

**TOWN OF GALENA, MARYLAND**  
**Ordinance No. 2014-05**

**New Chapter 59 (Cable Service Franchising) of the Code of the Town of Galena**

AN ORDINANCE TO ENACT A NEW CHAPTER 59 OF THE CODE OF THE TOWN OF GALENA ENTITLED "CABLE SERVICE FRANCHISING" FOR THE PURPOSES OF SETTING FORTH MINIMUM REGULATIONS, TERMS, AND CONDITIONS UNDER WHICH A CABLE SERVICE FRANCHISEE(S) MAY USE AND OCCUPY THE PUBLIC RIGHTS-OF-WAY OF THE TOWN; ESTABLISHING A FRAMEWORK UNDER WHICH CABLE SYSTEMS SHALL BE CONSTRUCTED, INSTALLED, OPERATED, MAINTAINED, AND REGULATED WHEN UTILIZING THE PUBLIC RIGHTS-OF-WAY; AUTHORIZING THE GRANTING OF ONE OR MORE NON-EXCLUSIVE FRANCHISES FOR CABLE SERVICE WITHIN THE TOWN; ESTABLISHING MINIMUM OPERATIONAL AND CUSTOMER SERVICES STANDARDS FOR CABLE SERVICE FRANCHISES; PROVIDING PROCEDURES FOR CABLE SERVICE FRANCHISE APPLICATION, MODIFICATION AND RENEWAL; ESTABLISHING A CABLE SERVICE FRANCHISE FEE AND APPLICATION FEE; AND GENERALLY RELATING TO CABLE SERVICE FRANCHISING IN THE TOWN OF GALENA.

**WHEREAS**, pursuant to Section 5-202 *et seq* of the Local Government Article of the Annotated Code of Maryland, the Town of Galena (the "Town") has the authority to adopt ordinances within the Town of Galena, as well as the authority to amend said ordinances; and pursuant to Section 1-708 of the Local Government Article, the Town is authorized to grant cable television franchises; and

**WHEREAS**, the Town finds that the development of Cable Systems within the Town has the potential of having significant benefit and impact upon the residents of the Town of Galena; and

**WHEREAS**, because of the complex and rapidly changing technology associated with Cable Service and related services, the Town further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the Town or such persons as the Town shall designate; and

**WHEREAS**, the Town of Galena owns and maintains a system of Public Rights-of-Way throughout the Town of Galena, and the Town has the authority to regulate the occupation and use of such Public Rights-of-Way to the maximum extent permitted under applicable law, including, but not limited to, the U.S. Cable Communications Policy Act, codified as Title VI of the Communications Act of 1934, 47 U.S.C. §§ 521 through 573, as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996 and as may be amended from time to time; and

**WHEREAS**, the Town desires to structure and implement a fair and orderly process for the grant of franchises (and renewals of such franchises) to occupy and use the Public Rights-of-Way to provide Cable Service in the Town of Galena, including the negotiation of Franchise provisions to protect the public interest; and

**WHEREAS**, the Town has determined that the grant of franchises to occupy and use Public Rights-of-Way in the Town of Galena for the provision of Cable Service would promote the health, safety and welfare of the public, stimulate commerce and otherwise serve the public interest; and

**WHEREAS**, the Town has determined that it is in the best interest of and consistent with the convenience and necessity of the Town of Galena to grant Franchises to persons desiring to occupy and use Public Rights-of-Way in the Town of Galena for the provision of Cable Service through a Cable System within the territorial boundaries of the Town of Galena, subject to the terms and conditions herein and as may be further provided for in a Franchise Agreement for Cable Service; and

**WHEREAS**, the Town, for the good and welfare of the Town of Galena, deems it necessary and appropriate to enact a new Chapter 59 of the Code of the Town of Galena entitled “Cable Service Franchising” for the purposes of setting forth minimum regulations, terms, and conditions under which Cable Service Franchises may use and occupy the Public Rights-of-Way of the Town; establishing a framework under which Cable Systems shall be constructed, installed, operated, maintained, and regulated when utilizing the Public Rights-of-Way; authorizing the granting of one or more non-exclusive Franchises for Cable Service within the Town; establishing minimum operational and customer services standards for Cable Service Franchises; providing procedures for Cable Service Franchise application, modification and renewal; establishing a Cable Service Franchise Fee and application fee; providing that the title of this Ordinance shall be deemed a fair summary; and generally relating to Cable Service Franchising in The Town of Galena.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF GALENA AS FOLLOWS:**

**SECTION 1.** The Code of the Town of Galena is hereby amended by adding a new Chapter 59 entitled “Cable Service Franchising”, which is fully set forth on “Exhibit A”, attached hereto and incorporated herein by reference.

**SECTION 2.** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision

and such holding shall not affect the validity of the remaining portions of this Ordinance, it being the intent of the Mayor and Council that this Ordinance shall stand, notwithstanding the invalidity of any section, subsection, sentence, clause, phrase, or portion thereof.

SECTION 3. All ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 4. The title of this Ordinance, or a condensed version thereof, shall be deemed to be, and is, a fair summary of this Ordinance for publication and all other purposes.

This Ordinance, having been introduced on \_\_\_\_\_, 2014 and adopted on \_\_\_\_\_, 2014, we hereby affix our signatures. Effective \_\_\_\_\_, 2014. A summary of this Ordinance shall be published twice in a newspaper having general circulation within the Town of Galena.

BY AUTHORITY OF THE  
MAYOR AND COUNCIL OF  
THE TOWN OF GALENA,  
MARYLAND

\_\_\_\_\_  
Barbara Shaw, Clerk-Treasurer

\_\_\_\_\_  
Donald E. Othoson, Mayor

\_\_\_\_\_  
John T. Carroll, Jr., Council Member

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Kirk J. Blackard, Council Member

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Samuel F. Sessa, II, Council Member

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Carlton L. Felty, Jr., Council Member

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Ayes

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Nayes

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Absent

Approved as to Form:

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Thomas N. Yeager  
Attorney for the Town of Galena

**Chapter 59**  
**CABLE SERVICE FRANCHISING**

**ARTICLE I**  
**Grant of Franchise**

**§ 59-1. Chapter and purpose.**

This Chapter shall be known and may be cited as the “Town of Galena Cable Service Franchising Act” (the “Chapter”). The purposes of this Chapter are to: (i) establish the terms and conditions under which a Franchise occupying the Public Rights-of-Way must operate within the Town of Galena; (ii) provide for the payment of a Franchise Fee to the Town for use of the Public Rights-of-Way and other costs associated with administering and regulating Cable Service; and (iii) enhance the Town’s authority to grant a Cable Service Franchise while managing the Public Rights-of-Way.

**§ 59-2. Definitions.**

As used in this Chapter, the following terms shall have the meanings indicated. Words not defined shall be given their common and ordinary meaning.

- (A) “**Access Manager**” means any Person, including a non-profit community access corporation, designated by the Town’s to perform any or all of the following functions:
- (1) Manage any necessary scheduling or allocation of any PEG or institutional network Channel capacity; and/or
  - (2) Program any PEG Channel on the Town’s behalf.
- (B) “**Affiliate**” means each Person who falls into one or more of the following categories:
- (1) Each Person having, directly or indirectly, a Controlling Interest in a Grantee;
  - (2) Each Person in which a Grantee has, directly or indirectly, a Controlling Interest; or
  - (3) Each Person, directly or indirectly, Controlling, Controlled by or under common management, common ownership or common Control with a Grantee; provided that “Affiliate” shall in no event mean any creditor of a Grantee solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning, directly or indirectly, a Controlling Interest in, being owned by or being under common ownership, common management or common Control with a Grantee.

- (C) **“Agreement”** or **“Franchise Agreement”** means a binding contract granting a Cable Service Franchise pursuant to this Chapter, and any amendments, exhibits or appendices thereto, containing the specific provisions of the Cable Service Franchise granted, including references, specifications, requirements and other related matters.
- (D) **“Basic Cable Service”** means any service tier, which includes the retransmission or delivery of local television broadcast signals, origination Channels and PEG Access Channels. In the event that the definition of **“Basic Cable Service”** is amended by an act of the United States Congress, under the Cable Act or otherwise, then the definition under this Section shall be amended to conform therewith.
- (E) **“Cable Act”** means the Cable Communications Policy Act of 1984, codified at Title VI of the Communications Act of 1934, 47 U.S.C. §§ 521 through 573, as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996 and as may be amended from time to time.
- (F) **“Cable Service”** means the one-way transmission to Subscribers of video programming or other programming services and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- (G) **“Cable System”** means a facility consisting of a set of closed transmission paths and associated signal generation, reception, transmission and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple Subscribers within the Town of Galena, but such term does not include:
- (1) A facility that serves only to retransmit the television signals of one or more television broadcast stations;
  - (2) A facility that serves Subscribers without using any Public Rights-of-Way;
  - (3) A facility of a common carrier which is subject, in whole or in part, to the provisions of Chapter II of the Cable Act, except that such facility shall be considered a Cable System if such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; or
  - (4) Any facilities of any electric utility used solely for operating its electric utility system.

A reference to a **“Cable System”** in this Chapter refers to any part of such Cable System. The foregoing definition of **“Cable System”** shall not be deemed to circumscribe or limit the authority of the Town to regulate or franchise the

activities of any other communications or information system to the maximum extent permitted by law.

- (H) “**Channel**” means a portion of the electromagnetic frequency spectrum that is used in a Cable System and which is capable of delivering a television channel (as a “television channel” is defined by the FCC).
- (I) “**Control**” or “**Controlling Interest**” means actual working control or ownership of a System in whatever manner exercised. A rebuttable presumption of the existence of Control or a Controlling Interest shall arise from the beneficial ownership, directly or indirectly, by any Person or entity (except underwriters during the period in which they are offering securities to the public) of 25 percent or more of a Cable System or a Franchise under which the System is operated. A change in the Control or Controlling Interest of any entity which has Control or a Controlling Interest in a Grantee shall constitute a change in the Control or Controlling Interest of the System under the same criteria. Control or a Controlling Interest, as used herein, may be held simultaneously by more than one Person or entity.
- (J) “**Converter**” means an electronic tuning device which converts Cable Service signals into a signal that can be received and displayed on a Subscriber’s television set. While not an explicit part of signal conversion, many cable converter boxes include forms of descrambling to manage carrier-controlled access restriction to various Channels.
- (K) “**Town**” means the Mayor and Council of Galena, a body politic and municipal corporation under the laws of the State of Maryland, and any agency or department thereof.
- (L) “**Town Administrator**” means the person designated pursuant to Section 804 of the Charter of the Town of Galena, or that person’s designee.
- (M) “**FCC**” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- (N) “**Franchise**” means a non-exclusive authorization, or renewal thereof, evidenced by a written Franchise Agreement, granted pursuant to this Chapter and applicable law, to construct, operate and maintain a Cable System within the Public Rights-of-Way to provide Cable Service within all or a specified area of the Town of Galena. The term “Franchise” includes a Franchise Agreement. Any such authorization, in whatever form granted, shall not mean or include any license or permit required for the privilege of transacting and carrying on a business within the Town of Galena as required by applicable law, or for attaching devices to poles or other structures, whether owned by the Town or a private entity, or for excavating or performing other work in or along the Public Rights-of-Way.
- (O) “**Franchise Area**” means the geographic area within the Corporate Limits of the Town of Galena that a Grantee is authorized to serve by its Franchise.

- (P) **“Franchise Fee”** means the fee imposed by the Town pursuant to § 59-12 of this Chapter. The term “Franchise Fee” does not include:
- (1) Any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators);
  - (2) Capital costs that are required by a Franchise Agreement to be incurred by the cable operator for public, educational or governmental access facilities, or
  - (3) Requirements or charges incidental to the awarding or enforcing of a Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages.
- (Q) **“Grantee”** means a Person to whom or which a Franchise is granted by the Town pursuant to this Chapter, along with the lawful successors or assigns of such Person.
- (R) **“Gross Revenue”** means all revenue, as determined in accordance with generally accepted accounting principles, that is derived by the grantee and by each affiliate from the operation of the cable system to provide cable services.

Gross revenue shall include, to the extent it is received by the grantee, revenue from any other person, including, without limitation, leased or PEG channel programmers, that is derived from the operation of the cable system to provide cable services.

Gross revenue shall also include, by way of example and without limitation:

- (1) The fair market value of any nonmonetary (i.e., barter) transactions between the grantee and any affiliate, which fair market value shall not be less than the customary prices paid in connection with equivalent transactions conducted with persons who are not affiliates and which would, if received in the form of cash, otherwise be of a kind or character constituting gross revenue;
- (2) Revenue received by the grantee which represents or can be attributed to a subscriber fee or a payment for the use of the cable system for the sale of merchandise through any cable service distributed over the cable system;
- (3) Franchise fees received from subscribers;
- (4) Fees received from subscribers to support PEG channels;
- (5) To the extent allowed by applicable law, revenue generated from the provision of cable modem service and voice over Internet Protocol (Voip) service;

- (6) Any revenue generated by the grantee or by any affiliate through any means which has the effect of avoiding the payment of compensation that would otherwise be paid to the grantor for the franchise granted in this agreement;
- (7) Any revenue from subscriber equipment sold or leased by the grantee or an affiliate;
- (8) Late fees and administrative fees;
- (9) Revenue derived from program guides;
- (10) Revenue derived from forfeited deposits;
- (11) Revenue derived from installation, disconnection, or service call fees;
- (12) Revenue derived from game channels;
- (13) Studio rental, rental of or charges for production equipment, and personnel fees;
- (14) Revenue derived from commissions;
- (15) Any actual bad debt that is written off but subsequently collected (Such bad debt shall be included as gross revenue for the period in which it is collected); and
- (16) Other revenues that may be posted in the general ledger as an offset to an expense account.

Gross revenue shall also include all advertising revenue which is derived, directly or indirectly, from or in connection with the sale of advertising on the cable system, whether by the grantee or whether collected by an affiliate or any other person for the grantee. If the advertising revenue received from the affiliate is only net advertising revenue, advertising revenues from an affiliate shall be grossed up as if the grantee had received the advertising revenue directly. Notwithstanding the preceding sentence, standard and reasonable commissions retained by a regional interconnect that is an affiliate may be excluded from gross revenue.

Gross revenue shall not include:

- (1) Any compensation awarded to the grantee based on the grantor's condemnation of property of the grantee;
- (2) The revenue of any person, including, without limitation, a supplier of programming to the grantee, to the extent that such revenue is also included in gross revenue of the grantee;
- (3) The revenue of the grantee or any other person which is generated directly from the sale of any merchandise through any service distributed over the cable system, other than that portion of such revenue which

represents or can be attributed to a subscriber fee or a payment for the use of the cable system for the sale of such merchandise, for example, the portion of such payment attributable to a commission for the grantee or an affiliate, which portion shall be included in gross revenue;

- (4) Taxes imposed by law on subscribers which the grantee is obligated to collect, it being acknowledged that franchise fees under this agreement are not considered taxes;
  - (5) Amounts collected by the grantee from subscribers on behalf of leased or PEG channel programmers, other than affiliates, to the extent that all of the amounts collected, in excess of the amounts deducted and paid to the grantor, are passed on by the grantee to such programmers;
  - (6) The revenue of any affiliate which represents standard and reasonable amounts paid by the grantee to the affiliate for ordinary and necessary business expenses of the grantee, including, without limitation, professional service fees and insurance or bond premiums;
  - (7) Advertising commissions deducted by advertising agencies, other than an agency which is an affiliate, before advertising revenues are paid over to the grantee;
  - (8) To the extent consistent with generally accepted accounting principles, consistently applied, actual bad debt write-offs taken in the ordinary course of business;
  - (9) Amounts recovered by the grantee for theft or loss of portions of the cable system, which amounts were previously written off;
  - (10) Investment income; and
  - (11) Payments received by the grantee or an affiliate that represent a reimbursement for work performed by the grantee or its agents on behalf of a contractor or third party, where payment for such work would not normally be considered gross revenue based on the nature of the work performed.
- (S) **“Initial Service Area”** means all areas in the Town of Galena that will receive Cable Service initially, as set forth in a Franchise Agreement.
- (T) **“Installation”** means the connection of the System to Subscribers’ terminals, and the provision of Cable Service.
- (U) **“Leased Access Channel”** means any Channel designated or dedicated for use by Persons unaffiliated with a Grantee in accordance with 47 U.S.C. 532.
- (V) **“Normal Business Hours”** means those hours during which most businesses in and about the Town of Galena similar to a Grantee are open to serve customers.

- (W) **“Normal Operating Conditions”** means those service conditions which are within the control of a Grantee. Those conditions which are not within the control of a Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions. Conditions which are ordinarily within the control of a Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods and maintenance or upgrade of the Cable System.
- (X) **“Outage”** means the complete loss of picture, sound or both on multiple Channels from a common problem which affects multiple customers on the System.
- (Y) **“PEG” or “Public, Educational or Government Access Facilities”** means:
- (1) Channel capacity provided by a Grantee designated for public, educational or governmental use; and
  - (2) Facilities and equipment for the use of such Channel capacity.
- (Z) **“PEG Access User”** means a Person authorized to administer or operate a PEG Facility and shall include the Town and the Access Manager. If several Persons operate or share the same PEG Facility, each Person shall be considered a separate PEG Access User.
- (AA) **“Person”** means any natural person or any partnership, association, joint stock company, joint venture, domestic or foreign corporation, stock or non-stock corporation, limited liability company, professional limited liability company, an organization or entity of any kind or any lawful successor thereto or transferee thereof. Such term does not include the Town.
- (BB) **“Public Rights-of-Way”** means the surface of and all rights-of-way and the space above and below any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, bridge, driveway, drive or easement now or hereafter held by the Town for the purpose of public travel and shall include other similar easements or rights-of-way as shall be now held or hereafter held by the Town which shall, within their proper use and meaning, entitle a Grantee to the use thereof for the purposes of installing poles, wires, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a Cable System.
- (CC) **“Service Interruption”** means the loss of either picture or sound or both, on one or more Channels, affecting at least one Subscriber on the System.
- (DD) **“State”** means the State of Maryland.
- (EE) **“Subscriber”** means any Person lawfully receiving Cable Service provided by a Grantee by means of or in connection with the Cable System, whether or not a

fee is paid for such Cable Service, including such Persons authorized to receive Cable Service without charge as provided for in a Franchise Agreement.

**§ 59-3. Grant of rights.**

Any Franchise granted by the Town shall grant to a Grantee the non-exclusive right and privilege to construct, erect, install, maintain or operate: (i) a Cable System in, upon, along, across, above, over and under the Public Rights-of-Way within the Town of Galena now in existence and as may be created or established during any Franchise term; (ii) any poles, wires, cable, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation of a Cable System to provide Cable Service; and (iii) other services as may lawfully be allowed within a Franchise Area. A Franchise granted by the Town does not expressly or implicitly authorize a Grantee to provide service to, or install a Cable System on, private property without the owner's consent (except for use of compatible easements pursuant to the Cable Act) or to use publicly or privately owned conduits or any other public property without a separate agreement with the owner(s) thereof.

**§ 59-4. Franchise application, application fee and review process.**

- (A) Any Person desiring an initial Franchise for Cable Service or the renewal or modification of an existing Franchise for Cable Service shall file a written application with the Town. The application shall be in such form and under such terms and conditions as determined by the Town.
- (B) To be acceptable for filing, a signed original of the application shall be submitted together with sufficient copies required by the Town. The application must be accompanied by any required application filing fee, conform to any applicable request for proposals and contain all required information. All applications shall include the names and addresses of Persons authorized to act on behalf of all applicants with respect to the application.
- (C) All applications accepted for filing shall be made available by the Town for public inspection.
- (D) A Person may apply for an initial Franchise or a Franchise Renewal by submitting an application containing, at a minimum, the following information:
  - (1) Name and address of the applicant and identification of the ownership and control of the applicant, including: (i) the names and addresses of the 10 largest holders of an ownership interest in the applicant and Affiliates of the applicant, and all Persons with five percent or more ownership interest in the applicant and its Affiliates; (ii) the Persons who Control the applicant and its Affiliates; and (iii) all officers and directors of the applicant and its Affiliates;
  - (2) A demonstration of the applicant's technical ability to construct and/or operate the proposed Cable System, including identification of key personnel;

- (3) A demonstration of the applicant's legal qualifications to construct and/or operate the proposed Cable System;
- (4) A statement prepared by a certified public accountant regarding the applicant's financial ability to complete the construction and operation of the Cable System proposed;
- (5) A description of the applicant's prior experience in Cable System ownership, construction and operation and identification of communities in which the applicant or any of its principals have, or have had, a Cable Franchise or any interest therein;
- (6) Identification of the area of the Town of Galena to be served by the proposed Cable System, including a description of the proposed Franchise Area's boundaries;
- (7) A detailed description of the physical facilities proposed, including Channel capacity, technical design, performance characteristics, headend and access facilities;
- (8) Where applicable, a description of the construction of the proposed Cable System, including an estimate of plant mileage and its location; the proposed construction schedule; a description, where appropriate, of how services will be converted from existing facilities to new facilities; and information on the availability of space in conduits including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities;
- (9) The proposed rate structure, including projected charges for each service, Installation, Converters and all other proposed equipment or service;
- (10) A demonstration of how the applicant will reasonably meet the future Cable-related needs and interests of the Town of Galena, including descriptions of how the applicant will meet the needs described in any recent community needs assessment conducted by or for the Town, and how the applicant will provide adequate PEG Access Channel capacity, facilities or financial support to meet the Town's needs and interests;
- (11) *Pro forma* financial projection for the proposed Franchise term, including a statement of projected income, and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules;
- (12) If the applicant proposes to provide Cable Service to an area already served by an existing Grantee, the identification of the area where the overbuild would occur and the ability of the Public Rights-of-Way and other property that would be used by the applicant to accommodate an additional Cable System;

- (13) Any other information that may be reasonably necessary to demonstrate compliance with the requirements of this Chapter;
  - (14) Any additional information that the Town may request of the applicant that is relevant to the Town's consideration of the application; and
  - (15) An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, acknowledging the enforceability of application commitments and certifying that the application complies with applicable law.
  - (16) The Town may, at its discretion and upon request of an applicant, waive in writing the provision of any of the information required by this Section.
  - (17) The application for a renewal franchise may incorporate by reference any of the above required information by reference if such information was supplied in the initial application and has not changed since the time of the initial application.
- (E) An applicant shall be notified of any public hearings held in connection with the evaluation of its application and shall be given an opportunity to be heard.
  - (F) An nonrefundable application fee of \$5,000 shall accompany any initial Franchise application. A nonrefundable application fee of \$1,000 shall accompany any renewal application or modification application unless otherwise stipulated by the Town. In addition, the Town may require an applicant to reimburse the Town for its reasonable out-of-pocket expenses in considering the application, including attorneys' and consultants' fees. Payments made by a Grantee hereunder shall not be deemed to be Franchise Fees within the meaning of the Cable Act, and such payment shall not be deemed to be involuntary payment chargeable against, or part of, the compensation to be paid to the Town by the Grantee pursuant to § 59-12 of this Chapter and applicable provisions of a Franchise Agreement. The purpose of the application fees is to cover costs incidental to processing and evaluating the application and/or enforcement of the Franchise.

**§ 59-5. Duration and acceptance of Franchise.**

- (A) A Franchise and the rights, privileges and authority granted thereto shall take effect and be in force as set forth in the Franchise Agreement and shall continue in force and effect for a term of no longer than ten years. Such Franchise shall be non-exclusive and revocable.
- (B) Within 30 days after the Town's decision to grant a Franchise, the intended Grantee shall file with the Town its unconditional acceptance of the Franchise and its promise to comply with and abide by all its provisions, terms and conditions.

**§ 59-6. Franchise renewal.**

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

**§ 59-7. Notices.**

All notices, reports or demands required to be given in writing pursuant this Chapter shall be delivered via certified first class mail or reputable overnight courier service to the Town Administrator or to the Town Administrator's designee, if to the Town, and to the person designated by the Grantee in a Franchise Agreement, if to the Grantee. A Grantee shall maintain with the Town, throughout the term of a Franchise, an address for personal service and a central office to address any issues relating to a Franchise operating under this Chapter.

**§ 59-8. Police powers.**

- (A) In entering into a Franchise Agreement with the Town, a Grantee shall acknowledge that its rights thereunder are subject to the police powers of the Town to adopt and enforce general public local laws pursuant to applicable law and necessary to the health, safety and welfare of the public. A Grantee shall also agree to comply with all applicable laws enacted or adopted by the Town pursuant to such power.
- (B) Any conflict between the provisions of this Chapter and any other present or future lawful exercise of the Town's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the Town of Galena, or applies exclusively to a Grantee or Cable Service, which contains provisions inconsistent with the Grantee's Franchise Agreement, shall prevail only if upon such exercise the Town finds an emergency exists constituting a danger to health, safety, property or general welfare or such exercise is mandated by law.
- (C) In the event that the State or federal government discontinues preemption in any area of Cable Service over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, the Town may, if it so elects, adopt rules and regulations in such area(s) to the extent permitted by law.

## **ARTICLE II**

### **General Requirements**

#### **§ 59-9. Franchise required.**

It shall be unlawful for any Person to construct, erect, install, maintain or operate a Cable System in the Town of Galena within any Public Rights-of-Way without first having been granted a Franchise by the Town pursuant to this Chapter.

#### **§ 59-10. Franchise Area.**

Any Franchise to provide Cable Service shall be valid within all the corporate limits of the Town of Galena, Maryland, unless otherwise specified in a Franchise Agreement.

#### **§ 59-11. Governing requirements; agreement and incorporation of application by reference.**

Upon adoption of a Franchise Agreement and execution thereof, a Grantee shall be bound by all the terms and conditions of this Chapter and any amendments thereto, unless otherwise provided in a Franchise Agreement. A Grantee shall also agree to provide all services specifically set forth in its application, if any, and to provide Cable Service within the confines of its Franchise Area. By its acceptance of a Franchise Agreement, a Grantee specifically grants and agrees that its application is thereby incorporated by reference and made a part of the Franchise Agreement. In the event of a conflict between the application and the provisions of this Chapter, that provision which provides the greatest benefit to the Town, in the opinion of the Town, shall prevail.

#### **§ 59-12. Franchise Fee.**

- (A) The Public Rights-of-Way of the Town to be used by a Grantee in the operation of its Cable System within the boundaries of the Town of Galena are held in trust for the benefit of the citizens and taxpayers of the Town of Galena, and the grant of a Franchise to a Grantee is a valuable right without which a Grantee would be required to invest substantial capital in right-of-way costs, acquisitions and maintenance. For this reason, a Grantee shall pay to the Town an annual Franchise Fee not to exceed five percent (5%) of the Grantee's Gross Revenue as defined herein. The Franchise Fee applicable to each Franchise shall be specified in a Franchise Agreement.
- (B) The Franchise Fee shall be in addition to any other tax, fee or assessment of general applicability or payment owed to the Town by a Grantee.
- (C) The Franchise Fee shall be paid on a quarterly basis and shall be due 45 days after the close of each calendar quarter, unless otherwise specified in a Franchise Agreement. Each payment shall be accompanied by a verified statement showing the basis for the computation and such other relevant factors as may be required by a Franchise Agreement.

- (D) The Town shall have the right, no more frequently than once every 12 months, to inspect a Grantee's Gross Revenue records directly-related to the calculation of the Franchise Fee and the right to audit and to re-compute any amounts determined to be payable under this Chapter upon thirty (30) days prior notice to the Grantee. Any additional amount due to the Town as a result of the audit shall be paid within thirty (30) days following written notice to the Grantee by the Town, which notice shall include a copy of the audit report. Unless required by law, the Town shall not disclose to any third party (other than its financial advisors in their capacity as such) any financial information or other information that would reasonably be regarded as confidential that the Town gains access to in connection with the provisions of this subsection. A Grantee's Gross Revenue records, when made available to the Town, shall not include Subscriber specific information.
- (E) If an audit review shows that any Franchise Fees have been underpaid, then a Grantee shall pay the underpaid amount and monetary fines of five percent of the underpayment. If Franchise Fees have been underpaid by ten percent or more, then a Grantee shall also reimburse the Town for any reasonable additional expenses and costs incurred in connection with such underpayment.
- (F) A Grantee shall not bundle its Cable Service with non-Cable Service so as to intentionally reduce or evade the imposition of the Franchise Fee.
- (G) Unless otherwise specified in a Franchise Agreement, if any Franchise Fee payment or recomputed amount, cost or penalty is not made on or before the applicable dates set forth in this Chapter, interest shall be charged daily from such date at the maximum legal rate charged by the Internal Revenue Service for late tax payments and a Grantee shall reimburse the Town for reasonable additional expenses and costs incurred by reason of the delinquent payment(s).

**§ 59-13. Use of Public Rights-of-Way.**

- (A) For the purpose of operating and maintaining a Cable System in the Franchise Area, a Grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the Public Rights-of-Way within the Franchise Area such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary to the operation of the Cable System; provided, however, that the Grantee complies with all design, construction, safety, and performance provisions contained in this Chapter, the Franchise Agreement, and other applicable law.
- (B) A Grantee's Cable System, poles, wires and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons or interfere with the rights or reasonable convenience of property owners who adjoin any of the Public Rights-of-Way, or interfere with any improvements the Town may deem proper to make, or unnecessarily

hinder or obstruct the free use of the Public Rights-of-Way of the Town of Galena.

- (C) Before commencing construction in, above, over, under, across, through or in any way connected with the Public Rights-of-Way (other than such public areas not under the Town's control), a Grantee shall obtain all required permits (at the fees regularly charged therefore), including but not limited to the written approval of the Town, which approval shall not be unreasonably withheld or delayed. The Town may designate the location, manner and time of any construction within the Public Rights-of-Way. Notwithstanding the foregoing, a Grantee shall not be required to obtain a permit for individual drop connections to Subscribers servicing or installing pedestals or instances of routine maintenance or minor repair to its Cable System that do not disturb the surface grade or impact vehicular traffic.
- (D) In case of any disturbance of pavement, sidewalk, landscaping, driveway or other surfacing, including the surface of the Public Rights-of-Way, caused by a Grantee or any Person acting on its behalf, the Grantee shall, at its own cost and expense and in a manner and within a timeframe approved by the Town, replace and restore all such paving, sidewalk, driveway, landscaping or other surface disturbed, to a condition comparable to that before the work was commenced and in accordance with standards for such work set by the Town.
- (E) A Grantee or any other Person acting on its behalf shall not open or otherwise disturb the surface of any Public Right-of-Way for any purpose whatsoever without: (i) obtaining approval to do so in the manner prescribed in Subsections (C) and (D); and (ii) obtaining all required street opening or other permits. A Grantee shall be fully responsible for the actions and activities of its agents, employees and sub-contractors and shall immediately respond to and rectify any complaint resulting from an activity of any such agent, employee or sub-contractor.
- (F) A Grantee shall restore any Public Right-of-Way it has disturbed, and shall, at its own cost and expense, restore and replace any other property disturbed, damaged or in any way injured by or on account of its activities, to a condition comparable to the condition that said Public Right-of-Way was in immediately prior to the disturbance, damage or injury.
- (G) A Grantee shall, at its own cost and expense, protect, support, temporarily disconnect, relocate in the same Public Right-of-Way, or remove from said Public Right-of-Way, any of its property when required to do so by the Town because of: street or other public excavation; construction; repair; regarding or grading; traffic conditions; installation of sewers, drains, or water pipes; Town-owned power or signal lines; tracks; vacation or relocation of streets or any other type of structure or improvement of a public agency; or any other type of improvement necessary for the public health, safety or welfare.
- (H) A Grantee shall have the authority to trim trees within the Public Rights-of-Way at its own expense as may be necessary to protect its wire and facilities,

subject to the direction of the Town or any other appropriate governmental authority.

- (I) **Erection, Removal and Common Uses of Poles:**
- (1) No poles or other wire-holding structures shall be erected by a Grantee without prior approval of the Town with regard to location, height, types and any other pertinent aspect. However, no location of any pole or wire-holding structure of a Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the Town determines that the public health, safety and/or welfare may be enhanced thereby.
  - (2) Where poles or other wire-holding structures already existing for use in serving the Town are available for use by a Grantee, but the Grantee does not make arrangements for such use or an agreement thereof cannot be reached, the Town may require the Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby, the use of such poles and structures is technically feasible and the terms of the use available to the Grantee are just and reasonable.
  - (3) In the absence of any governing federal or State statute, where a public utility serving the Town desires to make use of the poles or other wire-holding structures of a Grantee, but agreement thereof with the Grantee cannot be reached, the Town may require the Grantee to permit such use for such consideration and upon such terms as the Town shall determine to be just and reasonable, if the Town determines that the public convenience would be enhanced thereby and would not unduly interfere with the Grantee's operations.
- (J) If, at any time during the term of a Franchise, the Town shall lawfully elect to alter or change the grade of any Public Right-of-Way and shall require all of the respective public utilities impacted by such alteration to remove or relocate their facilities, a Grantee, upon reasonable notice by the Town, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense unless the utilities are compensated, in which case the Grantee shall be similarly compensated.
- (K) A Grantee shall, on the request of any Person holding a building or moving permit issued by the Town, temporarily raise or lower its wires to permit the moving of buildings. The Person making the request shall provide the Grantee at least 30 days' prior written notice to arrange for such temporary wire changes and pay the expense of such temporary removal, raising or lowering of wires, and a Grantee shall have the authority to require such payment in advance.
- (L) The operations and activities of a Grantee that impact Public Rights-of-Way are further subject to the provisions of Article IX of the Charter of the Town of Galena (Public Ways and Sidewalks) and Chapter 150 (Streets and Sidewalks)

of the Code of the Town of Galena, and any conflict between the provisions of this Chapter and Chapter 150 of the Code and Article IX of the Charter shall be resolved in favor of the best interests of the Town.

**§ 59-14. Cable System construction.**

- (A) The Cable System construction timetable in an Initial Service Area shall be established in a Franchise Agreement.
- (B) Unless otherwise provided for in a Franchise Agreement:
  - (1) In any Franchise Area, a Grantee shall be required to extend its Cable System pursuant to the following requirements:
    - (a) No customer shall be refused service arbitrarily. A Grantee may extend the Cable System as necessary within the Town. To expedite the process of extending the Cable System into a new subdivision, the Town will forward to a Grantee an approved engineering plan of each such project. Subject to the applicable franchise density requirements, a Grantee shall commence the design and construction process upon receipt of the final engineering plan. Upon notification from the Town that the first home in the project has been approved for a building permit, a Grantee shall have a maximum of three months to complete the construction/activation process within the project meeting the density requirement; provided, however, that the three-month period shall be reasonably extended to accommodate delays caused by circumstances beyond the control of the Grantee, including but not limited to make-ready procedures, weather conditions, and location of all underground utilities.
    - (b) A Grantee must extend and make Cable Service available to every residential dwelling unit in all unserved, developing areas having at least 25 dwelling units per mile, as measured from the existing Cable System. For purposes of this provision, "per mile" means within one mile, as measured in strand footage, from the nearest point of the Cable System trunk or feeder line from which a usable Cable signal is obtainable.
    - (c) A Grantee shall connect all residential dwelling units that are within one hundred twenty five (125) feet of active feeder lines not otherwise already served by the Cable System ("Normal Installation"). Grantee shall be allowed to recover, from any Subscriber that requests such connection, the actual costs incurred for residential dwelling unit connection that exceeds the distance of a Normal Installation.
  - (2) In areas not meeting the requirements for mandatory extension of service, a Grantee shall provide, upon the request of a potential Subscriber desiring

service, an estimate of the costs required to extend service to the Subscriber.

(3) In cases of new construction or property development where utilities are to be placed underground, the Town shall encourage the developer or property owner to give Grantees reasonable, prior written notice of such construction or development, and of the particular date on which open trenching will be available for the installation of Grantee conduit, pedestals and/or vaults, and laterals to be provided at the expense of Grantee.

(4) A Grantee, in its application, may propose a line extension policy which will result in serving more residents of the Town of Galena than as required in this Section, in which case such line extension policy shall be incorporated into a Franchise Agreement, and will be binding on the Grantee.

(C) Nothing herein shall be construed to prevent a Grantee from serving areas not covered under this Section upon agreement with developers, property owners, or residents provided that Franchise Fees are paid to the Town on those Gross Revenues.

#### **§ 59-15. Construction and technical standards.**

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

(B) Additional Specifications:

(1) Construction, Installation and maintenance of a Cable System shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines in accordance with industry standards. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

(2) A Grantee shall at all times comply with applicable provisions of the following:

(a) National Electrical Safety Code (National Bureau of Standards); National Electric Code (National Bureau of Fire Underwriters); Bell System Code of Pole Line Construction; and

(b) FCC and other federal, State and local regulations.

- (3) In any event, a Cable System shall not endanger or interfere with the safety of persons or property in a Franchise Area or other areas where a Grantee may have equipment located.
  - (4) Any antenna structure used in the Cable System shall comply with construction, marking and lighting of antenna structures, required by the United States Department of Transportation.
  - (5) All working facilities and conditions used during construction, Installation and maintenance of the Cable System shall comply with the applicable standards of the Occupational Safety and Health Administration.
  - (6) RF leakage shall be checked at reception locations for emergency radio services to prove no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception in the normal flight patterns. FCC rules and regulations shall govern the foregoing requirements.
  - (7) A Grantee shall maintain equipment capable of providing emergency standby power for the headend and transport Cable System for a minimum of three hours, unless otherwise provided for in a Franchise Agreement.
  - (8) In all areas of the Town of Galena where the cables, wires and other like facilities of public utilities are placed underground, a Grantee shall place its cables, wires and other like facilities underground, provided that such underground facilities are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality.
- (C) A Grantee's repeated and verified failure to maintain specified technical standards shall constitute a material Franchise violation.

#### **§ 59-16. Insurance.**

A Grantee shall carry insurance in such forms and in such companies as specified in a Franchise Agreement.

#### **§ 59-17. Security.**

- (A) Unless otherwise provided in a Franchise Agreement, a Grantee shall obtain and maintain during the Franchise term, at its sole cost and expense, a performance bond running to the Town with a surety company licensed to do business in the State of Maryland to ensure the Grantee's faithful performance of its obligations under the Franchise Agreement. The performance bond shall provide that the Town may recover from the principal and surety any and all liquidated damages and/or compensatory damages incurred by the Town for the Grantee's confirmed violations of the Franchise Agreement, after notice and opportunity to cure, in accordance with §59-40 of this Chapter. The form and

amount of the performance bond shall be specified in the Franchise Agreement. A Grantee shall not reduce, cancel or materially change said bond from the requirement contained herein without the express prior written permission of the Town.

- (B) In the event that a Grantee shall undertake a construction or reconstruction project or series of projects that will necessitate significant and/or system-wide disruption of the Public Rights-of-Way in the Town with respect to the Cable System in an amount of \$1,000,000.00 or more in any 12-month period, the Grantee shall notify the Town of the particulars thereof and the Town, in its reasonable discretion, shall have the right to demand that the Grantee obtain a construction bond or other security with respect to said project in favor of the Town, in form and substance satisfactory to the Town, in its reasonable discretion.
- (C) Nothing herein shall be deemed a waiver of the normal permit and bonding requirements made of all contractors working within the Town's Public Rights-of-Way or otherwise.

**§ 59-18. Hold harmless.**

(A) The Town shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of the construction, maintenance, repair, use, operation, condition or dismantling of a Grantee's Cable System or due, in whole or in part, to the act or omission of any person other than the Town or those persons for which the Town is legally liable as a matter of law.

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

(C) In the event any action or proceeding shall be brought against the Town or any of its officers, boards, commissions, agents or employees by reason of any matter for which the Town is indemnified hereunder, the Grantee shall, upon timely notice from the Town, *i.e.*, a period of time provided by law that allows the Grantee to take action to avoid entry of a default judgment and does not prejudice the Grantee's ability to defend the claim or action,

and at the Grantee's sole cost and expense, resist and defend the same; provided, however, that the Grantee shall not admit liability in any such matter on behalf of the Town or any of its officers, boards, commissions, agents or employees without the written consent of the Town Attorney or the Town Attorney's designee.

(D) The Town shall give a Grantee prompt notice of the making of any claim or the commencement of any action, suit, or other proceeding subject to indemnification pursuant to this Section. Nothing herein shall be deemed to prevent the Town from cooperating with a Grantee and participating in the defense of any litigation through the Town Attorney.

(E) Nothing in any Franchise Agreement entered into pursuant to this Chapter shall be intended to express or imply a waiver of the statutory provisions, of any kind or nature, as set forth in State statutes, including the limits of liability of the Town as exists presently or may be amended from time to time.

**§ 59-19. Rights of individuals.**

- (A) A Grantee shall not deny service or access or otherwise discriminate against Subscribers, Channel Users, PEG Users or any other citizen of the Town of Galena on the basis of race, color, religion, national origin, disability or gender. A Grantee shall comply at all times with all applicable law relating to nondiscrimination, which are hereby incorporated and made part of this Chapter by reference.
- (B) A Grantee shall strictly adhere to the equal employment opportunity requirements of the FCC, federal, State and local regulations, as amended from time to time.
- (C) A Grantee shall, at all times, comply with the privacy requirements of federal and State law.
- (D) A Grantee is required to make all Cable System services available to all residential dwellings and dwelling units throughout the Franchise Area which meet the minimum housing density requirements set forth herein and/or in a Franchise Agreement.

**§ 59-20. Public notice.**

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

**§ 59-21. Availability of records and reporting.**

- (A) A Grantee shall fully cooperate in making available at reasonable times, and the Town shall have the right to inspect, where reasonably necessary to the enforcement of a Franchise and upon reasonable prior written notice, books, records, reports, maps, plans and other like materials of the Grantee directly applicable to the Cable System in the Town. Such inspection shall take place at the local office of the Grantee and during Normal Business Hours.

- (B) The following records and/or reports are to be made available to the Town upon 30 days prior written request:
- (1) An annual review or progress report submitted by a Grantee to the Town;
  - (2) Periodic preventive maintenance reports;
  - (3) Any copies of FCC Form 396-C, "Multi-channel Program Distributor EEO Program Annual Report" (or successor form) or any supplemental forms related to equal opportunity or fair contracting policies;
  - (4) A record of monthly service calls which will indicate the nature of each service complaint received in the past 12 months, the date it was received, the disposition of said complaint, and the date thereof; and
  - (5) Periodic construction update reports, during that period of time a construction project is in progress, and/or the submission of strand maps, (i.e., maps showing the location of the Cable System in relation to the streets and roadways in the Town).
- (C) Copies of all petitions, applications, communications and reports either submitted by a Grantee to the FCC, Securities and Exchange Commission or any other federal or State regulatory commission or agency having jurisdiction in respect to any matters affecting Cable Service operations authorized pursuant to the Franchise, or received from such agencies, shall be provided to the Town upon written request.
- (D) Upon written request, a Grantee shall file annually with the Town, no later than 120 days after the end of the Grantee's fiscal year, a copy of a Gross Revenues statement certified by an officer of the Grantee.

**§ 59-22. Periodic evaluation and review.**

- (A) Upon written request of not less than 30 days prior written notice to a Grantee, the Town may conduct evaluation and review sessions during the term of a Franchise Agreement, but not more than once every three years; provided, however, that special evaluation and review sessions may be held at any time during the Franchise term at the request of the Town or a Grantee.
- (B) All scheduled evaluation and review sessions shall be open to the public and announced in a newspaper of general circulation in accordance with legal notice standards applicable to public hearings. The Town, in its discretion, may also require a Grantee to notify its Subscribers of all such sessions by announcements on at least one Channel of the Cable System during a specified timeframe preceding each session. If the Town has an operating PEG channel, such notices may be placed on the PEG channel unless otherwise directed by the Town. Topics that may be discussed at any evaluation and review session include, but are not limited to, Franchise Fee, penalties, rates, Channel capacity, the Cable System performance, programming, PEG access, the Town's uses of

cable, Subscriber complaints, line extension policy, application of new technologies, judicial rulings, FCC rulings and any other topics that directly relate to Cable Service.

- (C) During an evaluation and review session, a Grantee shall fully cooperate with the Town and shall provide without cost such reasonable information and documents as the Town may request to perform the evaluation and review in accordance with applicable law.
- (D) As a result of an evaluation and review session, and the Town has reason to believe that a Grantee violated any technical or customer service provision of the Franchise Agreement and/or applicable law, it shall notify the Grantee in writing of the nature of such violation and the section of any Franchise Agreement or provision of law that it believes has been violated. The Grantee shall then have 30 days to cure such violation after written notice is received by taking appropriate steps to comply. If the nature of the violation is such that, in the Town's reasonable judgment, it cannot be fully cured within 30 days due to circumstances outside of a Grantee's control, the period of time in which the Grantee must cure the violation may be extended by the Town in writing for such additional time necessary to complete the cure, provided that the Grantee shall have promptly commenced to cure and is diligently pursuing its efforts to cure.

**§ 59-23. Public requests for information.**

- (A) In any Franchise Agreement entered into pursuant to this Chapter, the Town shall agree to timely advise a Grantee of any request by any person, other than a Town official or Town employee in the performance of such Town official's or Town employee's duties, seeking to review or obtain such documents. In the event that the Town determines that such documents are disclosable under the Maryland Public Information Act ("MPIA"), the Town shall timely advise the Grantee and allow the Grantee to challenge the disclosure of such documents at the Grantee's own expense. If the Grantee's challenge of the disclosure is unsuccessful, the Grantee, in addition to its own expenses, shall indemnify, defend, and hold harmless the Town, and its officials and employees, of and from all costs and damages related to the challenge, including reasonable attorneys' fees. If the Town determines that such documents are not disclosable under the MPIA, the Town shall not disclose such documents, shall advise the requester of the basis for such non-disclosure and requester's rights under the MPIA and shall advise timely the Grantee of any challenge by the requester to such action.
- (B) In any Franchise Agreement entered into pursuant to this Chapter, a Grantee and the Town shall each agree to provide the other, upon written request, with copies of all pleadings, court filings and non-privileged correspondence relating to the defense of any action brought to disclose documents under the MPIA.

**§ 59-24. Continuity of service mandatory.**

- (A) It shall be the right of all Subscribers to continue receiving service provided that their financial and other obligations to a Grantee are honored. If the Grantee elects to rebuild, modify or sell its Cable System, or the Town gives notice of intent to terminate or fails to renew a Franchise, the Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances. If there is a change of Franchise, or if a new operator acquires the Cable System, a Grantee shall cooperate with the Town, new Grantee or operator in maintaining continuity of service to all Subscribers. During this transition period, which shall not exceed 12 months, a Grantee shall be entitled to the revenues for any period during which it operates the Cable System, and shall be entitled to reasonable costs for its services until it no longer operates the Cable System.
- (B) Unless otherwise provided for in the Franchise Agreement, if a Grantee fails to operate a Cable System for 14 consecutive days without prior approval of the Town or without just cause, the Town may, at its option, operate the Cable System or designate an operator until such time as the Grantee restores service under conditions acceptable to the Town or a permanent operator is selected. If the Town is required to fulfill this obligation for a Grantee, the Grantee shall reimburse the Town for all reasonable costs or damages in excess of revenues from the Cable System received by the Town that are the result of the Grantee's failure to perform.

**§ 59-25. Complaint procedure.**

- (A) The Town Administrator, or the Town Administrator's designee, is designated as having primary responsibility for the continuing administration of a Franchise and implementation and oversight of complaint procedures.
- (B) Unless otherwise provided in the Franchise Agreement, a Grantee shall maintain, during the term of a Franchise and any renewal thereof, a central office for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, and similar matters. The office must be reachable by a local, toll-free telephone call and by electronic mail.
- (C) As Subscribers are connected or reconnected to a Grantee's Cable System, the Grantee shall, by appropriate means, such as a card, brochure or electronic mail, furnish information concerning the procedures for making inquiries or complaints, including the address, local telephone number and Internet website for customer service.
- (D) To the extent permitted by applicable law, the Town shall have the right and authority to require a Grantee to test, analyze and report on the performance of its Cable System, provided that the Town shall not require a Grantee to test the Cable System as a whole, or any specific part thereof, more than once during any calendar year, unless a test shows that the Cable System or such a specific

part fails to meet relevant performance specifications. A Grantee shall fully cooperate with the Town in performing such testing and shall prepare results and a report, if requested, within 45 days after notice.

- (1) Such report shall include the following information:
  - (a) The nature of the complaint or problem which precipitated the tests;
  - (b) What Cable System component was tested;
  - (c) The equipment used and procedures employed in testing;
  - (d) The method, if any, in which such complaint or problem was resolved;  
and
  - (e) Any other information pertinent to the tests and analysis which may be required.
- (2) A Grantee's periodic proof of performance tests conducted pursuant to FCC standards and requirements may satisfy a test or report required by the Town under this Section.
- (3) The Town may require an independent review of a performance test, with the independent reviewer selected by the Town to review the Cable System in cooperation with a Grantee. Should such a test prove that the Grantee failed to meet a technical standard, the Grantee shall bear the cost of such independent observer. Should such a test prove that the Grantee met the technical standard(s), the Town shall bear the cost of such test.

**ARTICLE III**  
**Cable System Capabilities, Requirements,**  
**And Operational Standards**

**§ 59-26. Required services and facilities.**

- (A) A Cable System shall have the services and facilities prescribed in this Chapter and in a Franchise Agreement.
- (B) Upon the execution of a Franchise Agreement, a Grantee shall notify the Town of the number of Channels and types of services it offers and intends to offer on the Cable System and shall attach its current Channel lineup as an exhibit to the Franchise Agreement. A Grantee shall also notify the Town in writing within 30 days of any change in the number of Channels or types of services offered. Concurrently with the activation of its Cable System, a Grantee shall make all such programming and services available to Subscribers.
- (C) A Grantee shall provide emergency alert capacity pursuant to FCC rules. A Grantee shall cooperate with the Town in the use and operation of the emergency alert override system.
- (D) A Grantee may alter, adjust, modify, rebuild, upgrade, redesign or otherwise reconfigure the Cable System at any time during the term of a Franchise Agreement; provided, however, that no such alteration, adjustment, modifications, rebuild, upgrade, redesign or other reconfiguration of the Cable System shall have the effect of reducing the technical capabilities of the Cable System from those prescribed herein.

**§ 59-27. Leased Access Channels.**

In accordance with applicable law, a Grantee shall make available Leased Access Channels to assure that the widest possible diversity of information sources are made available to Subscribers. Such Channels shall be specifically designated for leased access use by Persons unaffiliated with the Grantee, at rates which are fair and reasonable. The number of such Channels shall be determined by applicable law.

**§ 59-28. Operational standards.**

Unless otherwise provided in a Franchise Agreement:

- (A) A Grantee shall put, keep and maintain all parts of a Cable System in good condition throughout the term of a Franchise.
- (B) Upon the reasonable request for service by any Person located within a Grantee's Franchise Area, the Grantee shall, within 60 days, furnish the requested service to such person within the terms of any Franchise line extension policy. A request for service shall be unreasonable for the purpose of this Subsection if no trunk line installation capable of servicing the Person's property has as yet been installed.

- (C) A Grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, to the maximum extent practicable, shall be preceded by notice and shall occur during periods of minimal Cable System use.
- (D) A Grantee shall not allow its Cable System or other operations to interfere with television reception of Subscribers or Persons not served by the Grantee, nor shall a Cable System interfere with, obstruct or hinder in any manner the operation of the various utilities serving the residents within the confines of the Town of Galena.
- (E) A Grantee shall provide and maintain a toll-free telephone access line available to Subscribers 24 hours a day, seven days a week, or a comparable customer service communication system. Trained representatives shall be available to respond to customer inquiries during Normal Business Hours.
- (F) Under Normal Operating Conditions, telephone answer time, including wait time and the time required to transfer the call, shall not exceed 60 seconds. This standard shall be met no less than 90 percent of the time as measured on a quarterly basis.
- (G) Standard Installations will be performed within seven business days after an order has been placed. A standard Installation is one that is within 125 feet of an existing Cable System.
- (H) Excluding those situations which are beyond its control, a Grantee will respond to any Service Interruption promptly and in no event later than 24 hours from the time the interruption becomes known. All other regular service requests will be responded to the next business day after notification of the service problem. The appointment window alternatives for Installations, service calls and other Installation activities will be “morning” or “afternoon”, not to exceed a four-hour window during Normal Business Hours, or at a time that is mutually acceptable to a Grantee and a customer. A Grantee will schedule supplemental hours during which appointments can be scheduled based on the needs of the community served. If at any time an installer or technician is running late, an attempt to contact the customer will be made and the appointment rescheduled as necessary at a time that is convenient to the customer.
- (I) A customer service center(s) and bill payment facility(s) shall be conveniently located for Subscribers and open for walk-in customer transactions during Normal Business Hours. A Grantee may, in its sole discretion, establish supplemental hours on weekdays and/or weekends if it would fit the needs of the community served.
- (J) In the event of an Outage of Subscriber Cable Service, the following shall apply after proper notification to a Grantee:
  - (1) For Outages of over six consecutive hours and up to seven days, Grantee shall provide, at a Subscriber’s written request, a credit of one-thirtieth (1/30) of

one month's fees for affected services for each twenty-four (24) hour period service is interrupted for six (6) consecutive or more hours for any single Subscriber, with the exception of: Subscribers disconnected because of non-payment; excessive signal leakage; or circumstances beyond Grantee's reasonable control.

- (2) For Outages of seven (7) days or more in one month which have been properly reported in writing to Grantee and which are within the reasonable control of Grantee, the Grantee shall provide, at a Subscriber's written request, a credit for service to affected Subscribers in accordance with Grantee's billing and refund policies.
- (K) For Outages of over six consecutive hours and up to seven days, Grantee shall provide, at Subscriber's written request, a credit of one-thirtieth (1/30) of one month's fees for affected services for each twenty-four (24) hour period service is interrupted for six (6) consecutive or more hours for any single Subscriber, with the exception of Subscribers disconnected because of non-payment; excessive signal leakage; or circumstances beyond Grantee's reasonable control. A Grantee will provide written information in each of the following areas at the time of Installation and at any future time upon the request of the customer:
- (1) Product and services offered;
  - (2) Prices and Cable Service options;
  - (3) Installation and service policies; and
  - (4) How to use the Cable Service.
- (L) Bills will be clear, concise and understandable, with all services itemized consistent with applicable law.
- (M) Credits will be issued promptly, but no later than a customer's next billing cycle following the resolution of the request and the return of equipment to a Grantee if service has been terminated.
- (N) Unless otherwise specified by FCC regulations, customers and the Town will be notified a minimum of 30 days in advance of any rate or programming Channel change, provided that the change is within the control of a Grantee.
- (O) A Grantee shall continue, through the term of a Franchise, to maintain the technical standards and quality of service specified in this Chapter. Should the Town find, by resolution of the Mayor and Council of the Town of Galena, that a Grantee has failed to maintain these technical standards and quality of service, then the Grantee shall be required to implement a plan for resolution.
- (P) A Grantee shall keep a record of monthly service calls which will indicate the nature of each service complaint received in the past 12 months, the date it was received, the disposition of said complaint, and the date thereof. Upon reasonable notice, such records shall be made available to the Town for inspection.

- (Q) All personnel of a Grantee contacting Subscribers or potential Subscribers outside the office of the Grantee must be clearly identified as associated with the Grantee.
- (R) The provisions of §59-40 notwithstanding, in the event a Grantee fails to arrive for Installations and/or service calls within the scheduled four-hour time frame set forth in this Chapter under Normal Operating Conditions less than 90 percent of the time as measured on a quarterly basis, then the Town may impose a monetary penalty upon the Grantee. The amount of such monetary penalty shall be established by resolution of the Mayor and Council of the Town of Galena. Prior to imposition of the penalty, the Town shall notify the Grantee in writing of the alleged default. Upon receipt of the notice, the Grantee shall have a 60-day period in which to correct the default or it may elect to pay such penalty, in which event the act or omission giving rise to the penalty shall not be the basis for any other sanction by the Town. In the alternative, a Grantee shall have the right to request a hearing affording due process before the Mayor and Council of the Town of Galena to determine whether the penalty should be imposed. The imposition of any such penalty shall be stayed pending the final outcome of such proceeding.

**§ 59-29. Parental control lock.**

A Grantee shall provide, for sale or lease, to Subscribers, upon request, a parental control locking device or digital code that permits inhibiting the video and audio portions of any Channels offered by the Grantee.

**§ 59-30. Town access to Cable Services**

- (A) Basic Cable Service will, upon request of the Town, be made available to any Town buildings and facilities identified in a Franchise Agreement. Connection and access to the Cable System shall be provided to such buildings and facilities within 90 days of the Town's written request. One drop per building or facility shall be made without charge for Installation of up to 125 feet from a Grantee's activated Cable System. Unless otherwise provided in a Franchise Agreement, the Town shall be solely responsible for any costs associated with the Installation of any additional drop or non-standard drop costs, line extension costs or other construction cost other than the one standard drop per building or facility. The Town shall be responsible for selecting, purchasing, installing and maintaining any premises equipment necessary for individuals at its buildings and facilities to use the Cable System.
- (B) A Grantee shall not charge the Town for the provision of Basic Cable Television Services and Internet access provided to those Town buildings and facilities set forth a Franchise Agreement.
- (C) A Grantee will not pass through, as an external cost to residential Subscribers of the Cable System, the cost of providing Cable Service, including Internet service, to Town buildings and facilities.

**§ 59-31. Public, Educational or Government (“PEG”) Access Channels.**

- (1) Upon 180 days’ prior written request from the Town, a Grantee shall make available to each of its Subscribers who receive some or all the services offered on the Cable System, reception of one PEG Access Channel, which shall be used for Public, Educational and Government programming. The PEG Access Channel shall be made available by a Grantee for use by the Town and its citizens in accordance with this Chapter and applicable law. The Grantee will provide the PEG Access Channel on the lowest available digital tier or as otherwise provided in federal or State laws or regulations.
  - (2) To the extent that a PEG Access Channel is not being used for the provision of non-commercial, public, educational or governmental access purposes, a Grantee shall be permitted to use such Channel for the provision of other services subject to any reasonable rules established by the Town regarding such use; provided, however, that such permitted use shall cease within 90 days of the Grantee’s receipt of written notice from the Town that such Channel will again be used for PEG access on a Town-wide or Cable System-wide basis.
- (B) To enable distribution of the PEG Access Channel, a Grantee shall install PEG Access video return capability in accordance with the requirements in the Franchise Agreement.
- (1) If the Town wishes to cablecast live programming, then the Town shall select a location within the Franchise Area and a Grantee shall provide and install, within 180 days’ written notice from the Town, the cables, wires, lines and other signal distribution equipment for an alternative technology such that live programming can originate from the selected location and be distributed via the Cable System to Subscribers in the Franchise Area. These cables, wires, lines and other signal distribution equipment shall be collectively known as the “Return Line”.
  - (2) Any expenditures made in connection with construction and maintenance of Return Lines for live programming not utilizing an Internet-based or other type of capable technology, shall be at the expense of the Town.
  - (3) A Grantee shall be responsible for maintaining the wiring to the video origination points, provided that the Town provides the Grantee with access to the location and access to the PEG equipment within the location. A Grantee shall provide, install and maintain in good working order the equipment and the fiber necessary for transmitting the signal to the Channel aggregation site for further processing and distribution to Subscribers. A Grantee shall deliver the PEG Access Channel signal at a level of technical quality that is comparable to the level of technical quality provided by the Grantee for signals of commercial Channels transmitted to Subscribers in the Franchise Area; provided, however, that the Grantee shall have no responsibility to improve upon or modify the signal quality of any PEG

Access Channel content provided to Grantee by any PEG Access Channel programmer.

- (4) The Town or its designee shall be responsible for providing any necessary production or playback equipment and shall be responsible for securing and supervising all of the trained/qualified personnel required to conduct the operation of the PEG Channel. The Town and a Grantee shall work cooperatively in implementing the PEG Channel through such means and in such manner as shall be mutually satisfactory.

(C) Access Facilities and Equipment.

- (1) Within 60 days of the execution of a Franchise Agreement, a Grantee shall pay the Town a grant in the amount set forth in the Franchise Agreement. Such grant shall be used by the Town, in its sole discretion, to purchase, operate and maintain PEG Access Facilities and equipment.
- (2) The Town shall be responsible for the provision and operation of the Access Facilities and equipment. The Town may delegate from time to time its responsibilities to others who then shall assume the responsibility of the Town in accordance with the Town's delegation.
- (3) The Town will develop reasonable rules regarding use of Access Facilities and equipment and determine its needs for PEG Access services. In this regard, the Town shall regularly coordinate with a Grantee for the purpose of developing and maintaining reasonable Access Facilities and equipment.
- (4) A Grantee is responsible for its headend equipment necessary for the playback of programming, including operation and maintenance. The Town is responsible for all on-site equipment for telecasting from any origination point.

- (D) All capital costs incurred by a Grantee for providing the use of the PEG Access Channels and supporting such Channels, including any and all Access Facilities and equipment and capital grants, may be designated as "costs of Franchise requirements" or "external costs" pursuant to the Cable Act.

**§ 59-32. Removal of Cable System.**

- (A) At the expiration of the Franchise term or if any renewal request is denied, or upon the termination of a Franchise as provided in this Chapter, a Grantee shall forthwith, upon reasonable notice by the Town, remove at its own expense all designated portions of its Cable System from all Public Rights-of-Way within the Town. If a Grantee fails to do so within 12 months of notice, then the Town may perform such removal at the Grantee's expense. Upon such notice of removal, a bond shall be furnished by a Grantee in an amount sufficient to cover this expense.

(B) Notwithstanding the above and pursuant to the Cable Act, a Grantee shall not be required to remove its Cable System, or to relocate or sell the Cable System or any portion thereof, as a result of revocation, denial of renewal, or any other lawful action to forbid or disallow Grantee from providing Cable Service, if the Cable System is actively being used to facilitate any other services not governed by the Cable Act or any portion thereof.

## **ARTICLE IV Regulation**

### **§ 59-33. Town rules and regulations.**

In addition to the inherent powers of the Town to regulate and control a Cable Service Franchise, and those powers expressly reserved by the Town or agreed to and provided for in a Franchise Agreement, the right and power is hereby reserved by the Town to promulgate such generally applicable additional regulations as it shall find necessary in the exercise of its lawful powers and furtherance of the terms and conditions of this Chapter; provided, however, such rules, regulations, terms or conditions shall not be in conflict with a Franchise Agreement granted pursuant to this Chapter or applicable law.

### **§ 59-34. Grantee rules and regulations.**

A Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under a Franchise Agreement and to assure uninterrupted service to each and all of its customers provided, however, such rules, regulations, terms or conditions shall not be in conflict with a Franchise Agreement granted pursuant to this Chapter or applicable law.

### **§ 59-35. Compliance with County, State, and federal laws.**

Notwithstanding any other provisions of this Chapter to the contrary, a Grantee shall at all times comply with all laws and regulations of the County (to the extent applicable), State, and federal government or any administrative agencies thereof; provided, however, if any such County, State or federal law or regulation shall require the Grantee to perform any service, permit the Grantee to perform any service or prohibit the Grantee from performing any service, in conflict with the terms of this Chapter or of any law or regulation of the Town, then as soon as possible following knowledge thereof, the Grantee shall notify the Town of the point of conflict believed to exist between such regulation or law and the laws or regulations of the Town or this Chapter.

### **§ 59-36. Rate regulation.**

The Town reserves the right to regulate rates for Basic Cable Service and any other services offered over a Cable System, to the extent permitted by applicable law. A Grantee shall be subject to the rate regulation provisions provided for herein, and those of the FCC.

### **§ 59-37. Subsequent regulatory authority.**

To the extent any applicable law may in the future: (i) permit the Town to regulate any fee, charge or deposit, or any term or condition with respect thereto; (ii) permit the Town to increase the Franchise Fee or the rate thereof; or (iii) permit the Town to assess the Franchise Fee against items or categories of items; or (iv) expand the authority of the Town in any other way or manner, the Town shall not be estopped or prohibited from so doing by any provision of a Franchise Agreement, by virtue of having granted a Franchise to a Grantee, or by the existence thereof.

**ARTICLE V**  
**Termination And Revocation of Franchise**

**§ 59-38. Forfeiture and termination.**

- (A) In addition to all other rights and powers retained by the Town under applicable law, the Town reserves the right to forfeit and terminate a Franchise and all rights and privileges of a Grantee thereunder in the event of a substantial breach of the terms and conditions of this Chapter or a Franchise Agreement. A substantial breach by a Grantee shall include, but not be limited to, the following:
- (1) A violation of any material provision of a Franchise Agreement or this Chapter or any material rule, order, regulation or determination of the Town made pursuant to a Franchise Agreement or this Chapter.
  - (2) An attempt to evade any material provision of a Franchise Agreement or perpetuate any fraud or deceit upon the Town or a Grantee's Subscribers or customers;
  - (3) Failure to begin or complete Cable System construction or extension;
  - (4) Failure to provide the services promised in a Grantee's application, if any, as provided in a Franchise Agreement;
  - (5) Failure to restore service after 96 consecutive hours under Normal Operating Conditions of an Outage or Service Interruption, except when approval of such Outage or Service Interruption is obtained from the Town; or
  - (6) Material and intentional misrepresentation of fact in the application for a Franchise or in the negotiation of a Franchise Agreement.
- (B) The foregoing shall not constitute a substantial breach if the violation occurs but results directly or indirectly from circumstances beyond a Grantee's control; provided, however, that a Grantee shall not be excused by mere economic hardship or by misfeasance or malfeasance of its directors, officers, employees or agents.
- (C) In the event of a substantial breach of a Franchise Agreement, the Town shall make a written demand that a Grantee comply with any such provision, rule, order or determination under or pursuant to this chapter or the Franchise Agreement. If the substantial breach continues for a period 30 days following such written demand, without written or other proof acceptable to the Town that the corrective action has been taken or is being actively and expeditiously pursued, then the Town may place the issue of termination of a Franchise before the Mayor and Council. The Town shall cause to be served upon a Grantee, at least 45 days prior to the date of such meeting, a written notice of intent to invoke termination proceedings and the time and place of the meeting. Public notice shall be given of the meeting and the issue(s) which the Mayor and Council shall consider.

- (D) The Mayor and Council shall hear and consider the issue(s) and shall hear any Person interested therein and shall determine in its discretion whether or not any violation by a Grantee has occurred.
- (E) If the Mayor and Council determine the violation by a Grantee was the fault of the Grantee and within its control, the Mayor and Council declare in a written decision that the Franchise of the Grantee be terminated unless there is compliance within such period as the Mayor and Council may fix, to not be less than 60 days, provided no opportunity for compliance need be granted for fraud or misrepresentation. All notice requirements shall be met by providing Grantee with written notice (via certified mail, return receipt requested) of any public hearing concerning the proposed revocation of a Franchise.
- (F) In addition to the penalties provided for herein, the Town and a Grantee may agree upon any other lawful remedies in a Franchise Agreement.

**§ 59-39. Notice of violation; hearing.**

- (A) In the event the Town believes that a Grantee has violated any provision of this Chapter or a Franchise Agreement, provided that such violation does not constitute a substantial breach pursuant to §59-38 of this Chapter, the Town, by action of the Town Administrator, shall provide the Grantee with written notice specifying the nature of the alleged violation and demanding correction within a reasonable time.
- (B) A Grantee shall have 30 days from the receipt of the Town's notice described in Subsection A:
  - (1) To respond to the Town, contesting the assertion of the violation, or
  - (2) To cure such violation, or
  - (3) In the event that, by nature of the violation, such violation cannot be cured within the 30-day period, initiate reasonable steps to remedy such violation and notify the Town of the steps being taken and the projected date that they will be completed.
- (C) In the event a Grantee fails to respond to the Town's notice described in Subsection A, fails to correct a violation within the time prescribed and diligently remedy such violation thereafter, or responds contesting the alleged violation, the Grantee shall then be given a written notice of not less than 20 days of a public hearing to be held before the Mayor and Council. Said notice shall specify the violation(s) alleged. At the public hearing, the Mayor and Council shall hear and consider all relevant evidence, and thereafter render findings and its decision.
- (D) In the event the Mayor and Council find that the Grantee has corrected the violation, or has diligently commenced correction of such violation after notice thereof from the Town and is diligently proceeding to fully remedy such

violation, or that no material violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed. In determining whether a violation is material, the Mayor and Council shall take into consideration the reliability of the evidence of the violation, the nature of the violation and the damage, if any, caused to the Town thereby, whether the violation was chronic, and any justifying or mitigating circumstances and such other matters as it may deem appropriate.

- (E) If the Mayor and Council determine after the hearing prescribed in Subsection C that the Grantee is in violation and such violation is not cured within the times set forth in Subsection B, or in the event that the alleged violation is not remedied within the 30 days or the date projected pursuant to Subsection B, the violation shall be deemed a civil infraction and a penalty of up to \$500 per day for each day that a violation occurs may be assessable by the Town against a Grantee in addition to any amounts otherwise due, and may be chargeable to the Grantee's surety bond, letter of credit, performance bond or security deposit, if any. In the alternative, the Town may seek legal or equitable relief from any court of competent jurisdiction.
- (F) Unless otherwise provided in this Chapter, a Grantee shall pay any penalty assessed in accordance with this Chapter within 30 days after receipt of notice from the Town of such penalty.
- (G) Pending litigation or any appeal to any regulatory body or court having jurisdiction over a Grantee shall not excuse the Grantee from the performance of its obligations under this Chapter or its Franchise Agreement unless a stay is obtained. Failure of the Grantee to perform such obligations because of pending litigation or petition, in the absence of a stay issued by a forum of competent jurisdiction, may result in forfeiture or revocation pursuant to the provisions of this Chapter and/or its Franchise Agreement.

**ARTICLE VI**  
**Miscellaneous**

**§ 59-40. Transfer of ownership or Control.**

- (A) Except as may be provided in a Franchise Agreement, a Franchise or a franchised Cable System shall not be assigned or transferred, either in whole or in part, or leased, sublet or mortgaged in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein, or Control over such Franchise or Cable System, pass to or vest in any Person without the prior written consent of the Town. A Grantee may, however, transfer or assign a Franchise to any Affiliate or to a wholly owned subsidiary of the Grantee (or its parent corporation) and such subsidiary may transfer or assign the Franchise back to the Grantee without such consent, provided that such transfer or assignment is without any release of liability or responsibility of the Grantee for any purpose, including Franchise renewal. The proposed assignee must, *inter alia*, show financial responsibility as determined by the Town and must agree to comply with all provisions of the Franchise. The Town shall have 120 days to act upon any request for approval of such a sale or transfer submitted in writing that contains or is accompanied by the information required by FCC regulations and the Town. The Town shall be deemed to have consented to a proposed transfer or assignment if its refusal to consent is not communicated in writing to a Grantee within 120 days following receipt of written notice and aforementioned information, unless the requesting party and the Town agree to an extension of time.
- (B) A Grantee shall promptly notify the Town of any actual or proposed change in, or transfer of, or acquisition by any other party of, Control of the Grantee. Every assignment or transfer of a Grantee as specified in this Section shall make a Franchise subject to revocation unless and until the Town shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of Control, the Town may inquire into the qualifications of the prospective Controlling party and such other legal, technical and financial matters as the Town deems pertinent to its approval; and a Grantee shall assist the Town in such inquiry.
- (C) The consent or approval of the Town to any transfer of a Grantee shall not constitute a waiver or release of the rights of the Town in and to the Public Rights-of-Way, and any transfer by its terms, shall be expressly subordinate to the terms and conditions of this Chapter and any Franchise Agreement.
- (D) In no event shall a transfer of ownership or Control be approved without the successor in interest becoming a signatory to an applicable Franchise Agreement.

**§ 59-41. Landlord/Tenant.**

- (A) Neither the owner of any multiple unit residential dwelling nor his agent or representative shall interfere with the right of any tenant or lawful resident

thereof to receive Cable Service, Installation or maintenance from a Grantee regulated by and lawfully operating under a valid and existing Franchise issued by the Town.

- (B) Neither the owner of any multiple unit residential dwelling nor his agent or representative shall ask, demand or receive any payment, service or gratuity in any form as a condition for permitting or cooperating with the Installation of Cable Service to a dwelling unit occupied by a tenant or resident requesting Cable Service.
- (C) Neither the owner of any multiple unit residential dwelling nor his agent or representative shall penalize, charge or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or receives Cable Service from a Grantee operating under a valid and existing Franchise issued by the Town.
- (D) No Person shall resell, without the express, written consent of the Town, any Cable Service, program or signal transmitted by a Grantee under a Franchise issued by the Town.
- (E) Nothing in this Chapter shall prohibit a Person or the Town from requiring that Cable System facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning, appearance and value of premises or the convenience and safety of persons or property.
- (F) Except as provided by applicable law, nothing in this Chapter shall prohibit a Person from requesting a Grantee to indemnify the owner, or his agents or representatives for damages or from liability for damages caused by the Installation, operation, maintenance or removal of Cable System facilities.

**§ 59-42. Town's Right of Intervention.**

Grantee shall not oppose intervention by the Town in any suit or proceeding to which the Grantee is a party in connection with a Franchise provided under this Chapter.

**§ 59-43. Right of Acquisition by the Town.**

Federal regulations pursuant to the Cable Act shall apply to the right of acquisition by the Town.

**§ 59-44. Severability.**

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