

**TITLE 19**

**ELECTRICITY AND GAS**

**CHAPTER**

1. GENERAL.
2. CABLE.
3. TELECOMMUNICATIONS.

**CHAPTER 1**

**GENERAL**

**SECTION**

- 19-101. Purpose of chapter.
- 19-102. Definitions.
- 19-103. Other remedies.
- 19-104. Rights reserved.
- 19-105. Violations and penalty.

**19-101. Purpose of chapter.** The purpose and intent of this chapter is to:

- (1) Establish a local policy concerning telecommunications carriers and services and cable service providers and cable service, and establish clear local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of telecommunications carriers and services and cable service providers and cable service;
- (2) Promote competition in telecommunications and cable services;
- (3) Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to the businesses, institutions and residents of the town;
- (4) Permit and manage reasonable access to the streets of the town for cable or telecommunications purposes on a competitively neutral basis;
- (5) Conserve the limited physical capacity of the streets held in public trust by the town;
- (6) Ensure that the town's current and ongoing costs of granting and regulating private access to and use of the streets are fully paid by the persons seeking such access and causing such costs;
- (7) Secure fair and reasonable compensation to the town and the residents of the town for permitting private use of the streets;
- (8) Ensure that all cable and telecommunications earners providing facilities or services within the town comply with the ordinances, rules and regulations of the town; ensure that the town can continue to fairly and responsibly protect the public health, safety and welfare; and

(9) Enable the town to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-102. Definitions.** The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

(1) "Affiliate." A person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person.

(2) "FCC." The Federal Communications Commission and any legally appointed, designated or elected agent or successor.

(3) "Force majeure." A strike, acts of nature, acts of public enemies, orders of any kind of a government of the United States of America, riots, epidemics, landslides, lightning, earthquakes, fires, tornadoes, storms, floods, civil disturbances, explosions, partial or entire failure of utilities or any other cause or event not reasonably within the control of the disabled party, but only to the extent the disabled party notifies the other party as soon as practicable regarding such force majeure.

(4) "Person." Corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals and includes their lessors, trustees and receivers.

(5) "Town." The Town of Thompson's Station, Tennessee, the grantor of rights under this chapter.

(6) "Town property." All real property owned by the town, other than public streets and utility easements as those terms are defined in this section, and all property held in a proprietary capacity by the town, which are not subject to right-of-way franchising as provided in this chapter. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-103. Other remedies.** Nothing in this chapter shall be construed as limiting any judicial remedies that the town may have, at law or in equity, for enforcement of this chapter. All franchise agreements approved by the town shall provide that if it is necessary for the town to file suit against the franchisee to enforce the provisions of this chapter or the franchise agreement, and if the town is the prevailing party in such suit, then the franchisee shall be required to reimburse the town for all costs of enforcement, including reasonable attorneys' fees. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-104. Rights reserved.** The town hereby expressly reserves the following rights which shall not be deemed to be waived or abrogated by any franchise granted pursuant to this chapter:

(1) Exercise its governmental powers, now or hereafter, to the full extent that such powers may be vested in or granted to the town.

(2) Adopt, in addition to the provisions contained in this chapter and in a franchise, issued by the town or the state, or license and in any existing applicable ordinance, such additional regulations as it shall find necessary in the exercise of its police power.

(3) Amend this chapter or any franchise granted pursuant to this chapter to require reasonable and appropriate modifications in a franchise of a nature that would not result in effectively terminating such franchise.

(4) Renegotiate any franchise granted pursuant to this chapter should substantial sections of this chapter be rendered void by subsequent changes in applicable federal or state laws.

(5) Waive portions of this chapter if the town determines such waiver is in the public interest. (as added by Ord. #2015-008, Nov. 2015 **Ch2\_8-2-21**)

**19-105. Violations and penalty.** Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this chapter shall be fined not more than fifty dollars (\$50.00) for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues. (as added by Ord. #2015-008, Nov. 2015 **Ch2\_8-2-21**)

**CHAPTER 2****CABLE****SECTION**

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**19-201. Definitions.** The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Basic service." That service tier which includes the retransmission of local television broadcast signals and any community, educational and government access channel requirements under this chapter. The term "basic service" does not include optional program and satellite service tiers, a la carte services, per channel, per program or auxiliary services for which a separate charge is made. However, a company may include other satellite signals on the basic service.

(2) "Cable service." The one (1) way transmission, via a cable system, to subscribers of video programming, or other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(3) "Cable system" or "system." A facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within the town, but such term does not include:

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

(b) A facility that serves subscribers, unless such facility or facilities uses directly, as licensee, or otherwise, any public right-of-way;

(c) A facility of a common carrier which is subject, in whole or in part, to the provisions of title 11 of the Cable Television Consumer Protection and Competition Act of 1992 (the act), except that such facility shall be considered a cable system (other than for purposes of section 621(c) of the act) to the extent such facility is used in the transmission of video programming directly to subscribers; or

(d) Any facilities of any electric utility used solely for operating its electric utility systems.

(4) "Class IV channel." A signaling path provided by a cable system to transmit signals of any type from a subscriber terminal to another point in the cable system.

(5) "Company." A grantee of rights under this chapter by means of an award of a franchise, or a grantee of rights in a state-issued franchise (state issued certificate of franchise authority) pursuant to the Competitive Cable and Video Services Act by means of an award of a franchise, or its permitted successor, transferee or assignee, or an applicant therefor.

(6) "Converter." 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 the system at designated converter dial locations.

(7) "Franchise." The right of a company to operate a cable system within the town for a limited term and in a manner in agreement with this chapter and, if the franchise is a state-issued franchise, the Competitive Cable and Video Services Act as well.

(8) "Gross revenues." All revenue received directly or indirectly by a company from cable system operations within the town including, but not limited to, subscriber service monthly fees, pay cable fees, installation and reconnection fees, leased channel fees, converter rentals, studio rental, production equipment, personnel fees, late fees, downgrade fees, home shopping service commissions and advertising commissions; provided, however, that such shall not include any taxes on services furnished by a company imposed directly upon any subscriber or user by the state, local or other governmental unit and collected by the company on behalf of the governmental unit.

(9) "Initial application." The document setting forth the proposed terms for a franchise to be awarded by the town to a company for a new franchise as opposed to the renewal of a franchise.

(10) "Installation." The connection of the system from feeder cable to subscribers' terminals. The term shall include all procedures required to complete service standards, including underground installation of service lines and restoration of lawn areas.

(11) "Monitoring." Observing a communications signal, or the absence of a signal, where the observer is neither the subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever; provided, however, that monitoring shall not include system wide, nonindividually addressed sweeps of the system for purposes of verifying system integrity, controlling return paths transmissions, or billing for pay services.

(12) "Normal business hours (as applied to the company)." Those hours during which similar businesses in the town are open to serve customers. In all cases, normal business hours means that a company will be open for subscriber transactions Monday through Friday from 8:00 A.M. to 5:00 P.M., unless there is a need to modify those hours to fit more appropriately the needs of the town or the subscribers. A company will establish supplemental hours on weekdays and weekends if it would fit the needs of the town or the subscribers.

(13) "Normal operating conditions." Those service conditions which are within the control of the company. Those conditions which are not within the control of the company include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the company 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.

(14) "PEG facility." The public, educational and governmental access facility maintained by the town.

(15) "Renewal proposal." A document setting forth the proposed terms for the renewal of an existing franchise to a company already functioning as an operator of a cable system for the town.

(16) "Service interruption." The loss of picture or sound on one (1) or more channels.

(17) "State-issued franchise (state issued certificate of franchise authority)." A franchise applied for and granted by the State of Tennessee pursuant to the Competitive Cable and Video Services Act, Tennessee Code Annotated, §§ 7-59-301, et seq., as may be amended

(18) "Street." The surface of all rights-of-way and the space above and below, of 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 also mean other 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 company 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.

(19) "Subscriber." Any person, firm, company, corporation or association lawfully receiving basic service and/or additional service from the company.

(20) "User." A party utilizing a cable system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt thereof in a subscriber capacity. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-202. Rights and privileges of company.** (1) A franchise granted by the town pursuant to this chapter or a state-issued franchise shall grant to a company the nonexclusive right and privilege to erect, construct, operate and maintain in, upon, and along, across, above, over and under the streets, now in existence and as may be created or established during the term hereof, any poles, wires, cable, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation of a system for the interception, sale, transmission and distribution of cable service

and other audiovisual and data signals, and the right to transmit the same to the inhabitants of the town on the terms and conditions set forth in this section.

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

(3) The right to use the streets, easements and rights-of-way granted in this section or in a state-issued franchise is subject to all ordinances in the town addressing access and use of streets, easements and rights-of-way, the terms of all rights or franchises heretofore granted by the town, and to the terms of all rights or franchises hereafter granted by the town or by the state to companies with a franchise granted pursuant hereto or by the state and/or other companies primarily engaged in the rendering of public utilities service.

(4) Nothing in this section shall vest a company any property rights in the town-owned property, nor shall the town be compelled to maintain any of its property any longer than or in any fashion other than in the town's judgment its own business or needs may require. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-203. Binding effect.** (1) Upon grant of a franchise pursuant hereto or by the state and acceptance thereof by a company, a company will be bound by all the terms and conditions contained in this chapter except, in the case of a state-issued franchise, should there be a direct and clear conflict with this chapter and the applicable state law, such state law would control.

(2) Upon grant and acceptance of a franchise issued by the town, a company and the town shall agree, either in the franchise agreement itself or in a separate document, as to all financial obligations of the company to the town associated with the franchise. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-204. Franchise territory.** A franchise granted by the town or a state-issued franchise is for the present territorial limits of the town and for any area henceforth added thereto during the term of the franchise. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-205. Duration and acceptance of franchise.** A franchise and the rights, privileges and authority hereby granted shall take effect and be in force from and after final grant and acceptance thereof by a company for the term specified in an initial proposal or renewal proposal as the case may be or for the term set forth in the state-issued franchise, which term may be for not more

than twenty (20) years; provided, however, that by appropriate agreement certain obligations may be deemed to commence from a date prior to the final grant and acceptance of a franchise. Acceptance by a company of a franchise shall constitute a representation or warranty that it accepts the franchise willingly and without coercion, undue influence and duress, that it has not misrepresented or omitted material facts, has not accepted the franchise with intent to act contrary to the provisions of this chapter, and that, so long as it operates the cable system, it will be bound by the terms and conditions of this franchise, subject to applicable state and federal law. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-206. Franchise renewal.** (1) A franchise may be renewed by the town in accordance with the procedures delineated in 47 U.S.C. § 546 or other applicable statutory requirements.

(2) In the absence of statutory requirements:

(a) At least twenty-four (24) months prior to the expiration of its franchise, a company shall inform the town in writing of its intent to seek renewal of the franchise.

(b) Such company shall submit a renewal proposal which demonstrates that:

(i) It has been and continues to be in substantial compliance with the terms, conditions and limitations of this chapter and its franchise;

(ii) Its system has been installed, constructed, maintained and operated in accordance with the accepted standards of the industry, and this chapter and its franchise;

(iii) It has the legal, technical, financial and other qualifications to continue to maintain and operate its system, and to improve the same as the state of art progresses so as to ensure its subscribers high quality service; and

(iv) It has made a good faith effort to provide services and facilities which accommodate and will accommodate the demonstrated needs of the town and its residents as may be reasonably ascertained by the town.

(c) After giving public notice, as defined in § 19-217, the town shall proceed to determine whether the company has met the requirements of § 19-205. In making this determination, the town shall consider technical developments and performance of the system, programming and other services offered, cost of services, and any other particular requirements set out in this chapter. Also, the town shall consider a company's reports made to the town and the FCC; may require a company to make available specified records, documents and information for this purpose; and may inquire specifically whether a company will supply services sufficient to meet community needs and

interests. Industry performance on a national basis shall also be considered. Provision shall be made for public comment.

(d) The town shall then adopt any amendments to this chapter that it considers necessary.

(e) If the town finds the company's performance satisfies the renewal requirements as set out in statutory requirements or, in lieu thereof, satisfies the four (4) criteria outlined above in subsection (2)(b) above, a new franchise shall be granted pursuant to this chapter, as amended.

(f) If a company is determined by the town not to have satisfied the criteria described at subsection (2)(b) above, new applicants shall be sought and evaluated and a franchise award shall be granted by the town according to this chapter. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-207. Police powers.** (1) In accepting a franchise issued by the town or the state, a company acknowledges that its rights under this chapter are subject to the police power of the town to adopt and enforce general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the town pursuant to such power.

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

(3) The right is hereby reserved to the town to adopt, in addition to the provisions contained in this chapter and in existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power. Nothing in this chapter or in any agreement under this chapter awarding a franchise or in any franchise granted by the state shall be construed as an abrogation by the town of its police power. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-208. Cable television franchise.** Any person or entity who desires to construct, install, operate, maintain, lease or otherwise locate or continue to locate, a cable system in any street of the town for the purpose of providing cable service to persons in the town shall obtain a cable franchise from the town pursuant to this chapter or a state-issued franchise pursuant to the Competitive Cable or Video Services Act, Tennessee Code Annotated, §§ 7-59-301, et seq., as may be amended. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-209. Use of company facilities.** The town shall have the right, during the term of any franchise, whether issued by the town or the state, to install and maintain free of charge upon the poles of a company or on or within any easements or facilities owned or used by a company, any wire, pole or other fixtures that do not unreasonably interfere with the cable system operations of such company. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-210. Costs.** A company shall bear the following costs: all reasonable and justifiable charges or costs incidental to the awarding, renewal or enforcement of a franchise including, but not limited to, payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-211. Notices.** All notices from a company to the town shall be addressed to the town administrator at town hall. Company shall maintain with the town, throughout the term of its franchise, an address for service of notices by mail. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-212. Letter of credit/security deposit.** (1) Within fifteen (15) days after the award of a franchise, whether by the town or the state, a company shall deposit with the town either a letter of credit from a federally insured financial institution, or a security deposit in such an institution, in immediately available funds in the amount of fifty thousand dollars (\$50,000.00). The sole condition of the letter of credit shall be written notice by the town to the issuer that a company is in default under the franchise. The security deposit must be available for draw by the town without condition. The form, issuer and content of such letter of credit or security deposit shall be approved by the town. These instruments shall be used to ensure the faithful performance of a company of all provisions of its franchise, 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 its franchise and the payment by a company of any claims, liens and taxes due the town which arise by reason of the construction, operation or maintenance of the system.

(2) The letter of credit or security deposit shall be maintained at the amount of fifty thousand dollars (\$50,000.00) for the entire term of a franchise even if sums are withdrawn therefrom pursuant to subsections (1) above or (3) below.

(3) If a company fails to pay to the town any sum due under its franchise within the time required; or fails after fifteen (15) days' notice to pay to the town any taxes due and unpaid; or fails to repay the town within, fifteen (15) days, any damages, costs or expenses which the town is compelled to pay by reason of any act or default of a company in connection with its franchise; or fails, after fifteen (15) days' notice of such default to comply with any provision of its franchise which the town reasonably determines can be remedied, the

town may immediately demand payment of the amount thereof, with interest and any penalties, from the issuer of the letter of credit or the holder of such security deposit. Upon such demand for payment, the town shall notify the company of the amount and date thereof.

(4) The rights reserved to the town with respect to the letter of credit and security deposit are in addition to all other rights of the town, and no action, proceeding or exercise of a right with respect to such letter of credit or security deposit shall affect any other right the town may have.

(5) The letter of credit shall contain the following endorsement: "It is hereby understood and agreed that this letter of credit may not be canceled or not renewed until 30 days after receipt by the town, by certified mail, of a written notice of such intention to cancel or not to renew."

(6) Upon receipt of such thirty (30) day notice, such shall be construed as a default granting the town the right to call for payment of either the security deposit or letter of credit.

(7) Notwithstanding the foregoing provisions of this section, if a company makes application to the town to be relieved from furnishing a letter of credit, the town administrator may waive the requirement for such bond or reduce the required amount thereof if the town administrator determines that, for state-issued franchises, that compliance with Tennessee Code Annotated, § 7-59-305(c)(6) as to financial qualifications of a cable service provider has been complied with and, for town-issued franchises, that:

(a) Such company has a net worth of not less than fifty million dollars (\$50,000,000.00) as reflected by its most current audited financial statement; and

(b) The performance of such company of its obligations generally, whether financial or otherwise, has been satisfactory with respect to the town and with respect to other parties with which such company has had obligations of construction or improvements to cable systems. (as added by Ord. #2015-008, Nov. 2015 **Ch2\_8-2-21**)

**19-213. Performance bond.** (1) Thirty (30) days prior to commencing any construction, whether such construction consists of improvements to the existing system or construction of a new system, a company shall file with the town a performance bond and payment bond in the amount of not less than fifty percent (50%) of the costs necessary to perform such construction. This bond shall be maintained throughout the construction period and thereafter until such time as determined by the town. The form and content of such bond shall be approved by the town.

(2) If a company fails to comply with any law, ordinance or resolution governing its franchise or fails to well and truly observe, fulfill and perform each term and condition of its franchise, as it relates to the conditions relative the construction of the 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 costs of removal or abandonment of any property of the company, plus a reasonable allowance for attorney's fees, including the town's legal staff, and costs, up to the full amount of the bond. This section shall be an additional remedy for any and all violations outlined in § 19-212.

(3) The town will, upon completion of construction, waive further maintenance of such bonds. However, the town may require a like bond to be posted by a company for any construction subsequent to the completion of any improvements or construction of a new system.

(4) Notwithstanding the foregoing provisions of this section, if a company makes application to the town to be relieved from furnishing a performance and payment bond relative to construction of a system or improvements thereto, the town administrator may waive the requirement for such bond or reduce the required amount thereof if the town administrator determines, for state-issued franchises, that compliance with Tennessee Code Annotated, § 7-59-305(c)(6), as to financial qualifications of a cable service provider has been complied with and, for town-issued franchises that:

(a) Such company has a net worth of not less than fifty million dollars (\$50,000,000.00) as reflected by its most current audited financial statement; and

(b) The performance of such company of its obligations generally, whether financial or otherwise, has been satisfactory with respect to the town and with respect to other parties with which such company has had obligations of construction or improvements to cable systems. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-214. Liability and insurance.** (1) A company shall maintain and by its acceptance of a franchise specifically agrees that it will maintain, throughout the term of its franchise, liability insurance insuring the town and the company in the minimum amounts of:

(a) One million dollars (\$1,000,000.00) for property damage due to any one (1) person;

(b) One million dollars (\$1,000,000.00) for property damage due to any one (1) accident;

(c) One million dollars (\$1,000,000.00) for personal injury due to any one (1) person; and

(d) One million dollars (\$1,000,000.00) for personal injury due to any one (1) accident.

(2) In order to comply with this section, the insurance policy must be obtained by a company from an insurance company licensed to do business in the state and rated not less than A- by Best or a comparable insurance rating service. Certificates of insurance, along with written evidence of payment of required premiums, shall be filed and maintained with the town during the term of a franchise and may be changed from time to time to reflect changing liability

limits. The company shall immediately advise the town of any litigation that may develop that would affect this insurance.

(3) Nothing contained in this section or in any franchise document shall limit the liability of a company to the town.

(4) All insurance policies maintained pursuant to a franchise shall contain the following endorsement: "It is hereby understood and agreed that this insurance policy may not be canceled or not renewed until 30 days after receipt by the town, by certified mail, of a written notice of such intention to cancel or not to renew." (as added by Ord. #2015-008, Nov. 2015 **Ch2\_8-2-21**)

**19-215. Indemnification.** (1) A company shall, at its sole cost and expense, fully indemnify, defend and hold harmless the town, its officers, boards, commissions and employees, against any and all claims, defense of suits, actions, and any liability and judgments for damages including, but not limited to, expenses for reasonable legal fees and disbursements and liabilities assumed by the town in connection therewith:

(a) To persons or property, in any way arising out of or through the acts or omissions of a company, its servants, agents or employees, or to which a company's negligence shall in any way contribute;

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

(c) Arising out of a company's failure to comply with the provisions of any federal, state or local statute, ordinance or regulation applicable to a company in its business under this chapter.

(2) The indemnity described in subsection (1) above is conditioned upon the following: the town shall give a company prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. Nothing in this section shall be deemed to prevent the town from cooperating with a company and participating in the defense of any litigation by its own counsel at its sole cost and expense. The company shall fully control the defense to any claim or action and any settlement or compromise thereof. No recovery by the town of any sum by reason of the letter of credit or security deposit required in § 19-212 shall be any limitation upon the liability of a company to the town under the terms of this section, except that any sum so received by the town shall be deducted from any recovery which the town might have against the company under the terms of this section. (as added by Ord. #2015-008, Nov. 2015 **Ch2\_8-2-21**)

**19-216. Rights of individuals.** (1) A company shall not deny service, deny access or otherwise discriminate against subscribers, channel users or other citizens on the basis of race, color, religion, national origin, income or sex.

A company shall comply at all times with all other applicable federal, state and local laws and regulations and all executive and administrative orders relating to non-discrimination which are hereby incorporated and made part of this chapter by reference.

(2) A company shall strictly adhere to the equal employment opportunity requirements of the FCC and similar state and local laws, ordinances and regulations, as amended from time to time.

(3) A company shall at all times comply with applicable state and federal law with respect to privacy rights of subscribers, as such laws may change from time to time.

(4) A company may not enter into or attempt to enforce the terms of any exclusive bulk service agreement, or any other non-competitive agreement, that violates state or federal, including FCC rules, rulings or regulations.

(5) A company, or any of its agents or employees, shall not invoice, threaten to sue or otherwise attempt to require any person or entity within the town to pay for cable services for which they have not individually and directly entered into a contract to receive.

(6) A company, or any of its agents or employees, shall not, without specifically providing notice to subscribers, such notice allowing each subscriber to prohibit the inclusion of his name, sell or otherwise make available to any party:

(a) Lists of the names and addresses of such subscribers; or

(b) Any list which identifies the viewing habits of subscribers.

(as added by Ord. #2015-008, Nov. 2015 **Ch2\_8-2-21**)

**19-217. Public notice.** A company shall give minimum public notice of any public meeting relating to its franchise by publication at least once in a local newspaper of general circulation at least ten (10) days prior to the meeting, posting at the town hall, and on the town website for five (5) consecutive days prior to the meeting. (as added by Ord. #2015-008, Nov. 2015 **Ch2\_8-2-21**)

**19-218. Service availability and record request.** A company shall provide cable service throughout the town pursuant to the provisions of its franchise and shall keep a record for at least three (3) years of all requests for service received by such company. This record shall be available for public inspection at the local office of such company during normal business hours. (as added by Ord. #2015-008, Nov. 2015 **Ch2\_8-2-21**)

**19-219. System construction, improvement or extension requirements.** (1) The specifics for a timetable for system construction, extension or improvement (construction) shall be agreed to by the town and a company in writing. When determining the specifics of a timetable, the following shall be considered:

- (a) The areas of the town currently being served with cable service;
- (b) The need to provide cable service to residents in new developments in the town in a timely and feasible manner;
- (c) The equitable treatment of all of the town's residents;
- (d) The need to foster competition between all companies providing cable service to the town to ensure the highest quality cable service to the town; and
- (e) Such other matters presented due to the then existing circumstances.

(2) In addition to the specifics of any construction timetable agreed to by the town and a company, the following requirements shall apply:

- (a) No subscriber shall be refused cable service arbitrarily.
- (b) Any construction delay beyond any terms of an agreed construction timetable, unless specifically approved by the town, will be considered a violation of this chapter and the applicable franchise.

(c) In isolated areas of the town not being provided cable service pursuant to the terms of an agreement for a franchise, a company shall provide, upon the request of a resident desiring cable service, an estimate of the costs required to extend cable service to the potential subscriber. A company shall then extend cable service upon request of the resident and such resident's agreement to pay such costs. A company may require advance payment or assurance of payment satisfactory to such company. Notwithstanding the foregoing, a resident will not be required to contribute toward the costs required to extend cable service to such resident if the connection to the isolated resident would require no more than a standard one hundred fifty foot (150') aerial drop line.

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

system engineer of a company prior to approval of the preliminary plat request. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-220. Construction and technical standards.** (1) A company shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements, FCC technical standards and detailed standards submitted by a company as part of its initial application or renewal proposal, which standards are incorporated by reference in this section. In addition, a company shall provide the town, upon request, with a written report of the results of a company's annual proof of performance tests conducted pursuant to FCC standards and requirements.

(2) Additional specifications. (a) Construction, installation and maintenance of the cable 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;

(b) A company shall at all times comply with;

(i) National Electrical Safety Code (National Bureau of Standards);

(ii) National Electrical Code (National Bureau of Fire Underwriters);

(iii) Bell System Code of Pole Line Construction; and

(iv) Applicable FCC or other federal, state and local regulations.

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

(d) 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.

(e) All working facilities and conditions used during construction, installation and maintenance of the cable system shall comply with the standards of the Occupational Safety and Health Administration and/or any legally appointed, designated or elected agent or successor.

(f) 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.

(g) A company shall maintain equipment capable of providing standby power for head end, transportation and trunk amplifiers for a

minimum of two (2) hours or equivalent standby power to maintain an acceptable signal.

(h) In all areas of the town where the cables, wires and other like facilities of public utilities are placed underground, a company shall place its cables, wires or other like facilities underground. When public utilities relocate their facilities from pole to underground, a company must concurrently do so. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-221. Use of streets.** (1) A company'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, or interfere with any improvements the town may deem proper to make, or unnecessarily hinder or obstruct the free use of the streets.

(2) In case of any disturbance of any street, pavement, sidewalk, driveway or other surfacing, grass or landscaping, a company shall, at its own cost and expense and in a manner approved by the town, replace and restore such places so disturbed, in as good condition as before the work was commenced and in accordance with standards for such work set by the town.

(3) Erection, removal and common uses of poles. (a) No poles or other wire-holding structures shall be erected by a company 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 company shall be a vested interest and such poles or structures shall be removed or modified by a company at its own expense whenever the town determines that the public convenience would be enhanced thereby.

(b) Where poles or other wire-holding structures already existing for use in serving the town are available for use by a company, but it does not make arrangements for such use, the town may require a company to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to a company are just and reasonable.

(c) Where the town or a public utility serving the town desires to make use of the poles or other wire-holding structures of a company, but agreement thereof with a company cannot be reached, the town may require a company 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 a company's operations.

(d) No aerial cable shall be installed so that it interferes with the view of traffic control devices including traffic signal heads or similar apparatus. If, in the opinion of the town, a cable is installed in such a

manner so as to interfere with the unobstructed view of a traffic control device, then in the interest of public safety, the installer shall relocate or adjust the cable immediately upon receipt of notice from the town of such interference at such company's expense.

(4) If, at any time during the period of a franchise, the town shall lawfully elect to alter, or change the grade of any street, a company, 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. No location of any underground or aboveground facility or structure of any company shall be a vested interest, and such poles or structures shall be removed or modified by a company at its own expense whenever the town determines that the public convenience would be enhanced thereby. Notwithstanding anything to the contrary foregoing in this section, if any utility is compensated for removing or relocating its facilities, then a company shall be similarly compensated.

(5) A company shall, on the request of any person holding a building moving permit issued by the town or another governmental entity, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and a company shall have the authority to require such payment in advance. A company shall be given not less than forty-eight (48) hours' advance notice to arrange for such temporary wire changes.

(6) A company shall not remove any tree or trim any portion, either above, at or below ground level, of any tree within any public place without the prior consent of the town. The town shall have the right to do the trimming requested by a company at the cost to a company. Regardless of who performs the work requested by a company, a company shall be responsible, shall defend and hold town harmless for any and all damages to any tree as a result of trimming or to the land surrounding any tree, whether such tree is trimmed or removed, as well as for any and all injuries to persons.

(7) A company shall comply with Tennessee Code Annotated, §§ 65-31-101 to 65-31-112, regarding utility location requests. Service interruptions occurring as a result of failure to comply with locator requests shall be cause for a penalty in as set forth in this chapter. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-222. Operational standards.** (1) A company shall put, keep and maintain all parts of the system in good condition throughout its entire franchise.

(2) Temporary service drops:

(a) A company will put forth every effort to bury temporary drops within ten (10) working days after placement. Any delays for any other reason than listed will be communicated to the town. These delays will be found understandable and within the course of doing business by

the town: weather, ground conditions, street bores, system redesign requirements and any other unusual obstacle such as obstructive landscaping that is created by the customer.

(b) The company will provide monthly reports to the town, in care of the cable advisory commission, or its successor, on the number of drops pending.

(3) A company shall render efficient service, make repairs promptly, and interrupt cable 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.

(4) A company shall not allow its cable system or other operations to interfere with television reception of persons not served by a company, nor shall the system interfere with, obstruct or hinder in any manner the operation of the various utilities serving the residents within the confines of the town.

(5) A company shall have knowledgeable, qualified company representatives available to respond to subscriber telephone inquiries Monday through Friday between the hours of 8:00 A.M. and 6:00 P.M., and on Saturday between the hours of 9:00 A.M. and 5:00 P.M.

(6) 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 an annual basis.

(7) Under normal operating conditions, the subscriber will receive a busy signal less than three percent (3%) of the total time that the office is open for business, as measured on an annual basis.

(8) A customer service center in the town will be open for subscriber transactions Monday through Friday from 8:00 A.M. to 5:00 P.M., unless there is a need to modify those hours to more appropriately fit the needs of the town or the subscribers. A company will seek other locations to arrange for one (1) or more payment agents within the town where subscribers can pay bills.

(9) Under normal operating conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time as measured on an annual basis:

(a) 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 feet (150') of the existing cable system.

(b) Excluding those situations which are beyond the control of the cable system, a company will respond to any cable service interruption (area or neighborhood outage affecting two (2) or more customers) promptly and in no event later than twenty-four (24) hours from the time of initial notification. All other regular service requests will be responded to within thirty-six (36) hours during the normal workweek for the company. The appointment window alternatives for installations,

service calls and other installation activities will be morning, afternoon and all day, during normal business hours for the company. A company will schedule supplemental hours during which appointments can be scheduled based on the needs of the town, the subscribers and other residents in the community. If at any time an installer or technician is running late, an attempt to contact the subscriber will be made and the appointment rescheduled as necessary at a time that is convenient to the subscriber.

(c) A company shall maintain a written log for all cable service interruptions, including trunk and feeder line outages, and the record shall be kept for a period of three (3) years.

(10) Upon interruption of a subscriber's cable service, if notice of such interruption has been provided by such subscriber to the company and the subscriber has requested the credit provided for, the following shall apply:

(a) For service interruptions of over four (4) consecutive hours and up to seven (7) days, a company shall provide a credit of one-thirtieth (1/30) of one (1) month's fees for affected services for each twenty-four (24) hour period service is interrupted for four (4) or more consecutive hours for any single subscriber, with the exception of subscribers disconnected because of nonpayment or excessive signal leakage.

(b) For interruptions of seven (7) days or more in one (1) month, a company shall provide a full month's credit for affected services for all affected subscribers.

(c) Nothing in this subsection (10) limits a company from applying a rebate policy more liberal than the requirements of this subsection.

(11) The company will provide written information in each of the following areas at the time of installation and at any future time upon the request of a subscriber:

- (a) Product and services offered;
- (b) Prices and service options;
- (c) Installation and service policies; and
- (d) How to use the cable services.

(12) Bills will be clear, concise and understandable.

(13) Refund checks will be issued promptly, but no later than a subscriber's next billing cycle following the resolution of the request and the return of the equipment by a customer if cable service has been terminated.

(14) Subscribers will be notified a minimum of thirty (30) days in advance of any rate or channel change; provided that the change is within the control of a company.

(15) A company shall maintain and operate its network in accordance with the rules and regulations as are incorporated in this chapter or may be promulgated by the FCC, the United States Congress or the state,

(16) A company shall, throughout the term of its franchise, maintain high quality service.

(17) A company shall, within seven (7) days after receiving a written request from the town, send a written report to the town with respect to any particular subscriber complaint. The report shall provide a full explanation of the investigation, findings and corrective steps taken by a company.

(18) All field employees of a company shall carry identification indicating their employment with a company.

(19) A company, via its computer system, will maintain a service log which will indicate the nature of each subscriber service problem, the remedy to the problem, and the order and resolution time and date for one (1) year. (as added by Ord. #2015-008, Nov. 2015 **Ch2\_8-2-21**)

**19-223. Continuity of service mandatory.** (1) It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to a company are honored. If a company ejects to overbuild, rebuild, modify or sell its system, or the town gives notice of intent to terminate or fails to renew a franchise, such company shall act so as to ensure that all subscribers receive continuous, uninterrupted cable service regardless of the circumstances.

(2) If a new operator acquires a system, a transferring company shall cooperate with the town, and the new franchisee or operator in maintaining continuity of cable service to all subscribers. During such period, a transferring company 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.

(3) If a company fails to operate the system for seven (7) consecutive days without prior approval of the town or without just cause, the town may, at its option, operate the system or designate an operator until such time as such company restores cable service under conditions acceptable to the town or a permanent operator is selected. If the town is required to fulfill this obligation for a company, such company 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 such company's failure to perform. (as added by Ord. #2015-008, Nov. 2015 **Ch2\_8-2-21**)

**19-224. Complaint procedure.**<sup>1</sup> (1) The town administrator is designated as having primary responsibility for the continuing administration of all franchises and implementation of procedures for the reporting and resolution of complaints.

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<sup>1</sup>Complaint procedure for state-issued franchises is set forth at Tennessee Code Annotated, § 7-59-308.

(2) As subscribers are connected or reconnected to the system, the company shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed, and furnish information concerning the town office responsible for administration of all franchises with the address and telephone number of the office.

(3) When there have been similar complaints made or where there exists other evidence which, in the judgment of the town, casts doubt on the reliability or quality of cable service furnished by a company, the town shall have the right and authority to require such company to test, analyze and report on the performance of its system. A company shall fully cooperate with the town in performing such testing and shall prepare results and a report, if requested, within thirty (30) days after notice. Such report shall include the following information:

- (a) The nature of the complaints or problems which precipitated the special tests.
- (b) What system component was tested.
- (c) The equipment used and procedures employed in testing.
- (d) The method, if any, in which such complaints or problems was resolved.
- (e) Any other information pertinent to the tests and analysis which may be required.

(4) The town may require that tests be supervised, at a company's expense, by a licensed professional engineer not on the permanent staff of such company (outside engineer). The outside engineer shall sign all records of special tests and forward to the town such records with a report interpreting the results of the tests and recommending actions to be taken. Notwithstanding the foregoing, if the outside engineer concludes in his report that the cable system provided by such company meets the FCC technical standards or that the cause of the problem to the cable system is not the fault of the company, then the expense of the outside engineer shall be borne by the town.

(5) The town's right under this section shall be limited to requiring tests, analysis and reports covering specific subjects and characteristics based on complaints or other evidence when and under such circumstances as the town has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard cable service.

(6) This section shall not become effective until such time as company has either obtained a state-issued franchise or upon the effective date of a franchise agreement between the town and company. (as added by Ord. #2015-008, Nov. 2015 **Ch2\_8-2-21**)

**19-225. Company rules and regulations.** A company 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 such company to exercise its rights and perform its obligations under its franchise and to ensure uninterrupted service to each and all of its subscribers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions of this chapter or applicable state and federal laws, rules and regulations. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-226. Franchise fee.** (1) For the reason that the streets of the town to be used by a company in the operation of its system within the boundaries of the town are valuable public properties acquired and maintained by the town at great expense to its taxpayers, and that the grant, whether by the town or the state, to a company to use the streets for the purpose of furnishing cable service is a valuable property right without which a company would be required to invest substantial capital in right-of-way costs and acquisitions, a company shall pay to the town an amount equal to five percent (5%) of the company's gross revenue (the franchise fee).

(2) Such payment of a franchise fee shall be in addition to any other tax or payment owed to the town by a company.

(3) The franchise fee and any other costs or penalties assessed shall be payable on a quarterly basis to the town, and a company shall pay the same and file a complete and accurate verified statement of all gross revenue within forty-five (45) days after each calendar quarter.

(4) The town shall have the right to inspect a company's income records and the right to audit and to recompute any amounts determined to be payable under this chapter; provided, however, that such audit shall take place within thirty-six (36) months following the close of each of a company's fiscal years. Any additional amount due to the town as a result of the audit (together with the cost of the audit unless the shortage is of a de minimus amount) shall be paid within thirty (30) days following written notice to a company by the town, which notice shall include a copy of the audit report. Notwithstanding the foregoing, an amount shall be deemed de minimus if such amount, is equal to one percent (1%) or less of the amount paid by a company during the audited period.

(5) If any franchise fee 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 then legal maximum rate in the state, and a company shall reimburse the town for any additional expenses and costs incurred by the town by reason of the delinquent payments.

(6) The franchise fee does not include any tax, fee or assessment of general applicability. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-227. Capital contribution.** As outlined in § 19-226 for franchises granted by the town or as outlined at Tennessee Code Annotated, § 7-59-309, for franchises granted by the state, any company granted a franchise, permit, license or other authorization to provide cable service is to provide access to certain channel capacity for public, educational or governmental use, and to assist in the providing of such access, provide funds to cover those capital costs incurred in providing such access. If more than one (1) company or entity is granted a franchise, permit, license or other authorization to provide cable service, each company or entity is to share in the capital contribution necessary to provide such access, from and after the granting of such authorization, on a basis which shall be equitable to both the entity and the town. The terms of such sharing shall be contained in the franchise or other agreements executed between the town and such company or other entity. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-228. Transfer of ownership or control.** (1) A franchise shall not be sold, assigned or transferred (including through inheritance), either in whole or in part, nor shall title thereto, either legal or equitable, or any right or interest therein, pass to or vest in any person or entity without full compliance with the procedure set forth in this section.

(2) The provisions of this section shall apply to the sale or transfer of all or a majority of a company's assets or shares of stock, and to a merger (including any parent and its subsidiary corporation), consolidation, creation of a subsidiary corporation of the parent company, or sale or transfer of stock in a company so as to create a new controlling interest. The term "controlling interest" as used in this section is not limited to majority stock ownership but includes actual working control in whatever manner exercised, including the creation or transfer of decision-making authority to a new or different board of directors.

(a) The parties to the sale or transfer shall make a written request to the town for its approval of a sale or transfer. The written request shall be accompanied by all information required by FCC rules and shall be presented on a form as prescribed by FCC rules. Thereafter, the town shall have one hundred twenty (120) days to act on the request or it shall be deemed granted subject to the provisions following. If the town finds that the application is not complete, as required by FCC rules, it shall notify the parties within sixty (60) days of the initial filing. Such notice shall stay the running of the one hundred twenty (120) days until such time as the parties file a complete application in accordance with FCC rules. If the town does not so notify the parties within the sixty (60) days following the filing of an application, the application shall be deemed complete and the one hundred twenty (120) days shall run from the date such application was filed. The town may request such additional information as it might reasonably determine to be necessary to act on

the request. Such request shall not, however, extend the one hundred twenty (120) day period unless mutually agreed to by all parties or such extension is expressly permitted by the FCC rules.

(b) The town shall signify in writing, within the time described in subsection (2)(a) above, its approval of the request or its determination that a public hearing is necessary due to potential adverse effect on a company's subscribers.

(c) If a public hearing is deemed necessary pursuant to subsection (2)(b) above, such hearing shall be commenced within thirty (30) days of such determination and notice of any such hearing shall be given fourteen (14) days prior to the hearing by publishing notice, as defined in § 19-211. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by the town.

(d) Within thirty (30) days after the closing of the public hearing, the town shall approve or deny in writing the sale or transfer request.

(e) Within thirty (30) days of any transfer, a company shall file with the town a copy of the deed, agreement, mortgage, lease or other written instrument evidencing such sale, transfer of ownership or control or lease, certified and sworn to as correct by such company.

(3) In reviewing a request for sale or transfer pursuant to subsection (1) above, the town may inquire into the legal, technical and financial qualifications of the prospective controlling party, and a company shall assist the town in so inquiring. The town may condition such transfer upon such terms and conditions as it deems reasonably appropriate to satisfy such qualifications; provided, however, that the town shall not unreasonably withhold its approval. As a condition of approval of a transfer or assignment of ownership or control, the town may require that the transferee become a signatory to the franchise agreement entered into by the town and the predecessor of the transferee.

(4) A company shall notify the town in writing of any change in administrative officials regarding its cable system within fourteen (14) days of the change.

(5) Notwithstanding anything to the contrary in this chapter or a company's franchise, no prior consent by the town shall be required for any transfer or assignment to any entity controlling, controlled by, or under the same common control of the transferring company. However, in such a transfer or assignment, the transferring company shall remain liable for all financial obligations as required pursuant to its franchise and this chapter, unless otherwise agreed to by the town. Such agreement to release the transferring company shall not be withheld unreasonably and shall further be provided in all transfers or assignments where the transferee company has a net worth of not less than twenty-five million dollars (\$25,000,000.00) as reflected by its most

current audited financial statement. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-229. Availability of books and records.** (1) A company shall fully cooperate in making available at reasonable times, and the town shall have the right as it pertains to the enforcement of a franchise to inspect, the books, records, maps, plans and other like materials of a company applicable to a cable system, at any time during normal business hours. Where volume and convenience necessitate, a company may require inspection to take place on such company's premises.

(2) The following records and/or reports are to be made available to the town upon request:

(a) There shall be a monthly review and resolution or progress report submitted by a company to the town;

(b) Periodic preventive maintenance reports;

(c) Any copies of FCC form 395-A (or successor form) or any supplemental forms related to equal opportunity or fair contracting policies;

(d) Reports filed with the FCC, SEC or any other federal or state agency that has a potential impact on the administration of a franchise;

(e) Subscriber inquiry/complaint resolution data and related documentation; and

(f) Periodic construction update reports including, where appropriate, the submission of as-built maps. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-230. Other petitions and applications.** Copies of all petitions, applications, communications and reports submitted by a company 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 its franchise, shall be provided to the town when requested by the town. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-231. Fiscal reports.** (1) A company shall file annually with the town, no later than one hundred twenty (120) days after the end of the company's fiscal year, a copy of a gross revenue report applicable to the cable system and its operations during the preceding twelve (12) month period. Such report shall deal exclusively with the services rendered by the company under the franchise and shall be certified as correct by an authorized officer of such company.

(2) A company shall file annually with the town, no later than one hundred twenty (120) days after the end of the company's fiscal year, a copy of

financial statements, certified by a certified public accountant, of the income, expenses and financial standing of such company. (as added by Ord. #2015-008, Nov. 2015 **Ch2\_8-2-21**)

**19-232. Removal of cable system.** At the expiration of the term for which a franchise is granted, whether by the town or the state, and any denial of a renewal proposal or upon its termination as provided in this chapter, a company shall forthwith, if required by the town but not otherwise, remove at its own expense all designated portions of the cable system from all streets and public property within the town. If the company fails to do so, the town may perform the work at such company's expense or elect to leave the same in place. A bond shall be furnished by the company in an amount sufficient to cover this expense. (as added by Ord. #2015-008, Nov. 2015 **Ch2\_8-2-21**)

**19-233. Required services and facilities.** (1) A cable system of a company granted a franchise hereunder shall have a minimum system capacity of at least five hundred fifty (550) MHz or seventy-seven (77) full video channel equivalent and a minimum capacity no less than any other cable system franchise then held by such company or by any entity controlling it, controlled by it, or under the same common control as such company for any municipality within the county, or any unincorporated area of the county. Such system shall maintain a plant having the technical capacity for two (2) way communications.

(2) A company or other entity granted a franchise, permit, license or other authorization to provide cable service shall maintain the following:

(a) At least one (1) specially designated, noncommercial public access channel available on a first-come, non-discriminatory basis;

(b) At least one (1) specially designated channel for educational access;

(c) At least one (1) specially designated channel for local governmental uses; and

(d) Leased access made available in accordance with federal law. These uses may be combined on one (1) or more channels until such time as additional channels become necessary in the opinion of the board of mayor and aldermen on the advice of the cable commission of the town or its successor.

(3) A company awarded a franchise shall maintain an institutional network (I-Net) of cable, optical, electrical or electronic equipment, including cable television systems, used for the purpose of transmitting cable signals interconnecting designated buildings or places to be determined by the town and incorporated into a franchise.

(4) A company or other provider of cable service shall incorporate into its cable system the capacity which will permit the town, in times of emergency, to override, by remote control, the audio of all channels which a company or other provider of cable service may lawfully override simultaneously. The town

shall designate a channel used by the PEG facility for emergency broadcasts of both audio and video. A company shall cooperate with the town in the use and operation of the emergency alert override system.

(5) A company and any other providers of cable service may be required to interconnect its system with other systems. Such interconnection shall be made within the time limit established by the town. Upon receiving the directive of the town to interconnect, a company shall immediately initiate negotiations with the other affected systems in order that all costs may be shared equally among cable companies for both construction and operation of the interconnection link. A company or other provider of cable service may be granted reasonable extensions of time to interconnect or the town may rescind its order to interconnect upon petition by a company or other provider of cable service to the town. The town shall grant the request if it finds that a company or other provider of cable service has negotiated in good faith and has failed to obtain an approval from the operator or franchising authority of a system to be interconnected, or the cost of the interconnection would cause an unreasonable or unacceptable increase in subscriber rates.

(a) A company or other provider of cable service shall cooperate with any interconnection corporation, regional interconnection authority or town, county, 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.

(b) Initial technical requirements to ensure future interconnection capability are as follows:

(i) All companies or entities receiving franchises, licenses, permits, or other authorization to operate within the town shall use the standard frequency allocations for television signals.

(ii) All companies or other entities are required to use in the cable systems signal processors at the head end for each television signal.

(iii) The town also urges a company or other provider of cable service to provide local origination equipment that is compatible throughout the area so that video cassettes or videotapes can be shared by various systems. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-234. Rules and regulations.** (1) In addition to the inherent powers of the town to regulate and control a company, and those powers expressly reserved by the town or agreed to and provided for in this chapter, 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 franchise; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions of

this chapter or applicable state and federal laws, rules and regulations or change a company's obligations or rights under this chapter.

(2) The town may also adopt such regulations as requested by a company upon application. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-235. Performance evaluation sessions.** (1) The town and a company shall hold scheduled performance evaluation sessions every third year within thirty (30) days of the anniversary date of a company's award or renewal of its franchise and as may be required by federal and state law. Notice, as defined in § 19-211, shall be provided for all such evaluation sessions, which shall be open to the public.

(2) Special evaluation sessions may be held at any time during the term of the franchise at the request of the town or a company.

(3) Topics which may be discussed at any scheduled or special evaluation session may include, but shall not be limited to, service rate structures, franchise fee, penalties, free or discounted services, application of new technologies, system performance, services provided, programming offered, customer complaints, privacy, amendments to this chapter, judicial and FCC rulings, construction policies, and company or town rules.

(4) Members of the general public may add topics either by working through the negotiating parties or by presenting a petition. If such a petition bears the valid signatures of fifty (50) or more residents of the town, the proposed topic or topics shall be added to the list of topics to be discussed at the evaluation session. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-236. Rate change procedures.** The town may regulate basic service rates charged by a company as allowed pursuant to the Cable Television Consumer Protection and Competition Act of 1992 or any other law or regulation. Should federal or state law permit further rate regulation beyond the basic service, the town may assume such rate regulation immediately and adopt appropriate procedures for such regulation. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-237. Forfeiture and termination.** (1) In addition to all other rights and powers retained by the town under this chapter or otherwise, the town reserves the right to forfeit and terminate a franchise and all rights and privileges of a company thereunder in the event of a substantial breach of its terms and conditions. A substantial breach by the company shall include, but shall not be limited to, the following:

(a) Violation of any material provision of the franchise or any material violation of any rule, order, regulation or determination of the town made pursuant to the franchise;

(b) Attempt to evade any material provision of the franchise or practice any fraud or deceit upon the town or its subscribers;

(c) Failure to begin or complete system construction as provided under § 19-219 or in a company's franchise;

(d) Failure to restore service after ninety-six (96) consecutive hours of interrupted service, except when approval of such interruption is obtained from the town; or

(e) Material misrepresentation of fact in a proposal for or negotiation of a franchise.

(2) The provisions of subsection (1) above shall not constitute a major breach if the violation occurs but is without fault of a company or occurs as a result of a force majeure. A company shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

(3) The town may make a written demand that a company comply with any provision, rule, order or determination under or pursuant to this chapter. If the violation by a company continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the town may set a public hearing to decide the issue of termination of its franchise. The town shall cause to be served upon a company, at least twenty (20) days prior to the date of such hearing, a written notice of intent to request such termination, and establish the time and place of the hearing. Public notice as defined in § 19-217 shall be given of the hearing and the issues which will be addressed at the hearing.

(4) The town shall hear and consider the issues and shall hear any person interested therein (including the report of the cable commission or its successor) and shall determine in its discretion whether or not any violation by a company has occurred.

(5) If the town shall determine that a violation by a company was the fault of such company and within its control, the town may, by resolution by its board of mayor and aldermen, declare that the franchise of such company shall be forfeited and terminated unless there is compliance within such period as the board may fix. Such period shall not be less than sixty (60) days; provided that no opportunity for compliance need be granted for fraud or misrepresentation.

(6) The issue of forfeiture and termination shall be placed upon the agenda of the board of mayor and aldermen at the expiration of the time set by it for compliance. The town then may terminate the franchise forthwith upon finding that a company has failed to achieve compliance or may further extend the period, in its discretion. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-238. Foreclosure.** Upon the foreclosure or other judicial sale of all or a substantial part of the system, a company shall notify the town of such fact, and such notification shall be treated as a notification that a change in control

of such company has taken place, and the provisions of its franchise governing the consent of the town to such change in control of the company shall apply. (as added by Ord. #2015-008, Nov. 2015 **Ch2\_8-2-21**)

**19-239. Approval of transfer and right of acquisition by the town.**

(1) At the expiration of a franchise, if it is not renewed, the town may, in lawful manner and upon payment of fair market value, determined on the basis of the system valued as a going concern exclusive of any value attributable to the franchise itself, lawfully obtain, purchase, condemn, acquire, take over and hold the system.

(2) Upon the revocation of a franchise, the town may in lawful manner and upon the payment of an equitable price lawfully obtain, purchase, condemn, acquire, take over and hold the system. (as added by Ord. #2015-008, Nov. 2015 **Ch2\_8-2-21**)

**19-240. Receivership.** The town shall have the right to cancel a franchise one hundred twenty (120) days after the appointment of a receiver or trustee for a company to take over and conduct the business of the company, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of one hundred twenty (120) days, or unless:

(1) Within one hundred twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this chapter and a franchise issued pursuant hereto and remedied all defaults thereunder; and

(2) Such receiver or trustee, within the one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this chapter and the franchise granted to a company. (as added by Ord. #2015-008, Nov. 2015 **Ch2\_8-2-21**)

**19-241. Compliance with state and federal laws.**

(1) Notwithstanding any other provisions of this chapter to the contrary, a company shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof; provided, however, that if any such state or federal law or regulation shall require a company to perform any service, or shall permit a company to perform any service, or shall prohibit a company 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, a company shall notify the town of the point of conflict believed to exist between such regulation or law and the ordinances or regulations of the town or its franchise.

(2) 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

and a company shall have the right to negotiate a modification to any of the provisions of this chapter to such reasonable extent as may be necessary to carry out the full intent and purpose of this chapter and any franchise. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-242. Landlord/tenant.** (1) 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 company.

(2) 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 service.

(3) 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 company.

(4) No person shall resell, without the expressed written consent of both a company and the town, any cable service, program or signal transmitted by a cable company.

(5) Nothing in this chapter shall prohibit a person from requiring that the cable system conform to laws and regulations and reasonable conditions necessary to protect safety, function, appearance and value of premises or the convenience and safety of persons or properly.

(6) Nothing in this chapter shall prohibit a person from requiring a company to agree 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 communication facilities. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-243. Initial application.** (1) All initial applications received by the town from any applicants for a franchise to be granted to provide cable service will become the property of the town.

(2) The town reserves the right to reject any and all initial applications and waive informalities and/or technicalities where the best interest of the town may be served.

(3) Before submitting an initial application, each and every applicant must:

(a) Examine this chapter and any required application documents thoroughly;

(b) Familiarize itself with local conditions that may in any manner affect its performance under a franchise;

(c) Familiarize itself with federal, state and local laws, ordinances, rules and regulations affecting its performance under a franchise; and

(d) Carefully correlate its observations with the requirements of this chapter and any and all application documents.

(4) The town may make such investigations as it deems necessary to determine the ability of the applicant to provide cable service and to fully perform under a franchise, and the applicant shall furnish to the town all such information and data for this purpose as the town may request. The town reserves the right to reject any initial application if the evidence submitted by, or investigation of, such applicant fails to satisfy the town that such applicant is properly qualified to carry out the obligations of this chapter or a franchise or if the plans of the applicant for construction of this cable system and/or its operation fail to satisfy the town that it is in the best interests of its citizens to grant a franchise to the applicant. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-244. Financial, contractual, shareholder and system disclosure in initial application.** (1) No franchise will be granted pursuant to an initial application unless all requirements and demands of the town regarding financial, contractual, shareholder and system disclosure have been met.

(2) Applicants, including all shareholders and parties with an interest equal to or greater than ten percent (10%) of the shares of stock of an applicant, shall fully disclose all agreements and undertakings, whether written or oral, or implied with any person, firm, group, association or corporation with respect to a franchise and the proposed cable system. This section shall include, but not be limited to, any agreements between local applicants and national companies.

(3) Applicants, including all shareholders and parties with an interest equal to or greater than ten percent (10%) of the shares of stock of an applicant, shall submit all requested information as provided by the terms of this chapter. The requested information must be complete and verified as true by the applicant.

(4) Applicants, including all shareholders and parties with an interest equal to or greater than ten percent (10%) of the shares of stock of an applicant, shall disclose the numbers of shares of stock, and the holders thereof, and shall include the amount of consideration for each share of stock and the nature of the consideration.

(5) Applicants, including all shareholders and parties with an interest equal to or greater than ten percent (10%) of the shares of stock of an applicant, shall disclose any information required by the town regarding other cable systems in which they hold an interest of any nature including, but not limited to, the following:

(a) Locations of all other franchises and the dates of award for each location;

(b) Estimated construction costs and estimated completion dates for each cable system;

(c) Estimated number of miles of construction and number of miles completed in each cable system as of the date of any initial application; and

(d) Date for completion of construction as promised in any initial application for each system.

(6) Applicants, including all shareholders and parties with an interest equal to or greater than ten percent (10%) of the shares of stock of an applicant, shall disclose any information required by the town regarding pending applications for other cable systems including, but not limited to, the following:

(a) Location of other franchise applications and date of any application;

(b) Estimated dates of franchise awards;

(c) Estimated number of miles of construction; and

(d) Estimated construction costs. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-245. Theft of services and tampering.** (1) No person, whether or not a subscriber to the cable system, may intentionally or knowingly damage or cause to be damaged any wire, cable, conduit, equipment or apparatus of a company, or commit any act with intent to cause such damage, or tap, tamper with or otherwise connect any wire or device to a wire cable, conduit, equipment, apparatus or appurtenances of a company with the intent to obtain a signal or impulse from the cable system without authorization from or compensation to a company, or to obtain cable service with intent to cheat or defraud a company of any lawful charge to which it is entitled.

(2) Any person convicted of violating any provision of this section is subject to a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) for each offense. Each four (4) days' violation of this section shall be considered a separate offense. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-246. Force majeure.** If by reason of a force majeure either party is unable, in whole or in part, to carry out its obligations under this chapter, that party shall not be deemed to be in violation or default during the continuance of such inability. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-247. Violations and penalty.** Whenever the town finds that a company has allegedly violated one (1) or more terms, conditions or provisions of its franchise or this chapter, a written notice shall be given to such company. The written notice shall describe in reasonable detail the alleged violation so as to afford a company an opportunity to remedy the violation. A company shall have fifteen (15) days after receipt of such notice to correct or present a plan of

action to correct the violation before the town may resort to the letter of credit or security deposit, as provided for in § 19-212. A company may, within fifteen (15) days of receipt of the notice, notify the town that there is a dispute as to whether a violation or failure has, in fact, occurred. If notice of a dispute of a violation is provided, imposition of the penalties outlined in this section will be stayed until resolution of the dispute at a public hearing by the town to address the violation and the dispute. Unless the town directs otherwise, a public hearing will be held within fifteen (15) days of the town's receipt of a company's notice of dispute. Notice of the public hearing shall be provided pursuant to § 19-217. The hearing shall be before the town administrator or a person designated by him. After resolution of the dispute or if there is no dispute, penalties for violation as set out in this section shall be chargeable to the letter of credit or security deposit, as provided for in § 19-212, as follows, and the town may determine the amount of the fine for other violations which are not specified in a sum not to exceed five hundred dollars (\$500.00) for each violation, with each day constituting a separate violation.

(1) Failure to furnish, maintain or offer all cable services to any potential subscriber within the town upon valid order of the town: two hundred dollars (\$200.00) per day, per violation, for each day that such failure occurs or continues.

(2) Failure to obtain or file evidence of required insurance, construction bond, performance bond or other required financial security: two hundred dollars (\$200.00) per day, per violation, for each day such failure occurs or continues.

(3) Failure to provide access to data, documents, records or reports to the town as required by this chapter: two hundred dollars (\$200.00) per day, per violation, for each day such failure occurs or continues.

(4) Failure to comply with applicable construction, operation or maintenance standards: three hundred dollars (\$300.00) per day, per violation, for each day such failure occurs or continues.

(5) Failure to comply with a rate decision or refund order: five hundred dollars (\$500.00) per day, per violation, for each day such a violation occurs or continues. The town may impose any or all of the above-enumerated measures against a company, which shall be in addition to any and all other legal or equitable remedies it has under a franchise or under any applicable law.

(6) For any violations for noncompliance with the customer service standards of §§ 19-222 to 19-224, a company shall pay two hundred dollars (\$200.00) per day for each day, or part thereof, that such noncompliance continues.

(7) Failure to comply with utility locator request in accordance with rules and procedures of the underground utility damage prevention law: fifty dollars (\$50.00) per subscriber service interruption per day.

(8) Any other violations of this chapter or a franchise, but not specifically noted in this section, shall not exceed five hundred dollars (\$500.00) per day, per violation. (as added by Ord. #2015-008, Nov. 2015 ***Ch2\_8-2-21***)

**CHAPTER 3****TELECOMMUNICATIONS****SECTION**

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**19-301. Definitions.** The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning.

(1) "Annual gross revenue." All revenue, as determined by generally accepted accounting principles, that is received directly or indirectly by a franchisee from the operation of a telecommunication system in the town including, without limitation, all revenue received for the provision of services, installation, reconnection, sale of products, not including customer premises equipment and the imputed value of bartered service and the value of all goods and services received by the telecommunication carrier in exchange for telecommunications service including all payments received for the lease, rental or sale of time, bandwidth or capacity on a telecommunications carriers system; provided, however, that no billings shall be imputed related to any services provided to the town, or for services governed as interstate commerce.

(2) "Excess capacity." The volume or capacity in any existing or future duct, conduit, manhole, handhold or other utility facility within the public way that is or will be available for use for additional telecommunications facilities.

(3) "Franchise." The right of a telecommunications carrier to operate a telecommunications system in the town for a limited term and in a manner in agreement with this chapter.

(4) "Franchisee." A grantee of rights under this chapter by means of an award or franchise or its permitted successor, transferee or an applicant thereof.

(5) "Overhead facilities." Utility poles, utility facilities and telecommunications facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

(6) "Street." The surface of all rights-of-way and the space, above and below, of 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 also mean other 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 telecommunications carrier to the use thereof for the purposes of installing plant facilities and equipment as may be ordinarily necessary and pertinent to a telecommunications system.

(7) "Surplus space." That portion of the usable space on a utility pole which has the necessary clearance from other pole users to allow its use by a telecommunications carrier for a pole attachment.

(8) "Telecommunications carrier." Every person that directly or indirectly owns, controls, operates or manages telecommunications facilities within the town, used or to be used for the purpose of offering telecommunications service.

(9) "Telecommunications facilities" or "facility." The plant, equipment and properly including, but not limited to, cables, wires, conduits, ducts, pedestals, antennae, electronics and other appurtenances used or to be used to transmit, receive, distribute, provide or offer telecommunications services.

(10) "Telecommunications service" or "service." The providing or offering for rent, sale, resale or lease, or in exchange for other value received, of the transmittal of voice, video or data information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

(11) "Telecommunications system" or "system." See "Telecommunications facilities."

(12) "Underground facilities." Utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for overhead facilities.

(13) "Usable space." The total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance.

(14) "Utility easement" or "Public utility easement." Any easement owned by the town and acquired, established, dedicated or devoted for public utility purposes not inconsistent with telecommunications facilities.

(15) "Utility facilities." The plant, equipment and property including, but not limited to, the poles, pipes, mains, conduits, ducts, cables, wires, plant and equipment located under, on or above the surface of the ground within the streets of the town and used or to be used for the purpose of providing utility or telecommunications services. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-302. Registration.** All telecommunications carriers who would, by this chapter, require a franchise, shall register with the town pursuant to this chapter on forms to be provided by the town clerk, which shall include the following:

(1) The identity and legal status of the registrant, including any affiliates.

(2) The name, address and telephone number of the officer, agent or employee responsible for the accuracy of the registration statement.

(3) A description of registrant's existing or proposed telecommunications facilities within the town.

(4) A description of the telecommunications service that the registrant intends to offer or provide, or is currently offering or providing, to persons, firms, businesses or institutions within the town.

(5) Information sufficient to determine whether the registrant is subject to telecommunications franchising under this chapter.

(6) Information sufficient to determine whether the transmission, origination or receipt of the telecommunications services provided or to be provided by the registrant constitutes an occupation or privilege subject to any municipal telecommunications tax, utility message tax or other occupation tax imposed by the town.

(7) Information sufficient to determine that the applicant has applied for and received any construction permit, operating license or other approvals required by the Tennessee Regulatory Authority and/or the Federal Communications Commission to provide telecommunications services or facilities within the town.

(8) Such other information as the town may reasonably require. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-303. Fee.** Each application for registration as a telecommunications carrier shall be accompanied by a fee of twenty-five dollars (\$25.00). (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-304. Purpose.** The purpose of registration under this chapter is to:

- (1) Provide the town with accurate and current information concerning the telecommunications carriers who offer or provide telecommunications services within the town or that own or operate telecommunication facilities within the town.
- (2) Assist the town in enforcement of this chapter.
- (3) Assist the town in the collection and enforcement of any municipal taxes, franchise fees or charges that may be due the town.
- (4) Assist the town in monitoring compliance with local, state and federal laws. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-305. Telecommunications franchise.** Any telecommunications carrier who desires to continue or begin to operate, use, maintain lease or otherwise locate or continue to locate telecommunications facilities in, under, over or across any street of the town for the providing of a telecommunications service to persons or areas in the town or leasing such telecommunication facilities, shall obtain a franchise from the town pursuant to this chapter. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-306. Franchise application.** Any person that desires a telecommunications franchise pursuant to this chapter shall file an application with the office of town administrator which shall include the following information:

- (1) The identity of the applicant, including all affiliates of the applicant.
- (2) A description of the telecommunications services that are or will be offered or provided by the applicant over its existing or proposed facilities.
- (3) A description of the transmission medium that will be used by the applicant to offer or provide such telecommunications services.
- (4) Preliminary engineering plans, specifications and a network map of the facilities to be located within the town, all in sufficient detail to identify:
  - (a) The location and route requested for the applicant's proposed telecommunications facilities;
  - (b) The location of all overhead and underground public utility, telecommunication, cable, water, sewer drainage and other facilities in the public way along the proposed route;
  - (c) The locations, if any, for interconnection with the telecommunications facilities of other telecommunications carriers; and
  - (d) The specific trees, structures, improvements, facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate.
- (5) If the applicant is proposing to install overhead facilities, evidence that surplus space is available for locating its telecommunications facilities on existing utility poles along the proposed route.

(6) If the applicant is proposing an underground installation in existing ducts or conduits within the streets, information in sufficient detail to identify:

(a) The excess capacity currently available in such ducts or conduits before installation of the applicant's telecommunications facilities; and

(b) The excess capacity, if any, that will exist in such ducts or conduits after installation of the applicant's telecommunications facilities.

(7) If the applicant is proposing an underground installation within new ducts or conduits to be constructed within the streets:

(a) The location proposed for the new ducts or conduits; and

(b) The excess capacity that will exist in such ducts or conduits after installation of the applicant's telecommunications facilities.

(8) A preliminary construction schedule and completion dates.

(9) Financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the facilities.

(10) Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the telecommunications facilities and services described in the application.

(11) Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications services.

(12) Whether the applicant intends to provide cable service, video dialtone service or other video programming service, whether directly or by re-transmission or resale of such service, and sufficient information to determine whether such service is subject to cable franchising.

(13) An accurate map showing the location of any existing telecommunications facilities in the town that the applicant intends to use or lease.

(14) A description of the services or facilities that the applicant will offer or make available to the town and other public, educational and governmental institutions.

(15) A description of the applicant's access and line extension policies.

(16) The areas of the town the applicant desires to serve and a schedule for build-out to the entire franchise area.

(17) A description of applicant's plans for emergency communications and redundancy.

(18) All fees, deposits or charges required pursuant to this chapter.

(19) Such other and further information as may be requested by the town. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-307. Determination by the town.** Within one hundred fifty (150) days after receiving a complete application under § 19-306, the town shall issue

a written determination granting or denying the application, in whole or in part, applying the following standards. If the application is denied, the written determination shall include the reasons for denial. Reasons for denial will include all those allowed under applicable law, which may include, but are not limited to:

- (1) The financial and technical ability of the applicant.
- (2) The legal ability of the applicant.
- (3) The capacity of the streets to accommodate the applicant's proposed facilities.
- (4) The capacity of the streets to accommodate additional utility and telecommunications facilities if the franchise is granted.
- (5) The damage or disruption, if any, of public or private facilities, improvements, services, travel or landscaping if the franchise is granted.
- (6) The public interest in minimizing the cost and disruption of construction within the streets.
- (7) The service that the applicant will provide to the community and region.
- (8) The effect, if any, on public health, safety and welfare if the franchise requested is granted.
- (9) The availability of alternate routes and/or locations for the proposed facilities.
- (10) Applicable federal and state telecommunications laws, regulations and policies.
- (11) Such other factors as may demonstrate that the franchise to use the streets will not serve the community interest. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-308. Agreement.** No franchise shall be granted unless the applicant and the town have executed a written agreement setting forth the particular terms and provisions under which the franchise to occupy and use the streets will be granted. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-309. Nonexclusive grant.** No franchise granted under this chapter shall confer any exclusive right, privilege, franchise to occupy or use the streets or other easements or public rights-of-way of the town for delivery of telecommunications services or any other purposes. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-310. Term of grant.** Unless otherwise specified in a franchise agreement, a telecommunications franchise granted under this chapter shall be valid for a term of ten (10) years. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-311. Rights granted.** No franchise granted under this chapter shall convey any right, ordinance or interest in the streets, but shall be deemed a grant only to use and occupy the streets for the limited purposes and term stated in the franchise agreement. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-312. Franchise territory.** A telecommunications franchise granted under this chapter shall be limited to the specific geographic area of the town to be served by the franchisee and the specific streets, easements and rights-of-way necessary to serve such areas. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-313. Non-discrimination; consumer protection.** A franchisee shall make its telecommunications services available to any customer within its franchise area who shall request such service, without discrimination as to the terms, conditions, rates or charges for franchisee's services and in accordance with applicable law; provided, however, that nothing in this chapter shall prohibit a franchisee from making any reasonable classifications among differently situated customers.

A franchisee shall not invoice, threaten to sue or otherwise attempt to require any person or entity to pay for telecommunications services for which they have not individually and directly entered into a contract to receive. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-314. Service to the town.** A franchisee shall make its telecommunications services available to the town at its most favorable rate for similarly situated users, unless otherwise directed by a state or federal regulatory agency having jurisdiction over telecommunication sales. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-315. Amendment of franchise.** (1) A new franchise application shall be required of any telecommunications earner that desires to extend its franchise territory or to locate its telecommunications facilities in streets of the town which are not included in a franchise previously granted under this chapter.

(2) If ordered by the town to locate or relocate its telecommunications facilities in streets not included in a previously granted franchise under this chapter, the town shall grant a franchise amendment without further application. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-316. Renewal applications.** A franchisee that desires to renew its franchise under this chapter shall, not more than two hundred forty (240) days, nor less than one hundred fifty (150) days, before expiration of the current

franchise, file an application with the town for renewal of its franchise which shall include the following information:

- (1) The information required pursuant to § 19-306.
- (2) Any information required pursuant to the franchise agreement between the town and the franchisee. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-317. Renewal determinations.** Within one hundred fifty (150) days after receiving a complete renewal application under § 19-316, the town shall issue a written determination granting or denying the renewal application, in whole or in part, applying the following standards. If the renewal application is denied, the written determination shall include the reasons for nonrenewal. Reasons for nonrenewal will include all those allowed under applicable law, but are not limited to:

- (1) The financial and technical ability of the applicant.
- (2) The legal ability of the applicant.
- (3) The continuing capacity of the streets to accommodate the applicant's existing facilities.
- (4) The applicant's compliance with the requirements of this chapter and the franchise agreement.
- (5) Applicable federal, state and local telecommunications laws, rules and policies.
- (6) Such other factors as may demonstrate that the continued grant to use the streets will serve the community interest. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-318. Obligation to cure as a condition of renewal.** No franchise shall be renewed until any ongoing violations or defaults in the franchisee's performance of the franchise agreement, or of the requirements of this chapter, have been cured, or a plan detailing the corrective action to be taken by the franchisee has been approved by the town. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-319. Application and review fee.** (1) Any applicant for a franchise pursuant to this chapter shall pay a fee of one thousand five hundred dollars (\$1,500.00).

(2) The application and review fee of one thousand five hundred dollars (\$1,500.00) shall be deposited with the office of town administrator as part of the application filed pursuant to this chapter.

(3) An applicant whose franchise application has been withdrawn, abandoned or denied shall, within sixty (60) days of such event, be refunded, within sixty (60) days of such written request, the balance of its deposit under this section, less all ascertainable costs and expenses incurred by the town in

connection with the application. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-320. Other town costs.** All franchisees shall, within thirty (30) days after written demand therefor, reimburse the town for all reasonable direct and indirect costs and expenses incurred by the town in connection with any modification, amendment, renewal or transfer of the franchise or any franchise agreement. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-321. Construction permit fee.** Prior to issuance of a construction permit, the franchisee shall pay a permit fee equal to one percent (1%) of the estimated cost of constructing the telecommunication facilities, as certified by the franchisee's engineer and approved by the town engineer, to cover the town costs for inspections, survey and mapping. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-322. Franchise fees.** (1) Each franchisee shall pay an annual franchise fee to the town for use of the street and for costs associated with procurement, maintenance and oversight of the street for the public, current and future users. The amount of such annual franchise fee shall be established by resolution of the town and the town expressly reserves the right to review and/or modify any telecommunications franchise agreement every third year of the franchise.

(2) The payment of a franchise fee shall be in addition to any tax or payment owed to the town by a telecommunications carrier.

(3) The franchise fee and any other costs or penalties assessed shall be payable on a quarterly basis to the town, and a telecommunications carrier shall pay the same and file a complete and accurate verified statement of all gross revenue, as defined in this section, within forty-five (45) days after each calendar quarter.

(4) The town shall have the right to inspect a telecommunications carrier's income records and the right to audit and to recompute any amounts determined to be payable under this chapter; provided, however, that such audit shall take place within thirty-six (36) months following the close of each of a telecommunications carriers fiscal years. Any additional amount due to the town as a result of the audit (together with the cost of the audit unless the shortage is a de minimus amount) shall be paid within thirty (30) days following written notice to a telecommunications carrier by the town, which notice shall include a copy of the audit report. Notwithstanding the foregoing, an amount shall be deemed de minimus if such amount is equal to one percent (1%) or less of the amount paid by a telecommunications carrier during the audited period.

(5) If any franchise fee or recomputed amount, cost or penalty is not paid on or before the applicable dates heretofore specified, interest shall be charged daily from such date at the then legal maximum rate in the state, and

a telecommunications carrier shall reimburse the town for any additional expenses and costs incurred by the town by reason of the delinquent payments.

(6) The franchise fee does not include any tax, fee or assessment of general applicability. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-323. Regulatory fees and compensation not a tax.** The regulatory fees and costs provided for in this chapter, and any compensation charged and paid for the streets provided for in §§ 19-303, 19-319, 19-320, 19-321, and 19-322 are separate from, and additional to, any and all federal, state, local and town taxes as may be levied, imposed or due from a telecommunications carrier, its customers or subscribers, or on account of the lease, sale, delivery or transmission of telecommunications services. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-324. Location of facilities.** All facilities shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified in a franchise agreement:

(1) A franchisee shall install its telecommunications facilities within an existing underground duct or conduit whenever excess capacity exists.

(2) A franchisee with permission to install overhead facilities shall install its telecommunications facilities on pole attachments to existing utility poles only, and then only if surplus space is available. The town administrator must review and approve the use of overhead facilities and when appropriate may refer such installation plans to the town planning commission for review.

(3) Whenever any existing electric utilities, cable system or telecommunications facilities are located underground within a street of the town, a franchisee, with permission to occupy the same street, must also locate its telecommunications facilities underground.

(4) Whenever any new or existing electric utilities, cable system or telecommunications facilities are located, or relocated, underground within a street of the town, a franchisee that currently occupies the same street shall relocate its facilities underground within a reasonable period of time, which shall not be later than the end of the franchise term. Absent extraordinary circumstances or undue hardship as determined by the town engineer, such relocation shall be made concurrently to minimize the disruption of the streets.

(5) Whenever new telecommunications facilities will exhaust the capacity of a street or utility easement to reasonably accommodate future telecommunications carriers or facilities, the franchisee shall provide additional ducts, conduits, manholes and other facilities for non-discriminatory access to future telecommunications carriers. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-325. Compliance with joint trenching rules.** All franchisees shall, before commencing any construction in the streets, comply with all

regulations of utility joint trenching rules, including the provisions set forth for Tennessee Code Annotated, § 7-59-310(b), or as provided by regulation or ordinance of the town, either of which as may be amended from time to time. (as added by Ord. #2015-008, Nov. 2015 **Ch2\_8-2-21**)

**19-326. Construction permits.** All franchisees are required to obtain construction permits for telecommunications facilities as required in this chapter. However, nothing in this chapter shall prohibit the town and a franchisee from agreeing to alternative plan review, permit and construction procedures in a franchise agreement; provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices. (as added by Ord. #2015-008, Nov. 2015 **Ch2\_8-2-21**)

**19-327. Interference with the streets.** No franchisee may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the streets by the town, by the general public or by other persons authorized to use or be present in or upon the streets, including other cable and telecommunication service providers. All such facilities shall be moved by the franchisee, temporarily or permanently, as determined by the town engineer. (as added by Ord. #2015-008, Nov. 2015 **Ch2\_8-2-21**)

**19-328. Damage to property.** No franchisee nor any person acting on a franchisee's behalf shall take any action or permit any action to be done which may impair or damage any town property, streets of the town or other permanent property located in, on or adjacent thereto. (as added by Ord. #2015-008, Nov. 2015 **Ch2\_8-2-21**)

**19-329. Notice of work.** Unless otherwise provided in a franchise agreement, no franchisee, nor any person acting on the franchisee's behalf, shall commence any nonemergency work in or about the streets of the town without ten (10) working days' advance notice to the town. (as added by Ord. #2015-008, Nov. 2015 **Ch2\_8-2-21**)

**19-330. Repair and emergency work.** In the event of an unscheduled repair or emergency, a franchisee may commence such repair and emergency response work as required under the circumstances; provided that the franchisee shall notify the town as promptly as possible before such repair or emergency work is commenced, or as soon thereafter as possible if advance notice is not practical. (as added by Ord. #2015-008, Nov. 2015 **Ch2\_8-2-21**)

**19-331. Maintenance of facilities.** Each franchisee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements. (as added by Ord. #2015-008, Nov. 2015 **Ch2\_8-2-21**)

**19-332. Relocation or removal of facilities.** Within thirty (30) days following written notice from the town, a franchisee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the streets whenever the town shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

(1) The construction, repair, maintenance or installation of any town or other public improvement in or upon the streets.

(2) The operations of the town or other governmental entity in or upon the streets. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-333. Removal of unauthorized telecommunications facilities.**

Within thirty (30) days following written notice from the town, any telecommunications carrier that owns, controls or maintains any unauthorized telecommunications system, telecommunications facility or related appurtenances within the streets of the town shall, at its own expense, remove such telecommunications facilities or appurtenances from the streets of the town. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

(1) Upon expiration or termination of the franchisee's telecommunications franchise.

(2) Upon abandonment of a facility within the streets of the town.

(3) If the system or facility was constructed or installed without the prior grant of a telecommunications franchise.

(4) If the system or facility was constructed or installed without the prior issuance of a required construction permit.

(5) If the system or facility was constructed or installed at a location not permitted by the telecommunications franchise. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-334. Emergency removal or relocation of facilities.** The town retains the right and privilege to cut or move any telecommunications facilities located within the streets of the town as the town may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The town, where feasible, shall attempt to contact franchisee prior to cutting or removing facilities from the streets. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-335. Damage to franchisee's facilities.** The town shall not be liable for any damage to or loss of any telecommunications facility within the streets of the town as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling or work of any kind in the streets by or on behalf of the town. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-336. Restoration of streets and town property.** (1) When a franchisee, or any person acting on its behalf, does any work in or affecting any streets or town property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such streets or property to as good a condition as existed before the work was undertaken, unless otherwise directed by the town.

(2) If weather or other conditions do not permit the complete restoration required by this section, the franchisee shall temporarily restore the affected ways or property. Such temporary restoration shall be at the franchisee's sole expense, and the franchisee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(3) A franchisee or other person acting in its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such ways or property. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-337. Facilities maps.** Each franchisee shall provide the town with an accurate map certifying the location of all telecommunications facilities within the streets. Each franchisee shall provide updated maps annually. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-338. Duty to provide information.** Within ten (10) days of a written request from the town, each franchisee shall furnish the town with information sufficient to demonstrate that:

(1) The franchisee has complied with all requirements of this chapter.

(2) All municipal sales, message and/or telecommunications taxes due the town in connection with the telecommunications services and facilities provided by the franchisee have been properly collected and paid by the franchisee.

(3) All books, records, maps and other documents maintained by the franchisee with respect to its facilities within the streets shall be made available for inspection by the town at reasonable times and intervals. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-339. Leased capacity.** A franchisee shall have the right, without prior town approval, to offer or provide capacity or bandwidth to other providers of telecommunications service; provided that:

(1) The franchisee shall furnish the town with a copy of any such lease or agreement with other telecommunication service.

(2) The telecommunications service provider has complied, to the extent applicable, with the requirements of this chapter or other applicable town ordinances. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-340. Franchisee insurance.** Unless otherwise provided in a franchise agreement, each franchisee shall, as a condition of the grant, secure and maintain the following liability insurance policies insuring the franchisee and the town, and its elected and appointed officers, officials agents and employees as coinsureds:

(1) Comprehensive general liability insurance with limits not less than:

(a) Two million dollars (\$2,000,000.00) for bodily injury or death to each person;

(b) Two million dollars (\$2,000,000.00) for property damage resulting from any one (1) accident; and

(c) Two million dollars (\$2,000,000.00) for all other types of liability.

(2) Automobile liability for owned, non-owned and hired vehicles with a limit of one million dollars (\$1,000,000.00) for each person and three million dollars (\$3,000,000.00) for each accident.

(3) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than one million dollars (\$1,000,000.00).

(4) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products complete hazard with limits of not less than three million dollars (\$3,000,000.00).

(5) Umbrella liability with limits of not less than five million dollars (\$5,000,000.00).

(6) The liability insurance policies required by this section shall be maintained by the franchisee throughout the term of the telecommunications franchise and such other period of time during which the franchisee is operating without a franchise hereunder or is engaged in the removal of its telecommunications facilities. Each such insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 90 days after receipt by the Town, by registered mail, of a written notice addressed to the Town Administrator of such intent to cancel or not to renew."

(7) Within sixty (60) days after receipt by the town of such notice, and in no event later than thirty (30) days prior to such cancellation, the franchisee shall obtain and furnish to the town replacement insurance policies meeting the requirements of this section. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-341. General indemnification.** Each franchise agreement shall include, to the extent permitted by law, the franchisee's express undertaking to defend, indemnify and hold the town and its officers, employees, agents and representatives harmless from and against any and all damages, losses and

expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the franchisee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its telecommunications facilities and in providing or offering telecommunications' services over the facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this chapter or by a franchise agreement made or entered into pursuant to this chapter. (as added by Ord. #2015-008, Nov. 2015 **Ch2\_8-2-21**)

**19-342. Performance and construction surety.** Before a franchise granted pursuant to this chapter is effective, and as necessary thereafter, the franchisee shall provide and deposit such monies, bonds, letters of credit or other instruments in form and substance acceptable to the town as may be required by this chapter or by an applicable franchise agreement. (as added by Ord. #2015-008, Nov. 2015 **Ch2\_8-2-21**)

**19-343. Security fund.** (1) Each franchisee shall establish a permanent security fund with the town by depositing the amount of fifty thousand dollars (\$50,000.00) with the town in cash, an unconditional letter of credit or other instrument acceptable to the town, which fund shall be maintained at the sole expense of the franchisee so long as any of the franchisee's telecommunications facilities are located within the streets of the town.

(2) The fund shall serve as security for the full and complete performance of this chapter, including any costs, expenses, damages or loss the town pays or incurs because of any failure attributable to the franchisee to comply with the codes, ordinances, rules, regulations or permits of the town.

(3) Before any sums are withdrawn from the security fund, the town shall give written notice to the franchisee:

(a) Describing the act, default or failure to be remedied, or the damages, cost or expenses which the town has incurred by reason of the franchisee's act or default.

(b) Providing a reasonable opportunity for the franchisee to first remedy the existing or ongoing default or failure, if applicable.

(c) Providing a reasonable opportunity for franchisee to pay any monies due the town before the town withdraws the amount thereof from the security fund, if applicable.

(d) That the franchisee will be given an opportunity to review the act, default or failure described in the notice with the town administrator or his designee.

(4) A franchisee shall replenish the security fund within fourteen (14) days after written notice from the town that there is a deficiency in the amount of the fund. (as added by Ord. #2015-008, Nov. 2015 **Ch2\_8-2-21**)

**19-344. Construction and completion bond.** (1) Unless otherwise provided in a franchise agreement, a performance bond written by a corporate surety acceptable to the town equal to at least fifty percent (50%) of the estimated cost of constructing the franchisee's telecommunications facilities within the streets of the town shall be deposited before construction is commenced.

(2) Notwithstanding the provisions of subsection (1) above, if a franchisee makes application to the town to be relieved from furnishing a performance and payment bond relative to construction of a system or improvements thereto, the town may waive the requirement for such bond or reduce the required amount thereof if the town determines that:

(a) Such franchisee has a net worth of not less than fifty million dollars (\$50,000,000.00) as reflected by its most current financial statement; and

(b) The performance of such franchisee of its obligations generally, whether financial or otherwise, has been satisfactory with respect to the town and with respect to other parties with which such company has had obligations of construction or improvements to telecommunication systems.

(3) The construction bond shall remain in force until sixty (60) days after substantial completion of the work, as determined by the town engineer, including restoration of streets and other property affected by the construction.

(4) The construction bond shall guarantee, to the satisfaction of the town:

(a) Timely completion of construction;

(b) Construction in compliance with applicable plans, permits, technical codes and standards;

(c) Proper location of the facilities as specified by the town;

(d) Restoration of the streets and other property affected by the construction;

(e) The submission of as-built drawings after completion of the work as required by this chapter; and

(f) Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-345. Coordination of construction activities.** (1) Any and all franchisees are required to cooperate with the town and with each other.

(2) Each franchisee shall meet with the town, other franchisees and users of the streets annually or periodically, as determined by the town, to schedule and coordinate construction in the streets.

(3) All construction locations, activities and schedules shall be coordinated, as ordered by the town engineer, to minimize public inconvenience, disruption or damages. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-346. Transfer of ownership or control.** (1) A franchise shall not be sold, assigned or transferred (including through inheritance), either in whole or in part, nor shall title thereto, either legal or equitable, or any right or interest therein, pass to or vest in any person or entity without full compliance with the procedure set forth in this section.

(2) The provisions of this section shall apply to the sale or transfer of all or a share of a telecommunications carrier's assets or shares of stock, and to a merger (including any parent and its subsidiary corporation), consolidation, creation of a subsidiary corporation of the parent company, or sale or transfer of stock in a company so as to create a new controlling interest. The term "controlling interest" as used in this section is not limited to majority stock ownership, but includes actual working control in whatever manner exercised, including the creation or transfer of decision-making authority to a new or different board of directors.

(a) The parties to the sale or transfer shall make a written request to the town for its approval of a sale or transfer. The written request shall be accompanied by all information required by FCC rules and shall be presented on a form as prescribed by FCC rules. Thereafter, the town shall have one hundred twenty (120) days to act on the request, or it shall be deemed granted subject to the provisions following. If the town finds that the application is not complete, as required by FCC rules, it shall notify the parties within sixty (60) days of the initial filing. Such notice shall stay the running of the one hundred twenty (120) days until such time as the parties file a complete application in accordance with FCC rules. If the town does not so notify the parties within the sixty (60) days following the filing of an application, the application shall be deemed complete and the one hundred twenty (120) days shall run from the date such application was filed. The town may request such additional information as it might reasonably determine to be necessary to act on the request. Such request shall not, however, extend the one hundred twenty (120) day period unless mutually agreed to by all parties or such extension is expressly permitted by the FCC rules.

(b) The town shall signify in writing within the time aforesaid its approval of the request or its determination that a public hearing is necessary due to potential adverse effect on a company's subscribers.

(c) If a public hearing is deemed necessary pursuant to subsection (2)(b) above, such hearing shall be commenced within thirty (30) days of such determination, and notice of any such hearing shall be given fourteen (14) days prior to the hearing by publishing a notice. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by the town.

(d) Within thirty (30) days after the closing of the public hearing, the town shall approve or deny in writing the sale or transfer request.

(e) Within thirty (30) days of any transfer, a company shall file with the town a copy of the deed, agreement, mortgage, lease or other written instrument evidencing such sale, transfer of ownership or control or lease, certified and sworn to as correct by such company.

(3) In reviewing a request for sale or transfer pursuant to subsection (1) above, the town may inquire into the legal, technical and financial qualifications of the prospective controlling party, and a franchisee shall assist the town in so inquiring. The town may condition such transfer upon such terms and conditions as it deems reasonably appropriate to satisfy such qualifications; provided, however, that the town shall not unreasonably withhold its approval. As a condition of approval of a transfer or assignment of ownership or control, the town may require that the transferee become a signatory to the franchise agreement entered into by the town and the predecessor of the transferee.

(4) A franchisee shall notify the town in writing of any change in administrative officials regarding its telecommunications system within fourteen (14) days of the change.

(5) Notwithstanding anything to the contrary in this chapter or a franchise agreement, no prior consent by the town shall be required for any transfer or assignment to any entity controlling, controlled by, or under the same common control of the transferring party. However, in such a transfer or assignment, such transferring party shall remain liable for all financial obligations as required pursuant to its franchise and this chapter, unless otherwise agreed to by the town. Such agreement to release the transferring company shall not be withheld unreasonably and shall further be provided in all transfers or assignments where the transferee party has a net worth of not less than twenty-five million dollars (\$25,000,000.00) as reflected by its most current audited financial statement. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-347. Transactions affecting control of franchise.** Any transactions which singularly or collectively result in a change of ten percent (10%) or more of the ownership or working control of the franchisee, of the ownership or working control of a telecommunications franchise, of the ownership or working control of affiliated entities having ownership or working control of the franchisee or of a telecommunications system or of control of the capacity or bandwidth of franchisee's telecommunication system, facilities or substantial parts thereof, shall be considered an assignment or transfer requiring town approval pursuant to § 19-346. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-348. Revocation or termination of franchise.** A franchise granted by the town to use or occupy streets of the town may be revoked for the following reasons:

- (1) Construction or operation in the town or in the streets of the town without a franchise.
- (2) Construction or operation at an unauthorized location.
- (3) Unauthorized substantial transfer of control of the franchisee.
- (4) Unauthorized assignment of a franchise.
- (5) Unauthorized sale, assignment or transfer of franchise or assets, or a substantial interest therein.
- (6) Misrepresentation or lack of candor by or on behalf of a franchisee in any application to the town.
- (7) Abandonment of telecommunications facilities in the streets.
- (8) Failure to relocate or remove facilities as required in this chapter.
- (9) Failure to pay taxes, compensation, fees or costs when and as due the town.
- (10) Insolvency or bankruptcy of the franchisee.
- (11) Violation of material provisions of this chapter.
- (12) Violation of the material terms of a franchise agreement. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-349. Notice and duty to cure.** If the town administrator or his designee believes that grounds exist for revocation of a franchise, he or his designee shall give the franchisee written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the franchisee a reasonable period of time not exceeding thirty (30) days to furnish evidence that:

- (1) Corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance.
- (2) Rebutts the alleged violation or noncompliance.
- (3) It would be in the public interest to impose some penalty or sanction less than revocation. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-350. Hearing.** If a franchisee fails to provide evidence reasonably satisfactory to the town administrator, the town administrator shall refer the apparent violation or noncompliance to the board of mayor and aldermen. The board of mayor and aldermen shall provide the franchisee with notice and a reasonable opportunity to be heard concerning the matter. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-351. Standards for revocation or lesser sanctions.** If persuaded that the franchisee has violated or failed to comply with material provisions of this chapter, or of a franchise, the board of mayor and aldermen shall determine whether to revoke the franchise, or to establish some lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation as reflected by one (1) or more of the following factors:

- (1) The misconduct was egregious;
- (2) Substantial harm resulted;
- (3) The violation was intentional;
- (4) There is a history of prior violations of the same or other requirements;
- (5) There is a history of overall compliance; and/or
- (6) The violation was voluntarily disclosed, admitted or cured. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-352. General.** No person shall commence or continue with the construction, installation or operation of telecommunications facilities within the town except as provided in this chapter. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-353. Construction codes.** Telecommunications facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations including the National Electrical Safety Code. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-354. Construction permits.** No person shall construct or install any telecommunications facilities within the town without first obtaining a construction permit therefor; provided, however, that:

- (1) No permit shall be issued for the construction or installation of telecommunications facilities within the town unless the telecommunications carrier has filed a registration statement with the town pursuant to this chapter.
- (2) No permit shall be issued for the construction or installation of telecommunications facilities in the streets unless the telecommunications carrier has applied for and received a franchise pursuant to Article III of this chapter.
- (3) No permit shall be issued for the construction or installation of telecommunications facilities without payment of the construction permit fee established in § 19-321. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-355. Applications.** Applications for permits to construct telecommunications facilities shall be submitted upon forms to be provided by the town and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

- (1) That the facilities will be constructed in accordance with all applicable codes, rules and regulations.
- (2) The location and route of all facilities to be installed on existing utility poles.

(3) The location and route of all facilities to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are within the streets.

(4) The location of all existing underground utilities, conduits, ducts, pipes, mains and installations which are within the streets along the underground route proposed by the applicant.

(5) The location of all other facilities to be constructed within the town, but not within the streets.

(6) The construction methods to be employed for protection of existing structures, fixtures and facilities within or adjacent to the streets.

(7) The location, dimension and types of all trees within or adjacent to the streets along the route proposed by the applicant, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-356. Engineer's certification.** All permit applications shall be accompanied by the certification of a registered professional engineer that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-357. Traffic control plan.** All permit applications which involve work on, in, under, across or along any streets shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, consistent with Uniform Manual of Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-358. Issuance of permit.** Within forty-five (45) days after submission of all plans and documents required of the applicant and payment of the permit fees required by this chapter, the town engineer, if satisfied that the applications, plans and document comply with all requirements of this chapter, shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as he may deem necessary or appropriate. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-359. Construction schedule.** The franchisee shall submit a written construction schedule to the town engineer ten (10) working days before commencing any work in or about the streets. The franchisee shall further notify the town engineer not less than two (2) working days in advance of any

excavation or work in the streets. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-360. Compliance with permit.** All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The town engineer and his representatives shall be provided access to the work and such further information as he may require to ensure compliance with such requirements. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-361. Display of permit.** The franchisee shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the town engineer or his representatives at all times when construction work is occurring. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-362. Survey of underground facilities.** If the construction permit specifies the location of facilities by depth, line, grade, proximity to other facilities or other standard, the franchisee shall cause the location of such facilities to be verified by a registered state land surveyor. The franchisee shall relocate any facilities which are not located in compliance with permit requirements. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-363. Noncomplying work.** Upon order of the town engineer, all work which does not comply with the permit, the approved plans and specifications for the work, or the requirements of this chapter, shall be removed. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-364. Completion of construction.** The franchisee shall promptly complete all construction activities so as to minimize disruption to the streets and other public and private property. All construction work authorized by a permit within the streets, including restoration, must be completed within one hundred twenty (120) days of the date of issuance. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-365. As-built drawings.** Within sixty (60) days after completion of construction, the franchisee shall furnish the town with two (2) complete sets of plans, drawn to scale and certified to the town as accurately depicting the location of all telecommunications facilities constructed pursuant to the permit. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-366. Construction surety.** Prior to issuance of a construction permit, the franchisee shall provide a construction and completion bond. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-367. Exceptions.** Unless otherwise provided in a franchise agreement, all telecommunications carriers are subject to the requirements of this chapter. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)

**19-368. Responsibility of owner.** The owner of the facilities to be constructed and, if different, the franchisee, are responsible for performance of and compliance with all provisions of this chapter. (as added by Ord. #2015-008, Nov. 2015 *Ch2\_8-2-21*)