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**AN ORDINANCE AMENDING  
CHAPTER 32 OF THE COUNTY CODE GOVERNING CABLE TELEVISION  
SERIVCES**

BE IT ORDAINED by the Board of Commissioners of the County of Surry, as follows:  
The County Code of Ordinances reference: Cable Television of the County Code is revised to read as follows:

**Article II. Cable Television**

**Sec. 32-31. SHORT TITLE**

This Chapter shall be known as the “County of Surry Ordinance for Regulations of the Cable Television Services” (the “Ordinance”)

**Sec. 32-32. STATEMENT OF INTENT AND PURPOSE**

The County of Surry, North Carolina, pursuant to applicable Federal and State law, is authorized to grant one or more nonexclusive Franchises to construct, operate, maintain, and reconstruct Cable Systems within the unincorporated areas of the County.

The Board of Commissioners of the County of Surry finds that Cable Service has become an integral part of its citizens' lives, and that evolving Cable Systems have the potential to play an even more dramatic role in the future, providing great benefits and advanced capabilities to the County. At the same time, the Board further finds that the public convenience, safety, and general welfare can best be served by establishing regulatory powers that are vested in the County or such Persons as the County designates.

In order to ensure that the County and its Residents receive state-of-the-art Cable Services and capabilities as this technology further evolves, all Franchises granted pursuant to this Ordinance will be subject to periodic review to keep current with changing law, technology, and Services. It is the intent of this Ordinance to help ensure that local cable operators provide the best possible Cable Service to Residents of the County, and any Franchises issued pursuant to this Ordinance shall be deemed to include this finding as an integral part thereof.

Further, it is recognized that Cable Systems have the capacity to provide entertainment and information services to the County’s residents, and may have the Capacity to provide a variety of broadband, interactive communications services to institutions and individuals. For these purposes, the following goals underlie the regulations contained herein:

Cable television services should be made available to all of the County's residents at the lowest reasonable cost.

The System should be capable of accommodating both the present and reasonably foreseeable future State-of-the-Art cable television needs of the County.

The Systems authorized by this Ordinance shall be responsive to the needs and interests of the local community, and shall provide the widest possible diversity of information sources and services to the public. Each of the above-enumerated goals shall be sought to the maximum extent, taking into account the costs and benefits to the residents of the County of Surry.

The Board further finds that on-going industry consolidation could result in less local accountability, and that, therefore, stringent customer service standards, including liquidated damages provisions, may be the only practical means of ensuring compliance and approximating the costs of Franchise Agreement non-compliance to the County and its Residents.

### **Sec. 32-33. DEFINITIONS**

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

"Additional Service" means any Cable Service other than Basic Service provided over the System.

"Basic Cable Service" means any Cable Service tier that includes the lawful retransmission of local television broadcast signals and any Public, Educational, and Governmental Access programming required by this Ordinance or a Franchise Agreement to be carried on the basic tier. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b)(7) (1997), and shall include any signal of any television broadcast station that is provided by a Grantee 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.

"Board" means the County Board of Commissioners of the County of Surry, North Carolina or its delegates

"Cable Act" "Cable Internet Service" means any Cable Service offered by a Grantee whereby Persons receive access to the Internet or high-speed data information services through the Cable System

"Cable Service" or "Service" means: The one-way transmission to subscribers of (i) video programming, or (ii) other programming service; subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service; and for purposes of this Ordinance Cable Internet Service shall be considered Information Service unless determined otherwise by state or federal law.

"Cable Television 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 to multiple Subscribers within the Franchise Area, but such term does not include: a facility that serves only to retransmit the television signals of one or more television broadcast stations; a facility that serves Subscribers without using any public Right-of-Way; or a facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a Cable System to the extent such facility, whether on a common carrier basis or otherwise, is used in the transmission of video programming directly to Subscribers.

“Capital Contribution” means a contribution provided by a Grantee as determined in a Franchise Agreement that may at the County's discretion be utilized for the Capital Costs of the municipal access channel facilities, or to help defray the costs of an I-Net.

“Channel” means a portion of the electromagnetic frequency spectrum that is capable of carrying one standard video signal, in either analog or digital form. Consistent with future changes in technology and/or applicable law, the parties may mutually agree to a different definition in an individual Franchise Agreement.

“County” means the County of Surry, North Carolina, as it is now, or may in the future be, constituted.

"County Administrator" means a person designated by the County Manager to represent the County in all business with the Grantee.

“Complaint” means any written or electronic inquiry, allegation, or assertion, made by a Person regarding Service.

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

“Converter” means an electronic device that converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber and, through the use of an appropriate Channel selector, permits a Subscriber to view all authorized Subscriber signals delivered at designated converter dial locations.

“Direct Incremental Costs” means the costs actually incurred by Grantee in meeting an obligation under its Franchise which Grantee would not otherwise have incurred in order to either operate and conduct the business of its Cable System or meet another obligation of the Franchise.

“Downstream Signal” means a signal originating from or provided by a 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.

“Drop” means the cable or cables that connect users of the System to the distribution system in order to receive Service.

“Educational Access Channels” means Channels specially designated for locally produced Non-Commercial educational access programming use.

“Effective Date” means the date a Franchise becomes effective in accordance with the Franchise and the rules and procedures of the County.

“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.

“FCC” means the Federal Communications Commission or a designated representative.

“Franchise” means the rights and obligations extended by the County of Surry pursuant to an initial authorization or a renewal thereof, to a Person to own, lease, construct, maintain, or operate a Cable System in the Right-of-Way within the Franchise Area for the purpose of providing Cable Services. Any such authorization, in whatever form granted, shall not mean or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the County required by the ordinances and laws of the County, including the provision of telecommunications services; (ii) any generally applicable non-discriminatory permit, agreement, or authorization required in connection with operations in the

Right-of-Way including, without limitation, permits and agreements for placing devices on or in poles, conduits, or other structures, whether owned by the County or a private entity, or for excavating or performing other work in or along the Right-of-Way.

“Franchise Agreement” means that document which grants a Franchise pursuant to this Ordinance.

“Franchise Area” means the geographic area for which a Franchise is granted under the authority of this Ordinance. If not otherwise specifically stated in the Franchise Agreement, the Franchise area shall be the entire geographic unincorporated area within the County as it is now, or may in the future be, constituted.

“Franchise Fee” means any tax, fee, or assessment of any kind imposed by the County or other governmental entity on a Grantee solely because of its status and activities as such. The term “Franchise Fee” does not include: (i) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their Services but not including a tax, fee, or assessment that is unduly discriminatory against cable operators or cable Subscribers); (ii) capital costs that are required by a Franchise Agreement to be incurred by a Grantee for Public Access Channels equipment and facilities; (iii) requirements or charges incidental to the award or enforcement of a Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, compliance audits, penalties, or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.

“Government Access Channels” means Channels specially designated for locally produced Non-Commercial governmental access programming use.

“Grantee” means a Person who is granted a Franchise or that Person’s lawful successors, transferees, or assignees.

“Grantor” means the County.

“Gross Revenues” means any and all revenue, whether received in the form of cash, credits, barter, trade, property or consideration of any kind or nature, arising from, attributable to, or in any way derived by the Grantee from the operation of a Grantee’s System to provide Cable Service, whether such revenue is received by the Grantee, its affiliates, or any Person in which the Grantee has a financial interest, or by any other Person who operates the system, directly or indirectly. This definition is intended to reach as broadly as possible to encompass all revenue. Gross revenue includes, by way of illustration and not limitation, amounts charged for basic service; optional premium, per-channel, per-program services; cable programming services; audio services; launch fees; channel guide subscriptions; installation, disconnection, reconnection, and changes-in-service; equipment sales or rentals; leased channel fees; late fees and administrative charges of any type; consideration received from programmers; advertising revenue; and revenue from the sale of subscriber names and addresses. To the extent that Grantee receives revenue from Cable Services provided to a Subscriber for a fixed price that also includes non-Cable Services (i.e., those services are "bundled"), Grantee shall allocate an appropriate portion of those revenues for inclusion in Gross Revenues. If the fixed price of the bundled services is lower than the aggregate of the prices of those services if purchased individually, then the appropriate amount of the revenue to be allocated to each service shall be proportional to the individual price of that service when compared to the aggregate of the individual prices of those services when unbundled. Gross revenues shall not include:

1. Bad debt except to the extent that bad debt is recovered.
2. The revenue of any person including, without limitation, a supplier of programming to the Grantee to the extent that said revenue is also included in gross revenue of the Grantee.
3. Pass-through payments received by the Grantee from third-party programmers to purchase services from entities other than the Grantee, which services benefit, only the third-party programmers and for which the Grantee neither received nor provides any consideration.

4. Any taxes on Services furnished by the Grantee which are imposed directly on any Subscriber by the state, the County or other governmental unit and which are collected by the Grantee on behalf of said governmental unit. A franchise fee is not such a tax.
5. To the extent the scope of gross revenues is limited by federal law or judicial action, the definitions herein shall be so amended.

“Headend” means the electronic control center of the System including components that amplify, filter, and convert incoming broadcast and other television and electronic signals for distribution over the Cable System

“Institutional Network” or “I-Net” means capacity, fibers or both, from both within the primary cable network and/or separately constructed networks that are dedicated to municipal users or other governmental and educational users as determined by the County for two-way, broadband, Non-Commercial, non-competitive, not for profit communications. The I-Net includes all equipment and maintenance of equipment required to make the Capacity available including but not limited to fiber, cable modems, coaxial cable, and all switching, routing, transmitting and receiving equipment necessary for the use of the I-Net as determined in the individual Franchise Agreement.

“Institutional Network Services” means the provision of an I-Net by a Grantee to municipal users and other governmental and educational users as determined by the County, pursuant to the terms of a Franchise Agreement for Non-Commercial, non-competitive, not for profit applications including but not limited to, two-way dedicated voice, data, video, Internet and telephony channels connecting and interconnecting user facilities; computerized traffic control systems; GIS systems; and the interconnection of facilities serving police, fire and other public safety systems.

“Lockout Device” means a mechanical or electrical accessory to a Subscriber’s terminal that inhibits the video or audio portions of a certain program or certain Channel(s) provided by way of a Cable System.

“Non-Commercial” means Channels or programming that is operated on a not-for-profit basis.

The term “normal business hours” means those hours during which most similar businesses in the community are open to serve customers. In all cases, “normal business hours” must include some evening hours at least one night per week and/or some weekend hours.

“Normal Operating Conditions” means any and all situations or conditions that are ordinarily within the control of a Grantee, including, but not limited to, management or corporate decisions; employee conduct; staffing levels; special promotions; pay-per-view events; rate increases; regular peak or seasonal demand periods; electronic and video equipment; and maintenance, repair or upgrade of the Cable System, and any associated computer or software systems. Those conditions that are not within the control of a Grantee include, but are not limited to, natural disasters; civil disturbances; power outages; telephone network outages; and severe or unusual weather conditions. A condition shall not be deemed to be beyond the Grantee’s control if committed by a corporation or other business entity which the Grantee controls.

“Other Programming Service” means information that a Grantee makes available to all Subscribers generally.

“Person” means any corporation, partnership, proprietorship, individual, organization, company, governmental entity or any natural person.

“Public Access Channels” means Channels specially designated for locally produced non-commercial public access programming use.

“Public Building” means a building, or any portion thereof, owned, leased or otherwise occupied by the County.

“Reasonable Notice” means written notice addressed to the County or Grantee at such location as the parties have designated in the Franchise Agreement as the address to which notice shall be transmitted to it, which notice shall be sent by certified mail 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.

“Right-of-Way” means each of the following which have been, or are hereafter, dedicated to the public and maintained by any public authority or by others and located within the County, including without limitation, the surface and space within, above and below any real property in which the County has an interest in law or equity, whether held in fee, or other estate or interest, or as a trustee for the public, including, but not limited to, any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, swale, river, tunnel, viaduct, bridge, park, or any other place, area, easements, rights-of-way and similar public property and areas, or real property owned by or under the control of the County.

“School” means any state-accredited public or nonprofit educational institution including primary and secondary schools, both public and private.

The term “service interruption” means the loss of picture or sound on one or more cable channels.

“Standard Installation” means any Service drop not exceeding one hundred fifty (150) feet from a single point or pedestal attachment to the Subscriber's residence.

“State-of-the-Art” means the addition of new services and associated equipment as they are developed, available and when economically feasible and marketable to Subscribers as specifically required under the terms of a Franchise Agreement.

“Subscriber” means any Person who or which elects to subscribe for any purpose to Cable Service provided by a Grantee by means of, or in connection with, the Cable System, and whose premises or facilities are physically wired and lawfully activated to receive Cable Service from Grantee’s Cable System.

“System” means a Grantee’s Cable System operated pursuant to a Franchise Agreement within the Franchise Area.

“Trained Representative” means employees of the Grantee who have the authority and capability while speaking with a Subscriber to, among other things, answer billing questions, adjust bills, and schedule service and installation calls.

“Upstream Signal” means a signal originating from a Subscriber's terminal to the head end of the 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.

## **FRANCHISE GENERALLY**

### **Sec. 32-34. FRANCHISE REQUIREMENTS**

1. It shall be unlawful for any Person to construct, operate or maintain a Cable System or to provide Cable Service in the County without a Franchise. Any such person shall be subject to a fine of \$500 per day. The payment of such fine notwithstanding, all such violators shall be subject to all other applicable provisions of this Ordinance, including but not limited to the payment of a Franchise Fee.

2. Any Franchise granted pursuant to this Ordinance shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional Franchises for a Cable System or any component thereof, to any other Person including itself, as it deems appropriate, subject to applicable federal and state law.

3. In the event the County grants more than one Franchise or similar authorization for the construction, operation, or maintenance of any Cable System to a qualified Person in the County, the County shall grant the Franchises on terms that are non-discriminatory and competitively neutral, provided that nothing herein shall be construed as requiring the use of identical terms or conditions, in accordance with federal law.

4. A Franchise Agreement shall establish the term of each individual Franchise.

5. Federal, State, and County Jurisdiction

A. The County shall exercise appropriate regulatory authority under the provisions of this Ordinance, the Cable Act, and all applicable laws. This authority shall be vested in the County of Surry County Board 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, and to carry out the County's responsibilities with regard to Cable Service.

B. This Ordinance shall be construed in a manner consistent with all applicable federal and state laws.

C. In the event that the federal or state government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, Grantor may, if it so elects, adopt rules and regulations in these areas to the extent permitted by law, provided the same do not materially alter the rights and obligations of a Grantee under any existing Franchise.

D. Grantee's rights are subject to the police powers of the County to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Grantee shall comply with all applicable general laws and ordinances enacted by the County pursuant to that power.

E. The provisions of this Ordinance shall apply to all Franchises granted or renewed after the effective date of this Ordinance. This Ordinance shall also apply to all existing Franchises, to the extent not inconsistent with the terms of any such Franchise or applicable law. In the event of any conflict between the terms and conditions of a Franchise Agreement and the provisions of this Ordinance, and other generally applicable regulatory ordinances of the County, the terms of this Ordinance shall control unless otherwise expressly set forth in the Franchise Agreement. A Franchise Agreement (including all of Grantee's particular rights, powers, protections, privileges, immunities and obligations associated therewith as the same exist on the date hereof) shall constitute a legally binding contract between the County and Grantee, and as such, cannot be amended, modified or changed by the County or Grantee without the consent of Grantee and Grantor in any manner whatsoever, whether by ordinance, rule, regulation or otherwise, to impose on Grantee more stringent or burdensome requirements or conditions; provided, however, that nothing herein contained shall preclude the County from the proper exercise of its police powers, or its powers of eminent domain.

F. In the event of a change in state or federal law which by its terms would require the County to amend this Ordinance, the parties shall modify the existing Franchise in a mutually agreed upon manner.

G. Grantee shall not be relieved of its obligation to comply with any of the provisions of this Ordinance or a Franchise Agreement by reason of any failure of the County to enforce prompt compliance.

#### 6. Rights Reserved to Grantor

In addition to any rights specifically reserved to Grantor by this Ordinance or a Franchise Agreement, Grantor reserves to itself every right and power that is required to be reserved by a provision of any other ordinance or under any other Franchise.

#### 7. Franchise Agreement

A. Every Grantee shall agree to the terms and provisions of a Franchise Agreement as negotiated between the Grantee and the Grantor.

B. In addition to those matters required elsewhere in this Ordinance to be included in the Franchise Agreement, each Franchise Agreement must contain the following express representations by each Grantee:

(1) Grantee has examined all of the provisions of this Ordinance and accepts and agrees to all of the provisions of this Ordinance, as it exists as of the effective date of the Grantee's Franchise Agreement.

(2) Grantee recognizes, unless otherwise agreed in the applicable Franchise Agreement, the right of the County to adopt such additional regulations of general applicability as it shall find necessary in the exercise of its police power.

C. Every Franchise Agreement shall contain such further conditions or provisions as may be negotiated between the County and a Grantee, except that no such conditions or provisions shall be such as to conflict with any provisions of state or federal law. In case of any conflict or of any ambiguity between any terms or provisions of a Franchise Agreement and this Ordinance, the provisions of the Ordinance shall control, unless expressly set forth in the Franchise Agreement.

#### 8. Initial Franchise Applications

Any Person desiring an initial Franchise for a Cable System shall file an application with the County. An application for an initial Franchise for a Cable Television System shall contain, where applicable:

A. A statement as to the proposed Franchise Area;

- B. Resume of prior history of applicant, including the legal, technical, and financial expertise of applicant in the cable television field;
- C. List of the partners, general and limited, of the applicant, if a partnership, or a list of the principals of the applicant, if a limited liability company, or the percentage of stock owned or controlled by shareholders holding 10 percent or greater, if a corporation;
- D. List of officers, directors, and managing employees of applicant, together with a description of the background of each such Person;
- E. The names and addresses of any parent or subsidiary of applicant or any other business entity owning or in control of applicant, in whole or in part, or owned or controlled in whole or in part by applicant;
- F. A current financial statement of applicant verified by a CPA audit or otherwise certified to be true, complete, and correct to the reasonable satisfaction of the County;
- G. Proposed preliminary construction and Cable Service schedule; and
- H. Any additional information that the County may require for the administration of the Franchise.

#### 9. Consideration of Initial Applications

Upon receipt of any application and application fee for an initial Franchise, the County Administrator shall prepare a report and make his or her recommendations respecting such application to the Board.

### **Sec. 32-35. FRANCHISE RENEWAL**

Franchise renewals shall be in accordance with applicable law including, but not limited to, the Cable Communications Policy Act of 1984, as amended. Grantor and a Grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the Franchise.

### **Sec. 32-36 GRANT OF ADDITIONAL FRANCHISE**

Competing or overlapping Franchises may have an adverse impact on the public Rights-of-Way and on the quality and availability of Services to the public. In considering whether to grant one or more additional Franchises, the County shall specifically consider, and address in a written report or in provisions of the Franchise Agreement, the following issues:

- A. The positive and/or negative impact of an additional Franchise on the community.
- B. The ability and willingness of the specific applicant in question to provide Cable Services to the Franchise Area.
- C. The amount of time it will take the applicant to complete construction of the proposed System and activate Service in the Franchise Area; and, whether the applicant can complete construction and activation of its System in a timely manner.
- D. The financial capabilities of the applicant and its guaranteed commitment to make the necessary investment to erect, maintain, and operate the proposed Cable System for the duration of the Franchise term. In order to ensure that any prospective Grantee does have the requisite current financial capabilities, the County may request equity and debt financing commitment letters, current audited financial statements, bonds, letters of credit, or other documentation to demonstrate to the County's satisfaction that the requisite funds to construct and operate the proposed System are available.
- E. The quality and technical reliability of the proposed System, based upon the applicant's plan of construction and the method of distribution of signals, and the applicant's technical qualifications to construct and operate such System.
- F. The experience of the applicant in the erection, maintenance, and operation of a Cable System.
- G. The Capacity of the public Rights-Of-Way to accommodate one or more additional Cable Systems and the potential disruption of those public Rights-Of-Way and private property that may occur if one or more additional Franchises are granted.
- H. The likelihood and ability of the applicant to continue to provide competing Cable Service to Subscribers within the Franchise Area for the duration of the Franchise.
- I. Such other information as the County may deem appropriate to be considered prior to granting any competing or overlapping Franchise.
- J. The purpose of this section is to ensure that any competition which may occur among Grantees will be on terms which when taken as a whole are non-discriminatory according to federal law.

**Sec. 32-37. Permits for Non-Franchised Entities**

A. The County may issue a license, easement, or other permit to a Person other than the Grantee to permit that Person to traverse any portion of the Grantee's Franchise Area within the County in order to provide Service outside, but not within the County. Such license or easement, absent a grant of a Franchise in accordance with this Ordinance, shall not authorize nor permit said Person to provide Cable Service to any Subscriber within the County nor render any other Service within the County. The granting of such license, easement or permit shall be conditioned upon the payment of fee for occupancy of the public Right Of Way to the extent permitted by applicable law.

B. Review for Competition. The County recognizes that the cable television and telecommunications industries are in a period of convergence, that the technologies and services provided by these industries are rapidly changing, and that the Telecommunications Act of 1996 promoted and encouraged competition between and among these formally discrete industries. At this time it is premature to know fully the extent to which there will be changes in law, technology or services that may impact entities that have been or may be granted Franchises or licenses to use the County's Rights-Of-Way. It is the desire of the County to be a communications friendly County that encourages the development of competitive advanced communications capabilities for the benefit of all its citizens. For this reason the regulatory ordinances and Franchises of the County should not impede or restrict the fair opportunity to compete, but rather are intended to provide uniform and consistent requirements for all similarly situated providers.

**Sec. 32-38. APPLICATION AND RENEWAL FEES**

A. An application fee shall not be deemed to be "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. § 542), and such payments shall not be deemed to be (i) "payments in kind" or any involuntary payments chargeable against the compensation to be paid to the County by Grantee, or (ii) part of the compensation to be paid to the County by Grantee pursuant to this Ordinance or a Franchise Agreement.

B. All applicants for an initial Franchise shall submit an application fee of nine thousand five hundred dollars (\$9,500) to compensate the County for its costs in reviewing, preparing and awarding a Franchise. Consistent with the Cable Act, all such fees shall not constitute or be credited towards a Grantee's Franchise Fee obligation.

C. The County reserves the right, unless prohibited by applicable law, to require a Grantee to pay the incidental costs of the franchise renewal and negotiation process. Incidental costs include staff time, professional fees, and administrative costs as stated in the Franchise Agreement.

**Sec. 32-39. DESIGN PROVISIONS**

A. Every Grantee shall offer Service that meets the current and future needs of the County, taking into account the costs of meeting those needs. The Franchise Agreement shall incorporate a description of the Grantee's application including the general design and capabilities of the System to identify for the County how the System will meet the current and future Cable Service needs of the County.

B. State-of-the-Art Review. The Franchise Agreement shall include provisions to ensure Cable Service and Cable System compatibility with changes in law, technology, and programming and services to maintain a State-of-the-Art system throughout the Franchise term.

C. The System. Every System shall pass by every single-family dwelling unit and multiple-family dwelling unit within the Franchise Area in accordance with line extension policies set forth in this Ordinance. Service shall be provided to Subscribers in accordance with the schedules and line extension. Unless specified otherwise, Service shall also be extended to commercial buildings on a consistent basis with the residential line extension policies.

**Sec. 32-40. DROPS TO PUBLIC BUILDINGS**

A. Every Grantee shall provide installation of at least one (1) cable Drop, and provide monthly Basic Cable Service, without charge, to public buildings in accordance with the line extension policies of this Ordinance, or as otherwise specified in the applicable Franchise Agreement. Schools shall also receive one (1) cable Drop and Basic Cable Service at no charge.

Following the County's designation of additional buildings(s) to receive Cable Service, and upon the County's request, a Grantee shall complete construction of the Drop and outlet within thirty (30) days.

B. All such Cable Service outlets shall not be utilized for commercial purposes.

C. In instances where the Drop to the public building exceeds 150 feet, the Grantee may charge for the actual and reasonable cost of its labor and materials.

D. Every Grantee that offers two-way interactive broadband services to Subscribers within the County shall provide and install at no cost for the term of the franchise agreement cable modems at every School and to all public libraries, within the Franchise Area that are passed by the portions of the Grantee's Cable System that are capable of supporting such two-way services.

#### **Sec. 32-41. USE OF GRANTEE FACILITIES**

The County shall have the right to install and maintain County equipment, at the actual cost for the space, not including cost for existing space. Any use by the County will be negotiated in a separate agreement with the Grantee. Cost will be limited to any incremental cost for any wire or fixtures. This applies to the excess space upon the poles and within the underground pipes and conduits of a Grantee, any wires and fixtures desired by the County to the extent that such installation and maintenance does not interfere or compete with existing operations of a Grantee. County will relinquish its use of such poles and conduits upon ninety (90) days' notice from a Grantee that County's use interferes with Company's actual or anticipated use of the same.

#### **Sec. 32-42 UPGRADE OF SYSTEM**

Every Grantee shall upgrade its System (herein referred to as the "System Upgrade"), if required, as set forth in its respective Franchise Agreement.

#### **Sec. 32-43 NON-DISCRIMINATORY ACCESS TO CABLE SYSTEM**

Grantee may be required to allow non-discriminatory access to its Cable System if such shall be required by federal law. Prior to the enactment of any such requirement, a Grantee shall be provided with reasonable notice and an opportunity to be heard, including the right to present evidence with respect to the need for such a requirement. Grantee reserves, and has not waived, any right it may have, or may later be determined to have, to challenge the County's implementation of an open access requirement.

#### **Sec. 32-44 INSTITUTIONAL NETWORKS, AND PUBLIC EDUCATIONAL AND GOVERNMENTAL ("PEG") ACCESS**

A. Every Grantee shall, to the extent required by federal Statutes provide institutional to the extent that a Grantee is obligated to provide such support pursuant to its Franchise Agreement. Such may be supported pursuant to a separate contract arrangement if so agreed upon in the Franchise Agreement.

B. Every Grantee shall provide a channel or channels, bandwidth Capacity, Service, and funding for separate Public, Educational, and Government ("PEG") Access Channels, as specified in its Franchise Agreement. All such PEG Access Channels shall be available to all Subscribers as part of Basic Cable Service.

C. Oversight and administration of the PEG Access Channels shall be set forth in the Franchise Agreement. The County may designate a Community Access Corporation or similar entity to administer one or more of the Access Channels.

D. Cost associated with construction and operation of the I-Net shall not be a considered a franchise fee unless specified in the franchise agreement.

### **TECHNICAL STANDARDS**

#### **Sec. 32-45. GENERAL TECHNICAL STANDARDS**

A. This Ordinance incorporates technical standards and establishes customer service practices with which a Grantee must comply. In addition, a Grantee shall comply with any additional or stricter requirements established by FCC regulations, or other federal regulation that may be adopted or amended from time to time.

B. A Grantee shall maintain such equipment and keep such records as are required to enable the Grantor to determine whether the Grantee is in compliance with all standards required by these regulations and other applicable laws.

**Sec. 32-46. BOOKS AND RECORDS AVAILABLE TO THE GRANTOR**

A. The Grantee shall maintain an office conveniently located to serve the Surry subscribers. The County shall have the right, upon Reasonable Notice, to inspect and copy or transcribe at any time during normal business hours, all books, records, maps, plans, financial records, performance test results and other like materials of the Grantee kept or maintained by Grantee or under its control, maintained in the ordinary course of business, concerning the operations, finances, affairs, transactions or property of Grantee when necessary to ascertain the Grantee's compliance with the material terms of this Ordinance or the Franchise Agreement. Access to the aforementioned records shall not be denied by the Grantee on the basis that said records contain "proprietary" information. Access to proprietary information shall be treated as confidential and not subject to public disclosure.

B. If any of such maps or records is not kept in the County, or upon Reasonable Notice made available in the County, and if the County shall determine that an examination of such records is necessary or appropriate, all reasonable expenses necessarily incurred in making such examination shall be paid by Grantee. Maps may be provided in a form mutually agreed upon by the Grantee and the County necessary for the County to insure compliance with this Ordinance or the Franchise Agreement.

C. Reports Required

The Grantee shall file with the County, upon reasonable request:

- (1) Regulatory Communications. All reports required by the Federal Communications Commission (FCC) including, but not limited to annual proof of performance tests and results, Equal Employment Opportunity (EEO) reports, and all petitions, applications and communications of all types submitted by Grantee to the FCC, the Security and Exchange Commission (SEC), or any other federal or state regulatory commission or agency, having jurisdiction over any matter affecting operation of Grantee's System.
- (2) Facilities Report. An annual report setting forth the physical miles of plant construction and plant in operation at the end of the fiscal year will be made available at the local office of the Grantee for review by the County.
- (3) Rebuild/Upgrade/Construction Reports. Such reports shall be sent to the County thirty (30) days after the initial Franchise Agreement is awarded and monthly thereafter until construction is completed as specified in this Ordinance or the Franchise Agreement.
- (4) Proof of Performance Tests. Proof of performance test results performed as required by the FCC shall be supplied to the County.
- (5) Test Required by County. Tests required by County as specified in this Ordinance shall be submitted within thirty (30) days of notification.
- (6) Grantee Rules. The Grantee's schedule of charges, 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 in accordance with applicable state and federal laws, rules or regulations.
- (7) Proof of Bonds and Insurance. Grantee shall submit to the County the required performance bond, or a certified copy thereof, and insurance certificates as required under the terms and conditions described in this Ordinance.
- (8) Financial and Ownership Reports. The following financial reports for the Franchise area shall be submitted to the County, upon reasonable notice and as required by the County:
  - (a) A statement verifying the amount of Gross Annual Revenues derived from the Franchise, certified by the Vice President for Finance or a duly authorized officer or manager of the Grantee.
  - (b) An annual list of officers and members of the Board of Directors of Grantee and of Grantee's parent corporation, if applicable.
- (9) Additional Reports. The Grantee shall prepare and furnish to the County at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions or property, as may be reasonably necessary and appropriate to ascertain Grantee's compliance with this Ordinance or the Franchise Agreement.

## **Sec. 32-47 TECHNICAL STANDARDS COMPLIANCE**

The technical standards used in the operation of a System shall comply, at a minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to the FCC's rules and regulations found in Title 47, Sections 76.601 to 76.617, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference. The results of any tests required by the FCC, or a Franchise Agreement shall be made available to the County within thirty (30) days of written request.

## **Sec. 32-48 TEST AND COMPLIANCE PROCEDURE**

A. Tests for a System shall be performed periodically in a manner so as to conform to FCC specifications. The County shall notify the Grantee of its desire to witness such tests for a period of 90 days beyond the date of request. Grantee shall notify the County at least 5 business days prior to conducting such tests. Representatives of the County may witness the tests and written test reports shall be made available to the County upon request. If any test locations fail to meet such specifications, the Grantee shall be required to indicate what corrective measures have been or will be taken. Grantee shall have the site re-tested on a timely basis as needed.

B. Complaints. Whenever there have been similar 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 requests the tests 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 said testing; the results of such tests; and methods by which said complaints were resolved. Said tests and analyses shall be supervised by an engineer or other trained technical specialist 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 conducted by Grantee shall be at the expense of the Grantee.

C. Consultants. The County shall have the right to employ or contract with an independent qualified consultants and attorneys if necessary or desirable, to assist in the administration of this, or any other section of this Ordinance or the Franchise Agreement. If test results differ by more than ten (10) percent from the FCC technical standard, the Grantee shall reimburse the County for its reasonable costs associated with the testing.

## **Sec. 32-49. EMERGENCY REQUIREMENTS**

Each Grantee must provide emergency alert override capabilities in a manner consistent with the FCC's emergency alert system ("EAS") rules and consistent with any state and/or regional emergency alert system plans adopted in response to the FCC's EAS rules that are applicable to the Franchise Area.

## **Sec. 32-50. PROGRAMMING DECISIONS**

Each Grantee shall provide programming from each of the broad programming categories identified in its Franchise Agreement. All programming decisions remain within the sole discretion of each Grantee provided that each Grantee complies with federal law regarding notice to Grantor and Subscribers prior to any Channel additions, deletions, or realignments, and further subject to the Grantee's signal carriage obligations pursuant to 47 U.S.C. §§ 531-536, as may be amended and subject to the County's rights pursuant to 47 U.S.C. § 545, as may be amended. The Grantee shall use its good faith efforts to ensure diversity of programming.

## **Sec. 32-51. PARENTAL CONTROL**

Every Grantee shall make available to any Subscriber upon request a "lockout" device for blocking both video and audio portions of any Channel(s) of programming entering the Subscriber's premises. Such device shall be provided at a reasonable charge, except to the extent that federal law specifically provides otherwise. The Grantee may, however, require a reasonable security deposit for the use of such a device. This section shall not apply to channels

that are on the basic or expanded basic tier of programming unless the Subscriber receives Service via a programmable terminal device, such as a converter.

**Sec. 32-52. PERIODIC SUBSCRIBER SURVEY**

The Franchise Agreement shall provide terms for a periodic Subscriber survey to assess the Cable Service needs and interests of the community throughout the term of the Franchise as well as procedures for review and implementation of changes identified through any such survey.

**Sec. 32-53. INSTALLATIONS EXCEEDING STANDARD INSTALLATION**

Service drops in excess of 150 feet and concealed wiring in the home shall be charged to the subscriber based upon time and material. The desire of the Subscriber as to the point of entry into the residence shall be observed whenever possible. 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.

**Sec. 32-54 SERVICE AREA AND LINE EXTENSION POLICY**

A. No Grantee may discriminate in the build-out of its System to a particular area of the County in providing Service to an individual or groups of Residents on the basis of race, creed, religion or economic condition. Unless the Franchise Agreement provides otherwise, every Grantee shall serve all areas of the County equally. Grantee shall serve annexed areas with populations of at least fifteen (15) residential dwelling units per cable mile as measured from a Grantee's existing distribution system. The Franchise Agreement shall provide a schedule of the areas to be served, and the specific build-out requirements of the Grantee, and shall also describe the process for extending Service to areas that will meet minimum density requirements at some future date. Unless the Franchise Agreement provides otherwise, every Grantee shall extend Service to commercial areas at no additional costs where the costs to do so does not exceed the same costs of providing service in a residential area.

B. During the initial construction phase of a new System, a Grantee may implement its System in stages pursuant to a schedule and line extension policy established in its Franchise Agreement that serves all areas of the County equally, provided that any deviation from the service and line extension requirements of this Ordinance do not discriminate between different areas of the County on the basis of race, creed, religion or economic condition. A Grantee of any such new Franchise shall comply with all customer service obligations with respect to customers whose premises are passed by portions of the Grantee's network which are fully activated, tested and available for Service.

C. Cost-sharing. In annexed areas with less than fifteen (15) homes per proposed cable mile, Grantee shall offer a cost-sharing arrangement to Residents. Grantee shall bear its pro rata share of the current construction costs based upon the actual number of homes per mile. The cost-sharing arrangement shall consist of the following: On the request of a Subscriber desiring Service, Grantee shall prepare, at its cost, an engineering survey and cost analysis to determine the cost of the plant extension required to provide Service to the Subscriber from the closest usable point on the Cable System. The cost of construction shall be allocated based on the following formula: If a request for extension into a residential area requires the construction of cable plant which does not pass at least fifteen (15) homes per Cable mile, a proportionate share of construction costs shall be borne by Grantee and by the subscribers. For example, if there are ten (10) dwelling units per mile, Grantee's share will equal 10/15th of the construction cost. The remaining cost will be shared equally by each subscriber in the area to be constructed. The line extension formula shall also be applied to a portion of a Cable mile meeting proportionate density requirements. For example, if there are seven (7) dwelling units per one-half mile, the Grantee shall construct the plant. The cost sharing described above would be utilized if there were less than the proportionate share of dwelling units per the portion of a mile needed to reach the dwelling units. Should additional Subscribers' request Cable Service, Subscribers utilizing the cost-sharing plan for extension shall be reimbursed pro-rata for their contribution or a proportional share thereof. In such case, the pro-rata shares shall be recalculated and each new subscriber shall pay the new pro-rata share, and all prior subscribers shall receive refunds. In any event, at the end of twenty-four (24) months from completion of the project, the Subscribers are no longer eligible for refunds, and the amounts paid by Subscribers will be credited to the plant account of the Grantee. The average cost of the line extension shall be recalculated

annually based upon the current costs of labor and material. Each Person contributing toward the direct cost of the line extension shall waive all ownership interest in the line extension. All equipment and components of the line extension, including, but not limited to, cable wire, electronics and pedestals shall at all times remain the exclusive property of the Grantee.

**Sec. 32-55. COUNTY MONITORING**

In addition to free Cable Service required by the Ordinance, Grantee shall provide one Service feed to County Administration Offices (unless otherwise specified by County) that shall receive without charge all basic and expanded basic Cable programming provided by Grantee. Such Service shall be provided in such a manner that the County may monitor the programming and use of the Cable System for compliance with the Franchise Agreement and this Ordinance. The Services provided pursuant to this requirement shall be in a secure office location, and not in a location open to public viewing.

**Sec. 32-56. ACCESS TO INSIDE WIRING**

Access to, and ownership of, inside wiring shall be in accordance with Section 76.800, ET. Seq. of the FCC rules and regulations as the same may be amended from time to time.

**CONSTRUCTION STANDARDS**

**Sec. 32-57 RIGHT-OF-WAY CONSTRUCTION**

A. Prior to commencing any construction in the County, a Grantee must obtain all necessary permits and licenses required by federal, state and generally applicable County laws, ordinances and rules, and pay all associated non-discriminatory fees. Further, a Grantee shall comply with all applicable laws, ordinances, rules, and standards relating to the construction, operation and maintenance of a Cable System.

B. Compliance with Laws. The construction, installation, and maintenance of the Cable System shall be effectuated by Grantee in a manner that is consistent with the laws, ordinances and construction standards of the State of North Carolina, the Occupational Safety and Health Administration, the National Electrical Safety Code, National Electrical Code and the FCC, to the extent applicable, as well as all other laws, rules, regulations and ordinances that are generally applicable and promulgated pursuant to the County's lawful police power. All open connections on splitters, couplers and other devices shall be properly terminated.

C. Minimum Interference. All of Grantee's construction, installation, operation, repair and maintenance, and the arrangement of its lines, cables and other appurtenances, on public or private property, shall be conducted in such a manner as to not unreasonably interfere with the rights and reasonable convenience of property owners that may be affected. In the event such work is not in accordance with applicable rules and regulations, the County may require the removal, within such period of time after notice as is reasonable under the circumstances, of Grantee's lines, cables and appurtenances from the Public Rights-of-Way in question, at the sole expense of the Grantee.

D. Repair of Property. Grantee shall promptly repair and restore any County or private property which may be damaged as a result of the construction, installation, operation, repair, maintenance or removal of the Cable System. Any such property damaged or destroyed shall be promptly repaired and restored by Grantee, at Grantee's sole cost and expense to the reasonable satisfaction of the County, to its condition prior to being damaged, or shall be replaced by Grantee with equivalent property. The County may inspect and approve the condition of the Public Right-of-Ways and cables, wires, attachments, and poles after restoration. The liability, indemnity, insurance and performance bond as provided herein shall continue in full force and effect during the period of any removal and until the Grantee has fully complied with the terms and conditions of this Ordinance and the Franchise Agreement. In the event of a failure by the Grantee to complete any restoration work required by the County within the time as may be established by the County and to the reasonable satisfaction of the County, the County may, following reasonable notice to the Grantee, cause such work to be done and the Grantee shall reimburse the County the cost thereof within thirty (30) days after receipt of an itemized list of such cost, 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.

E. **Erection of Poles.** Grantee shall not erect any pole on or along any Public Rights-of-Way in an existing aerial utility system without the advance written approval of the County. If additional poles in an existing aerial route are required, Grantee shall negotiate, as needed, with the owners thereof for the installation of the needed poles. Grantee shall negotiate the lease of pole space and facilities from the existing pole owners for all aerial construction, under mutually acceptable terms and conditions.

F. **Reservations of Street Rights.** Nothing in this Ordinance shall be construed to prevent the County from constructing storm or sanitary sewers, grading, paving, repairing or altering any public Rights-of-Way, or laying down, repairing or removing water mains, traffic signal control systems, County fiber plant, or constructing or establishing any public utility, Service or other public work that the County may operate or undertake now or in the future. All such work shall be done, insofar as practicable, in such manner as not to obstruct, injure or prevent the free use and operation of poles, wires, conduits, conductors, pipes or appurtenances of Grantee. If County in its reasonable judgment shall determine that Grantee's facilities interfere with the construction location or repair of any public Right-of-Way or public improvement, then all such facilities of Grantee shall be removed or replaced, or temporarily disconnected, in such manner as shall be directed by the County so that the same shall not interfere with the public works of the County. Such removal or replacement shall be at the expense of Grantee; provided, however, that nothing in this Ordinance shall preclude Grantee from seeking reimbursement for removal or replacement costs from any public funds generally available to Rights-of-Way users for the reimbursement of such costs.

G. **Underground Installation.** In those areas within the County where Cable Television, telephone, or electrical facilities are currently placed underground, all Cable System facilities shall remain or be placed underground. In areas where either telephone or electric utility facilities are above ground at the time of installation, Grantee may install its Cable System facilities above ground, provided that at such time as both electric and telephone utility facilities are placed underground, Grantee shall likewise place its Cable System facilities underground without cost to the County. Nothing contained in this Section shall require a Grantee to construct, operate and maintain underground any ground-mounted appurtenances, except that Grantee shall take steps to minimize the number and visual impact of such facilities. If the Grantor reimburses any utility for such relocation, Grantee shall be similarly reimbursed. This section shall not prevent the County or any of its agencies or joint agencies from requiring the installation or relocation of Cable Services facilities underground pursuant to a separate ordinance or regulation or requirement imposed in accordance with the exercise of the general police power or regulatory function of such agency or joint agency.

H. **Conduit**

(1) The County shall not be responsible for any cuts or damage to buried or underground facilities of a Grantee that are not clearly marked or cannot be located through the North Carolina "one-call" service.

(2) Grantee shall provide the County detailed strand and trench maps in both paper and a mutually agreed upon electronic format of all new underground and buried cable facilities upon activation of such sections of the System, as may be necessary to insure compliance with this Ordinance or a Franchise Agreement. Should the Grantee consider this information of a proprietary nature, the maps may be viewed at the Grantee's facility.

(3) Grantee shall provide a contact number for the County to call in emergency situations requiring an immediate response on the part of the County. If the Grantee does not properly and effectively identify the precise location of its facilities within forty-five minutes of an emergency call from the County, the County shall not be responsible for damage to the Grantee's facilities.

I. **Clearing Poles and Cables.** Grantee shall have the right to remove, trim, cut and to keep clear of its poles, cables, underground conduits and related equipment the trees, shrubs and woody plants in and along the public Rights-of-Way, but, in the exercise of such right, Grantee shall not cut such trees, shrubs and woody plants to any greater extent that is reasonably necessary for the construction, erection, installation, maintenance and use of Cable System equipment. Except in emergency situations, all tree, shrub and woody plant pruning shall be carried out under the supervision of the County Arborist and shall be governed in accordance

with pruning guidelines of the American National Standard Institute and National Electric Code. The Grantee shall compensate the County or any private owners of such trees, shrubs and woody plants for any damage caused by Grantee's negligent conduct.

J. Moving Facilities. Grantee, on the request of the County, or any Person holding a building permit issued by the County, or any permit issued by an appropriate state agency, shall temporarily move its wires, cables, poles or other Cable System facilities to permit the moving of large objects, vehicles, buildings or other structures. The expense of such temporary moves shall be paid to Grantee by the Person requesting the same and Grantee shall have the authority to require such payment in advance. Grantee shall be given not less than thirty (30) days advance notice to arrange for such temporary moves.

K. Work Performed by Others. To the extent applicable, all provisions of this Ordinance shall apply to any subcontractors or others performing any work or services pursuant to the provisions of a Franchise Agreement on behalf of a Grantee.

J. Nothing contained in this Ordinance shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities while performing any work connected with grading, re-grading or changing the line of any Public Rights-of-Way or with the construction of any sewer or water system or utility system.

## **GENERAL FINANCIAL AND INSURANCE PROVISIONS**

### **Sec. 32-58 FRANCHISE FEE**

A. The administration of this Ordinance or the Franchise Agreement imposes upon the County additional regulatory responsibility and expense and in consideration for permission to use the Public Rights-of-Way of the County for the construction, operation and maintenance, of a Cable System within the County, a Grantee of any Franchise hereunder shall pay to the County a Franchise Fee in an amount as designated in the Franchise Agreement, up to the maximum amount allowed by applicable law. To the extent that applicable law changes the maximum authorized Franchise Fee, the County reserves the right to change the Franchise Fee as stated in the Franchise Agreement, by adopting an ordinance establishing the new Franchise Fee rate and allowing reasonable notice to the Grantee for administration of the change. The County shall hold a public hearing prior to adopting any change in the Franchise Fee.

B. Payments due Grantor under this section shall be computed quarterly, for the preceding quarter. Each quarterly payment shall be due and payable no later than forty-five (45) days after the end of the preceding quarter. Each payment shall be accompanied by a brief report by a Grantee showing the basis for the computation and a "Franchise Fee Worksheet" listing all of the sources of revenues attributable to the operation of Grantee's System in the County. All such payments shall be certified as correct by an officer of the Grantee.

C. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim Grantor may have for further sums payable under the provisions of this Ordinance or a Franchise Agreement. All amounts paid shall be subject to audit and re-computation by Grantor or its designee at any time during any calendar year (but not more than once per calendar year) upon twenty (20) calendar day's notice, which shall include a request for any documents sought to be reviewed. Audits shall be at the expense of the Grantee if the additional amount due is greater than two percent (2%) of the amount paid. Any additional amount due to the County as a result of the audit shall be paid within sixty (60) days following written notice to the Grantee by the County which notice shall include a copy of the audit report. Grantor's right to audit and Grantee's obligation to retain records related to the Franchise Fee audit, shall expire three (3) years from the date on which the most recent franchise fee payment by the Grantee was due from the time of written notice.

D. 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.

### **Sec. 32-59. PERFORMANCE BOND.**

Each Grantee shall maintain a Performance Bond with the County to ensure compliance with this Ordinance and the applicable Franchise Agreement, in an amount and in a manner as set forth in the Grantee's Franchise Agreement.

**Sec. 32-60. PENALTIES PROCEDURE**

A. Whenever Grantor has reason to believe that a Grantee has violated any material provision of a Franchise Agreement or this Ordinance, Grantor shall first notify the Grantee of the alleged material violation and demand correction within a reasonable time, which shall not be less than twenty (20) days in the case of the failure of a Grantee to pay any sum or other amount due the Grantor under a Franchise Agreement, and forty-five days (45) in all other cases. If a Grantee fails to correct the alleged violation within forty-five (45) days, or if a Grantee is unable to correct the alleged violation and fails to commence corrective action within the time prescribed and to diligently remedy such violation thereafter, the Grantee shall then be given written notice of not less than forty-five (45) days for public comment. Said notice shall indicate with reasonable specificity the violation alleged to have occurred.

B. At the public hearing, the Board shall hear and consider all relevant evidence and thereafter render findings and a decision based upon the evidence. Any such hearing must, at a minimum, provide the Grantee a full and fair opportunity to be heard by the Board.

C. In the event the Board finds that a Grantee has corrected the violation or promptly commenced correction of such violation after notice thereof from Grantor and is diligently proceeding to fully remedy the violation, or that no violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.

D. In the event the Board finds that a violation exists and that a Grantee has not corrected the same in a satisfactory manner or did not promptly commence and diligently proceed to correct the violation, the Board may impose liquidated damages to be collected from the Performance Bond, as set out in the Franchise Agreement.

E. If the Board elects to assess liquidated damages, then such election shall constitute Grantor's exclusive remedy for a period of sixty (60) days. Thereafter, if a Grantee remains in non-compliance, the Grantor may pursue any other available remedy.

F. In the event that a Franchise is cancelled or terminated by reason of the default of a Grantee, the Performance Bond deposited pursuant to a Franchise Agreement shall remain in effect and available to the Grantor until all pending claims or penalties are resolved or settled, after which point any remaining amounts in the Performance Bond shall revert to the Grantee.

G. The rights reserved to Grantor with respect to the security fund are in addition to all other rights of Grantor, whether reserved by a Franchise Agreement, this Ordinance, or authorized by law, and no action, proceeding, or exercise of a right with respect to such Performance Bond shall affect any other right Grantor may have.

In instances of repeated violations, whether remedied or not, the Grantor shall serve special notice outlining additional remediation requirements. Failure to cure, as measured by repeated instances of the same violation, is evidence of an evasive practice and may lead to revocation.

I. Grantee acknowledges that non-compliance with the provisions of the Franchise Agreement and this Ordinance will harm Subscribers and the County and the amounts of actual damages will be difficult or impossible to ascertain. The County may therefore assess the following liquidated damages against Grantee for unexcused non-compliance with the requirements of the Franchise Agreement and Master Ordinance. Grantee acknowledges that the liquidated damages set forth below are a reasonable approximation of actual damages and that this provision is intended to provide compensation and is not a penalty. All damages provided shall be cumulative, unless expressly stated.

1. For failure to materially complete construction or extend service in accordance with the Ordinance and the Franchise Agreement: \$50/ calendar day for each day the violation continues;
2. For failure to materially comply with requirements for Access channels: \$50 calendar day for each day the violation continues;
3. For failure to comply with the material requirements of the I-Net provisions of the Ordinance/Franchise Agreement: \$50/ calendar day for each day the violation continues;
4. For repeated, willful or continuing failure to submit reports, maintain records, provide documents or information: \$50/ calendar day for each day the violation continues;
5. For failure to comply with the material requirements of the Customer Service Standards: \$250/ calendar day for each day the violation continues;
6. For failure to comply with the transfer provisions: \$50/ calendar day for each day the violation continues;

7. For violation of other material provisions of the Ordinance and the Franchise Agreement: up to \$50/ day for each day the violation continues.

J. For the purposes of calculating the amount of liquidated damages, time periods shall be tolled for such time as Grantee is found to be diligently working to remedy such violation.

#### **Sec. 32-61. BONDS, INDEMNIFICATION, AND INSURANCE**

Each Grantee shall maintain bonds and insurance with the County in amounts and in a manner as set forth in the Grantee's Franchise Agreement. Each Grantee also shall be required to indemnify the County in a manner as set forth in the Grantee's Franchise Agreement.

### **REVOCAATION**

#### **Sec. 32-62. GROUNDS FOR REVOCATION**

A. Grantor reserves the right to revoke the Franchise, and all rights and privileges pertaining thereto, in the event that:

(1) A Grantee substantially violates any material provision of this Ordinance or a Franchise Agreement;

(2) A Grantee attempts to evade any of the material provisions of this Ordinance or a Franchise Agreement;

(3) Grantee practices an act of fraud or deceit upon the Grantor;

(4) A Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt;

(5) A Grantee fails to provide or maintain in full force and effect the liability and indemnification coverage or the performance bond as required pursuant to its Franchise; or

(6) A Grantee violates any orders or rulings of any regulatory body having jurisdiction over the Grantee relative to this Ordinance or the Franchise and after notice thereof, shall continue the violation and not remedy the same within sixty (60) days.

#### **Sec. 32-63. PROCEDURE FOR REVOCATION**

A. Whenever Grantor has reason to believe that there may be grounds for revocation of a Franchise, Grantor shall first notify the Grantee in writing of its basis for believing grounds for revocation exist. Such notice shall indicate with reasonable specificity the grounds for revocation that are believed to exist so that the Grantee may have a reasonable opportunity to cure or otherwise address the same. If a Grantee fails to adequately cure or address the purported grounds for revocation within thirty (30) days of such notice, then the Grantor may, upon thirty (30) days written notice to the Grantee, commence a public administrative hearing to determine whether there exists any ground for revocation.

B. The administrative hearing shall be conducted so as to protect the full due process rights of the parties and provide for, at a minimum, the right to have counsel, the right to call and cross examine witnesses, and the right to a full transcript of the proceedings.

C. After the close of the hearing, Grantor or the designated hearing officer shall issue a written decision based on the record of the proceedings, stating with specificity the findings and reasons supporting the decision.

D. Upon revocation, a Grantee shall have a period of one hundred and twenty (120) days subsequent to the date of the formal adoption of a revocation of the Franchise by the County within which to file an appeal with a court of competent jurisdiction.

During the appeal period, the Franchise shall remain in full force and effect.

### **FORECLOSURE AND RECEIVERSHIP**

#### **Sec. 32-64. FORECLOSURE**

Upon the foreclosure or other judicial sale of all or a part of a System, a Grantee shall notify Grantor of such fact and such notification shall be treated as a notification that a change in Control of the Grantee has taken place, and the provisions of this Ordinance governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

#### **Sec. 32-65. RECEIVERSHIP**

Apart from and supplemental to the right to revoke a Franchise, Grantor shall have the right to cancel a Franchise Agreement one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of a Grantee, whether in 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: Within one hundred twenty (120) days after its election or appointment, the receiver or trustee has fully complied with all the provisions of Grantee's Franchise Agreement and this Ordinance and remedied all defaults thereunder; and Such receiver or trustee, within said one hundred twenty (120) days, has executed an agreement, duly approved by a court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Ordinance and the applicable Franchise Agreement.

## **PURCHASE OF SYSTEM**

### **Sec. 32-66. PURCHASE BY GRANTOR**

Upon Termination of Franchise Term or Revocation of Franchise the Grantor may, in accordance with and to the extent permitted by 47 U.S.C. § 547, upon the payment of a fair valuation, purchase, condemn, acquire, take over, and hold the property and plant of a Grantee, in whole or in part, on the following conditions:

- A. Upon revocation of a Franchise, a fair valuation shall be an equitable value that shall not include any sum attributable to the value of the Franchise itself, and plant and property shall be valued according to its book value at the time of revocation, or the System's initial cost less depreciation and salvage.
- B. At the expiration of a Franchise Agreement and following a denial of renewal of the Franchise Agreement, a fair valuation shall be the fair market value of the plant and property, exclusive of the value attributed to the Franchise itself.
- C. In the event Grantor shall acquire a Franchise pursuant to the provisions of this Ordinance or a Franchise Agreement, and commence operation of the System, Grantor shall reimburse the Grantee for the Fair Market Value of the System.

### **Sec. 32-67. SALE OR TRANSFER**

- A. No Grantee shall sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, an interest in or Control of a Franchise or Cable System or any of the rights or privileges granted by a Franchise Agreement, without the prior consent of the Grantor, which consent shall not be unreasonably denied or delayed and may be denied only upon a good faith finding by the Grantor that the proposed transferee lacks the legal, technical, or financial qualifications to consummate the transaction and operate the System so as to perform its obligations under this Ordinance and the applicable Franchise Agreement. This section shall not apply to sales of property or equipment in the normal course of business. Consent from the Grantor shall not be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure indebtedness, or for a transfer to a corporation, partnership, or other entity controlling, controlled by, or under common Control with a Grantee.
- B. The following additional events shall be deemed to be a sale, assignment, or other transfer of an interest in or Control of a Grantee or its Franchise or Cable System requiring compliance with this section: (i) the sale, assignment, or other transfer of all or a majority of a Grantee's assets; (ii) the sale, assignment, or other transfer of capital stock or partnership, membership, or other equity interests in a Grantee by one or more of its existing shareholders, partners, members, or other equity owners so as to create a new controlling interest in a Grantee; (iii) the issuance of additional capital stock or partnership, membership or other equity interest by a Grantee so as to create a new controlling interest in a Grantee; and (iv) a Grantee's agreement to transfer management or operation of the Grantee or the System. The term "controlling interest" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised.
- C. In the case of any sale or transfer of ownership of an interest in or Control of a Grantee or its Franchise or Cable System, the County shall have one hundred twenty (120) days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with FCC Regulations and the requirements of this Ordinance and the applicable Franchise Agreement, including information related to the legal,

technical and financial qualifications, and the proposed transferee's ability to operate the System in accord with this Ordinance and the Franchise Agreement. Failure to provide all information reasonably requested by the County as part of its review may be grounds for a denial of the proposed transfer. If the County fails to render a final decision on the request within one hundred twenty (120) days after receipt by the County of all required information, such request shall be deemed granted unless the Grantee and the County agree to an extension of the one hundred twenty (120) day period.

D. The consent or approval of the County to any transfer of the Grantee shall not constitute a waiver or release of the rights of the County in and to the Public Rights-of-Way, and any transfer shall, by its terms, be expressly subject to the terms and conditions of this Ordinance and the Franchise Agreement.

E. In the absence of extraordinary circumstances, the County will not approve any transfer or assignment of the Franchise prior to completion of construction of the proposed initial System.

Any approval by the County of a transfer shall be contingent upon the prospective new Grantee becoming a signatory to the Franchise Agreement.

## **RIGHTS OF INDIVIDUALS PROTECTED**

### **Sec. 32-68. DISCRIMINATORY PRACTICES PROHIBITED**

No Grantee shall deny Service, deny access, or otherwise discriminate against Subscribers, programmers, or general citizens on the basis of race, color, religion, national origin, sex, disability, or age. Every Grantee shall strictly adhere to the equal employment opportunity requirements of state and federal law. Each Grantee shall comply at all times with all other applicable federal, state, and local laws, and all executive and administrative orders relating to non-discrimination.

### **Sec. 32-69. SUBSCRIBER PRIVACY**

Grantees shall at all times comply with the federal subscriber privacy requirements codified at 47 U.S.C. § 551.

## **MISCELLANEOUS PROVISIONS**

### **Sec. 32-70. RATE REGULATION**

The County reserves the right to regulate rates for all Services offered over the Cable System, to the extent permitted by federal or state law. Grantee shall be subject to the rate regulation provisions provided for herein, and those of the Federal Communications Commission (FCC) at 47 C.F.R., Part 76.900, Subpart N. The County shall follow the rules relating to cable rate regulation promulgated by the FCC at 47 C.F.R., Part 76.900, Subpart N. To the extent required by applicable federal or state law, Grantee shall establish rates that are nondiscriminatory within the same general class of Subscribers and 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; or (v) reduced rates to Subscribers who receive non-Cable Services in addition to Cable Services.

### **Sec. 32-71. RIGHTS RESERVED TO GRANTOR**

A. Upon either the expiration or revocation of a Franchise, Grantor may permit and/or require a Grantee to continue to operate the Cable System for an extended period of time not to exceed three (3) months from the date of such expiration or revocation. A Grantee shall continue to operate the System under the terms and conditions of this Ordinance and the applicable Franchise Agreement and to provide Cable Service and any and all other Services which Grantee had been providing.

B. The Grantor shall have the right to compel continued operation of the Cable System whether by the Grantee or a trustee or receiver or by the Grantor, and to ensure that such operation is consistent with public interest as determined by a court of competent jurisdiction.

The Grantee may not remove equipment or documents necessary for continued operation of the System.

C. At all reasonable times, Grantee shall permit examination by the County of the System, together with any appurtenant property of Grantee situated within or without the County when necessary to ascertain the Grantee's compliance with this Ordinance, the Franchise Agreement, and all applicable laws.

D. The County shall have the right of intervention in any suit or proceeding to which the Grantee is a party relative to Grantee's operations in the County, and the Grantee shall not oppose such intervention by the County.

E. Except as otherwise provided by applicable law, the Grantee shall have no recourse whatsoever against the County or its officials, Boards, commissions, agents, or employees for any loss, cost, expense, or damage arising out of any provision or requirements of this Ordinance or the Franchise Agreement, or of their enforcement.

#### **Sec. 32-72. NON-ENFORCEMENT BY THE COUNTY**

Grantee shall not be relieved of its obligation to comply with any of the provisions of this Ordinance or the Franchise Agreement by reason of any failure of the County to enforce prompt compliance.

#### **Sec. 32-73. GOVERNING LAW AND CHOICE OF FORUM**

Any dispute arising with respect to this Ordinance or a Franchise Agreement granted pursuant to it shall be subject to review by the state and federal courts having primary jurisdiction in the County of Surry, North Carolina.

#### **Sec. 32-74. SEVERABILITY**

If any material portion of this Ordinance, or a Franchise Agreement adopted pursuant to it, is held by an authority of competent jurisdiction, to be invalid or unlawful as conflicting with applicable laws now or hereafter in effect, or is held by a court or competent governmental authority to be modified in any way in order to conform to the requirements of any such applicable laws, such provision shall be considered a separate, distinct, and independent part of this Ordinance or Franchise Agreement, and, to the extent possible, such holding shall not affect the validity and enforceability of all other provisions thereof.

#### **Sec. 32-75. PUBLICATION OF NOTICES**

All public notices required to be published by Grantor under this Ordinance or any Franchise Agreement shall be published in a manner consistent with the public notice laws of the State of North Carolina.

#### **Sec. 32-76. SYSTEM CONSTRUCTION CAPABILITIES AND SCHEDULE**

A. The Cable System shall generally conform to the System design and Channel Capacity specifications set forth by the Grantee in its application for a Franchise submitted to the County. At a minimum, the Grantee shall construct a System with equivalent technical capabilities to a hybrid fiber coax [HFC] 750 MHz cable system. The Grantee is permitted to modify its design and implementation plan, pursuant to the conditions provided herein, to accommodate technological innovations and refinements that enhance System reliability and Capacity.

B. The initial construction required under initial Franchise Agreement shall be completed in compliance with a schedule specified therein. If the Grantee shows that, notwithstanding its due diligence, that it has been unable to extend service to a specified area because the acts or omissions of a third party (excluding the Grantee's subcontractors or agents) or other factors have caused a delay in construction beyond that reasonably expected during the course of construction, and the Grantee proposes a reasonable alternative deadline for extension of Service to that area, the County shall grant reasonable extensions of time to complete construction.

C. In the event the County requires the Grantee to interconnect the cable system with any other entity for any purposes, the County and Grantee shall mutually agree upon the terms of interconnection.

**Sec. 32-77.**

**CUSTOMER SERVICE STANDARDS**

Grantee will at all times comply with the FCC Customer Service Standards (Title 47 CFR, Part 76 (Cable Television Service), Subpart H (General Operating Requirements) as amended.

Adopted this the 19th day of December 2005

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Chairman

ATTEST:

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County Clerk