

CABLE COMMUNICATIONS ORDINANCE
FOR THE
COUNTY OF SCOTLAND, NORTH CAROLINA

COUNTY ORDINANCE

I. PURPOSE

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

Further, it is recognized that cable communications systems have the capacity to provide not only entertainment and information services to the County's residents, but can provide a variety of broadband, interactive communications services to institutions and individuals. Many of these services involve County agencies and other public institutions, by providing governmental, educational or public access.

For these purposes, the following goals underlie the regulations contained herein:

- a) Communications services should be provided to the maximum number of County residents, taking into consideration the cost of providing such services.
- b) The system will be capable of accommodating the communications needs of the County as outlined in this Ordinance and any franchise issued pursuant thereto.
- c) The communications system authorized by this Ordinance shall be responsive to the needs and interests of the local community, as outlined in the franchise.
- d) Each of the goals enumerated in (a) - (c) above shall be sought taking into account the costs and benefits to the residents of Scotland County.

II. TITLE OF ORDINANCE

This Ordinance shall be known and may be cited as the "Scotland County Cable Communications Ordinance," or the "Cable Ordinance," and it shall become a part of the ordinances of the County.

All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed, specifically including the previous cable ordinance and franchise agreement.

This Ordinance shall be governed by and subject to the Communications Act of 1934, as subsequently amended or superseded.

III. DEFINITIONS AND USAGE

For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein unless otherwise defined by federal or state law. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

3.1 ADDITIONAL SERVICE means any cable service other than basic service provided over the cable television system.

3.2 ACCESS CHANNELS means any channels on the system provided herein by the operator for use by the County and its agencies.

3.3 BASIC SERVICE means a separately available basic service tier to which subscription is required for access to any other tier of service. Such basic service tier shall, at a minimum, consist of the following: all signals carried in fulfillment of the Cable Act, Sections 614 and 615; any public, educational, and governmental access programming required in this Ordinance or the franchise; any signal of any television broadcast station that is provided by the cable operator to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station. Additional signals may be added to the basic tier by the grantee.

3.3A BOARD OF COMMISSIONERS or BOARD means the Scotland County Board of Commissioners, the governing body of Scotland County.

3.3B CABLE means coaxial cable, fiber optics or other wires or transmission media that are part of the cable system.

3.4 CABLE ACT, see 3.11 below.

3.5 CABLE COMMUNICATIONS SYSTEM, also referred to as "system" or "cable system," means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, and including all facilities within the definition of "cable television system" in N.C.G.S. 153A-137, but such term does not include any of the following: (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (b) a facility that serves only subscribers in one or more multiple dwelling units under common ownership, control, or management, unless such facility or facilities uses any public rights-of-way (see Section 3.40 below); (c) a facility of a common carrier which is subject in whole or in part to the provision of Title II of the Cable Act, except that such facility shall be considered a cable system to the extent that such facility is used in the transmission of video programming directly to subscribers; or (d) any facilities of any electric utility used solely for operating its electric utility systems.

3.6 CABLECAST SIGNAL means a nonbroadcast signal that originates within the facilities of the cable communications system.

3.7 CHANNEL means a portion of the electromagnetic frequency spectrum, which is capable of carrying one standard video signal.

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

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

3.10 [Reserved]

3.11 COMMUNICATIONS POLICY ACT or CABLE ACT means the federal Communications Policy Act of 1934, as amended, and the Cable Television Consumer Protection and Competition Act of 1992, as they may be amended or succeeded.

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

3.13 COUNTY means the County of Scotland, North Carolina, a contiguous, continuous, and homogenous community and unit of local government located in the State of North Carolina.

3.14 CPI or CONSUMER PRICE INDEX means the national percentum increase for the most recently completed calendar year of the Average Consumer Price Index for all items as published by the Bureau of Labor Statistics of the United States Department of Labor, subject to maximum limits as are set forth within the franchise agreement (see 3.22A below).

3.14A CUSTOMER, see 3.47A below.

3.15 DEDICATED INSTITUTIONAL ACCESS CHANNELS means broadband communications channels dedicated to serving city, county, state or federal governmental agencies, educational institutions, health care institutions or other nonprofit and profit making organizations that may be qualified by the Board.

3.16 DISCRETE CHANNEL shall mean a channel which can only be received by the person and/or institution intended to receive signals on such channel.

3.17 DOWNSTREAM SIGNAL means a signal originating from or provided by a cable television system to a subscriber terminal or other terminal including video, audio, or digital signals or any other type of data or information for either programs or other uses such as security alert services, etc.

3.18 DROP shall mean a coaxial, fiber, or other connection from feeder cable to the subscriber/user residence or place of business.

3.19 EDUCATIONAL ACCESS CHANNEL means any channel designated for educational access use.

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

3.21 FCC means the Federal Communications Commission and any legally appointed successor.

3.22 FRANCHISE means the nonexclusive rights granted pursuant to this Ordinance and a franchise agreement to construct, operate and maintain a cable communications system along the public rights of way throughout the County or within a specified area in the County, with applicable obligations. This Ordinance, at times, refers to the franchise agreement and its provisions as "the franchise." 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 County as required by other ordinances and laws of the county, state or federal governments.

3.22A FRANCHISE AGREEMENT means an agreement between the County and a franchisee, which grants a franchise pursuant to and consistent with this Ordinance.

3.23 FRANCHISE AREA means the entire County, or portions thereof, for which a franchise is granted under the authority of this Ordinance. If not otherwise stated in the franchise, the franchise area shall be the corporate limits of the County, excluding all territory within the corporate limits of any municipality within the County that has granted a cable franchise.

3.24 FRANCHISE FEE means the percentage, as specified by the County in a franchise agreement, of the grantee's Gross Annual Revenues (as hereinafter defined) in exchange for the rights granted pursuant to this Ordinance and the franchise agreement.

3.25 FRANCHISEE or GRANTEE means a person that has been granted a valid franchise by the County, and its lawful successor, transferee or assignee.

3.26 GOVERNMENTAL ACCESS CHANNEL means any channel specifically designated or dedicated for government access use.

3.27 GRANTEE, see 3.25 above.

3.28 GRANTOR, also referred to as "local franchising authority (LFA)" and "County," means Scotland County as represented by the Board acting within the scope of its authority and jurisdiction.

3.29 GROSS ANNUAL REVENUES means all revenues received between January 1 and December 31 of any calendar year, directly or indirectly by the Grantee, its subsidiaries or affiliates that are in any way connected with cable television operations of the cable system in the franchise area by the Grantee, its affiliates, subsidiaries, and as defined by the Cable Act.

3.30 HEADEND means the electronic control center of the cable system, including components that amplify, filter, and convert incoming broadcast and other television and electronic signals for distribution over the system.

3.31 INSTALLATION means the connection of the system from feeder cable to a subscriber's terminal.

3.31A INSTITUTIONAL ACCESS, see 3.15 above.

3.31B INTERACTIVE or INTERACTIVITY, see Section 3.52 below.

3.31C INTERCONNECT or INTERCONNECTIVITY means connecting cable communications systems with other private, public, investor owned or regulated communications or telecommunications networks or systems, whether franchised or not, including fiber optic systems, or the ability to so connect.

3.32 LEASED ACCESS CHANNEL or COMMERCIAL ACCESS CHANNEL means any channel or portion thereof designated or dedicated for use by persons unaffiliated with the grantee.

3.32A LOCAL FRANCHISING AUTHORITY, see 3.28 above.

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

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

3.35 OPERATOR means the person or entity granted a franchise under this Ordinance.

3.36 ORIGINATION SITE means a location capable of transmitting audio-video television signals to the Operator's headend or other location as provided.

3.37 PERSON means an individual, partnership, association, organization, corporation, limited liability company or any lawful successor or transferee of said individual, partnership, association, organization or corporation.

3.38 PLANT MILE means a linear mile of cable as measured on the street or easement from pole to pole or pedestal to pedestal.

3.39 PUBLIC ACCESS CHANNEL means any channel designated or dedicated for use by the general public or noncommercial organizations which is made available for use without charge, on a nondiscriminatory basis, in accordance with the rules and regulations specified in the franchise and over which Grantee has no editorial control.

3.40 PUBLIC WAY or PUBLIC RIGHTS OF WAY means the surface, the air space above the surface, and the area below the surface of any public street, highway, road, sidewalk, bridge, tunnel, park, parkway, waterway, utility easement or other public right-of-way now or hereafter held by the County or the State which shall entitle the County and the operator to the use thereof for the purpose of installing and maintaining the operator's cable system. No reference herein, or in any franchise, to the "public way" shall be deemed to be a representation or guarantee by the County that its title to any property is sufficient to permit its use for such purpose, and the Grantee shall, by the use of such terms, be deemed to gain only such rights to use property in the County as the County may have the undisputed right and power to give or as granted by federal or state law.

3.41 REASONABLE NOTICE shall be written notice addressed to the Grantee at its principal office within the County or such other office as the Grantee has designated to the County as the address to which notice shall be transmitted to it, which notice shall be certified and postmarked not less than seven (7) business days prior to that day in which the party giving such notice shall commence any action which requires the giving of notice. In computing said seven (7) days, holidays recognized by the County shall be excluded.

3.42 RESIDENT means any person residing in the County as otherwise defined by applicable law.

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

3.44 SALE shall include any sale, exchange, barter or offer for sale.

3.45 SCHOOL means any public educational institution, including primary and secondary schools, colleges and universities.

3.46 SERVICE AREA means the entire geographic area within the franchise area.

3.47 STATE means the State of North Carolina.

3.47A SUBSCRIBER means a person that has agreed to pay for cable system services subject to this Ordinance.

3.48 SUBSCRIBER NETWORK means the system of cable and related devices necessary to deliver audio-video television signals to and from subscribers. The downstream portion of the subscriber network is that portion of the electromagnetic spectrum capable of transmitting audio-video television signals and other signals to subscribers from the operator's headend. The upstream portion of the subscriber network is that portion of the electromagnetic spectrum which is capable of transmitting audio-video and other signals from a subscriber to the Operator's headend.

3.49 SYSTEM FACILITIES or FACILITIES means the cable communications system constructed for use within the County, without limitation, the headend, antenna, cables, wires, lines, towers, amplifiers, converters, equipment or facilities located within the corporate limits of the County designed, constructed or wired for the purpose of producing, receiving, amplifying, and distributing by coaxial cable, fiber optics, microwave or other means, audio and visual radio, television and electronic signals to and from subscribers, in the County and any other equipment or facilities located within the corporate limits of the County intended for the use of the system; provided, however, such system facility excludes buildings, facilities, and equipment where primary use is for providing service to other system facilities located outside the County limits.

3.50 TRANSFER means the disposal by the Grantee, directly or indirectly, by gift, assignment, voluntary sale, assets acquisition, merger, consolidation, or otherwise, of more than fifty percent (50%) at one time of the ownership or controlling interest in the system, or more than fifty percent (50%) cumulatively over the term of the franchise of such interest to a person or group of persons acting in concert.

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

3.52 TWO-WAY or INTERACTIVE means the capability of both sending and receiving audio-video or other electronic signals from the same location. It refers to the capability of using the upstream and downstream portions of the subscriber network.

3.53 UPSTREAM SIGNAL means a signal originating from a subscriber terminal and transmitted to another point in the cable system including video, audio, or digital signals or any other type of data or information for either programs or other uses such as security alert services, etc.

3.54 USER means a person or organization utilizing channel or equipment and facilities for the purpose of producing and/or transmitting material, as contrasted with receipt thereof in a subscriber capacity.

IV. GRANT OF FRANCHISE

4.1 GRANT.

A. Grant. In the event that County shall grant to the Grantee a nonexclusive, revocable franchise to construct, operate, and maintain a cable communications system within the County, the franchise shall constitute both a right and an obligation to provide the services of a cable communications system as outlined in the provisions of this Ordinance and the franchise. By accepting the franchise and entering into the franchise agreement, the Grantee agrees to abide by all regulations thereof and herein.

B. Conflict. The franchise shall be granted under the terms and conditions contained herein, consistent with and subject to all applicable statutory requirements. In the event of conflict between the terms and conditions of this Ordinance, the franchise agreement, or the terms and conditions on which the County can grant a franchise, statutory requirements shall control. The provisions of this Ordinance shall control over the provisions of a franchise agreement, unless specifically provided otherwise herein or in a franchise agreement, in which case the franchise agreement shall control. In addition, with respect to a franchise for a cable system that operated in only one residential subdivision prior to the effective date of this Ordinance, the provisions of the initial franchise agreement granted to an entity operating in such subdivision about the following requirements shall prevail over the provisions of this Ordinance: system upgrade/rebuild; public, educational and governmental access; bond and insurance; rate regulation; and emergency override.

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

4.2 FRANCHISE AREA. A franchise may be granted for the entire County, or for a portion or portions of the County, provided that a specific previously granted franchise agreement provision on this point shall control over this Ordinance provision.

4.3 **USE OF PUBLIC RIGHTS OF WAY.** Insofar as permitted by law and for the purpose of operating and maintaining a cable communications system in the County, the 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 County such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary to the operation of a cable communications system, provided, however, that Grantee complies with all design, construction, safety, and performance provisions contained in this Ordinance, the franchise agreement, and other laws and regulations of general applicability.

4.4 **USE OF COUNTY FACILITIES.** At the County's option, the County may require a Grantee to utilize County-owned conduit or other facilities for any portion of its cable communications system. The consideration and fee for the use of County conduit or other facilities shall be as stated in the franchise agreement. A reasonable fee for the use of County-owned, leased or controlled facilities shall be established in the franchise agreement and may be adjusted at the periodic performance evaluations.

4.5 **USE OF GRANTEE FACILITIES.** No poles shall be erected by the Grantee without prior approval of the State Department of Transportation or other governmental unit with jurisdiction and authority, with regard to location, height, type and any other pertinent aspect. However, no location of any pole of the Grantee shall be a vested right and such poles shall be removed or modified by the Grantee at its own expense whenever the State or other governmental unit with jurisdiction and authority reasonably determines that the public convenience would be enhanced thereby. Grantee shall utilize existing poles and conduits where possible. The County shall have the right, during the life of the franchise, to install and maintain free of charge upon the poles owned by the Grantee, any wire and pole fixtures that do not unreasonably interfere with the cable system operations of the Grantee.

4.6 **FRANCHISE REQUIRED.** No cable communications system shall be allowed to operate within the County without a franchise from the County under this Ordinance, excluding operation of a cable system inside the corporate limits of a municipality for which the municipality has granted a franchise.

4.7 **TERM OF FRANCHISE.** The term of any franchise granted pursuant to this Ordinance shall be stated in the franchise agreement.

4.8 **FRANCHISE NONEXCLUSIVE.** A franchise granted hereunder is nonexclusive, despite the use of terms such as "the grantee" or "the franchise" in the Ordinance. The County specifically reserves the right to grant at any time such additional franchises for cable communications systems as the Board deems appropriate and in compliance with the provisions of this Ordinance, provided that a specific provision of a franchise agreement placing limitations and conditions on the right of the County to grant additional franchises shall control over this Ordinance provision.

4.9 **TIME OF PERFORMANCE.** Whenever this Ordinance or a franchise agreement sets forth any time for an act to be performed by or on behalf of the Grantee, such time shall be complied with, and any failure of a Grantee to perform under a material provision within the time allotted, absent force majeure, shall be sufficient grounds for the County to invoke an appropriate penalty, following written notice and reasonable opportunity to cure, possibly including revocation of the franchise as provided in Section 4.16 of this Ordinance.

4.10 **GOVERNING LAW.** In any controversy or dispute under this Ordinance, the law of the State of North Carolina shall apply and venue shall be in Scotland County, North Carolina.

4.11 **SEVERABILITY.** If any portion of this Ordinance or a franchise agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, or is or becomes invalid under any federal, state, or local statute or regulation, such portion shall be deemed a separate, distinct and independent provision and such holding or invalidity shall not affect the validity of the remaining portions thereof.

4.12 TRANSFER OF OWNERSHIP OR CONTROL

A. **Transfer of Franchise.** Any franchise granted hereunder cannot in any event be sold, transferred, leased, assigned or disposed of, including but not limited to, by force or voluntary sale, merger, consolidation, receivership or other means without the prior consent of the County, which shall not be unreasonably withheld, and then in accordance with the conditions set forth in Section 617 of the Communications Act (47 U.S.C. 534). The County and Grantee shall comply with all provisions of federal law, specifically including Section 617 of the Cable Act (47 U.S.C. 537), that impose restrictions or conditions on transfer within a specified period following either the acquisition or initial construction of a system. In addition, the transferee shall be required to file a franchise application as provided in Section 10.3. The Board may call a public hearing before approving a transfer.

B. **Transfer Threshold.** The Grantee shall promptly notify the County of any actual or proposed change in or transfer of, or acquisition by any other party of, control of the Grantee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the disposal by the Grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of more than fifty percent (50%) at one time of the ownership or controlling interest in the system, or more than fifty percent (50%) cumulatively over the term of the franchise of such interest to a person or group of persons acting in concert. The County shall exercise its power to approve a transfer of ownership or control in a manner consistent with Section 617 of the Communications Act (47 U.S.C. 537).

C. **Process.** Every change, transfer, or acquisition of control of the Grantee shall make the franchise subject to cancellation unless and until the County 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 County may inquire into the legal, financial and technical qualifications of the prospective controlling party, and the Grantee shall assist the County in any such inquiry. Failure to provide all relevant information reasonably requested by the County as part of said inquiry shall be grounds for denial of the proposed change, transfer or acquisition of control.

D. **Assumption of Control.** The County agrees that any financial institution having a pledge of the franchise or its assets to secure the advancement of money for the construction and/or operation of the franchise or cable system shall have the right to notify the County that it or its designee satisfactory to the County will take control and operate the cable system. The financial institution shall submit a plan for operation that will insure continued service and compliance with all franchise obligations during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one year, unless extended by the County at its discretion, and during said period of time the financial institution shall have the right to petition for transfer of the franchise to another Grantee. In the event that the FCC adopts a definition of "control" that preempts the definition herein, the FCC definition shall govern. If the County finds that such transfer, after considering the legal, financial and technical qualifications of the applicant, is satisfactory, the County will transfer and assign the rights and obligations of such franchise as in the public interest. The consent of the County to such transfer shall not be unreasonably withheld.

E. **Regulation of Transfer.** County consent to or approval of any transfer of a franchise shall not constitute a waiver or release of the rights of the County or the State in and to the streets, public rights-of-way, or pertinent thereto, or rights of the County under this Ordinance, and any transfer shall, by its terms, be expressly subject to the terms and conditions of this Ordinance and the franchise agreement.

F. **Construction Requirement.** The County will consider approving a transfer or assignment of the franchise prior to completion of construction of a proposed rebuild or upgrade of a system, but reserves the right to negotiate additional security to assure timely completion of the system rebuild, in the form of an increased bond or a letter of credit or otherwise as agreed.

G. **Notice of Purchase Price.** If there is a sale and transfer or assignment of the individual franchise, as approved by the County, the Grantee shall inform the County of the sale price. If permitted by law, the County, in the discretion of the Board, may consider the reasonableness of the sale price in connection with subsequent requests for rate increases.

H. **Signatory Requirement.** Any approval by the County of transfer of ownership or control shall be contingent upon the prospective controlling party becoming a signatory to the franchise agreement, or a new franchise agreement.

4.13 **FRANCHISE RENEWAL.** The Grantee shall own the cable communication system, but shall have no right to use of public rights of way upon the completion of the franchise term, unless otherwise allowed by law. The County shall grant or deny renewal of the franchise of a Grantee in accordance with Section 626 of the Communications Act (47 U.S.C. 546) and other applicable law.

4.14 **POLICE POWERS.**

A. **Acknowledgements.** In accepting the franchise, the Grantee acknowledges that its rights are subject to the police power of the County to adopt and enforce ordinances of general applicability necessary to the safety and welfare of the public, and it agrees to comply with all laws and ordinances of general applicability enacted by the County pursuant to such power.

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

4.15 **FRANCHISE FEES.**

A. **Levy of Franchise Fee.** Because the County finds that the administration of this Ordinance or the franchise imposes upon the County additional regulatory responsibility and expense, a Grantee of any franchise hereunder shall pay to the County a franchise fee in an amount as designated in the franchise, but in no event less than five percent (5%) of the gross annual revenues. This annual franchise fee shall be in addition to any other valid and enforceable fee of general applicability pursuant to Section 622 of the Communications Act (47 U.S.C. 542) and commence as of the effective date of the franchise. The County shall be furnished a statement of said payment by a certified public accountant, reflecting the total amounts of gross revenues and computations for the period covered by the payment. The Grantee shall provide an audited statement to the County every three (3) years from the date of the grant of franchise. Upon a majority vote of the Board, an audited financial statement shall be provided annually.

B. **Franchise Fee in Addition to Other Fees or Taxes.** This franchise fee shall be in addition to any other valid and enforceable fee, tax or payment of general applicability, pursuant to Section 622 of the Communications Act (47 U.S.C. 542), owed by the Grantee to the County or other taxing jurisdiction.

C. **Acceptance by the County.** No acceptance of any payment by the County shall be construed as a release or as an accord and satisfaction of any claim the County may have for any unpaid franchise fee under this Ordinance or a franchise agreement, or for the performance of any other obligation of the Grantee under this Ordinance or a franchise agreement.

D. **Failure to Make Required Payment.** In the event that any franchise payment or recomputed amount is not made on or before the dates specified herein, Grantee shall pay as additional compensation an interest charge, computed from such due date, at the annual rate equal to the commercial prime interest rate of the County's primary depository bank during the period that such unpaid amount is owed, or the maximum rate permitted by federal law, whichever is less.

E. **Semiannual Payments.** The franchise fee and any other costs, charges, or damages assessed shall be payable semiannually (twice per year) to the County. The Grantee shall file a complete and accurate verified statement of all gross revenue within the franchise area during the period for which said payment is made, and said payment shall be made to the County not later than forty-five (45) days after the expiration of each semiannual period. Computation dates are the last day in the months of June and December.

F. **Audits.** The County shall have the right to inspect the Grantee's income and revenue records and the right to audit and to recompute any amounts determined to be payable under this Ordinance or a franchise agreement. Audits shall be at the expense of the Grantee if the additional amount due is greater than five percent (5%) of the amount paid. Any additional amount due to the County as a result of the audit shall be paid within thirty (30) days following written notice to the Grantee by the County, which notice shall include a copy of the audit report.

4.16 FORFEITURE OR REVOCATION.

A. **Grounds for Revocation.** The County reserves the right to revoke any franchise granted hereunder and rescind all rights and privileges associated with the franchise in accordance with the Communications Act, other applicable law and the procedures set forth herein in the following circumstances, each of which shall represent a default and breach under the Ordinance and the franchise grant:

- (1) Grantee defaults in the performance of any of the material obligations under this Ordinance or a franchise agreement.
- (2) Grantee fails to provide or maintain in full force and effect the liability and indemnification coverage or the performance bond as required herein.
- (3) Grantee violates any order or ruling of the FCC, or any material orders or rulings of any other regulatory body having jurisdiction over the Grantee relative to this Ordinance or the franchise and after notice thereof, and continues and fails to remedy the violation within sixty (60) days.
- (4) Grantee practices any fraud or engages in any unfair or deceptive act or practice with regard to the County or cable subscribers under the laws of this state.
- (5) Grantee's construction schedule is delayed later than the schedule contained in the franchise or beyond any extended date set by the County.
- (6) Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt.
- (7) Grantee fails to restore service to a subscriber after ninety-six (96) consecutive hours of interrupted service, except when written approval of such interruption is obtained from the County.
- (8) Grantee makes a material misrepresentation of fact in the application for or negotiation of the franchise or any extension or renewal thereof.
- (9) Grantee ceases to provide the services outlined in the Ordinance or a franchise agreement for any reason that is within the control of the Grantee over the cable communications system.
- (10) Grantee fails to comply with appropriate agreements with appropriate agencies or any necessary parties for usage of poles or other facilities necessary to the satisfactory operation of the cable system.

B. Effect of Circumstances Beyond Control of Grantee. Grantee shall not be declared at fault or be subject to any sanction under any provision of this Ordinance or any franchise granted pursuant thereto in any case in which performance of any such provision is prevented for reasons beyond the Grantee's control. Nonperformance or a fault shall not be deemed to be beyond the Grantee's control if committed by a corporation or other business entity in which the Grantee holds a controlling interest, whether held directly or indirectly.

C. Court Order. Grantor and Grantee will abide by the terms of any stay order issued by a court of competent jurisdiction.

D. Procedure Prior to Revocation.

- (1) The County shall make written demand that the Grantee comply with any such material requirement, limitation, term, condition, rule or regulation or correct any action deemed cause for revocation. If the failure, refusal or neglect of Grantee continues for a period of thirty (30) days following such written demand, except in instances where compliance within 30 days is not reasonably possible, in which case 60 days shall be allowed, the County shall place its request for termination of the franchise upon a regular Board meeting agenda. The County shall cause to be served upon such Grantee at least (10) days prior to the date of such Board meeting, a written notice of this intent to request such termination and the reason therefor, and the time and place of the meeting, notice of which shall be published by the Clerk to the Board of Commissioners at least once, not less than ten (10) days before such meeting in a newspaper of general circulation within the County.
- (2) The Board shall hear any persons interested therein, and shall determine in its discretion, whether or not any failure, refusal or neglect by the Grantee was with just cause.
- (3) If the Board determines that such failure, refusal or neglect by the Grantee was with just cause, the Board shall direct the Grantee to comply within such time and manner and upon such terms and conditions as are reasonable.
- (4) If the Board determines that such failure, refusal, or neglect by the Grantee was without just cause, the Board may, by resolution, declare that the franchise of the Grantee shall be terminated and bond forfeited unless there be compliance by the Grantee within ninety (90) days.
- (5) Evidence admitted shall be in any reliable form so long as it is relevant, material, and not unduly repetitious.
- (6) Grantee shall have the right to appeal any revocation to any applicable administrative agency or court of competent jurisdiction.

E. Disposition of Facilities. In the event a franchise is revoked or otherwise terminated for cause, the County may, in its sole discretion, do any of the following:

- (1) Purchase the system under the procedures set forth in Section 4.21 of this Ordinance.
- (2) Effect a transfer of ownership of the system to another party in accordance with Section 627 of the Communications Act (47 U.S.C. 547).
- (3) Order the removal of the system facilities required by public necessity from the County within a reasonable period of time as determined by the County or require the original Grantee to maintain and operate its system for a period of four (4) months. In the event Grantee continues to operate the system lawfully, Grantee shall be entitled to

the revenues and actual costs for cable service rendered during such period of continued operation.

F. **Restoration of Property.** In removing its plant, structures and equipment, the Grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good a condition, within reason, as that existing prior to the Grantee's removal of its equipment and appliances without affecting electrical or telephone or other utilities, cables, wires, pipes or attachments. The owners shall inspect and approve the condition of the public rights-of-ways and public places and cables, wires, attachments, and poles after removal. The liability, indemnity, insurance and performance bond as provided herein shall continue in full force and effect during the period of removal and until the Grantee has fully complied with the terms and conditions of this paragraph, this Ordinance and the franchise.

G. **Restoration by County; Reimbursement of Costs.** In the event of a failure by the Grantee to complete any work required by the County by resolution, law, or ordinance within the time as may be established by the County and to the reasonable satisfaction of the County, the County may cause such work to be done and the Grantee shall reimburse the County the reasonable cost thereof within thirty (30) days after receipt of an itemized list of such costs or the County may, at its option, recover such costs through the performance bond provided by Grantee. The County shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

H. **Extended Operation.** Upon either the expiration or revocation of a franchise, the County may require the Grantee to continue to operate the system for a period of four (4) months from the date of such expiration or revocation. The Grantee shall, as trustee for its successor in interest, continue to operate the cable communications system under the terms and conditions of this Ordinance and the franchise and provide the regular subscriber service and any and all of the services that may be provided at the time. The County shall be permitted to seek legal and equitable relief to enforce the provisions of this section. In the event Grantee continues to operate the system lawfully, Grantee shall be entitled to the revenues and actual costs for cable services rendered during such period of continued operation.

4.17 RECEIVERSHIP AND FORECLOSURE.

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

- (1) Such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Ordinance and the franchise granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all defaults under the franchise; and
- (2) Such receiver, or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction over the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and condition of the franchise herein granted.

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

- (1) The County has approved the transfer of the franchise as provided by this Ordinance, and
- (2) The successful bidder has agreed with the County to assume and be bound by every term, provision, and condition of the franchise granted hereunder, or enter into a new franchise agreement.

4.18 EQUAL OPPORTUNITY POLICY.

A. EEO. Equal opportunity employment shall be afforded by all operators of cable television systems to all qualified persons, and no person shall be discriminated against in employment because of race, color, religion, age, national origin, sex, or handicap. Grantee shall comply with all equal opportunity provisions enacted by federal, state and local authorities, and in particular Section 634 of the Communications Act (47 U.S.C. 554), as well as all such provisions contained in this Ordinance and the franchise.

B. Local Employment and Procurement Practices. Whenever reasonably possible, within Grantee's business judgment, all services, personnel, hardware and supplies for the construction, maintenance and operation of the system shall be procured locally.

4.19 NOTICES. All notices from Grantee to the County pursuant to this Ordinance and the franchise shall be to the County Manager or his/her designee. Grantee shall maintain with the County, throughout the term of the franchise, an address for service of notices by mail. Grantee shall also maintain within the County a local office for the conduct of matters related to the franchise during normal business hours, in addition to a local, toll-free, or collect telephone number. The Grantee shall be required to advise the County of such address(es) and telephone numbers and any changes thereof.

4.20 NO WAIVER.

A Grantee shall not be excused from complying with any of the terms and conditions of this Ordinance or the franchise by any failure of the County upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

4.21 RIGHTS RESERVED TO THE GRANTOR.

A. Right to Purchase. In the event the County terminates the franchise for cause, pursuant to provisions of this Ordinance, or at the normal expiration of the franchise term absent a franchise renewal, the County shall have the right, directly or as an intermediary, to purchase the franchised cable communications system. The County shall have thirty (30) days following termination or non-renewal within which to provide Grantee with written notice of its intent to purchase the system. The purchase price shall be in accordance with Section 627 of the Communications Act (47 U.S.C. 547).

B. Right of Inspection of Records. The County shall have the right to inspect all books, records, reports, maps, plans financial statements, and other like materials of the Grantee that are directly related to the franchise and located in Grantee's local office, during normal business hours upon advance written notice of three (3) business days. Any such record not retained at Grantee's local office shall be made available to the County as soon as reasonably possible. Grantee shall provide such information in such form as may be reasonably required by the County to establish Grantee's compliance with the franchise or this Ordinance.

C. Right of Inspection of Construction. The County shall have the right to inspect all construction or installation work performed subject to the provisions of the franchise and to make such reasonable tests as it shall find necessary to ensure compliance with the terms of this Ordinance and all applicable laws.

D. Right of Inspection of Property. At all reasonable times, Grantee shall permit examination by any duly authorized representative of the County of the system facilities located on public property or public right-of-way, and upon advance written notice of three (3) business days Grantee shall permit examination of other system facilities and any appurtenant property of Grantee situated within or without the County, as necessary to ensure compliance with the franchise.

E. Right of Intervention. The County shall have the right of intervention in any suit or proceeding affecting the County's rights under this Ordinance or any franchise granted pursuant thereto to which the Grantee is party, subject to Grantee's available and asserted defenses.

V. REGULATION OF FRANCHISE

5.1 REGULATORY AUTHORITY.

A. County Manager to Administer. The County shall exercise appropriate regulatory authority under the provisions of this Ordinance, the franchise agreement, the Communications Act, and all valid and applicable law. This authority shall be vested in the Scotland County Board of Commissioners and administered through the County Manager or his/her designee in order to provide day-to-day administration and enforcement of the provisions of this Ordinance and any franchise granted hereunder.

B. Change in Law. Notwithstanding any other provisions of this Ordinance to the contrary, the County and the Grantee shall at all times comply with all valid laws and regulations of the local, state and federal government. In the event that any actions of the state or federal government or any agency thereof, or any court of competent jurisdiction upon final adjudication, substantially reduce in any way the power or authority of the County under this Ordinance or the franchise, or if in compliance with any local, state, or federal law or regulation, the Grantee or the County finds conflict with the terms of this Ordinance, the franchise, or any law or regulation of the County, then as soon as possible following knowledge thereof, either party shall notify the other of the point of conflict believed to exist between such law or regulation and the laws or regulations of the County, this Ordinance and the franchise. The County or the Grantee may notify the other party that it wishes to renegotiate those provisions which are affected in any way by such modification in regulations or other authority. Thereafter, the Grantee and the County shall negotiate in good faith on the development of alternate provisions. In the absence of an agreement, County and Grantee each may seek available remedies.

C. The County reserves the right to exercise appropriate regulatory authority, consistent with the franchise. Should applicable legislative, judicial or regulatory authorities at any time expressly permit regulation not presently permitted to the County, the County may, following good faith negotiations with Grantee, engage in any such additional regulation as may then be permissible, whether or not contemplated by this Ordinance or the franchise, including without limitation, regulation regarding franchise fees, taxes, programming, rates charged to subscribers and users, consumer protection, or any other similar or dissimilar matter.

5.2 SUPERVISION OF THE FRANCHISE.

A. The County shall have the following regulatory responsibility, all subject to the terms and provisions of this Ordinance and the franchise:

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

B. The County also reserves the right to perform the following functions, all in accordance with the provisions of this Ordinance and the franchise:

- (1) Develop objectives and coordinate activities related to the operation of government channels.
- (2) Approve procedures and standards for public, government and educational access operations and services, including the use of dedicated channels and sharing of public facilities.
- (3) Coordinate plans for expansion, interconnection and growth of cable services.
- (4) Analyze the possibility of integrating or interconnecting cable communications with other County, State or regional telecommunications networks.
- (5) Formulate and recommend long-range telecommunications policy for the County, and determine the County's view of the future cable-related needs and interests of the community.
- (6) Provide the administrative effort necessary for the conduct of performance evaluations, and any other activities required for the administration of the franchise.
- (7) Monitor Grantee's process for handling citizen complaints and periodically inspect and analyze the records related to such complaints.
- (8) Receive applications for rate increases, if applicable, and provide staff assistance in the analysis and recommendations thereto.
- (9) Monitor Grantee's adherence to operational standards, service requirements and line extension policies.
- (10) Assure compliance with the franchise and this Ordinance.
- (11) Arrange tests and analysis of equipment and performance, as needed to insure compliance with this Ordinance and the franchise.
- (12) Assure continuity in service.
- (13) Receive for examination all data and reports required by this Ordinance.

C. Cable TV Advisory Committee. The County may establish a citizen's committee entitled the Cable TV Advisory Committee, to advise the Board and County Manager on cable issues, and Grantee shall designate a member to serve on such committee. Upon the adoption of concurrent ordinances or resolutions by the Board and the Laurinburg City Council so providing, and if allowed by the City of Laurinburg franchise, the Committee may be made a joint committee entitled the Laurinburg-Scotland County Cable TV Advisory Committee. The responsibilities of the Committee shall be subject to the terms and conditions of this Ordinance and the franchise, and the City of Laurinburg franchise, if applicable, and may include, but not be limited to, the following:

- (1) Monitor and advise on the provisions of this Ordinance and related ordinances.
- (2) Serve as an advisory body for the public, educational and governmental ("PEG") access channels and any institutional programming that may be developed.
- (3) Advise on objectives to be obtained with respect to the cable communications system(s), based upon continued evaluation of the franchise(s), cable technology and the future cable-related needs and interests of the community.

Ordinance 26 cont.

- (4) Prepare an annual report on the cable system(s) and current and future issues.
- (5) Cooperate with the franchising authority (or authorities) and Grantee in fulfilling respective roles and responsibilities.
- (6) Advise on issues of obscenity, indecency and programming that has been identified by some as offensive, particularly with respect to reasonable time, place and manner guidelines, to the extent allowed by federal law.

5.3 RATES AND CHARGES.

A. **Schedule Filings.** Upon execution of any franchise granted pursuant to this Ordinance, Grantee shall file with the County schedules which shall describe all services offered, all rates and charges of any kind, and all terms and conditions relating thereto. No rates or charges shall be effective except as they appear on a schedule so filed. Grantee shall notify subscribers in writing at least thirty (30) days prior to the implementation of any change in services offered, rate charges, or terms and conditions related thereto.

B. **Nondiscriminatory Rates.** Grantee shall establish rates that are nondiscriminatory within the same general class of subscribers which must be applied fairly and uniformly to all subscribers in the franchise area for all services. Nothing contained herein shall prohibit the Grantee from offering (i) discounts to commercial and multiple family dwelling subscribers billed on a bulk basis; (ii) promotional discounts; (iii) reduced installation rates for subscribers who have multiple services; or (iv) discounts for senior citizens and/or low income residents. To the extent required by federal, state, or local law or regulation, Grantee's charges and rates for all services shall be itemized on subscriber's monthly bills.

C. **County Regulation.** To the extent that federal or state law or regulation, particularly Section 626 of the Communications Act (47 U.S.C. 543) and the regulations of the FCC, may now, or as the same may hereafter be amended to, expressly authorize the County to regulate the rates for any particular service tiers, service packages, equipment, or any other services provided by Grantee, the County shall have the right to exercise rate regulation to the full extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the County.

D. **Rate Regulation of the Basic Tier and Charges.** The County will follow any Rate and Service Regulation Ordinance adopted in connection with this Ordinance, and FCC Rate Regulations including, but not limited to, Report and Order, In the Matter of Implementation of Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket 92-226, FCC 93-177 (released May 3, 1993), or as hereafter amended or altered from time to time, in its regulation of the basic service rates and charges of the Grantee. In connection with such regulation, the County will ensure a reasonable opportunity for consideration of the views of interested parties, and file with the FCC such certification forms or other instruments as are now or may hereafter be required by the FCC Rate Regulations in order to enable the County to regulate basic service rates and charges.

E. **Evaluation Criteria.** If applicable federal law or regulations contain mandatory criteria or requirements for use by local franchising authorities in regulating rates, the County will follow such criteria and requirements. The County may retain rate consultants as it deems appropriate.

F. **Ability to Petition.** If applicable, the County shall have the right to petition the FCC or other appropriate agency or organization to obtain rate regulation authority or to petition the federal body to review or regulate rates in the County.

G. **Free Connections.** Grantee shall provide upon request and free of charge the drops set forth in the franchise. Grantee shall discuss the location of each connection with the proper officials of each such institution receiving free connection.

5.4 PERFORMANCE EVALUATION.

A. Evaluations. If at any time during the term of the franchise the County has reason to believe that Grantee is not in compliance with the material provisions of the franchise, the County may require the Grantee to submit to a performance evaluation and public hearing, in accordance with applicable provisions of the franchise agreement.

B. [Deleted, intentionally left blank.]

C. Public Notice of Public Hearings on Performance. All evaluation sessions may be open to the public and notice may be published in a newspaper of general circulation, as provided in Section 10.1, provided that County shall comply with the Open Meetings Law and other applicable statutory requirements. Grantee shall notify subscribers of all such evaluation sessions by announcement on a designated channel on the system between the hours of 11:00 a.m. and 9:00 p.m. for five (5) consecutive days preceding each evaluation session.

D. Items for Review. Topics that may be discussed at any scheduled or special evaluation session shall be limited to Grantee's compliance with the material provisions of this Ordinance and the franchise, and other applicable requirements, specifically including customer service standards.

E. Cooperation. During the review and evaluation by the County, the Grantee shall cooperate fully with the County and shall provide such information and documents as the County may need to reasonably perform its review.

VI. BONDS, INSURANCE AND INDEMNIFICATION

6.1 PERFORMANCE BOND AND LETTER OF CREDIT.

A. Performance Bond. Upon the effective date of the franchise, the Grantee shall obtain, at its cost and expense, and file with the County, a corporate surety bond in an amount specified in the franchise to guarantee the faithful performance by the Grantee of all its rebuild obligations provided under this Ordinance and the franchise. Failure to timely obtain, file and maintain said bond for so long as the Ordinance or franchise agreement requires shall constitute a substantial violation within the meaning of this Section. Other conditions of the bond, including the time period during which the bond must be maintained, shall be addressed in the respective franchise agreements.

B. Conditions. The performance bond shall provide the following conditions:

- (1) There shall be recoverable by the County jointly and severally from the principal and surety, any and all fees, fines and liquidated damages due to the County and any and all damages, losses, costs, and expenses suffered or incurred by the County resulting from the failure of the Grantee to: faithfully comply with the rebuild provisions of this Ordinance and the franchise; comply with all orders, permits and directives of any County agency or body having jurisdiction over its acts or defaults in connection with the rebuild; pay fees due to the County; and pay any claims, liens or taxes due the County which arise by reason of the construction, operation, maintenance or repair of the cable system. Such losses, costs and expenses shall include, but not be limited to, reasonable attorney's fees and other associated reasonable expenses.
- (2) The total amount of the bond, while in effect, shall be forfeited in favor of the County in the event:
 - (a) The Grantee abandons the cable system; or
 - (b) The Grantee purports or attempts to assign the franchise without the express written consent of the County.

C. - E. [Deleted, intentionally left blank.]

F. Use of Performance Bond. Prior to drawing upon the performance bond for the purposes described in this Section, the County shall notify the Grantee in writing by certified or registered mail, return receipt requested, that payment is due and the Grantee shall have ten (10) days from the receipt of such written notice to make a full and complete payment. If the Grantee does not make the payment within ten (10) days, the County may withdraw the amount thereof, with interest and penalties, from the performance bond.

G. Notification. Within three (3) days of a withdrawal from the performance bond, the County shall send to the Grantee, by certified mail, return receipt requested, written notification of the amount, date and purpose of such withdrawal.

H. Replenishment of Performance Bond. No later than thirty (30) days after mailing to the Grantee by certified mail notification as described in paragraph G above of a withdrawal pursuant to paragraph F above, the Grantee shall replenish the performance bond.

I. Non-Renewal, Alteration, or Cancellation of Performance Bond. The performance bond required herein shall be in a form satisfactory to the County and shall require thirty (30) days written notice of any non-renewal, alteration or cancellation to both the County and the Grantee. The Grantee shall, in the event of any such cancellation notice, obtain, pay all premiums for, and file with the County, written evidence of the issuance of replacement bond or policies within thirty (30) days following receipt by the County or the Grantee of any notice of cancellation, and failure to do so constitutes a substantial violation of this Ordinance.

J. Inflation. To offset the effects of inflation the amounts of the bond provided for herein, shall be increased by the annual rate of inflation at the end of every three (3) year period of the franchise, applicable to the next three year period, upon the request of the County.

6.2 LIABILITY AND INSURANCE.

A. Letter of Insurance. Prior to commencement of construction, but in no event later than sixty (60) days after the effective date of the franchise and thereafter, Grantee shall obtain and maintain insurance as defined by this Section and shall throughout the duration of the franchise and any extensions or renewals thereof, furnish to the County certificates of insurance, approved by the County, for all types of insurance required under this section. Failure to furnish said certificates of insurance in a timely manner shall constitute a violation of this Ordinance.

B. Filing. Any insurance policy or certificate thereof obtained by the Grantee in compliance with this section shall be filed and maintained with the County Manager or his/her designee during the term of the franchise, and may be changed from time to time to reflect changing liability limits and/or to compensate for inflation. Grantee shall immediately advise the County of any litigation that may develop that would affect this insurance.

C. No Limitation of Liability. Neither the provisions of this section nor any damages recovered by the County hereunder shall be construed to limit the liability of the Grantee under any franchise issued hereunder or for damages.

D. Enforcement. All insurance policies maintained pursuant to this Ordinance or the franchise shall contain the following, or a comparable, endorsement:

It is hereby understood and agreed that this insurance policy may not be canceled by the insurance company nor the intention not to renew be stated by the insurance company until thirty (30) days after receipt by the County Manager, by registered or certified mail, of a written notice of such intention to cancel or not to renew.

E. Hold Harmless Clause. All contractual liability insurance policies maintained pursuant to this Ordinance or the franchise shall include the following hold harmless clause:

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

F. **Authorized Carriers.** All insurance policies provided under the provisions of this Ordinance or the franchise shall be written by companies authorized to do business in the state.

G. **Named Insured.** At any time during the term of the franchise, the County may request and the Grantee shall comply with such request, to name the County as an additional named insured for all insurance policies written under the provisions of this Ordinance or the franchise.

H. **Inflation.** To offset the effects of inflation and to reflect changing liability limits, all of the coverages, limits and amounts of the insurance provided for herein will be increased at the end of every three (3) year period of the franchise at the annual rate of inflation, applicable to the next three year period, upon the request of the County.

I. **General Liability Insurance.** The Grantee shall maintain, and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain throughout the term of the franchise, general liability insurance insuring the Grantee in the minimum of:

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

J. **Policy Inclusions.** Such general liability insurance must include, at a minimum, coverage for all of the following: comprehensive form, premises-operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, and personal injury.

K. **Automobile Liability Insurance.** The Grantee shall maintain, and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain throughout the term of the franchise, automobile liability insurance for owned, non-owned, or rented vehicles used by Grantee, its, agents, officials, or employees in the minimum amount of:

- (1) \$1,000,000 for bodily injury and consequent death per occurrence;
- (2) \$1,000,000 for bodily injury and consequent death to any one person;
- (3) \$500,000 for property damage per occurrence.

L. **Worker's Compensation and Employer's Liability Insurance.** The Grantee shall maintain and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain throughout the term of the franchise, Worker's Compensation and employer's liability, valid in the state, in the minimum amount of:

- (1) Statutory limit for Workers' Compensation.
- (2) \$100,000 for employer's liability.

6.3 INDEMNIFICATION.

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

- (1) To persons and property, in any way arising out of or through the acts or omissions of Grantee, its servants, agents or employees, or to which Grantee's negligence shall in any way contribute unless caused by negligence or other fault of the County, its agents, servants or employees, or any other person indemnified hereunder.
- (2) Arising out of any claim for invasion of the right of privacy, for defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation (excluding claims arising out of or relating to public, educational and County programming).
- (3) Arising out of Grantee's failure to comply with the provisions of any federal, State or local statute, ordinances, or regulation applicable to Grantee in its business hereunder.

B. The foregoing indemnity is conditioned upon the following:

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

VII. DESIGN AND CONSTRUCTION PROVISIONS

7.1 AUTHORITY TO CONSTRUCT.

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

B. Power to Contract. Upon grant of the franchise and in order to construct, operate and maintain a cable system in the County, the Grantee may enter into contracts with any public utility companies or any other owner or lessee of any poles or underground areas located within the County; obtain right-of-way permits from appropriate County, State, city and federal officials necessary to cross or otherwise use highways or roads under their respective jurisdiction; obtain permission from the Federal Aviation Administration to erect and maintain antennas; and obtain other necessary County, city, state or federal permits.

7.2 CONSTRUCTION AND TECHNICAL STANDARDS.

A. Compliance with Construction and Technical Standards. Grantee shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements, FCC technical standards and detailed technical standards submitted by Grantee as part of its application, which standards are incorporated by reference herein. The Grantee, throughout the system, shall provide

uniform, strong signals which are free from any significant distortion and interference. The system shall be designed, constructed, operated and maintained for 24-hours-a-day continuous operation. The system shall produce, for reception on subscribers' receivers which are in good working order, either monochrome or color pictures (providing the receiver is color capable) which are free from any significant interference or distortion within Grantee's control which would cause any material degradation of video or audio quality.

B. State of the Art. The Grantee shall construct, install, operate and maintain its system in accordance with the following:

- (1) The system will be spaced to permit a minimum of 550 Mhz operation and will be capable of utilizing converters and be compatible with cable ready television sets.
- (2) The system will utilize converters which will make the system adaptable for the development of future services.
- (3) The Grantee shall maintain its system facilities in a manner which will continue to enable it to add new services and associated equipment as they are developed, available and proved marketable to subscribers.

C. Poles. Prior to the erection of any towers, poles or conduits or the upgrade or rebuild of the cable communications system under this Ordinance, the Grantee shall first submit to the County and other designated parties for approval a concise description of the facilities proposed to be erected or installed, including engineering drawings, if required, together with a map and plans indicating the proposed location of all such facilities. No erection or installation of any tower, pole, underground conduit, fixture or any rebuilds or upgrading of the cable communications system shall be commenced by any person until necessary approval has been received from the State Department of Transportation or other appropriate governmental unit or agency, which approval by the County or its agencies shall not be unreasonably withheld.

D. Contractor Qualifications. Any contractor or subcontractor proposed for work of construction, installation, operation, maintenance and repair of system equipment must be properly licensed under laws of the State.

E. System Equipment. The Grantee's system and associated equipment constructed or erected by the Grantee within the County shall be so located as to cause minimum interference with the proper use of streets, roads and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets, roads or other public ways and places. No pole or other fixtures placed in any public ways by the Grantee shall be placed in such a manner as to interfere with normal travel on such public way.

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

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

H. Construction Standards. Grantee shall at all times comply with: (1) National Electrical Safety Code (National Bureau of Standards); (2) National Electrical Code (National Bureau of Fire Underwriters); (3) Bell System Code of Pole Line Construction; (4) applicable FCC or other federal, state and local regulations; and (5) standards as set forth in the franchise.

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

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

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

L. RF Leakage. RF leakage shall be checked at reception location for emergency radio services to prove measurable interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no measurable interference to airborne navigational reception in the normal flight pattern. FCC Rules and Regulations shall govern. In no event shall Grantee be required to exceed FCC standards with regard to RF leakage.

M. Standby Power. The Grantee shall maintain equipment capable of providing standby power for a minimum of eight (8) hours for the headend.

7.3 SYSTEM CONSTRUCTION SCHEDULE. The franchise shall specify construction schedules.

7.4 EXTENSION OF SERVICE.

Full cable service shall be provided to all unserved areas of the County where there are at least twenty (20) homes per mile, measured from Grantee's existing distribution plant. In an area with less than twenty (20) homes per mile, full cable service shall be provided where the residents of fifteen (15) homes per mile measured from Grantee's existing distribution plant agree to take cable service. In an area with less than twenty (20) homes per mile and where the residents of fifteen (15) homes per mile measured from Grantee's existing distribution plant do not agree to take cable service, Grantee shall offer a cost sharing arrangement to residents whereby Grantee and the subscriber will each bear their proportionate share of construction costs, in accordance with the franchise agreement. If, within two (2) years, additional subscribers request cable television service, the initial subscribers shall receive pro rata rebates of construction costs, in a total amount not to exceed the additional costs above Grantee's share received by the initial subscribers. The Grantee may not otherwise discriminate against low income or low density areas. For good cause, the Grantee may request and the County may grant reasonable extension of time. Failure to provide service under this provision shall subject the Grantee to penalties of \$50 per day.

7.5 USE OF STREETS.

A. Underground Installation. All installations shall be underground in those areas of the County where public utilities providing telephone and electric service are underground at the time of installation. In areas of the County where either telephone or electric utility facilities are above ground at the time of installation, Grantee may install its service above ground, provided that at such time as those facilities are required to be placed underground by the State, the Grantee shall likewise place its services underground without direct additional cost to the County or to the individual subscribers so served within the County. Where not otherwise required to be placed underground by this Ordinance or the franchise, the Grantee's system shall be located underground at the request of a property owner, provided that the excess cost over aerial location shall be borne by the property owner making the request. All cable passing under the roadway shall be installed in conduit.

B. Approvals. Prior to construction or alteration, however, the Grantee shall in each case file plans with the appropriate County agencies, complete use agreements with the utility companies, obtain all construction permits and receive written approval of the County before proceeding, which approval shall not be unreasonably withheld.

C. Interference with Persons, Improvements, Public and Private Property and Utilities. The Grantee's system and facilities, including poles, lines, equipment and all appurtenances, shall be located, erected and maintained so that such facilities shall:

- (1) Not endanger or interfere with the health, safety or lives or persons;
- (2) Not interfere with any improvements the County, any city or State may deem proper to make;
- (3) Not interfere with the free and proper use of public streets, alleys, bridges, easements or other public ways, places or property, except to the minimum extent possible during actual construction or repair;
- (4) Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction or repair; and
- (5) Not obstruct, hinder or interfere with any gas, electric, water or telephone facilities, easements, property rights, or other utilities facilities' easements located within the County.

D. Restoration to Prior Condition. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the State or County, replace and restore all paving, sidewalk, driveway, landscaping, or surface of any street or road disturbed, consistent with the practices of local utilities. Such restoration shall be undertaken as soon as reasonably practicable after the damage is incurred and shall be completed as soon as possible thereafter. Such closing shall be at the expense of the Grantee.

E. Private Property. Grantee shall be subject to all laws, ordinances or regulations regarding private property or regulations regarding private property in the course of constructing, installing, operating or maintaining the cable communications system in the County. Grantee shall promptly repair or replace all private property, both real and personal, damaged or destroyed as a result of the construction, installation, operating, or maintenance of the cable communications system at its sole cost and expense.

F. Relocation of the Facilities. In the event that at any time during the period of the franchise, the State shall lawfully elect to alter, or change, the grade of any street, alley or other public way, the Grantee, upon reasonable notice by the proper authority, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own cost and expense.

G. Cooperation with Building Movers. The Grantee shall, on the request of any person holding a building moving permit issued by the County or other governmental unit, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than fifteen (15) working days' advance notice to arrange for such temporary wire changes.

H. Tree Trimming. The Grantee shall comply with all State laws and regulations regarding tree removal and trimming in public rights-of-way.

I. Easements. All necessary easements over and under private property shall be arranged for by the Grantee.

7.6 [RESERVED]

7.7 CONSTRUCTION REPORTING REQUIREMENTS.

A. Progress Report. Within sixty (60) days of the granting of a franchise pursuant to this Ordinance, the Grantee, upon request of the County, shall provide the County with a written progress report describing the progress in applying for any necessary agreements,

licenses or certifications and any other information the County Manager may deem necessary. The content and format of the report will be determined by the County Manager and may be modified at his/her discretion.

B. Time Frame for Reports. Such written progress reports shall be submitted to the County Manager's office, on request of the County, on a quarterly basis throughout the entire construction process. The County Manager or his/her designee may require more frequent reporting, if he/she determines it is necessary to better monitor the Grantee's progress.

C. Subscriber Information. Prior to the commencement of any system construction, the Grantee shall produce an informational document to be distributed to all residents of the area to be under construction, which shall describe the activity that will be taking place. The informational document shall be reviewed and approved by the County Manager or his/her designee prior to its distribution.

7.8 TESTS AND PERFORMANCE MONITORING.

A. Rebuild Tests. At the time of annual FCC Proof of Performance testing, the Grantee shall conduct technical performance tests to demonstrate full compliance with all valid and applicable technical standards and guidelines contained in this Ordinance and the franchise, including those of the FCC.

B. Report. Such tests shall be performed by, or under the supervision of a qualified technician or engineer with proper training and experience. A copy of the report shall be submitted to the County upon request.

C. Test Points. System monitor test points shall be established as required by the FCC.

D. FCC Reports. In addition to the performance test reports required herein, a copy of any additional performance test reports required by the FCC shall be submitted to the County upon request.

E. Complaints. Whenever there have been similar numerous complaints made or when there exists other evidence, which, in the reasonable judgment of the County, casts doubt on the reliability or quality of the Grantee's system, the County shall have the right and authority to compel the Grantee to test, analyze and report on the performance of its system. The County may require additional tests, full or partial repeat tests, different test procedures or tests involving a specific subscriber's terminal. Reports on such tests shall be delivered to the County no later than thirty (30) days after the County formally notifies the Grantee and shall include the following information: the nature of the complaints which precipitated the special tests; what system component was tested; the equipment used and procedures employed in testing; the results of tests; and methods by which complaints were resolved. Tests and analyses shall be supervised by an engineer, who shall sign all records of the special tests and forward same to the County with a report interpreting the results of the tests and recommending what actions should be taken by the County. All such tests shall be at the expense of the Grantee.

F. Consultants. The County shall have the right, at its expense, to employ or contract with qualified consultants and attorneys if necessary or desirable, to assist in the administration of this or any other portion of this Ordinance or the franchise.

VIII. SERVICE PROVISIONS

8.1 GENERAL SERVICE STANDARDS. The County reserves the right to enforce all valid and relevant service rules and regulations as set forth by the federal government and in this Ordinance and the franchise agreement. These rules and regulations include, but are not limited to, FCC Customer Service Regulations, as hereafter amended by the FCC.

8.2 SERVICES TO SUBSCRIBERS AND USERS.

A. Service. Concurrently with the activation of the rebuilt cable communications system in the County, the Grantee shall provide all services to subscribers as described herein and in the franchise at rates detailed in the rate schedule or as subsequently lawfully changed.

- (1) The system shall carry the broad categories of programming and services listed in the franchise. Should the Grantee desire to change the selection of programs or services offered on any of its tiers, it shall maintain the mix and quality of services provided over the system. Any such change in programs or services offered shall comply with the conditions and procedures contained in the franchise, and shall be reported to the County at least thirty (30) days prior to the proposed implementation.
- (2) A basic service tier shall be offered to subscribers throughout the term of this Ordinance and the franchise.
- (3) The Grantee shall provide and maintain, as designated in the franchise, the following access channels whose purposes are outlined below:
 - (a) "Government Access Channel" which shall be a specifically designated channel for local governmental use and shall be shared with the City of Laurinburg and shall be managed, scheduled and programmed as agreed between the City and the County.
 - (b) "Educational Channel" which shall be a specifically designated channel for use by local school authorities of the City of Laurinburg and the County, and shall be managed, scheduled and programmed as agreed between the City and the County.
 - (c) A "Public Access Channel," which will be a specifically designated channel available on a non-discriminatory shared basis between subscribers in the City and the County.
- (4) The Grantee shall make available Leased Access channels, as required by Federal law.
- (5) The Grantee shall produce and carry on a designated channel, on a daily basis, an alphanumeric program guide describing at a minimum, the programs offered on the access channels described above provided that programming information is furnished to the Grantee.
- (6) The Grantee shall provide, at a minimum, the services, facilities and equipment for public, educational and government access as indicated in the franchise.

B. Emergency Override. The Grantee shall, without charge, provide, service and maintain public emergency transmission facilities to the County, as described in the franchise.

8.3 INSTALLATIONS, CONNECTIONS AND OTHER GRANTEE SERVICES.

A. Standard Installations. Standard installation shall consist of a service not exceeding one hundred fifty (150) feet from a single point or pedestal attachment to the customer's residence. Service drops in excess of 150 feet and concealed wiring in the home shall be charged to the consumer. The desire of the subscriber as to the point of entry into the residence shall be observed whenever feasible and in compliance with the National Electrical Code. Runs in building interiors shall be as unobtrusive as possible. The Grantee shall use due care in the process of installation and shall repair any damage to the subscriber's property caused by said installation. Such restoration shall be undertaken within no more than ten (10) days after the damage is incurred and shall be completed as soon as possible thereafter.

B. Deposits. Any deposit required by Grantee shall bear interest at a rate consistent with other service providers that require deposits.

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

D. Lockout Devices. The Grantee shall provide to the potential subscriber, as part of its promotional literature, information concerning the availability of a lockout device for use by a subscriber. The Grantee may require a reasonable deposit or purchase price for the use of this device. The lockout device described herein shall be made available to all subscribers requesting it beginning on the first day that any cable service is provided.

E. Reconnection. Grantee shall restore service to customers wishing restoration of service, provided that the customer shall first satisfy any previous obligations owed.

F. Free Disconnection. Subscribers shall have the right to have cable service disconnected without charge. Such disconnection shall be made as soon as practicable and in no case later than fifteen (15) days following notice to Grantee of same. A refund of unused service charges shall be paid to the customer within thirty (30) days from the date of termination of service.

G. Delinquent Accounts. Grantee shall use its best efforts to collect on delinquent subscriber accounts. In all cases, the Grantee shall provide the customer with at least ten (10) working days written notice prior to disconnection.

8.4 SERVICE CALLS AND COMPLAINT PROCEDURES.

A. The Grantee shall establish, operate and maintain in the County a business office and maintenance and repair facility for the purpose of receiving inquiries, requests and complaints concerning all aspects of the construction, installation, operation and maintenance of the system and for the payment of subscribers' service charges.

B. The Grantee shall have a listed, local, toll-free or collect telephone number for service calls and such telephone service shall be available twenty-four (24) hours a day, seven (7) days a week according to FCC guidelines. Said number shall be made available to subscribers and the general public. The Grantee shall provide an unlisted telephone number to the County and utility companies to enable the County or utility companies to reach the Grantee in case of emergency.

C. The Grantee shall respond to and resolve subscribers' complaints or requests for service in connection with repairs and maintenance and malfunctions of system facilities. The Grantee shall respond as quickly as possible to such complaints and requests, but shall in any case respond within twenty-four (24) hours. Complaints or requests which may pose a potential health and safety hazard will be responded to immediately. In connection with billing complaints, the Grantee shall respond within seven (7) business days.

D. The Grantee shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed, and furnish information concerning the County office responsible for the administration of the franchise, including, but not limited to, the address and telephone number of said office.

E. The Grantee shall keep full records in connection with all complaints in connection with service. Such records shall identify the person contacting the Grantee, and the person responding on behalf of the Grantee, the subject matter of the contact, the date and time it was received, the resolution of the matter in question or the action taken by the Grantee in connection with the contact, and the date and time thereof, and such other information as may be deemed pertinent by the Grantee. These records shall be made available for periodic inspection by the County upon reasonable advance written notice.

F. The Grantee shall service or replace without charge all equipment provided by it to the subscriber, provided, however, that the Grantee may charge a subscriber for service to or replacement of any equipment damaged due to negligence of such subscriber or lost or stolen from the subscriber's residence or place of business.

G. The County may review and monitor unresolved customer complaints.

8.5 CONTINUITY OF SERVICE MANDATORY.

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

B. In the event that the Grantee elects to rebuild, modify or sell the system, or the County gives notice of intent to terminate or fails to renew its franchise, the Grantee shall cooperate with the County or new Grantee or operator in maintaining continuity of service to all subscribers for a period of four (4) months or such other time as mutually agreed upon. During such period, Grantee shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for the services when it no longer operates the system.

C. Failure to Provide Continuity. In the event the Grantee fails to operate the system for seven (7) consecutive days without prior approval of the County or without just cause, the County may, at its option, operate the system or designate an operator until such time as Grantee restores service under conditions acceptable to the County or a permanent operator is selected. If the County is required to fulfill this obligation for the Grantee, the Grantee shall reimburse the County for all reasonable costs or damages incurred by the County as a the result of the Grantee's failure to perform.

8.6 PROTECTION OF SUBSCRIBER PRIVACY MANDATORY. Grantee shall at all times protect the privacy of subscribers, as provided in Section 631 of the Communications Act (47 U.S.C. 551).

8.7 RIGHTS OF INDIVIDUALS.

A. Nondiscrimination Required. Grantee shall not deny service, deny access or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin, age, sex or handicap, provided the subscriber shall pay all applicable fees for the service desired. Grantee shall comply at all times with all other applicable federal and state laws and regulations, and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this Ordinance by reference.

B. Fairness of Accessibility. The entire system of the Grantee shall be operated in a manner consistent with the principles of fairness and equal accessibility of its facilities.

C. Information Accessibility.

(1) Each individual shall have the right of access to information as required by the FCC and the North Carolina public record laws. The location and hours of operation for the review of such information in the custody of Grantee shall be: Grantee's business office during normal business hours, Monday-Friday.

(2) Each individual subscribing to the services of the cable communications system shall be provided with information covering rates and charges, billing procedures, delinquency policy, subscriber privacy notice, lock-out procedures, A/B switch policy, and an itemized channel line-up.

(3) To the extent required by federal or state law or regulation, such information as may herein be prescribed will be made available to the public and individual subscribers in such form required for understanding, including the deaf and blind, and in such languages as may be specified by the Board.

- (4) Each document required to be maintained, prepared, filed or submitted under the provisions of this Ordinance or pursuant to it, except those required and designated confidential by the Federal Communications Commission is a public document, available for public inspection and copying at the requestor's expense, at the office of the Grantee or the County Manager's office during normal business hours. The charge for such copying shall approximate the cost of mechanical reproduction and shall not include a charge for labor.

IX. BOOKS, RECORDS, AND REPORTS

9.1 BOOKS AND RECORDS AVAILABLE TO THE GRANTOR.

A. The Grantee shall maintain an office within the franchise territory, and manage all of its operations in accordance with a policy of open books and records to the County Manager or his/her designee. The County shall have the right to inspect upon reasonable advance written notice at any time during normal business hours, all books, records, maps, plans, income tax returns, financial statements, service complaint logs, performance test results and other like materials of the Grantee which relate directly to the operation of the franchise. Access to the aforementioned records shall not be denied by the Grantee on the basis that said records contain "proprietary" information.

B. Grantee shall permit any duly authorized representative of the County to examine and copy or transcribe any and all maps and other records kept or maintained by Grantee or under its control concerning the operations, finances, affairs, transactions or property of Grantee directly related to this Ordinance and the franchise. If any of such maps or records are not kept in the County, or upon reasonable request made available in the County, and if the County shall determine that an examination of such maps or records is necessary or appropriate to the performance of any of their duties, then all reasonable travel and maintenance expenses necessarily incurred in making such examination shall be paid by Grantee.

9.2 REPORTS REQUIRED. Except as otherwise specified below, the Grantee shall file the following with the County, upon written request:

A. Regulatory Communications. All reports required to be filed with the County by federal law shall be filed.

B. The County may request specific reports required by federal law to be filed with the FCC that contain information about the County system.

C. [Deleted, intentionally left blank.]

D. Proof of Performance Tests. Proof of performance test results shall be supplied to the County annually as required in Section 7.8 of this Ordinance.

E. [Deleted, intentionally left blank.]

F. Change in Service. A report on any change in programming or service shall be provided to the County thirty (30) days prior to implementation, whether or not required by federal law.

G. Grantee Rules. The Grantee's schedule of charges, contract or application forms of regular subscriber service policy regarding the processing of subscriber complaints, delinquent subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its subscribers shall be filed with the County prior to their becoming effective, in accordance with the provisions of this Ordinance, and conspicuously posted in the Grantee's local office. Such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules or regulations.

H. Proof of Bonds and Insurance. Grantee shall submit to the County the required performance bond, or a certified copy thereof, and all policies of insurance required by this Ordinance, or certified copies thereof, under the terms and conditions described in Section VI of this Ordinance.

I. **Financial and Ownership Reports.** The following financial reports for the franchise area shall be submitted annually to the County:

- (1) An ownership report, indicating any changes during the preceding year of controlling or near controlling interests in Grantee or the franchise. No annual report shall be necessary if notice was given at the time of the change.
- (2) A fully-audited statement of gross annual revenues verifying all revenues from the Scotland County franchise as certified by a certified public accountant. Upon request by the County, no more than four (4) times during the term of the franchise, the Grantee shall provide: an annual, fully-audited and certified financial report from the previous calendar year, (including year-end balance sheet; income statement and statement of sources and applications of funds).
- (3) A current annual statement of all capital expenditures including the cost of construction and equipment, but only if Grantee has such a report readily available.
- (4) Upon request of the County only, not more often than annually, a list of officers and members of the Board of Grantee and of any parent corporation.

J. **Operational Reports.** The following system and operational reports shall be submitted annually if requested by the County:

- (1) An annual summary of the previous year's activities including subscriber totals for each category of service offered including number of pay units sold, new services offered and the amount collected annually from other users of the system and the character and extent of the service rendered thereto.
- (2) An annual general summary of complaints received and handled in addition to any reports required in the franchise.
- (3) An annual projection of system and service plans for the future.

K. **Additional Reports.** The Grantee shall prepare and furnish to the County at the times and in the form prescribed, upon reasonable advance written notice, such additional reasonable and relevant reports with respect to its operation, affairs, transactions or property as may be reasonably necessary and appropriate to the performance of any of the rights, functions or duties of the County in connection with this Ordinance or the franchise.

9.3 RECORDS REQUIRED.

A. **Mandatory Records.** The Grantee shall at all times maintain:

- (1) A record of all service complaints received and interruptions or degradation of service experience for the preceding calendar year.
- (2) A full and complete set of plans, records and "as built" maps showing the exact location of all cable communication system equipment installed or in use in the County, exclusive of subscriber service drops.

B. **Other Records.** The County may, from time to time, impose reasonable requests for additional information, records and documents.

X. **MISCELLANEOUS PROVISIONS**

10.1 **PUBLIC NOTICE.** Public notice of any public meeting relating to this Ordinance or the franchise shall be in compliance with the County's general public notice requirements or practices.

10.2 CAPTIONS. The captions to sections throughout this Ordinance are intended solely to facilitate reading and reference to the sections and provisions of this Ordinance. Such captions shall not affect the meaning or interpretation of this Ordinance.

10.3 FRANCHISE APPLICATIONS.

A. Applicants for a franchise shall submit to the County written applications utilizing the standard format provided by the County, at the time and place designated by the County for accepting applications. The application shall include, at a minimum, the following:

- (1) Applicant's(s') proper business, corporate or partnership name;
- (2) If a corporation, applicant shall also state the corporation's process agent address for service of notice, and provide a certified copy from the North Carolina Secretary of State of authorization to do business in the State;
- (3) If a partnership, application shall also contain names and addresses of all partners, and names and addresses of general partner(s) responsible for overseeing the management of the franchise;
- (4) Most recent financial statement certified by a certified public accountant; and
- (5) Insurance bonds and certificates.

B. In awarding a franchise, the County shall allow the applicant's cable system a reasonable period of time to become capable of providing cable service to households in the franchise area as specified in Section 7.4; may require adequate assurance that the cable operator will provide adequate public, educational and governmental access channel capacity, facilities, or financial support; and may investigate qualifications to provide cable service.

C. An application fee in a reasonable amount set by the Board, not to exceed \$500, shall be paid by each franchise applicant at the time of filing of each application for a franchise filed after the effective date of this Ordinance, which fee shall be in the form of cash, certified check or money order to defer the cost of studying, investigating and otherwise processing such application and which shall be in consideration thereof and not refundable or returnable in whole or in part.

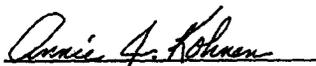
10.4 PUBLIC HEARINGS. Whenever a public hearing is required by this Ordinance and related communications ordinances, the public hearing must be advertised in a newspaper of general circulation within the County at least ten (10) working days before the hearing, the hearing shall be open to the public and provide for public comment, and any reliable, relevant evidence that is not unduly repetitive shall be admissible.

10.5 FORCE MAJEURE. With respect to any provision of this Ordinance, the violation or noncompliance with which could result in the imposition of a forfeiture, penalty, or other sanction upon Century, such violation or noncompliance shall be excused where such violation or noncompliance is beyond Century's reasonable control or not reasonably foreseeable. Causes beyond Century's reasonable control or not reasonably foreseeable shall include, but shall not be limited to, Act of God, civil disturbance, strikes, labor unrest.

XI. EFFECTIVE DATE

This Ordinance becomes effective on the date of final adoption.

This is to certify that the attached "Cable Communications Ordinance for the County of Scotland, North Carolina" was adopted by a unanimous vote of the Scotland County Commissioners on Tuesday, January 2, 1996.


Annie J. Kohmen, Clerk
Board of Commissioners