

TITLE XI: BUSINESS REGULATIONS

TITLE XI: BUSINESS REGULATIONS

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CHAPTER 110: BUSINESSES IN GENERAL

Section

110.01 Indirect solicitation of alms in public places without permit

110.02 Additional information required of solicitors upon application for license

§ 110.01 INDIRECT SOLICITATION OF ALMS IN PUBLIC PLACES WITHOUT PERMIT.

No person shall sell or offer for sale any pencils, shoestrings, chewing gum or similar objects in or on the streets or other public places as an indirect method of soliciting alms, nor shall any person offer a cup or other receptacle for the deposit of money or take up any collection in connection with the playing of any musical instrument in or on the streets or other public places without having a permit therefor issued by the Town Clerk.

(1993 Code, § 18-2) Penalty, see § 10.99

Statutory Reference:

Authority to regulate begging, see G.S. § 160A-179

§ 110.02 ADDITIONAL INFORMATION REQUIRED OF SOLICITORS UPON APPLICATION FOR LICENSE.

In addition to the information furnished by applicants for privilege license taxes, every solicitor applying for a license shall furnish to the Town Clerk the name and address of the person whom he or she represents together with a description of the goods or services which he or she offers for sale.

(1993 Code, § 18-3)

Statutory Reference:

Authority to regulate solicitation campaigns and itinerant merchants, see G.S. § 160A-178

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CHAPTER 111: REGULATING AND LICENSING BUSINESSES AND TRADES

Section

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§ 111.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUSINESS. Any business, trade, occupation, profession, avocation, or other form of commercial activity, regardless of form, that maintains a physical presence or that charges \$500 or more for any improvement to real property located within the incorporated town limits.

PUBLIC UTILITY. A public utility as defined in N.C. Gen. Stat. 62-3(23), as may be amended.

§ 111.02 BUSINESS REGISTRATION REQUIRED.

No business shall operate within the municipal limits of the Town without having first registered with the Town to do business. Registration applications shall be made available by the Town Clerk and may require the applicant to provide information such as the applicant's name, contact information, emergency contact information, and nature of the business operation. Business licenses are not transferable. Nothing herein shall limit the Board of Commissioners from prohibiting or limiting business activity as allowed by law, and the issuance of a business license shall not thereafter restrict or limit the Board of Commissioner's authority to regulate business as allowed by law. A business license may be denied, or revoked, for any business that is in violation of any federal, state or local law. Provided, businesses shall be exempt from registration to the extent allowed or required by federal or state law.

§ 111.03 CONDUCTING BUSINESS WITHOUT A LICENSE.

It shall be unlawful for any person or his or her agent to engage in or carry on a business in town without having first obtained a business license. For the purpose of this chapter, the opening of a place of business, or offering to sell, followed by a single sale or transaction, or performing any act or thing in

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furtherance of commerce or business activity, shall be construed to be engaging in or carrying on that business. Each day that a person shall engage in or carry on that business without a license shall be a separate offense.

§ 111.04 DURATION OF LICENSE.

Business licenses shall be issued on a fiscal year basis that coincides with the Town's fiscal year. A business must obtain a new license each fiscal year. The registration fee shall be established each year by the Board of Commissioners through the adoption of the annual budget, provided that in no instance shall the fee exceed the cost reasonably related to administering the provisions of this Chapter. (Ord. Am. 2016-03, passed 9-19-16; Am. Ord. 11-18-19; Am. Ord. 2.17.20)

§ 111.05 LICENSE REQUIRED FOR EACH SEPARATE BUSINESS.

A separate license shall be required for each business located in town. A business license is only valid for the business conducted at the place, and by the licensee named, on the license.

§ 111.06 DISPLAY OF LICENSE.

Every license must be kept prominently displayed at all times at the place of business to which the licensed was issued.

§ 111.07 REGISTRATION REQUIRED BY PUBLIC UTILITIES BEFORE INSTALLING OR MAINTAINING UTILITY LINES.

Except in emergencies, a public utility must register with the Town at least 48-hours prior to installing or maintaining any utility line or other apparatus that is either located on town-owned property or within the public utilities' right of way, regardless of whether such installation or maintenance occurs above or below ground. Upon request by the Town, the public utility must establish that it is properly operating on town-owned property or within the public utility's right of way.

Statutory Reference:

G.S. 160A-194 (Am. Ord.2015-10, passed 8-17-15; Am. Ord. 6-17-19)

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CHAPTER 112: ALCOHOLIC BEVERAGES

Section

112.01 Beer and wine sales restricted on Sunday

112.02 Public consumption

112.99 Penalty

§ 112.01 BEER AND WINE SALES RESTRICTED ON SUNDAY.

No malt beverages or wine, fortified or unfortified, shall be sold within the corporate limits of the town from 2:00 a.m. to 1:00 p.m. on each Sunday, except that sold by establishments having a permit issued under G.S. §§ 18B-300 *et seq.*

(1993 Code, § 6-1) Penalty, see § 112.99

§ 112.02 PUBLIC CONSUMPTION.

No person shall consume malt beverages or unfortified wine, as defined by G.S. § 18B-101, on or within the rights-of-way of the municipal streets, boulevards, alleys and sidewalks, in municipal parks, or on municipal premises outside of any municipal buildings, owned or occupied by the town.

(1993 Code, § 6-3) Penalty, see § 112.99

§ 112.99 PENALTY.

(A) A violation of this chapter is subject to the provisions of § 10.99.

(1993 Code, § 6-2; Am. Ord. 3-18-19)

Statutory Reference:

Authority to regulate the consumption of malt beverages and unfortified wine on city-owned property, see G.S. § 18B-300(c)

CHAPTER 113: JUNKYARDS

Section

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- 113.02 Purposes
- 113.03 Definitions
- 113.04 Junkyards prohibited
- 113.05 Fencing and vegetation
- 113.06 Register of dealers' purchases and sales
- 113.07 Approval of Town Board for establishment or enlargement of junkyard
- 113.08 Removal of hazardous materials; other conditions
- 113.09 Stacking of junked motor vehicles and other junk
- 113.10 Enforcement
- 113.11 Application of chapter to other laws

- 113.99 Penalty

§ 113.01 ADOPTION OF JUNKYARD ORDINANCE.

Upon the recommendation and review of the Planning Board, the Town of Enfield Board of Commissioners has been presented with a junkyard ordinance to regulate the location and operation of junkyards in the town; and the Board has reviewed the proposed junkyard ordinance at its regularly scheduled public meeting. It is resolved that the Board of Commissioners adopts and enacts the junkyard ordinance attached to this resolution.

(Res. passed 4-11-2005)

§ 113.02 PURPOSES.

The purposes of this chapter are to:

(A) Protect the citizens and residents of the zoning jurisdiction of the town from possible injury at junkyards;

(B) Preserve the dignity and aesthetic quality of the environment in the zoning jurisdiction of the town;

(C) Preserve the physical integrity of land in close proximity to residential areas;

(D) Protect the economic interests of the citizens and residents of the zoning jurisdiction of the town; and

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(E) Achieve responsible economic growth in areas of the zoning jurisdiction of the town.
(Ord. passed 4-11-2005)

§ 113.03 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

APPLIANCES. Stoves, ovens, dishwashers, dryers, refrigerators, microwaves or other similar devices used for household purposes.

AUTO REPAIR SHOP OR GARAGE. An establishment which is maintained and operated for the primary purpose of making mechanical or body repairs to motor vehicles and which receives 50% or more of its gross income from charges made for repairs.

FENCE. A continuous barrier extending from the surface of the ground to a uniform height of not less than six feet from the ground at any given point and constructed of wood, steel or other metal or any substance of a similar nature and strength, with perforations or openings no larger than six square inches.

GATE. A door or other device attached to a fence which, when opened, provides a means of ingress and egress of persons and things for which it was intended and which, when closed, forms a continuous barrier as a part of the fence to which it is attached.

HAZARDOUS MATERIAL:

(1) Solid or hazardous waste, as defined in the Federal Resource Conservation and Recovery Act of 1980;

(2) Hazardous substances, as defined in the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980;

(3) Gasoline, or any other petroleum product or by-product;

(4) Toxic substances, as defined in the Federal Toxic Substances Control Act of 1976; or

(5) Insecticides, fungicides or rodenticides, as defined in the Federal Insecticide, Fungicide and Rodenticide Act of 1975.

JUNK. Old or scrapped copper, brass and other metals; junked motor vehicles; boats, manufactured homes or trailers, appliances, rubber, wood and related items that are in a deteriorated condition whose current value is substantially below the fair market value for similar items in their ordinary condition; and parts of junk.

JUNK DEALER. A person within the town engaged in buying, selling or storing junk.

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JUNKED MOTOR VEHICLE. A motor vehicle as defined in § 92.01.

JUNKYARD. Any place of storage or deposit, whether or not in connection with another business, of at least 25 junked motor vehicles and other junk.

SERVICE STATION. Any establishment which is maintained and operated for the primary purpose of making retail sales of fuels, lubricants, air, water and other items for the operation and routine maintenance of motor vehicles or for making mechanical repairs, servicing or washing of motor vehicles and which receives more than 50% of its gross income from the retail sale of like items or from the making of mechanical repairs, servicing or washing of motor vehicles.

VEGETATION. Evergreen trees and plants with a minimum height of three feet when planted, and which will reach a height of at least eight feet within three years of planting and 12 feet at maturity, and which provide thick cover and concealment.

(Ord. passed 4-11-2005)

Statutory Reference:

Junkyard Control Act, see G.S. §§ 136-141 et seq.

§ 113.04 JUNKYARDS PROHIBITED.

No person may operate or maintain a junkyard within the zoning jurisdiction of the town except as provided in this chapter. A person who owns or operates a junkyard on or before the adoption of this chapter may continue to operate and maintain the junkyard after the adoption of this chapter so long as: the pre-existing junkyard complies with the provisions of this chapter; and written notice is received by the Town Administrator within 30 days of the effective date of this chapter stating that the person intends to operate or maintain a junkyard pursuant to this chapter. This chapter shall not apply to legitimate service stations, auto repair shops or garages located within the appropriate commercial or industrial zoning districts.

(Ord. passed 4-11-2005)

§ 113.05 FENCING AND VEGETATION.

(A) Each junkyard shall be completely enclosed by a fence.

(B) All junk stored in a junkyard shall be concealed entirely from public view by either a fence or, if the fence does not prevent public view, by planting vegetation that screens the junkyard entirely from public view from ground level.

(1) Vegetation that conceals the junkyard shall be planted on the exterior of the fence and as close as practical to the fence. Vegetation shall be of a type that will reach at least eight feet within three years of planting. Vegetation shall also be planted at intervals evenly spaced so that a continuous, unbroken hedgerow will exist to a height of at least 12 feet along the fence surrounding the junkyard when the vegetation reaches maturity. The height of any plants used must be at least three feet at the time of planting.

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(2) Each owner or operator of a junkyard shall utilize good nursery techniques with respect to vegetation, including but not limited to proper pruning, fertilization and mulching, so that the vegetation will reach maturity as soon as practical and will have maximum density in foliage.

(3) Dead or diseased vegetation shall be replaced at the next appropriate planting time. The fence and vegetation shall be maintained in good condition.

(C) The fence shall have at least one gate for the purpose of ingress and egress, which shall be locked during non-business hours.

(Ord. passed 4-11-2005)

§ 113.06 REGISTER OF DEALERS' PURCHASES AND SALES.

Every junk dealer shall keep a register of the name, address and driver's license number of each person from whom junk is purchased or received and to whom junk is sold. The register shall be open at all times during business hours for public examination and inspection.

(Ord. passed 4-11-2005)

Statutory References:

Similar provisions, see G.S. § 66-10

§ 113.07 APPROVAL OF TOWN BOARD FOR ESTABLISHMENT OR ENLARGEMENT OF JUNKYARD.

It shall be unlawful for any person to establish any junkyard or to enlarge any existing junkyard in the town without first obtaining from the Board of Commissioners, by at least a 2/3 vote of that body, a special permit. The Board of Commissioners may consider any relevant factor in deciding whether to issue the special permit, including but not limited to, the purposes of this chapter.

(Ord. passed 4-11-2005) Penalty, see § 113.99

§ 113.08 REMOVAL OF HAZARDOUS MATERIALS; OTHER CONDITIONS.

(A) All hazardous materials shall be lawfully removed from all junk stored in any junkyard. Except for junked motor vehicles, all doors and other entrances to appliances and other junk located in a junkyard shall be removed to allow ingress and egress, and to prevent entrapment.

(B) No junkyard shall be located within 50 feet of any drainage ditch, stream, creek or other channel of moving water.

(Ord. passed 4-11-2005)

§ 113.09 STACKING OF JUNKED MOTOR VEHICLES AND OTHER JUNK.

Junked motor vehicles shall be stacked no higher than three vehicles, but in no event shall any junk be stacked higher than the fence required under this chapter.
(Ord. passed 4-11-2005)

§ 113.10 ENFORCEMENT.

(A) The Town Administrator shall administer and enforce this chapter.

(B) Violation of this chapter shall be punished as provided in divisions (1) through (3) below.

(1) *Notice of violation.* The Town Administrator shall issue a notice of violation for any violation of this chapter. A copy of the notice of violation shall be delivered to the person or entity violating this chapter by hand delivery or by certified mail. If notice cannot be effectuated by hand delivery or certified mail, notice shall be served by posting a copy of the notice of violation on the property where the violation is occurring, with a copy of the notice of violation sent by regular mail to the person or entity to whom the notice of violation applies.

(2) *Time to remedy violation.* The person or entity violating this chapter shall have 15 days to remedy all violations set forth in the notice of violation. The 15-day period shall commence upon the earlier of the posting of the notice of violation on the property or the delivery of a copy of the notice of violation.

(3) *Extension of time for compliance.* The Town Administrator may grant a single 30-day extension of time within which the person or entity violating this chapter must comply with the notice of violation. The single extension of time may be issued based upon a written request for extension of time which sets forth valid reasons for not complying with the original 15-day period. All other extensions of time may be granted only by the Board of Commissioners.

(Ord. passed 4-11-2005)

Statutory Reference:

Similar provisions, see G.S. § 160A-175

§ 113.11 APPLICATION OF CHAPTER TO OTHER LAWS.

An owner or operator of a junkyard shall comply with all federal, state and local regulations and laws. To the extent there is a conflict between this chapter and any other applicable federal, state or local law or regulation, the federal, state or local law or regulation shall apply.

(Ord. passed 4-11-2005)

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§ 113.99 PENALTY.

A violation of this chapter is subject to the provisions of § 10.99. Each day a violation continues shall be a separate offense. In addition to or in lieu of the other remedies set forth in this section, the Town Administrator may request the Town Attorney to seek appropriate relief in a court of general jurisdiction.

(Ord. passed 4-11-2005; Am. Ord. 3-18-19)

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CHAPTER 114: COMMUNICATIONS REGULATIONS

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GENERAL PROVISIONS

§ 114.001 PURPOSE.

(A) The Town of Enfield finds that the development of a broadband communications system has the potential of having great benefit and impact upon the people of Enfield. Because of the complex and rapidly changing technology associated with communications systems, the town further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the town or persons as the town shall designate. It is the intent of this chapter and subsequent amendments to provide for and specify the means to attain the best possible interest and public purpose in these matters and any franchise issued pursuant to this chapter shall be deemed to include this finding as an integral part thereof.

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(B) Further, it is recognized that broadband communications systems have the capacity to provide not only entertainment and information services to the town's residents, but also a variety of broadband, interactive communications services to institutions and individuals. Many of these services involve town agencies and other public institutions, by providing governmental, educational or health care communications.

(C) For these purposes, the following goals underlie the regulations contained herein.

(1) Communications services should be provided to the maximum number of town residents.

(2) The system should be capable of accommodating both the present and reasonably foreseeable future communications needs of the town.

(3) The system should be improved and upgraded during the franchise term so that the new facilities necessary for the operation of this system shall be integrated to the maximum extent possible with existing facilities.

(4) The communications system authorized by this chapter shall be responsive to the needs and interests of the local community, and shall provide the widest possible diversity of information sources and services to the public.

(5) Each of the goals enumerated in divisions (C)(1) through (4) above shall be sought taking into account the costs and benefits to the residents of Enfield.
(Ord. passed 6-8-1994)

§ 114.002 TITLE.

This chapter shall be known and may be cited as "Enfield Communication Regulatory Chapter" and it shall become a part of the Code of Ordinances of the town.
(Ord. passed 6-8-1994)

§ 114.003 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number. The word *SHALL* is mandatory and *MAY* is permissive. Words not defined shall be given their common or ordinary meaning.

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BASIC SUBSCRIBER TELEVISION SERVICES. All subscriber services provided by the grantee in one or more service tiers, including the delivery of broadcast signals, public, educational and government access channels, and local origination channels, covered by the regular monthly charge paid by all subscribers to a particular service tier including subscriber equipment charges and related deposits. Basic service may be further defined in the franchise agreement to include specific services or types of services to be provided by the grantee.

BOARD OF COMMISSIONERS. The Board of Commissioners of the Town of Enfield.

BROADBAND COMMUNICATIONS SYSTEM or SYSTEM. A system of antennas, cables, fiber, amplifiers, towers, microwave links, cablecasting studios, and any other conductors, converters, equipment or facilities, designed and constructed for the purpose of distributing video programming to home subscribers and/or producing, receiving, amplifying, storing, processing, or distributing audio, video, telephonic digital or other forms of electronic or electrical signals sold or distributed to subscribers. This definition shall not include any similar facility that serves only the residents of one or more apartment or multi-family dwellings or condominiums under common ownership, control or management, nor other closed circuit systems for industrial, commercial, or similar use to which the general public may not subscribe, so long as public streets or rights of way are not utilized in the provision of the service or interconnection of the facilities.

CABLECAST SIGNAL. A non-broadcast video signal that originates within the facilitates of the cable communications systems.

CHANNEL. A six Megahertz (MHz) frequency band, which is capable of carrying either one standard video signal, a number of audio, digital or other non-video signals or some combination of these signals. One channel of high definition television will utilize more than six MHz.

CLOSED-CIRCUIT OR INSTITUTIONAL SERVICES. Video, audio, data and other services provided to institutional users on an individual application basis. These may include, but are not limited to, one-way video, two-way video, audio or digital signals among institutions to residential subscribers.

COMMERCIAL SUBSCRIBER. A subscriber who receives a service in a place of business where the service may be utilized in connection with a business, trade or profession.

COMMUNICATIONS POLICY ACT or CABLE ACT. The Cable Communications Policy Act of 1984 as it may be amended or succeeded.

CONVERTER. An electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and any channel selector which permits a subscriber to view all signals delivered at designated converter dial locations at the set or by remote control.

DEDICATED INSTITUTIONAL ACCESS CHANNELS. Broadband communications channels dedicated to serving town, county, state or federal governmental agencies, educational institutions, health care institutions or other non-profit and profit making organizations that may be qualified by the Board of Commissioners.

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DISCRETE CHANNEL. A channel which can only be received by the person and/or institution intended to receive signals on the channel.

DROP. A coaxial connection from feeder cable to the subscriber/user television set, radio or other terminal.

EDUCATIONAL ACCESS CHANNEL. Any channel designated for educational access use.

FAIR MARKET VALUE. The price that a willing buyer would pay to a willing seller for a going concern based on the system valuation prevailing in the industry at the time.

FCC. The Federal Communications Commission and any legally appointed successor.

FRANCHISE. The non-exclusive rights granted pursuant to this chapter to construct, operate and maintain a broadband communications system along the public ways within all or a specified area in the town. Any authorization, in whatever form granted, shall not mean or include any license or permit required for the privilege of transacting and carrying on a business within the town as required by other ordinances and laws of the town.

FRANCHISE AREA. The entire town, or portions thereof, for which a franchise is granted under the authority of this agreement. If not otherwise stated in the franchise, the **FRANCHISE AREA** shall be the corporate limits of the town, including all territory thereafter annexed to the town.

FRANCHISE FEE. The percentage, as specified by the town, of the grantee's gross revenues from all sources payable in exchange for the rights granted pursuant to this chapter and the franchise agreement as permitted by the Cable Act.

FRANCHISEE or GRANTEE. The natural person(s), partnership(s), domestic and foreign corporation(s), association(s), joint venture(s), or organization(s) of any kind which has been legally granted a franchise by the town, and its lawful successor, transferee or assignee.

GOVERNMENT ACCESS CHANNEL. Any channel specifically designated or dedicated for government access use.

GRANTOR. The Town of Enfield as represented by the Board of Commissioners acting within the scope of its jurisdiction.

GROSS ANNUAL REVENUES. All revenue received directly from operation of the system by the grantee.

INSTALLATION. The connection of the system from feeder cable to subscribers' terminals.

LEASED ACCESS CHANNEL or COMMERCIAL ACCESS CHANNEL. Any channel designated or dedicated for use by persons unaffiliated with the grantee, at rates established by grantee which are fair and reasonable based on the totality of the circumstances as provided in the Cable Act.

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

NARROWCASTING. The ability to distribute cable programming to a particular segment or segments of the cable subscribers.

PERSON. An individual, partnership, association, organization, corporation or any lawful successor transferee of the individual, partnership, association, organization or corporation.

PLANT MILE. A linear mile of cable as measured on the street or easement from pole to pole or pedestal to pedestal. In cases where cable is on both sides of the street, only the cable on one side of the street will be utilized in measuring a plant mile.

PUBLIC ACCESS CHANNEL. Any channel or portion of a channel designated or dedicated for use by the general public or non-commercial organizations which is made available for use without charge and over which grantee exercises no editorial control in accordance with the rules and regulations specified in the franchise.

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

REASONABLE NOTICE. Written notice addressed to the grantee at its principal office within the town or any other office as the grantee has designated to the town as the address to which notice shall be transmitted to it, which notice shall be certified and postmarked not less than seven days prior to that day in which the party giving notice shall commence any action which requires the giving of notice. In computing seven days, holidays recognized by the town shall be excluded.

RESIDENT. Any person residing in the town as otherwise defined by applicable law.

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

SALE. Includes any sale, exchange, barter or offer for sale.

SCHOOL. Any public or non-profit educational institution including primary and secondary schools, colleges and universities, both public and private.

SERVICE AREA. The entire geographic area within the franchise territory.

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STATE. The State of North Carolina.

SYSTEM FACILITIES or FACILITIES. The communications system constructed for use within the town, without limitation, the headend, antenna, cables, fibers, wires, lines, towers, amplifiers, converters, health and property security systems, equipment or facilities located within the corporate limits of the town designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing by coaxial cable, fiber optics, microwave or other means, audio and visual radio, television and electronics or digital signals to and from subscribers, in the town and any other equipment or facilities located within the corporate limits of the town intended for the use of the system; provided, however, the **SYSTEM FACILITY** excludes building, contracts, facilities, and equipment where primary use is for providing service to other **SYSTEM FACILITIES** located outside the town limits.

TRANSFER. The disposal by the grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of 15% or more at one time of the ownership or controlling interest in the system, or 20% cumulatively over the term of the franchise of the interest to a corporation, partnership, limited partnership, trust or association, or person or group of persons acting in concert.

TRUNK LINE. The major distribution cable used in cable communications, which divides into feeder lines which are tapped for service to subscribers.

UPSTREAM SIGNAL. A signal originating from a terminal to another point in the cable television system including video, audio or digital signals for either programs or other uses such as security alert services and the like.

USER. A person or organization utilizing channel or equipment and facilities for purpose of producing and/or transmission of material, as contrasted with receipt thereof in a subscriber capacity.
(Ord. passed 6-8-1994)

§ 114.004 FRANCHISE APPLICATIONS.

Applicants for a franchise shall submit to the town written applications utilizing the standard format provided by the town, at the time and place designated by the town for accepting applications and including the designated application fee.

(Ord. passed 6-8-1994)

GRANT OF FRANCHISE

§ 114.015 GRANT.

(A) In the event that town shall grant to the grantee a non-exclusive, revocable franchise to construct, operate, and maintain a communications system within the town, the franchise shall constitute both a right and an obligation to provide the services of a communications system as regulated by the provisions of this chapter and the franchise.

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(B) The franchise shall be granted under the terms and conditions contained herein, consistent with the town's Charter and/or other applicable federal or state statutory requirements. In the event of conflict between the terms and conditions of this chapter, the franchise, or the terms and conditions on which the town can grant a franchise, the Charter and/or statutory requirements shall control.

(C) Any franchise granted by the town is hereby made subject to the general ordinance provisions of general applicability now in effect and hereafter made effective. Nothing in the franchise shall be deemed to waive the requirements of the various codes and ordinances of the town regarding permits, fees to be paid or manner of construction.

(Ord. passed 6-8-1994)

§ 114.016 FRANCHISE AREA.

The franchise area shall be the entire town, or portions thereof, for which a franchise is granted.

(Ord. passed 6-8-1994)

§ 114.017 USE OF PUBLIC RIGHTS-OF-WAY.

For the purpose of operating and maintaining a broadband communications system in the town, the grantee may erect, install, construct, repair, replace reconstruct and retain in, on, over, under, upon, across and along the public streets and way within the town wires, cables, fibers, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary to the operation of the communications systems, provided, however, that grantee complies with all design, construction, safety, and performance provisions contained in this chapter, the franchise agreement, and other applicable local ordinances.

(Ord. passed 6-8-1994)

§ 114.018 USE OF TOWN FACILITIES.

At the town's option, the town may require a grantee to utilize town owned utility poles for any portion of its communications system. The consideration for the use of town conduit or other facilities shall be in accordance with the town's regular and then current charges for use of general applicability.

A reasonable fee for the use of town poles and facilities shall be established in the pole agreement.

(Ord. passed 6-8-1994)

§ 114.019 USE OF GRANTEE FACILITIES.

No poles shall be erected by the grantee without prior reasonable approval of the town with regard to location, height, type and any other pertinent aspect. However, no location of any pole of the grantee shall be a vested right and the poles shall be removed or modified by the grantee at its own expense whenever the town determines that the public convenience would be enhanced thereby. Grantee shall

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utilize existing poles and conduits, where possible. The town shall have the right, during the life of the franchise, to install and maintain for a reasonable fee upon the poles owned by the grantee, any wire and pole fixtures that do not unreasonably interfere with the communication system operations of the grantee.

(Ord. passed 6-8-1994) Penalty, see § 10.99

§ 114.020 FRANCHISE REQUIRED.

No communications system shall be allowed to occupy or use the streets of the town or be allowed to operate without a franchise. At the minimum, the franchise agreement shall contain representations by the grantee that:

(A) It accepts and agrees to all of the provisions of this chapter, and any supplementary specifications, as to construction, operation or maintenance of the system, which the town may include in the franchise agreement;

(B) It has examined all of the provisions of this chapter and waives any claims that any provisions hereof are unreasonable, arbitrary or void (except where voided by federal or state laws);

(C) It recognizes the right of the town to make reasonable amendments to this chapter or franchise agreement during the term of the franchise, provided that no change shall conflict with grantee's rights under this chapter or the franchise agreement (except as authorized by federal or state laws) or shall compromise the grantee's ability to perform satisfactorily its obligations or rights under this chapter or the franchise agreement; and

(D) It acknowledges that its rights hereunder are subject to the general police power of the town to adopt and enforce general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all laws of general applicability enacted by the town pursuant to this power.

(Ord. passed 6-8-1994) Penalty, see § 10.99

§ 114.021 TERM OF FRANCHISE.

The term of any franchise granted pursuant to this chapter shall be 15 years.

(Ord. passed 6-8-1994)

§ 114.022 FRANCHISE NON-EXCLUSIVE.

The franchise discussed herein is non-exclusive. The town specifically reserves the right to grant at any time additional franchises for a communications system as it deems appropriate in accordance with the terms of this chapter as it may be amended.

(Ord. passed 6-8-1994)

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§ 114.023 TIME IS OF THE ESSENCE.

Whenever the agreement shall set forth any time for any act to be performed by or on behalf of the grantee, the time shall be deemed of the essence and any material failure of the grantee to perform within the time allotted shall always be sufficient ground for the town to invoke an appropriate penalty including possible revocation of the franchise.

(Ord. passed 6-8-1994)

§ 114.024 LAW GOVERNS.

In any controversy or dispute under this chapter, the law of the State of North Carolina shall apply.

(Ord. passed 6-8-1994)

§ 114.025 TRANSFER OF OWNERSHIP OR CONTROL.

(A) *Transfer of franchise.* Any franchise granted hereunder cannot in any event be sold, transferred, leased, assigned or disposed of, including but not limited to, by force or voluntary sale, merger, consolidation, receivership or other means without the prior consent of the town, which shall not be unreasonably withheld, and then only under conditions as the town may establish.

(B) *Prompt notification.*

(1) The grantee shall promptly notify the town of any actual or proposed change in, or transfer of, or acquisition by any party of, control of the grantee.

(2) The word **CONTROL** as used herein is not limited to major stockholders, but includes actual working control in whatever manner exercised.

(3) A rebuttable presumption that a transfer of control has occurred shall arise upon the disposal by the grantee, directly or indirectly by gift, assignment, voluntary sale, merger, consolidation or otherwise, of 15% or more at one time of the ownership or controlling interest in the system, or 20% cumulatively over the term of the franchise of the interest to a corporation, partnership, limited partnership trust or association of person or group of persons acting in concert, none of whom already own or control the percentage interest.

(C) *Written notice.* If the grantee decides to sell, transfer, lease, assign, or dispose of the franchise by any means or method or change the control of the grantee, it shall first give written notice to the town of the proposed change, transfer or acquisition, including the name and address of the prospective transferee or controlling party and shall furnish additional information as the town may reasonably request regarding the legal, financial, character, technical, and other public interest qualifications of the party.

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

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

(F) *Consent does not constitute waiver.* The consent or approval of the town to any transfer of the grantee shall not constitute a waiver or release of the rights of the town in and to the streets, and any transfer shall, by its terms, be expressly subject to the terms and conditions of this chapter and the franchise.

(G) *Contingent upon controlling party becoming a signatory.* Any approval by the town of transfer of ownership or control shall be contingent upon the prospective controlling party becoming a signatory to the franchise.

(Ord. passed 6-8-1994) Penalty, see § 10.99

§ 114.026 FRANCHISE RENEWAL.

(A) *Renewal discretionary.* Upon completion of the term of any franchise granted under this chapter, the town may in its sole discretion grant or deny renewal of the franchise of the grantee in accordance with the provisions of the Cable Act.

(B) *Grantee ownership but no property rights.* The grantee shall own the cable communication system, but shall have no property right in the public rights-of-way upon the completion of the franchise term.

(Ord. passed 6-8-1994) Penalty, see § 10.99

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§ 114.027 POLICE POWERS.

(A) In accepting the franchise, the grantee acknowledges that its rights hereunder are subject to the police power of the town to adopt and enforce general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all laws and ordinances of general applicability enacted by the town pursuant to that power.

(B) Any conflict between the provisions of this chapter or the franchise and any other present or future lawful exercise of the town's police powers shall be resolved in favor of the latter, except that any exercise that is not of general application in the jurisdiction or applies exclusively to grantee or cable communications systems which contains provisions inconsistent with this chapter shall prevail only if, upon the exercise, the town finds an emergency exists constituting a danger to health, safety, property or general welfare and the exercise is mandated by law.

(Ord. passed 6-8-1994)

§ 114.028 FRANCHISE FEES.

(A) *Generally.*

(1) The grantee of any franchise hereunder shall pay to the town a franchise fee in an amount as designated in the franchise, but in no event less than 5% of the gross annual revenue, or upon notification by grantor the maximum amount permitted under applicable federal, state, or local law, if the maximum is greater than 3%, because the town finds that:

(a) The streets of the county, state, and town to be used by the grantee in the operation of its system within the boundaries of the franchise area are valuable public properties acquired and maintained by the county, state and town at great expense to its taxpayers;

(b) The grant to the grantee relating to the the streets is a valuable property right without which the grantee would be required to invest substantial capital in right-of-way costs and acquisitions; and

(c) The administration of this chapter and the franchise imposes upon the town additional regulatory responsibility and expense.

(2) (a) This annual franchise payment shall commence as of the effective date of the franchise.

(b) The town shall be furnished a statement of the payment by a certified public accountant, reflecting the total amounts of annual gross revenue and the above charges and computations for the period covered by the payment.

(3) A statement that lists the revenue categories will accompany the franchise fee payment statement.

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(B) *Payment.* This payment shall be in addition to any other tax or payment owed to the governments or other taxing jurisdiction by the grantee. Payment of the franchise fee made by grantee to the town shall in addition to any and all taxes which are now or may be required hereafter to be paid by and federal, state or local law.

(C) *Acceptance by the town.* No acceptance of any payment by the town shall be construed as a release or as an accord and satisfaction of any claim the town may have for further or additional sums payable as a franchise fee under this chapter or for the performance of any other obligation of the grantee.

(D) *Failure to make required payment.* In the event that any franchise payment or recomputed amount is not made on or before the dates specified herein, grantee shall pay as additional compensation an interest charge, computed from the due date, at the annual rate equal to the commercial prime interest rate of the primary depository bank during the period that the unpaid amount is owed.

(E) *Payable quarterly.* The franchise fee and any other cost or damages assessed shall be payable quarterly to the Town of Enfield. The grantee shall file a complete and accurate verified statement of all gross revenue within the town during the period for which the quarterly payment is made, and the payment shall be made to the town not later than 45 days after the expiration of each calendar quarter. Quarterly computation dates are the last day in the month's of March, June, September and December.

(F) *Right to inspect.* The town shall have the right to inspect the grantee's income records and the right to audit and to recompute any amounts determined to be payable under this chapter. Audits shall be at the expense of the town. Any additional amount due to the town as a result of the audit shall be paid within 30 days following written notice to the grantee by the town which notice shall include a copy of the audit report.

(Ord. passed 6-8-1994) Penalty, see § 10.99

§ 114.029 FORFEITURE OR REVOCATION.

(A) *Grounds for revocation.* The town reserves the right to revoke any franchise granted hereunder and rescind all rights and privileges associated with the franchise in the following circumstances, each of which shall represent a default and breach under the chapter and the franchise grant:

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

(2) If the grantee shall fail to provide or maintain in full force and effect the liability and indemnification coverage as required herein;

(3) If the grantee shall violate any orders or rulings of any regulatory body having jurisdiction over the grantee relative to this chapter or the franchise, and after notice thereof shall continue the violation and not commence a resolution of the same within 30 days;

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(4) If the grantee attempts to evade any of the provisions of this chapter or the franchise or practices any fraud or deceit upon the town or cable subscribers;

(5) The grantee's construction schedule is delayed later than the schedule contained in the franchise or beyond any extended date set by the town;

(6) The grantee becomes insolvent, unable or unwilling to pay its debts or is adjudged bankrupt;

(7) Failure to restore service after 48 consecutive hours of interrupted service, except when approval of the interruption is obtained from the town;

(8) Material misrepresentation of fact in the application for or negotiation of the franchise or any extension or renewal thereof;

(9) If the grantee ceases to provide services for any reason within the control of the grantee over the communications system; or

(10) Failure to provide subscribers or users with adequate service as provided in the franchise.

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

(C) *Pending litigation.* Except where court or regulatory body overrides, pending litigation or appeal to any regulatory body or court having jurisdiction over the grantee shall excuse the grantee from the performance of its obligations under this chapter of the franchise. Failure of the grantee to perform these obligations because of pending litigation or petition may not result forfeiture or revocation pursuant to the provisions of this section.

(D) *Procedure prior to revocation.*

(1) The town shall make written demand that the grantee do so comply with any requirement, limitation, term, condition, rule or regulation or correct any action deemed cause for revocation. If the failure, refusal or neglect of the grantee continues for a period of 30 days following the written demand, the town shall place its request for termination of the franchise upon a regular Board of Commissioners

meeting agenda. The town shall cause to be served upon the grantee at least seven days prior to the date of the Board meeting, a written notice of this intent to request the termination, and the time and place of the meeting, notice of which shall be published by the Town Clerk at least once, seven days before the meeting in a newspaper of general circulation within the town.

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

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

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

(E) *Disposition of facilities.* In the event a franchise expires, is revoked or otherwise terminated, the town may in its sole discretion, do any of the following:

(1) Effect a transfer of ownership of the system to another party; or

(2) Order the removal of the system facilities from the town within a reasonable period of time as determined by the town or require the original grantee to maintain and operate its system for a period of six months or until further time as mutually agreed upon.

(F) *Restoration of property.* In removing its plant, structures and equipment, the grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good a condition or better than that prevailing prior to grantee's removal of its equipment and appliances without affecting the electrical or telephone cable wires or attachments. The town shall inspect and approve the condition of the public ways and public places and cables, wires attachments and poles after removal. The liability, indemnity, insurance and performance bond as provided herein shall continue in full force and effect during the period of removal and until full compliance by the grantee with the terms and conditions of this section, this chapter and the franchise.

(G) *Restoration by town; reimbursement of costs.* In the event of a failure by the grantee to complete any work required by §§ 114.017 and 114.019 and/or division (F) above, or any other work required by town law or chapter within the time as may be established and to the satisfaction of the town, the town may cause the work to be done and the grantee shall reimburse the town the cost thereof within 30 days after receipt of an itemized list of the costs or the town may recover the costs through the performance bond provided by grantee. The town shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

(H) *Extended operation.* Upon either the expiration or revocation of a franchise, the town may require the grantee to continue to operate the system for a period of six months from the date of the expiration or revocation, or until the time as is mutually agreed upon. The grantee shall, as trustee for its successor in interest, continue to operate the cable communications system under the terms and condition of this chapter and the franchise and to provide the regular subscriber service and any and all of the services that may be provided at the time. The town shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

(Ord. passed 6-8-1994) Penalty, see § 10.99

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§ 114.030 RECEIVERSHIP AND FORECLOSURE.

(A) *Termination by insolvency.* The franchise granted hereunder shall, at the option of the town, cease and terminate 120 days after the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of the grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless the receivership or trusteeship shall have been vacated prior to the expiration of 120 days, or unless:

(1) The receivers or trustees shall have, within 120 days after their election or appointment, fully complied with all the terms and provisions of this chapter and the franchise granted pursuant hereto, and the receiver or trustees within the 120 days shall have remedied all defaults under the franchise; and

(2) The receivers, or trustees shall, within the 120 days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the franchise herein granted.

(B) *Termination by judicial action.* In the case of a foreclosure or other judicial sale of the plant, property and equipment of the grantee or any part hereof, including or excluding the franchise, the town may serve notice of termination upon the grantee and the successful bidder at the sale, in which event the franchise and all rights and privileges of the grantee granted hereunder shall cease and terminate 30 days after service of notice, unless:

(1) The town shall have approved the transfer of the franchise, in the manner this chapter provides; and

(2) The successful bidder shall covenanted and agreed with the town to assume and be bound by all the terms and conditions of the franchise.

(Ord. passed 6-8-1994)

§ 114.031 EQUAL OPPORTUNITY POLICY.

(A) *Policy.* Equal opportunity employment shall be afforded by all operators of communication systems to all qualified persons, and no person shall be discriminated against in employment because of race, color, religion, age, national origin, sex, or physical handicap. Grantee shall comply with all equal opportunity provisions enacted by federal, state and local authorities, as well as provisions contained in this chapter and the franchise.

(B) *Local employment and procurement practices.* Whenever reasonably possible, all services, personnel, hardware and supplies for the construction, maintenance and operation of the system shall be procured locally.

(Ord. passed 6-8-1994)

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§ 114.032 NOTICES.

All notices from grantee to the town pursuant to this chapter and the franchise shall be to the Town Administrator or his or her designee. Grantee shall maintain with the town throughout the term of the franchise, an address for service of notices by mail. Grantee shall also maintain with the town a local office and telephone number for the conduct of matters related to the franchise during normal business hours. The grantee shall be required to advise the town of the address(es) and telephone numbers and any change thereof.

(Ord. passed 6-8-1994)

§ 114.033 FAILURE TO TOWN TO ENFORCE THIS FRANCHISE, NO WAIVER OF TERMS.

The grantee shall not to be excused from complying with any of the terms and conditions of this chapter or the franchise by any failure of the town upon any one or more occasions to insist upon or to seek compliance with any terms or conditions.

(Ord. passed 6-8-1994) Penalty, see § 10.99

§ 114.034 NO RECOURSE AGAINST GRANTOR.

The grantee shall have no recourse whatsoever against the town or its officials, boards, commissions, agents, or employees for any loss costs, expenses or damage arising out of any provision or requirements of the franchise or because of the legal enforcement of this chapter or the franchise.

(Ord. passed 6-8-1994)

REGULATIONS OF FRANCHISE

§ 114.045 REGULATORY AUTHORITY.

(A) The town shall exercise appropriate regulatory authority under the provisions of this chapter and applicable law. This authority shall be vested in the Board of Commissioners and administered through the Town Administrator or his or her designee in order to provide day-to-day administration and enforcement of the provisions of this chapter and any franchise granted hereunder, and to carry out the town's responsibilities with regard to communications.

(B) Notwithstanding any other provisions of this chapter to the contrary, the grantee shall at all times comply with all laws and regulations of the local, state and federal government. In the event that any actions of the state or federal government or any agency thereof, or any court of competent jurisdiction upon final adjudication, substantially reduce in any way the power of authority of the town under this chapter or the franchise, or if in compliance with any local, state or federal regulation, the grantee finds conflict with the terms of the chapter, the franchise, or any law or regulation of the town then as soon as possible following knowledge thereof, the grantee shall notify the town of the point of

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conflict believed to exist between the law or regulation and the laws or regulations of the town, this chapter and the franchise. The town, at its option, may notify the grantee that it wishes to negotiate those provisions which are affected in any way by the modification in regulations or statutory authority. Thereafter, the grantee shall negotiate in good faith with the town in attempting to develop alternate provisions which shall fairly restore the town to the maximum level of authority and power permitted by law without substantially altering the rights granted herein.

(C) The town reserves the right to exercise the maximum plenary authority, as may at any time be lawfully permissible, to regulate the communications system, the franchise and the grantee. Should applicable legislative, judicial or regulatory authorities at any time permit regulation not presently permitted to the town, the town may, following good faith negotiation with the grantee, engage in any additional regulation as may then be permissible, whether or not contemplated by this chapter or the franchise, including without limitation, regulation regarding franchise fees, taxes, programming, rates charged to subscribers and users, consumer protection, or any other similar or dissimilar matter.
(Ord. passed 6-8-1994)

§ 114.046 SUPERVISION OF FRANCHISE.

(A) The town shall have the following regulatory responsibility:

- (1) Administration and enforcement of the provisions of this chapter and any franchise granted hereunder;
- (2) Award, renewal, extension or termination of a franchise pursuant to the provisions of this chapter, the franchise and other applicable law;
- (3) Consent prior to sale or transfer of any franchise granted hereunder;
- (4) Performance evaluation; and
- (5) Rate regulation, if applicable.

(B) The town also reserves the right to perform the following functions:

- (1) Develop objectives and coordinate activities related to the operation of government channels;
- (2) Approve procedures and standards for public, government and educational access and operations and services, including the use of dedicated channels and sharing of public facilities;
- (3) Coordinate plans for expansion, interconnection and growth of communications services;
- (4) Analyze the possibility of integrating communications with other town, state or regional telecommunications networks;

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(5) Formulate and recommend long-range telecommunications policy for the town, and determine the future communications-related needs and interests of the community;

(6) Provide the administrative effort necessary for the conduct of performance evaluations, and any other activities required for the administration of the franchise;

(7) Monitor grantee's process for handling citizen complaints and periodically inspect and analyze the records related to complaints;

(8) Receive applications for rate increases if applicable and provide staff assistance in the analysis and recommendations thereto;

(9) Monitor grantee's adherence to operational standards, service requirements and line extension policies;

(10) Assure compliance with applicable laws and ordinances;

(11) Arrange tests and analysis of equipment and performance, as needed to ensure compliance with this chapter and the franchise;

(12) Assure continuity in service; and

(13) Receive for examination all data and reports required by this chapter.
(Ord. passed 6-8-1994)

§ 114.047 RATES AND CHARGES.

(A) Grantee shall file with the town schedules which shall describe all services offered, all rates and charges of any kind, and all terms and conditions relating thereto. No rates or charges shall be effective except as they appear on a schedule so filed with the town 30 days prior to the effective date.

(B) Grantee shall establish rates that are nondiscriminatory with the same general class of subscribers which must be applied fairly and uniformly to all subscribers in the franchise area for all services with the execution at bona fide credit risks. Nothing contained herein shall prohibit the grantee from offering:

(1) Discounts to commercial and multiple family dwelling subscribers billed on a bulk basis;

(2) Promotional discounts; or

(3) Reduced installation rates for subscribers who have multiple services.

(C) To the extent that federal or state law or regulation may now, or as the same may hereafter be amended to, authorize the town to regulate the rates for any particular service tiers, service packages, equipment, or any other services provided by grantee, the town shall have the right to exercise rate

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regulation to the full extent authorized by law, or to refrain from exercising the regulation for any period of time, at the sole discretion of the town.

(D) (1) If and when exercising rate regulation, the town shall consider, along with any other information it deems necessary or appropriate, the following factors in approving or disapproving a rate increase request:

(a) The ability of the grantee to render system services and to derive a reasonable profit therefrom under the existing rate schedule and under the proposed rate schedule;

(b) The revenues and profits derived from system services;

(c) The efficiency of the grantee;

(d) The quality of the service offered by the grantee;

(e) The fair value cost of the system less depreciation;

(f) A fair rate of return over the life of the franchise with respect to grantee's investment;

(g) The extent to which grantee has adhered to the terms of this chapter and the franchise;
and

(h) Fairness to town residents, subscribers and users.

(2) The town may retain rate consultants as it deems appropriate, and all reasonable charges for the independent consultants upon request by the town shall be paid by grantee if allowed by law or federal regulations.

(Ord. passed 6-8-1994) Penalty, see § 10.99

§ 114.048 PERFORMANCE EVALUATION.

(A) The town and the grantee shall, at the discretion of the town, hold scheduled performance evaluation sessions annually. All evaluation sessions shall be open to the public.

(B) Special evaluation sessions may be held at any time during the term of the franchise at the request of the town.

(C) All evaluation sessions shall be open to the public and announced in a newspaper of general circulation.

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(D) Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to system performance and construction. Grantee compliance with this chapter and the franchise, customer service and complaint response, subscriber privacy, services provided, programming offered, service rate structures, franchise fees, penalties, free or discounted services, applications of new technologies, judicial and FCC filings and line extensions.

(E) During the review and evaluation by the town, the grantee shall fully cooperate with the town and shall provide information and documents as the town may need to reasonably perform its review. (Ord. passed 6-8-1994)

BONDS, INSURANCE AND INDEMNIFICATION

§ 114.060 FAITHFUL PERFORMANCE BOND AND CONSTRUCTION BOND.

(A) *Faithful performance bond.* The franchisee shall, concurrently with its acceptance of this franchise, file with the Town Administrator and maintain in full force and effect for a term determined by the town at franchisee's sole expense, a corporate surety bond in a responsible company licensed to do business in North Carolina and approved by the town, in the full amount set forth in the franchise renewable annually, and conditioned upon the faithful performance of the franchisee, and in accordance with the provisions of this chapter and upon the further condition that in the event franchisee, after notice and a reasonable opportunity to cure, shall fail to comply with any one or more of the material provisions of the franchise, there shall be recoverable jointly and severally from the principal and surety of the bond and any damages or loss suffered by the town as a result thereof, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the franchisee as prescribed hereby, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, the condition to be a continuing obligation for the duration of the franchise and any renewal thereof and thereafter until the franchisee has liquidated all of its obligations with the town that may have risen from the acceptance of this franchise or renewal by the franchisee or from its exercise of any privileges of rights herein granted. The bond shall provide that at least 30 days prior written notice of intention not to renew, or of cancellation, or material change be given to the town by filing the same with the Town Administrator. Notwithstanding the above provisions of this section, the Commissioners may in its sole discretion waive the bond or reduce the required amount thereof after one year of operation of a system under the franchise, by the franchisee, its successors or assigns, which in the sole opinion of the Town Commissioners has been satisfactory. The waving of the bond for any particular year shall not prevent the Commissioners from reimposing the bond requirement up to the amount authorized in the franchise prior to the annual renewal thereof. Failure to keep a performance bond in force at all times as herein provided and to file with the Town Administrator all thereof shall constitute an event default.

(B) *Deposit in lieu of bond.* In lieu of the performance bond by a surety company as herein provided, the franchisee may file with the town a performance bond without a corporate surety but secured by a certificate of deposit in some bank or savings and loan association in Halifax County, North Carolina, in the same amount as the bond conditioned in the same manner as the performance bond of a surety company hereinbefore described. The income from the deposit shall be payable to the

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franchisee. As an alternative, the franchisee may provide other security as may be approved by the Town Commissioners, but absent approval, it shall provide a bond or deposit in lieu thereof as above provided.

(C) *Construction performance bond.*

(1) Franchisee shall maintain a construction performance bond in a form approved by the town in the amount provided in the franchise to ensure the town that franchisee will faithfully complete all construction plans required by the franchise.

(2) The franchisee shall file with the Town Administrator and at all times thereafter maintain in full force and effect for the period set forth in the franchise, at franchisee's sole expense, a corporate surety bond in a responsible company licensed to do business in North Carolina and approved by the town, in the full amount set forth in the franchise and conditioned upon the faithful performance of its construction obligations by the franchise, and in accordance with the provisions of this chapter and upon further condition that in the event franchisee, after notice and a reasonable opportunity to cure, shall fail to comply with any one or more of the material construction provisions of the franchise, there shall be recoverable jointly and severally from the principal and surety to the bond any damages or loss suffered by the town as a result thereof, including the cost of completion of the construction as prescribed hereby, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, the condition to be a continuing obligation for the duration of the construction period and thereafter until the franchisee has completed all of its obligations that may have arisen from the construction provisions under the franchise. The bond shall provide that at least 30 days prior written notice of intention not to renew, or of cancellation, or material change be given to the town by filing the same with the Town Administrator. Failure to keep a construction bond in force at all times as herein and in the franchise provided and to file with the Town Administrator all renewals thereof shall constitute an event default.

(D) *Conditions.* The performance bond shall provide the following conditions:

(1) There shall be recoverable by the town jointly and severally from the principal and surety, any and all fines and liquidated damages due to the town and any and all damages, losses, costs, and expenses suffered or incurred by the town resulting from the failure of the grantee to:

(a) Faithfully comply with the provisions of this chapter and the franchise; or

(b) Pay fees due to the town; pay any claims, liens or taxes due the town which arise by reason of the construction, operation, maintenance or repair of the cable system. These losses, costs and expenses shall include but not be limited to reasonable attorney's fees and other associated expenses.

(2) The total amount of the bond shall be forfeited in favor of the town in the event:

(a) The grantee abandons the cable system at any time during the term of the franchise or any extension thereto;

(b) The grantee assigns the franchise without the express written consent of the town; or

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(c) The grantee fails to renew the performance bond or construction bond as required herein and in accordance with the terms of the franchise.

(E) *Reduction of bond.* Subject to the provisions of division (A), upon written application by the grantee, the town may, as its sole option, permit the amount of the bond to be reduced or waive the requirements for a performance bond. Reductions granted or denied upon application by the grantee shall be without prejudice to the grantee's subsequent applications or to the town's right to require the full bond at any time thereafter. However, no application shall be made by the grantee within one year of any prior application.

(F) *Use of performance bond.* Prior to filing a claim upon the performance bond for the purposes described in this section, the town shall demand that the grantee perform its obligations, and if the grantee fails to do so within 30 days, the town shall notify the grantee in writing that payment is due and within ten days, the town may claim the amount thereof, with interest and penalties, from the letter of credit and the performance bond.

(G) *Replenishment of performance bond.* No later than 30 days after any reduction of any amount of the performance bond, the grantee shall replenish the performance bond in an amount equal to the amount so withdrawn.

(H) *Non-renewal, alteration or cancellation of performance bond.* The performance bond required herein shall be in a form satisfactory to the town and shall require 30 days written notice of any non-renewal, alteration or cancellation to both the town and the grantee. The grantee shall, in the event of any cancellation notice, obtain, pay all premiums for, and file with the town, written evidence of the issuance of replacement bond within 30 days following receipt by the town or the grantee of any notice of cancellation.

(I) *Inflation.* To offset the effects of inflation, the amounts of the bonds provided for herein, are subject to reasonable increases at the end of every three year period of the franchise, applicable to the next three year period, upon the determination of the town.
(Ord. passed 6-8-1994) Penalty, see § 10.99

§ 114.061 INSURANCE.

(A) *Prior to commencement of construction.* Prior to commencement of construction, but in no event later than 60 days after the effective date of the franchise and thereafter continuously throughout the duration of the franchise and any extensions or renewals thereof, the grantee shall furnish to the town certificates of insurance, approved by the town, for all types of insurance required under this section. Failure to furnish the certificates of insurance in a timely manner shall constitute a violation of this chapter.

(B) *Grantee to furnish certificate as evidence of insurance coverage.* Grantee shall furnish the town with a certificate as the evidence of insurance coverage required by these provisions. The certificate shall include a 30 day notification to the town in the event of cancellation, exhaustion of policy aggregates, non-renewal or reduction of coverage of policy limits. Language on the certificate

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that relieves the insurance company and its agents from liability for failure to provide notice shall be deleted. The endorsement required by § 114.060(D) of these provisions shall be attached to the certificate. The town reserves the right to require a complete, certified copy of the required insurance policy, at any time. Grantee shall provide certificates annually after renewal of coverages.

(C) *Shall not limit liability.* Neither the provisions of this section or any damages recovered by the town hereunder, shall be construed to or limit the liability of the grantee under any franchise issued hereunder or for damages.

(D) *Endorsement.* All insurance policies maintained pursuant to this chapter or the franchise shall contain the following, or a comparable endorsement:

The town is recognized as an insured for the purpose of receiving 30 days notice of non-renewal, reduction of coverage of policy limits, exhaustion of policy limits or cancellation for any reason, and the company shall agree to provide notice.

(E) *Hold harmless clause.* All contractual liability insurance policies maintained pursuant to this chapter or the franchise shall include the provision of the following hold harmless clause:

The grantee agrees to indemnify, save harmless and defend the town, its officials, agents, servants, and employees, and each of them against, and hold it and them harmless from, any and all lawsuits, claims, demands liabilities, losses and expenses, including court costs and reasonable attorney's fees for or on account of any injury to any person, or any death at any time resulting from injury, or any damage to any property, which may arise or which may be alleged to have arisen out of or in connection with the work covered by the franchise and performed or caused to be performed. The foregoing indemnity shall apply except if the injury, death or damage is caused by the negligence or other fault of the town, its agents, servants, or employees or any other person indemnified hereunder.

(F) *Policy to be state approved.* All insurance policies provided under the provisions of this chapter or the franchise shall be written by companies authorized to do business in the state, and approved by the State Insurance Commissioner.

(G) *Town may request to be additional named insured.* At any time during term of the franchise, the town may request and the grantee shall comply with the request, to name the town as an additional named insured for all insurance policies (except worker's compensation) written under the provisions of this chapter or the franchise.

(H) *Increases due to inflation.* To offset the effects of inflation and to reflect changing liability limits, all of the coverages, limits, and amounts of the insurance provided for herein are subject to reasonable increases at the end of every three year period of the franchise, applicable to the next three year period, upon the determination of the town.

(I) *General liability insurance.* The grantee shall maintain, and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain throughout the term of the franchise, general liability "occurrence" form insurance insuring the grantee of the minimum of:

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- (1) \$2,000,000 for property damage per occurrence;
- (2) \$2,000,000 for property damage aggregate;
- (3) \$5,000,000 for personal bodily injury or death to any one person; and
- (4) \$10,000,000 bodily injury or death aggregate per single accident or occurrence.

(J) *General liability insurance coverage.* General liability insurance must include coverage for all of the following:

- (1) Comprehensive form;
- (2) Premises-options;
- (3) Explosion and collapse hazard;
- (4) Underground hazard;
- (5) Products/completed operations hazard;
- (6) Contractual insurance;
- (7) Broad form property damage; and
- (8) Personal injury.

(K) *Automobile liability insurance.* The grantee shall maintain, and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain throughout the term of the franchise, automobile liability insurance for owned, non-owned, or rented vehicles in the minimum amount of \$2,000,000 combined single limit per accident for bodily injury and property damage.

(L) *Umbrella/excess liability.* At the option of the grantee, the limits of the primary general liability and auto liability may be less than stipulated herein, with an excess policy providing the additional limits needed. This form of coverage is at least as broad as the primary policy.

(M) *Worker's Compensation and employer's liability insurance.* The grantee shall maintain and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain throughout the term of the franchise, worker's compensation and employer's liability, valid in the state, in the minimum amount of:

- (1) Statutory limit for worker's compensation; and
- (2) Employer's liability with limits of \$500,000 for each accident, \$500,000 bodily injury by disease - each employee, and \$500,000 bodily injury by disease policy limit.
(Ord. passed 6-8-1994) Penalty, see § 10.99

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§ 114.062 INDEMNIFICATION.

(A) Grantee shall, at its sole and expense, fully indemnify, defend and hold harmless the town, its officers, boards and commissions, and town employees against any and all claims, suits, actions, liability and judgments for damages, including but not limited to, expenses for reasonable legal fees and disbursements and liabilities assumed by the town in connection therewith:

(1) To persons or property, in any way arising out of or through the acts or omissions of grantee, its servants, agents or employees, or to which grantee's negligence shall in any way contribute, unless caused by negligence or other fault of the town, its agents, servants, or employees or any other indemnified hereunder;

(2) Arising out of any claim for invasion of the right of privacy, for defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or if any other right of any person, firm or corporation (excluding claims arising out of or relating to town programming); and

(3) Arising out of grantee's failure to comply with the provisions of any federal, state, or local statute ordinances or regulation applicable to grantee in its business hereunder.

(B) The foregoing indemnity is conditioned upon the following:

The town shall give grantee prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. Nothing herein shall be deemed to prevent the town from cooperating with grantee and participating in the defense of any litigation by its own counsel at its sole costs and expense. No recovery by the town of any sum by reason of the liquidated damages required by this chapter shall be subject to litigation by the company, except that any sum so received by the town shall be deducted from any recovery which the town might have against the company under the terms of this section.

(Ord. passed 6-8-1994) Penalty, see § 10.99

DESIGN AND CONSTRUCTION PROVISIONS

§ 114.075 AUTHORITY TO CONSTRUCT.

(A) *Authorization to commence construction and application procedures.* Within 30 days of the acceptance by the grantee of a franchise, the grantee shall apply for any needed contracts for use of poles. Within 30 days after completion of the make-ready survey identifying the routes of the system facility, the grantee shall apply for all additional licenses from the state, town, or other necessary parties, such as the railroads for crossing under or over their property. In any event, all necessary applications for permits, licenses, certificates and authorizations shall be applied for in a timely fashion so that the filing and processing shall not interfere with or cause delay with the construction scheduled as outlined in the franchise. Failure to make a timely application and timely filing shall constitute a substantial violation of this chapter.

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

(Ord. passed 6-8-1994) Penalty, see § 10.99

§ 114.076 CONSTRUCTION AND TECHNICAL STANDARDS.

(A) Grantee shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements, FCC technical standards, and detailed technical standards submitted by grantee as part of its application, which standards are incorporated by reference herein. The grantee, through the system, shall provide uniform, strong signals which are free from any significant distortion and interference. The system shall be designed, constructed, operated and maintained for 24-hours-a-day continuous operation. The system shall produce, for reception on subscribers' receivers which are in good working order, either monochrome or color pictures (providing the receiver is color capable) which are free from any significant interference or distortion which would cause any material degradation of video or audio quality.

(B) The grantee shall construct, install, operate and maintain its system in accordance with the highest standards of the art cable communications taking into account the size and needs of the community as well as the costs and benefits to the residents of Enfield, the standards to include but not be limited to the following:

(1) The system will be spaced to permit a minimum of 450 MHz operation or as provided in the franchise, and will be capable of utilizing state-of-the-art converters and be compatible with cable ready television sets;

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(2) The system will utilize converters which will make the system adaptable for the development of future services; and

(3) The grantee shall upgrade its facilities, equipment, and service so that its system is as advanced as the current state of production technology will allow. The grantee shall install additional channel capacity as required to keep channel capacity in excess of demand therefore by users. At all times, the cable shall be no less advanced than any other system in the State of North Carolina of comparable size and age excepting only systems which are experimental, pilot, or demonstration. The town shall order the grantee to comply with this section in case of specific violations, which it may investigate upon complaint or its own motion.

(C) Prior to the erection of any towers, poles or conduits or the upgrade or rebuild of the communications system under this chapter, the grantee shall first submit to the town and other designated parties for approval, a concise description of the facilities proposed to be erected or installed, including engineering drawings, if required, together with a map and plans indicating the proposed location of all facilities. No erection or installation of any tower, pole, underground conduit, or fixture or any rebuilds or upgrading of the cable communications systems shall be commenced by any person until approval, therefore, has been received from the town provided further, that the approval shall not be unreasonably withheld, and action thereof shall be taken within a reasonable time.

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

(E) The grantee's system and associated equipment erected by the grantee within the town shall be located as to cause minimum interference with the proper use of street, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of, the streets, alleys or other public ways and places. No pole or other fixtures placed in any public ways by the grantee shall be placed in a manner as to interfere with normal travel on the public way.

(F) The town does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures. In public rights-of-way, where necessary, the location shall be verified by excavation.

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

(H) Grantee shall at all times comply with:

(1) The National Electrical Safety Code (National Bureau of Standards);

(2) The National Electrical Code (National Bureau of Fire Underwriters);

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- (3) The Bell System Code of Pole Line Construction;
- (4) Applicable FCC or other federal, state and local regulations; and
- (5) Standards as set forth in the franchise.

(I) In any event, the system shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the grantee may have equipment located.

(J) Any antenna structure used in the cable communications system shall comply with construction, marking and lighting of antenna structure standards as required by federal and state law or regulation.

(K) All worker facilities, conditions, and procedures that are used during construction, installation, operation, and maintenance of the cable system shall comply with the standards of the Occupational Safety and Health Administration.

(L) RF leakage shall be checked at reception location for emergency radio services to prove measurable interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigational reception in the normal flight pattern. FCC Rules and Regulations shall govern.

(M) Should any subscriber wish to have underground service in an area normally provided aerial service construction, the subscriber requesting underground services shall pay all costs attendant to underground construction plus 10% less the normal costs of the equivalent overhead installation, if the overhead service does not exist to the subscriber's residence.

(N) The grantee shall maintain equipment capable of providing standby power for a minimum of eight hours for the headend and standby power for the distribution system as specified in the franchise. (Ord. passed 6-8-1994) Penalty, see § 10.99

§ 114.077 SYSTEM CONSTRUCTION SCHEDULE.

The franchise shall specify the construction schedule.
(Ord. passed 6-8-1994)

§ 114.078 SERVICE DELIVERY.

(A) The grantee shall provide service to all residential dwellings units located within residential areas, public schools, nursing homes, and rest homes within the town and in any additional residential areas annexed to the town.

(B) Service shall be provided to newly annexed areas within six months of the date of annexation.

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(C) Any newly constructed residences shall be provided with service within 60 days of request.

(D) The grantee shall construct cable plant in any new residential developments concurrently with the construction of electric and telephone service.
(Ord. passed 6-8-1994) Penalty, see § 10.99

§ 114.079 USE OF STREETS.

(A) *Generally.* All installations shall be underground in those areas of the town where public utilities providing either telephone and electric service are underground at the time of installation. In areas where either telephone or electric utility facilities are above ground at the time of installation grantee may install its service above ground, provided that at the time as those facilities are required to be placed underground by the town or are placed underground, the grantee shall likewise place its services underground without additional cost to the town or the individual subscriber so served with the town. Where not otherwise required to be placed underground by this chapter or the franchise, the grantee's system shall be located underground at the request of the adjacent property owner, provided that the excess cost over the aerial location shall be born by the property owner making the request.

(B) *Filing of plans prior to construction.* Prior to construction or alteration, however, the grantee shall in each case file plans with the appropriate town agencies, complete use agreements with the utility companies, obtain all construction permits and receive written approval of the town before proceeding, which approval shall not be unreasonably withheld.

(C) *Interference with persons, improvements, public and private property and utilities.* The grantee's system and facilities, including poles, lines, equipment and all appurtenances, shall be located, erected and maintained so that the facilities shall to the extent reasonably possible:

(1) Not endanger or interfere with the health, safety or lives or persons;

(2) Not interfere with any improvements the town, county or state may deem proper to make;

(3) Not interfere with the free and proper use of public streets, alleys, bridges, easements or other public ways, places or property, except to the minimum extent possible during actual construction or repair;

(4) Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction or repair; and

(5) Not obstruct, hinder or interfere with any gas, electric, water or telephone facilities or other utilities located within the town.

(D) *Restoration to prior condition.* In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the grantee shall, at its own costs and expense and in a manner approved by the landscaping, or surface of any street or alley disturbed, in as good a condition as, or better than, before the work was commenced and in a good workmanlike, timely manner in accordance with standards for

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the work by the town. The restoration shall be undertaken within no more than ten business days after the damage is incurred and shall be completed as soon as possible thereafter.

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

(F) *Cooperation with building movers.* The grantee shall, on the request of any person holding a building moving permit issued by the town, temporarily raise or lower its wire to permit the moving of buildings. The expense of the temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the grantee shall have the authority to require payment in advance. The grantee shall be given not less than 15 working days' notice to arrange for the temporary wire changes.

(G) *Tree trimming.* The grantee shall have the authority, except when in conflict with existing town ordinances, to trim any trees upon and overhanging public right-of-way so as to prevent the branches of those trees from coming in contact with system facilities, except that at the option of the town, the trimming may be done by it, or under its supervision and direction, at the expense of the grantee.

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

(Ord. passed 6-8-1994) Penalty, see § 10.99

§ 114.080 ERECTION, REMOVAL AND COMMON USE OF POLES.

(A) No poles shall be erected by the grantee without prior approval of the town with regard to location, height, types, and any other pertinent aspect. However, no location of any pole or wireholding structure of the grantee shall give rise to a vested interest and the poles or structures shall be removed or modified by the grantee at its own expense whenever the town determines that the public convenience would be enhanced thereby.

(B) Where poles already exist for use in serving the town and are available for use by the grantee, but it does not make arrangements for the use, the town may require the grantee to use the poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the grantee are just and reasonable.

(Ord. passed 6-8-1994) Penalty, see § 10.99

§ 114.081 CONSTRUCTION REPORTING REQUIREMENTS.

(A) Within 30 days of the granting of an initial franchise pursuant to this chapter, or in case of substantial improvements or major construction, the grantee shall provide the town with a written progress report detailing work completed to date. The report shall include a description of the progress in applying for any necessary agreements, licenses, or certifications and any other information the Town

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Administrator may deem necessary. The content and format of the report will be determined by the Town Administrator and may be modified at his or her discretion.

(B) The written progress reports shall be submitted to the town on a monthly basis throughout the entire construction process. The Town Administrator may require more frequent reporting if he or she determines it is necessary to better monitor the grantee's progress.

(C) Prior to the commencement of any system construction, the grantee shall produce an informational document to be distributed to all residents of the area to be under construction, which shall describe the activity that will be taking place. The informational document shall be reviewed and approved by the Town Administrator prior to its distribution.

(Ord. passed 6-8-1994) Penalty, see § 10.99

§ 114.082 TESTS AND PERFORMANCE MONITORING.

(A) Not later than 60 days after any new or substantially rebuilt portion of the system is made available for service to subscribers, and thereafter annually, the grantee shall conduct technical performance tests to demonstrate full compliance with all technical standards contained in this chapter and the franchise, and the technical standards and guidelines of the FCC.

(B) The tests shall be performed by, or under the supervision of a qualified registered professional engineer or an engineer with proper training and experience. A copy of the report shall be submitted to the town, describing test results, instrumentation, calibration, and test procedures, and the qualification of the engineer responsible for the tests.

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

(D) In addition to the performance test reports required herein, a copy of any performance test reports required by the FCC shall be submitted to the town within 60 days of completion.

(E) (1) Whenever there have been similar recurrent complaints made or when there exists other evidence, which in the judgment of the town, casts doubt of the reliability or quality of the grantee's system, the town shall have the right and authority to compel the grantee to test, analyze and report on the performance of its system. The town may require additional tests, full or partial repeat tests, difference test procedures or tests involving a specific subscriber's terminal. Reports on these tests shall be delivered to the town no later than 14 days after the town formally notifies the grantee and shall include the following information:

- (a) The nature of the complaints which precipitate the special tests;
- (b) What system component was tested;
- (c) The equipment used, and procedures employed in the testing;

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- (d) The results of the tests; and
- (e) Methods by which the complaints were solved.

(2) The tests and analyses shall be supervised by a professional engineer not on the permanent staff of the grantee, who shall sign all records of the special tests and forward same to the town with a report interpreting the results of the tests and recommending what actions should be taken by the town. (Ord. passed 6-8-1994) Penalty, see § 10.99

SERVICE PROVISIONS

§ 114.095 SERVICES TO SUBSCRIBERS AND USERS.

Concurrently with the activation of the cable communications systems in the town, the grantee shall provide all services to subscribers as herein and in the franchise at rates detailed in the rate schedule.

(A) The system shall carry the broad categories of programming and services listed in the franchise. Should the grantee desire to change the selection of programs or services offered on any of its tiers, it shall maintain the mix, quality and level of services provided over the system. Any change in programs or services offered shall comply with the conditions and procedures contained in the franchise, and shall be reported to the town at least 30 days prior to the proposed implementation. The grantee shall use its best efforts to ensure diversity of programming and shall seek the non-binding recommendation of the Board in any programming change.

(B) A basic service tier shall be offered to subscribers throughout the term of this chapter and the franchise.

(C) The grantee shall provide and maintain, at a minimum the following access channels as specified in the franchise whose purposes are outlined: Governmental Access Channel which shall be a specifically designated channel or portion of a channel for local governmental use and shall be managed, scheduled and programmed exclusively by the town.

(D) The grantee shall make available leased access channels as required by federal law.

(E) The grantee, except as specified in the Cable Act, shall not exercise any editorial control over any public, educational or governmental use of access channel capacity.

(F) The grantee shall fully provide at a minimum services, facilities and equipment for public educational, and governmental access as indicated in the franchise. (Ord. passed 6-8-1994) Penalty, see § 10.99

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§ 114.096 INSTALLATIONS, CONNECTIONS AND OTHER GRANTEE SERVICES.

(A) *Standard installations.* Standard installation shall consist of a service not exceeding 150 feet customer's residence in accordance with § 114.078, Service Delivery. Service in excess of 150 feet and concealed wiring shall be charged not to exceed additional installation costs before installation begins. The grantee shall use its best efforts to accommodate the desire of the subscriber as to the point of entry into the residence. Runs in building interiors shall be as unobtrusive as possible. The grantee shall use due care in the process of installation and shall repair any damage to the subscriber's property caused by the installation. The restoration shall be undertaken within no more than ten days after the damage is incurred and shall be completed as soon as possible thereafter.

(B) *Antennas and antenna switches.* The grantee shall not, as a condition to providing cable communications service, require any subscriber or potential subscriber, to remove any existing antenna structures for the receipt of over-the-air television signals. The grantee shall install, upon the request of the subscriber, an RF or antenna switch where required for the provision of services provided by the grantee, as required by the federal law.

(C) *Lockout devices.* The grantee shall provide to its subscribers annually information concerning the availability of a lockout device. A lockout device shall be made available to all subscribers requesting it beginning on the first day that any cable service is provided. The grantee reserves the right to require a reasonable deposit for the use of this device as set forth in the rate schedule.

(D) *Reconnection.* Grantee shall restore service to customers wishing restoration of service provided customer shall first satisfy any previous obligations owed.

(E) *Delinquent accounts.* Grantee shall use its best efforts to collect on delinquent subscriber accounts. In all cases, the grantee shall provide the customer with at least ten working days' written notice prior to disconnection.

(F) *Advance charges and deposits.* A grantee may require subscribers to pay the installation charge in advance and to pay for each month of basic service in advance at the beginning of each month. (Ord. passed 6-8-1994) Penalty, see § 10.99

§ 114.097 SERVICE CALLS AND COMPLAINT PROCEDURES.

(A) The company shall establish, operate a maintenance and repair facility for the purpose of receiving inquiries, requests and complaints concerning all aspects of the construction, installation, operation and maintenance of the system and for the payment of subscribers' service charges.

(B) (1) The grantee shall have a listed, locally-staffed telephone number for service calls and the telephone service shall be available 24-hours a day, seven days-a-week.

(2) The number shall be available to subscribers and the general public.

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(3) The grantee shall provide an unlisted locally-staffed telephone number to the town and utility companies to enable the town or utility companies to reach the grantee in case of emergency on a 24-hour, seven-days-a-week basis.

(C) The grantee shall respond to and resolve subscribers' complaints or requests for service in connection with repairs and maintenance and malfunctions of system facilities. The grantee shall respond as quickly as possible to the complaints and requests, but shall in any case respond within 24 hours. Complaints or requests which may pose a potential health and safety hazard will be responded to immediately. In connection with billing complaints, the grantee shall respond within seven business days.

(D) The grantee shall prepare and file with the town copies of all of its rules and regulations in connection with the handling of inquiries, requests and complaints. The grantee shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the employee or employees or agent to whom the inquiries or complaints are to be addressed, and furnish information concerning the town office responsible for the administration of the franchise, including, but not limited to, the address and telephone number of the office.

(E) The grantee shall keep full records in connection with all inquiries, complaints and requests in connection with the system. The records shall identify the person contacting the grantee, and the person responding on behalf of the grantee, the subject matter of the contact, the date and time it was received, the resolution of the matter in question or the action taken by the grantee in connection with the contract, and the date and time thereof, and other information as may be deemed pertinent by the grantee. These records shall be made available for periodic inspection by the town.

(F) The grantee shall service or replace without charge all equipment provided by it to the subscriber, provided, however, that the grantee may charge a subscriber for service to or replacement of any equipment damaged due to negligence of the subscriber.

(G) For recurrent complaints regarding service deficiencies other than total or partial loss of service, such as "ghosting," weak audio signal, distortion, and the like, the Town Administrator may require the grantee to investigate and report to him or her the causes and cures thereof, and the Town Administrator may also conduct his or her own investigation. Thereafter, the Town Administrator may order specified remedial action to be taken within reasonably feasible time limits. If action is not taken or is ineffective, or if within 30 days the grantee files with the Board of Commissioners a notice of objection to the order, the Board of Commissioners may conduct a hearing and may, if the evidence warrants a finding of fault on the part of the grantee, take appropriate action pursuant to the terms of this chapter.

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(H) (1) The grantee shall without charge for installation, maintenance or service make single installations of its communications service facilities to those public buildings operated by units of local government when the building is located on the grantee's system when the system is constructed consistent with the requirements of this chapter. These installations shall be made at reasonable locations as shall be requested by the chief administrative officer of the unit involved. Additional installations at the same location may be made at normal charge. No monthly service charges shall be made for distribution of the grantee's basic signals within publicly owned buildings.

(2) In addition, the grantee, shall without charge for installation, maintenance or service, make single installations of its standard community service facilities at any other town-owned facility identified in the franchise agreement. Further, no installation to any of the above-mentioned locations shall be made until requested in writing by the Town Administrator.
(Ord. passed 6-8-1994)

§ 114.098 CONTINUITY OF SERVICE/MANDATORY.

(A) *Continuity of service.* It shall be the right of all subscribers to receive continuous, uninterrupted service insofar as their financial and other obligations to be grantee are honored.

(B) *Cooperation.* In the event that the grantee elects to rebuild, modify or sell the system, or the town gives notice of intent to terminate or fails to renew its franchise, the grantee shall cooperate with the town or new grantee or operator in maintaining continuity of service to all subscribers for a period of six months or a time as mutually agreed upon. During the period, grantee shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for the services when it no longer operates the system.

(C) *Failure to provide continuity.* In the event the grantee fails to operate the system for seven 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 a time as grantee restores service under conditions acceptable to the town or a permanent operator is selected. If the town is required to fulfill this obligation for the grantee, the grantee shall reimburse the town for all reasonable costs or damages in excess of revenues from the system received by the town that are the result of the grantee's failure to perform.

(Ord. passed 6-8-1994) Penalty, see § 10.99

§ 114.099 PROTECTION OF SUBSCRIBER PRIVACY.

Grantee shall at all times protect the privacy of subscribers, as provided in applicable federal, state and local laws.

(Ord. passed 6-8-1994) Penalty, see § 10.99

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§ 114.100 RIGHTS OF INDIVIDUALS.

(A) *Non-discrimination required.* Grantee shall not deny service, deny access or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin, age, sex, or physical or mental handicaps, provided the subscriber shall pay all applicable fees for the service desired. Grantee shall comply at all times with all other applicable federal, state and local laws and regulations, and all executive and administrative orders relating to non-discrimination.

(B) *Fairness of accessibility.* The entire system of the grantee shall be operated in a manner consistent with the principles of fairness and equal accessibility of its facilities.

(C) *Information accessibility.*

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

(2) Each individual subscribing to the services of the cable communications system shall be provided with information covering rates and charges, billing procedure, delinquency policy, subscriber privacy notice and an itemized channel lineup.

(3) Each document required to be maintained, prepared, filed or submitted under provisions of this chapter or pursuant to it, except those required and designated confidential by the Federal Communications Commission is a public document, available for public inspection and copying at the requestor's expense, at the office of the grantee or the town during normal business hours.
(Ord. passed 6-8-1994)

BOOKS, RECORDS AND REPORTS

§ 114.115 BOOKS AND RECORDS AVAILABLE TO GRANTOR.

(A) (1) The town shall have the right to inspect at anytime during normal business hours, all books records, maps, plans, income tax returns, financial statements, service complaint logs, performance test results and other like materials of the grantee which relate to the operation of the franchise.

(2) Access to the aforementioned records shall not be denied by the grantee on the basis that the records contain "proprietary" information.

(B) (1) Grantee shall permit any duly authorized representative of the town to examine and copy or transcribe any and all maps and other records kept or maintained by grantee or under its control concerning the operations, affairs, transactions or property of grantee.

(2) If any maps or records are not kept in the town or upon reasonable request made available in the town, and if the town shall determine that an examination of the maps or records is necessary or

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appropriate to the performance of any of their duties, then all travel and maintenance expenses necessarily incurred in making the examination shall be paid by grantee.
(Ord. passed 6-8-1994) Penalty, see § 10.99

§ 114.116 REPORTS PROVIDED IN REQUEST.

When requested by the town the grantee shall file with the town:

(A) *Regulatory communications.* All reports required by the Federal Communications Commission (FCC) including, but not limited to annual proof of performance tests and results, and Equal Employment Opportunity (EEO) reports, and all petitions, applications and communications of all types submitted by grantee to the FCC, the Security and Exchange Commission (SEC), or any other federal or state regulatory commission or agency, having jurisdiction over any matter affecting operation of the grantee's system shall be submitted simultaneously to the town by delivery to the Town Clerk who shall advise interested town departments of the filing.

(B) *Facilities report.* A report setting forth the physical miles of plant construction and plant in operation during the fiscal year shall be submitted to the town.

(C) *Construction reports.* Construction reports shall be sent to the town 30 days after the franchise is awarded.

(D) *Proof of performance tests.* Proof of performance test results shall be supplied to the town upon completion of the test.

(E) *Test required by town.* Tests required by town as specified in § 114.082(E) of this chapter shall be submitted within 14 days of notification.

(F) *Change in service.* A report of any change in programming or service shall be provided to the town 30 days prior to implementation.

(G) *Grantee rules.* The grantee's schedule of charges, contract or applications forms of regular subscriber service, policy regarding the processing of subscriber complaints, delinquent subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the grantee's policy in connection with its subscribers shall be filed with the town and conspicuously posted in the grantee's office. All the terms and conditions, including schedule of charges, must have been filed with the town prior to their becoming effective. The rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations.

(H) *Proof of insurance.* Grantee shall submit to the town all policies of insurance required by this chapter, or certified copies thereof, and written notice of payment of required premium.

(I) *Financial and ownership reports.*

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(1) An ownership report, indicating all persons, who at any time during the preceding year did control or benefit from an interest in the franchise of 1% or more.

(2) A fully-audited statement of gross annual revenues verifying all revenues from the town franchise as certified by a certified public accountant.

(3) A current annual statement of all capital expenditures including the cost of construction and of equipment.

(4) An annual list of officers and members of the Board of grantee and any parent corporation.

(J) *Operational reports.*

(1) A report on the system's technical tests and measurements as set forth herein and in the franchise.

(2) A report on programs and services offered by grantee, including public, educational, government and leased access.

(3) An annual summary of the previous year's activities including, but not limited to, subscriber totals for each category of service offered including number of pay units sold, new services offered, and the amount collected annually from other users of the system and the character and extent of the service rendered thereto.

(4) An annual summary of complaints received and handled in addition to any reports required in the franchise.

(5) An annual projection of system and service plans for the future.

(K) *Additional reports.* The grantee shall prepare and furnish to the town at the times and in the form prescribed, any additional reports with the respect to its operation, affairs, transactions or property, as may be reasonably necessary and appropriate to the performance of any of the rights, functions or duties of the town in connection with this chapter or the franchise.

(Ord. passed 6-8-1994) Penalty, see § 10.99

§ 114.117 REPORTS REQUIRED.

(A) *Mandatory records.* The grantee shall at all times maintain:

(1) A record of all complaints received and interruptions or degradation of service experience for the preceding period prior to a performance review;

(2) A full and complete set of plans, records and "as built" maps showing the exact location of all cable communication system equipment installed or in use in the town, exclusive of subscriber service drops; and

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(3) A comprehensive record of all personnel transactions and utilization of contractors, subcontractors, vendors and suppliers by race and sex.

(B) *Other records.* The town may impose reasonable requests for additional information, records and documents from time to time.

(Ord. passed 6-8-1994) Penalty, see § 10.99