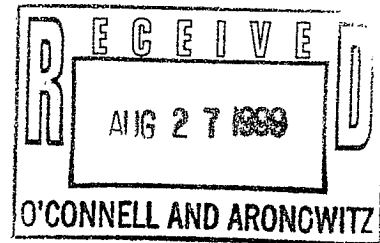




STATE OF NEW YORK  
DEPARTMENT OF STATE  
41 STATE STREET  
ALBANY, NY 12231-0001



ALEXANDER F. TREADWELL  
SECRETARY OF STATE

August 25, 1999

WILLIAM A. FAVREAU  
O'CONNELL AND ARONOWITZ  
206 WEST BAY PLAZA  
PLATTSBURGH, NY 12901

RE: Town of Plattsburgh, Local Law 2, 1999, filed 08/20/99

The above referenced material was received and filed by this office as indicated. Additional local law filing forms will be forwarded upon request.

Sincerely,

Janice G. Durfee  
Principal File Clerk  
Bureau of State Records  
(518) 474-2755

JGD:ml

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\*\* ALSO ADMITTED TO CONN. BAR  
\*\*\* ALSO ADMITTED TO D.C. BAR

August 31, 1999

Ann Stanley  
Town Clerk  
151 Banker Road  
Plattsburgh, NY 12901

RE:

Dear Ann:

Enclosed herewith is a State of New York Department of State acknowledgment of receipt and filing of Town of Plattsburgh Local Law 2, 1999 which was filed on August 20, 1999. Kindly place on file this original receipt with the original laws as filed in your office.

Very Truly Yours,

O'Connell & Aronowitz

By:   
William A. Favreau, Esq.

D:\data\TOP\stanley.lt.wpd  
WAF/cs  
cc: Andrew Abdallah

TOWN OF PLATTSBURGH  
TOWN BOARD SEMI-MONTHLY MEETING  
August 16, 1999

Resolution No.        99-208

Motion by:            Andrew Winterkorn

**WHEREAS**, on August 2, 1999, Mr. Renadette introduced Local Law #2 of the year 1999, entitled;

"A LOCAL LAW ENACTING REGULATIONS PURSUANT TO SECTION 253 (C) OF THE TELECOMMUNICATIONS ACT OF 1996 GOVERNING THE USE AND OCCUPANCY OF THE TOWN'S RIGHTS-OF-WAY AND TOWN-OWNED PROPERTY BY WIRELINE TELECOMMUNICATIONS SYSTEMS AND SERVICE PROVIDERS, INCLUDING THOSE SERVICE PROVIDERS KNOWN AS CABLE OPERATORS AND OPEN VIDEO SYSTEM OPERATORS, AND INCLUDING PROVISIONS FOR INSURANCE, REPORTS AND RECORDS, COMPLAINT PROCEDURES, CONSUMER PROTECTION MEASURES, CONSTRUCTION AND CONSTRUCTION-RELATED REQUIREMENTS, SAFETY REQUIREMENTS, MUNICIPAL COMPENSATION INCLUDING FRANCHISE FEES AND/OR RENT, RATE REGULATIONS PROVISIONS, OPERATIONAL PROCEDURES, TERMINATION AND REVOCATION OF A FRANCHISER OR OTHER USE AND OCCUPANCY OR OPERATING AUTHORITY, FINES AND/OR PENALTIES, AND HEALTH AND WELFARE MEASURES; AND PROVIDING AN EFFECTIVE DATE."

And;

**WHEREAS**, by Resolution #99-186, the Town Board of the Town of Plattsburgh set a public hearing to receive public comment on said Local Law, to be held on August 16, 1999, at 6:30 PM, prevailing time, at the Town Hall, 151 Banker Road, Plattsburgh, and;

**WHEREAS**, the required public hearing on said proposed local law was duly held on August 16, 1999 at 6:30 PM, prior to this meeting of the Town Board, and;

**WHEREAS**, it is the opinion of the members of the Town Board, that the best interests of the Town of Plattsburgh will be served by the adoption of said proposed Local Law as Local Law No. 2 of the year 1999; now, therefore, it is

**RESOLVED**, that introductory Local Law No. 2 of the year 1999 entitled;

"A LOCAL LAW ENACTING REGULATIONS PURSUANT TO SECTION 253 (C) OF THE TELECOMMUNICATIONS ACT OF 1996 GOVERNING THE USE AND OCCUPANCY OF THE TOWN'S RIGHTS-OF-WAY AND TOWN-OWNED PROPERTY BY WIRELINE TELECOMMUNICATIONS SYSTEMS AND SERVICE PROVIDERS, INCLUDING THOSE SERVICE PROVIDERS KNOWN AS CABLE OPERATORS AND OPEN VIDEO SYSTEM OPERATORS, AND INCLUDING PROVISIONS FOR INSURANCE, REPORTS AND RECORDS, COMPLAINT PROCEDURES, CONSUMER PROTECTION MEASURES, CONSTRUCTION AND CONSTRUCTION-RELATED REQUIREMENTS, SAFETY REQUIREMENTS, MUNICIPAL COMPENSATION INCLUDING FRANCHISE FEES AND/OR RENT, RATE REGULATIONS PROVISIONS, OPERATIONAL PROCEDURES, TERMINATION AND REVOCATION OF A FRANCHISER OR OTHER USE AND OCCUPANCY OR OPERATING AUTHORITY, FINES AND/OR PENALTIES, AND HEALTH AND WELFARE MEASURES; AND PROVIDING AN EFFECTIVE DATE."

be and the same hereby is adopted as Local Law No. 2 of the year 1999; and, it is further

**RESOLVED**, that the Town Attorney, acting for the Town Clerk, be and he hereby is directed to cause said Local Law No. 2 of the year 1999, to be duly filed with the Department of State of the State of New York, as required by Section 27, subdivision 1, of the Municipal Home Rule Law.

**Seconded by:** Gary DeCelle

**Discussion:** Yes

	<u>YES</u>	<u>NO</u>
<b>Roll Call:</b> Norman E. Baker	x	
Gerard A. Renadette	x	
Andrew D. Winterkorn	x	
Gary L. DeCelle	x	
Andrew C. Abdallah	x	
<b>Carried:</b>	x	

# Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE  
162 WASHINGTON AVENUE, ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County

City

Town

Village

Local Law No. 2 of the year 1999

A local law "A LOCAL LAW ENACTING REGULATIONS PURSUANT TO SECTION 253 (C) OF THE TELECOMMUNICATIONS ACT OF 1996 GOVERNING THE USE AND OCCUPANCY OF THE TOWN'S RIGHTS-OF-WAY AND TOWN-OWNED PROPERTY BY WIRELINE TELECOMMUNICATIONS SYSTEMS AND SERVICE PROVIDERS, INCLUDING THOSE SERVICE PROVIDERS KNOWN AS CABLE OPERATORS AND OPEN VIDEO SYSTEM OPERATORS, AND INCLUDING PROVISIONS FOR INSURANCE, REPORTS AND RECORDS, COMPLAINT PROCEDURES, CONSUMER PROTECTION MEASURES, CONSTRUCTION AND CONSTRUCTION-RELATED REQUIREMENTS, SAFETY REQUIREMENTS, MUNICIPAL COMPENSATION INCLUDING FRANCHISE FEES AND/OR RENT, RATE REGULATIONS PROVISIONS, OPERATIONAL PROCEDURES, TERMINATION AND REVOCATION OF A FRANCHISER OR OTHER USE AND OCCUPANCY OR OPERATING AUTHORITY, FINES AND/OR PENALTIES, AND HEALTH AND WELFARE MEASURES; AND PROVIDING AN EFFECTIVE DATE."

Be it enacted by the Town Board of the

(Name of Legislative Body)

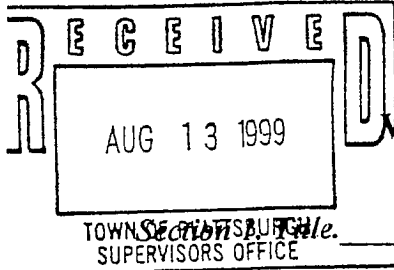
County

City

Town

Village

of Plattsburgh as follows:



WIRELINE TELECOMMUNICATIONS SYSTEM LAW  
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**TOWN OF PLATTSBURGH**

**Local Law No. 2 of the year 1999**

A LAW ENACTING REGULATIONS PURSUANT TO SECTION 253 (c) OF THE TELECOMMUNICATIONS ACT OF 1996 GOVERNING THE USE AND OCCUPANCY OF THE TOWN'S RIGHTS-OF-WAY AND TOWN-OWNED PROPERTY BY WIRELINE TELECOMMUNICATIONS SYSTEMS AND SERVICE PROVIDERS, INCLUDING THOSE SERVICE PROVIDERS KNOWN AS CABLE OPERATORS AND OPEN VIDEO SYSTEM OPERATORS, AND INCLUDING PROVISIONS FOR INSURANCE, REPORTS AND RECORDS, COMPLAINT PROCEDURES, CONSUMER PROTECTION MEASURES, CONSTRUCTION AND CONSTRUCTION-RELATED REQUIREMENTS, SAFETY REQUIREMENTS, MUNICIPAL COMPENSATION INCLUDING FRANCHISE FEES AND/OR RENT, TERMINATION AND REVOCATION OF A FRANCHISE OR OTHER USE AND OCCUPANCY OR OPERATING AUTHORITY, FINES AND/OR PENALTIES, AND HEALTH AND WELFARE MEASURES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Board of the Town of Plattsburgh, New York finds that the health, safety, and welfare of the citizens of the Town of Plattsburgh, New York requires that a comprehensive Law be enacted which establishes a regulatory framework applicable to Providers of Broadband Service and owners or operators of Wireline Telecommunications Systems within its territorial jurisdiction as permitted by federal and State law;

BE IT ORDAINED by the Town Board of the Town of Plattsburgh , New York, as follows:

**Section 1. Title.**

This Law may be known and cited as the Wireline Telecommunications System Law (WTS Law) for the Town of Plattsburgh, New York.

**Section 2. Construction.**

This Law shall be construed in accordance with applicable federal and State laws and rules governing Wireline Telecommunications Systems and Broadband Services, including but not limited to those known as Cable Systems and Cable Operators who provide Cable Service and Open Video Systems. With respect to the operation of Cable Systems, the provision of Cable Service and Open Video Systems, this Law shall be construed in accordance with any applicable rules and regulations of the Federal Communications Commission and the Public Service Commission, or any successor agency or authority.

**Section 3. Scope.**

This Law shall apply within the geographical limits of the Town, including any areas subsequently annexed by the Town, unless State law prescribes otherwise, or unless State law in some fashion restricts or alters the effect of this Law to a subsequently annexed area of the Town.

**Section 4. Severability.**

If any word phrase, sentence, part, section, subsection, or other portion of this Law, or any application thereof to any Person, entity or circumstance is declared void, unconstitutional or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this Law and all applications thereof not having expressly been declared void, unconstitutional or invalid, shall remain in full force and effect.

## Section 5. Definitions.

For purposes of this Law, and where not otherwise inconsistent with the context of a particular Section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this Section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number, and words in the singular number include the plural number. The words "shall" and "will" are always mandatory and not merely directive.

**"Abandonment"** means the cessation of use of a System and the provision of any Service by or using the System, or any portion of the System, or any component, facility or equipment of the System or Service in the Town for a period of time greater than sixty (60) consecutive days.

**"Activated"** means the ability to deliver of any type of Service using the System, or otherwise using the System to transmit and provide Service.

**"Activated channel"** means a channel engineered for the provision of Services generally available to residential Subscribers or Users of Service using the System, regardless of whether such Services are actually provided, including any channel designated for Video Programming Service or Multichannel Video Programming, including and channels used for Public, Educational or Governmental Access.

**"Affiliate"** means, when used in relation to any Person, another Person or entity who owns or controls, is owned or controlled by, or is under common ownership or control of such Person.

**"Administrator"** means the individual or organization designated by the Town Board to act as the technical and administrative liaison or representative of the Town, the Subscriber or Users, and the public in the Town, in matters related to the provision of this Law, and any Franchise as defined in this Section.

The Administrator may be designated as the point of contact for all matters under this Law and that relate to a Franchise or a System owner or operator or Service Provider. If designated, unless specifically directed otherwise by the Town Board, it shall at all times be presumed that the Administrator is acting as the Town Board's designee and under the Board's direction.

**"Applicant"** means a Person or legal entity submitting an initial Application or Proposal to the Town for a Franchise to operate a System or to provide Service under the terms and conditions set forth in this Law and in any Franchise and in compliance with any State rules or regulations.

**"Application"** or **"Proposal"** for the purposes of this Law are synonymous and mean the documents submitted, and on which the Town is intended in good faith rely on, for the purpose of being granted a Franchise by the Town. An Application or Proposal shall be deemed to include all written representations and supporting documentation submitted by an Applicant to the Town for the purpose of being granted the privilege to occupy or use the Town's property or rights-of-way for commercial purposes as intended under this Law.

**"Assignment"** or **"Transfer"** means the act of changing the Person or entity who has ultimate Control of the Franchisee, the System or the Franchise, whether such control is direct or indirect. Transfer or Assignment is deemed to be any Change in Control, in whole or in part, whether by sale, assignment, merger, consolidation, lease or other form of alienation, or any change in the ultimate legal or financial control of the Person or entity granted a Franchise.

**"attributable"** means to be regarded as produced by or originating with the operation of the System or the provision of service in the Town.

**"Board"** or **"Town Board"** means the Town Board for the Town of Plattsburgh, New York, which is the legislative body for the Town of Plattsburgh, New York. For purposes of clarification, the Town Board is the Franchising Authority for the Town of Plattsburgh, New York.

**"Broadband"** means a technology having a capacity of more than 28.8 Kilobits per second of bandwidth.

**"Cable Act" or "CCPA"** means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection Act of 1992 and the Telecommunications Act of 1996.

**"Cable Service" or "Video Programming Service" or "Multichannel Video Programming"** means:

- (a) the one-way transmission to Subscriber or Users of subscription video programming or other programming Service; and
- (b) Subscriber or User interaction, if any, or any other function which is required for the selection or use of such video programming or other programming Service.

**"Cable Operator"** means any Person or group of persons who:

- a) provides Cable Service or Video Programming Service over a System and, whether directly or through one (1) or more affiliates, owns a significant or attributable interest in such System; or
- b) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a System.

**"Channel"** means a band or group of frequencies in the electromagnetic or light spectrum, including the radio frequency spectrum, using any other means of Wireline transmission, including without limitation, wires, cable, optical fibers or any functional equivalent, which has the ability to carry a video Signal in the National Television Systems Committee (NTSC) or functionally equivalent format, or in any format devised or approved in the future by the Federal Communications Commission ("FCC"), or an audio, voice or data Signal. All video channels shall include their vertical and horizontal blanking intervals and all information contained therein, all other components of the video Signal, all aural components of the Signal including sub-carriers, and all closed-captioning intended for reception by the hearing impaired and others. Such shall be transmitted and provided to Subscribers or Users on the System, unless the operator deletes them in accordance with FCC, Copyright and other applicable rules.

**"Change in Control" or "Change of Control"** are synonymous terms for the purpose of this Law and mean any change in the Control of the System, System owner or operator or Service Provider, as Control is defined in this Section.

**"Collection Charge"** means a Charge or Fee assessed on a User or Subscriber for efforts or attempts to collect a past due and/or delinquent account.

**"Commercial Impracticability" or "Commercially Impracticable"** shall have the same meaning in this Law and any Franchise or other use, occupancy or operating authority as is defined and applied under the United States Uniform Commercial Code (UCC).

**“Complaint”** means any verbal or written claim of dissatisfaction or problem with a System or Service, and which requests or requires corrective action or remedy, and shall also include any necessary investigation subsequent to a Complaint, and any research and/or additional Service call or work activity.

**“Complete” or “Completion”** means with respect to any construction, reconstruction, rebuilding, upgrading or repair of the System that in each instance:

- a) attachment strand, if necessary, has been put in place for aerially serviced areas, and all needed cable or fiber has been securely and properly lashed to such strand; or,
- b) all cable or fiber has been placed correctly in trenches in areas Serviced underground as required by applicable code and this Law, the trenches have been refilled, all disturbed road surfaces have been restored as required, and all landscaping restoration has been completed as required;
- c) all amplifier housings and modules, all fiber nodes, and all other active and passive devices necessary for the operation of the System and the provision of Service, have been installed, including modules for return path signals if bi-directional activation has been proposed or committed to;
- d) primary and backup/standby power supplies, as required, have been installed and operate properly;
- e) all bonding and grounding as required has been completed;
- f) construction, reconstruction or upgrading of all headends, hubs, and nodes, as applicable, has been completed, and all necessary processing equipment has been installed therein and is functioning as required; and
- g) any and all other construction, reconstruction or upgrading necessary for the System to deliver Service to Subscribers or Users has been completed, including in the case of a rebuild or upgrade of the System, the replacement of drops to each and every Subscriber or User unit passed if such is either needed or proposed, pursuant to the plans, specifications, representations and commitments submitted to and approved or accepted by the Town.
- h) All required testing has been completed successfully on each new or technologically upgraded portion of the System, and shall demonstrate compliance with all applicable FCC and PSC Technical Rules to the Town’s satisfaction, , including but not limited to ‘Proof-of-Performance’ tests as may appropriate or required, unless the Town is expressly prohibited by law or rule from requiring such demonstration. Services provided to any segments of the System in the Town will be Activated only when the required testing is has been done and the System operates as required, and never before.
- i) No significant construction, reconstruction, upgrade or rebuild of any portion of a System providing Video Programming Service will be considered complete until ‘Proof-of-Performance’ tests have been conducted on such portion or segment (or in the case of the entire System, on all segments of the System), and all channels are in compliance with the Signal quality requirements of the FCC’s Technical Rules. Any performance characteristics of any segment which are found not to comply with said technical standards must have been corrected before construction is deemed complete.
- j) The term Completion, in relation to the construction, reconstruction, upgrade or rebuild does not include the marketing and installation of Subscriber or User Service.
- k) Any construction, reconstruction, upgrade or rebuild shall not be deemed complete unless and until the System is capable of delivering all services to all addresses in any area being

constructed, reconstructed, upgraded or rebuilt. If applicable, any construction, reconstruction, upgrade, or rebuild shall not be deemed complete until the wreck-out or removal of the old segments of the System has been completed to the reasonable satisfaction of the Town.

**"Control"** means the Person or entity holding legal or financial Control of or over the holder of the Franchise or the Service Provider, regardless of whether such control is direct or indirect, or is exercised or is permitted to be exercised directly or indirectly through other persons, holdings or entities. Control shall always be deemed to rest in the hands of any Person or entity that has the right or authority to establish or change any policy or practice of the holder of the Franchise or the Service Provider, whether such Control may be exercised directly, or indirectly through other persons, holdings or entities.

**"Consumer"**: See definition for "Subscriber or User".

**"Consumer Protection"** means regulations intended to protect the Subscriber or User in relation to receiving that for which the Subscriber or User is paying for, including representations made by the Service Provider or System owner or operator with respect to Service, and that create expectations on the part of the Subscriber or the User and on which the Subscriber or User relies in good faith.

Consumer Protection also includes the regulation of practices involving payments by the Subscriber or User, including, but not limited to the intended use of such payments as in the case of security deposits, and practices or policies regarding disconnection and collection of moneys owed.

**"Customer"** means a Subscriber or User of any Service and/or facility of the System or Service Provider.

**"Diminution of signals"** means, with respect to the provision of any Service, any visibly or audibly noticeable and objectionable degradation of the Signal or Service, including the partial loss or degradation or disruption of picture, sound, voice or data, regardless of the duration of such degradation or disruption.

With respect to Video Programming Services, diminution of Signal may be deemed as the presence of snow, lines, bars, ghosting, static, electronic noise, audio external to the Service, or any other objectionable and visually or audibly discernible disruption or interference, or other manifestation not contained within the Signal received by the Service Provider or System owner or operator, or prior to its introduction or entry into the System, which leads to or causes the quality of Signal received to be unusable, inconsistent, erratic, objectionable or unreliable. As diminution of signals can occur even when the System is in compliance with FCC's technical standards, the Subscriber or User shall be the primary determiner of whether a diminution of signals is being experienced, so long as the manifestation is visually or audibly discernible without magnification or amplification other than eye glasses.

For the purposes intended under this Law, situations involving matters of a Force Majeure nature or cause shall not be deemed a Diminution of Signal.

**"Disaster Emergency"** means an imminent, impending, or actual natural or humanly-induced situation wherein the health, safety or welfare of the residents of the Town is threatened. By way of illustration, a Disaster Emergency may include a severe climatic or meteorological storm, dam failure, flood, tornado, hazardous waste infiltration, fire, petroleum or chemical spill, explosion, vehicle accident of significant effect, or aircraft crash.

**"Downgrade"** means a change in the level of a Subscriber's or User's Service from a more comprehensive and/or expensive level of Service to a less comprehensive and/or less expensive level of Service.

**"Easement"** means and shall include any compatible use easement, whether created by dedication to the Town or by other means, for public utility purposes or any other purpose primarily benefiting the general public, Easement shall also include a private easement granted by a private property owner for the same or similar purposes.

**"Equipment"** means equipment supplied by the System owner or operator or Service Provider, which is used to provide, enhance or assist in the reception or provision of Service.

**"FCC"** means the Federal Communications Commission and/or such other federal regulatory agency as in the future may have jurisdiction to oversee the operation of Service Providers and their systems.

**"FCC Technical Rules"** means the technical rules and standards of the Federal Communications Commission as set forth in Part 76, Subpart K [Technical Standards] of the FCC's Rules, 47 C.F.R. §§ 76.601 et seq., as amended from time to time.

**"Fiber"** or **"Fiber cable"** or **"Fiber optic cable"** or means thin pliable cylinders or strands of glass or plastic, or any future functional equivalent, that is used to carry wide bands of multiple frequencies.

**"Franchise"** means the document of authorization granted by the Town, regardless of the type of authorization, whether such authorization is a use, occupancy or operating authority, that permits a Person to occupy and use the Town's property and rights-of-way for commercial purposes as intended under this Law, including to construct, operate, rebuild, replace, upgrade, maintain and repair the System, and to provide Service in the Town. A Franchise shall also include as an inseparable part any Application or Proposal for a Franchise, and any information contained therein on which the Town was intended to rely. The particular type and scope of Franchise, and any distinction between any type of Franchises, may be dependent upon the scope of authority the Town has over a given type of System owner or operator or Provider of Service.

**"Franchise Agreement"** means the Agreement or contract which the Town and a System owner or operator or a Service Provider enter into, and that specifies the contractual agreements or commitments between the parties, and which may also serve as a Franchise granting the authority to own and operate a System or provide Service within all or a part of the Town by using or occupying the Town's property or rights-of-way in accordance with the Town's franchising authority and any other authority, including its police powers. Subject to applicable law, rule and regulation, a Franchise Agreement may be different in scope and content from other permissible types of grants of authority by the Town.

**"Franchisee"** means any System owner or operator or Service Provider that has been granted a valid Franchise by the Town, and that is subject to the Town's regulatory authority as set forth in this Law and applicable State law, rules or regulation.

**"Franchise Expiration"** or **"Franchise Agreement Expiration"** or **"Expiration"** means the date of the end of the term of the document that granted authority to use and/or occupy the Town's property or rights-of-way for commercial purposes, including the operation of a System or the provision of Service.

**"Franchise Fee"** means a Fee charged a Service Provider or System owner or operator by the Town for the cost of administering the Franchise.

**"Franchising Authority"** means the Town Board of the Town of Plattsburgh, New York.

**"Functional equivalent"** or **"Functionally equivalent"** means something that

- 1) is used or is intended to accomplish the same purpose; or
- 2) has the same or substantially similar characteristics, qualities and capabilities; or
- 3) operates or functions in substantially the same form and fashion; or
- 4) operates or functions in a superior manner.

With respect to matters not involving equipment, the term also means something that equates to or is intended to effect the same, or a substantially similar outcome or function in effectively the same manner or for the same purpose.

**"Grandfather"** or **"Grandfathered"** means to retain or preserve a right, privilege or authority held, so long as the retention or preservation is expressly stated.

**"Gross Revenue"** means, for any period of time, any and all revenues or other valuable consideration of any kind which are derived from the operation of the System and/or the provision of Service within the Town, and that are attributable to or occasioned by the grant of the Franchise, regardless of the corporate or organizational relationship of the recipient of the revenue with the owner or operator of System or the Service Provider. The following, but only the following, shall not be deemed a part of Gross Revenue:

- a) Bad debts attributable to the provision of Service within the Town in the normal course of its business that, if booked, are actually written off; provided that subsequent recovery of bad debts previously deducted shall be included in Gross Revenue in the next reporting/payment period; and
- b) Refunds actually paid to Subscribers or Users.
- c) With respect to Service Providers classified as Cable Operators, Gross Revenues shall also not include any revenue expressly exempted by the Cable Act of 1984 or by State law. For any revenue that an owner or operator of a System or a Service Provider seeks to have exempted from this definition of Gross Revenue, such Person shall have the burden of proving to the Town that any such excluded revenue is expressly exempted by the federal law, State law, a final or unappealed federal or State judicial ruling by a court of competent jurisdiction, or by specific FCC ruling. Including, but not limited to the preceding, Gross Revenues shall not include the following:
  1. Any tax of general applicability imposed upon a Franchisee or other Service Provider or an owner or operator of a System, or upon Subscribers or Users of any Service or System by State or federal governmental agency and that is required to be collected by the System owner or operator or the Service Provider and is remitted to the taxing entity (including, but not limited to, property taxes, User taxes, Service taxes and communications taxes), provided such taxes are identified as a separate line item on Subscriber or User bills or statements;
  2. Any revenue received by a Service Provider or an owner or operator of a System from any third party for revenue not attributable, in whole or in part, to the operation of its System or the provision of Service in the Town, and which does not use or rely upon the use of the System or Service; and
  3. Any revenue which a Service Provider or an owner or operator of a System chooses not to receive in exchange for the provision of free or reduced cost Services. Notwithstanding the preceding, the value of any exchange for trade or barter or other items of value shall be included in Gross Revenues.

d) In computing Gross Revenues from sources other than Subscriber or User or Service revenue where it is not practicable to isolate the amount specifically derived from within the Town, and that is attributable to the grant of a Franchise, or the operation of a System or the provision of Service both inside the Town and outside the Town, the total or aggregate revenue received from such sources shall be computed as follows:

Said revenues shall be multiplied by a fraction, the numerator of which shall be the number of Subscribers or Users in the Town as of the last day of the required payment period and the denominator of which shall be the number of Subscribers or Users within all areas served by the Franchisee or other Service Provider or the owner or operator of a System as of the last day of the required payment period. The result shall then be multiplied by the percentage used to compute the required Fee that is assessed as a percentage of revenue. For purposes of example only, the following are types and sources of revenue intended to be included in Gross Revenues in such situations, regardless of the familial or organizational relationship of the recipient of the revenue with the System owner or operator or Service Provider.

1. The sale or rental of Subscriber or User lists;
2. the sale of advertising;
3. payments from programmers and shopping services;
4. commissions or bonuses of any kind from vendors or programmers that are attributable to the grant of authority under this Law;
5. rebates from programmers and vendors of any kind for Services that are attributable to the grant of authority under this Law;
6. viewing guide sales, including electronic guides;
7. the lease or sale of channel capacity;
8. payments or commissions from '900' phone numbers advertised on the Service or System; and
9. Interconnection charges or income

"**Headend**" means the electronic control center where incoming signals are received, regardless of the form of reception or the type of Signal, and are amplified, modulated, filtered, converted, or in any way processed for distribution to Subscriber or Users.

"**Impracticable**", when used in a non-economic or non-financial or non-commercial context, shall have the meaning ascribed in the most current edition of Webster's Encyclopedic Unabridged Dictionary of the English Language.

"**Initial activation**", or "**Initially providing Service**" or the "**Initial provision of Service**" mean with respect to a particular portion, part or segment of the System, or group of segments, or the entire System, that all Services and System capabilities, as stated in a Franchise, or in any Application or Proposal for Franchise, are available and useable, and that the construction, reconstruction, rebuild or upgrade has been Completed and the Completed segment(s) of the System involved, or the entire System, is capable of actually delivering the Services intended to each and every Subscriber or User and residence or business in each segment, pursuant to the plans and specifications as may have been approved, accepted or relied upon in good faith by the Town.

"**Installation Charge**" or "**Connection Fee**" means that Charge or Fee imposed on a Subscriber or User for the initial installation or reconnection of Service, or the relocation of equipment necessary to obtain or use Services or the System.



**"Internet"** or **"internet"** means that interconnected combination of networks that evolved from the original ARPANET experiment and the National Science Foundation subsidized Internet and the interconnection of networks that provides User-to-User, or address-to-address, communications Services, Broadband Service, other programming Services, or data Services.

**"Internet access"** means the availability of access of the Internet to a Subscriber or User and the service that enables a Subscriber or User to use the Internet.

**"Late Charge"** means a charge which is added to a Subscriber's or User's account or bill for late payment or non-payment of a previously due and currently delinquent amount. An administrative charge imposed because of a late payment is deemed the same as a Late Charge.

**"Law"** means the 'Wireline Telecommunications Law' for the Town of Plattsburgh, New York.

**"Leased Access Channel"** means the channel capacity that a System owner or operator or Service Provider, including a Cable Operator or Open Video System Operator, has designated for use by commercial Users and that is not affiliated with the System owner or operator or Service Provider, pursuant to Section 612 (at 47 U.S.C. 532) of the Communications Act of 1934, as amended.

**"Line Extension"** means an extension of the System requiring additional trunk or feeder cable, or both, fiber optic cable, active electronic equipment to amplify the Signal; or an additional fiber node, but does not include individual Service drops beyond two hundred (200) feet that may require additional feeder cable or the functional equivalent of such.

**"Local Origination Programming"** means programming produced locally by or for a Service Provider or System owner or operator for carriage on the Service Provider's or System owner's or operator's System.

**"Loss of Service"** or **"Service Outage"** means the inability to receive the Service subscribed to that is caused by, attributable to, or occasioned by problems with the operation of the System or the provision of Service, and which is not caused by the failure or malfunction of a Subscriber's or User's equipment, or by the misfeasance or malfeasance of the Subscriber or User.

A Service Outage involving Video Programming Service shall mean the loss of voice, audio and/or video Service, regardless of the level, tier or increment of Service so as to make that Service effectively unusable in the normal and usual sense of being able to enjoy or otherwise use or view such.

More than one (1) instance of a Loss of Service from the same portion of the System or that affects the same address or addresses within the Town that occurs within a 24 consecutive hour period shall be deemed a single, continuous Loss of Service

**"Node"** or **"Fiber Node"** means that facility at which signals are received in light-wave form and transmitted, retransmitted, relayed or otherwise provided to other portions of the system in light-wave form or are converted to RF signals or a functional equivalent type of Signal and are transmitted, retransmitted, relayed or otherwise provided to other portions of the System in the Town, or elsewhere outside the Town.

**"Non-renewal,"** means not granting a new Franchise to an incumbent System owner or operator or Service Provider to operate a System or provide Service within the Town.

**"Normal operating conditions"** means those conditions which are reasonably within the control of the System owner or operator or Service Provider with respect to the operation, maintenance and repair of the System and the provision of Service within the Town. Those conditions which are not within the control of the System owner or operator or Service Provider include labor strikes, sabotage, riots or civil disturbances of a disastrous nature and effect, explosions, acts of public enemies, unusually severe or catastrophic weather conditions, natural disasters as declared by appropriate government officials, fires, and wide-spread commercial power failures that exceed the capabilities of the backup or standby power supplies and capability of the System.

Those conditions which are expressly deemed to be within the control of the System owner or operator or Service Provider include, but are not limited to, financial situations other than the declaration of bankruptcy or insolvency, marketing promotions, loss of standby power up to the period of time for which the manufacturer has rated the standby power unit to operate, Rate increases, regular or periodic periods of high demand with respect to labor intensive functions, the regular inspection and maintenance of the System, required testing of the System, the timely remedy of safety and other code violations, and the timeliness and technological design with respect to any upgrade of the System.

**"Other programming or communications services"** means information or Service that a System owner or operator or Service Provider makes available to all Subscribers or Users generally, including, but not be limited to video, telephony and other voice Services and the transmission of data.

**"Pay-per-view"** or **"Premium channel"** or **"Premium Service"** means the delivery of audio and/or video signals for a specific one-time Charge on a per event, per program or per channel basis over and above the Rate for regular subscription Service.

**"PEG"** means Public, Educational, and Governmental.

**"PEG facilities"** or **"public, educational and governmental access facilities"** means:

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

**"PEG programming"** means programming produced or aired by a governmental entity, a member of the educational community or the public at large using the channel(s) dedicated to or used for the provision of PEG programming

**"Person"** means any individual, corporation, entity, estate, trust, partnership, or any association of two (2) or more persons or entities having a joint common interest or a joint stock company.

**"Primary Service Area"** means that portion of the Town required or committed to be built and operated under a Franchise.

**"Property"** means all the property owned, installed, rented, leased or used by a System owner or operator or Service Provider holding a Franchise granted under or otherwise subject to this Law that is utilized in the operation of the System or the provision of Service in the Town.

**"Proposal"** or **"Application"** means a written request to use or occupy the Town's property and rights-of-way for the purpose of constructing, operating, maintaining or repairing a System or to provide Service in the Town using the public property and rights-of-way of the Town.

**"PSC "** means the Public Service Commission of the State of New York, or any successor agency or Commission.

**"Rate"** means the periodic price paid by a Subscriber or User for the receipt of any Service provided by a System owner or operator or Service Provider or the use of the System by a User.

**"Revocation" or "Termination," or "Involuntary Termination"** means an official act by the Town Board that removes, repeals, or rescinds any Franchise and authority to operate a System or provide Service in the Town that is granted under or is subject to this Law.

**"Rent"** means the compensation paid to the Town by a System owner or operator or Service Provider for the occupation and use of the public property and rights-of-way of the Town for commercial purposes..

**"Scheduled outage"** means any planned Service interruption or diminution of signals for which the Town and Subscribers or Users are required to be, and have been, notified in advance, and that does not exceed four (4) hours duration for any given address.

**"Service"** means any Service that is provided by means of a System that is not precluded or pre-empted from compliance with this Law by federal or State law, rule or regulation, and shall include any Service, use or other activity provided for commercial purposes that uses or is provided by means of the use of the System, regardless of the technology employed, and specifically including Service employing Broadband technology.

**"Service interruption"** means the loss of any Service or incremental level of Service, or separately priced Service such as any Service offered on a per-channel, per-event or per-showing basis, or any other Services that are delivered or provided by means of or that use a System or any components or the System.

**"Service Provider"** means any Person who provides Service using a System that occupies or uses the Town's property or rights-of-way using Broadband technology or otherwise providing Service using a System as defined in this Section and who owns a significant or Attributable interest in the Provider of such Service or in the System; or who, through any arrangement, otherwise controls or is responsible for the management and operation of a Service or System in the Town, or who has the authority to establish or change policy, or order the establishment or change of policy with respect to the provision of Service or the System within the Town.

**"Service tier" or "Billing increment"** means a category of Service provided by a Service Provider for which a separate Rate is charged.

**"Significant Interest" or "Attributable Interest"** means any Person or entity who directly or indirectly holds or owns a five percent (5%) interest or ownership position in a System or the holder of a Franchise permitting the construction and operation of a System or the provision of Service in the Town.

**"SMATV"** means Satellite Master Antenna Television.

**"SMATV Operator" or "Satellite Master Antenna Television Operator"** means any Person or group of persons who:

- a) provides Service over a SMATV system; or

- b) otherwise controls or is responsible for, through any arrangement, the management of a SMATV System.

"**SMATV System**" means a private System that does not cross or in any manner use any public or Town-owned property or rights-of-way, and which is located entirely on private property and serves only private dwellings.

"**State**" means the State of New York.

"**Street**" means the surface of, and the space above and below, a public street, path or thoroughfare designated for vehicular and/or pedestrian traffic, or other easement now or hereafter held by the Town, and includes any sidewalks or other paved pedestrian ways and any public or Town-owned rights-of-way.

"**Subscriber**" means a Person lawfully receiving Service delivered by a System owner or operator or a Service Provider.

"**Supervisor**" means the Supervisor of the Town of Plattsburgh, New York.

"**Technical Violation**" means a violation of this Law or any Franchise that is of de minimus negative effect on the Town or the public and that is not repeated after notice by the Town. Notwithstanding the preceding, a history or repeated pattern of the same or similar Technical Violations shall not be deemed a Technical Violation.

"**Telecommunications System**" or "**System**" means a facility consisting of a set of closed transmission paths and associated facilities and equipment that is designed to provide Service of a commercial nature, which includes the transmission of video, voice and data, or any combination of such transmissions, and voice-activated or electronic ordering capability or other uses or Services which are provided to Subscribers or Users within the Town, including the provision or use of data used to maintain and operate the System. However, Telecommunications System or System does not include the following:

- (a) a facility that serves only to retransmit the television signals of one (1) or more broadcast stations; or
- (b) a facility that serves only Subscribers or Users in one (1) or more multiple unit dwellings under common ownership, control or management, unless such facility occupies or uses any Town-owned property or Town rights-of-way for the provision of Service or to generate revenue for commercial purposes, in which case it shall be deemed a System; or
- (c) a facility of a common carrier which is subject to the provisions of Title II of the Communications Act of 1934 as amended, but only to the extent that such exemption relates to the Services provided at the time the operating authority was originally granted, or that State or federal law, rule or regulation expressly exempts from compliance with this Law.
- (d) any facilities of any electric utility used solely for operating its electric utility.

"**Town**" means the Town of Plattsburgh, New York.

"**Transfer**" means any change in the ownership or legal or financial Control of the entity granted a Franchise to any Person or legal entity that directly, or indirectly through another Person or legal entity, has financial or legal Control over the holder of the Franchise granted by the Town, and who may order

the establishment or change of policy as regards the operation of the System or the provision of Service within the Town. For purposes of this Law, a merger or consolidation of any kind at any level shall be deemed a Transfer, unless the possessor of the ultimate authority over the holder of the Franchise will not change. Any instance where the approval of the FCC or the PSC is required to affect a change in ownership or control shall also be deemed a transfer.

**"Transferee"** means the new holder of a Franchise or other use or operating authority as approved by formal action of the Town Board.

**"U.S.C."** means United States Code.

**"User"** means a Person utilizing a System and/or its equipment, facilities or capabilities for purposes of advertising, program production and/or the transmission of material, as contrasted with the receipt thereof in the capacity of a Subscriber.

**"Video Service"** means the provision of Cable television Service or Video Programming Service or other video subscription Service.

**"Video Programming"** means programming generally considered comparable to programming historically provided by a television broadcast station or satellite distributed video programmer that is intended for mass reception. Further, Video Programming means a Service whose use and value is largely determined by being able to be viewed.

**"Wireless"** or **"Wireless Service"** means any service that is transmitted through the air, whether employing microwave, radio frequency or a functionally equivalent technology. Programming from AM or FM radio broadcast stations shall not be deemed Wireless Service.

**"Wireline"** or **"Wireline Service"** means a System or Service that is provided through a wire, line, cable, fiber or any functionally equivalent closed system. A Franchise for Wireline Service shall not automatically or inherently include the authority to carry, transport or transmit Wireless Service. In order for a Wireline Telecommunications Franchise to carry, transport or transmit Wireless Service, the Franchise must expressly grants permission to do so.

**"Work Day"** or **Working Day"** means those days when the majority of retail businesses in the Town are customarily open for business.

**"Wreck out"** means, in the context of and with respect to, any construction, rebuild, upgrade, modification or maintenance activity of a System, the removal of the old cable, wires, parts and components of any portion of the System not currently and actively used in the provision of Service in the Town.

## **Section 6. Administration; Delegation of Powers and Authority.**

- A) The Supervisor is hereby designated the individual responsible for the continuing administration of this Law and matters related to the operation of Wireline Systems or providers of Service employing Broadband technology in the Town that use or occupy the property of the Town or the Town's rights-of-way for such purpose.
- B) Unless expressly prohibited by Federal, State or local law, the Town Board or the Supervisor may further delegate to a duly authorized representative the right and authority to assist in the

administration of this Law or a Franchise that authorizes the construction, operation and maintenance of a System or a Service Provider's facilities.

- C) Unless expressly prohibited by federal, State or local law, the Town Board is hereby authorized, at its sole discretion, to create an appointed advisory Board, commission, or committee whose purpose shall be to handle issues concerning Service and Service Providers subject to this Law. If such a Board, commission, or committee is created, then a separate resolution shall be adopted wherein the precise powers and authorities of the Board, commission, or committee shall be outlined.
- D) Notwithstanding anything in this Section, the Town Board may never delegate its initial or renewal franchising, licensing or permitting power, or power of revocation or termination of such, or any right or authority it may have to impose or assess fines and/or penalties under this law, to another Person or representative, advisory Board, commission, or committee.

## **Section 7. Applicability of this Law to a Service Provider or System Owner or Operator.**

- A) Systems owners or operators and Service Providers who use or occupy the Town's property or rights-of-way and who are not expressly exempted from compliance with this Law by prior State law are subject to and shall be governed by the requirements and provisions of this Law and any amendments thereto. Also subject to certain requirements and provisions of this Law and any amendments thereto are Service Providers and owners or operators of Systems not otherwise subject to local franchising authority, but who are not expressly exempted by applicable law, rule or regulation from compliance with applicable local regulatory laws or ordinances, including but not limited to those that govern the use and occupancy of the Town's property and rights-of-way.
- B) The authority of the Town to regulate any precluded or pre-empted Service Provider or System under certain portions of this Law shall not exempt such Persons from the requirements of this Law involving the regulation of the construction, operation and maintenance of the System or its facilities as such relate to the protection of the health, safety and welfare of the public under the construction, safety and safety-related requirements of this Law
- C) Any Service Provider or any System owner whose original grant of authority to use and occupy the Town's property or rights-of-way for commercial purposes that did not expressly grant the right to provide Service as defined in Section 5 of this Law shall be deemed subject to the provisions of this Law, except to the extent that the provision of any service provided under the original grant of authority to use and occupy the Town's property rights-of-way for commercial purposes, as expressly set forth therein, is exempted or Grandfathered with respect to being used to determine payments or Fees to the Town as required and permitted under this Law.
- D) In the event of any conflict or ambiguity between the requirements of this Law and any amendments thereto, and any Franchise subject to this Law, or any amendments thereto, this Law shall control, unless the requirement or provision is expressly pre-empted by federal or State law, rule or regulation, or unless the issue expressly addressed in the Franchise in the context of relief from this Law. Any relief or variance from the provisions of this Law shall be granted in accordance with Section 8 of this Law, and such relief or variance shall be expressly set forth in any Franchise Agreement .
- E) This Law shall not be deemed to, nor shall it, change, impair or repeal any Franchise, agreement, contract granted prior to the effective date of this Law to the extent that such expressly contains a lesser or less stringent obligation, requirement or commitment, nor shall this

Law change the provisions of those terms, conditions and commitments that are expressly enumerated in the existing Franchise, agreement, contract, as the expressly stated intended purpose and use of the Town's property or rights-of-way with respect to the service provided.

- F) When a Franchise agreement, contract or use and occupancy authority granted prior to the effective date of this Law is silent on a matter addressed in this Law, and absent express language in the Franchise, agreement, contract to the contrary, or limiting the Town's right to adopt additional regulatory requirements of effect on that System owner or operator or Service Provider, the applicable provisions of this Law shall apply.
- G) With respect to a Service Provider or System owner or operator holding a Franchise, agreement, contract or use and occupancy authority granted prior to the effective date of this Law, this Law shall be of effect upon the Expiration of the existing Franchise Agreement, contract, or use and occupancy authority or when one of the following occurs:
1. prior to the Expiration date of a Franchise, and at the request of the holder of such, the document is amended; or
  2. both parties agree to a specific date for the Expiration date which is prior to the Expiration date in existence on the date of adoption of this Law; or
  3. a court of competent jurisdiction orders that an existing Service Provider or System owner or operator become subject to all, or any part or provision, of this Law, or finds that a Service Provider or System owner or operator is not exempt from all, or any part or provision, of this Law.
- A) Any Service Provider or System owner or operator shall be required to comply with the safety requirements and provisions of this Law, unless the Agreement, contract granted prior to the effective date of this Law states otherwise.
- B) Unless a Franchise, agreement, contract granted prior to the effective date of this Law states otherwise, all System owners or operators or Service Providers shall abide by the construction and construction-related requirements and provisions of this Law when performing any construction, rebuild, upgrade, repair, change or replacement of equipment or facilities.
- C) With respect to provisions classified as Consumer Protection, such requirements and provisions shall be complied with by any Service Provider and owner or operator of a System operating in the Town, unless:
1. The provision or requirement is expressly pre-empted by the force of a superseding state or federal law, rule or regulation; or
  2. a court of competent jurisdiction has deemed the provision or requirement impermissible or unenforceable by the Town.
- A) Unless the existing Franchise contains either more stringent requirements, or contains specific language precluding, pre-empting or excluding the Town's right to enforce the Consumer Protection provisions of this Law under the existing Franchise, any Service Provider or System owner or operator that is operating a System or providing Service as of the effective

date of this Law shall abide by the Consumer Protection provisions of this Law no later than sixty (60) days after the effective date of this Law.

- B) All other provisions contained within this Law shall be of full force and effect thirty (30) days after the date of adoption of this Law, unless the applicability of a particular provision is pre-empted by the force of a superseding federal or State law, rule or regulation, in which case the exemption extends only to the express extent of the federal or State pre-emption, unless the federal or State law, rule or regulation Grandfathers the authority of the Town to enforce such provisions, in which case the particular provision shall be enforceable.
- C) Notwithstanding anything to the contrary in this Section, unless otherwise expressly Grandfathered in an existing Franchise granted prior to the effective date of this Law, in order to assure the protection of the health and safety of the public, any and all Service Providers or System owners or operators shall be subject to, and shall be required to comply with, all safety regulations, requirements and provisions of this Law at all times, including:
  - 1. the latest edition of the National Electrical Code, including any amendments;
  - 2. the latest edition of National Electrical Safety Code, including any amendments; and
  - 3. any other applicable safety and safety-related codes of the Town, County or State as exist as of the effective date of this Law or may be adopted.

## **Section 8. Seeking Relief.**

- A) Any Service Provider or System owner or operator subject to the provisions of this Law may file a written petition at any time with the Town Board seeking relief from one or more provisions of this Law. A Service Provider or System owner or operator may specifically request exemption or relief from, or delay in implementation, of one or more provisions of this Law, but only as to the petitioning Provider, owner or operator.
- B) In concert with the stated intent of the Telecommunications Act of 1996 to promote and facilitate competition, and so as not to hinder the development of competition, any Service Provider or System owner or operator may request that a specific provision of this Law apply to such Service Provider or System owner or operator for a specified or limited length of time or duration, pending a determination of the effect of compliance on the System owner's or operator's, or Service Provider's, ability to compete effectively at the Expiration of the period of time for which relief is granted. In the event that it is determined by the Town Board that the System owner's or operator's, or Service Provider's, ability to compete effectively is substantially hindered by compliance, relief shall be granted for the remaining term of the Franchise.
- C) Any petition submitted pursuant to this Section shall set forth the relief requested and the reason and basis thereof, with such supporting information and material as may be applicable and as may be deemed necessary by the Town Board to enable an informed decision.
- D) All requests for relief shall contain a clearly articulated explanation or rationale for each item or matter being requested. Any request submitted pursuant to with this Section that does not contain such information shall be deemed incomplete and returned to the petitioner without action.
- E) In order to be granted relief from one (1) or more of the provisions of this Law, a Service Provider or System owner or operator must demonstrate to the Town Board with reasonable certainty that at least one (1) of the following facts exist:



- 1) the provision and/or requirement is expressly prohibited by federal law, the FCC, or State law, rule or regulation, including any specific rule or regulation of the PSC; or
  - 2) where applicable, that the provision in question negatively and materially affects the petitioner to the extent that the provision or requirement creates an insurmountable competitive disadvantage not permitted or contemplated under federal or state law, or is in substantial conflict with a right that is expressly stated in an existing Franchise, but such relief shall only be for the term of the existing Franchise. This provision specifically includes, but is not limited to situations where a Service Provider or System owner or operator classified as a Cable Operator or Open Video System operator seeks, and is granted, modification of an existing Franchise under Section 625 of the Cable Act (codified at 47 USC 545); or
  - 3) that compliance with a particular provision and/or requirement will be Commercially Impracticable for the System owner or operator or Service Provider; or
  - 4) that one (1) or more time requirements listed in this Law are either impracticable or impossible to meet; or
  - 5) that the Service Provider or System owner or operator has its own policy which the Town Board deems comparable to, or better than, the provision or requirement from which the Service Provider or System owner or operator seeks relief; or
  - 6) that the health, safety, and welfare and the legitimate and reasonable interests of the Town and the public otherwise warrant the granting of such relief and will not be adversely affected to a significant extent.
- F) The Town Board shall be the determiner of whether a request for relief has met one (1) or more of the requirements of this subsection.
- G) A Service Provider or System owner or operator may petition the Town Board at any time for clarification concerning the precise intent and effect that any provision or requirement of this Law has on the petitioning Service Provider or System owner or operator.
- H) In those instances where the Town Board grants an exemption or relief or deems a Service Provider's or System owner's or operator's operational policy to be comparable to, or better than, a provision of this Law, then within sixty (60) days of the grant of relief the Franchise shall be formally amended to reflect the exact extent of such exemption and/or relief.
- I) It shall be the responsibility of the Service Provider or System owner or operator to include with its request a proposed resolution of amendment setting forth the intended effect in a clear and unambiguous manner.
- J) The benefit of any exemption or relief extends only to the Service Provider or System owner or operator granted such exemption or relief. Consequently, in the case of a Transfer, Assignment, Change of Control or sale of the System to a Person without a record of performance in the Town, the proposed Transferee, assignee, controlling entity or buyer, if required by the Town Board, shall be required to petition separately for the any relief or exemption. This shall mean that unlike certain other amendments to a Franchise, there shall be no automatic transfer of any exemption or relief to a Transferee. However, any grant of comparable policy shall continue without the need for any additional approval or grant by the Town Board.

- K) Any Service Provider or System owner or operator who petitions for or requests relief or exemption from any portion of this Law whereby the primary beneficiary of the requested relief or exemption will be the Petitioner and not the public or the Subscribers, may, at the discretion of the Town Board, be required to reimburse the Town for the actual, verifiable cost of processing and analyzing such request, since such cost is deemed an extraordinary cost to the Town that would not normally be incurred in the course of administering a Franchise. Such cost is thus not deemed a normal part of administering a Franchise.
- L) A requirement to reimburse the Town pursuant to subsection (H) of this Section, shall not apply to any request for relief or amendment of a Franchise where the public or the Subscribers will be the primary beneficiary, or where the granting of the request will eliminate an impermissible competitive disadvantage pursuant to subsection (B) of this Section.

### **Section 9. Failure of the Town Board to Enforce this Law.**

It being a reasonable assumption that responsible persons of good intent will comply with laws, and to prevent the Town from having to constantly monitor compliance with each and every aspect of a Service Provider's or System owner's or operator's every action, a Service Provider or System owner or operator shall not be excused from complying with any of the requirements of this Law, or any subsequently adopted amendments to this Law, by any failure of the Town on any one (1) or more occasions to seek or insist upon prompt compliance with such requirements or provisions.

### **Section 10. Subject to Present and Future Laws, Ordinances and Regulations.**

- A) Any Service Provider or System owner or operator, and its assignee or Transferee, shall be deemed subject to and required to abide by all applicable laws, ordinances and/or regulations now or hereafter adopted and in effect within the Town, including this Law, to the extent that the Service Provider or System owner or operator has not been granted an exemption or relief from said Law(s) and/or resolution(s).
- B) Notwithstanding the preceding subsection (A) of this Section, in the event the Town Board amends this Law and the amendment of the Law would have the effect of either requiring the investment of substantial additional capital by the Service Provider or System owner or operator, or of unilaterally changing the process for default and/or revocation of a Service Provider's or System owner's or operator's Franchise, or impairing the Service Provider's or System owner's or operator's Franchise, then such amendment shall have no effect on the affected Service Provider or System owner or operator until the Expiration of the Franchise, subject to the provisions of Section 7 of this Law.
- C) Notwithstanding subsection (B) of this section, unless otherwise stated in a Franchise, all Service Providers or System owners or operators shall be required to comply with any amendments of this Law that regulate matters of Consumer Protection, safety or construction or construction-related matters, within one-hundred-eighty (180) days of the effective date of the amendment, unless otherwise stated in the amendment or the Franchise.

## **Section 11. Repeal of Prior Inconsistent Regulations, Resolutions, Ordinances, and Local Laws and the affect on Agreements.**

Any prior resolution, ordinance or local law which, in part or in whole, is directly inconsistent with this Law, is hereby deemed unenforceable to the extent of the inconsistency, but only as regards Service Providers or System owners or operators subject to this Law.

## **Section 12. Resolution of Inconsistencies with Federal or State Rules, Regulations or Laws.**

In any case of an actual inconsistency between any provision or section of this Law and any provision or section of a federal or State law, rule or regulation which expressly supercedes or pre-empts local authority on the matter, but only to the extent that it expressly does so, then the federal or State law, rule or regulation shall supersede the effect of the applicable provision of this Law, and shall control in any local application, unless such federal or State rule, regulation or does not pre-empt, supersede, or make invalid the inconsistency.

## **Section 13. Resolution of Conflicts Between this Law and a Subsequently granted Franchise.**

- A) Where there is a conflict, whether actual or perceived, between this Law and a Franchise granted subsequent to the effective date of this Law, this Law shall control, unless judicially determined to be invalid or unenforceable by a court of competent jurisdiction, or unless the provisions of subsection (B) of this Section apply.
- B) Where, a Service Provider or System owner or operator receives an exemption or relief from one (1) or more provisions or Sections of this Law pursuant to Section 8 of this Law, or has one (1) or more of its policies deemed comparable to or of more benefit to the Town, the public or Subscribers, than a provision contained in this Law, the Franchise shall expressly state such exemption, relief or comparable policy. To the extent that such an exemption, relief or comparable policy is both expressly contained in a Franchise and is inconsistent with a provision contained in this Law, then the exemption, relief or comparable policy language contained in the Franchise shall control, but only to the extent expressly stated in the Franchise.
- C) Notwithstanding Subsection (B) of this Section, any grant of exemption or relief shall be limited to the owner and operator of the System or the Service Provider as of the date of the grant of exemption, or relief. Such grant of exemption or relief shall not be deemed to be, nor shall it be, automatically transferred along with any Transfer or change in ownership or Change of Control of a Franchise or Franchisee. Any exemption or relief bestowed on a Transferee shall always require a separate and formal act of approval by Town Board.

## **Section 14. Penalties and Sanctions for Violation of this Law.**

- A) Violations of this Law shall be handled in the manner prescribed by applicable law.
- B) To the extent permitted by State and local law, Town Board reserves the authority to change the schedule of fines and/or penalties for violations of this Law as may from time to time be deemed necessary, appropriate and permissible.

- C) In instances where fines and/or penalties as set forth herein are applicable for a violation of this Law, or for a breach of a Franchise, then such fines and/or penalties shall operate as a separate and independent remedy for the Town.
- D) A Service Provider or System owner or operator shall not be subject to such fines and/or penalties in instances of Force Majeure, or for a Technical Violations, or for a breach of a Franchise where such breach is of no or of de minimus effect on the Town or the public, as determined by the Town Board.
- E) A Service Provider or System owner or operator holding a Franchise Agreement, shall be subject to default and/or revocation of such Agreement, for cause as set forth in this Law:

### **Section 15. Effect of "Technical" Violation of Law or Franchise Agreement.**

Notwithstanding the provisions contained in Section 113 of this Law, a Service Provider or System owner or operator shall not be subject to penalties, fines, forfeitures, revocation or involuntary termination of a Franchise for a Technical Violation of this Law or a Technical breach of a Franchise. For purposes of this Law, Technical Violations or breaches include the following:

- A) Instances or matters where a violation of this Law or, where applicable a Franchise, was a good faith error that resulted in no negative impact on the residents, Subscriber or Users within the Town, or on the Town itself, or where such violation resulted in de minimus effect on any of the preceding Persons or the Town; or
- B) Instances or circumstances that are reasonably beyond the control of a Service Provider or System owner or operator, including Force Majeure situations, and that prevent a Service Provider or System owner or operator from complying with this Law or the Franchise.

### **Section 16. Force Majeure.**

- A) Notwithstanding any other provisions of this Law, a Service Provider or System owner or operator shall not be held in violation, material breach, default or non-compliance of this Law or a Franchise, nor suffer any penalty related thereto, including, where applicable, involuntary termination, cancellation or revocation of a Franchise, where such violation, breach, default or non-compliance occurred, and/or was caused by a natural disaster such as an earthquake, flood, tidal wave, hurricane, or similar devastating act of nature, or any other event that is reasonably beyond a Service Provider's or System owner's or operator's ability to anticipate and control, or that is of a devastating nature or effect on the System. Force majeure situations shall also include strikes, riots, wars, and armed insurrections, as well as work delays caused by waiting for utility Providers to service or monitor their own utility poles on which a Service Provider or System owner or operator's cable, wires' facilities and/or equipment is attached, as such may be necessary for the Service Provider or System owner or operator to comply with this Law.
- B) Notwithstanding subsection (A) of this Section, as a matter of Consumer Protection, in the case of a Force Majeure situation a Subscriber or User may be entitled to a refund or credit if the Subscriber or User sustains a Loss of Service for a period of time that is in excess of that permitted under the provisions of this Law.

## **Section 17. Notices.**

- A) The Town, and each Service Provider or System owner or operator, shall provide the other party with the name and address of the individual or entity designated to receive notices, filings, reports, records, documents, orders and other correspondence. All of the preceding shall be delivered to each party by U.S. certified mail, return receipt requested, or by personal service with a signed receipt of delivery, or by overnight delivery with receipt verification. By mutual agreement, filings, reports, records, documents, and other correspondence may be delivered by any permissible means including, but not limited to, facsimile transmission, personal service, or overnight mail or package delivery, so long as proof of receipt or delivery is obtained. The delivery of all notices, reports, records, and other correspondence shall be deemed to have occurred at the time of receipt, unless otherwise mutually agreed to or as may be designated by State law.
- B) If the Service Provider or System owner or operator is required to obtain a Franchise, then the designation of such contact Person for notice and notification purposes shall also be contained within the Franchise.

## **Sections 18 -- 24. Reserved.**

## **Section 25. Indemnity.**

- A) To the extent permitted by federal and/or State law, a Service Provider or System owner or operator shall at all times be required to defend, indemnify, protect, save harmless and exempt the Town, the Town Board, the Supervisor, their officers, agents, servants, and employees, from any and all penalties, damages, or charges arising out of claims, suits, demands, causes of action, or award of damages whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might be claimed now or in the future, which may arise out of, or be caused by, the construction, erection, location, upgrade, System or Service performance, operation, maintenance, repair, installation, replacement, removal or restoration of the System or Service within the Town by an act or omission of a Service Provider or System owner or operator, its agents or employees, contractors, subcontractors, independent contractors, or implied or authorized representatives. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' Fees, consultants' Fees, and expert witness Fees are included as those costs which may be recovered by the Town from the Service Provider or System owner or operator.
- B) The Town, the Town Board and the Supervisor reserve the right to retain counsel of their own choice, at their own expense.
- C) If a Service Provider or System owner or operator obtains counsel for the Town, the Town Board, or the Supervisor, then any one of them shall have the right to approve such counsel. However, neither the Town, the Town Board, nor the Supervisor shall unreasonably withhold its approval of counsel, provided such counsel is qualified and reasonably experienced in defending against such claims or actions.
- D) With respect to a Service Provider's or System owner's or operator's own defense of such actions set forth in this Section, it is understood that such Service Provider or System owner or operator reserves the right to select and retain counsel of its own choice, at its own expense, without the Town's, the Town Board's or the Supervisor's approval.

## Section 26. Liability Insurance.

- A) A Service Provider or System owner or operator shall secure and maintain, for as long as it operates the System or provides Service within the Town, public liability insurance, property damage insurance, and umbrella insurance coverage in at least the following amounts:
- 1) Public liability: \$3,000,000.00 per Person/per occurrence;
  - 2) Property damage: \$3,000,000.00 for any one (1) claim;
  - 3) Umbrella liability: \$5,000,000.00.
- B) A Service Provider's or Systems owner's or operator's public and personal liability and property damage insurance policy shall expressly include the Town, the Town Board and the Supervisor as additional named insureds.
- C) The public and personal liability and property damage insurance policy shall be issued by an agent or representative of an insurance company licensed to do business in the State, and which has one (1) of the three highest or best ratings from the Alfred M. Best Company, or an equally reputable rating Service.
- D) The liability and property damage insurance policy shall contain an endorsement obligating the insurance company to furnish the Town Board with at least thirty (30) days written notice in advance of the cancellation of the insurance.
- E) Renewal or replacement policies or certificates shall be delivered to the Town Board at least thirty (30) days prior to the Expiration of the insurance which such policies are to renew or replace.
- F) Before a Service Provider provides Service to Subscribers or Users, and before a System owner or operator permits the System to be used to provide Service, the Service Provider or System owner or operator shall deliver to the Town the policies or certificates representing the required insurance, and each policy or certificate delivered shall be accompanied by evidence of payment of the full premium thereof.
- G) If the State permits a Service Provider or System owner or operator to be self-insured, then the Town Board may, at the Board's sole discretion, permit the Service Provider or System owner or operator to self-insure, so as long as the minimum amounts of insurance coverage outlined in this Section are met and maintained for the entire period that the Service Provider or System owner or operator is self-insured, and the Service Provider or System owner or operator can demonstrate to the satisfaction of the Town Board that it has the financial ability to pay in a timely manner up to the maximum amount per category as set forth in subsection (A) of this Section.

## Section 27. Performance and Completion Security.

- A) A Service Provider or System owner or operator shall, provide to the Town a performance bond or other security executed by a surety licensed to do business in the State, or if deemed necessary by the Town Board a cash deposit or irrevocable letter of credit in the name of the Town, in an amount totaling at least twenty-five thousand dollars (\$25,000.00) and not exceeding one-hundred thousand dollars (\$100,000.00). The purpose of the security is to ensure performance and compliance with the requirements and provisions of this Law and may be called, or drawn upon, as appropriate, to recompense the Town for costs, losses or damages incurred by the Town as a result of the failure to comply with this Law, up to the monetary limits

of the security. If the Town draws on a performance bond, cash deposit or irrevocable letter of credit as a result of a Service Provider's or System owner's or operator's failure to fully and timely discharge its obligations under this Law, then the Service Provider or System owner or operator shall be required to replenish the security to the minimum level required by this Law within thirty (30) days of the draw down.

- B) If the Applicant is an incumbent in the Town, the specific amount of the security required under subsection (A) of this Section shall be based in part upon the Franchisee's or Applicant's record of performance in the Town. If the Applicant has no record of performance under any authority granted by the Town, the amount of the security may in part be based upon its record of performance in other communities and the fact that it has no record of performance in the Town.
- C) In addition to the performance security required in subsection (A) of this Section, a Service Provider or System owner or operator shall furnish to the Town a construction/completion bond or other approved security prior to the time it commences any construction, upgrade, rebuild, or repair/maintenance project that has a capital construction cost or outlay exceeding one hundred thousand dollars (\$100,000.00). In determining the cost, the cost of the entire project shall be used, and a Service Provider or System owner or operator may not avoid the requirements of this section by separating or segregating the project into smaller component parts or portions, such as listing geographical sections of the Town as separate projects, whether or not they are to be done simultaneously or consecutively. The amount of the bond or other security shall equal at least seventy-five percent (75%) of the projected capital cost. Any component parts or portions of a project subject to the requirements of this subsection that are undertaken within a twelve (12) month period shall be deemed the same project.
- D) To minimize and control the disruption of the normal and usual use of the streets and rights-of-way in the Town, any construction/completion bond or other permitted form of security shall expressly guarantee that a Service Provider or System owner or operator will in a timely manner abide by the schedule for the project as approved by the Town Board or Administrator and that the Service Provider or System owner or operator will Complete the project in a timely manner.
- E) If the Town Board draws on a completion bond or other permitted form of security as a result of a Service Provider's or System owner's or operator's failure to timely and fully discharge its obligations and Complete any project subject to this subsection, then the affected Service Provider or System owner or operator shall be required to replenish the completion and performance bond or security to the minimum level required by the Town Board or the Administrator within thirty (30) days of the date of the draw down.
- F) The performance bond or other permitted form of security shall be in force at all times as may be required by the Town Board, unless relief is granted or a schedule of reduction is detailed in a separate agreement executed between the Service Provider or System owner or operator and the Town Board.
- G) In lieu of a performance bond and/or a construction/completion bond, at its sole discretion the Town Board may accept alternative forms of security, including a written guarantee of a Service Provider or System owner or operator pledging the full faith and credit of the affected Service Provider's or System owner's or operator's ultimate parent.

## **Section 28. Maintaining Other Types of Insurance and Bonds.**

- A) Notwithstanding the insurance and bond requirements contained elsewhere in this Law, a Service Provider or System owner or operator shall obtain and maintain any other types of insurance and bonds, including, but not limited to workers compensation insurance and automobile liability insurance, that are mandated by either federal or State law, rule or regulation.
- B) Where applicable and required, a Service Provider or System owner or operators shall maintain such insurance and/or bonds in at least the required minimum amounts, and according to the minimum terms and provisions mandated by either the federal or State law, rule or regulation.

## **Section 29. Maintaining a Public Inspection File.**

- A) To the extent required by Federal and/or State law, rule or regulation, a Service Provider or System owner or operator shall maintain records and reports and assure that they are available upon request for inspection by the following:
  - 1) The general public;
  - 2) Subscribers and Users of the Service or System, and
  - 3) the Town Board, the Administrator or other Town officials, or the designee of such.
- B) A Service Provider or System owner or operator shall maintain a public inspection file which shall include at least the following:
  - 1) ownership records;
  - 4) Equal Employment Opportunity (EEO) data;
  - 5) Testing data and records pursuant to the FCC's rules, if applicable; and
  - 6) any other records or information required to be contained in a public inspection file by federal or State law, rule or regulation.
- C) Notwithstanding subsection (B), and unless preempted or prohibited by the State or the FCC, a System owner or operator shall include in the public inspection file:
  - 1) a current Rate card detailing rates for all Services and for any equipment placed at a Subscriber's or User's location, charges for installation, Late Charges or Fees and the policy regarding the imposition of Late Charges;
  - 2) a copy of the current complaint resolution policy;
  - 3) a copy of the current disconnection policy, including both voluntary and involuntary disconnections;
  - 4) a copy of the current policy regarding the issuance of credits or rebates for Loss or Diminution of Service, missed appointments and refunds due upon disconnection or downgrade from prepayments; and

## **Section 30. Retention and Submission of Reports and Records.**

- A) Notwithstanding any requirements contained elsewhere in this Law, a Service Provider or System owner or operator shall maintain, and upon request by the Town Board or its designee, provide records as are reasonably necessary for the Town to determine compliance with the provisions of this Law, and to determine the Service Provider's or System owner's or operator's legal, technical, financial and character qualifications as may needed from time-to-time to administer this Law and the Franchise.



- B) On or before January 1<sup>st</sup> of each year after the effective date of this Law, a Service Provider or System owner or operator shall submit to a designated Town official a list of files, reports, records, data or other information that the Service Provider or System owner or operator periodically and/or regularly and customarily files with the FCC or the PSC or any other federal or State agency because of its status as a Service Provider or System owner or operator that are applicable to or have affect on the System or the provision of Service in the Town. For any other report that a Service Provider or System owner or operator files with any other federal or State agency, and that has or will have a direct impact on the operation of the System or the provision of in the Town within one-hundred and eighty (180) days of the filing, then the Service Provider or System owner or operator shall notify the Town Board or Administrator of the filing within fifteen (15) days of the date of the filing. The notice shall inform the Town Board or Administrator of the nature and scope of the filing and the effect or intended effect, and the agency with whom the filing was made, including the name, address, department, division, and phone number of the recipient.
- C) As part of any compliance review or evaluation, or for any legitimate matter related to the administration and enforcement of this Law or a Service Provider's or System owner's or operator's Franchise, or any permitted operation under this Law, pursuant to subsection (B) of this Section the Town Board or the Administrator may require the provision of any reports, records, data or other information that filed with the FCC, the Securities and Exchange Commission (SEC) or any other federal or State agency that affects the ownership or operation of the System or the provision of Service in the Town. However, unless the Town is expressly authorized to require such by State or federal law, a Service Provider or System owner or operator shall not be required to provide any State or Federal tax returns, or any documents that are expressly exempted under State or federal privacy laws, including any applicable provision of the PSC and Section 631 of the Cable Act (codified at 47 USC 551).
- D) For the purposes intended under this Section, an address shall be required to be provided, but without giving the name of the Subscriber or User located at that address, unless the consent of the Subscriber or User is obtained.
- E) Notwithstanding anything to the contrary in the preceding subsection (B) of this Section, the Town shall have the right and authority to require the delivery to the Town of any information related to determining the adequacy of any payments due the Town, including, but not limited to Franchise Fee payments, Rent, User Fees, licenses or taxes of any kind. However, the Town may not require the delivery of original documents, but may require the delivery of photostatic copies of such.
- F) Notwithstanding anything to the contrary in the preceding subsection (D), the Town reserves the right to require, as deemed necessary for the administration and enforcement of this Law or a Franchise, that a Franchisee or other Service Provider or System owner or operator deliver to the Town copies of all applications, reports, documents, correspondence, pleadings and petitions of any kind that relate to or have an effect on the System, the System owner's or operator's or the Service Provider's ownership or operation of the Service or System, or on the franchising or regulatory authority of the Town, that are submitted by or on behalf of the Franchisee or other Service Provider or System owner or operator, without regard to the federal or State regulatory agencies or courts where such addresses issues which affect, or have the intent of affecting, the operation of the Service Provider's or System owner's or operator's Service or System within the Town, or the Town's regulatory authority. The information shall be provided in a timely and expeditious manner, and as may further be required by this Law or a Franchise agreement .

- G) No Service Provider or System owner or operator shall use the delay of the provision of the information required under this Section to prevent the Town Board from exercising its rights or performing its duties and obligations under this Law or any applicable federal or State law, rule or regulation.
- H) Copies of such responses, decisions, or any other communications from the regulatory agencies or courts set forth in this Section to a Service Provider or System owner or operator or its agent, including the Service Provider's or System owner's or operator's ultimate parent, its attorney, or its consultants, that are relative to the Service Provider or System owner or operator, or the operation of the System or the provision of Service in the Town, that would have an effect on the operation of System or the provision of Service within the Town, or the ownership, shall likewise be filed with the Town immediately upon the filing or receipt of such, but in no case later than fifteen (15) days after the filing or receipt thereof.
- I) In addition to the requirements noted in the preceding subsections of this Section, a Service Provider or System owner or operator shall in a timely manner submit those reports, statements and logs required by this Law that are necessary for the proper and diligent administration and enforcement of this Law or any Franchise granted by the Town, including, but not limited to, the following:
1. a periodic Gross Revenue statement and report in the manner set forth in this Law;
  2. a copy of the Loss of Service or Outage log applicable to the System or Service in the Town, showing all Service outages of any kind and duration, in accordance with the requirements in this Law and any Franchise;
  3. preventive maintenance reports as set forth in this Law;
  4. if applicable, the FCC Form 394 or any subsequent equivalent form concerning Assignment or Transfer of a System owner or operator or Service Provider that is subject to Section 617 of the Cable Act of 1984, as amended (at 47 U.S.C 537), or if not applicable to the aforementioned FCC Form 394, a formal request for Transfer;
  5. if applicable, a copy of the FCC Form 395-A or any subsequent equivalent form concerning equal employment opportunity (EEO) and fair contracting policies; and
  6. if applicable, a copy of any required State authorization to operate a System or provide Service using a System.

### **Section 31. Inspection and Review of Books, Records, and Other Data.**

- A) A Service Provider or System owner or operator shall keep complete and accurate books of accounts and records of the business and operations in connection with the operation of System and/or the provision of Service in the Town, including records of inspection and maintenance activity in sufficient detail to ascertain the diligence and adequacy of the inspection and maintenance program.
- B) The Town Board, the Administrator, or a duly authorized designee of either, shall always have the right to require the provision of and delivery to the Town offices, or the offices of the Town's designee, information or records, including true and complete photostatic copies of any records, as may be necessary and required to administer this Law or any Franchise. At the discretion of the Town Board or the Administrator, and in lieu of the preceding, the Company may be permitted to provide attested and certified summaries of information in the form and format determined by the Town Board.

- C) Requests for information and records shall be provided within five (5) days of the receipt of a written request, unless the retention of such records is expressly exempted by one or more provisions of a Franchise, or unless the time for the provision of such records is extended by the Town Board or the Administrator. In an emergency situation the information may be required to be provided sooner.
- D) It shall be the responsibility of the Service Provider or System owner or operator to retain and maintain records and information so as to enable their provision in a timely manner as required by this Law. The period of time for the required retention of such records shall be for the period of time represented by the State's statute of limitations given the facts and circumstances involved.
- E) The Town shall have the right, at its own expense, to hire, an independent certified public accountant or other business professional to review the books and records of a Service Provider or System owner or operator, or at the discretion of the Town Board or the Administrator, attested and certified summaries of information in the form and format determined by the Board or the Administrator. If, after a financial audit or analysis, it is determined that the Service Provider or System owner or operator has underpaid amounts owed to the Town by one percent (1%) or more of the amount owed or \$2,000, whichever is less, then the Service Provider or System owner or operator may be required to reimburse the Town for the actual cost of the audit or review. Absent fraud, any audit by an independent certified public accountant or other qualified professional retained by the Town shall be binding.
- F) A false entry into the books and/or records of a Service Provider or System owner or operator of a material fact or amount made by a Service Provider or System owner or operator or any employee or contractor of the Service Provider or System owner or operator, shall constitute a material violation of this Law and, at the discretion of Town Board, subject the Service Provider or System owner or operator to termination and revocation of its Franchise, and any and all fines and penalties, both civil and criminal, as permitted under law. An unintentional erroneous entry made in good faith and of de minimus negative affect, shall be deemed a Technical violation or breach and shall not constitute a material violation of this Law, nor subject a Service Provider or System owner or operator to any damages or penalties of any kind.
- G) Unless granted relief pursuant to Section 8 of this Law, a Service Provider or System owner or operator shall keep complete and accurate books and records of the key aspects of the Service Provider's or System owner's or operator's operation at the local office for at least the preceding three (3) years, and in such a manner that all matters pertaining to the Town can be easily produced and/or verified at the request of the Town. A Service Provider or System owner or operator shall be permitted to keep such records at a different location for the period of time represented by the State's statute of limitations so long as copies of the records will be delivered to the Town or its designee upon request as may be needed for the administration and enforcement of this Law or the Franchise.
- H) The Service Provider or System owner or operator shall also keep at its local office, and shall make available and provide upon request by the Town, any other applicable records and information that may be required by any other federal or State agency, including the PSC, that has jurisdiction over one or more classes of Service Provider or System owner or operators as relate to the operation of the System or the provision of Service, including financial matters.

- I) Notwithstanding anything else in this Section, no Service Provider or System owner or operator shall be required to provide information that is by law expressly deemed confidential or proprietary.
- J) Failure to comply with the provisions of this Section shall subject the Service Provider or System owner or operator to fines or penalties as set forth in Section 113 of this Law.
- K) To the extent permitted by applicable State and federal law, the Town shall not disclose or use any information provided by a Service Provider or System owner or operator in a manner that would reasonably be deemed to provide a competitive advantage to another Service Provider or System owner or operator, or that would reasonably be deemed place the Service Provider or System owner or operator at a competitive disadvantage.
- E) No Service Provider or System owner or operator shall use the delay of the provision of the information required under this Section to prevent the Town Board from exercising its rights or performing its duties and obligations under this Law or any applicable federal or State law, rule or regulation.

## **Sections 32 -- 37. Reserved.**

## **Section 38. Applicability of State Consumer Sales Practices Laws.**

In addition to any and all requirements of this Law relating to matters of Consumer Protection, each and every Service Provider or System owner or operator shall comply with, and abide by, all applicable provisions of any State law concerning sales practices and Consumer Protection requirements.

## **Section 39. Subscriber or User Security Deposits**

As a matter of Consumer Protection, the Town establishes the following regulations related to Subscriber or User Security Deposits.

- A) A Franchisee or other Service Provider or System owner or operator shall be permitted to require refundable security deposits in circumstances consistent with reasonable business practices and applicable State law, but only where such deposits are necessary to protect the System owner's or operators' or Service Provider's investment in equipment loaned, leased or rented to a Subscriber or User, or to ensure payment where there is reasonable evidence of a risk of non-payment such as history of repeated non-payment.
- B) Security Deposits shall be kept in a separate interest-bearing account and the Subscribers or Users shall annually be paid all interest earned on the deposits and shall record and account for the collective amounts of the deposits separately from any other account. At no time shall there be a co-mingling or mixing of Security Deposit money in accounts with any other monetary receipts.
- C) Upon termination of Service for any reason, the Subscriber or User shall receive a refund of any deposit, including all accrued and unpaid interest, within thirty (30) days of the termination or cancellation of Service, subject to (i) an offset or credit for all outstanding obligations of the Subscriber or User to the Franchisee or other Service Provider or System owner or operator, including outstanding Service charges, and (ii) return of all equipment provided by the

Franchisee or other Service Provider or System owner or operator in connection with the Services received by the Subscriber or User in suitable condition, normal wear and tear expected.

- D) In no circumstances shall a Service Provider or System owner or operator be permitted to use any deposits for working capital, or allow any deposits to be used for working capital, or to be used for any purpose other than to serve as security against the loss of any amounts owed or for loss of or damage to equipment pursuant to subsection (F) of this Section, unless the Service Provider or System owner or operator annually pays the depositor interest on the money used at the prevailing rate of interest for commercial loans in effect at the time the deposit was used. Failure to pay interest as set forth in this subsection shall subject the offending Service Provider or System owner or operator to interest at the Rate of ten percent (10%) per annum, which interest shall be compensatory in nature to the depositor, and shall not preclude the imposition or assessment of a Fine or Penalty as set forth in this Law or as may be permitted under State law.
- E) All deposits for equipment shall be returned, with interest if applicable under this Law, within thirty (30) days of the cancellation or termination of the Service or the return of the equipment for which the deposit was made, provided the equipment is returned in good working order, normal wear and tear excepted and further provided there is no outstanding amounts owed to the Service Provider or System owner or operator ..
- F) Failure to meet the requirements of this Section may, at the discretion of the Town Board, result in fines or penalties as set forth in this Law and other sanctions as permitted under law.

#### **Section 40. Preferential or Discriminatory Practices Prohibited.**

- A) As a matter of Consumer protection and Equal Protection rights under the United States Constitution, a Service Provider or System owner or operator shall not as to rules, regulations, rates, charges, provision of Service or the use of a Service Provider's or System owner's or operator's facilities and equipment, make, allow, or grant any undue and impermissible preference or advantage to any Person, nor subject any Person to prejudice or disadvantage, on the basis of race, creed, color, sex, national origin, handicap or physical condition, religious affiliation, location of residence or income.
- B) Subsection (A) of this Section, does not prohibit a Service Provider or System owner or operator from denying Service based on the location of a residence or business if that residence or business is outside the parameters for any Line Extension, allowing for any cost-sharing formula, as may be detailed in a Franchise.

#### **Sections 41 -- 45. Reserved.**

#### **Section 46. Restoration of a Subscriber or User's Property.**

- A) If at any time a Service Provider or System owner or operator shall disturb the yard, residence, or other real or personal property of a Subscriber or User, such Service Provider or System owner or operator shall ensure that the Subscriber's or User's yard, residence, place of business or other real or personal property is returned or restored to a condition comparable to that which existed prior to the commencement of the work or to the creation of the damage.
- B) The costs associated with both the disturbance and the return, replacement, and/or restoration shall be borne solely by the Service Provider or System owner or operator. The Service Provider or System owner or operator shall reimburse a Subscriber or User or private property owner, for

minimum number and effect, and after ordering the remedy or elimination of the failures and providing a period of time to comply with the order, the Town may order a reinspection in order to verify the resolution or elimination of any failure or problem by a Service Provider or System owner or operator.

- E) In instances involving reimbursement under subsection (C) of this Section, at the discretion of the Town Board or the Administrator, the Service Provider or System owner or operator may be required to reimburse the Town for all of the actual costs that are incurred by the Town to obtain the necessary information; or that are incurred to conduct or have conducted any needed reinspection. If, upon reinspection, all failures to construct, install, maintain, repair, rebuild or upgrade any portion of the Service Provider's or System owner's or operator's System or facilities have been eliminated, the Town Board or the Administrator may, at their discretion, waive the reimbursement requirement.
- F) The reimbursable costs as described in this Section are deemed reimbursable because either the costs were precipitated by the unreasonable or non-compliant behavior of the System owner or operator or the Service Provider, or because the costs are related to actions of enforcement for violations or breaches committed, neither of which is a part of the normal administrative function of this Law or of Franchise, and are extraordinary costs that would not have been incurred were it not for the impermissible action or violation by the System owner or operator or the Service Provider.

## **Sections 73 -- 77. Reserved.**

### **Section 78. Provisions to Alert Subscriber or Users in the Event of a Disaster Emergency; Standby Power.**

- A) In order that Subscribers or Users may be alerted in the event of an impending, imminent or actual natural or other disaster or emergency, unless prohibited by federal law or rule, all Service Providers or System owners or operators shall ensure that the System or facilities providing Service to all or any part of the Town are designed, constructed and installed with equipment that will permit an authorized official or designee of the Town to override the audio portion of all video Channels or Signals by touch-tone phone or functional equivalent, from any location.
- B) In addition to any other requirements listed in this Section, a provider of Video Programming Service or Multichannel Programming Service shall:
  - 1) designate a channel which will be used for disaster/emergency broadcasts of both audio and video, though this channel need not be solely used for emergency broadcasts, and may be used for any lawful purpose until needed in an emergency or disaster; and then only for the duration of the emergency or disaster.
  - 2) inform Subscriber or Users of the designated emergency Channel on a periodic basis, but not less than once a week;
  - 3) maintain all-Channel video blanking capability to facilitate the needs of the hearing and sight-impaired Subscribers or Users;
  - 4) test the emergency override function not less than once a month, and remedy any problems or operational deficiencies immediately;
  - 5) train designated Town officials and cooperate with the Town on the use and operation of the emergency alert override function; and
  - 6) develop a plan, with the Town's concurrence, to provide Continuity of Service, and response to Service calls, in the event of an emergency or disaster.

- A) As one method of assuring Continuity of Services in the event of a failure of commercial electrical power for reasons including, but not limited to a natural or other disaster or emergency, a Service Provider or System owner or operator shall install and diligently maintain automatically activated standby or backup power so that all active System components remain functional for at least two (2) hours, and additionally install and diligently maintain an automatically activated standby generator at all Headends, hubs, nodes and receive sites associated with the distribution of Service to and throughout the Town that are owned or under the control of the Service Provider or System owner or operator or any affiliate or parent entity.
- B) For purposes intended under this Section, the Town Board shall designate one or more officials of the Town who are authorized to declare an emergency or disaster and access and use the override function of the System.

### **Section 79. Implementation of a Preventive Maintenance Program.**

- A) It shall be the duty of a Service Provider or System owner or operator to devise, implement and diligently conduct a preventative maintenance program in order to assure that there is no material degradation of the operation, performance or condition of the Service or System that would threaten, endanger or in a substantive manner negatively affect the public health, safety, or welfare of the public, or the reliability of Service anywhere in the Town, or negatively affect the quality of Service as may be required by applicable rules.
- B) Thirty (30) days after each calendar quarter, a Service Provider or System owner or operator shall notify the Town Board, or the Administrator, of the preventive maintenance information available for that calendar quarter, and that such information is available to be delivered for inspection, examination, review and analysis.

### **Section 80. Safety Requirements.**

- A) All System owners or operators or Service Providers shall at all times and without exception comply with the most current editions of the National Electrical Safety Code (NESC), the National Electrical Code (NEC) and the Occupational Safety and Health Act (OSHA). This shall mean that any changes in or amendments to these codes and law shall be deemed to have been automatically adopted by the Town with respect to this Law, unless expressly rejected by the Town Board.
- B) In cases involving safety issues related to utility poles, including the requirement to regularly inspect the System and facilities for violations of the NESC, including but not limited to issues of minimum clearances or impermissible contact of the facilities of two occupants of the poles, and where there is a question as to which party caused the violation, the System owner or operator or the Service Provider may be required to provide the following, as applicable under the circumstance:
  - 1. a copy of the request for makeready for the situation at that location showing the date of the request; or
  - 2. a copy of the signed and dated work order showing the date of installation for the particular subscriber or address; or
  - 3. a copy of the signed and dated work order for the latest service call for the particular subscriber or address.

- A) In cases involving subsection (B)(2) or (3) of this Section, where individually identifiable subscriber information may be revealed, it shall nevertheless be responsibility of the System owner or operator or Service Provider to provide proof of the date in question, but without identifying the name of the subscriber, unless the subscriber's permission has been obtained.
- B) To provide for the maximum possible protection of the health and safety of persons and property in the Town, the Town deems it necessary to adopt a policy of "zero" (0) tolerance of safety-related violations associated with any System or the provision of any Service in the Town, excepting those caused by Subscribers, Users or the public and which the Service Provider was not aware of or should not have reasonably been aware existed. Notwithstanding the preceding exception, it shall always be the responsibility of the Service Provider or System owner or operator to remedy and eliminate any safety-related violations associated with its System or Service as such may be found, or if caused by a third party to diligently pursue the remedy and elimination of the violation.
- C) To enable the Town to take any needed action or precaution to alert or otherwise protect persons and property in the Town, it shall be the responsibility and obligation of any Service Provider or System owner or operator to report to the Town any violation of safety codes, regulations or requirements, or the construction or construction-related requirements of this Law that is identified and is not able to be remedied within twenty-four (24) hours of the time of its identification, or if caused by a Subscriber or User and due to the location on private property is not able to be remedied within the required twenty-four (24) hours. For purposes of this subsection, the notice to the Town shall be done the same day by phone, and the next day in writing.
- D) It shall be the immediate and primary responsibility of the Service Provider or System owner or operator to place appropriate and effective warning signs and protective devices or barriers at the site of any such safety violations that create an imminent danger or threat.
- E) Notwithstanding anything to the contrary in the Section of this Law entitled Fines and Penalties, there shall be no Fine or Penalty assessed or imposed for construction or construction-related or safety or safety-related violations that are voluntarily, and of the System owner's or operator's or Service Provider's own accord and volition, reported to the Town in accordance with the subsection (D) of this Section prior to any injury or harm having been caused, and provided that the report of a situation occurs prior to or on the same day as a third party report that the Town receives that is relevant to this Section, and if the violation is eliminated within twenty-four (24) hours, or in such time-frame as may otherwise be approved by the Town Board or the Administrator.

## **Sections 81 -- 85. Reserved.**

## **Section 86. Franchise Required.**

- A) No Person, Service Provider or System owner or operator, shall be permitted to construct, build, rebuild, upgrade or operate a System or provide Service in, along, over, under or across Town property or streets or rights-of-way of the Town, without having first obtained a Franchise, unless such Person, Service Provider or System owner or operator is exempted from this requirement under State or federal law.



- B) No Franchise shall be required for either the Town, or for any authority affiliated with the Town, to own a System or provide Service in the Town, or to operate as a Service Provider or System owner or operator in the Town, unless required to do so by State law.

### **Section 87. Initial Franchises; Authority to Grant Non-Exclusive Franchises; Required Permitting.**

- A) The Town Board may award one (1) or more non-exclusive Franchises within its corporate limits, or any area outside the corporate limits that is under the Town's governmental or regulatory control, including the Town's police powers.
- B) No Franchise granting authority to construct and operate a System or provide Service in the Town shall be exclusive.
- C) A Service Provider's or System owner's or operator's Application or Proposal shall be evaluated and approved or disapproved as part of a public proceeding and hearing which affords the Applicant and the public an opportunity to be heard, and which is in accordance with applicable federal and State laws, rules and regulations.
- D) Any Service Provider or System owner or operator shall proceed with due diligence and its best efforts to obtain, at its own costs, all necessary permits, licenses, and authorizations which are required for the conduct of its business in the Town within thirty (30) days after the effective date of an initial Franchise, including, but not limited to, any private easement agreements, business licenses, utility joint use or attachment agreements, microwave carrier licenses, and any other permits, licenses and authorizations needed to lawfully provide Service or operate a System within the Town.
- E) A Service Provider or System owner or operator shall have in its possession all necessary and required permits, easements, agreements and licenses prior to the commencement of any construction, rebuild or upgrade of the System, and, if applicable, the provision of service.

### **Section 88. Franchise Agreement; Minimum Requirements.**

- A) A Service Provider or System owner or operator subject to this Law may not lay or use any cable, lines or wires, whether coaxial, fiber, or a functional equivalent, or any other equipment or facilities, on Town-owned property or in the Town's rights-of-way until the Franchise is fully executed and is in effect, including approval by the PSC if such is required.
- B) A Franchise shall be sufficiently detailed so as to clearly delineate the rights, privileges, duties, obligations and limitations of the parties concerned.
- C) As permitted, and as may be applicable to a particular class or type of Service Provider or System owner or operator, a Franchise shall, at a minimum, contain and address the following matters, as well as any requirements in accordance with any applicable rules of the PSC:
  - 1. the term or duration of the Franchise;
  - 2. an indemnity and hold harmless provision;
  - 3. an insurance commitment, as required;
  - 4. performance bonds or other security, as required;
  - 5. completion bonds or other security, as required;

6. the clearly designated Service area;
7. a schedule of service to any unserved areas of the Town;
8. the construction, upgrade or rebuild schedule, if applicable;
9. compensation, including, but not necessarily limited to a Franchise Fee for administering the Franchise;
10. a Fee or Rent for the commercial use and occupancy of the Town's property and rights-of-way
11. a statement of repeal of any previously granted or inconsistent Franchise;
12. a severability clause;
13. a commitment to abide by any and all laws, rules and regulations that govern the Franchise or its use and occupancy of the Town's property and rights-of-way and the provision of Service;
14. any exemptions or relief from this Law, or any comparable policy, as may be granted.; and
15. an effective date.

- D) Without limitation other than as may be established by superseding law, the Town shall always have the right to require additional matters, issues and subjects to be contained in a Franchise, as may be reasonably deemed necessary in the interest of and to protect the Town and its residents.

### **Section 89. Extent of Grant of a Franchise; Wireline System and Service**

- A) Upon an award of a Franchise, and in accordance with the terms of the Franchise, a Service Provider or System owner or operator required to obtain a Franchise may construct, erect, install, maintain, rebuild, upgrade, operate, repair, replace, remove, and restore Service or a System within the geographical limits set forth in the Franchise, but only to the extent permitted by this Law and the terms and conditions of the Franchise.
- B) Any Franchise granted under this Law shall be solely and exclusively for Wireline Service, unless express written authority and permission to use the System for the receipt or provision of Wireless Service(s) is obtained from the Town, and no Wireless reception or transmission equipment or facilities shall be attached to or use the Wireline System located on or using Town-owned property or rights-of-way without the express written permission of the Town, which authority must be expressly contained in any Franchise.
- C) The System may be located in, upon, along, across, over, and under the streets, rights-of-way, easements, and public ways of the Town as more specifically set forth in the Franchise, but only to the extent set forth in this Law and the Franchise.
- D) A Service Provider or System owner or operator shall be solely and separately responsible for obtaining any required easements for the use of private property, including privately-owned utility or street light poles, solely at its own cost.
- E) A Service Provider or System owner or operator, through a separate pole or conduit agreement with a utility, or the Town, may locate the System on, or within, the easement or property of such utility in the Town, so long as the System and Service is deemed a compatible use of the easement and such use is expressly permitted by the holder or owner of the easement.

## **Section 90. Term of a Franchise.**

- A) The term of an initial Franchise shall be no more than ten (10) years from the date that a Franchise is approved by the Town Board and is executed by an authorized official of the Town and the affected Service Provider or System owner or operator. Ten (10) years shall be the maximum term permitted absent the demonstration of the need for a longer term for financial reasons, such as, for purposes of example, the time needed to recoup the initial investment plus a reasonable return on the investment as set forth in subsection (C) of this Section.
- B) No Franchise may contain an option to extend the term of the Franchise where such option is automatic or able to be unilaterally exercised.
- C) The Town shall not be obligated to grant a Franchise for a period of time that is greater than is necessary to recoup the amount of any capital expended that was required by the Town or as may be agreed to during negotiations for the Franchise, plus a return-on-investment attributable to that capital investment.
- D) The permitted return-on-investment shall be as may be agreed to in the Franchise, or as may be established by the FCC or the PSC for telecommunications utilities, or 11.5%, whichever is less.
- E) A System owner or operator or Service Provider shall be required to demonstrate to the Town Board the financial need of the requested term of the Franchise in the form of an analysis as deemed appropriate and necessary and in reasonable detail as may be required by the Town Board.
- F) Unless ordered or otherwise required by a court of competent jurisdiction, or unless required by State law, the Town shall not disclose the details of financial information provided under this Section, other than to make public the length or term of the Franchise and the rate of return on capital investment used to determine or verify the need and justification for the term granted.
- G) The term of a renewal of a Franchise or the grant of a Franchise subsequent to an initial Franchise to an incumbent Service Provider or System owner or operator, shall be for a period of not less than three and one-half (3 ½) years, measured from the date that a Franchise is approved by the Town Board, and if required is approved by the PSC. The maximum term shall be no more than ten (10) years, absent demonstration of the financial need for a longer term as set forth in this Section.
- H) In the event of the Expiration of a Franchise prior to the renewal or issuance of a subsequent or different Franchise than that originally granted, unless prohibited by State law or rule, at the discretion of the Town Board continued authority may be granted in ninety (90) day increments.

## **Section 91. Service Area.**

- A) An Application or Proposal for a Franchise, or for the grant of a Franchise subsequent to the Expiration of a previously granted Franchise, may, at the discretion of the Town Board, be required to include a plan to make Service available to any or all residences, dwellings, businesses and establishments located on any or all public streets and roads throughout the Town.
- B) As determined by the Town Board at its discretion, the cost of any Line Extension may either be apportioned among the Subscribers and Users of that Line Extension or, at the discretion of

the Town Board, among all Subscribers and Users of that System or Service Provider in the Town.

- C) If the Town adds or incorporates additional land through annexation or any other lawful means, pursuant to subsection (A) of this Section the Service Provider or System owner or operator serving that area may, at the discretion of the Town Board, be required to extend Service to the new locations within the reasonable time frame established by the Town Board.
- D) A plan submitted or required to be submitted pursuant to subsection (A) of this Section that requires more than one (1) year for Completion as measured from the date of the directive of the Town Board shall be accompanied by a detailed explanation justifying the need for the additional time, which justification shall include detailed supporting evidence of the reasons for the needed additional time, as well as a date specific by which Service shall be available to all residences, dwellings, businesses and establishments on any or all public streets and roads in the subject area.
- E) Town Board may grant relief from this requirement for one or more unserved areas within the Town if the Applicant provides an explanation acceptable to the Town as to why a particular area can not be served.

## **Section 92. System or Service Expansion.**

Any Franchise Agreement that does not contain a plan for service to all occupied homes and buildings in the Town, pursuant to Section 91 of this Law, shall contain a System expansion or Line Extension plan and schedule for areas not served as of the effective date of the Franchise.

## **Section 93. Application for Franchise.**

- A) For Service Providers or System owners or operators classified as Cable Operators, the Town Board shall follow all applicable rules of the FCC and the PSC, with respect to the submission and processing of initial and renewal Applications or Proposals for a Franchise. Notwithstanding the preceding, in the event the Applicant is an incumbent and proposes or requests to be permitted to allow the System to be used for the provision service other than for Cable Service as defined under Section 631 (a)(2) of the Communications Act of 1934 (at 47 USC 551(a)(2)), such Application or Proposal shall not be deemed a renewal Application or a renewal Proposal. Any Proposal or Application by a current holder of a Cable Franchise Agreement with the Town, and which Proposal is for the provision of Service or the ownership or operation of a System as defined in Section 5 of this Law shall be deemed an initial Application or a renewal Proposal, except as regards the provision of Cable Service or the use of the System to provide Cable Service, in which case that portion of the Application related to the provision of Cable Service, but only that portion, shall be deemed a renewal Application subject to Section 626 of the Cable Act of 1984, as amended (at 47 U.S.C 546).
- B) For Service Providers or System owners or operators not deemed solely Cable Operators, and thus subject to the rules of the FCC and the PSC as set forth under subsection (A) of this Section, the Town Board may develop rules with respect to the submission and processing of initial and renewal Applications or Proposals for a Franchise. Such rules and regulations shall primarily be aimed at determining the legal, financial, technical, and character qualifications of the Applicant, though the Town may also consider other matters deemed of importance that are not prohibited from consideration by applicable law, including but not limited to the Applicant's or Proposer's history of performance and compliance, both in the Town and elsewhere.

- C) With respect to an initial Application or Proposal for a Franchise, an Applicant shall pay an initial non-refundable Application Fee as established by Resolution of the Town Board, which fee shall be for the purpose of covering the Town's fully allocated costs of processing and analyzing the Application. An Application for a Franchise that permits uses of a System not expressly set forth in previous Franchise shall be deemed an initial Application for an initial Franchise.
- D) An initial Application for a Franchise to use and occupy the Town's Property and Town-owned and managed rights-of-way to provide Service or own or operate a System for commercial purposes shall place a deposit with the Town in the amount of \$20,000 to cover actual costs associated with, attributable to and necessitated by the process.
- E) As the Town would otherwise be required to deal with experts in the industry without the aid of equal expertise and knowledge, which situation creates an insurmountable disadvantage for the Town and would prevent the Town Board from making truly informed decisions, the cost of outside expert assistance, including legal assistance as may be necessary, is deemed a cost associated with, attributable to and necessitated by the process for the purposes intended by this Section. At any time during the processing of an Application or Proposal and the negotiation of a Franchise that the balance of the deposit required under subsection (D) of this Section is less than \$5,000, then upon notice by the Town the Applicant shall be required to restore the deposit to \$7,500 before further processing of the Application or Proposal. At the conclusion of the process any remaining balance shall be promptly returned to the Applicant.
- F) As consideration of a request for renewal of a Franchise is deemed an extraordinary cost to the Town that is not part of the normal administration of the existing Franchise, then unless expressly prohibited by federal law or rule, an Applicant requesting a renewal of its a Franchise or the grant of a new Franchise subsequent to the grant of a previous one, may be required by the Town to place on deposit with the Town an amount not to exceed \$20,000 to cover the fully allocated costs of processing and analyzing the Application or Proposal. At the conclusion of the process any remaining balance shall be promptly returned to the Applicant.
- G) An Applicant with an existing Franchise shall not be required to pay both an Application Fee under subsection (D) of this Section and place a deposit under subsection (E) of this Section, regardless of the nature of the Application.
- H) Any Application or Proposal shall be accompanied by the amount required at the time of the filing of the Application or Proposal. In the event the Application or Proposal is not accompanied by the required payment or deposit the Application or Proposal shall be deemed incomplete and no action shall be taken on the Application or Proposal until the required deposit is received.

## **Section 94. Franchise Fees.**

- A) Any Service Provider or System owner or operator that is granted a Franchise or the renewal of a Franchise after the date this Law becomes effective, shall pay to the Town an amount that is equal to the fully allocated cost of administering the Franchise for the year, which cost shall be based on the budget adopted by the Town for that year.
- B) Notwithstanding the requirement of subsection (A) of this Section, the Town may at its discretion elect to assess a Franchise Fee in any amount up to the maximum amount permitted under law.

- C) The requirements of this Section shall not change the terms of payment or increase the computational formula for the payment of a Franchise Fee contained in a Franchise Agreement in existence and effective as of the effective date of this Law.
- D) The Franchise Fee shall be paid on a calendar quarter basis, unless otherwise stated in the Franchise, and shall be deemed late if received later than forty-five (45) days after the end of any calendar quarter.
- E) Notwithstanding anything to the contrary in subsections (A) or (B) of this Section, upon the expiration of a Franchise Agreement in existence as of the effective date of this Law that contained a smaller Franchise Fee than is permitted by law, the Town may increase the previously required Franchise Fee to the maximum permitted under law, including for or during any period of continued authority pending the grant of a new or renewed Franchise.
- F) If the Town assesses the Franchise Fee as a percentage of revenue, notwithstanding the fact that certain types of Service Providers or System owners or operators may be required to remit an annual Fee to the PSC, to the extent that the payment of such annual Fee, when added to the Franchise Fee payable to the Town, is greater than the maximum permitted by law, and to the extent required by law, but only if expressly required, the amount of the PSC's annual Fee shall be permitted to be deducted from the amount that would otherwise have been permitted to be paid to the Town. In the event that the Service Provider or System owner or operator does not pay the annual Fee to the PSC out of Gross Revenue, but elects merely to collect the Fee from Subscribers separately and apart from the Rate for Service and other Charges, and remit the amount so collected to the PSC, then the amount remitted to the PSC shall not be permitted to be deducted from the amount that would otherwise have been permitted to have been paid to the Town.
- G) If the Town assesses the Franchise Fee as a percentage of revenue, then if the FCC, Congress or any other governmental agency with authority to establish the maximum allowable Franchise Fee increases the maximum permissible Franchise Fee beyond five percent (5%) of Gross Revenue, then upon ninety (90) days notice by the Town to the Franchisee, to protect against the derogation of its rights the Town shall have the right and authority to increase the Franchise Fee to the maximum percentage or amount permissible.
- H) Subject to federal law, and notwithstanding anything preceding in this Section, and without limitation other than as established by State or federal law, nothing shall limit the authority of the Town to assess and impose a Franchise Fee, or its functional equivalent, on any source, portion, category or type of revenue, or to exempt any source, portion, category or type of revenue from inclusion in the computational base used to calculate the Franchise Fee or its functional equivalent, so long as such is done in a non-discriminatory and competitively neutral manner with respect to competitive Service Providers or System owners or operators in the Town, and so long as the Fee does not exceed the maximum allowable under law.
- I) If the Town assesses the Franchise Fee as a percentage of Revenue, then in the event the Town eliminates Subscriber revenue from the revenue base used to calculate the Franchise Fee, or decreases the percentage attributable to Subscriber revenue, upon notice from the Town of such elimination or reduction, a Service Provider or System owner or operator paying a Franchise Fee that is calculated on Subscriber revenue shall reduce the amount of Subscribers' or Users' monthly bills to reflect the decrease starting in the Subscriber's or User's next bill.
- J) If the Town assesses the Franchise Fee as a percentage of Revenue, then, unless expressly set forth to the contrary in a Franchise, a Service Provider or System owner or operator that is

required to pay a Franchise Fee or its functional equivalent shall file with the Town, within forty-five (45) days after the Expiration of each calendar quarter, a complete and unexpurgated Income Statement, together with the basis of the calculations for the Franchise Fee, showing all computations used to determine the Franchise Fee.

- K) The Income Statement required in subsection (J) of this Section shall be in the form and format used in Generally Accepted Accounting Principals (GAAP) and showing all incremental and individual types, categories and sources of revenue needed to ascertain the accuracy and completeness of the total payment and shall reflect the following requirements.
1. The Income Statement shall never be a synopsis of revenue whereby different revenue sources are grouped together showing only a single number for multiple types or sources of revenue.
  2. The Income Statement shall show all revenue and other valuable consideration from whatever source that is derived from, or caused to be derived from, or that is attributable to the operation of System and/or the provision of any Service or Use in the Town, including revenue earned from Subscribers and from those who are not Subscribers but are Users of the Service or System.
  3. The Income Statement shall be certified by an officer of the Service Provider or System owner or operator attesting to the accuracy, completeness, and veracity of the revenue figures and other information contained therein.
- A) As an alternative to the Income Statement requirements of subsections (J) and (K) of this Section, the System owner or operator or Service Provider may provide a photostatic copy of the unexpurgated Revenue Chart of Accounts applicable to the calculation of the Franchise Fee taken from the ledger of any Person or entity who derived revenue as the term Gross Revenue is defined in Section 5 of this Law, along with a Statement of Certification by an officer of the System owner or operator or the Service Provider attesting to the accuracy and completeness of the reported revenue as relates to the payment of the Franchise Fee.
- B) The provision of the information required under subsections (J) and (K) or subsection (L) of this Section shall be made simultaneously with the payment of the Franchise Fee.
- C) If the payment of the Franchise Fee is made after the deadline set forth in subsection (C) of this Section, the System owner or operator or Service Provider may be required to pay the Town interest for the entire amount owed for any period of time beyond the deadline set forth in subsection (C) of this Section. The interest shall be the Prime Rate as listed in the Wall Street Journal as of the end of the calendar quarter for which the payment is due, plus two percent (2%), unless State law establishes a maximum permissible interest Rate, in which case the rate shall be the maximum interest allowable under State law, given the facts and circumstances.
- D) In the event that the Franchise Fee payment is not made in full by the due date set forth in subsection (D) of this Section, and payment in full is not made within thirty (30) days after notice thereof by the Town, including all interest due, then in addition to the provisions of subsection (N) of this Section the Service Provider or System owner or operator may also be declared in default of the Franchise and subject to all fines, penalties and sanctions permitted under law.

- E) Should the total amount owed under subsection (M) of this Section remain unpaid for sixty (60) days after the date of the notification of non-payment or late payment, then the Franchise may be revoked, terminated, or canceled as noted elsewhere in this Law and in accordance with rights of due process.
- F) The Town Board shall have the right from time to time to examine, audit and analyze the financial records of a Service Provider or System owner or operator, including any subsidiary, affiliate or parent that derives revenue as Gross Revenue is defined in Section 5 of this Law or to require delivery to the Town true and complete copies of such records. In the alternative, the Town Board may require the delivery to the Town of photostatic copies of the Revenue Chart of Accounts of any subsidiary, affiliate or parent that derives revenue as Gross Revenue is defined in Section 5 of this for the period being reviewed. If such audit, examination or analysis discovers an underpayment of the Franchise Fee or its functional equivalent of greater than one percent (1%) of the actual amount owed, then the Service Provider or System owner or operator shall reimburse the Town for the cost of the audit, examination or analysis. It is specifically understood that the right of audit, examination and analysis, and the re-computation of any and all amounts paid, shall always be accorded the Town.
- G) If an audit or other investigation discovers that the full amount of the Franchise Fee has not been paid for a period exceeding six (6) months from the original due date, notwithstanding Subsection (N) of this Section, then the Town Board may seek full recovery of the unpaid Fees, plus interest as set forth in subsection (N) of this Section, and the Town may demand recovery all of the fully allocated costs incurred that are associated with and necessitated by the act of underpayment or non-payment, including all reasonable attorney's fees and expert's fees.
- H) If the Town assesses the Franchise Fee as a percentage of Revenue, all reports due and pertaining to the remittance of the Franchise Fee will be certified by an officer of the Service Provider or System owner or operator, or its parent, and will be provided in the form, format and detail applicable to quarterly reports pursuant to subsections (J) and (K) or subsection (L) of this Section. A Service Provider or System owner or operator shall maintain records used in the preparation of said reports for the duration of the Franchise, to be produced and delivered in their totality upon request by the Town Board.
- I) No acceptance of any payment shall be construed as a release, accord, or satisfaction of any claim that the Town may have for further or additional sums payable under the provisions this Law or any Franchise, or for any other performance or obligations of a Service Provider or System owner or operator hereunder.
- J) Pursuant to the provisions of this Law, payments of Franchise Fees made to the Town by a Service Provider or System owner or operator, or remittances of amounts collected, shall be considered in addition to, and exclusive of, any and all taxes, business licenses or Fees, or other Fees levies or assessments.
- K) A Franchise Fee required of a Cable Operator shall not include any items excluded by Section 622 (g) (2) (D) of the Cable Act (codified at 47 USC 542 (g) (2) (D)).
- L) Nothing in this Section shall limit the authority of the Town to require the payment of a Fee or other assessment of any kind, by any third party Person or entity who provides Service over or using a System in the Town for which charges are assessed to Subscribers or Users, but which charges are not received by a Service Provider or System owner or operator who has been granted a Franchise. For purposes of illustration this shall include situations where a Provider of



a particular Service using an OVS System directly bills a Subscriber or User, or when the Service Provider or System owner or operator acts as collection agent for a third party Provider of a particular Service when the third party Service Provider directly bills Subscribers or Users, or where a third party Person leases a channel for commercial purposes and receives Revenue directly or through a third party.

- M) For any twelve (12) month period, the Franchise Fees paid by any Person who provides Service pursuant to Subsection (W) of this Section, shall not exceed five percent (5%) of such Person's Gross Revenue derived in such period from the provision of Service in the Town, or the maximum permitted by law or rule at any time.
- N) Notwithstanding anything in this Section, in the event a Service Provider or System owner or operator does not pay the Franchise Fee itself out of Gross Revenue, but instead chooses to pass the Franchise Fee through to Subscriber or Users, incrementally and in addition to the amount owed for Service, so that the effect is that the Franchise Fee is paid by the Subscriber or Users and not the Service Provider or System owner or operator out of Gross Revenue, and is merely collected and remitted by the Service Provider or System owner or operator, then in such an instance the Service Provider or System owner or operator shall not be permitted to deduct the Franchise Fee from what is owed for property taxes, or any other taxes or money, due the Town if otherwise permitted.

## **Section 95. Rent or Right-of-Way Use and Occupancy Fee**

- A) Pursuant to Section 253 (c) of the Telecommunications Act of 1996, the Town reserves and preserves the right to assess, impose and collect Rent or a Right-of-Way Use and Occupancy Fee from any Service Provider or System owner or operator occupying and using the Town's property and the Town's rights-of-way for commercial purposes.
- B) If assessed, the Town shall at all times diligently attempt to assure that the imposition of Rent or a Right-of-Way Use and Occupancy Fee is done on a non-discriminatory and on a competitively neutral basis.
- C) The amount of Rent or the Right-of-Way Use and Occupancy Fee shall not be less than the fair market value of the Town's property and rights-of-way that are used and occupied for commercial purposes, as determined by the Town Board; nor shall the amount of Rent or the Right-of-Way Use and Occupancy Fee exceed the fair market value of the Town's property and rights-of-way that are used and occupied by a Service Provider or System owner or operator for commercial purposes, as determined by the Town's assessor or another qualified individual as may be designated by the Town.
- D) An assessment pursuant to this Section shall be based upon either (i) the fair market value of like or similar property adjacent to the Town's property or rights-of-way that are used and occupied by the Service Provider or System owner or operator serving that portion of the Town, or (ii) the average fair market value of commercially zoned property within the Town that is used and occupied for commercial purposes as determined by ascertaining the average or mean value for the preceding three (3) years, or (iii) up to five percent (5%) of the Gross Revenue of the Service Provider or System owner or operator as Gross Revenue is defined in Section 5 of this Law, whichever is greater. The Town Board shall make the determination which of the alternatives set forth in this subsection it chooses to use, but the Town may use only one (1) of the three (3) alternatives and never a combination of such.

- E) Notwithstanding anything to the contrary in this section, the Town may negotiate with a Service Provider or System owner or operator for the in-kind provision of Services or other valuable consideration in lieu of all or a portion of the amount that would otherwise be required to be paid. However, the Town shall not be obligated to grant this option to any Service Provider or System owner or operator, so long as it applies this authority in a manner among like or similar Service Providers that is non-discriminatory and competitively neutral in effect with respect to the value received by the Town.
- F) In the event the Town elects to determine Rent or a Right-of-Way Use and Occupancy Fee using a percentage of Gross Revenue, the requirements of subsections (J) through (X) of the previous Section shall apply.
- G) All payments of Rent or a Right-of-Way Use and Occupancy Fee shall be quarterly on a calendar year basis, unless otherwise expressly set forth in the Franchise.

### **Section 96. Assignment, Transfer or Sale of Franchise.**

- A) There shall be no assignment of a Service Provider's or System owner's or operator's Franchise, in whole or in part, nor shall there be any change in the ownership, or the legal or financial Control, of the Service Provider or System owner or operator, or of any parent or controlling entity, whether Control is direct or indirect, or where such change results in any Change in Control of the System or the facilities used to provide Service, or of the holder of the Franchise, whether such Change in Control is direct or indirect, de juri or de facto, nor shall there be any Change in Control or ownership of the System's facilities and components, without the prior express written approval and consent of the Town Board. Control and Change in Control shall have the meanings set forth in Section 5 of this Law.
- B) A Service Provider or System owner or operator classified as a Cable Operator shall have its Franchise assigned, transferred or sold only in accordance with the Cable Act of 1984 as amended, and applicable FCC rules and State law, rules and regulations.
- C) For all Service Providers or System owners or operators subject to this Section, including those classified as Cable Operators, the Franchise shall be Assigned, Transferred, sold, or Control changed, only as described in subsection (A) of this Section, and only after the Town Board determines that the proposed Transferee or controlling entity can and will meet all obligations contained in the existing Franchise, unless granted separate and deliberate relief is granted as part of the Transfer request process.
- D) No Franchise approval of request for Transfer or Change in Control shall occur with outstanding, uncured violations of this Law or breaches of the Franchise, and until all money that may be owed the Town has been paid in full.
- E) In the event the Town Board, at its sole discretion, elects to approve a request for Change in ownership or Control contingent upon the Transferee or Assignee accepting responsibility for outstanding or uncured violations of this Law or breaches of the Franchise, the Board may require the Assignee or Transferee to post sufficient security to assure that the violations and/or breaches are remedied and cured as required.
- F) Mergers or consolidations shall require the consent of the Town Board pursuant to subsection (A) of this Section.

- G) The sale of the System or the sale of any business associated with the operation of the System or the provision of Service shall require the prior consent of the Town Board.
- H) Any Assignment, Change in Control or sale as set forth in this Section that occurs without the prior written consent of the Town Board shall constitute a violation of this Law and a default of the Franchise, and may, at the discretion and in the judgment of the Town Board, subject the Franchise to revocation and other sanctions or penalties as permitted under law.

### **Section 97. Default of Franchise; and Revocation, Termination or Cancellation of Franchise.**

- A) In the case of any procedure concerning or involving the default, involuntary termination, revocation, unilateral alteration, or suspension of a Franchise granted or enforceable under this Law, the Town Board shall follow the rules and procedures set forth in this Section, unless expressly prohibited or pre-empted by State law or rule. Such action may be in addition to the payment of Fines and/or the imposition of penalties, unless otherwise deemed impermissible under applicable law.
- B) When an act of evasion, avoidance or omission, or the failure to comply with a time-related or performance-related requirement of this Law or the Franchise is committed by a Service Provider or System owner or operator which represents a material violation of a provision of this Law or the Franchise, or compromises the corporate character, or legal, financial or technical ability, integrity and/or stability of the Service Provider or System owner or operator to such a degree that the interests of the Subscribers and Users, or the Town, are substantively affected in a negative manner, then such violation, breach, act of evasion, act of avoidance or omission shall be considered a material violation of this Law and breach of any Franchise granted or enforceable hereunder. Under such circumstances, the Town shall notify the affected Service Provider or System owner or operator, in writing, of the specific violation or breach, and direct the Service Provider or System owner or operator to remedy the breach or violation in accordance with the provisions of this Law.

For illustrative purposes only, violations, breaches, acts of evasions or avoidance and omissions include, but are not limited to: bankruptcy, insolvency, failure to pay taxes or pay Franchise Fees or the functional equivalent including a Rent or Right-of-Way Use and Occupancy Fee, or repeated failure to comply with the provisions of this Law or a Franchise, after proper notice, showing a pattern of failure or refusal to abide by the terms and conditions of the Franchise or the provisions of this Law.

- C) Where a Service Provider or System owner or operator corrects any violation or breach to the satisfaction of the Town Board or as required in this Law or a Franchise within thirty (30) days after notification by the Town, and where the situation does not involve the repeat of a type of violation for which the Service Provider or System owner or operator has previously received notice within the past twenty-four (24) months, then the procedure provided for under this Section shall cease, and the enumerated condition shall not be considered in any subsequent compliance or performance review, so long as it has not been repeated.
- D) Notwithstanding anything to the contrary in subsection (C) of this Section with respect to the thirty (30) day cure period, to protect the health and safety of the public, at the discretion of the Town Board, violations of construction-related or safety-related requirements may be required to be corrected, eliminated or otherwise cured in less than thirty (30) days.

- E) A copy of the notice of violation or breach shall also be mailed to the surety of the System owner or operator or Service Provider.
- F) Within sixty (60) days, but in no case sooner than thirty (30) days, after the written notice is mailed, the Town Board or the Administrator may conduct a hearing on the matter, unless State law requires a different procedure, in which event the State-mandated procedure shall control.
- G) The Town Board shall provide written notice of the date, time and place of the hearing at least thirty (30) days prior to the hearing to the affected Service Provider or System owner or operator.
- H) At the time of the hearing, the Service Provider or System owner or operator, or its representative or legal counsel, may (i) present information on the current status of the alleged violation of this Law or breach of the Franchise; and (ii) present arguments as to why the situation is not a violation or breach, including evidence in support of such an argument, and (iii) why the Service Provider or System owner or operator should not be subjected to sanctions as permitted under this Law and applicable State law. If the situation has been resolved, or meaningful and substantive steps are being taken to resolve the situation, then the Service Provider or System owner or operator shall present such information at the hearing.
- I) If the Service Provider or System owner or operator fails to attend the hearing and has not requested and been granted a continuance of the hearing, then the Service Provider or System owner or operator shall be deemed to have waived its right to a further continuation of the matter, and may be declared in violation of this Law or in breach and default of the Franchise based on the evidence available at that time.
- J) After the public hearing, the Town Board or Administrator may (i) determine the Service Provider or System owner or operator to be in compliance and dismiss the matter, with or without prejudice; or may (ii) determine that the Service Provider or System owner or operator has adequately remedied and cured any violation or breach and thereby dismiss the matter; or (iii) may determine that a violation has been committed and remains unremedied and uncured.
- K) Upon a finding that the Service Provider or System owner or operator violated this Law or committed a breach of a material provision of the Franchise that resulted in a violation of this Law, and failed to remedy and adequately cure the violation of this Law or material breach of the Franchise, the Town Board or the Administrator may (i) direct the Service Provider or System owner or operator to take corrective action to eliminate, remedy or cure the violation or breach within a specified period of time; or (ii) may for sufficient cause declare the Service Provider or System owner or operator in default of the Franchise, the Town Board, and only the Town Board, thereafter may revoke, terminate, or cancel the Franchise pursuant to this Section, unless the Service Provider or System owner or operator complies with the directive or order of the Town Board or the Administrator, or presents sufficient mitigating circumstances that, at the discretion of the Town Board or the Administrator, warrant less severe or extreme measures.
- L) If the Town Board or the Administrator directs corrective action to take place within a specified period of time, or declares the Service Provider or System owner or operator in default of the Franchise, then the directive or declaration shall be committed to writing and the notice of corrective action or default shall be mailed within twenty-one (21) days of the action of the Town Board or the Administrator to the Service Provider or System owner or operator and to its surety.

- M) If, within the time set forth in the order or directive, the Service Provider or System owner or operator, or its surety, has not complied with the order or directive, or submitted a plan detailing how the Service Provider or System owner or operator will comply with the order or directive as given, or has not paid any amount due, including proposing an alternative time frame for compliance as may be acceptable to the Town Board at the Board's sole discretion, then the Town Board may impose fines or penalties as set forth in this Law, or in the extreme may terminate and revoke the Service Provider's or System owner's or operator's Franchise and, unless there are further mitigating circumstances, shall notify the affected Service Provider or System owner or operator and its surety of such action.
- N) In the event fines are imposed, the compliance or performance security placed with the Town may be used to collect the fines and the Town may take such action as is required to call on or draw against the security.
- O) In the event of the termination and revocation of the Franchise, simultaneously or within seven (7) days after notification of such action, the Town Board or the Administrator shall notify the Service Provider or System owner or operator and its surety that any security is forfeited. The Town may then take such action as is required to collect on the security.
- P) If deemed appropriate by the Town Board or the Administrator given the facts and circumstances the Town may call the security in further settlement of the matter.

## **Section 98. Compliance and Performance Evaluations.**

- A) The Town shall periodically monitor the compliance of Service Providers or System owners or operators who are subject to the requirements of this Law in whole or in part. Prior to the conduct of an evaluation the Town Board or the Administrator shall establish a procedure for such purpose and shall provide the procedure to the Service Provider or System owner or operator. Included in a compliance review may be an examination to determine whether a Service Provider or System owner or operator still has the financial, technical, legal, and character qualifications necessary to operate a System and/or offer Service in the Town. Such review shall also include an examination to determine if the operational, maintenance, and performance levels meet the minimum requirements of this Law. Compliance reviews may be conducted every three (3) years, or more frequently if deemed necessary and appropriate due to Subscriber or User complaints, or complaints from the public, or due to reasonable evidence of violations of this Law or material breaches of the Franchise. However, no compliance review shall occur more than once in any three hundred sixty-five (365) day period.
- B) If, as a result of any investigation, evaluation or determination permitted under this Section, the Town Board or the Administrator determines that the Service Provider or System owner or operator has not complied with one or more provisions of this Law for which relief has not been granted for the period covered by the review, irrespective of whether or not the violation can be corrected, eliminated, remedied or cured, then the Town Board or the Administrator may require the Service Provider or System owner or operator to reimburse the Town for all actual fully-allocated costs incurred by the Town that are necessitated by such violation(s) or act(s) of non-compliance, evasion or avoidance. Any matter of non-compliance or act of evasion or avoidance for which relief has not been properly requested and granted pursuant to Section 8 of this Law, shall be deemed a violation of this Law.
- C) Notwithstanding subsection (B) of this section, the Town Board or the Administrator shall give the Service Provider or System owner or operator an opportunity either to (i) correct,

eliminate, remedy or cure any violation or act of non-compliance, evasion or avoidance, or (ii) submit documentation or supporting evidence that resolves any area of non-compliance or act of evasion or avoidance to the satisfaction of the Town Board or the Administrator, or (iii) explain the lack of effect of such to the satisfaction of the Town Board or the Administrator .

- D) The period of time allowed for the elimination of any violation or act of non-compliance, evasion or avoidance that can be corrected or eliminated shall be set by the Town Board or the Administrator, which period of time may not be unreasonable taking into account whether such act of non-compliance, evasion or avoidance was one of a first occurrence or is a repeat of the same or similar act of non-compliance, evasion or avoidance, as well as the seriousness of the situation, including but not limited to the impact or potential impact on the health, safety and welfare of the Town, its residents, or both.
- E) To serve as an incentive for compliance with this Law and the intent thereof, if any violation of this Law that is identified pursuant to this section cannot be eliminated due to the nature of the violation, including but not limited to the passage of time or the inability to undo an act of omission, evasion or avoidance, unless expressly prohibited by State law the inability to eliminate or undo the violation shall not relieve or eliminate the obligation of the Service Provider or System owner or operator to cure any violation as such cure may be reasonably determined by the Town Board or the Administrator, including but not limited to a financial cure.
- F) If the Service Provider or System owner or operator fails to correct or resolve an area of non-compliance in a timely manner, as such is determined by the Town Board or the Administrator, which period of time may not be unreasonable taking into account (i) whether such act of non-compliance, evasion or avoidance was one of a first occurrence or is a repeat of the same or similar act of non-compliance, evasion or avoidance, and (ii) the seriousness of the situation, including but not limited to the impact or potential impact on the health, safety and welfare of the Town, its residents, or both, or fails in a timely manner to provide an explanation that demonstrates the lack of culpability of the Service Provider or System owner or operator, then such failure may be treated as a material violation of this Law and subject the Service Provider or System owner or operator to the appropriate sanction of the Town Board as permitted under this Law and applicable State and federal law. Such action or sanctions may, at the discretion of the Town Board or the Administrator, include the imposition of fines and penalties as set forth in this Law, and as permitted by State law.
- G) Notwithstanding anything contained in the preceding subsections of this Section, the elimination, remedy or correction of a violation shall not de facto serve to eliminate the imposition of fines and penalties under this Law. Rather, such shall serve to protect a Service Provider or System owner or operator from the further and continued accrual of fines and penalties under this Law for the same violation.

## **Sections 99 -- 105. Reserved.**

## **Section 106. Rates and Charges.**

- A) To the extent permitted by law, the Town Board expressly reserves the right to regulate the rates for Service and the non-regularly occurring charges of a System owner or operator or Service Provider operating within the Town.
- B) Before the Town Board exercises any authority to regulate rates or charges and impose, approve, disapprove or order the change of any rates or charges, or order a refund or rebate, the Town

Board must conduct a public hearing in which to allow an affected Service Provider or System owner or operator, and any other interested party, an opportunity to be heard and express his or her views concerning the matter, and to introduce evidence in support of or opposition to the contemplated or proposed action.

- C) After due process has been afforded a Service Provider or System owner or operator, if the Town Board requires a refund or credit to be given to Subscribers or Users; then, if any payment made to the Town during the period involved was based on Gross revenue or some portion of Gross Revenue, and the Service Provider or System owner or operator actually paid the Fee or other payment out of its Revenues and did not merely collect the Fee or other payment from the Subscribers or Users excluding it from the Gross Revenue calculation and remit it to the Town, the Service Provider or System owner or operator shall be eligible for a credit against its next Fee payment to the Town in an amount equal to amount of the ordered refund or credit. Nothing shall limit the authority of the Town Board to issue such credit against the Fee owed to the Town over several payments periods.
- D) Rates or charges paid by Subscribers may not reflect any cost incurred in the course of eliminating or curing any violation of this Law, or any breach or violation of the Franchise, including any fines or penalties imposed because of such violation, or breach, or any settlement arising out of any violation or breach, by a Service Provider or System owner or operator, as it was not the Subscribers who violated the Law or breached the Franchise. The burden of such costs is to be solely that of the owners or stockholders.

### **Section 107. Interconnection.**

A Service Provider or System owner or operator required to provide PEG access channels in the Town, may be required to interconnect its Service or System, through any permissible means, to any other Service or System operating within the Town, so that all public, educational and governmental access programming may be provided to all Subscribers or Users in the Service area.

### **Sections 108 -- 112. Reserved.**

### **Section 113. Fines and Penalties**

- A) This local law may be enforced by the Town Attorney, the Town Board and if applicable the Administrator. In addition to all other rights and powers vested in and possessed by the Town, the Town Board reserves the right to seek fines and/or penalties, if required by State law, in the lowest Court of competent jurisdiction in the Town.
- B) Notwithstanding the preceding subsection (A) of this Section, and if permitted by State law, the Town reserves for itself the right to assess fines and/or penalties for any violation of this Law, or any attempt to evade or avoid compliance with the requirements of this Law, or for the failure of a Service Provider or System owner or operator to comply with any applicable time-related or performance-related requirements, or for the violation of any federal, state, or local law, rule, or regulation that is not specifically pre-empted from local enforcement, and, in the event such violation, evasion, avoidance or failure has not been remedied pursuant to procedures set forth in this Law, to impose and assess fines or penalties as set forth in this Section.
- C) Any imposition of fines or penalties shall be preceded by written notice of the violation, and shall set forth the amount of time allowed for the elimination of the violation if elimination is reasonably practicable. Violations of the same or similar type and of a substantive number, but

occurring at different locations or involving different Persons, Subscribers or Users, shall not require individual notification, but may be referenced by type of violation.

- D) Absent good and just cause, including the provision of evidence of good faith efforts to comply with the requirements of this Law, the failure by a Service Provider or System owner or operator to comply with any time-related or performance-related requirement of this Law, or an act of evasion or avoidance of the requirements of this Law, will subject the Service Provider or System owner or operator to the assessment and imposition of fines or penalties as set forth in this section: Once imposed, any fines or penalties shall continue to accrue, including during any appeals process, until such time as the payment of the fine and/or penalty is received by the Town, or is otherwise specifically waived by the Town Board.
- E) Failure to pay fines and/or penalties within the time provided shall be a material violation of this Law and shall be cause to proceed against either a letter of credit, or bond or other surety as may have been required. Failure to pay any fines under this section shall also constitute cause to revoke any Franchise or other use, occupancy or operating authority granting permission to provide Service in the Town.
- F) A Service Provider or System owner or operator found to be in violation of this Law may be fined and penalized according to the following list of violations and schedule of fines and penalties for the violations listed. If permitted by State law, the Town Board reserves the right for the Town Board to fine and penalize any Service Provider or System owner or operator found to be in violation of this Law according to the following list of violations and schedule of fines and penalties for the violations listed.
- G) Each instance or occurrence shall be deemed a separate violation, and each day or part thereof following written notification by the Town and the expiration of any period of time allowed for the elimination, remedy or cure of the violation that the violation continues or is not eliminated, remedied or cured as prescribed by the Town Board, shall be deemed a separate violation, punishable separately. The imposition and payment of fines and penalties as set forth in this Section shall not serve to extinguish or eliminate any other rights of prosecution the Town may have under law:
1. For failure to complete any System construction, reconstruction or upgrade in any section of the Town, or in the Town as a whole, as committed to pursuant to in a Proposal or Franchise; an amount not to exceed Two Hundred dollars (\$200).
  2. For failure to obtain a street cutting permit prior to the cutting or disturbance of any Street, an amount not to exceed Five Hundred dollar (\$500).
  3. For failure to comply with the privacy requirements as set forth in this law, an amount not to exceed Five Hundred dollars (\$500) for the first violation or offense, and One Thousand dollars (\$1,000) for each subsequent offense after notification of the first offense.
  4. For failure to provide any data, documents, reports or information required by this Law, or that is needed to monitor or determine compliance with and to administer this Law, an amount not to exceed One Hundred dollars (\$100).
  5. For failure to test, analyze and report on the performance of the System following a written request to do so; an amount not to exceed Two Hundred dollars (\$200).



6. For refusal to cooperate with the Town on any matter involving an inspection of the System and its components and facilities; an amount not exceed One Hundred dollars (\$100).
7. For failure to comply with any Consumer Protection requirements of this Law or a Franchise; an amount not to exceed One Hundred dollars (\$100).
8. For failure to comply with any requirements regarding deposits and the return of deposits as set forth in this Law; an amount not to exceed One Hundred dollars (\$100) per day, per incident or per affected Subscriber or User.
9. For failure to comply with any requirements regarding the improper or impermissible discontinuance or disconnection of a Subscriber's or User's Service as set forth in this Law or a Franchise; an amount not to exceed One Hundred dollars (\$100).
10. For failure to comply with any requirements regarding connections and disconnections as set forth in this Law or a Franchise; an amount not to exceed One Hundred dollars (\$100).
11. For failure to comply with any requirements regarding disconnection and downgrade Fees as set forth in this Law or a Franchise; an amount not to exceed One Hundred dollars (\$100).
12. For failure to comply with any requirements regarding penalties for downgrade or disconnection as set forth in this Law or a Franchise; an amount not to exceed One Hundred dollars (\$100).
13. For failure to comply with any requirements regarding any right of rescission as may be set forth in State law, or in a Franchise; an amount not to exceed Five Hundred dollars (\$500).
14. For failure to comply with any requirements regarding the use and display of identification passes and badges as set forth in this Law; an amount not to exceed Fifty dollars (\$50).
15. For failure to comply with any requirements regarding Completion, cleanup and proper installation as set forth in this Law; an amount not to exceed One Hundred dollars (\$100).
16. For failure to comply with requirements regarding Subscribers or Users being advised in writing of specific procedures and policies as set forth in this Law; an amount not to exceed Fifty dollars (\$50).
17. For failure to maintain a Public Inspection File as required by this Law and FCC rules, an amount not to exceed One Hundred dollars (\$100).
18. For failure to meet any construction or safety-related requirements of this Law, including fire and electrical codes; an amount not to exceed \$200 Hundred (\$200) per violation.

- a) For reasons of impracticability and excessive, unreasonable and unnecessary cost to the Town, in the event that a substantial number of safety-related violations are found during an inspection of a System within the Town, such being defined as more than ten (10) in one (1) continuous or contiguous mile of the System within the Town, the Town shall not be required to notify a Service Provider or System owner or operator of each and every individual safety or safety-related violation. Rather, in such an instance the Town may reasonably assume the findings to be prima facie evidence that the situation is Town-wide and order the entire System to be inspected by the Service Provider or System owner or operator for either construction or safety-related violations, and order that all such violations found shall be eliminated within thirty (30) days of the date of notification by the Town.
- b) In the event of a situation described in subsection (G,18,a) of this section, any fines imposed shall be calculated using the following formula:

$$\frac{\text{Number of Violations Found}}{\text{Miles of System Inspected}} \times \text{Total Miles in the Town} = \text{Total Violations}$$

- c) As these issues are of paramount concern to the Town, and as non-compliance with these requirements is normally deliberate, if the Town is forced to notify a Service Provider or System owner or operator of construction or safety-related violations, the mere elimination of such violations within the required period of time contained in the notice shall not relieve an offending Service Provider or System owner or operator from the payment of fines imposed under this section. Fines for construction and safety-related violations shall accrue starting forty-eight (48) hours after notification by the Town of the existence of the violations, and shall continue until the Service Provider or System owner or operator certifies to the Town in writing that all construction and safety-related violations associated with its System in the Town have been eliminated.
- d) In the event a subsequent reinspection reveals that specific previously identified violations still exist, the fines may be doubled and shall accrue from the date of the first notice required pursuant to subsection (G,18,c) until the elimination of the violation is verified.
- e) Notwithstanding the subsection (G,18,c) of this Section, no fine or penalty shall be imposed on a Service Provider or System owner or operator for any construction or safety-related violation where it is proven that the violation was caused by the actions of a third party, provided that proof is provided of a demand by the Service Provider or System owner or operator to the party having caused the violation to eliminate the situation, including a diligent pursuit of the demand if necessary.
- f) In order to verify and assure continued compliance with all applicable construction and safety-related requirements, within a reasonable amount of time after the period of time set forth in the Town's notice for the elimination of all construction or safety-related violations as set forth in subsection (G,18,c) of this Section, but in no case sooner than thirty-five (35) days after the date of the notice of violation, the Town shall have the System within the Town reinspected

by a party experienced in such inspections and that has no affiliation of any kind with any member of the industry.

- g) As the cost of a reinspection under subsection (G,18,f) of this Section is an extraordinary expense to the Town caused by the impermissible actions of a Service Provider or System owner or operator, and is not deemed a normal cost of administering this Law or a Franchise, to prevent the taxpayers from having to bear the financial burden, the Town may require the Service Provider or System owner or operator to place on deposit with the Town an amount deemed to be reasonably sufficient to cover the cost of reinspecting twenty percent (20%) of the System within the Town on a random sample basis and generating a written report on the findings of the inspection. The amount of the deposit shall not be less than ten-thousand dollars (\$10,000), and any amount not expended shall be promptly returned to the Service Provider or System owner or operator.
- 19) For failure to pay the full and complete amount of any money owed the Town, including any interest that may be owed, an amount not to exceed one hundred (\$100).
- 20) For failure or refusal to place or restore Performance and Completion securities as required, an amount not to exceed one hundred (\$100).
- 21) For failure to comply with the requirements of this Law with respect to Continuity of Service, or for threatening to discontinue Service, for each day or part thereof that such non-compliance continues or such threat is not removed in writing to the Town following written notification by the Town of the violation; an amount not to exceed One Thousand (\$1,000).
- 22) For failure or refusal to comply with any of the provisions of Section 99 of this Law, Five Hundred dollars (\$500).
- 23) For failure to comply with any other Section, subsection, or provision of this Law, or a Franchise, an amount not to exceed Fifty dollars (\$50.00).
- A) Notwithstanding anything in the preceding subsections of this Section or any other Section of this Law, unless otherwise formally granted relief or a waiver by the Town Board or the Administrator, or unless a longer period of time is permitted after the initial forty-eight (48) hours following notification by the Town to the Service Provider or System owner or operator that a violation exists, each day that a violation continues shall constitute and be deemed a separate violation and may be treated as a separate offense.
- B) Notwithstanding the provisions contained in Section 113 of this Law, a Service Provider or System owner or operator shall not be subject to penalties, fines, forfeitures, revocation or involuntary termination of a Franchise for a Technical Violation of this Law or a Technical breach of a Franchise. For purposes of this Law, Technical Violations or breaches include the following:
  - 1. Instances or matters where a violation of this Law or, where applicable a Franchise, was a good faith error that resulted in no negative impact on the residents, Subscriber or Users within the Town, or on the Town itself, or where such violation resulted in de minimus effect on any of the preceding Persons or the Town; or

2. Instances or circumstances that are reasonably beyond the control of a Service Provider or System owner or operator, including Force Majeure situations, and that prevent a Service Provider or System owner or operator from complying with this Law or the Franchise.
- A) In the event of an appeal arising out of the enforcement of this Section, or in the event of litigation arising out of a dispute regarding the enforceability of any action taken by the Town under this Section, the Service Provider or System owner or operator shall not be excused from the prompt and timely payment of fines and/or penalties as set forth in this Section during the course of such proceeding. Payment of fines and/or penalties in such an instance shall be placed in an escrow account by the Town, pending the resolution and decision of the adjudicating entity.
  - B) Notwithstanding anything in this Section, or any other Section of this Law, and given the right of a Service Provider or System owner or operator to request relief from any provision of this Law under Section 8 of this Law, a Service Provider or System owner or operator may not use the payment of fines and/or penalties to evade or avoid compliance with this Law or any Section of this Law. An attempt to do so shall subject the Service Provider or System owner or operator to a fine not to exceed Ten-Thousand dollars (\$10,000) for the first occurrence, and for a second such occurrence termination and loss of the Franchise, and a fine of One-Hundred Thousand dollars (\$100,000).

#### **Section 114. Notice of Violation or Failure to Comply; Hearing**

- A) For the failure to comply with a time-related or performance-related requirement of this Law which the Town deems sufficient to warrant sanctions, the Town shall provide notice and an opportunity to eliminate, remedy or cure.
- B) Notwithstanding anything to the contrary in subsection (A) of this Section, or any other subsection of this Section, to incent the protection of the public health and safety and the safety of public and private property, for situations involving violations of construction and safety-related codes and requirements where such are deemed to create an imminent threat or danger to lives or property within the Town, and for which the Service Provider or System owner or operator has previously been notified of the same or similar situations in the previous thirty-six (36) months, the Service Provider or System owner or operator shall be notified, but may not be granted an opportunity to remedy or cure prior to the imposition of fines and/or penalties. Rather fines and/or penalties may be assessed and imposed after proper written notice on a per occurrence per day basis, until the violation(s) is eliminated.
- C) Notice and the opportunity to cure, as required, shall be provided to the Service Provider or System owner or operator in writing, and shall be sent by certified U.S. mail, return receipt requested, or may be personally delivered, to the Service Provider's or System owner's or operator's local place of business.
- D) A Service Provider or System owner or operator may request a hearing on the matter addressed in the notice required in subsection (A) of this Section, or the Town may call a hearing on the matter. At the discretion of the Town Board the hearing may be held before the Town Board or the Administrator.
- E) Public notice shall be given of the hearing and of the issues that are to be considered by the Town.

- F) The Town Board, or the Administrator, or a designated hearing officer, shall, at the date, time and place designated for the hearing, hear and consider issues from the Town and the Service Provider or System owner or operator and make a determination regarding the alleged violation of this Law or any Franchise.
1. The Town Board, or the Administrator, or a designated hearing officer, shall hear and consider the matter, including hearing any Person interested in the matter wishing to be heard, and review and consider any relevant evidence. After affording the Service Provider or System owner or operator required rights of due process to be heard, to present relevant evidence and witnesses and to question any witnesses, the Town Board shall determine, based on a preponderance of the evidence, whether or not there was committed a breach or violation of a time or performance-related requirement of this Law, or a breach of a term or condition of Franchise, or a violation of any federal, State, law, rule or regulation or local law, regulation or code not expressly prohibited from local enforcement. The Town shall have made a transcript of the hearing.
  2. The Service Provider or System owner or operator may, at its own expense, make a transcript of any such hearing, or it may share the costs of obtaining a transcript of such hearing equally with the Town.
  3. At the hearing the Town and the Service Provider or System owner or operator may present evidence relevant to the issues being heard and, including the right to call and examine and cross examine witnesses.
  4. Within thirty (30) days following the completion and close of the hearing, the Town Board, or the Administrator, or the hearing officer, shall issue a written decision as regards whether any failure to comply with any time-related or performance related requirement or act of evasion or avoidance of this Law, or breach of a term or condition of the Franchise, or violation of any federal or State, law, rule or regulation, or local law, regulation or code, occurred. Such determination shall be based upon a preponderance of the evidence presented as contained in the record of the proceeding, stating with particularity the reasons for the decision.
  5. Within thirty (30) days after the issuance of a decision, Town Board shall then take formal action, either dismissing the claim of violation or breach, or finding that the Service Provider or System owner or operator did commit the alleged violation or breach and did not cure or eliminate such as required. The Town Board's formal action shall be in writing and a copy of such shall be provided to the Service Provider or System owner or operator.
  6. Should the Town Board, the Administrator or the hearing officer find that no breach, violation or failure to comply or perform occurred, or, except for situations addressed in Subsection (B) of this Section, that the Service Provider or System owner or operator remedied the violation or failure prior to or by the end of the period allowed for cure, or that the Service Provider or System owner or operator instituted substantial and meaningful good faith actions to remedy the failure to comply or perform after having been provided written notice, and actively and expeditiously started and undertook substantial and meaningful efforts to complete the remedy as directed by the Town Board, all of which shall be determined at the

sole discretion of the Town Board, the proceedings shall be terminated and no penalty shall be imposed.

7. The Town Board shall be required to base its decision on a preponderance of the evidence from the record established during the hearing. If the Town Board determines that a failure to comply with any time or performance related requirement of this Law, or any act of evasion or avoidance of this Law, or breach of a term or condition of the Franchise, or of any federal or State law, rule or regulation or local law, regulation or code, was the fault of the Service Provider or System owner or operator, and was within its control, subsequent to the required notice and opportunity to cure and due process requirements of this Law, the Town Board may determine whatever action it deems appropriate as may be permitted under this Law and the Franchise. The Town Board's decision shall be final and no other remedies, administrative or otherwise, nor any procedures for such, are provided under this Law.
  8. Prior to the imposition of any penalty or sanction against a Service Provider or System owner or operator, but not including fines as previously set forth in this subsection, the Town shall provide the Service Provider or System owner or operator notice and opportunity to cure in accordance with the following subparagraphs (a) and (b).
    - a) The Town shall provide the Service Provider or System owner or operator with written notice specifying the nature of the failure, breach, violation or act of evasion or avoidance. The Service Provider or System owner or operator shall have a period of forty-eight (48) hours following the receipt of such notice to cure or satisfy the alleged failure, breach or violation, with the exception of safety situations.
    - b) In the event the Town Board or the Administrator concludes that the Service Provider or System owner or operator has failed to comply with its obligations under this Law or the Franchise, and that the Service Provider or System owner or operator has not remedied such failure, violation, act of avoidance or evasion or breach within the period set forth in the notice set forth in the preceding subparagraph (a) after having received written notice, the Town Board may pursue whatever additional penalties or sanctions are provided for under State law, including civil or criminal prosecution.
- A) The amount of time given the Service Provider or System owner or operator to cure any violation of this Law, or any violation of any federal or State law, rule or regulation, or other local law, regulation or code, shall be at the discretion of the Town Board to the extent not otherwise governed by this Law or State or federal law, but in no event shall a Service Provider or System owner or operator be given less than forty-eight (48) hours, unless otherwise dictated by an emergency situation posing an imminent threat to the health and safety of individuals or the safety of public or private property. Notwithstanding the preceding, or anything else in this Section or anywhere in this Law, in the event a violation of the construction or safety-related requirements of this Law endangers, or has the reasonable possibility of endangering, the health or safety of individuals or the safety of property, the forty-eight (48) hour elimination period may be lessened and the elimination of the violation may be required the same day, depending upon the seriousness of the matter as a factor of the degree of danger involved or the imminence of injury or damage to property. Notwithstanding the preceding portion of this subsection, any

lessening of the forty-eight (48) hour period shall be solely for purposes of eliminating the danger or threat, and shall not enable the Town to impose fines during such shorter period.

- B) The Town may, in its reasonable discretion, grant extensions of time to a Service Provider or System owner or operator to eliminate, cure or remedy, where extraordinary circumstances not precipitated by the Service Provider or System owner or operator warrant an extension.
- C) Notwithstanding any notice and opportunity to cure requirements of the applicable federal or State law, the issuance of two (2) or more notices to cure or eliminate or remedy a violation for the same or similar provisions or requirement of this Law, or two (2) or more breaches of a term or condition of a Franchise that constitute a violation of this Law or an act of evasion or avoidance of the requirements of this Law, or two (2) or more violations of any federal or State law, rule or regulation, or other local law, regulation or code, within any twelve (12) consecutive month period, may be deemed a pattern of behavior that demonstrates an intent to continue violating this Law and thereby relieve the Town of any obligation to provide further notice and opportunity to cure for subsequent failures to meet the requirements of this Law, or for breaches of terms or conditions of a Franchise or violations of federal or State, law, rule or regulation or other local law, regulation or code. Evidence of subsequent failures as set forth in this subsection shall be admissible as evidence in a hearing before the Town Board or the Administrator, or a designated hearing officer, regarding the assessment of fines and/or penalties, provided that the Town has provided such evidence to the Service Provider or System owner or operator at least ten (10) days prior to the hearing and the Service Provider or System owner or operator has an opportunity to be heard at the hearing and to present evidence in contravention of the charge(s) or in defense of its actions.
- D) A Notice of Intent to Assess Fines and/or Penalties may be issued concurrently with a Notice to Cure. If a Notice of Intent to Assess Fines and/or Penalties is issued concurrently with a Notice to Cure, then fines and penalties, if assessed, will accrue commencing with the expiration of the time allowed for an opportunity to cure as set forth in the Notice. The Notice of Intent to Assess Fines and/or Penalties shall state the reason for the assessment and imposition, and shall inform the Service Provider or System owner or operator that fines and/or penalties will be assessed from the date of the Notice, or the end of the time allowed for an opportunity to cure, whichever is later.
- E) If the Service Provider or System owner or operator desires to appeal the Town's imposition of Fines and/or Penalties, it must file a written Notice of Appeal with the Supervisor or the Administrator, delivered by certified U.S. mail/Return Receipt Requested, within ten (10) days of the receipt of the Notice of Intent to Assess Fines and Penalties. The Supervisor or Administrator shall then place the issue before the Town Board.
- F) The Town shall then have served upon the affected Service Provider or System owner or operator, by certified U.S. mail/Return Receipt Requested, a written notice of the date, time and place of the meeting, at least fifteen (15) days prior to the date of the meeting of the Town Board at which the matter will be heard.
- G) Public notice shall be given of the meeting and of the issue that is to be considered by the Town Board. If the Franchisee or other Service Provider or System owner or operator fails to appeal the Town's assessment or imposition of fines and/or penalties within the time required by this Section, the Town's decision to assess fines and/or penalties shall be final.

- H) The Town Board shall, at the date, time and place designated for the hearing, hear and consider issues from the Town and the Service Provider or System owner or operator and make a determination regarding the alleged violation of this Law or any Franchise.
1. The Town Board shall hear both parties and consider the matter, including any relevant evidence presented.
  2. After affording the Service Provider or System owner or operator and the Town the right to be heard and present evidence, the Town Board shall determine whether or not there was committed a violation of this Law, or a breach of a material term or condition of the Franchise, or a violation of any federal, State, or other local law, rule, regulation or code.
  3. The Town shall have made a transcript of the hearing. A Service Provider or System owner or operator may, at its own expense, make a transcript of the hearing, or may obtain a copy of the Town's transcript if it shares the costs equally with the Town.
  4. Within thirty (30) days following the completion and close of the hearing, the Town Board shall issue a written decision as regards the commission of a violation of this Law, or breach of a material term or condition of the Franchise, or a violation of any federal, State, or local law, rule, regulation or code, and such determination shall be based upon the record of the proceeding, stating with particularity the reasons for such decision. A copy of the Town Board's written decision shall be provided to the Service Provider or System owner or operator.
  5. Should the Town Board find that no breach, violation or failure to comply or perform occurred, or, except for situations addressed in Subsection (B) of this Section, that the Service Provider or System owner or operator remedied the failure prior to the end of the period allowed for cure, or that the Service Provider or System owner or operator instituted substantial good faith actions to remedy the failure to comply or perform after having been provided written notice, and actively and expeditiously started and undertook substantial efforts to complete such remedy, or that fines and/or penalties are not warranted or applicable in the instant situation, all of which shall be determined at the sole discretion of the Town Board, the proceedings shall be terminated and no penalty shall be imposed.
  6. The Town Board shall be required to base its decision on a preponderance of the evidence from the record established during the Town Board's hearing. If the Town Board determines that any violation of this Law, or breach of a term or condition of the Franchise, or of any federal, State, or local law, rule, regulation or code, was the fault of the Service Provider or System owner or operator, and was within its control, subsequent to the required notice and opportunity to cure and due process requirements of this Law, the Town Board may affirm the assessment and imposition of fines, penalties or sanctions as permitted under this Law or State law. The Town Board's decision to affirm the Town's assessment of fines, penalties or other sanctions shall be final and no other remedies, administrative or otherwise, nor any procedures for such, are provided under this Law.



## **Section 115. Complaint Procedures**

- A) The Town is hereby granted the authority to implement procedures for the filing and resolution of complaints.
- B) The responsibility to adjust, settle or compromise any controversy arising from the operations of any Service Provider or System owner or operator, either on behalf of the Town or any Subscriber or User, in accordance with the best interests of the public and the Town; provided, however, that any Person aggrieved by a decision of the Town Board may appeal the matter for a hearing and determination in accordance with this Law.
- C) The Town Board reserves the right, at all times, on behalf of the Town, or a Subscriber or User, to accept, reject or change any decision of the Town Board, and may adjust, settle or impose a compromise regarding any controversy arising from the operation of Service Provider or System owner or operator that is subject to this Law in whole or in, part, or from any provision of this Law.

## **Section 116. Effective Date.**

This Law shall become effective upon filing with the Secretary of State of the State of New York