

Chapter 13 Index

13-101 Title And Purpose	13-1
13-102 Definitions	13-1
13-103 Cable Television Franchise Required.....	13-6
13-104 Rights and Privileges of Grantee	13-6
13-105 Agreement and Incorporation of Application by Reference	13-6
13-106 Franchise Area	13-6
13-107 Duration of Franchise	13-7
13-108 Franchise Renewal.....	13-7
13-109 Police Powers	13-7
13-110 Town Use of Grantee Facilities	13-7
13-111 Initial Grantee Costs	13-8
13-112 Franchise Application, Application Fee and Review Process	13-8
13-113 Franchise Fee.....	13-12
13-114 Notices	13-12
13-115 Public Notice	13-13
13-116 Letter Of Credit/Security Deposit.....	13-13
13-117 Performance Bond	13-14
13-118 Insurance.....	13-14
13-119 Hold Harmless	13-14
13-120 Rights Of Individuals.....	13-15
13-121 Service Availability And Record Request.....	13-16
13-122 System Construction.....	13-16
13-123 Construction And Technical Standards	13-17
13-124 Use Of Public Rights-Of-Way.....	13-18
13-125 Operational Standards.....	13-20
13-126 Continuity Of Service Mandatory	13-23
13-127 Required Services And Facilities	13-24
13-128 Complaint Procedure	13-25
13-129 Grantee Rules And Regulations	13-26
13-130 Transfer Of Ownership Or Control	13-26
13-131 Availability Of Books And Records.....	13-27
13-132 Other Petitions And Applications.....	13-28
13-133 Fiscal Reports	13-28
13-134 Removal Of Cable Television System.....	13-28
13-135 Rules And Regulations	13-28
13-136 Performance Evaluation Sessions.....	13-28
13-137 Forfeiture And Termination.....	13-29
13-138 Foreclosure	13-30
13-139 Right Of Acquisition By The Town	13-31
13-140 Compliance With State And Federal Laws	13-31
13-141 Landlord/Tenant	13-32
13-142 Penalties.....	13-32
13-143 Rate Regulation	13-34
13-144 Severability.....	13-34
13-145 Town's Right Of Intervention.....	13-34
13-146 Recourse	13-34
13-147 Theft Of Service	13-35

CHAPTER 13 CABLE TELEVISION FRANCHISING

§ 13-101. Title And Purpose.

This ordinance shall be known and may be cited as the “The Town of Church Hill Cable Television Franchise Ordinance” (hereinafter “chapter”). The purposes of this chapter are (i) to establish the terms and conditions under which a cable television or open video system occupying the public rights-of-way must operate within the Town of Church Hill, Maryland (which may hereinafter be referred to as “Town”, “franchising authority”, or “grantor”); (ii) to provide for the payment of a franchise fee to the Town for use of public rights-of-way and the costs associated with administering and regulating the system; and (iii) to enhance the Town's authority to grant a cable television system franchise while managing the public rights-of-way.

§ 13-102. Definitions.

For the purpose of this chapter and any franchise agreement entered into hereunder, the following terms, phrases, words and their derivations shall have the meaning given herein. Words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in this section. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

(A) “Access Manager” means any entity, including a non-profit community access corporation, designated by the Town to perform any or all of the following functions:

(1) Manage any necessary scheduling or allocation of any PEG or institutional network channel capacity; and/or

(2) Program any PEG channel on the Town's behalf.

(B) “Affiliate” means each person who falls into one or more of the following categories:

(1) Each person having a controlling interest in a grantee;

(2) Each person in which a grantee has a controlling interest; or

(3) Each person, directly or indirectly, controlling, controlled by, or under common control with, a grantee; provided that “affiliate” shall in no event mean any creditor or a grantee solely by virtue of its status as a creditor and which is not otherwise an affiliate by reason

of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, a grantee.

(C) “Agreement” or “Franchise Agreement” means a binding contract granting a franchise pursuant to this chapter, and any amendments, exhibits or appendices thereto, containing the specific provisions of the franchise granted, including references, specifications, requirements and other related matters.

(D) “Applicable Law” means all federal, state, and local laws, statutes, codes, constitutions, charters, ordinances, resolutions, orders, rules, and regulations, including, but not limited to, all FCC resolutions, orders, rules, and regulations, and all administrative judicial decisions interpreting any of the forgoing sources of law.

(E) “Basic Service” or “Basic Cable Television Service” means any service tier, which includes the retransmission or delivery of local television broadcast signals, origination channels and public, educational and governmental access channels, covered by a regular monthly charge paid by all subscribers to a particular service tier. In the event that the definition of basic cable television service is amended by an act of the United States Congress, under the Cable Act or otherwise, or by the FCC, then the definition under this section shall be amended to conform thereto.

(F) “Cable Act” means the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, and as may be amended from time to time.

(G) “Cable Television System” or “cable system” or “system” means a facility consisting of a set of closed transmission paths and associated signal generation, reception, transmission and control equipment that is designed to provide cable television service which includes video programming and which is provided to multiple subscribers within the Town of Church Hill, but such term does not include:

(1) A facility that serves only to retransmit the television signals of one or more television broadcast stations;

(2) A facility that serves subscribers without using any public rights-of-way;

(3) A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, except that such facility shall be considered a cable system if such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; or

(4) Any facilities of any electric utility used solely for operating its electric utility system.

A reference to a cable system in this chapter refers to any part of such system, including, without limitation, converters. The foregoing definition of “cable system” shall not be deemed

to circumscribe or limit the authority of the Town to regulate or franchise the activities of any other communications system or provider of communications services to the full extent permitted by law.

(H) “Cable Service” means: (1) the one-way transmission to subscribers of video programming or other programming services; and (2) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service, as further defined by an act of the United States Congress, under the Cable Act or otherwise, or by the FCC.

(I) “Channel” or “Cable Channel” means a portion of the electromagnetic frequency spectrum that is used in a cable system and which is capable of delivering a television channel, as further defined by an Act of the United States Congress, under the Cable Act or otherwise, or by the FCC.

(J) “Control” and/or “Controlling Interest” shall mean actual working control or ownership of a system in whatever manner exercised. A rebuttable presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or indirectly, by any person or entity (except underwriters during the period in which they are offering securities to the public) of twenty-five percent or more of a cable system or a franchise under which the system is operated. A change in the control or controlling interest of any entity which has control or a controlling interest in a grantee shall constitute a change in the control or controlling interest of the system under the same criteria. Control or controlling interest as used herein may be held simultaneously by more than one person or entity.

(K) “Converter” means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by an appropriate channel selector also permits a subscriber to view more than twelve (12) channels delivered by a system at designated converter dial locations.

(L) “Town Administrator” means the administrative head of the Town, or his designee.

(M) “Town” means the Commissioners of Church Hill and any agency or department thereof. The Town may also be referenced as “franchising authority” or “grantor”.

(N) “Franchise” means a non-exclusive authorization, or renewal thereof, evidenced by a written franchise agreement, granted pursuant to this chapter and applicable law, to construct, operate and maintain a cable system within the public rights-of-way to provide cable service within all or a specified area of the Town of Church Hill. The term “franchise” includes the franchise agreement. Any such authorization, in whatever form granted, shall not mean or include any license or permit required for the privilege of transacting and carrying on a business within the Town of Church Hill as required by state or local law, ordinances, or regulations, or for attaching devices to poles or other structures, whether owned by the Town or a private entity, or for excavating or performing other work in or along the public rights-of-way.

(O) “Franchise Area” means the geographic area within the Town of Church Hill that a grantee is authorized to serve by its franchise.

(P) “Franchise Fee” means the fee imposed by the Town pursuant to § 13-113 of this chapter. The term “Franchise Fee” does not include:

(1) Any tax, fee or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators);

(2) Capital costs that are required by a franchise agreement to be incurred by the cable operator for public, educational or governmental access facilities, or

(3) Requirements or charges incidental to the awarding or enforcing of a franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages.

(Q) “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

(R) “Grantee” means a person or entity to whom or which a franchise is granted by the Town pursuant to this chapter, along with the lawful successors or assigns of such person or entity.

(S) “Gross Revenue” means any and all revenues or consideration of any kind or nature that constitutes revenue within generally accepted accounting principles (including without limitation, cash, and credits,) actually received by grantee, from the provision of cable service over the cable system within the franchise area. Gross revenues include, by way of illustration and not limitation, monthly fees charged to subscribers for any basic, optional, premium, per-channel, per-program service, or other cable service; installation, disconnection, reconnection and change-in-service fees; leased access channel fees; revenues from rentals or sales of converters and/or other equipment. Gross revenues shall not include:

(1) To the extent consistent with generally accepted accounting principles, actual bad-debt write-offs; or

(2) Any taxes or fees, including the franchise fee, on services furnished by a grantee which are imposed directly on any subscriber or user by the State of Maryland, the Town or other governmental unit and which are collected by the grantee on behalf of said governmental unit.

(T) “Initial Grantee” means a grantee who has not previously been granted a franchise by the Town.

(U) “Initial Service Area” means all areas in the Town of Church Hill that will receive cable service initially, as set forth in any franchise agreement.

(V) "Installation" means the connection of the system to subscribers' terminals, and the provision of cable service.

(W) "Normal Business Hours", as applied to a grantee, shall mean those hours during which similar businesses in the Town of Church Hill are open to serve customers. In all cases, normal business hours shall include some evening hours at least one (1) night per week, and some weekend hours.

(X) "Normal Operating Conditions" shall mean those service conditions which are within the control of a grantee. Those conditions which are not within the control of a grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Conditions which are ordinarily within the control of the grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(Y) "Outage" shall mean the complete loss of picture, sound or both on multiple channels from a common problem which affects multiple customers on the system.

(Z) "PEG" or "Public, Educational or Government Access Facilities" means:

- (1) Channel capacity designated for public, educational or governmental use;
- and
- (2) Facilities and equipment for the use of such channel capacity.

(AA) "Person" shall mean any natural person or any partnership, association, joint stock company, joint venture, domestic or foreign corporation, stock or non-stock corporation, limited liability company, professional limited liability company, or organization of any kind, or any lawful successor thereto or transferee thereof. Such term does not include the Town.

(BB) "Public Rights-of-Way" or "Street" means the surface of and all rights-of-way and the space above and below any public street, road highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive or easement now or hereafter held by the Town for the purpose of public travel and shall include other similar easements or rights-of-way as shall be now held or hereafter held by the Town which shall, within their proper use and meaning, entitle a grantee to the use thereof for the purposes of installing poles, wires, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a cable system.

(CC) "Service Interruption" shall mean the loss of either picture or sound or both, on one or more channels, affecting at least one (1) subscriber on the system.

(DD) "State" means the State Of Maryland.

(EE) “Subscriber” shall mean any person lawfully receiving cable service provided by a grantee by means of or in connection with the cable system and who pays the charges therefore, except such persons or entities authorized to receive cable service without charge as provided for in a franchise agreement.

(FF) “User” means a person utilizing a cable television system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt thereof in a subscriber capacity.

§ 13-103. Cable Television Franchise Required.

It shall be unlawful for any person to construct, install or operate a cable television system in the Town of Church Hill within any public right-of-way without a properly granted franchise issued pursuant to the provisions of this chapter.

§ 13-104. Rights and Privileges of Grantee.

Any franchise granted by the Town shall grant to a grantee the non-exclusive right and privilege, subject to building, electrical, and other applicable codes, ordinances, and laws, to erect, construct, operate and maintain in, upon, and along, across, above, over and under the public rights-of-way, now in existence and as may be created or established during a franchise term; any poles, wires, cable, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation of a cable system to provide cable service within a franchise area. A franchise granted by the Town does not expressly or implicitly authorize a grantee to provide service to, or install a cable system on, private property without the owner’s consent (except for use of compatible easements pursuant to the Cable Act), or to use publicly or privately owned conduits or any other public property without a separate agreement with the owners thereof.

§ 13-105. Agreement and Incorporation of Application by Reference.

(A) Upon adoption of any franchise agreement and execution thereof by a grantee, the grantee agrees to be bound by all the terms and conditions contained in this chapter and any amendments thereto, unless otherwise provided in the franchise agreement.

(B) Any grantee also agrees to provide all services specifically set forth in its application, if any, and to provide cable service within the confines of its franchise area; and by its acceptance of a franchise, a grantee specifically grants and agrees that its application is thereby incorporated by reference and made a part of the franchise. In the event of a conflict between the application and the provisions of this chapter, that provision which provides the greatest benefit to the Town, in the opinion of the Town, shall prevail.

§ 13-106. Franchise Area.

Any franchise to provide cable service shall be valid within all the unincorporated territorial limits of the Town of Church Hill, Maryland, unless otherwise specified in the franchise agreement.

§ 13-107. Duration of Franchise.

A franchise and the rights, privileges and authority granted shall take effect and be in force as set forth in the franchise agreement and shall continue in force and effect for a term of no longer than fifteen (15) years. Such franchise shall be non-exclusive and revocable.

§ 13-108. Franchise Renewal.

Franchise renewals shall be conducted in accordance with applicable law including, but not necessarily limited to, the Cable Act, as amended. Grantor and grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise.

§ 13-109. Police Powers.

(A) In accepting a franchise, a grantee shall acknowledge that its rights there under are subject to the police powers of the Town to adopt and enforce general public local laws pursuant to applicable law and necessary to the health, safety and welfare of the public. Grantee shall agree to comply with all applicable laws, including ordinances, policies, codes, rules and regulations enacted or adopted by the Town pursuant to such power.

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

(C) In the event that the state or federal government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, the Town may, if it so elects, adopt rules and regulations in these areas to the extent permitted by law.

§ 13-110. Town Use of Grantee Facilities.

The Town shall have the right, during the term of a franchise, to install and maintain free of charge upon the poles of a grantee any wire or pole fixtures that do not unreasonably interfere with the cable television system operations of the grantee. The Town shall indemnify and hold harmless, to the extent permitted by law, the grantee from any claim that might arise due to or as a result of such usage.

§ 13-111. Initial Grantee Costs.

Costs to be borne by an initial grantee shall include, but shall not be limited to, any reasonable charges incidental to the awarding or enforcing of an initial grantee's franchise, all costs of publications of notices prior to any public meeting provided for pursuant to this chapter, and any costs not covered by application fees but incurred by the Town in its study, preparation of proposal documents, evaluation of all applications, and examinations of the applicants' qualifications. Any payments made to the Town pursuant to this section shall not be considered franchise fees.

§ 13-112. Franchise Application, Application Fee and Review Process.

(A) Any person desiring (i) an initial franchise for a cable television system, (ii) the renewal of a franchise, or (iii) a modification of a franchise shall file a written application with the Town. The application shall be in such form, and under such terms and conditions, as determined by the Town.

(B) To be acceptable for filing, a signed original of the application shall be submitted together with five (5) copies. The application must be accompanied by any required application filing fee and contain all required information. All applications shall include the names and addresses of persons authorized to act on behalf of all applicants with respect to the application.

(C) All applications accepted for filing shall be made available by the Town for public inspection.

(D) A person may apply for an initial franchise or a franchise renewal by submitting an application containing the information required in § 13-112(E). Upon receipt of such an application, the Town shall evaluate the application pursuant to § 13-112(D)(1), conducting such investigations as it deems necessary to determine whether the application satisfies the standards set forth in §13-112(D)(1) and may seek additional applications.

(1) In evaluating an application for a franchise or a renewal thereof, the Town shall consider, among other things, the following factors:

(A) The extent to which the applicant has substantially complied with the applicable law and the material terms of any existing franchise for the Town;

(B) Whether the quality of the applicant's service under any existing franchise in the Town of Church Hill, including signal quality, response to customer complaints, billing practices, but without regard to the mix and quality of cable services or other services provided over the system, has been reasonable in light of the needs and interests of the communities served;

(C) Whether the applicant has the financial, technical, and legal qualifications to provide cable service;

(D) Whether the application satisfies any minimum requirements established by the Town and is otherwise reasonable to meet the future cable-related needs and interests of the community, taking into account the cost of meeting such needs and interests;

(E) Whether, to the extent not considered under § 13-112(D)(1)(D), the applicant will provide adequate PEG access channel capacity, facilities, or financial support.

(F) Whether issuance of a franchise is warranted in the public interest considering the immediate and future effect on the public rights-of-way and private property that would be used by the cable system, including the extent to which installation or maintenance as planned would require replacement of property or involve disruption of property, public services, or use of the public rights-of-way; the effect of granting a franchise on the ability of cable to meet the cable-related needs and interests of the community; and the comparative superiority or inferiority of competing applications;

(2) If the Town finds that it is in the public interest to issue or renew a franchise considering the factors set forth in this section, and subject to the applicant's entry into an appropriate franchise agreement, it shall proceed with the grant or renewal of franchise. If the Town denies a franchise or renewal thereof after consideration of the factors set forth in this section, it will issue a written decision explaining the denial. The Town also may grant or deny a request for a franchise or renewal thereof based on its review of an application without further proceedings and may reject any application that is incomplete. This chapter is not intended and shall not be interpreted to grant any applicant or existing franchisee standing to challenge the issuance of a franchise to another person.

(3) Prior to rendering a final decision whether or not to issue or renew a franchise pursuant to this section, (i) the Town shall provide public notice of the franchise application; (ii) the Town may hold one or more public hearings or implement other procedures under which comments from the public and/or the applicant on an application may be received; and (iii) in the event of a renewal application where the franchise may not be renewed, the Town shall provide a preliminary assessment to the franchisee seeking renewal and shall afford that applicant and opportunity to respond to the preliminary assessment.

(E) An application for the grant of an initial franchise shall require, and any such application shall contain, at a minimum, the following information:

(1) Name and address of the applicant and identification of the ownership and control of the applicant, including: the names and addresses of the ten (10) largest holders of an ownership interest in the applicant and affiliates of the applicant, and all persons with five (5) percent or more ownership interest in the applicant and its affiliates; the persons who control the applicant and its affiliates; and all officers and directors of the applicant and its affiliates.

(2) A demonstration of the applicant's technical ability to construct and/or operate the proposed cable system, including identification of key personnel.

(3) A demonstration of the applicant's legal qualifications to construct and/or operate the proposed cable system.

(4) A statement prepared by a certified public accountant regarding the applicant's financial ability to complete the construction and operation of the cable system proposed.

(5) A description of the applicant's prior experience in cable system ownership, construction, and operation, and identification of communities in which the applicant or any of its principals have, or have had, a cable franchise or any interest therein.

(6) Identification of the area of the Town of Church Hill to be served by the proposed cable system, including a description of the proposed franchise area's boundaries.

(7) A detailed description of the physical facilities proposed, including channel capacity, technical design, performance characteristics, headend, and access facilities.

(8) Where applicable, a description of the construction of the proposed system, including an estimate of plant mileage and its location; the proposed construction schedule; a description, where appropriate, of how services will be converted from existing facilities to new facilities; and information on the availability of space in conduits including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities.

(9) The proposed rate structure, including projected charges for each service, installation, converters, and all other proposed equipment or service.

(10) A demonstration of how the applicant will reasonably meet the future cable-related needs and interests of the community, including descriptions of how the applicant will meet the needs described in any recent community needs assessment conducted by or for the Town, and how the applicant will provide adequate PEG access channel capacity, facilities, or financial support to meet the community's needs and interests.

(11) Pro forma financial projection for the proposed franchise term, including a statement of projected income, and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules.

(12) If the applicant proposes to provide cable service to an area already served by an existing cable franchisee, the identification of the area where the overbuild would occur and the ability of the public rights-of-way and other property that would be used by the applicant to accommodate an additional system.

(13) Any other information that may be reasonably necessary to demonstrate compliance with the requirements of this chapter.

(14) Any additional information that the Town may request of the applicant that is relevant to the Town's consideration of the application.

(15) An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, acknowledging the enforceability of application commitments, and certifying that the application meets all federal and state law requirements.

(16) The Town may, at its discretion and upon request of an applicant, waive in writing the provision of any of the information required by this section.

(F) An application for modification of a franchise agreement shall include, at minimum, the following information:

(1) The specific modification requested;

(2) The justification for the requested modification, including the impact of the requested modification on subscribers and others, and the financial impact on the applicant if the modification is approved or disapproved, demonstrated through, *inter alia*, submission of financial pro formas;

(3) A statement whether the modification is sought pursuant to §625 of the Cable Act (18 U.S.C. § 545), and, if so, a demonstration that the requested modification meets the standards set forth therein;

(4) Any other information that the applicant believes is necessary for the Town to make an informed determination on the application for modification; and

(5) An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, and certifying that the application is consistent with all federal and state law requirements.

(G) An applicant shall be notified of any public hearings held in connection with the evaluation of its application and shall be given an opportunity to be heard.

(H) Filing Fees. A nonrefundable application fee of one thousand dollars (\$1,000) shall accompany any initial franchise application. A nonrefundable application fee of five hundred dollars (\$500) shall accompany any renewal application or modification application, unless otherwise stipulated by the Town. In addition, the Town may require an applicant to reimburse the Town for its reasonable out-of-pocket expenses in considering the application, including consultants' fees. Payments made by a grantee hereunder shall not be deemed to be franchise fees within the meaning of the Cable Act, and such payment shall not be deemed to be involuntary payment chargeable against, or part of, the compensation to be paid to the Town by grantee pursuant to § 13-113 of this chapter and applicable provisions of a franchise agreement. The purpose of the application fees is to cover costs incidental to processing and evaluating the application or enforcement of the franchise.

§ 13-113. Franchise Fee.

(A) For the reason that the streets and public rights-of-way of the Town to be used by a grantee in the operation of its cable system within the boundaries of the Town of Church Hill are valuable public properties acquired and maintained by the Town at great expense to its taxpayers, and that the grant of a franchise to a grantee is a valuable right without which a grantee would be required to invest substantial capital in right-of-way costs and acquisitions, a grantee shall pay to the Town a franchise fee in an amount equal to five percent (5%) of the grantee's gross revenue, unless otherwise provided for in the franchise agreement. If the statutory five percent (5%) limitation on franchise fees is raised or applicable law deletes the franchise fee limitation entirely, then the franchise fee shall be subject to renegotiation. The obligation to pay a franchise fee pursuant to this § 13-113 shall apply to all persons operating a cable system or providing cable service with the Town of Church Hill, irrespective of whether a valid franchise has been granted to such person.

(B) The franchise fee payment shall be in addition to any other tax, fee or assessment of general applicability or payment owed to the Town by a grantee.

(C) The franchise fee and any other costs or penalties assessed shall be payable quarterly on a calendar year basis to the Town and a grantee shall file a complete and accurate verified statement of all gross revenues within forty-five (45) days after the close of each calendar quarter as established between the Town and the grantee.

(D) The Town shall have the right, no more frequently than biannually, to inspect a grantee's income records and the right to audit and to recompute any amounts determined to be payable under this chapter upon thirty (30) days prior notice to the grantee. Any additional amount due to the Town as a result of the audit shall be paid within thirty (30) days following written notice to the grantee by the Town, which notice shall include a copy of the audit report. Unless required by law, the Town shall not disclose to any third party (other than its financial advisors in their capacity as such) any financial information or other information that would non-disclosable under the Maryland Access to Public Information Act, §§ 10-611 through 10-628 of the State Government Article of the Annotated Code of Maryland, including any successor or additional provision thereto, that the Town gains access to in connection with the provisions of this subsection. A grantee's income records, when made available to the Town, shall not include subscriber specific information.

(E) If any franchise fee payment or recomputed amount, cost or penalty, is not made on or before the applicable dates heretofore specified, interest shall be charged daily from such date at the legal maximum rate charged by the United States Internal Revenue Service for late federal income tax payments and a grantee shall reimburse the Town for any reasonable additional expenses and costs incurred by the Town by reason of the delinquent payment(s).

§ 13-114. Notices.

All notices from a grantee to the Town pursuant to this chapter shall be to the Town Administrator's office. Every grantee shall maintain with the Town, throughout the term of a

franchise, an address for service of notices by mail. A grantee shall maintain a central office to address any issues relating to operating under this chapter.

§ 13-115. Public Notice.

Minimum public notice of any public meeting relating to a franchise shall be made as prescribed by the Town.

§ 13-116. Letter Of Credit/Security Deposit.

(A) Within fifteen (15) days after the award of a franchise, a grantee shall deposit with the Town an irrevocable letter of credit from a financial institution, a security deposit, or a surety bond, in form and amounts as set forth in the franchise agreement. The Town attorney shall approve the form and content of such letter of credit, security deposit, or surety bond. These instruments shall be used to insure the faithful performance of a grantee of all provisions of this chapter and the franchise; and compliance with all orders, permits and directions of any agency, commission, board, department, division, or office of the Town having jurisdiction over its acts or defaults under this chapter and the franchise, and the payment by a grantee of any claims, liens, and taxes due the Town which arise by reason of the construction, operation or maintenance of a cable system.

(B) The letter of credit, security deposit, or surety bond shall be maintained at the amount set forth in the franchise agreement for the entire term of a franchise, even if amounts have to be or have been withdrawn pursuant to this chapter or the franchise agreement.

(C) If a grantee fails to pay to the Town any compensation within the time fixed under this chapter or in the franchise agreement; or fails to repay the Town within thirty (30) days, any damages, costs or expenses which the Town is compelled to pay by reason of any act or default of the grantee in connection with this chapter or a franchise, or fails, after thirty (30) days notice of such failure by the Town to comply with any material provision of this chapter or the franchise which the Town reasonably determines can be remedied by demand on the letter of credit, security deposit, or surety bond, the Town may immediately request payment of the amount thereof, with interest and any penalties, from the letter of credit, surety bond or security deposit. Upon such request for payment, the Town shall notify the grantee of the amount and date thereof.

(D) The rights reserved to the Town with respect to the letter of credit, security deposit or surety bond are in addition to all other rights of the Town, whether reserved by this chapter or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit, surety bond or security deposit shall affect any other right the Town may have.

(E) A letter of credit shall contain the following endorsement: "It is hereby understood and agreed that this letter of credit, security deposit or surety bond may not be canceled by the surety, nor the intention not to renew be stated by the surety, until thirty (30) days after receipt by the Commissioners of Church Hill, by registered mail, of a written notice of

such intention to cancel or not to renew.” Upon receipt of the thirty (30) day notice, this shall be construed as a default granting the Town the right to call on the surety for either the security deposit, letter of credit or surety bond, unless a grantee obtains a substitute letter of credit, security deposit or surety bond.

(F) The Town may at any time during the term of the franchise, waive their requirement that the grantee maintain a letter of credit, surety bond or security deposit. The invitation to waive the requirement can be initiated by the Town or a grantee.

§ 13-117. Performance Bond.

(A) Within thirty (30) days after the award of a franchise to an initial grantee, such grantee shall file with the Town a performance bond in the amount of not less than fifty (50) percent of costs to install the system contained in the new application in favor of the Town. This bond shall be maintained throughout the construction period and until such time as determined by the Town, unless otherwise specified in a franchise agreement.

(B) If a grantee fails to comply with any law, ordinance or resolution governing a franchise, or fails to well and truly observe, fulfill and perform each term and condition of the franchise, as it relates to the conditions relative to the construction or upgrade of a cable system, there shall be recoverable jointly and severally, from the principal and surety of the bond, any damages or loss suffered by the Town as a result including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the grantee plus a reasonable allowance for attorneys’ fees, including the Town's legal staff, and costs, up to the full amount of the bond.

(C) The bond shall contain the following endorsement: “It is hereby understood and agreed that this bond may not be canceled by the surety, nor the intention not to renew be stated by the surety, until thirty (30) days after receipt by the Commissioners of Church Hill, by registered mail, of a written notice of such intent to cancel and not to renew.” Upon receipt of a thirty (30) day notice, this shall be construed as default granting the Town the right to call in the bond.

(D) The Town may, at any time during the term of a franchise, waive the requirement that the grantee maintain a performance bond. The invitation to waive the requirement can be initiated by the Town or grantee.

§ 13-118. Insurance.

A grantee shall carry insurance in such forms and coverage levels, and from companies as specified in the franchise agreement.

§ 13-119. Hold Harmless.

(A) The Town shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of the construction, maintenance,

repair, use, operation, condition or dismantling of a grantee's cable system or due, in whole or in part, to the act or omission of any person other than the Town or those persons for which the Town is legally liable as a matter of law.

(B) Grantee, under any franchise operated pursuant to this chapter, shall agree to indemnify, hold harmless, release and defend the Town, its officers, boards, commissions, agents and employees from and against any and all lawsuits, claims, causes of action, actions, liability, demands, damages, disability, losses, expenses, including reasonable attorneys' fees and costs or liabilities of any nature (hereinafter in this chapter, collectively "claims" and individually a "claim") that may be asserted by any person resulting or in any manner arising from the action or inaction of the grantee in constructing, operating, maintaining, repairing or removing the cable system, in carrying on grantee's business or operations in the Town or in exercising or failing to exercise any right or privilege granted by the franchise. This indemnity shall apply, without limitation, to any action or cause of action for invasion of privacy, defamation, antitrust, errors and omissions, theft, fire, violation or infringement of any copyright, trademark, trade names, service mark or patent, or any other right of any person, firm or corporation, whether or not any act or omission complained of is authorized, allowed or prohibited by this chapter or any franchise agreement, but shall not include any claim arising, in whole or in part, out of the actions or omissions of Town officers, employees or agents or related to any Town programming or other access programming for which the grantee is not legally responsible.

(C) The Town shall promptly notify grantee of any claims subject to indemnification by grantee and shall cooperate with all reasonable requests by grantee for information, documents, testimony or other assistance appropriate to a resolution of such claims. Grantee shall have full responsibility for and control of any action or undertaking directed at the resolution of such claims.

§ 13-120. Rights Of Individuals.

(A) A 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, disability or gender. A 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 nondiscrimination which are hereby incorporated and made part of this chapter by reference.

(B) A grantee shall strictly adhere to the equal employment opportunity requirements of the FCC, and state and local regulations, as amended from time to time.

(C) A grantee shall, at all times, comply with the privacy requirements of state and federal law.

(D) A grantee is required to make all cable television system services available to all residential dwellings throughout the franchise area which meet the minimum housing density requirements set forth herein and/or in the franchise agreement.

§ 13-121. Service Availability And Record Request.

A grantee shall provide cable service throughout its entire franchise area pursuant to the provisions of this chapter and its franchise agreement, and shall keep a record for at least three (3) years of all requests for service received by the grantee. Upon reasonable notice, this record shall be available for inspection by the Town at the local office of the grantee during normal business hours.

§ 13-122. System Construction.

(A) New construction timetable. The system construction timetable in an initial service area shall be established in the franchise agreement.

(B) Line extensions. Unless otherwise provided for in the franchise agreement:

(1) In areas of the franchise not included in the initial service areas, a grantee shall be required to extend its system pursuant to the following requirements:

(A) No customer shall be refused service arbitrarily. Grantee is hereby authorized to extend the cable system as necessary within the Town. To expedite the process of extending the cable system into a new subdivision, the Town will forward to a grantee an approved engineering plan of each project. Subject to the density requirements (twenty-five dwelling units per street mile as measured from the existing system and twenty-five dwelling units per street mile within the new subdivision), the grantee shall commence the design and construction process upon receipt of the final engineering plan. Upon notification from the Town that the first home in the project has been approved for a building permit, a grantee shall have a maximum of three (3) months to complete the construction/activation process within the project; provided, however, that the three (3) month period shall be reasonably extended to accommodate delays caused by circumstances beyond the control of the grantee.

(B) A grantee must extend and make cable service available to every dwelling unit in all unserved, developing areas having at least twenty-five (25) dwelling units per street mile, as measured from the existing system, and shall extend its system following established utility easements.

(C) A grantee must extend and make cable service available to any isolated resident outside the initial service area requesting connection at the standard connection charge, if the connection from the existing cable plant to the isolated resident would require no more than a standard one hundred fifty (150) foot drop line, unless an alternative standard is provided for in the franchise agreement.

(2) Early extension. In areas not meeting the requirements for mandatory extension of service, a grantee shall provide, upon the request of a potential subscriber desiring service, an estimate of the costs required to extend service to the subscriber. The grantee shall then extend service upon request of the potential subscriber. A grantee may require advance payment. The amount paid by subscribers for early extensions may be non-refundable.

(3) New development underground. In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give a grantee reasonable notice, but not less than thirty (30) days' notice, of such construction or development, and of the particular date on which open trenching will be available for the grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at the grantee's expense. A grantee may also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if a grantee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five (5) day period, the cost of new trenching is to be borne by the grantee.

(C) Special agreements. Nothing herein shall be construed to prevent a grantee from serving areas not covered under this section upon agreement with developers, property owners, or residents provided that franchise fees are paid to the Town on those gross revenues.

(1) A grantee, in its application, may propose a line extension policy which will result in serving more residents of the Town of Church Hill than as required in this section, in which case the grantee's "line extension policy" shall be incorporated into a franchise agreement, and will be binding on the grantee.

(2) A violation of this section shall be considered a breach of the terms of this chapter for which the provisions of § 113-137 or § 113-142 shall apply, as determined by the Town.

§ 13-123. Construction And Technical Standards.

(A) Compliance with construction and technical standards. A grantee shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinance, construction standards, governmental requirements, and FCC technical standards, as the same may be amended from time to time. In addition, a grantee shall provide the Town, upon request, with a written report of the results of the grantee's periodic proof of performance tests conducted pursuant to FCC standards and requirements.

(B) Additional Specifications:

(1) Construction, installation and maintenance of a cable television system shall be performed in an orderly and workmanlike manner. 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.

(2) A grantee shall at all times comply with applicable provisions of all applicable electrical, building, construction, maintenance and other codes and all FCC or other federal, state and local regulations.

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

(4) Any antenna structure used in the system shall comply with construction, marking, and lighting of antenna structure, required by the United States Department of Transportation.

(5) All working facilities and conditions used during construction, installation and maintenance of the cable television system shall comply with the applicable standards of the Occupational Safety and Health Administration.

(6) RF leakage shall be checked at reception locations for emergency radio services to prove no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception in the normal flight patterns. FCC rules and regulations shall govern.

(7) A grantee shall maintain equipment capable of providing standby power for headend and transport system for a minimum of two (2) hours, unless otherwise provided for in the franchise agreement.

(8) In all areas of the Town of Church Hill where the cables, wires, and other like facilities of public utilities are placed underground, a grantee shall place its cables, wires, or other like facilities underground. When all other public utilities relocate their facilities from pole to underground, a grantee must concurrently do so.

(C) Repeated and verified failure to maintain specified technical standards shall constitute a material franchise violation.

§ 13-124. Use Of Public Rights-Of-Way.

(A) For the purpose of operating and maintaining a cable system in the franchise area, the grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the streets and public ways within the franchise area such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary to the operation of the cable system; provided, however, that the grantee complies with all design, construction, safety, and performance provisions contained in this chapter, the franchise agreement, and other applicable law.

(B) Interference with persons and improvements. A grantee's system, poles, wires and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons or interfere with the rights or reasonable convenience of property owners who adjoin any of the streets and public ways, or interfere with

any improvements the Town may deem proper to make, or unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, easements or public property.

(C) Before commencing construction in, above, over, under, across, through or in any way connected with the streets, public ways or public places of the Town of Church Hill (other than such public areas not under the Town's control), the grantee shall obtain all required permits which grantee reasonably can foresee to be necessary in the reasonable future (at the fees regularly charged therefore), including but not limited to the written approval of the Town, which approval shall not be unreasonably withheld or delayed. The Town may designate the location, manner and time of any construction within the roads and rights-of-way over which the Town has jurisdiction.

(D) Restoration to prior condition. In case of any disturbance of pavement, sidewalk, landscaping, driveway or other surfacing, including the surface of streets and alleys, caused by grantee or any person acting on its behalf, a grantee shall, at its own cost and expense and in a manner and within a timeframe approved by the Town, replace and restore all paving, sidewalk, driveway, landscaping, or surface disturbed, to a condition comparable to that before the work was commenced and in accordance with standards for such work set by the Town.

(E) Grantee or any other person acting on its behalf shall not open or otherwise disturb the surface of any street, sidewalk, driveway, public way or other public place for any purpose whatsoever without (i) obtaining approval to do so in the manner prescribed in paragraphs (C) and (D) of this section, and (ii) obtaining all required street opening or other permits. Grantee shall be fully responsible for the actions and activities of its agents, employees and sub-contractors. Grantee shall immediately respond to and rectify any complaint resulting from an activity of any sub-contractor, agent, or employee.

(F) A grantee shall restore any street it has disturbed, and shall, at its own cost and expense, restore and replace any other property disturbed, damaged or in any way injured by or on account of its activities, to a condition comparable to the condition that said property was in immediately prior to the disturbance, damage or injury.

(G) A grantee shall, at its own cost and expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from said street or other public place, any of its property when required to do so by the Town because of: street or other public excavation; construction; repair; regarding or grading; traffic conditions; installation of sewers, drains, or water pipes; Town-owned power or signal lines; tracks; vacation or relocation of streets or any other type of structure or improvement of a public agency; or any other type of improvement necessary for the public health, safety or welfare.

(H) Grantee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wire and facilities, subject to the direction of the Town or other appropriate governmental authority.

(I) Erection, removal and common uses of poles:

(1) No poles or other wire-holding structures shall be erected by a 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 wire-holding structure of a grantee shall be a vested interest and such 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.

(2) Where poles or other wire-holding structures already existing for use in serving the Town are available for use by a grantee, but grantee does not make arrangements for such use or an agreement thereof cannot be reached, the Town may require the grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby, the use of such poles and structures is technically feasible; and the terms of the use available to the grantee are just and reasonable.

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

(J) Relocation of the facilities. If at any time during the term of a franchise the Town shall lawfully elect to alter or change the grade of any street, alley or other public ways and shall require all of the respective public utilities impacted by such alteration to remove or relocate their facilities, a grantee, upon reasonable notice by the Town, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense unless the utilities are compensated, in which case the grantee shall be similarly compensated.

(K) Cooperation with building movers. A grantee shall, on the request of any person holding a building or moving permit issued by the Town, temporarily raise or lower its wires to permit the moving of buildings or structures. The person making the request shall pay the expense of such temporary removal, raising or lowering of wires, and a grantee shall have the authority to require such payment in advance. A grantee shall be given not less than twenty-one (21) days advance notice to arrange for such temporary wire changes.

(L) The operations and activities of a grantee that impact streets, sidewalks and other public ways are further subject to the provisions of Town ordinances and codes, and any conflict between the provisions of this chapter and such ordinances and codes shall be resolved in favor of the best interests of the Town.

§ 13-125. Operational Standards.

(A) A grantee shall put, keep and maintain all parts of a cable system in good condition throughout the term of a franchise.

(B) Upon the reasonable request for service by any person located within a grantee's franchise area, the grantee shall, within sixty (60) days, furnish the requested service to such person within the terms of the line extension policy. A request for service shall be unreasonable for the purpose of this subsection if no trunk line installation capable of servicing that person's block has as yet been installed.

(C) A grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use.

(D) A grantee shall not allow its cable system or other operations to interfere with television reception of subscribers or persons not served by the grantee, nor shall a system interfere with, obstruct or hinder in any manner the operation of the various utilities serving the residents within the confines of the Town of Church Hill, nor shall other utilities interfere with a grantee's system.

(E) A grantee shall have knowledgeable, qualified grantee representatives available to respond to customer telephone inquiries twenty-four (24) hours per day and seven (7) days per week. A staffed answering service, or an automated response system, shall be considered a qualified grantee representative during evening and weekend hours.

(F) Under normal operating conditions, telephone answer time, including wait time and the time required to transfer the call, shall not exceed thirty (30) seconds. This standard shall be met no less than ninety percent (90%) of the time as measured on a quarterly basis.

(G) Under normal operating conditions, a customer will receive a busy signal less than three percent (3%) of the total time that the grantee's office is open for business. This standard shall be met no less than ninety percent (90%) of the time as measured on a quarterly basis.

(H) Standard installations will be performed within seven (7) business days after an order has been placed. A standard installation is one that is within one hundred fifty (150) feet of an existing system.

(I) Excluding those situations which are beyond its control, a grantee will respond to any service interruption promptly and in no event later than twenty-four (24) hours from the time the interruption becomes known. All other regular service requests will be responded to the next business day after notification of the service problem. The appointment window alternatives for installations, service calls and other installation activities will be: "morning;" or "afternoon;" not to exceed a four (4) hour "window" during normal business hours for a system, or at a time that is mutually acceptable to a grantee and a customer. A grantee will schedule supplemental hours during which appointments can be scheduled based on the needs of the community. If at any time an installer or technician is running late, an attempt to contact the customer will be made and the appointment rescheduled as necessary at a time that is convenient to the customer.

(J) A customer service center and bill payment location in the Town of Church Hill, or within thirty (30) minutes drive time, from the Town of Church Hill, will be open for walk-in customer transactions during normal business hours.

(K) In the event of an outage of subscriber cable service, the following shall apply after proper notification to grantee: for outages of over six (6) hours and up to seven (7) days, the grantee shall provide, at a subscriber's written request, a credit of one-thirtieth (1/30) of one month's fees for affected services for each twenty-four (24) hour period service is interrupted for six (6) or more hours for any single subscriber, with the exception of subscribers disconnected because of non-payment or excessive signal leakage or circumstances beyond grantee's reasonable control.

(L) A grantee will provide written information in each of the following areas at the time of installation and at any future time upon the request of the customer:

- (1) Product and services offered.
- (2) Prices and cable service options.
- (3) Installation and service policies.
- (4) How to use the cable services.

(M) Bills will be clear, concise and understandable, with all services itemized consistent with the federal law. Franchise fees and PEG fees (if any) shall be identified as fees and not as a tax.

(N) Credits will be issued promptly, but no later than a customer's next billing cycle following the resolution of the request and the return of equipment to a grantee if service has been terminated.

(O) Unless otherwise specified by FCC regulations, customers and the Town will be notified a minimum of thirty (30) days in advance of any rate or programming channel change, provided that the change is within the control of a grantee.

(P) A grantee shall maintain and operate its cable system in accordance with all applicable laws, rules, and regulations.

(Q) A grantee shall continue, through the term of a franchise, to maintain the technical standards and quality of service specified in this chapter. Should the Town find, by resolution, that a grantee has failed to maintain these technical standards and quality of service, grantee shall be required to implement a plan for resolution.

(R) A grantee shall keep a record of monthly service calls which will indicate the nature of each service complaint received in the last twenty-four (24) months, the date and time

it was received, the disposition of said complaint, and the time and date thereof. Upon reasonable notice, such records shall be made available to the Town for inspection.

(S) All personnel of a grantee contacting subscribers or potential subscribers outside the office of grantee must be clearly identified as associated with the grantee.

(T) The provisions of § 13-142 notwithstanding, in the event a grantee fails to arrive for installations and/or service calls within the scheduled four (4) hour time frame set forth in this chapter under normal operating conditions less than ninety percent (90%) of the time as measured on a quarterly basis, then the Town may impose a monetary penalty upon the grantee. The amount of such monetary penalty shall be established by resolution of the Town Commissioners. Prior to imposition of the penalty, the Town shall notify the grantee in writing of the alleged default. Upon receipt of the notice, the grantee shall have a sixty (60) day period in which to correct the default or it may elect to pay such penalty, in which event the act or omission giving rise to the penalty shall not be the basis for any other sanction by the Town. In the alternative, a grantee shall have the right to request a hearing affording due process before the Board of Town Commissioners to determine whether the penalty should be imposed, and the imposition of any such penalty shall be stayed pending the final outcome of such proceeding.

(U) A grantee shall not terminate residential service for non-payment of a delinquent account unless the grantee provides initial notice of the delinquency and impending termination at least ten (10) days prior to the proposed termination. Such notice of delinquency shall be mailed, postage prepaid, to the subscriber to whom the service is billed. This notice shall not be sent until the twenty-eighth (28th) day after the initial bill for service was mailed to the subscriber. The notice of delinquency and impending termination may be part of a billing statement. This section does not apply to subscribers disconnected due to NSF (not sufficient funds) checks.

(V) Refund checks shall be issued by a grantee within thirty (30) days following a subscriber's valid request.

§ 13-126. Continuity Of Service Mandatory.

(A) It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to a grantee are honored. If a grantee elects to rebuild, modify or sell its system, or the Town gives notice of intent to terminate or fails to renew a franchise, the grantee shall act so as to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances.

(B) If there is a change of franchise, or if a new operator acquires the system, a grantee shall cooperate with the Town, new franchisee or operator in maintaining continuity of service to all subscribers. During this transition period, which shall not exceed twelve (12) months, a grantee shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for its services until it no longer operates the system.

(C) Unless otherwise provided for in the franchise agreement, if a grantee fails to operate a system for fourteen (14) consecutive days without prior approval of the Town or without just cause, the Town may, at its option, operate the system or designate an operator until such time as the 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 a 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.

§ 13-127. Required Services And Facilities.

(A) A cable television system shall have facilities as set forth in the applicable franchise agreement.

(B) Such cable system shall maintain a plant having the technical capacity for "two-way" communications, unless otherwise provided in the franchise agreement.

(C) At the Town's request, a grantee shall maintain the following:

(1) At least one specially designated, noncommercial channel for use as a public access, educational, and governmental channel; provided, however, that the Town may require a grantee to provide at least one government channel, one public access channel, and one educational channel to accommodate programming shared with or from other jurisdictions.

(2) The uses specified in this section shall be combined on one channel until such time as the Town demonstrates sufficient need for additional channels pursuant to a demonstrable programming demand provided for in the franchise agreement. Financial and technical support, replacement and maintenance of equipment of this facility shall be separately incorporated into the franchise agreement.

(3) An institutional network (i-net) of cable, optical, electrical, or electronic equipment, used for the purpose of transmitting two-way telecommunications signals interconnecting designated entities if set forth in a franchise agreement and mutually agreed to by a grantee and the Town. The Town and the grantee may agree that such an institutional network may be provided by utilizing capacity on the subscriber system.

(D) A grantee shall incorporate into its cable television system sufficient capacity that will permit the Town, in times of emergency, to override, by remote control, the audio of all channels simultaneously which the grantee may lawfully override. A grantee shall provide emergency alert capacity pursuant to FCC rules and state law. A grantee shall cooperate with the Town in the use and operation of the emergency alert override system.

(E) A grantee may be required to interconnect its system with other contiguous cable television systems for the purpose of sharing PEG access programming. Such interconnection shall be made within a reasonable time limit to be established by the Town.

(1) Interconnection procedure: Upon receiving the directive of the Town to interconnect, a grantee shall immediately initiate negotiations with the other affected system or systems in order to complete the interconnection link.

(2) Relief: A grantee may be granted reasonable extensions of time to interconnect or the Town may rescind its order to interconnect upon petition by the grantee to the Town. The Town shall grant the request if it finds that the grantee has negotiated in good faith and has failed to obtain an approval from the operator or franchising authority of the system to be interconnected, or the cost of the interconnection would cause an unreasonable or unacceptable increase in subscriber rates.

(3) Cooperation Required: A grantee shall cooperate with any interconnection corporation, regional interconnection authority or Town, state and federal regulatory agency which may be hereafter established for the purpose of regulating, financing, or otherwise providing for the interconnection of cable systems beyond the boundaries of the Town of Church Hill.

(4) The full cost of an interconnection link shall be borne by the Town, if the interconnection is being made at the direction of the Town. However, the full cost of this link shall be borne by the participating persons, in the event that the interconnection is being made for any reason other than at the direction of the Town.

§ 13-128. Complaint Procedure.

(A) The Town Administrator, or her/his designee, is designated as having primary responsibility for the continuing administration of a franchise and implementation of complaint procedures.

(B) Unless otherwise provided in the franchise agreement, a grantee shall maintain, during the term of a franchise and any renewal thereof, a central office for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, and similar matters. The office must be reachable by a local, toll-free telephone call. A grantee will use its good faith efforts to arrange for one or more payment locations in a central location where customers can pay bills or conduct other business activities.

(C) As subscribers are connected or reconnected to a grantee's cable system, the grantee shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the address and local telephone number of customer service.

(D) To the extent permitted by applicable law, the Town shall have the right and authority to require a grantee to test, analyze and report on the performance of its system, provided that the Town shall not require a grantee to test the system as a whole, or any specific part thereof, more than once during any calendar year, unless a test shows that the system or such a specific part fails to meet relevant performance specifications. A grantee shall fully cooperate

with the Town in performing such testing and shall prepare results and a report, if requested, within forty-five (45) days after notice.

(1) Such report shall include the following information:

(A) The nature of the complaint or problem which precipitated the tests;

(B) What system component was tested;

(C) The equipment used and procedures employed in testing;

(D) The method, if any, in which such complaint or problem was resolved; and

(E) Any other information pertinent to the tests and analysis which may be required.

(2) A grantee's periodic proof of performance tests conducted pursuant to FCC standards and requirements may satisfy a test or report required by Town under this subsection.

(3) The Town may require an independent review of a performance test, with the independent reviewer selected by the Town to review the cable system in cooperation with the grantee. Should such a test prove that the grantee failed to meet a technical standard, the grantee shall bear the cost of such independent observer. If the test should prove that the grantee met the technical standards, the Town shall bear the cost of such test.

§ 13-129. Grantee Rules And Regulations.

A grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the grantee to exercise its rights and perform its obligations under a franchise, and to assure an uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions of this chapter or applicable law.

§ 13-130. Transfer Of Ownership Or Control.

(A) Except as may be provided in a franchise agreement, a franchise or a franchised cable system shall not be assigned or transferred, either in whole or in part, or leased, sublet or mortgaged in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein, or control over such franchise or system, pass to or vest in any person without the prior written consent of the Town. A grantee may, however, transfer or assign a franchise to any affiliate (as defined in § 13-102) or to a wholly owned subsidiary of the grantee (or its parent corporation) and such subsidiary may transfer or assign the franchise back to the grantee without

such consent, providing that such transfer or assignment is without any release of liability or responsibility of the grantee for any purpose, including franchise renewal. The proposed assignee must *inter alia* show financial responsibility as determined by the Town and must agree to comply with all provisions of the franchise. The Town shall have one hundred twenty (120) days to act upon any request for approval of such a sale or transfer submitted in writing that contains or is accompanied by the information required by FCC regulations and the Town. The Town shall be deemed to have consented to a proposed transfer or assignment if its refusal to consent is not communicated in writing to the grantee within one hundred twenty (120) days following receipt of written notice and aforementioned information, unless the requesting party and the Town agree to an extension of time.

(B) A grantee shall promptly notify the Town of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the grantee. Every assignment or transfer of a grantee as specified in § 13-130(a) shall make a franchise subject to revocation 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 such change, transfer or acquisition of control, the Town may inquire into the qualifications of the prospective controlling party and such other legal, technical and financial matters as the Town deems pertinent to its approval, and a grantee shall assist the Town in such inquiry.

(C) The consent or approval of the Town to any transfer of a grantee shall not constitute a waiver or release of the rights of the Town in and to the streets, and any transfer by its terms, shall be expressly subordinate to the terms and conditions of this chapter and the franchise agreement.

(D) In the absence of extraordinary circumstances, the Town shall have the discretion to disapprove any transfer or assignment of an initial franchise prior to substantial completion of construction of the proposed system.

(E) In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory to the applicable franchise agreement.

§ 13-131. Availability Of Books And Records.

(A) A grantee shall fully cooperate in making available at reasonable times, and the Town shall have the right to inspect, where reasonably necessary to the enforcement of a franchise, books, records, maps, plans and other like materials of the grantee applicable to the cable system, at any time during normal business hours; provided where volume and convenience necessitate, a grantee may require inspection to take place on the grantee's premises.

(B) The following records and/or reports are to be made available to the Town upon thirty (30) days prior written request.

- (1) An annual review or progress report submitted by a grantee to the Town;

- (2) Periodic preventive maintenance reports;
- (3) Any copies of FCC Form 396-C (or successor form) or any supplemental forms related to equal opportunity or fair contracting policies;
- (4) Subscriber inquiry/complaint resolution date; and
- (5) Periodic construction update reports, including where appropriate the submission of strand maps.

§ 13-132. Other Petitions And Applications.

Copies of all petitions, applications, communications and reports either submitted by a grantee to the FCC, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to the franchise, or received from such agencies, shall be provided to the Town upon request.

§ 13-133. Fiscal Reports.

A grantee shall file annually with the Town, no later than one hundred twenty (120) days after the end of the grantee's fiscal year, a copy of a gross revenues statement for the fiscal year certified by an officer of the grantee.

§ 13-134. Removal Of Cable Television System.

At the expiration of the term for which a franchise is granted or if any renewal request is denied, or upon the termination of a franchise as provided herein, a grantee shall forthwith, upon reasonable notice by the Town, remove at its own expense all designated portions of its cable television system from all streets and public property within the Town. If a grantee fails to do so within twelve (12) months of notice, the Town may perform the work at the grantee's expense. Upon such notice of removal, a bond shall be furnished by a grantee in an amount sufficient to cover this expense.

§ 13-135. Rules And Regulations.

In addition to the inherent powers of the Town to regulate and control a cable television franchise, and those powers expressly reserved by the Town or agreed to and provided for in a franchise agreement, the right and power is hereby reserved by the Town to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers and furtherance of the terms and conditions of this chapter provided, however, that such rules, regulations, terms or conditions shall not be in conflict with any franchise agreement granted hereunder or applicable state and federal laws, rules and regulation.

§ 13-136. Performance Evaluation Sessions.

(A) The Town and a grantee may hold scheduled performance evaluation sessions within thirty (30) days of the every third (3rd) anniversary date of the grantee's award or renewal of the franchise and as may be required by federal and state law. All such evaluation sessions shall be open to the public.

(B) Special evaluation sessions may be held at any time during the term of a franchise at the request of the Town or the grantee.

(C) All scheduled performance evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with legal notice. A grantee may be required by the Town to notify its subscribers of all such evaluation sessions by announcements on at least one (1) channel of its system during a specified timeframe preceding each session.

(D) Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, franchise fee, penalties; application of new technologies; system performance; customer complaints, privacy; amendments to this chapter; judicial and FCC rulings; line extension policies; and grantee or Town rules.

(E) Members of the general public may add topics either by working through the Town or the grantee or by presenting a petition to the Commissioners outlining the topic or topics sought to be discussed at the evaluation session.

§ 13-137. Forfeiture And Termination.

(A) In addition to all other rights and powers retained by the Town under a franchise or otherwise, the Town reserves the right to forfeit and terminate a franchise and all rights and privileges of a grantee hereunder in the event of a substantial breach of the terms and conditions of this chapter or a franchise agreement. A substantial breach by a grantee shall include, but shall not be limited to, the following:

(1) Violation of any material provision of a franchise or this chapter, or any material rule, order, regulation or determination of the Town made pursuant to a franchise or this chapter.

(2) Attempt to evade any material provision of a franchise or practice any fraud or deceit upon the Town or the grantee's subscribers or customers;

(3) Failure to begin or complete system construction or system extension as provided under § 13-122;

(4) Failure to provide the services promised in the grantee's application, if any, as incorporated in a franchise agreement;

(5) Failure to restore service after ninety-six (96) consecutive hours of an outage or service interruption, except when approval of such outage or service interruption is obtained from the Town; or

(6) Material and intentional misrepresentation of fact in the application for or negotiation of a franchise.

(B) The foregoing shall not constitute a major breach if the violation occurs but is without fault of a grantee or occurs as a result of circumstances beyond its control. A grantee shall not be excused by mere economic hardship or by misfeasance or malfeasance of its directors, officers or employees.

(C) The Town shall make a written demand that a grantee comply with any such provision, rule, order or determination under or pursuant to this chapter or a franchise agreement. If the violation by a grantee continues for a period of thirty (30) days following such written demand, without written or other proof acceptable to the Town that the corrective action has been taken or is being actively and expeditiously pursued, the Town may place the issue of termination of a franchise before the Town Commissioners. The Town shall cause to be served upon a grantee, at least twenty (20) days prior to the date of such meeting, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and the issue(s) which the Town Commissioners are to consider.

(D) The Town Commissioners shall hear and consider the issue(s) and shall hear any person interested therein and shall determine in its discretion whether or not any violation by a grantee has occurred.

(E) If the Town Commissioners determine that the violation by a grantee was the fault of the grantee and within its control, the Town Commissioners may, by resolution, declare that the franchise of the grantee be terminated unless there is compliance within such period as the Town Commissioners may fix, such period shall not be less than sixty (60) days, provided no opportunity for compliance need be granted for fraud or misrepresentation.

§ 13-138. Foreclosure.

(A) Subject to applicable law, a franchise may be deemed revoked one hundred twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of a franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding; provided, however, that a franchise may be reinstated at the Town's sole discretion if, within that one hundred twenty (120) day period:

(1) Such assignment, receivership or trusteeship has been vacated; or

(2) Such assignee, receiver, or trustee has fully complied with the terms and conditions of this chapter and the applicable franchise agreement and has executed an agreement, approved by a court of competent jurisdiction, under which it assumes and agrees to be bound by

the terms and conditions of this chapter and the applicable franchise agreement, and such other conditions as may be established or as are required by applicable law.

(B) Notwithstanding the foregoing, in the event of foreclosure or other judicial sale of any of the facilities, equipment, or property or a franchisee, the Town may revoke the franchise, following a public hearing before the Commissioners, by serving notice on the grantee and the successful bidder, in which event the franchise and all rights and privileges of the franchise will be revoked and will terminate thirty (30) calendar days after serving such notice, unless:

(1) The Town has approved the transfer of the franchise to the successful bidder; and

(2) The successful bidder has covenanted and agreed with the Town to assume and be bound by the terms and conditions of the franchise agreement and this chapter, and such other conditions as may be established or as are required pursuant to this chapter or a franchise agreement.

§ 13-139. Right Of Acquisition By The Town.

(A) Federal regulations pursuant to the Cable Act shall apply to the right of acquisition by the Town. In the event that the relevant federal regulations are repealed, the guidelines specified in paragraph (B) of this section shall apply.

(B) Upon the expiration of the term of a franchise and denial of any renewal or upon any other termination thereof as provided in this chapter, the Town at its election shall have the right to purchase and take over a system upon resolution by the Commissioners. In such event, the system shall be purchased: (i) at a price equal to the fair market value, determined on the basis of the cable system's value as a going concern but with no value allocated to the franchise itself, or (ii) at a price determined in accordance with the franchise agreement if the franchise agreement contains provisions applicable to such an acquisition. The Town must begin exercise of its option to purchase the system within sixty (60) days of the denial of franchise renewal. Nothing shall prohibit a grantee, in the event of the election of the Town to purchase a system, from requesting a court of competent jurisdiction to set a reasonable bond of the Town to secure the purchase price, which is to be immediately available funds at the time of purchase.

§ 13-140. Compliance With State And Federal Laws.

(A) Notwithstanding any other provisions of this chapter to the contrary, a grantee shall at all times comply with all laws and regulations of the local, state and federal government or any administrative agencies thereof; provided, however, if any such state or federal law or regulation shall require the grantee to perform any service, or shall permit a grantee to perform any service, or shall prohibit the grantee from performing any service, in conflict with the terms of this chapter or of 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 conflict believed to exist between such regulation or law and the laws or regulations of the Town or this chapter.

(B) If the Town determines that a material provision of this chapter is affected by any subsequent action of the state or federal government, the Town shall modify any of the provisions herein to comply with such state or federal law or regulation to such reasonable extent as may be necessary to carry out the full intent and purpose of this chapter and the franchise agreement, and to preserve the benefit of the bargain for each party.

§ 13-141. Landlord/Tenant.

(A) Interference with cable service is prohibited. Neither the owner of any multiple unit residential dwelling nor his agent or representative shall interfere with the right of any tenant or lawful resident thereof to receive cable service, cable installation or maintenance from a grantee regulated by and lawfully operating under a valid and existing franchise issued by the Town.

(B) Gratuities and payments to permit service are prohibited. Neither the owner of any multiple unit residential dwelling nor his agent or representative shall ask, demand or receive any payment, service or gratuity in any form as a condition for permitting or cooperating with the installation of a cable service to the dwelling unit occupied by a tenant or resident requesting cable service.

(C) Neither the owner of any multiple unit residential dwelling nor his agent or representative shall penalize, charge or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or receives cable service from a grantee operating under a valid and existing franchise issued by the Town.

(D) Reselling service is prohibited. No person shall resell, without the expressed, written consent of the Town, any cable service, program or signal transmitted by a grantee under a franchise issued by the Town.

(E) Protection of property is permitted. Nothing in this chapter shall prohibit a person or the Town from requiring that cable television system facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning, appearance and value of premises or the convenience and safety of persons or property.

(F) Except as provided by state or federal law, nothing in this chapter shall prohibit a person from requesting a grantee to indemnify the owner, or his agents or representatives for damages or from liability for damages caused by the installation, operation, maintenance or removal of cable system facilities.

§ 13-142. Penalties.

(A) In the event the Town believes that a grantee has not complied with the provisions of the chapter or a franchise agreement, the Town, by action of the Town Administrator, shall notify the grantee in writing by personal delivery or registered or certified mail, specifying the

nature of the alleged noncompliance or default and demanding correction within a reasonable time.

(B) A grantee shall have thirty (30) days from the receipt of the Town's notice described in § 13-142(a):

(1) To respond to the Town, contesting the assertion of the noncompliance or default, or

(2) To cure such noncompliance or default, or

(3) In the event that, by nature of the noncompliance or default, such noncompliance or default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such noncompliance or default and notify the Town of the steps being taken and the projected date that they will be completed.

(C) In the event grantee (i) fails to respond to the Town's notice described in paragraph (A) of this section, (ii) fails correct a violation within the time prescribed and diligently remedy such violation thereafter, or (iii) responds contesting the alleged noncompliance, the grantee shall then be given a written notice of not less than twenty (20) days of a public hearing to be held before the Town Commissioners. Said notice shall specify the violation(s) alleged. At the public hearing, the Town Commissioners shall hear and consider all relevant evidence, and thereafter render findings and its decision.

(D) In the event the Town Commissioners find that grantee has corrected the violation, or has diligently commenced correction of such violation after notice thereof from grantor and is diligently proceeding to fully remedy such violation, or that no material violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed. In determining whether a violation is material grantor shall take into consideration the reliability of the evidence of the violation, the nature of the violation and the damage, if any, caused to the grantor thereby, whether the violation was chronic, and any justifying or mitigating circumstances and such other matters as the grantor may deem appropriate.

(E) If the Town determines after the due process hearing prescribed in paragraph (C) that the grantee is in noncompliance and that noncompliance is not cured within the times set forth in paragraph (B) of this section, or in the event that the alleged noncompliance or default is not remedied within the thirty (30) days or the date projected pursuant to paragraph (B) of this section, the violation shall be deemed a civil infraction and a penalty of up to five hundred dollars (\$500.00) per day for each day that a violation occurs may be assessable by the Town against a grantee in addition to any amounts otherwise due, and may be chargeable to the grantee's surety bond, letter of credit, performance bond or security deposit. In addition, the Town may seek legal or equitable relief from any court of competent jurisdiction.

(F) Unless otherwise provided in this chapter, a grantee shall pay any penalty assessed in accordance with this chapter within thirty (30) days after receipt of notice from the Town of such penalty.

(G) To the extent that penalties are applied to a grantee under this section, a grantee shall not be subject to additional liquidated damages payable to the Town for the same violation.

(H) Pending litigation or any appeal to any regulatory body or court having jurisdiction over a grantee shall not excuse the grantee from the performance of its obligations under this chapter or its franchise agreement unless a stay is obtained. Failure of the grantee to perform such obligations because of pending litigation or petition, in the absence of a stay issued by a forum of competent jurisdiction, may result in forfeiture or revocation pursuant to the provisions of this chapter and/or its franchise agreement.

§ 13-143. Rate Regulation.

The Town reserves the right to regulate rates for basic cable service and any other services offered over the cable system, to the extent permitted by applicable law. The grantee shall be subject to the rate regulation provisions provided for herein, and those of the FCC. The Town shall follow the rules relating to cable rate regulation promulgated by the FCC.

§ 13-144. Severability.

If any provision of this chapter is held by any court or by any state or federal agency of competent jurisdiction to be invalid as conflicting with any federal or state law, rule or regulation now or hereinafter in effect, or is held by such court or agency to be modified in an way in order to conform to the requirements of any such law, rule or regulation, such provision shall be considered a separate, distinct, and independent part of this chapter, and such holding shall not affect the validity and enforceability of all other provisions hereof.

§ 13-145. Town's Right Of Intervention.

A grantee shall not oppose intervention by the Town in any suit or proceeding to which the grantee is a party in connection with a franchise hereunder.

§ 13-146. Recourse.

(A) Except as expressly provided herein and in any franchise, the grantee shall have no recourse against the Town for any loss, expense or damage resulting from the terms, conditions or the provisions hereof or any franchise, the Town's enforcement or a lack of enforcement thereof nor for the Town's failure to have authority to grant a franchise. Any grantee receiving a franchise from the Town expressly agrees that upon its acceptance of the franchise, it is relying upon its own investigation and understanding of the power and authority of the grant said franchise.

(B) Any grantee by excepting a franchise, acknowledges that it has not been induced to accept same by any promise, oral or written, by or on behalf of the Town or any third party regarding any term or condition differing from the provisions hereof. Any grantee further

pledges that no promise or inducement, oral or written, has been made by any Town employee or official regarding the receipt of a franchise.

(C) Any grantee further acknowledges by accepting a franchise that it has carefully reviewed the terms and conditions of this chapter and such franchise and accepts without reservation the obligations imposed herein regardless of whether such obligations are contained in franchise documents.

§ 13-147. Theft Of Service.

(A) It shall be unlawful for any person, without the express consent of any grantee under the terms hereof, to make any connection, attachment, extension, or division to, or to interfere physically, acoustically, inductively, electronically, or otherwise with, any segment of any cable system for any purposes whatsoever.

(B) It shall be unlawful for person to willingly interfere or tamper with, remove, obstruct, damage any segment or content of a cable system.

(C) It shall be unlawful for any person to obtain, for such person or for another, the services or programming of a cable system except by subscription with or with the permission of the operator of such cable system.

(D) Any person found to be in violation hereof shall be deemed guilty of a misdemeanor and shall be subject to a penalty of \$500 for each violation and/or imprisonment for thirty days or both.

Originally Adopted November 2, 2009 as Ordinance No. 118/09. The date of any amendment will appear below the amended paragraph in brackets ([]).