

## CABLE TELEVISION FRANCHISE ORDINANCE

THIS ORDINANCE, adopted pursuant to Section 15.1-23.1 of the Code of Virginia, 1950, as amended, establishes the policies and procedures whereby the City of Bedford, Virginia may grant to one or more companies, their successors and assigns, non-exclusive franchises, or may renew an existing franchise or franchises, to construct, erect, operate and maintain a Cable Television System under, over, upon and across the Streets, public ways and public places of the City and to provide Cable Service and Other Communications Services to the residents and citizens of said City, and to the persons, firms, and corporations doing business therein.

### Section 1. Short Title

This Ordinance shall be known and may be cited as the "CABLE TELEVISION FRANCHISE ORDINANCE."

### Section 2. Definitions

For the purpose of this Ordinance the following terms, phrases, words, and their derivations shall have the meaning given herein. Terms of art not otherwise defined herein, whether capitalized or not, shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984 (the "1984 Cable Act"), as incorporated in and made a part of the Communications Act of 1934, as amended and the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"). When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number.

The word "shall" is always mandatory and not merely directory.

(a) "Cable Television System" (or "CATV", or "Cable System", sometimes also referred to as "System") shall have the same meaning as ascribed to the term "cable system" in the 1984 Cable Act.

(b) "City" shall mean the City of Bedford, Virginia.

(c) "City School" shall mean any building operated by or located within the City of Bedford, Virginia for the purposes of teaching and learning.

(d) "Council" shall mean the City Council of the City of Bedford, Virginia.

(e) "FCC" shall mean the Federal Communications Commission or its successor.

(f) "Franchise" shall mean a legal entitlement granted by the City of Bedford, Virginia to a non-governmental entity to construct, erect, operate and maintain a Cable Television System in accordance with the provisions of this Ordinance and any franchise granted hereunder. As used herein, the term "Franchise" shall apply, unless otherwise distinguished, to either an initial franchise or a renewal franchise.

(g) "Franchisee" shall mean the grantee of rights under a Franchise granted pursuant to this Ordinance.

(h) "Franchise Area" shall mean and be deemed as being coterminous with the incorporated portions of the City of Bedford, Virginia; provided, however, that in the event of annexation by the City of any portions of Bedford County after the date of this Ordinance, or in the event of consolidation of the City and the

surrounding County of Bedford, then the term "Franchise Area," for the purposes of establishing the rights of the City, or of any surviving or successor entity post-consolidation, to regulate rates charged by a Franchisee pursuant to §3 of the 1992 Cable Act (Regulation of Rates), or any subsequently adopted counterpart thereof or governing regulatory provision relating thereto, shall mean and be deemed as being that part of the City, or surviving or successor entity, to which such Franchisee offers Regular Subscriber Service.

(i) "Franchise Fee" shall mean that fee charged by the City to a Franchisee for the privilege of operating a Cable System within the Franchise Area.

(j) "Gross Revenues" shall mean all compensation and other consideration in any form received by a Franchisee from or in connection with the operation of that Franchisee's Cable System or the provision of Other Communications Services, excluding, however, any sales, service, rent or other tax to the extent such tax is levied upon transactions between a Franchisee and Subscribers or users of the System, is charged separately in addition to other charges imposed by the Franchisee and is remitted by the Franchisee to the City or other taxing authority; provided, however, that the foregoing exclusion shall not be deemed to include any Business, Professional, Occupational, License or other similar tax of general applicability to enterprises conducting business in the City.

(k) "Highway Department" shall mean the Virginia Department of Transportation.

(l) "Home" is any single family dwelling unit, whether a house, apartment, mobile home, trailer, rented room or otherwise, but such definition shall not include any abandoned, derelict or other structure not fit or suitable for human habitation.

(m) "Local Government Occupied Buildings" shall mean those buildings owned in whole or in part by the City of Bedford, Virginia or occupied in whole or in part by City officials or other persons in furtherance of City government objectives, and shall include, without limiting the generality of the foregoing, all volunteer fire and/or rescue companies located within the City limits.

(n) "Other Communications Services" shall mean all services or facilities provided by a Franchisee utilizing spectrum capacity or transmissions along or through and compatible with the closed transmission paths established or maintained for the operation of a Franchisee's Cable System.

(o) "Person" is any individual, firm, partnership, association, corporation, company, trust, governmental entity or organization of any kind.

(p) "Regular Subscriber Service" shall mean the simultaneous delivery by a Franchisee to the television receivers (or any other suitable type of audio-video communications receivers) of all Residential Subscribers, to commercial, i.e., non-Residential, Subscribers, and to public or governmental facilities or buildings in the City of all signals that are carried by or on the delivering Franchisee's Cable System, subject to payment of permissibly

imposed subscription, installation and other fees or charges associated with the delivery, receipt or utilization of such signals.

(q) "Residential Subscriber" shall mean a purchaser in good standing of any service that a Franchisee delivers to any Home.

(r) "Senior Citizen" shall mean any Residential Subscriber who is sixty-five (65) years of age or older.

(s) "Signals" shall mean and refer to all frequencies, and the modulating intelligence imposed or carried thereon, provided by a Franchisee on the Cable System operated by such Franchisee.

(t) "Streets" shall mean all dedicated public streets, roads, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parkways, waterways, docks, bulkheads and alleys, and all other public rights of way and public grounds or waters within the incorporated portions of the City and subsequent additions thereto.

(u) "Subscriber" or "User" shall mean any person or entity lawfully receiving any service provided by or carried on a Franchisee's Cable Television System.

### Section 3. Grant of Authority

(a) The City shall have, and hereby assumes and reserves to itself the rights to exercise, the authority, subject to compliance with the relevant provisions of §15.1-23.1 of the Code of Virginia, to grant to a Franchise applicant, who shall thereafter be a Franchisee hereunder, a nonexclusive Franchise to construct, erect, operate and maintain, in, upon, along, across, above, over and under the City's Streets, public ways and public places now laid

out or dedicated, and all extensions thereof, and additions thereto, poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a Cable Television System and to thereafter provide Cable Service to any portion of the City, subject to such applicant's agreement and obligation to construct, maintain and operate a Cable Television System within the City as hereinbefore defined, to offer Regular Subscriber Service within the City, subject at all times to the Line Extension Requirements set forth at Section 6 of this Ordinance, and to otherwise comply with all provisions of this Ordinance and any agreement relating to the grant of the Franchise.

(b) No Franchisee shall, as to rates, charges, service, facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage, provided that nothing in any Franchise granted hereunder shall be deemed to prohibit the establishment of a graduated or reduced scale of charges: (1) to "Senior Citizen" Subscribers, as to whom, at the Franchisee's option, eligibility for a discount may be based on income, provided that all eligibility criteria for such graduated or reduced charges shall be made available to all persons making inquiry thereof; (2) for installations made or contracted for at the same time, or within or proximate to the same building, or to multiple buildings or facilities under common ownership or control; or (3) in connection with promotional offerings otherwise permitted or

contemplated by the FCC's rules.

(c) Any Franchise granted hereunder as an initial authorization shall be for a term not to exceed 15 years, and any renewal thereof shall be for a term not to exceed 15 years.

Section 4. Rates

The City specifically retains all rights to regulate rates charged by any Franchisee for Cable Service provided within said Franchisee's Franchise Area, subject to the provisions of relevant Federal and State legislation and the rules and regulations of administrative agencies with authority.

Section 5. System Operation

Every Franchisee shall operate its Cable System as required by the FCC's Rules and Regulations, including any and all minimum standards, and updates thereof, prescribed by the FCC pursuant to the provisions of Subpart K - Technical Standards of the FCC's Rules, and any amendments or successors thereto. Every Franchisee shall submit to the City, if requested by the City, copies of its proof-of-performance tests required pursuant to FCC Rule §76.601, or its successor, within 30 days after completion of same, and any other performance tests that may be required by subsequent amendment of the FCC's Rules and Regulations.

Section 6. Line Extension Requirements

(a) Each renewal Franchisee shall, as to all Homes within the City as it exists as of the date of adoption of this Ordinance, make available Regular Subscriber Service within 90 days following such renewal, and shall thereafter, as to any areas annexed by the

City, make available Regular Subscriber Service to all Homes in every such annexed area no later than 90 days after the density of Homes to be passed immediately adjacent to the Franchisee's existing plant equals or exceeds 25 Homes per contiguous mile, and shall install such Regular Subscriber Service upon the request of the owner or legal occupant of each eligible Home subject only to payment of a Franchisee's published installation fee for the Cable Service requested. For the purposes of this Ordinance and any Franchise granted hereunder, all Homes within 200 feet from a Franchisee's existing cable, or within 200 feet from a Street, roadway, easement or a right-of-way available to such Franchisee for the installation of cable, shall be counted in density determinations.

(b) Notwithstanding any other provisions hereof to the contrary, each Franchisee first providing Cable Service within the City after the date of adoption of this Ordinance shall within one year following the date of a Franchise grant make available Regular Subscriber Service to all Homes as set forth in its franchise proposed as accepted by the City, and shall otherwise and thereafter comply with all requirements set forth in Subsection (a) of this Section 6.

#### Section 7. Franchisee Liability - Indemnification

(a) Every Franchisee, as a condition to its continued entitlement to hold a Franchise hereunder, shall save the City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim, or demand whatsoever, resulting

from negligence on the part of the Franchisee in the construction, operation or maintenance of its Cable Television System in the City.

(b) Each Franchisee shall take out and maintain throughout the term of its Franchise comprehensive general liability insurance against personal injury with limitations of not less than \$500,000 for injury to any person and \$1,000,000 for any one accident, and insurance against property damage, including damage to City property, in an amount not less than \$1,000,000, and shall maintain comprehensive automobile liability insurance, including non-owned and hired car as well as owned vehicles coverage, with minimum bodily injury coverage for each occurrence of \$1,000,000 and property damage coverage of not less than \$100,000 per occurrence. The above policies shall be written by a company acceptable to the City and the City shall be named as an additional insured thereunder. A certificate of insurance evidencing these policies shall be furnished to the City as a condition to the grant of any Franchise hereunder. The City reserves the right to require an increase in the foregoing listed basic coverages by an amount not to exceed the greater of 5% or the amount by which the National Consumer Price Index ("CPI") has increased during the immediately prior calendar year, for each year after the adoption of this Ordinance; provided, however, that no single increase exceeding twice the amount by which the CPI has increased for the immediately prior year shall be required, nor shall any increase be required without six months advance notice to a Franchisee.

(c) Every Franchisee shall obtain workmen's compensation insurance as required by the laws of the State of Virginia.

(d) No insurance policy shall be cancelable or non-renewable until 30 days after receipt by the City of notice of intention to cancel or non-renew.

Section 8. Maintenance and Service Problem Procedures

(a) Throughout the term of its franchise, every Franchisee shall maintain all parts of its Cable System in good working condition.

(b) Except to the extent that more stringent standards are established by this Ordinance, each Franchisee shall, at a minimum, comply with customer service standards established by FCC Rule §76.309(c), and any amendments or successors thereto, with such compliance to become effective upon the later of either the date of initial commencement of cable service by a Franchisee or 90 days following the adoption of this Ordinance. In addition to, and not in lieu of the notice requirements of FCC Rule §76.607 or any notice requirements subsequently established by the FCC, notice of the procedures for reporting and resolving service problems will be given to each Subscriber by the Franchisee at the time of initial subscription to the Cable System. Notwithstanding any other provision of law or FCC rule, unless specifically preempted thereby, every Franchisee shall maintain a toll-free telephone number available to all Subscribers, to be listed in the applicable telephone directory for the City, and to be answered at its area or regional business office during normal City business hours to

provide adequate and prompt service to all Subscribers; provided, however, that during non-business hours a Franchisee shall ensure that at a minimum a 24-hour answering service is available on a toll-free basis to receive Subscriber calls. The City may appoint a Cable Representative to be directly responsible for assisting in the satisfactory resolution of service problems; absent the appointment of a Cable Representative by the City, functional responsibilities for that position shall be fulfilled by the Office of the City Manager. The specific procedure for reporting service problems and, to the extent not subsequently preempted by law or FCC rule, the minimum responsibilities of a Franchisee and of the City shall be as follows:

Franchisee

(1) The Franchisee shall respond to all reported or known service problems and correct malfunctions as promptly as possible, and, except for circumstances beyond the Franchisee's control, shall respond immediately to service outages involving more than one Subscriber in a localized service area and shall respond to service outages involving an individual Subscriber only within 24 hours, following receipt of notice of such outage. The Franchisee shall rebate a pro-rata portion of the monthly fee charged to any Subscriber for any occurrence in any given calendar month in which such Subscriber has experienced more than 24 hours of continuous Cable Service outage, with such rebate to be

based on the number of days in the month to which the rebate applies, and if the total cumulative outage in any given calendar month exceeds 36 hours, then a rebate shall be given based on the total hours of outage compared to the total number of hours in the month to which such rebate applies.

(2) If requested by the City the Franchisee shall provide no more frequently than once every six months aggregated data concerning the overall number and types of service problems received during the immediately preceding six months, the resolution thereof, and the number and duration of outages experienced, ensuring at all times that personally identifiable information concerning any Subscriber is excluded therefrom.

#### The City

(1) The Cable Representative shall conduct such investigations of unresolved service problems brought to his or her attention by any Subscriber as he or she deems necessary to assist in resolution thereof, shall maintain records of all such service problems and disposition thereof, and shall retain copies of same for a period of two calendar years. Whenever the Cable Representative believes that a Franchisee is not following prescribed service problem resolution procedures, the Cable Representative shall bring this matter to the attention of the City Manager, who shall take such further action

as he or she deems appropriate.

Section 9. Customer Survey Requirements

Each Franchisee will at least once every two years conduct a poll or survey of a reasonably representative portion of its Subscribers to identify community perceptions concerning the need for new cable-related services as technological developments render such services capable of being provided on the Franchisee's Cable System, either as then configured or with reasonable modifications thereto. At a Franchisee's discretion, the first such survey may, but need not, be conducted in conjunction with any similar poll or survey conducted by such Franchisee of subscribers of its system who are not located within the Franchise Area. The City may, but shall not be required to, provide assistance to any Franchisee in preparing questionnaires in conjunction with such polls or surveys to be conducted by such Franchisee. At the conclusion of each such poll or survey, the Franchisee shall provide to the City a summary report of the results therefrom, with an indication concerning the Franchisee's plans to accommodate the changing community needs as evidenced by the poll or survey. The City acknowledges that nothing contained in this Section shall be deemed as interfering with or otherwise limiting any Franchisee's entitlement to determine, pursuant to relevant federal statute, the specific services, facilities and equipment that will be provided on its Cable System; provided, however, that each Franchisee shall exert its best efforts, consistent with economic and other considerations, to provide such enhancements to its Cable System as

are consistent with the community's cable-related needs as determined through the foregoing polls or surveys or other sources available to each Franchisee.

Section 10. Subscriber Bill Itemization.

Unless the provisions of this Section are preempted or otherwise rendered unenforceable by law or relevant FCC rule, no Franchisee shall itemize on any subscriber bills any costs other than those expressly permitted to be itemized by FCC Rule §76.985(a), to-wit: (i) the amount of the total bill assessed as a franchise fee and the identity of the franchising authority to which the fee is paid; (ii) the amount of the total bill assessed to satisfy requirements imposed on the Franchisee by the Franchise Agreement to support Public, Educational or Governmental channels or the use of such channels; and (iii) the amount of any other governmental fee or assessment directly imposed on a transaction between the cable operator and a Subscriber.

Section 11. Filings with City

(a) In addition to other filings that may be set forth herein, every Franchisee shall file with the City Manager true and accurate maps or plats of all existing and proposed line extensions, and the City hereby reserves the right at all times to reject any proposed line extensions whose manner or place of construction it deems contrary to public interest, and may order and direct the Franchisee, at its own expense, to move the location or alter the construction of any existing cable or other installation wherever the City or the Highway Department deems it

is in the public interest to require such removal or alteration, having due regard for the equities of the parties concerned and the purpose of a Franchise granted hereunder.

(b) Every Franchisee shall file with the City Manager a statement setting forth the names and addresses of all its directors and officers (or, if a partnership or limited liability company, its general partners or members) and the position that each holds. In the event of a change in ownership of a Franchisee constituting a transfer of control as defined by the FCC's rules or any change of officers, directors, general partners or members, the Franchisee shall promptly file with the City Manager information setting forth such change.

(c) Every Franchisee shall file with the City Manager: (1) copies of rules, regulations, terms and conditions adopted by the Franchisee for the conduct of its business; (2) a summary report accompanying each Franchise Fee payment showing Gross Revenues received by the Franchisee from its operations within the City during the period on which such payment is based, and such other information as the City shall reasonably request with respect to properties and expenses related to the Franchisee's service within the City; and (3) a monthly count of all Subscribers within the City. The City shall have the right, upon providing advance written notice to a Franchisee, to have the Franchisee's books and records audited by an independent Certified Public Accountant of its choice reasonably acceptable to the Franchisee, during normal business hours at the Franchisee's offices where such books and

records are maintained, for the sole purpose of determining the accuracy of the Franchisee's reported Gross Revenues upon which Franchise Fees are based. If such audit discloses that a Franchisee's reporting of its Gross Revenues has been understated by 5% or more for any period on which a Franchise Fee payment is based, the Franchisee shall compensate the City for the audit expenses. The City shall, and shall require its auditors to, treat and keep as proprietary and confidential all information so designated by a Franchisee during the audit(s), and such information shall not be publicly disclosed except as necessary for Franchise enforcement, renewal or termination proceedings, or judicial or administrative proceedings associated with the Franchise. Consistent under-reporting of a Franchisee's Gross Revenues shall be grounds for termination of a Franchise.

(d) An applicant for an initial or a renewal Franchise hereunder shall include in its application all information reasonably requested by the City, including such information as the City deems reasonably appropriate to allow it to evaluate such applicant's legal, financial and technical qualifications. In evaluating an application, the City shall be governed by and comply with all relevant Federal and State statutes.

Section 12. Construction and Installation of the System

(a) The City shall have the right to inspect all construction or installation work performed by a Franchisee within any part of the City, and to make such inspections as the City deems necessary to ensure compliance with the terms of this Ordinance, other

pertinent provisions of law and any Franchise granted hereunder. No poles, underground conduits, or other wire-holding structures shall be erected by a Franchisee without prior approval of, or any required notice to, the City or its duly authorized personnel, or affected property owners where the City does not own the area in which such are to be erected. To the extent required by §12 (Limits on Rights of Way) of this Ordinance, the Franchisee shall negotiate agreements with the appropriate parties to permit it to utilize the existing poles and underground conduits throughout the City. Any poles, underground conduits or other fixtures that a Franchisee is authorized by the City to install must be placed in a manner not to interfere with or obstruct the usual travel on the City Streets or to interfere with any existing utility services. All construction activities of a Franchisee shall be conducted to cause minimum interference with the rights and reasonable convenience of the property owners directly affected thereby. Every Franchisee shall maintain all structures, cable and related CATV equipment that are located in, over, under, and upon the Streets in a safe, suitable, substantial condition and in good order and repair at all times.

(b) All construction and installation by a Franchisee shall be effectuated in a manner that is consistent with the FCC's Rules, relevant local building codes, zoning and other regulatory requirements, the National Electrical Safety Code, and other standards of general applicability to Cable Systems. No Franchisee shall commence any construction without obtaining all local zoning

and other approvals, permits and other licenses of general applicability to other entities performing such construction, and paying all costs and fees normally imposed or charged therefor.

(c) In the event the City identifies to any Franchisee in writing any portion of the City, not served by that Franchisee's cable system, that is subject to mandatory service by such Franchisee, pursuant to §6(a) hereof (Line Extension Requirements), the Franchisee so noticed shall provide service to such unserved area within 90 days following the date of such notice unless it takes good faith exception in writing to such notice and service requirement within 30 days after the date of such notice, supported by an objective demonstration that provision of such service is technically infeasible or by objective evidence that the area identified is not subject to mandatory service by the Franchisee.

(d) In the event that the owner or lawful occupant of any Home or other structure not eligible for mandatory service by a Franchisee agrees in writing to pay the excess cost of extending cable service to that location, which payment the Franchisee shall have the authority to require in advance, then a Franchisee so requested by such owner shall provide Cable Service to such Home or other structure, provided that such owner's payment obligation shall only apply to the costs incurred in extending cable more than 200 feet from any existing trunk or suitable distribution line. In addition to such civil remedies as may be available to an affected Franchisee, nonpayment by any owner or lawful occupant of a Home or other structure of costs associated with the immediately foregoing

extension of service, after having agreed with a Franchisee to pay such costs and such Franchisee having provided such extension, shall be a Class 4 Misdemeanor and punishable as such.

(e) In case of any disturbance of pavement, sidewalk, driveway or any other surface covering, a Franchisee causing such disturbance shall, at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway or surface of any Street or other part of the City so disturbed in as good condition as before said work was commenced, and shall maintain the restoration in an approved condition for a period of one year, provided that a Franchisee's obligations hereunder shall not extend to maintaining any restored areas subsequently disturbed by third parties.

(f) In the event that at any time during the period of a Franchise the City or Highway Department shall lawfully elect to alter or change the grade of any Street or other public way, the affected Franchisee, upon reasonable notice by the City or the Highway Department, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

(g) No Franchisee shall place any poles or other fixtures where the same will interfere with any gas, electric or telephone fixture, water hydrant, main, or sewer, and all such poles or other fixtures placed in any Street or other public way shall be placed within easements dedicated for such placement, and if no such easement be dedicated then in such a manner as not to interfere

with the usual travel on said Streets and public ways.

(h) A Franchisee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Franchisee shall have the authority to require such payment in advance. The Franchisee shall be given not less than five (5) business days advance notice to arrange for such temporary wire changes.

(i) Every Franchisee shall have the authority to trim trees upon and overhanging Streets and other public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Franchisee, provided that all trimming shall be done at the expense of the Franchisee and in a manner to minimize to the extent reasonably possible the damage to such trees. The City specifically reserves the right to prohibit the trimming of trees where it deems that such trimming would damage unreasonably or destroy the tree. No portion of any trees not overhanging Streets or other places of the City may be trimmed without the express permission of the affected property owner.

(j) No Franchisee shall install above-ground facilities in any portion of the City where all public utility lines are underground, and every Franchisee shall be obligated to relocate its existing facilities underground in any portion of the City within 90 days after all public utility lines in that portion of the City have been placed underground.

Section 13. Limits on Rights of Way

This Ordinance shall not be construed to mean that the City, by granting any Franchise hereunder, is giving any person the right to use any easement or right-of-way controlled by the Highway Department or by any person other than the City. Every Franchisee hereunder shall be required to meet any and all Highway Department regulations and requirements set forth for the use of such easements or right-of-ways controlled by the Highway Department and, to the extent not otherwise pre-empted by the provisions of §621(a)(2) of the Communications Act of 1934, as amended (47 U.S.C. §541(a)(2)) (authorizing the use by cable systems of easements and rights-of-way dedicated for compatible uses), shall be required to obtain separately from private parties and others permission to use any non-compatible rights-of-way or easements not controlled by or vested in the City prior to the installation of any cable on, under or over the property so affected.

Section 14. Emergency Override Capability

In addition to, and not in lieu of, such standards as the FCC may prescribe pursuant to §624(g) of the Communications Act of 1934 (47 U.S.C. 544(g)) (requiring the FCC to establish standards to ensure that cable television viewers are afforded the same emergency information as is afforded by the emergency broadcasting system), each Franchisee shall, no later than three years following the date of any Franchise or renewal thereof granted hereunder, establish for use by and access to such authorized persons as are designated by the City an emergency override capability whereby the

audible portion of all programming carried on all channels may be interrupted for the insertion of emergency information, and whereby a written supplemental emergency message may be superimposed on the video portions of all such programming; provided, however, that shared usage of such emergency override capability shall be allowed by other franchising authorities having cognizance over any portion of a Franchisee's Cable System contiguous to the City; and provided, further, that relief from this requirement may be given if the City determines at its sole discretion that a Franchisee's compliance with and participation in any program established by the FCC pursuant to §624(g) of the Communications Act of 1934 will provide an acceptable means of disseminating emergency information to Subscribers.

Section 15. Channel Assignment or Service Changes

Each Franchisee shall provide the City not less than 30 days advance written notice of any change in channel assignment or in the Video Programming Service provided over any such channel, and shall also contemporaneously inform its Subscribers in writing that comments on programming and channel position changes are being recorded by the City's Cable Representative or other designated person.

Section 16. Equipment Compatibility

Each Franchisee shall comply with the provisions of FCC Rule §76.630, and any subsequent amendments thereto, including compliance with the effective dates set forth therein for specified actions to be taken by a cable operator to ensure compatibility

between televisions and video cassette recorders and cable systems.

Section 17. Service to Local Government Occupied Buildings and City Schools

In addition to, and not in lieu of, any requirements established in a Franchise granted hereunder, each Franchisee shall, in furtherance and support of the City's Public, Education and Governmental channel requirements, and not as an in-kind equivalent to any franchise fee payment otherwise assessed hereunder, at no cost to the City provide to such Local Government Occupied Buildings as may be specified from time to time by the City and to all City Schools basic Cable Service plus one converter (if required for cable reception) and one energized cable outlet at a location to be determined by the City; provided, however, that such Franchisee shall provide additional outlets as may be requested by the City. Installation costs and fees for additional outlets shall not exceed the Franchisee's rates and monthly fees charged for similar installations.

Section 18. Approval of Transfer

No Franchisee shall sell or transfer its plant or system to another person, nor transfer any rights under a Franchise to another person without approval by the City Council, which approval shall not unreasonably be withheld, upon such reasonable terms and conditions as the City may impose. No sale or transfer shall thereafter be effective until the vendee, assignee or lessee ("Successor Franchisee") has filed in the office of the City Manager an instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting and agreeing to be bound by

the provisions of this Ordinance and a Franchise granted pursuant hereto, with any reasonably imposed modifications thereto deemed appropriate by the City, and agreeing to perform all the conditions that may be imposed by the City pursuant to its consent. Any such Successor Franchisee shall, upon prior written notice to the City, have the right to mortgage, pledge or otherwise hypothecate the assets of its Cable Television System, including the rights granted under a Franchise assumed and granted under this Ordinance, if such be required as a condition of a sale or transfer permitted hereunder, and any Franchisee shall have the foregoing specified right, upon prior written notice to the City, if required as a condition to such Franchisee or its parent obtaining financing wholly or partly intended for or reasonably related to the operation, expansion or maintenance of the Franchisee's Cable System within the City.

Section 19. City Right in Franchise

(a) The right is hereby reserved by the City to adopt, in addition to the provisions herein contained and in existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of its police powers.

(b) All rights, rights-of-way, and easements hereinabove designated shall remain the property of the City or the Highway Department. Until such time as poles or other equipment are actually installed by a Franchisee, and in the event of future removal of said poles or other equipment, said rights shall remain vested in or immediately revert to the City or the Highway

Department and, in the event of removal, a Franchisee's rights therein shall be automatically canceled.

(c) At the time a Franchise becomes effective, the Franchisee shall furnish a bond to the City, in such form and with such sureties as shall be acceptable to the City, guaranteeing the payment of all sums which may at any time become due from the Franchisee to the City under the terms of this Ordinance and any Franchise granted, and further guaranteeing the faithful performance of all obligations of the Franchisee under the terms of this Ordinance and the agreement reflecting the grant of the Franchise.

The initial bond for a Franchisee lawfully providing cable service within the City prior to the date of adoption of this Ordinance shall be \$5,000.00 for each 200 basic service Subscribers, or fraction thereof, on the Franchisee's Cable System as of the last day of the month immediately preceding the date of such Franchisee's acceptance of a renewal franchise hereunder, up to a maximum of \$50,000.00, and such bond requirement shall thereafter decrease annually at a rate of 6% of the initially established bond for a period of 10 years, and shall thereafter remain fixed at such terminal amount for any remaining term of the Franchisee's Franchise; provided, however, that no reduction in any bond amount shall occur unless first approved by the City, which approval shall be contingent upon a Franchisee's reasonable compliance with the conditions of its Franchise and this Ordinance, and shall not unreasonably be withheld.

The initial bond for a Franchisee first lawfully providing cable service within the City after the date of adoption of this Ordinance shall be \$50,000.00 or such other amount as the City may by resolution specify, with such required bond amount thereafter to be reduced to the amount and governed by the procedures specified above for Franchisees lawfully providing service prior to the date of adoption of this Ordinance upon a reasonably acceptable demonstration to the City of System activation throughout the City as required by this Ordinance.

In the event of default under this Ordinance or a Franchise, the City shall not assume any liability, obligation or responsibility, but shall instead be entitled to levy on and collect from such bond all amounts deemed necessary by the City to render it whole.

(d) If at any time after the date a Franchisee's Cable System is energized the Franchisee shall fail to comply with the terms of this Ordinance or any Franchise granted, and shall continue to fail to comply for a period of thirty (30) days after receiving notice in writing of non-compliance from the City, the Franchisee shall be assessed liquidated damages of not less than \$5.00 nor more than \$50.00 for each day's failure to comply from the date of the written notice of such non-compliance, with each day's failure to comply being a separate and distinct offense. Liability under this section is predicated on the City's anticipated inability to determine the amount of actual damages arising from a Franchisee's failure to comply with any provision

hereof, and this section shall not apply if non-compliance is occasioned by events beyond the control of the Franchisee. In the event the Franchisee shall in good faith, as such good faith is reasonably determined by the City, contest its liability under this Section, no further assessment shall be imposed until such non-compliance or liability is established. Should such non-compliance or liability be established by a federal regulatory agency with authority or by a court of competent jurisdiction the Franchisee shall have thirty (30) days within which to comply with the terms of this Ordinance or its Franchise and within which to pay all assessed amounts for such prior non-compliance, which amounts shall in addition include all costs incurred by the City in connection with any enforcement action or determination of non-compliance or liability, including attorney fees. In the event the Franchisee does not then comply and pay all sums assessed the City shall have the option to terminate the Franchise or declare the bond forfeited, or both.

Section 20. Payment to City

(a) Unless and until the City shall require otherwise pursuant to the provisions of Subsection (b) of this Section, every Franchisee shall pay the City a Franchise Fee of three percent of its Gross Revenues, as hereinbefore defined, in accordance with the payment procedures set forth below; such Franchise Fee shall always be calculated consistent with the rules and stated policies of the FCC. The obligation of each Franchisee as to this Franchise Fee, and any increases that may be imposed

pursuant to Subsection (b) below, shall accrue upon the effective date of its Franchise granted hereunder, and shall remain in effect thereafter, unless superseded by actions of Federal, State or other regulatory agencies.

(b) In the event that governing law or the rules of regulatory agencies applicable on the date of enactment of this Ordinance or thereafter permit a greater Franchise Fee than set forth in this Ordinance, such payment obligation may, pursuant to a resolution duly adopted by the City, be increased up to the maximum amount permissible; provided, however, that before any increase in the Franchise Fee shall become effective, the City shall provide not less than six months notice in writing to each Franchisee or other person so affected.

(c) No fee, tax or other payment required to be made by a Franchisee to the City, including payment of a Business, Professional, Occupational or License fee or tax, shall be deemed as part of the Franchise Fee payable to the City hereunder, so long as such fee, tax or other payment obligation is imposed on a non-discriminatory basis on other entities doing business within the City.

(d) Franchise fee payments shall be made semi-annually, no later than October 15 and April 15 of each year, and shall be based upon the Gross Revenues received by each Franchisee operating a Cable System within the City for the immediately preceding six-month periods ending June 30 and December 31, respectively; provided, however, that the first Franchise Fee payment made by

each Franchisee under this Ordinance shall be due and payable on the earlier of the October 15 or April 15 immediately following the date that is six months after the effective date of the Franchisee's Franchise granted hereunder, and shall be based upon such Franchisee's Gross Revenues received between the date of such grant and the June 30 or December 31, immediately preceding the due date for such payment.

Section 21. Records and Reports

To the extent reasonably necessary and appropriate for the enforcement of a Franchise granted hereunder, the City shall have access during normal working hours to all of a Franchisee's plans, contracts, and engineering, accounting, financial, statistical, customer and service records relating to the Cable System and its operation by the Franchisee and to all other records required to be kept hereunder; provided, however, that nothing contained herein shall be construed to allow the City or any other person access to any personally identifiable information concerning any Subscriber.

Section 22. Franchise Revocation

(a) Whenever any Franchisee shall refuse, neglect or willfully fail to construct, operate or maintain its cable television system or to provide service to its Subscribers in substantial accordance with the terms of this Ordinance or any applicable rule or regulation, or materially breaches its Franchise Agreement, or practices any fraud or deceit upon the City or its Subscribers within the City, or fails to pay Franchise Fees when due, or if such Franchisee becomes insolvent, as adjudged by a

court of competent jurisdiction, or is unwilling or unable to pay its uncontested debts, or is adjudged bankrupt, or seeks relief under the bankruptcy laws of the United States or any state, then the Franchise may be revoked.

(b) In the event the City believes that grounds for revocation exist or have existed, it may notify the affected Franchisee in writing, setting forth the facts on which such belief is grounded. If, within thirty (30) days following such written notification, the Franchisee has not furnished reasonably satisfactory evidence that corrective action has been taken or is being actively and expeditiously pursued, or that the alleged violations did not occur, or that the alleged violations, except those involving financial matters, were beyond the Franchisee's control, the City may call and give notice of a hearing, pursuant to the Hearing Requirements for Matters Affecting Franchises as set forth in this Ordinance to consider revocation of the Franchisee's Franchise. If the City, following such hearing, finds that grounds for revocation exist, it may by Resolution duly adopted revoke for cause the Franchise granted to such Franchisee.

(c) In the event that the Franchise has been revoked, the City shall, to the extent then permitted by existing law, have the option to:

- (i) acquire, at fair market value excluding any value attributable to the Franchise itself, all the assets of the Franchisee's system located within the City; or
- (ii) to require the sale, at fair market value excluding

any value attributable to the Franchise itself, of all such assets of the Franchisee's system to another person;  
or

(iii) to require the removal of all such assets from the City.

Unless some later date is agreed to by the Franchisee, such option must be exercised by the City within one year from the date of the revocation of the Franchise, or the entry of the final judgment by a court reviewing the question of the revocation, or the entry of a final order upon appeal of same, whichever is later. Each Franchisee, by its acceptance of a Franchise granted under this Ordinance, shall conclusively be deemed to have agreed that the exercise by the City of either of the above-stated acquisition or sale options under the valuation provisions set forth herein shall constitute acquisition or transfer of the Franchisee's cable system at an equitable price.

(d) The termination of a Franchisee's rights as set forth herein shall in no way affect any other rights the City may have under the Franchise Agreement with such Franchisee or under this Ordinance or any other provision of law or ordinance.

Section 23. Hearing Requirements for Matters Affecting Franchises

Whenever a requirement is set forth herein for a public hearing or meeting to be called concerning any matter related to the evaluation, modification, renewal, revocation or termination of any Franchise issued pursuant to this Ordinance, such hearing or meeting shall not be held unless the City shall have advised the

Franchisee in writing, at least thirty days prior to such hearing or meeting, of the time, place and general purpose of such hearing or meeting, and published a notice setting forth the time, place and general purpose of such hearing at least ten days before such hearing or meeting in a newspaper of general circulation within the City. In addition, the City may require the affected Franchisee to, and when so required the Franchisee shall, give notice of such hearing, and any continuation thereof, by announcement on its cable system in such manner, on such channels and at such times as the City shall find to be reasonable under the circumstances. Any such hearing may be adjourned from time to time without further notice other than the announcement, at the time of adjournment, of the time and place of the continued hearing and such announcement, if any, as the City may require the Franchisee to make on its Cable System.

#### Section 24. Costs

Each Franchisee shall compensate the City for the City's direct, out of pocket costs incurred in the development of this Ordinance and in the award of a Franchise hereunder or any renewal thereof, including the City's expenses incurred for special counsel or consultants retained to assist it in such development, award or renewal and the cost of publication of this Ordinance, as such publication may be required by law, and those costs connected with updating the published City Code; provided, however, that a renewal Franchisee shall have no liability for payment of such costs if the Franchise Fee imposed on such Franchisee represents the maximum

amount permissibly chargeable under law or regulation; and provided, further, that payment of such costs shall be made in installments simultaneously with each Franchise Fee payment, with the amount of each such installment being the difference between the maximum amount permissibly chargeable as a Franchise Fee and the amount actually charged by the City as a Franchise Fee. A bill for such costs as the City determines are payable shall be presented to the Franchisee by the City as soon as such costs can reasonably be established, and shall thereafter be paid in accordance with the aforesaid procedures. Any Franchisee may pass through to subscribers any of the aforesaid costs to the extent permissible under Federal law or regulation.

Section 25. Severability

The provisions of this Ordinance are severable. If any of its sections, provisions, exemptions, sentences, clauses, phrases or parts be held unlawful, unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect, it being the City's intent now hereby declared that this Ordinance would have been adopted even if such unlawful, unconstitutional or void matter had not been included therein.

Section 26. Amendments to This Ordinance

At any time during the term of any Franchise granted pursuant to this Ordinance, the City or any Franchisee may propose amendments to this Ordinance by giving written notice of such proposed amendments to all other parties directly affected by such proposals (including all Franchisees), and the City and all

Franchisees shall within a reasonable time after such notice negotiate in good faith to agree on a mutually satisfactory amendment; provided, however, that nothing herein shall be construed to require the City to enact any amendment proposed to this Ordinance, or to prevent the City from enacting any amendment or adopting any resolution pertaining hereto that the City deems to be a proper exercise of its police powers or that is specifically reserved to the City hereunder.

Section 27. Acceptance of Franchise

No Franchise shall be deemed as granted pursuant to this Ordinance unless such grant be approved by a Resolution adopted by the City and within 30 days after such approval the applicant therefor acknowledges, in a writing provided by the City, its acceptance of the provisions of this Ordinance and any additional conditions reasonably imposed in consideration of such grant as evidenced by a Franchise Agreement, and provides payment of all sums past due under any prior Franchise and submits all documentation required herein.

Section 28. Notice

Whenever any notice is specified herein as being required, such notice shall be given in writing by first class certified U.S. mail, return receipt requested, and such notice shall be deemed as having been made on the date of delivery as indicated on the return receipt; provided, however, that any failure to comply with the foregoing notice provisions shall not render any notice legally defective if such notice has actually been received by the intended

recipient.

Section 29. Force Majeure

Notwithstanding any provision to the contrary contained herein, neither the City nor any Franchisee shall be held liable for, or suffer any penalty or detriment for, any failure to comply with any provision of this Ordinance or any Franchise granted hereunder if such failure to comply arises from any act of God or any other condition not within the reasonable control of such non-complying person; provided, however, that this provision shall not apply to any Franchisee's financial obligations hereunder or under any Franchise granted pursuant to this Ordinance.

Section 30. Miscellaneous

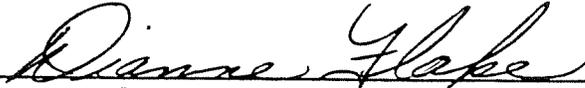
As to any requirements imposed on a Franchisee concerning the timeliness for completion of any actions hereunder, the City may, but shall not be obligated to, waive the imposition of any monetary assessment or penalty for a Franchisee's noncompliance with such requirements upon the Franchisee's demonstration of its best good faith efforts to comply actively with such requirements.

Section 31. Delegation of Authority

Any action, approval, authority or other responsibility specified herein as accruing to or being vested in the City, unless specifically reserved to the City Council or requiring Council action by the context thereof, is hereby delegated to the City Manager or his or her designated representative.

Passed by the City Council on the 27th day of  
June, 1995.

I hereby certify that the foregoing is a true and exact copy of an Ordinance adopted at a regular meeting of the Council of the City of Bedford, Virginia, held on June 27, 1995, at which said meeting a quorum was present and voted.

A handwritten signature in cursive script, appearing to read "Diane Flake", written over a horizontal line.

Deputy Clerk of the Council