchisee representatives shall be available to respond to customer telephone inquiries, at a minimum, fifty-five (55) hours per week, including from 9:00 a.m. to 500 p.m., Monday through Friday, plus a minimum of eight (8) hours in the course of Saturday and Sunday. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Fifty ($50.00) Dollars, per violation, per day or part thereof up to a maximum of Five Hundred ($500.00) Dollars.

C. Franchisee shall answer all customer service and repair telephone calls made under normal operating conditions within thirty (30) seconds, including wait time and within an additional thirty (30) seconds to transfer the call. Customers shall receive a busy signal less than three percent (3%) of the time. These standards shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis. Franchisee shall maintain performance data necessary to confirm compliance with the standards set forth herein, and such records shall be made available for review and inspection by the Town or its designee pursuant to SECTION XXII of this Ordinance. Such records shall be maintained at the franchise level, or for all the franchise areas in the same system. Franchisee's material failure to comply with this subsection may result in a fine in the amount Fifty ($50.00) Dollars per violation, per day or part thereof up to a maximum of Five Hundred ($500.00) Dollars.

D. A Franchisee shall employ and maintain sufficient qualified personnel and/or equipment to be available (1) to accept payments during normal business hours; (2) to exchange or accept converters or other equipment during normal business hours; (3) to receive Subscriber complaints or requests for service or repairs on a full-time basis, twenty-four (24) hours per day, seven (7) days per week; (4) to undertake normal repairs, by the next business day; (5) to enable a service technician to respond to service calls between 6:00 a.m. and midnight, under normal operating conditions, seven (7) days a week including holidays, when more than five (5) Subscribers served from the same nearest active electronic device, such as an amplifier or node, call with the same technical complaint. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Fifty ($50.00) Dollars per violation, per day or part thereof up to a maximum of Five Hundred ($500.00) Dollars.

E. Franchisee must meet each of the following standards no less than ninety-five (95) percent of the time under normal operating conditions as measured on a quarterly basis:
1. Standard installation work shall be performed within seven (7) business days after an order has been placed except in those instances where a Subscriber specifically requests an installation date beyond the seven (7) business day period. "Standard" installations are up to one hundred and twenty-five (125) feet from the existing distribution system. If scheduled installation is neither started nor completed as scheduled, the Subscriber shall be telephoned by an employee of the Franchisee the same day;
2. Franchisee shall respond to service interruptions promptly and in no event later than twenty-four (24) hours after the interruption becomes known to Franchisee. Other service problems shall be responded to promptly and in no event later than the next business day after the problem becomes known to the Franchisee;
3. The appointment window alternatives made available for installations, service calls, repairs, and other installation activities shall be either a specific time, a four-hour time block during normal business hours, or at the election and discretion of the Subscriber, "all day." These options shall be clearly explained to the customer at the time of scheduling;
4. Franchisee may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment;
5. If at any time an installer or technician is running late for a scheduled appointment, an attempt to contact the customer shall be made and the appointment rescheduled as necessary at a time which is convenient for the customer;
6. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Fifty ($50.00) Dollars, per violation, per day or part thereof up to a maximum of Five Hundred ($500.00) Dollars.

F. Franchisee shall institute and maintain a program providing a reasonable subscriber credit for missed appointments. The Town's determination that Franchisee's program is unreasonable and/or Franchisee's material failure to comply with this subsection may result in a fine in the amount of Fifty ($50.00) Dollars per violation, per day or part thereof up to a maximum of Five Hundred ($500.00) Dollars.

G. Disconnection.
1. Voluntary Disconnection.
a. A Subscriber may terminate service at any time.
b. A Franchisee shall promptly disconnect any Subscriber who so requests from the Cable System of the Franchisee. No period of notice prior to voluntary termination of service may be required of Subscribers by any Franchisee. No charge may be imposed by any Franchisee for such voluntary disconnection, or for any Cable Services delivered after the date of the requested disconnection.
C. A Franchisee may hold a Subscriber responsible for the return of equipment of the Franchisee which has been provided for Subscribers use. The Franchise may request the

Subscribers to return the equipment to Franchisee's office but, if the Subscriber requests, Franchisee shall pick up the equipment at the Subscriber's premises, subject to (b) above.

d. Any security deposit and/or other funds due the Subscriber shall be refunded on disconnected accounts after any customer premises equipment including all converters but excluding wiring have been recovered by the Franchisee. The refund process shall take a maximum of forty-five (45) days from the date equipment is returned to Franchisee to the date the customer receives the refund.

2. Involuntary Disconnection. If a Subscriber fails to pay a monthly subscription or other fee or charge, the Franchisee may disconnect the service outlet of the Subscriber; however, such disconnection shall not be effected until twenty-five (25) days after the due date of the monthly Subscriber fee or other charge, and ten (10) days advance written notice of intent to disconnect to the Subscriber in question. If the Subscriber pays within twenty-five (25) days of the due date and after notice of disconnection has been given, the Franchisee shall not disconnect. After disconnection, upon payment by the Subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if any, the Franchisee shall promptly reinstate service. Franchisee reserves the right to deny service to any customer who has been repeatedly disconnected for non-payment of services to the extent such rights are consistent with applicable state and federal Law.

3. With respect to any disconnection, whether requested or involuntary, a Franchisee shall comply with the rules and regulations of the FCC and applicable Law with respect to ownership, sale, removal and abandonment of home wiring. Failure to comply with such rules including, but not limited to providing applicable notice to Subscribers and property owners shall be considered a violation of this Ordinance.

4. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Fifty ($50.00) Dollars per violation, per day or part thereof up to a maximum of Five Hundred ($500.00) Dollars.

H. Franchisee shall intentionally interrupt service only for good cause and for the shortest time possible and shall use its best efforts to minimize the number of service interruptions between 6:00 p.m. and 1 I:00 p.m. Franchisee shall maintain a written log for all intentional service interruptions. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Fifty ($50.00) Dollars per violation, per day or part thereof up to a maximum of Five Hundred ($500.00) Dollars.

I. Franchisee shall provide the Town Manager or designee telephone number(s) and/or pager number(s) to enable the Town Manager or designee to contact at any time a person responsible for the operation of the Cable System serving all parts of the Town. Franchisee's material failure to comply with this subsection shall make Franchisee subject to a fine as provided herein. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Fifty ($50.00) Dollars per violation, per day or part thereof up to a maximum of Five Hundred ($500.00) Dollars.

J. Franchisee shall cause all of its field employees to wear a picture identification badge indicating employment by Franchisee. This badge shall be clearly visible to the public. All company vehicles shall display the company name and logo, if any, in a manner clearly visible to the public. Contractor vehicles shall display the contractor name, telephone number, and contractor license number, as required by applicable law. Employees of contractors working for Franchisee shall wear a picture identification badge. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Fifty ($50.00) Dollars per violation, per day or part thereof up to a maximum of Five Hundred ($500.00) Dollars.

K. A Franchisee shall develop written procedures for the investigation and resolution of all Subscriber or Town resident complaints, including, but not limited to, those regarding the quality of service and equipment malfunction, which procedures shall be provided upon request to the Town Manager. The good faith or lack thereof of the Franchisee in attempting to resolve Subscriber and resident complaints in a fair and equitable manner shall be considered in connection with the renewal application of the Franchisee, to the extent consistent with applicable law. Franchisee shall maintain a complete list of all complaints received during the prior twelve (12) months, requiring a service call not resolved within seven (7) days of receipt and the measures taken to resolve those complaints. This list shall be provided to the Town upon request. Franchisee shall also maintain a list of all written complaints received, which list shall be available to the Town upon request. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Fifty ($50.00) Dollars per violation, per day or part thereof up to a maximum of Five Hundred ($500.00) Dollars.

L. Upon reasonable request by the Town, Franchisee shall permit the Town Manager or his/her designee to inspect and test the technical equipment and facilities upon reasonable notice not to be less than two (2) business days, and accompanied by an employee of the Franchisee. Franchisee's material failure to comply with this subsection may result in a tine in the amount of Fifty ($50.00) Dollars per violation, per day or part thereof up to a maximum of Five Hundred ($500.00) Dollars.

M. Franchisee shall abide by the following requirements governing communications with customers, bills and refunds:
1. Each Franchisee shall provide to Subscribers written information in each of the following areas at the time of installation, at least once annually, and at any future time upon request by the Subscriber:
a. How to use the cable service;
b. Installation and service maintenance policies;
C. All products and services offered;
d. Prices and service options;
e. Channel positions of programming carried on the system;
f. The Franchisee's procedures for the receipt and resolution of customer complaints, the address of the Franchisee and telephone number to which complaints may be reported, and the hours of operation;
9. The availability and costs of a "lock-out" device and/or other parental control mechanisms, if any;
h. Collection policies of the Franchisee;
i. Privacy policies of the Franchisee, pursuant to federal law.

j. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Fifty ($50.00) Dollars per violation, per day or part thereof up to a maximum of Five Hundred ($500.00) Dollars.

2. To the extent a Franchisee's billing schedule allows, each Franchisee shall provide written notice in or on its monthly billing, at the request of the Town, of any Town meeting regarding requests or applications by the Franchisee for renewal, transfer or modification of its Franchise. The Town shall make such a request in writing, with reasonable notice prior to the mailing of any billing by Franchisee, such that Franchisee's regular billing cycle shall not be interrupted. Said notices shall be made at Franchisee's expense and said expense shall not be considered part of the Franchise fee assessed pursuant to this Ordinance and shall not be considered part of the Franchise fee, as defined in section 622 of the Communications Act, 47 U.S.C. § 542. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Fifty ($50.00) Dollars per violation, per day or part thereof up to a maximum of Five Hundred ($500.00) Dollars.

In addition, Franchisee shall, consistent with applicable law, provide written notice in or on its monthly billing of any change in service, rates or charges to subscribers unless such written notification takes place by separate mailing or other means.

3. Franchisee bills shall be clear, concise and understandable to Subscribers. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Fifty ($50.00) Dollars per violation, per day or part thereof up to a maximum of Five Hundred ($500.00) Dollars.

4. Credits for service or refunds shall be issued no later than thirty (30) days of the next billing cycle of the customer following the determination that a credit or refund is warranted. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Fifty ($50.00) Dollars per violation, per day or part thereof up to a maximum of Five Hundred ($500.00) Dollars.

5. A Franchisee shall provide Subscribers, the Council, and the Town Manager with at least thirty (30) days advance written notice of any changes in rates, charges, channel lineup, or initiations or discontinuations or changes of service or services offered over the Cable System whenever practicable. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Fifty ($50.00) Dollars per violation, per day or part thereof up to a maximum of Five Hundred ($500.00) Dollars.

N. Except in the case of a system malfunction, upon a Subscriber's request, a Franchisee shall provide a refund or credit to the account of the Subscriber, prorated on a daily basis, for any period of four (4) hours or more within a twenty-four (24) hour period during which a Subscriber experienced an interruption of service or substantial impairment of service, whether due to a System Malfunction or other cause. No refunds shall be due for service interruptions directly related to a rebuild, upgrade or routine maintenance of the Cable System which is planned, noticed properly to Subscribers, and occurs during a time other than between 6:00 p.m. and II:00 p.m. and lasts for four (4) hours or less. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Fifty ($50.00) Dollars per violation, per day or part thereof up to a maximum of Five Hundred ($500.00) Dollars.

O. Billing.
1. The first billing statement of the Franchisee after a new installation or service change shall be pro-rated as appropriate and shall reflect any security deposit.
2. The billing statement of the Franchisee must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Statements shall also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
3. Any balance not received within ten (IO) days after the due date may be assessed an administrative charge. However, in no event shall administrative charges for an overdue balance accumulated against any individual subscriber exceed Twenty Five ($25.00) Dollars. The charge shall appear on the billing statement for the following month. Any administrative charge applied to unpaid bills shall be subject to regulation by the Town consistent with applicable law. Subscribers shall not be charged an administrative fee, a late fee or otherwise penalized for any failure by the Franchisee, its employees, or contractors, including failure to timely or correctly bill the Subscriber, or failure to properly credit the Subscriber for a payment timely made.
4. The Franchisee must notify the Subscriber that payment can be remitted in Person at the office of the Franchisee in the Town and inform the Subscriber of the address of that office where payment can be made.
5. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Fifty ($50.00) Dollars per violation, per day or part thereof up to a maximum of Five Hundred ($500.00) Dollars.

P. No charge may be made for any service or product which the Subscriber has not affirmatively requested by name. Subscriber's failure to refuse a cable operator's proposal to provide such service or equipment is not an affirmative request for service or equipment. A Subscriber's affirmative request for service or equipment may be made orally or in writing. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Fifty ($50.00) Dollars per violation, per day or part thereof up to a maximum of Five Hundred ($500.00) Dollars.

Q. The Franchisee shall, upon request, certify in writing to the Town, based upon internal due diligence by the Franchisee, that to the best of Franchisee's knowledge it is in substantial compliance with the standards set forth in this section. At the request of the Town, the Franchisee shall submit such documentation as may be required to demonstrate compliance with this section. This documentation shall be submitted within forty five (45) days of the receipt by the Franchisee of the Town's request.
R. Responsibility for the administration of this Ordinance, and any Franchise granted pursuant to this Ordinance, and for the resolution of all complaints referred to the Town against a Franchisee regarding the quality of service, equipment malfunctions, and related matters, is hereby delegated to the Town Manager (who can in turn designate to a Town employee), who is empowered, among other things, to settle, or compromise any controversy arising from operations of the Franchisee, on behalf of the Town, in

accordance with the best interests of the public. In cases where requests for service have been ignored or in cases where the service provided is unsatisfactory for whatever reason, the Town Manager or designee, hereafter referred to jointly as Town Manager, shall have the power to require the Franchisee to provide service consistent with the terms of the Franchise, if in the opinion of the Town Manager or designee such request for service is reasonable. Any Person aggrieved by a decision of the Town Manager, including the Franchisee, may appeal the matter to the Council for hearing and determination. The Council may accept, reject or modify the decision of the Town Administrator. No adjustment, settlement, or compromise, whether instituted by the Town Manager or by the Council shall be contrary to the provisions of this Ordinance or any Franchise Agreement issued pursuant to this Ordinance, and neither the Town Manager nor the Council, in the adjustment, settlement, or compromise of any controversy shall have the right or authority to add to, modify or delete any provision of this Ordinance or of the Franchise, or to interfere with any rights of Subscribers or any Franchisee under applicable federal, or state Law or private contract.

S. 1. The fines to which the Franchisee is subject as set forth in this section are to be assessed by the Council on a per violation basis, with each day of a continuing violation constituting a separate violation. Where a credit required by this section is not possible because service has been terminated, Franchisee shall issue a refund to the former Subscriber for the appropriate amount.

2. Prior to the Council's assessment of a tine pursuant to this Ordinance, the Town Manager, or his designee, shall mail to the Franchisee a written notice, by hand delivery or certified or registered mail, of the proposed fine, specifying the violation at issue. The Franchisee shall have thirty (30) days from the date of receipt of the written notice to file a written response to the notice of the Town Manager or his/her designee as to whether the violation has been cured. The written response of the Franchisee shall be signed by management level personnel of Franchisee and all statements contained therein shall be regarded as material representations of the Franchisee to the Town.

3. The Town shall consider any justification or mitigating factor advanced in the written response of the Franchisee, including but not limited to rebates or credits to the Subscriber or a cure of the violation. The Town may not assess any fine if the Franchisee has reasonably resolved the complaint or cured the violation within a reasonable time frame. However, said Subscriber may be entitled to a credit or refund as provided herein.

4. Subsequent to the notice of proposed fine to Franchisee, and consideration of the response of the Franchisee, if any, the Town may, after a public hearing at which Franchisee shall have an opportunity to heard, issue an assessment of fine. The fine shall be paid within thirty (30) days of written notice to the Franchisee or, if Franchisee challenges the assessment in a court of competent jurisdiction, within thirty (30) days of a final non-appealable decision that the assessment is valid. If said refund, credit or fine is not paid by Franchisee within such thirty (30) day period, as the case may be, the Town may, at its discretion, withdraw immediately the amount thereof from the Security Fund. Upon such withdrawal, the Town shall notify Franchisee of the withdrawal amount, after which Franchisee shall have ten (10) days from the date of such notice to deposit in the Security Fund an amount sufficient to restore the Security Fund to the amount specified in the Franchise Agreement. The Town may enforce payment of the fine in any court having jurisdiction. It is the intent of the Town to determine fines as a reasonable

estimate of the damages suffered by the Town and/or its Subscribers, whether actual or potential, and may include without limitation, increased costs of administration and other damages difficult to measure.

5. Franchisee may appeal any decision of the Town Manager or his/her designee directly to the Council within thirty (30) days of notice of the decision to the Franchisee.

6. Intentional material misrepresentation by a franchisee in any response to a notice of proposed credit, refund and/or fine, whether oral or written, shall be considered a material breach of the Franchise Agreement, subject to a penalty of no less than Five Thousand ($5.000.00) Dollars, and shall be grounds for Franchise revocation.

7. In addition to complying with the customer service standards set forth in this Ordinance or in any Franchise issued pursuant to this Ordinance, a Franchisee shall, at minimum, comply with all customer service standards of the FCC applicable to Cable Systems and any other applicable federal or state Law concerning customer service standards, consumer protection, and unfair or deceptive trade practices.

8. The Town expressly reserves the right to consider violations of the customer service requirements in evaluating any renewal, modification or transfers of any Franchise, to the extent consistent with applicable law.

T. The Town hereby acknowledges that the standards incorporated in this section XVII (A-T) are not applicable to cable modem service. However, the Town hereby reserves the right if subsequently authorized by law, to adopt customer service standards applicable to cable modem service and to impose such standards on a Franchisee, upon ninety (90) days notice.

SECTION XVIII - SUBSCRIBER PRIVACY

A. A Franchisee shall at all times protect the privacy of all subscribers to the full extent required by Section 631 of the Communications Act, 47 U.S.C. § 551 and state law. A Franchisee shall not condition subscriber or other service on the subscriber's grant of permission to disclose information which, pursuant to federal or state law, cannot be disclosed without the subscriber's explicit consent. No penalties or extra charges may be invoked by the Franchisee for a subscriber's failure to grant consent.

B. Unless otherwise permitted by federal or state law, neither the Franchisee nor its agents or employees shall, without the prior and specific written authorization of the subscriber involved, sell, or otherwise make available for commercial purposes the names, addresses or telephone numbers of any subscriber or subscribers, or any information which identifies the individual viewing habits of any subscriber or subscribers.

SECTION XIX - DISCRIMINATION PROHIBITED

A. No Franchisee may in its rates or charges, or in the availability of the services or facilities of its system, or in any other respect, make or grant any illegal undue preferences or advantages to any subscriber, potential subscriber, or group of subscribers or potential subscribers, nor subject any such persons or group of persons to any illegal undue prejudice or any disadvantage. A Franchisee shall not deny, delay, or otherwise burden service or discriminate against subscribers or users on the basis of age, race, creed, religion, color, sex, handicap, national origin or marital status, except for discounts for senior citizens, the economically disadvantaged or handicapped that are applied in a uniform and consistent manner. A Franchisee may also offer bulk discounts to multiple dwelling buildings to the extent such discounts are otherwise permissible by law.

B. A Franchisee shall not deny cable service to any potential subscriber because of the income of the residents of the area in which the subscriber resides.
C. A Franchisee shall not refuse to employ, nor discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment because of age, race, creed, religion, color, sex, disability, national origin, or marital status. The Franchisee shall comply with federal, state and local laws and regulations governing equal employment opportunities, as the same may be from time to time amended.

SECTION XX - CABLE SYSTEM CONSTRUCTION

A. Construction map and schedule. Where applicable, Franchisee shall submit a construction plan or reconstruction plan which shall be incorporated by reference and made a part of the Franchise Agreement. The plan shall include Cable System design details, equipment specifications, and design performance criteria. The plan shall also include a map of the entire franchise area and shall clearly delineate the following:
1. Areas within the franchise area where the Cable System will be initially available to subscribers including a schedule of construction for six month that construction or reconstruction is proposed; and
2. Areas within the franchise area where extension the Cable System cannot reasonably be done due to lack of present or planned development or other similar reasons, with the areas and the reasons for not serving them clearly identified on the map.
3. A Franchisee shall provide to the Town, a detailed explanation, with proper notice including a detailed explanation of any delay of greater than twenty one (21) days.
B. Early construction and extension. Nothing in this section shall prevent the Franchisee from constructing or reconstructing the Cable System earlier than planned. However, any delay in the Cable System construction beyond the times specified in the plan report timetable shall require application to and consent by the Council.
C. Delay in construction timetable. Any delay beyond the terms of construction or reconstruction timetable, unless approved by, the Council, will be considered a violation of this Ordinance for which the provisions of SECTION XXIII shall apply as determined by the Council.
D. Commencement of construction or reconstruction. Construction or reconstruction in accordance with the plan submitted by Franchisee shall commence as soon after the grant. and acceptance of a franchise as is reasonably possible. Failure to proceed expeditiously shall be grounds for revocation of a franchise. Failure to proceed expeditiously shall be presumed in the event construction or reconstruction is not commenced within twelve (12) months of the grant and acceptance of a franchise.
E. Prior approval by Town. Except for individual service drops, the Franchisee shall not erect any pole, run any line, make any attachment, nor shall any construction of any kind be commenced without the prior approval of the Town. Prior to the issuance of such approval, the Franchisee shall submit to the Town, upon request:
1. Strand maps of the system authorized by the proposed franchise showing plant routing, utility company poles to which the system facilities are to be attached; and
2. True copies of authorization given to_the Franchisee with United Telephone Company or its successors and Florida Power and Light Company and any other utility or company to which an attachment is to be made.

G. Town's right to inspect and correct defects. The Town shall have and maintain the right to inspect the installation, construction, operation and maintenance of the system by the Franchisee to insure the proper performance of the terms of this ordinance, provided said inspection does not interfere with the operations of the system

H. Joint or common use of poles.

1. To enhance the public convenience and to minimize the placement of poles and wire holding structures within public ways, the Franchisee shall enter into agreements for the joint or common use of poles or other wire holding structures where poles or other wire holding structures already exist for the use in serving the Town or serving the public convenience. Where reasonable terms and conditions cannot be negotiated with the owners of such poles and wire holding structures, the Franchisee shall place the cable underground .

2. The Town shall be permitted to make use of the poles or other wire holding structures of the Franchisee, without charge or remuneration to the Franchisee, if the town manager determines that the use would enhance the public convenience and would not unduly damage, hamper or interfere with the Franchisee's present and future operations and provided that the use by the Town is not to offer a service directly competitive to a Franchisee's cable service.

I. Permits, easements and agreements. The Town shall not be required to assume any responsibility for the securing of any rights-of-way or easements, nor shall the Town be responsible for securing any permits or agreements with other persons or utilities. A Franchisee is required to obtain all such permits or easements prior to construction.

J. Location/relocation of facilities/use of streets.

1. Franchisee's system may be installed above ground in areas where existing power or telephone facilities are above ground, and shall be installed underground in areas where existing power and telephone facilities are installed underground. Where reasonable terms and conditions cannot be negotiated with the owners of such areas, the Franchisee may request waiver of this provision. The Franchisee shall endeavor to enter into agreements for the purpose of sharing poles with any person, firm or corporation now or hereafter authorized by license, franchise or otherwise to erect and maintain overhead or underground wires and cables, it being the intent hereof that all above ground installations of Cable Systems shall be accomplished on existing utility poles and easements where feasible, and installed only parallel to existing facilities. Where new poles are installed, prior approval of the Town Manager as to location must be received.

2. Franchisee shall not place any fixtures or equipment where the same will interfere with any gas, electric, cable, telephone, sewer, drainage or water lines, fixtures or equipment, and the location by Franchisees of their lines and equipment shall be in such a manner as not to interfere with the usual travel on or the proper use of said streets, the use of the same for the installation or operation of gas, electric,. telephone, water, drainage, or sewer lines equipment, or, the rights or reasonable convenience of owners of property which abuts any street.

3. Franchisees shall relocate any above ground portion of their systems underground in any Town easement or Rights-of-Way area where existing power and telephone facilities are hereafter so relocated unless Franchisee elects to purchase said poles owned by utility company or is permitted to remain on said poles pursuant to contractual pole attachment

agreements. Any such relocation shall be at their expense, and such relocation shall be accomplished concurrently with relocation of any such power and telephone facilities.

4. The Franchisee, upon notice to the Town of not less than seven (7) business days, emergency situations excepted, shall have the authority to trim trees upon or overhanging streets, alleys, sidewalks and public ways and places of the Town so as to prevent the branches of such trees from coming in contact with the wires and cables of the Franchisee, in a manner approved by and acceptable to the Town. At the option of the Town, such trimming may be done by the Town or under its supervision and direction at the expense of the Franchisee, if prior notification has been given to the Franchisee and Franchisee thereafter failed to respond.

5. Franchisees shall promptly, upon the Town's request and at their own expense, modify or relocate when necessary, any part of their systems to accommodate the abandonment of any street.

6. The location of any underground or above-ground facility or structure of any Franchisee shall not result in a vested interest, and such poles or structures shall be removed or modified by a franchisee at its own expense whenever the Town determines that public convenience would be enhanced thereby.

SECTION XXI - USE OF STREETS

A. Any pavements, sidewalks, curbing or other paved area taken up or any excavations made by a Franchisee shall be done in compliance with Town requirements under permits issued for work by the proper officials of the Town, and shall be done in such manner as to give the least inconvenience to the inhabitants of the Town. Nothing herein shall be construed to exempt a Franchisee from compliance with any other Town ordinances.

B. A Franchisee shall, at its own cost and expense, and in a manner approved by the Town, replace and restore any such pavements, sidewalks, curbing or other paved areas in as good a condition as before the work involving such disturbance was done, and shall also prepare, maintain and provide to the Town Engineer full and complete plats, maps and records showing the exact locations of its facilities located within the public Streets, ways, and easements of the Town. These maps shall be available to the Town Engineer.

C. Except to the extent required by law, a Franchisee shall, at its expense, protect, support, temporarily disconnect, relocate, or remove, any of its property when required by the Town by reason of traffic conditions, public safety, Street construction, Street resurfacing or widening, change of Street grade, installation or sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of municipal or public utility 81.improvements; provided, however, that the Franchisee shall, in all such cases, have the privilege of abandoning any property in place. Franchisee shall do so at its expense to the extent other users of the rights-of-way are so responsible, consistent with applicable law.

D. A Franchisee shall, on the request of any person holding a building moving permit issued by the Town, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting same, and the Franchisee shall have the authority to require such payment in advance, except in the case where the requesting person is the Town, in which case no such payment shall be required. The Franchisee shall be given not less than seven (7) business days advance notice to arrange for such temporary wire changes.

E. A Franchisee shall use, with the owner's permission, existing underground conduits (if applicable) or overhead utility facilities whenever feasible and if available on reasonable terms and conditions.

F. All wires, cable lines, and other transmission lines, equipment and structures shall be installed and located to cause minimum interference with the rights and convenience of property owners. The Town may issue such generally applicable rules and regulations concerning the installation and maintenance of a Cable System installed in, on, or over the Streets, as may be consistent with this Ordinance and the franchise agreement.

G. Safety.

1. Franchisee's work, performance, equipment and job sites shall be in compliance with all applicable state and federal requirements. A Franchisee's work, while in progress, shall be properly protected at all times with suitable barricades, flags, lights, flares, or other devices as are required by the Manual on Uniform Traffic Control Devices (FDOT) to protect all members of the public having occasion to use the portion of the streets involved or adjacent property.

2. Franchisee shall at all times employ due care and shall install, maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage; injuries or nuisances to the public. All structures, lines, equipment and connections in, over, under and upon streets of the Town wherever situated or located shall at all times be kept and maintained in a safe, suitable, condition, and in good order and repair. Franchisee shall install and maintain its wires, cables, fixtures and other equipment in accordance with the requirements of the National Electrical Safety Code promulgated by the National Bureau of Standards, the National Electrical Code.

SECTION XXII - REPORTS AND RECORDS

A. Within six (6) months of the close of its fiscal year, a Franchisee shall provide the Town an annual report that, at minimum, includes the following information:

1. Upon request, a summary of the previous year's activities in the system serving the Town including but not limited to, services and products initiated or discontinued, new technologies, number of subscribers, homes passed, and miles of cable distribution plant in service. The summary shall also include a comparison of any construction, including system upgrades, during the year with any projections previously provided to the Town, as well as rate and charge increases and/or decreases for the previous fiscal year. It is the obligation of the Franchisee to include within this report any and all information necessary to evaluate Franchisee's system as compared to the definition of "State-of-the-Art" as defined in SECTION II (A) (30).

2. To verify franchise fee payments, if the Town collects a fee from the Franchisee, a financial statement, including a statement of sources of revenues for the Franchise Area. The statement shall be audited if Franchisee has audited statements performed in its normal course of business. If not, the statement shall be certified by the Franchisee's chief financial officer or other duly authorized financial officer of the Franchisee. The statement shall include notes that specify all significant accounting policies and practices upon which it is based.

3. To the extent there have been changes from maps already filed by Franchisee, a copy of updated maps depicting the location of all cable plant, showing areas served and

locations of all trunk lines and feeder lines in the Town. Upon request by the Town, such maps shall be provided in digitized form at Franchisee's expense.
4. Upon a request, a summary of subscriber or resident written complaints and/or complaints requiring a service call, identifying the number and nature of complaints and their disposition. Where complaints involve recurrent system problems, the nature of each problem and the corrective measures taken shall be identified. More detailed information concerning complaints shall be submitted upon written request of the Town.
5. Upon written request, a summary of the number of outages exceeding one (1) hour, including number of planned outages, number of outages during prime viewing hours (8:00 p.m. to II:00 p.m. daily), and number of outages by duration including number of subscribers affected.
6. Upon any change, if the Franchisee is a corporation, a list of officers and members of the board of directors; the officers and members of the board of directors of any parent corporation; and if the Franchisee or its parent corporation's stock or ownership interests are publicly traded, a copy of its most recent annual report.
7. Upon any change, if the Franchisee is a partnership, a list of the partners, including any limited partners, and their addresses; and if the general partner is a corporation, a list of officers and members of the board of directors or the corporate general partner, and the officers and directors of any parent corporation; and where the general partner or its parent corporation's ownership interests are publicly traded, a copy of its most recent annual report.
8. Upon any change, a list of all persons holding five percent (5%) or more ownership or otherwise cognizable interest in the Franchisee pursuant to 47 C.F.R. 76.501.
9. Upon request, a copy of the Franchisee's rules and regulations applicable to Subscribers of the Cable System.
10. Upon request, a report on the number of senior citizen, economically disadvantaged or handicapped subscribers receiving any rate discounts, if any, and the amount of any such discounts for specific services if Franchisee offers separate rates or discounts for those categories of subscribers.
11. A full schedule and description of all products, services, and equipment offer to cable subscribers, service hours and location of the Franchisee's customer service office or offices available to subscribers, and a schedule of all rates, fees and charges for all product, services and equipment provided over the Cable System.
12. A report on the number of total subscribers served by the Franchisee in the Cable System.
B. Upon written request by the Town, a Franchisee shall provide, on an annual basis, the following documents to the Town as received or filed, without regard to whether the documents are filed by the Franchisee or an affiliate:
1. Annual report of the Franchisee or its parent or any affiliate of Franchisee which controls Franchisee and issues an annual report;
2. Applicable FCC Forms and fillings
3. Any and all pleadings, petitions, applications, communications, reports and documents (collectively referred to as "filings") submitted by or on behalf of the Franchisee to the FCC, SEC or any state or federal agency, regulatory court or regulatory commission which filings may impact the Franchisee's operation of the Franchisee's Cable System in the Town or that may impact the Town's rights or obligations under this Ordinance or the

Franchise Agreement issued pursuant to this Ordinance and any and all responses, if any, to the above mentioned filings.

4. Any and all notices of deficiency, forfeiture, or documents instituting any investigation, civil or criminal proceeding issued by any state or federal agency regarding the system, Franchisee, or any Affiliate of Franchisee, provided, however, that any such notice or documents relating to an Affiliate of Franchisee need be provided only to the extent the same may concern Franchisee's operations in the Town. For example, a notice that an Affiliate which has a management contract for the Town's system was not in compliance with FCC EEO requirements with respect to its activities in the Town would be deemed to affect or bear on operations in the Town.

5. Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy.

6. Notwithstanding anything to the contrary, the Franchisee agrees to provide the Town, within thirty (30) days of filing or receipt of such, any document filed with or received from a governmental agency that may adversely impact Franchisee's obligations under its Franchise with respect to the construction, operation or maintenance of the Franchisee's Cable System or the Town's rights with respect thereto.

C. Upon reasonable notice and during normal business hours, a Franchisee shall make a complete set of books and records available for inspection and audit by the Town in the Southwest Florida Area, for purposes of ascertaining compliance with requirements of this Ordinance and the franchise agreement.

D. Any materials requested by the Town which are deemed proprietary and confidential under applicable law shall be made available to the Town for review and inspection (but not copying or removal), but shall not be required to be filed with the Town unless such filing is required by applicable law. To the extent consistent with applicable law, the Town shall maintain the confidentiality of information provided by Franchisee, when designated as proprietary and confidential by Franchisee.

SECTION XXIII - ENFORCEMENT REMEDIES

A. In addition to any other remedies available at law or equity or provided herein, the Town may apply any one or combination of the following remedies in the event a Franchisee violates this Ordinance, its franchise agreement, applicable state or federal law, or applicable local law or order:

1. Impose damages in such amount, whether on a per-diem, per-incident, or other measure of violation, as provided in this Ordinance or in a Franchise Agreement. Payment of liquidated damages by the Franchisee will not relieve the Franchisee of its obligation to comply with the franchise agreement and the requirements of this Ordinance.

2. Impose a fine in an amount not less than Three Hundred ($300.00) Dollars per day for failure to obtain a Franchise Agreement from the Town pursuant to this Ordinance.

3. Impose a fine in the amount of Three Hundred Fifty ($350.00) Dollars per day per violation for material failure to comply with any provision of this Ordinance, except as otherwise provided for herein or as otherwise provided for in a Franchise Agreement.

4. In the event of a material failure to comply with the provision of this Ordinance, revoke the franchise pursuant to the procedures specified in SECTION XXVI hereof.

2. 5. Whenever the Town finds that a Franchisee granted a Franchise pursuant to this Ordinance has allegedly violated one (1) or more terms, conditions or provisions of a Franchise, a written notice

shall be given to Franchisee. The written notice shall describe in reasonable detail the alleged violation so as to afford Franchisee an opportunity to remedy the violation. Franchisee shall have thirty (30) days subsequent to receipt of the notice in which to either correct the violation of diligently be acting toward correction of the problem. Franchisee may, within fifteen (15) business days of receipt of notice, notify the Town that there is a dispute as to whether a violation or failure has, in fact occurred. Such notice by Franchisee to the Town shall specify with particularly the matters disputed by Franchisee an shall stay the running of the above-described time.

1. The Town shall hear the Franchisee dispute at a regularly or specially scheduled meeting. The Franchisee shall have the right to subpoena and cross-examine witnesses. The Council shall determine if Franchisee has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, Franchisee may petition for reconsideration.
2. If after hearing the dispute the claim is upheld by the Council, Franchisee shall have fifteen (15) business days from such a determination to commence to remedy the violation or failure.
3. The time for Franchisee to correct any alleged violation may be extended by the Town if the necessary action to correct the alleged violation is of such nature or character to require more then thirty (30) days within which to perform provided Franchisee commences the corrective action within the thirty (30) day period and thereafter uses reasonable diligence to correct the violation.

B. In determining which remedy or remedies are appropriate, the Town shall take into consideration the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and such other matters as the Town determines are appropriate to the public interest.

C. Notwithstanding anything to the contrary, Franchisee's failure to comply with SECTIONs XIV, XV and XVI hereof, may result in the assessment of fine in the amount of Three Hundred ($300.00) Dollars per day for each day such violation continues.

D. Failure of the Town to enforce any requirements of a franchise agreement or this Ordinance shall not constitute a waiver of the Town's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

E. In any proceeding wherein there exists an issue with respect to a Franchisee's performance of its obligations pursuant to this Ordinance, the Franchisee shall provide such information as it may have concerning its compliance with the terms of the Ordinance. The Council may find a Franchisee is not in compliance with the terms and conditions of this Ordinance and apply any one or combination of the remedies otherwise authorized by this Ordinance or applicable law.

F. Notwithstanding anything to the contrary, and notwithstanding being subjected to a tine or refund requirement, Franchisee shall be obligated to cure, or take all reasonably practicable steps to cure, any violation of this Ordinance or of any Franchise Agreement granted hereto within thirty (30) business days after receipt of notice from the Town of the alleged violation. If the alleged violation is not cured or Franchisee has not taken all reasonable and practicable steps to commence to cure within such period, the Town may exercise all rights and remedies available pursuant to this Ordinance, or applicable law, or the Franchise Agreement.

SECTION XXIV - RENEWAL OF FRANCHISE

Renewal shall be conducted in a manner consistent with SECTION 626 of the Communications Act, 47 USC. § 546.

SECTION XXV - TRANSFERS

A. No transfer of a franchise shall occur without prior approval of the Town, which shall not be unreasonably withheld.

B. An application for a transfer of a franchise shall meet the requirements of SECTION III hereof, and provide complete information on the proposed transaction, including details on the legal, financial, technical and other qualifications of the transferee, and on the potential impact of the transfer on subscriber rates and service. The application shall provide, at a minimum, the information required in SECTION III with respect to the proposed transferee. The information required in SECTION III shall also be provided whenever the proposed transferee expects material changes to occur in those areas.

C. In making a determination on whether to grant an application for a transfer of a franchise, the Town Council shall consider the legal, financial, and technical capacity of the transferee to operate the system; whether the incumbent cable operator is in substantial compliance with the material terms of its franchise agreement and this Ordinance and, if not, the proposed transferee's commitment to cure such noncompliance; and whether operation by the transferee would adversely affect cable services to subscribers.

D. No application for a transfer of a franchise shall be granted unless the transferee agrees in writing, in the form of an affidavit signed by a duly authorized officer of the transferee, that it will abide by and accept all terms of this Ordinance and the franchise agreement, and that it will assume the obligations and liabilities of the previous Franchisee to the Town under this Ordinance and the franchise agreement.

E. Approval by the Town of a transfer of a franchise does not constitute a waiver or release of any of the rights of the Town under this Ordinance or the franchise agreement, whether arising before or after the date of the transfer.

F. The application process shall not include any pro-forma transfers, as defined herein, mortgages and pledges of Franchisee's securities, but shall require proper notice to the Town, pursuant tot he terms of the Ordinance or the franchise agreement.

SECTION XXVI - REVOCATION OR TERMINATION OF FRANCHISE

A. A franchise may be revoked by the Council for a Franchisee's material failure to construct, operate or maintain the Cable System as required by this Ordinance or the franchise agreement, or for any other material violation of this Ordinance or material breach of the franchise agreement. To invoke the provisions of this subsection (A), the Town shall give the Franchisee written notice, by certified mail at the last known address, that Franchisee is in material violation of this Ordinance or in material breach of the franchise agreement and describing the nature of the alleged violation or breach with specificity. If within thirty (30) calendar days following receipt of such written notice from the Town to the Franchisee, the Franchisee has not cured such violation or breach, or has not commenced corrective action and such corrective action is not being actively and expeditiously pursued, the Town may give written notice to the Franchisee of its intent to revoke the franchise, stating its reasons.

B. Prior to revoking a franchise under subsection (A) hereof, the Council shall hold a public hearing, upon thirty (30) calendar days notice, at which time the Franchisee and the public shall be given an opportunity to be heard. Following the public hearing the Council may determine whether to revoke the franchise based on the evidence presented at the hearing, and other evidence of record. If the Council determines to revoke a franchise, it shall issue a written decision setting forth the reasons for its decision. A copy of such decision shall be transmitted to the Franchisee.

C. Notwithstanding subsections (A) and (B) hereof, any franchise may, at the option of the Town following a public hearing before the Council, be revoked one hundred twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding, unless within that one hundred twenty (120) day period:

1. Such assignment, receivership or trusteeship has been vacated; or
2. Such assignee, receiver or trustee has fully complied with the terms and conditions of this Ordinance and the franchise agreement and has executed an agreement, approved by a court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of this Ordinance and the franchise agreement.

D. In the event of foreclosure or other judicial sale of a significant part of the facilities, equipment or property of a Franchisee's system in the Public Rights-of-Way, the Town may revoke the franchise, consistent with the procedures of subsections A and B hereof, including a public hearing before the Council, by serving notice upon the Franchisee and the successful bidder at the sale, in which event the franchise and all rights and privileges of the Franchisee will be revoked and will terminate thirty (30) calendar days after serving such notice, unless:

1. The Town has approved the transfer of the franchise to the successful bidder; and
2. The successful bidder has covenanted and agreed with the Town to assume and be bound by the terms and conditions of the Franchise Agreement and this Ordinance

E. If the Town revokes a Franchise, or if for any other reason a Franchisee abandons, terminates or fails to operate or maintain service to its subscribers for a period of six (6) months, the following procedures and rights are effective:

1. The Town may require the former Franchisee to remove its facilities and equipment at the former Franchisee's expense. If the former Franchisee fails to do so within a reasonable period of time, the Town may have the removal done at the former Franchisee's and/or surety's expense.
2. The Town, by resolution of the Council, may acquire ownership, or effect a transfer, of the Cable System at an equitable price, consistent with applicable law.
3. If a Cable System is abandoned by a Franchisee, the Town may sell, assign or transfer all or part of the assets of the system.

F. The Town shall hold one or more public hearings on the transfer application and after said hearing(s) shall pass a resolution to grant or deny the application to transfer the Franchise.

G. Where the Town has issued a franchise specifically conditioned in the franchise agreement upon the completion of construction, system upgrade or other specific obligation by a specified date, failure of the Franchisee to complete such construction or upgrade, will result in the automatic forfeiture of the franchise without further action by the Town where it is so provided in the franchise agreement, unless the Town, at its discretion and for good cause demonstrated by the Franchisee, grants an extension of time.

H. Except as provided in Subsection F, no adverse action against a Franchisee may be taken by the Town pursuant to this section except as consistent with the procedures set forth in Subsections A and B hereof.

SECTION XXVII - CONTINUITY OF SERVICE MANDATORY

A. It is the right of all subscribers to receive all available services requested from the Franchisee as long as their financial and other obligations to the Franchisee are satisfied.

B. In the event of a termination or transfer of a franchise for whatever reason the Franchisee shall ensure that all subscribers receive continuous, uninterrupted service. The Franchisee shall cooperate with the Town to operate the system for a temporary period following termination or transfer as necessary to maintain continuity of service to all subscribers. The temporary period will not exceed six (6) months without the Franchisee's written consent. During such period the Cable System shall be operated under such terms and conditions as the Town and the Franchisee may agree, or such other terms and conditions that will continue, to the extent possible, the same level of service to subscribers and that will provide reasonable compensation to the cable operator.

C. In the event a Franchisee fails to operate the system for seven (7) consecutive days without prior approval of the Town or without just cause, the Town may, at its option, operate the system or designate an operator until such time as the Franchisee restores service under conditions consistent with the terms of the Franchise or until a permanent operator is selected. If the Town is required to fulfill this obligation for the Franchisee, the Franchisee shall reimburse the Town for all costs or damages resulting from the Franchisee's failure to perform that are in excess of the revenues from the system received by the Town. Additionally, the Franchisee will cooperate with the Town to allow Town employees and/or Town agents free access to the Franchisees' facilities and premises for purposes of continuing system operation.

SECTION XXVIII - RATES

A. Nothing in this Ordinance shall prohibit the Town from regulating rates for cable services to the full extent permitted by law.

B. Any rate or charge established for cable service, equipment, repair and installation shall be reasonable to the public and in compliance with FCC guidelines. Compliance with applicable laws and regulations shall be considered reasonable. Upon written request from the Town or its agent, Franchisee shall provide all requested data, records and documentation to show the reasonableness of the rates as required by FCC regulations or other applicable law. Where such information is designated proprietary and confidential, it shall not be copied or removed or otherwise subject to public inspection, to the extent the Town is permitted to protect such information from public inspection under applicable law.

C. The Town's regulation of rates as permitted under applicable law, shall be consistent with Federal Communications Commission cable rate regulation standards or other applicable law in effect at the time. A Franchisee shall notify the Town of any changes in rates or service no less than thirty (30) days prior to the effective date of such change. Unless otherwise prohibited by applicable law, the Town may require the Franchisee to notify each subscriber, by placing an announcement of not less than one quarter page in a newspaper of general circulation and/or via the Cable System, or by written notice to the Subscriber, or such other reasonable means consistent with applicable law, of the proposed rate change. At any hearing conducted by the Town in the exercise of any rate regulatory authority, the Franchisee and members of the public will be given an opportunity to present their respective views on the proposed rates. Upon conclusion of the public hearing, the Council shall decide the matter by majority vote and adopt a Resolution taking such action and providing such relief as is appropriate and authorized by Federal Communications Commission rate regulation standards or other applicable law. The resolution shall set forth complete findings of fact and conclusions regarding all of the basic elements considered in the Council's determination.

SECTION XXIX - PERFORMANCE EVALUATION

The Town will conduct periodic performance evaluations of a Franchisee as the Town, in its sole discretion, determines is necessary. A Franchisee shall cooperate with these evaluations reasonably and in good faith. If the Town implements a survey of cable subscribers in connection with a performance evaluation, the Town and Franchisee may agree in a Franchise Agreement that Franchisee shall distribute the Town's questionnaire to its subscribers at the Franchisee's expense.

SECTION XXX -ADMINISTRATION

A. The Town Manager, either directly or through a duly appointed designee, shall have the responsibility for overseeing the day-to-day administration of this Ordinance and franchise agreements on behalf of the Town. The Manager shall be empowered to take all administrative actions on behalf of the Town, except for those actions specified in this Ordinance that are reserved to the Council. The Manager may recommend that the Commission take certain actions with respect to the franchise. The Manager shall keep the Commission apprized of developments in cable and provide the Commission with assistance, advice and recommendations as appropriate.

B. Subject to federal and state law, the Council shall exercise the sole authority of the Town to regulate rates for cable services, grant franchises, authorize the entering into of franchise agreements, modify franchise agreements, renew or deny renewal of franchises, revoke franchises, and authorize the transfer of a franchise.

SECTION XXX1 - FORCE MAJEURE

In the event a Franchisee's performance of or compliance with any of the provisions of this Ordinance or the Franchisee's franchise agreement is prevented by a cause or event not within the Franchisee's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof, provided, however, that Franchisee uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For purposes of this Ordinance and any franchise agreement granted or renewed hereunder, causes or events not within a Franchisee's control shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, tires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court Causes or events within Franchisee's control, and thus not falling within this section, shall include, without limitation, Franchisee's financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of Franchisee's directors, officers, employees, contractors or agents.

SECTION XXXII -APPLICABILITY
This Ordinance shall be applicable to all cable franchises granted, transferred, modified, or renewed after its effective date, and shall apply to all cable franchises granted prior to the effective date of this Ordinance, to the full extent not inconsistent therewith.
SECTION XXXIII - MUNICIPAL CABLE SYSTEM OWNERSHIP AUTHORIZED
A. To the full extent permitted by law, the Town may acquire, construct, own, and/or operate a Cable System.
B. Nothing in this Ordinance shall be construed to limit in any way the ability or authority, if any, of the Town to acquire, construct, own, and/or operate a Cable System to the full extent permitted by law or consistent with the terms of a Franchise.
SECTION XXXIV - RESERVATION OF RIGHTS
A. The Town reserves the right to amend this Ordinance as it shall find necessary in the lawful exercise of its police powers.
B. Any additional regulations adopted by the Town shall be incorporated into this Ordinance and complied with by all Franchisees within thirty (30) days of the date of adoption of such additional regulations unless imposition of such regulations would be otherwise prohibited by applicable law, or inconsistent with an existing Franchise.
C. The Town reserves the right to exercise the power of eminent domain to acquire the property of Franchisee's Cable System, consistent with applicable federal and state law. Notwithstanding anything to the contrary, this section shall not enlarge or restrict the Town's exercise of eminent domain except to the extent provided by applicable law.
D. The Town shall at all times have the right, upon reasonable notice and during normal business hours, to examine records and to inspect a Franchisee's facilities to the extent needed to monitor a Franchisee's compliance with and performance under this Ordinance and the Franchisee's Franchise Agreement.
E. The Town shall have the right, during the life of this Franchise, to install and maintain free of charge upon the poles of the Grantee any wire and pole fixtures necessary for any municipal purpose on the condition that such wire and pole fixtures do not interfere with the operations of the Grantee and are not used to offer any commercial cable service directly competitive with that offered by a Franchisee.
F. At the expiration, without right of renewal, of the term for which a Franchise is granted or upon its termination and cancellation, as provided for herein, or in any Franchise Agreement granted pursuant hereto, the Town shall have the right to require the Franchisee to remove at its own expense all portions of its system from all public ways within the Town.
G. At the expiration without right of renewal of the term for which this Franchise is granted, including any renewal term, or upon its termination and cancellation, as provided for herein, the Town, at its election, and upon payment of the fair market value to the Franchisee consistent with applicable law, shall have the right to purchase and take over the Franchisee's system in the Town. The above price shall not include, and the Grantee shall not receive, anything for the valuation of any right or privilege appertaining to it under a Franchise. Upon the exercise of this option by the Town and its service of an official notice of such action upon the Franchisee, the Franchisee shall immediately transfer to the Town possession and title to all facilities and property, real and personal,

of the system, free from any and all liens and encumbrances not agreed to be assumed by the Town in lieu of some portion of the purchase price set forth above, and the Franchisee shall execute such warranty deeds or other instruments of conveyance to the Town as shall be necessary for this purpose. The Franchisee shall do nothing during the term of this franchise or any extension thereof to or in any way prevent or hinder the Town from purchasing the system under the option contained herein.

SECTION XXXV - SAVINGS

All rates, fees, charges and financial obligations previously accrued pursuant to prior ordinances and resolutions shall continue to be due and owing until paid.

SECTION XXXVI - SEVERABILITY

If any part, section, subsection, or other portion of this ordinance or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reason, such part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Ordinance, and all applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The Town declares that no invalid or prescribed provision or application was an inducement to the enactment of this Ordinance, and that it would have enacted this Ordinance regardless of the invalid or prescribed provision or application.

SECTION XXXVII -APPLICABLE LAW

This Ordinance shall be construed in accordance with the law of the State of Florida and is subject to applicable local, state and federal law.

SECTION XXXVIII - EFFECTIVE DATE

This Ordinance shall take effect immediately upon adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member Rynearson and seconded by Council Member Van Duzer and, upon being put to a vote, the result was as follows:

Howard Rynearson	aye
Daniel Hughes	aye
Bill Thomas	aye
W. H. "Bill" Van Duzer	aye
Terry Cain	aye

DULY PASSED AND ENACTED this 14th day of January, 2002.

ATTEST:

By: [signature]
Marsha Segal-George, Town Clerk

TOWN OF FORT MYERS BEACH

By: [signature]
Daniel Hughes, Mayor

Approved as to form by:

[signature]
Richard V.S. Roosa, Town Attorney