

**TOWN OF NEW GLOUCESTER, MAINE
CABLE TELEVISION ORDINANCE**

Be it ordained by the Town of New Gloucester, acting by and through its Board of Selectmen acting as its Municipal Officers, that the following Cable Television Ordinance be adopted pursuant to the requirement of 30-A M.R.S.A. §3008.

SECTION 1 – ESTABLISHMENT AND PURPOSE

- 1.1 An ordinance providing for Town regulation and use of Cable Systems in New Gloucester including their construction, operation and maintenance in, along, upon, across, over and under the streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof and additions thereto in the Town of New Gloucester, including, poles, wires, cables, underground conduits, manholes, conductors and fixtures necessary for a Cable System and to provide conditions accompanying the grant of a Franchise Agreement and providing for the Town's regulation of Cable System operation.

SECTION 2 – DEFINITIONS

- 2.1 "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, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves subscribers without using any public right of way; (C) a facility of a common carrier which is subject, in whole or in part to the provisions of Title II of the Communications Act, except that such facility shall be considered a cable system (other than for purposes of section 621(c) Title VI of the Communications Act to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with section 653 of Title VI of the Communications Act; or (E) any facilities of any electric utility used solely for operating its electric utility systems.
- 2.2 "Cable Operator" means any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.
- 2.3 "Town" shall mean the Town of New Gloucester organized and existing under the laws of the State of Maine and the area within its territorial limits

SECTION 3 – FRANCHISE REQUIRED

- 3.1 No person, firm or corporation shall install, maintain or operate within the Town or any of its public streets or other public areas any equipment or facilities for the operation of a Cable System unless a Franchise Agreement authorizing the use of said public streets or areas has first been obtained pursuant to the provisions of this Ordinance and unless said Franchise Agreement is in full force and effect.

SECTION 4 – FRANCHISE CONTRACT

- 4.1 The Municipal Officers of the Town may, in accordance with applicable law, contract on such terms, conditions and fees as are in the best interests of the Town and its residents with one or more Cable Operators for the operation of Cable Systems within the Town, including the granting of non-exclusive Franchise Agreements for the operation thereof for a period not to exceed fifteen (15) years.
- 4.2 Applicants for a new or initial Franchise Agreement shall pay a reasonable fee to the Town to defray the cost of public notices, advertising and other expenses (including reasonable attorney fees or consultant fees) relating to, or incurred by the Town in acting upon, such applications. The amount of said fee is to be determined by the Municipal Officers.
- 4.3 The application shall be filed with the Town Clerk and shall contain such information as the Town may require; including but not limited to a general description of the applicant's proposed operation, a schedule of proposed changes, a statement detailing its previous two fiscal years, an estimated ten year financial projection of its proposed Cable System and its proposed annual franchise fee or the basis for same, and a statement detailing the prior operational experience of the applicant in cable television service including that of its officers, management and staff to be associated with the proposed operation.
- 4.4 Prior to issuing a request for proposals to any Cable Operators for initial Franchise Agreements or renewals, the Town shall hold a public hearing or conduct some other process to determine any special local needs or interests with respect to cable television service and shall allow for a period of public comment on the request for proposals.
- 4.5 Franchise Agreement applications, including renewal applications, and any submittals in response to a request for proposals or solicitation of bids and related documents, are public records. Upon the filing of such documents, the Town shall provide reasonable notice to the public that such documents are open to public inspection during reasonable hours.
- 4.6 A Franchise Agreement may be revoked by the Municipal Officers for good and sufficient cause after due written notice to the Cable Operator, opportunity to cure and a public hearing thereon; with the sole right to appeal to the Cumberland County Superior Court pursuant to Rule 80B of the Maine Rules of Civil Procedure or to the United States District Court for the District of Maine.

4.7 A Cable Operator operating a Cable System in the Town pursuant to a Franchise Agreement with the Town may not enter into any transaction, including but not limited to any transfer, sale, assignment or disposal in any manner, concerning the ownership or control of the franchise or the Cable System in New Gloucester, or resulting in a change in control of the Cable Operator, without the Town's prior written approval which approval shall not be reasonably withheld; provided, however, that the Town's approval shall not be required for a pledge, mortgage or other routine assignment for security as part of a financing or refinancing in the normal course of business or for a transfer to an entity controlling, controlled by or under the same common control as the Cable Operator provided that such entity certifies to the Town that it will assume the obligations and liabilities of the transferor with respect to the franchise and has the financial ability to do so.

SECTION 5 – PUBLIC HEARING

5.1 Before authorizing the issuance of any Franchise Agreements, including renewals, and approvals of any transfers of ownership, property or rights under Franchise Agreements, the Municipal Officers shall review the applicant's legal, financial and technical qualifications to operate a Cable System within the Town, and shall conduct a public hearing thereon with at least seven days advertised notice prior to said public hearing. Such public hearing shall provide a reasonable opportunity for public input on the proposed Franchise Agreement, renewal or transfer.

SECTION 6 – PERFORMANCE BOND

6.1 Performance Bond or Letter of Credit. Each Cable Operator operating a Cable System in New Gloucester shall obtain and maintain during the entire term of its Franchise Agreement, at its sole cost and expense, and file with Town, an irrevocable Performance Bond running to the Town, or an irrevocable Letter of Credit identifying the Town as the sole beneficiary, issued by a surety or financial institution authorized to do business in Maine, to guarantee the faithful performance by the Cable Operator of all of its material obligations under this Ordinance and its Franchise Agreement. Such Performance Bond or Letter of Credit shall be in the amount of at least \$50,000; provided, however, that in the event of a sale of the Cable Operator's system or a transfer of the Franchise Agreement pursuant to Section 4.7 of this Ordinance, the Town may require that the Performance Bond or Letter of Credit provided by the transferee be increased to no more than \$100,000.

6.2 Conditions. The Performance Bond or Letter of Credit shall provide, but not be limited to, the following conditions:

- a. There shall be recoverable by the Town, jointly and severally from the issuing surety or financial institution, within 30 days after written request by the Town, any and all penalties due to the Town and any and all damages, losses, costs and expenses suffered or incurred by the Town resulting from the failure of the Cable Operator to comply with one or more material provisions of this Ordinance or its Franchise Agreement. Such losses, costs and expenses shall include, but not be limited to, reasonable attorney's fees. Prior to drawing upon the bond or letter of credit, the Cable Operator shall be provided written notice of the material breach, opportunity to cure and a hearing before the Town's Board of Selectmen.
- b. If a Cable Operator provides an irrevocable Letter of Credit, it must include the following language: that the Letter of Credit binds the issuing financial institution to pay one or more drafts drawn by the Town as long as the draft does not exceed the total amount of the irrevocable Letter of Credit; that the financial institution will notify the Town sixty (60) days in advance of expiration or cancellation of the Letter of Credit; to the extent not inconsistent with State law, that the Letter of Credit is subject to and governed by the Uniform Customers and Practice for Documentary Credits; that if any legal proceedings are initiated with respect to the payment of the Letter of Credit, those proceedings are subject to the State's courts and law; and that any draft presented by the Town will be promptly honored by the financial institution. If the Town is notified by the issuing financial institution that the irrevocable Letter of Credit will expire in sixty (60) days or less and that the irrevocable Letter of Credit was not replaced within thirty (30) days after that notice to the Town by other eligible security of equal value approved by the Town, then the financial institution must remit within fifteen (15) days the full amount of the irrevocable Letter of Credit to the Town to be held by the Town's Treasurer.

6.3 Forfeiture. The total amount of the Performance Bond or Letter of Credit shall be forfeited in favor of Town in the event:

- (i) The Cable Operator permanently abandons the Cable System or any part thereof at any time during the term of this Franchise Agreement;
- (ii) There is any change in ownership or control of the Cable Operator, the Franchise Agreement or the Cable System except in compliance with the provisions of section 4.7 of this Ordinance;
- (iii) The Cable Operator fails to purchase and maintain insurance as required by the Franchise Agreement; or
- (iv) The Franchise Agreement is revoked as provided therein.

6.4 Replenishment. In the event that any portion of the Performance Bond or Letter of Credit is forfeited or drawn down by the Town for any reason, the Cable Operator shall be required to post an additional Performance Bond or Letter of Credit in an amount equal to the forfeiture within 30 days of the date of the forfeiture.

- 6.5 Town Rights. The rights reserved to the Town in this Section are in addition to all other rights of the Town, whether reserved by this Ordinance, by the terms of the applicable Franchise Agreement or authorized by law, and no action, proceeding or exercise of a right with respect to this section shall affect any other rights Town may have.

SECTION 7 – INSURANCE

- 7.1 Cable Operators shall also, upon execution of any Franchise Agreement, provide evidence of such public liability, copyright infringement and other insurance coverage as the Franchise Agreement may require.

SECTION 8 – FRANCHISE AGREEMENT CONTENTS

- 8.1 Each Franchise Agreement between the Town and any Cable Operator shall contain but is not limited to, the following provisions:
- a) A statement of the area or areas to be served by the Cable Operator;
 - b) A line extension policy;
 - c) A provision for renewal, the term of which may not exceed fifteen (15) years;
 - d) Procedures for the investigation and resolution of subscriber complaints by the Cable Operator;
 - e) An agreement to comply with the requirements of 30-A M.R.S.A. §3010 regarding consumer rights and protection and any amendments thereto;
 - f) Any other terms and conditions that are in the best interest of the Town taking into account the costs thereof; and
 - g) A provision for access to, and facilities to make use of, one or more local public, educational and governmental access channels.

SECTION 9 – RULES, REGULATIONS and PROCEDURES

- 9.1 The Municipal Officers of the Town of New Gloucester shall, either directly or through their designees:
- a) Make recommendations to the Cable Operator concerning educational and local interest programming;
 - b) Resolve complaints, disputes, or disagreements between subscribers and the Cable Operators;

- c) Conduct public hearings and issue such appropriate orders as they may deem necessary to enforce the provisions of this Ordinance and any Franchise Agreements, including the revocation of Franchise Agreements and the assessment of penalties for violations, as well as to correct any deficiencies in the operation of the Cable Systems. The Municipal Officers' decisions and findings may be appealed to the Cumberland County Superior Court pursuant to Rule 80B, M.R.Civ.P. or to the United States District Court for the District of Maine;
- d) All such ordinances, regulations, rules and orders of the Municipal Officers shall not be in conflict with those that have been or may be adopted by the Federal Communications Commission for the operation of Cable Systems, except that unless expressly preempted, such ordinances, regulations, rules and orders may be more detailed, more strict or more restrictive than applicable FCC regulations; and
- e) As part of their enforcement authority, the Municipal Officers have the authority to bring legal action for damages, penalties and for injunctive relief. The Town shall be entitled to recover its costs, including reasonable attorneys fees, incurred in the enforcement of this Ordinance, the provisions of a Franchise Agreement, or any local rules or regulations adopted pursuant to this Ordinance.

SECTION 10 – COMPLIANCE WITH ALL LAWS

- 10.1 Cable Operators shall at all times comply with all applicable federal and State laws and regulations, with this Ordinance and with any other generally applicable, non-discriminatory local ordinances, codes and orders.

SECTION 11 – SUBSCRIBER PRIVACY

- 11.1 Privacy. A cable system operator may not intrude upon the privacy of a subscriber by installing or using any equipment that allows the cable system operator to observe or to listen to what is occurring in an individual subscriber's household or to monitor the viewing habits of the subscriber without express, prior written consent of the subscriber. A cable system operator may not sell, disclose or otherwise make available, or permit the use of, lists of the names or addresses of its subscribers, or any list or other information that identifies by name or address subscribers or subscriber viewing habits, to any person or agency for any purpose whatsoever without the prior written consent of the subscriber except that the cable system operator may make such lists available to persons performing services for the cable system operator in connection with its business or operations, such as a billing service, when the availability of such lists is necessary to the performance of such services if, in either case, the persons or entity receiving such lists agree in writing that they will not permit them to be made available to any other party.
- 11.2 Installation of Equipment. No cable, line, wire, amplifier, converter or other piece of equipment owned or controlled by a Cable Operator shall be installed on private property by a Cable Operator without first securing the permission of the owner or tenant in possession of such property or, if required by law, the written permission of the holder of any easement for utility lines or similar purposes.

- 11.3 Signal Leakage. The Cable System shall be constructed, operated and maintained to comply with all Federal regulations on signal leakage so that there will be no objectionable interference with television reception, radio reception, telephone communications or other electronic installations in the Town of New Gloucester or with the operation of any public fire, police, rescue or safety communications system. Should the Town find that any such interference occurs, the Cable Operator shall, upon notice from Grantor, act with diligence to eliminate it to conform its signal to FCC regulations on signal leakage as promptly as possible.

SECTION 12 – MAINTENANCE AND REPAIR SERVICES

- 12.1 Maintenance Policy. Each Cable Operator shall promulgate and adhere to a preventative maintenance policy (which may be amended from time to time) directed toward maximizing the reliability (mean-time-between-malfunctions) and maintainability (mean-time-to-repair) of the Cable System with respect to its delivery of service to Subscribers at or above the performance standard set forth herein. Whenever it is necessary to interrupt service for the purpose of making repairs, adjustments, installations or other maintenance activities, the Cable Operator shall do so at such time as will cause the least inconvenience to Subscribers. Except in an emergency, and except for insignificant interruptions of five minutes or less which may occur during the course of normal maintenance, service is to be interrupted only between the hours of 11:30 p.m. and 6:00 a.m. For purposes of this section, an emergency means an unexpected or accidental event or occurrence, outside the control of the Cable Operator, which threatens human health or safety or the property of the Cable Operator, subscribers, the Town or the public.
- 12.2 Repair. Each Cable Operator shall maintain a repair department comprising qualified technicians, service vehicles and equipment to provide prompt and efficient repair service within the parameters set forth below.
- 12.3 Notice. Except in an emergency, a Cable Operator shall give subscribers at least 24 hours' notice of any interruption of service for purposes of maintenance or repair that does not occur between 11:30 P.M. and 6:00 A.M. In an emergency, a Cable Operator shall give such notice as is reasonable in the circumstances. Notice given on the alphanumeric channels on basic service shall be considered sufficient.
- 12.4 Repair Procedure. Each Cable Operator shall have a toll free, local listed telephone so operated that requests for repairs or adjustments can be received at any time, 24 hours per day, seven days a week. Cable Operators responses to such requests shall occur on the same day for requests received before 12:00 noon, but in no event shall such responses occur later than 24 hours after Cable Operator's receipt of such a request; provided, the response time for service complaints other than complaints of no or unusable service shall be computed excluding Sundays and legal holidays.
- 12.5 Area Outages. Cable Operators shall respond within four hours to any area outage that occurs between the hours of 7:00 a.m. and 10:00 p.m. of any day, and by not later than the following 11:00 a.m. to any area outage that occurs between 10:00 p.m. and 7:00 a.m.

12.6 Service Complaints. If a Cable Operator responds to a service complaint as herein required and the subscriber is not satisfied that the problem giving rise to the original complaint has been resolved, the subscriber shall notify the Cable Operator thereof within 48 hours of the repair visit by Cable Operator's personnel, and Cable Operator shall have an additional period of 24 hours within which to correct the problem. If such second complaint is made to the Town instead of the Cable Operator, the Cable Operator shall have a period of 24 hours after receipt of oral or written notice from the Town within which to make the correction.

- a. In the event that a subscriber complaint remains unresolved, the subscriber may file a complaint with the Town or its designee. If the complaint remains unresolved for more than ten (10) days, then within thirty (30) days of the date of the filing of the complaint with the Town, the subscriber shall have the opportunity to meet jointly with the Town or its designee and a representative of the Cable Operator to discuss and resolve the matter.
- b. Cable Operators shall notify each new subscriber, at the time of initial subscription and at least annually thereafter, of the procedures for reporting and resolving complaints.
- c. When there have been numerous similar complaints made or when there exists other evidence which in the judgment of the Town or its designee casts reasonable doubt upon the reliability or quality of the Cable Service, the Town shall have the right and authority to compel the Cable Operator upon written request to test, analyze and report on the performance of the system as provided herein.
- d. Such report shall be delivered to the Town no later than fourteen (14) days after the Town formally notifies the Cable Operator and shall include the following information: the nature of the complaints which precipitated the special tests; what system component was tested; the equipment used; the procedures employed in said testing; the results of such tests; and the method in which said complaints were resolved.
- e. In the event that the Town finds that testing and analysis by the Cable Operator has not produced a solution to the problem, upon written request of the Town, the Cable Operator shall conduct additional testing and analysis under the direction and supervision of a professional engineer with training and experience in cable communications and not on the permanent staff of the Cable Operator and otherwise acceptable to the Town. The aforesaid engineer shall sign all records of the special tests and forward to the Town such records with a report interpreting the results of the tests and recommending actions to be taken by the Town. The Town shall be responsible for all costs associated with the retention of said professional engineer, but all other costs of such tests, analyses, and reports required under this section shall be borne by the Cable Operator.

12.7 Subscriber-Owned Equipment Excluded. The requirements for maintenance and repair shall not apply to subscriber television or radio receivers or other subscriber-owned equipment.

- 12.8 Rebate or Credit for Service Loss. For every loss of service in excess of 6 continuous hours, the Cable Operator shall grant a pro rata rebate or credit of the regular monthly charge upon request to each Subscriber so affected. For purposes of this paragraph, loss of basic service shall be considered a Subscriber's receipt of less than two-thirds of the respective available Channels, and loss of pay cable service shall be considered the loss of signal on any pay Channel. Company shall make such rebate or credit no later than thirty (30) days after the loss of service, but may, if it so elects, make such rebate by way of a credit on the affected Subscriber's next bill.
- 12.9 Records. Each Cable Operator shall maintain records of all oral and written complaints regarding quality of service, equipment malfunctions or billing procedure. Such records shall show the exact date and time of receipt of all such customer complaints, identifying the Subscriber (by name, address and telephone number), the nature of the complaint and the exact time action was taken by the Cable Operator in response thereto, together with a description of such action. The Cable Operator shall also maintain a record of all whole or partial system outages, including the date approximate time and duration, type and probable cause of each outage, except for outages caused by routine testing or maintenance. Such records shall be available at the Cable Operator's local office for at least two years, for inspection by the Town as it may from time to time request, during regular business hours and upon reasonable notice. The Cable Operator shall annually provide the Town a written summary of the above records. The Cable Operator shall, within ten (10) days after receiving a written request therefore, send a written report to the Town with respect to any material complaint (other than minor verbal complaints immediately resolved by Company employees without a record being made). Such report shall provide an explanation of the investigation, finding(s) and corrective steps taken.

SECTION 13 – COMMENCEMENT OF SERVICE TO SUBSCRIBERS

- 13.1 Commencement of Service. Subject to the line extensions provisions set forth in the applicable Franchise Agreement, each Cable Operator shall furnish cable service, as herein provided, to all locations in the Town of New Gloucester as requested by the owner or occupant of each location, within the time limits specified below.

13.2 Time of Installation. Service to any Subscriber served by a standard aerial drop shall commence by not later than 7 business days after service is requested. Service to any Subscriber served by an underground drop shall commence by not later than sixty (60) days after service is requested unless additional time is required by severe weather or other circumstances outside of the Cable Operator's control, subject, in either case, to section 16.8 below. Where the Cable Operator is provided access to an open trench to place its drop, service shall commence within 7 business days of a request. The Cable Operator shall exert every reasonable effort to commence service to a Subscriber served by a non-standard drop as expeditiously as possible. A standard drop, for which the Subscriber shall be charged the Cable Operator's standard installation fee, is an aerial drop running not more than two hundred (200) feet from feeder cable to the Subscriber's structure; provided, that any installation which requires the Cable Operator to go underground shall be considered a non-standard installation. If the Cable Operator schedules an appointment with a Subscriber for an installation, repair or other service call, and the Cable Operator fails to arrive at the Subscriber's premises within 30 minutes of the scheduled time for reasons not caused by the Subscriber, the Cable Operator shall make no charge to the Subscriber for any make-up or late installation or service call.

SECTION 14 – BILLING AND DISCONNECTION

- 14.1 Billing Practices. Each Cable Operator shall set forth, in writing its billing and collection practices and policies, and procedures for ordering changes in or termination of services and refund policies, and shall furnish a copy thereof to each new subscriber upon subscription and to the Town, and thereafter to the Town and all subscribers at such time as there is a change in such policies.
- 14.2 Pro-Rated Service. In the event a subscriber's service is terminated, monthly charges for service shall be pro-rated on a daily basis and, where advance payment has been made by a subscriber, the appropriate refund shall be made by the Cable Operator to the subscriber within thirty days of such termination.
- 14.3 Rebate for Service Loss. Rebates due subscribers as a result of loss of service shall be made to the affected subscribers by the Cable Operator either by direct payment or by appropriate credit entry on the next subsequent billing.
- 14.4 Disconnection for Non-Payment. A Cable Operator shall have the right to disconnect a subscriber for failure to pay an overdue account; provided, that:
- a. The Cable Operator's billing practices and policy statement set forth the conditions under which an account will be considered overdue;
 - b. At least fifteen days prior to the proposed disconnection, the Cable Operator mails to the subscriber written notice of intent to disconnect for delinquency in payment;
 - c. The subscriber's account is at least forty five days delinquent at the time said notice is mailed; and

- d. The disconnection occurs at least 15 days after the mailing of the above written notice.

In the event of a billing dispute, and at the request of the Town, the Cable Operator shall meet with Town or its designee to attempt to negotiate in good faith a resolution to the billing dispute.

- 14.5 Notice of Rates and Programming. All rates and charges associated with the provision of Cable Service shall be published. A written schedule of all such rates currently in effect, including special and promotional rates, shall be available and obtainable in person or by mail upon request during business hours at the Cable Operator's business office. At least once each year, the Cable Operator shall provide to each subscriber and the Town a complete schedule of all services, rates and charges for cable service provided by the Cable Operators for that year and of the programming offered and channel alignment. Such information shall also be provided to all new or prospective subscribers prior to installation or commencement of service. Such information shall be written in plain English and shall include, but shall not be limited to, the following: all services, tiers and rates, deposits, if applicable, installation costs, additional television set installation charges, service upgrade or downgrade charges, charges for lockout devices and for connecting video cassette recorders to the Cable System.
- 14.5 General Customer Service. Cable Operators shall comply with any and all customer service standards provided under Maine law, Federal law, FCC regulations, including those regulations found at 47 C.F.R. §76.309, as well as with the provisions of this Ordinance. To the extent of any difference or conflict in the requirements of this Ordinance and State and federal law or FCC regulations, the strictest of such standards shall govern.

SECTION 15 – SUBSCRIBER COMPLAINTS

- 15.1 Complaint Policy. Each Cable Operator shall maintain a written policy statement setting forth the procedure for reporting and resolving subscriber complaints and shall furnish a copy thereof to each new subscriber and to the Town, and thereafter annually to the Town and all subscribers. Such notice shall comply in all respects with the Cable Act, FCC Regulations, Maine law and this Ordinance.
- 15.2 Cable Operators Response. Each Cable Operator shall receive all subscriber complaints at its business office serving the Town and shall handle all such complaints promptly but in no event later than as set forth below.
- 15.3 Billing Complaints. In the case of a billing complaint, Cable Operators shall respond to the complainant by no later than five business days following receipt of the complaint.
- 15.4 Service Complaints. In the case of a service complaint not requesting repair or adjustment, Cable Operators shall respond to the complainant within five business days following receipt of the complaint.

SECTION 16 – NEW TECHNOLOGY

- 16.1 Town Options. The Town shall have the right, effective at any time after the end of the third year of the term of a franchise agreement, to propose that a Cable Operator provide technological improvements to the Cable System necessary to give the Cable System the capability of offering new or expanded services. Nothing in this section shall be deemed to require a Cable Operator to make technological improvements proposed by the Town or to prohibit a Cable Operator from upgrading its system with any cable television technology at its own discretion.
- 16.2 Requirements. In order for the Town to propose technological improvement, the following requirements must be met:
- (i) The Town must first conduct a public hearing to consider the technological improvements which are the subject of the option, on at least thirty days' notice to the Cable Operator, and all interested parties, including the Cable Operator, are given an opportunity to be heard.
 - (ii) Such technological improvements must be technically and economically feasible. Economically feasible shall mean that the Cable Operator will have reasonable prospects of earning a reasonable return during the remainder of the term of the Franchise Agreement or any extension thereof agreed to by the parties on its net investment in the Cable System after installation of equipment necessary for the provision of such technological improvements.
- 16.3 Negotiation. If the Town proposes technological improvements to the Cable System, the Town and the Cable Operator shall meet and negotiate in good faith in an effort to determine whether the technological improvements will be made and what, if any, amendments to the applicable Franchise Agreement are necessary to accommodate such improvements.

SECTION 17 – ENFORCEMENT

- 17.1 Assessment. If the Cable Operator fails to observe any material obligation under this Franchise Agreement, the Town, following the procedures outlined herein, may assess the Cable Operator a monetary penalty in accordance with the Schedule of Penalties set forth in section 17.7 below. Such assessment shall not constitute a waiver by the Town of any other right or remedy it may have under this Ordinance or the applicable Franchise Agreement, or under applicable law, including, without limitation, its right to recover from the Cable Operator such additional damages, losses, costs and expenses as may have been suffered or incurred by the Town by reason of or arising out of such breach of this Ordinance or the Franchise Agreement; provided, that any penalties collected by the Town from the Cable Operator pursuant hereto shall be applied against, and reduce accordingly, the amount of any recoveries due the Town pursuant to this sentence for the failure to perform for which such penalties were assessed.
- 17.2 Notification. Upon the Town's assessing a penalty, notice of such assessment shall be sent to the Cable Operator by certified mail or overnight delivery, with a concise statement of the reasons therefore.

- 17.3 Hearing. Within thirty (30) days after receipt of a notice pursuant to section 17.2 above, the Cable Operator may request a hearing before the Town's Board of Selectmen. Such hearing shall be held within thirty days after receipt of the request therefore and advance written notice thereof shall be provided to the Cable Operator. At such hearing the Board shall determine if the Cable Operator has committed a violation of the Franchise Agreement or this Ordinance and whether the penalty was properly assessed and, following an opportunity for the Cable Operator to be heard and present evidence, shall make written findings of fact relative to its determination. The pendency of a request for hearing shall suspend payment of the penalty until ten days after receipt by the Cable Operator of the decision of the Board of Selectmen confirming the penalty in whole or in part, which the Cable Operator may appeal to any court in Maine of competent jurisdiction, which appeal shall also suspend payment of the penalty until the appeal's final resolution.
- 17.4 Payment. Except as provided in section 17.3 above, the Cable Operator shall pay the full amount of any penalty to the Town within thirty (30) days after receipt of a notice pursuant to section 17.2 above.
- 17.5 Default. Upon failure of the Cable Operator to make timely payment of an assessed penalty, the Town may recover the amount of any such penalty from the Performance Bond or Letter of Credit pursuant to Section 6 above. Failure of the Cable Operator to make timely payment of an assessed penalty is a violation of a material provision of the applicable Franchise Agreement.
- 17.6 Disposition. Amounts received by the Town as penalties assessed against the Cable Operator may be used by the Town for any purpose it deems fit.
- 17.7 Schedule of Penalties. Pursuant to section 17.1 above, the following monetary penalties shall apply, and liability therefore shall accrue from the date of mailing of notice pursuant to section 17.2 above and upon failure to cure with best efforts within the time period specified below, if any opportunity to cure is provided;
- a. \$50.00 Per Day. The penalty for the following violations shall be \$50.00 per day until the violation is cured:
 - i. Failure to maintain insurance pursuant to section 7 and the terms of the Franchise Agreement, with the penalty beginning thirty (30) days after the Town notifies the Cable Operator of the violation;
 - ii. Failure to make timely payment of the franchise fee, with the penalty beginning thirty (30) days after the Town notifies the Cable Operator of the violation;
 - iii. Failure to furnish a lockout key, trap or other parental control device pursuant to the requirements of the Franchise Agreement, assessed on a per Subscriber basis starting 20 days after the key, trap or other parental control device is requested, with the penalty beginning seven (7) days after the Town notifies the Cable Operator of the violation;

- iv. Failure to restore damaged property within the specified period pursuant to the Franchise Agreement, with the penalty beginning three (3) days after the Town notifies the Cable Operator of the violation;
 - v. Failure to make and maintain records as required by the terms of the Franchise Agreement, assessed for each such record, with the penalty beginning thirty (30) days after the Town notifies the Cable Operator of the violation;
 - vi. Failure to obtain and maintain the Performance Bond or Letter of Credit pursuant to section 6, with the penalty beginning thirty (30) days after the Town notifies the Cable Operator of the violation;
 - vii. Failure to make service available to unserved areas within the time required by the Franchise Agreement, with the penalty beginning thirty (30) days after the Town notifies the Cable Operator of the violation;
 - viii. Failure to remove, relocate or protect the Cable Operator's system pursuant to the terms of the Franchise Agreement, with the penalty beginning seven (7) days after the Town notifies the Cable Operator of the violation;
 - ix. Failure to eliminate objectionable interference pursuant to the terms of the Franchise Agreement, with the penalty beginning seven (7) days after the Town notifies the Cable Operator of the violation;
 - x. Failure to provide reports within the time required by the Franchise Agreement, assessed for each report not provided, with the penalty beginning thirty (30) days after the Town notifies the Cable Operator of the violation;
 - xi. Violation of §11.3 or §11.5 of this Ordinance, assessed on a per Subscriber basis.
- b. \$3.00 Per Affected Subscriber Per Day. The fine for the following violations shall be \$3.00 per Subscriber affected by the violation per day credited or paid to the affected subscriber until the violation is cured. If the Subscriber has been otherwise compensated by the Grantee in an amount at least equal to the amount of the applicable penalty, the following penalties shall not apply.
- i. Failure to commence service to a Subscriber within the time required by section 13.0, beginning two (2) days after the Town or the affected Subscriber notifies the cable Operator of the violation;
 - ii. Failure to pay a rebate for service loss with the time required by section 12.8, beginning five (5) days after the Town or the affected Subscriber notifies the Cable Operator of the violation;

- iii. Failure to respond to a request for repair or adjustment or to an area outage within the time required by sections 12.4 and 12.5;
 - iv. Failure to respond to a billing complaint within the time required by section 15.3;
 - v. Failure to respond to a service complaint within the time required by section 15.4.
- c. \$100.00 Fine. The fine shall be \$100.00 for the following violations, beginning thirty (30) days after the Town notifies the Cable Operator of the violation, until the violation is cured:
- i. Failure to install new technology agreed to by the parties pursuant to section 16, assessed per day until operational;
 - ii. Failure to maintain Channel capacity pursuant to the terms of the Franchise Agreement, assessed per day until required capacity is provided;
 - iii. Failure to provide upstream channels pursuant to the terms of the Franchise Agreement, assessed per day until the required upstream channels are provided;
 - vi. Failure to provide PEG access channels or PEG facilities and equipment funding in accordance with the terms of the Franchise Agreement, assessed per day until compliance.
- d. The fine for a failure of the system to perform in the event of a public emergency or vital public information situation in violation of the requirements of the Franchise Agreement shall be \$1,000 assessed per occurrence.
- e. The fine for a violation of section 11.4 of this Ordinance is \$5,000 assessed per occurrence.
- 17.8 Force Majeure. A Cable Operator shall not be responsible for any delay or failure to perform its obligations under this Ordinance or the applicable Franchise Agreement if doing so is prevented by Act of God, earthquake, flood, storm, fire, explosions, strikes, riots, wars whether or not declared, insurrections, epidemics, or any law, rule or act of any court of competent jurisdiction or instrumentality of government.

- 17.9 Further Recourse. In addition to the foregoing penalties, upon the failure, refusal or neglect of the Cable Operator to cause any work or other act required by law, by the terms of this Ordinance or the applicable Franchise Agreement to be properly completed in, on, over or under any Street within any time prescribed and except for exigent circumstances upon thirty (30) days written notice to the Cable Operator and opportunity to cure, the Town may (but shall not be required to) cause such work or other act to be performed or completed in whole or in part, and upon so doing shall submit to the Cable Operator an itemized statement of the costs thereof. The Cable Operator shall, within thirty days after receipt of such statement, pay to the Town the entire amount thereof.
- 17.10 Enforcement Action. The Town may bring an action in the Cumberland County Superior Court to enforce any provision of this Ordinance and to collect any penalty assessed pursuant to this Ordinance.

SECTION 18 – SEVERABILITY

- 18.1 Should any section of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

SECTION 19 – EFFECTIVE DATE

- 19.1 This Ordinance shall be effective on the date of its adoption by the Municipal Officers of the Town of New Gloucester.

Adopted this 6th day of December, 2010.

Attest:


Sumner M. Field, III, Town Clerk