

ORDINANCE NO. 180

AN ORDINANCE ESTABLISHING THE RIGHT AND AUTHORITY OF THE TOWN OF MEAD TO GRANT A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE A CABLE TELEVISION SYSTEM AND DISTRIBUTION FACILITIES WITHIN THE TOWN OF MEAD.

WHEREAS, The Board of Trustees of the Town of Mead, hereinafter called the "Town" finds that the construction, operation and maintenance of a cable television system serving the Town is consistent with the public interest and specifically, with the establishment and maintenance of television broadcast service within the Town; and

WHEREAS, the Board of Trustees of the Town of Mead has determined that it is necessary to establish an orderly process for the granting of a nonexclusive franchise to construct, maintain and operate a cable television system within the Town of Mead.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF MEAD, COLORADO:

Section 1. Section 5, of Chapter 12, of the Code of the Town of Mead, Colorado is hereby adopted as follows:

"SECTION 5. CABLE TELEVISION SYSTEM AUTHORIZATION.

12-5-1. Definitions.

For the purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meanings given herein:

Access Channels - means those channels set aside for specific access purposes, including, but not limited to, the following:

Public Access Channel - means a specially designated non-commercial public access channel available on a first-come, non-discriminatory basis for which the system shall maintain and have available for free public use at least the minimal equipment and facilities necessary for the production of programming for such a channel.

Education Access Channel - means a specially designated channel for use by local educational authorities.

Local Government Access Channel - means a specially designated channel for local government use.

Leased Access Channel - means the use on a fee-for-service basis of the Cable Television System by business enterprises (whether profit, nonprofit or governmental) to render services to the citizens of the Town and shall include without limitation all use pursuant to Section 612 of the Cable Communications Policy Act of 1984 (47 USC 521 et.seq.)

Application - includes all written proposals, in whatever form, made by an applicant to the Town concerning construction, rendition of services, maintenance, or any other matter pertaining to the Cable Television system contemplated herein.

Basic Service - means all subscriber services provided by the Grantee, including the delivery of broadcast signals, covered by the regular monthly charge paid by all subscribers, excluding additional service for which a separate charge is made, and shall include, but not be limited to the following:

All signals of over-the-air television broadcasters required by the F.C.C. to be carried by a community antenna television system as defined by the F.C.C.; and

Such public, education, local government, local organization, and leased access channel signals as may be required pursuant to Section 5 of this Ordinance; and

Additional services proposed by the Grantee in its application, or as it may hereafter be provided.

Cable Television System, CATV System or Community Antenna Television - means a system of antenna, cables, wires, lines, towers, wave guides, or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video and other forms of electronic or electric signals, locate in the Town.

Channel - means a band of frequencies six (6) megahertz (MHz) wide.

Grantee - means the holder of a Cable Television System franchise granted by the Town of Mead.

Gross Revenue - means any and all revenue derived directly or indirectly by the Grantee, its affiliates, subsidiaries, parent, and any person in which the Grantee has a financial interest (or which has a financial interest in the Grantee) arising from or attributable to the operation of a CATV system in the Town of Mead. "Gross Revenues" shall include, but not be limited to:

Revenue from all charges for services provided to subscribers of entertainment and non-entertainment services (including basic subscriber service fees, tiered service fees, premium or pay per view programming service fees, leased access channel fees, converter rentals);

Revenue from all charges for the insertion of commercial advertisements upon the CATV system;

Revenue from all charges for the leased use of studios;

Revenue from all charges for the installation, connection, disconnection and reinstatement of equipment necessary for the utilization of the CATV system and the provision of subscriber and other services;

The sale, exchange or use or cablecast of any programming developed for community use or institutional users.

"Gross Revenues" shall include, value at retail price levels, the value of any goods, services, or other remuneration in non-monetary form, received by the Grantee or others described above in consideration for performance by a Grantee or others described above of any advertising or other service in connection with the CATV system.

"Gross Revenues" shall not include any taxes on services furnished by a Grantee, imposed directly upon any subscriber or user by the State, Town or other governmental unit and collected by the Grantee on the behalf of said government unit, and shall not include refunds or credits to subscribers in the Town of Mead.

"Financial interest" as used in the definition of "Gross Revenue" above, shall include but not be limited to:

Any contract in which the Grantee or any named owner thereof is to receive a percentage of the gross revenues and/or a percentage of the net income of the other party to the transaction by reason of the activities encompassed by said contract;

Any debt relationship in which the Grantee or any named owner thereof as debtor borrows funds at a rate more advantageous than that generally available to similarly situated entities of similar credit worthiness;

Any debt relationship in which the Grantee or any named owner thereof as creditor receives a rate of interest exceeding that which would otherwise be paid by a similarly situated debtor of similar credit worthiness;

Any option or warrant to purchase the stock or any other equity interest in an entity or entity related to an entity which generates revenues arising from or attributable to the operation of the CATV system;

Any debt relationship which has conversion privileges to a form of equity of the nature described in the preceding subsection.

The phrase "arising from or attributable to operation of a CATV system" as used in the definition of "Gross Revenues" above shall include but not be limited to:

Any activity, product or service which generates revenue of any type whatsoever and which is offered to the subscribers of the system by means of the system or any related service;

Any activity, product or service which is revenue producing and is offered to the subscribers of the system by any medium other than the system including but not limited to direct mail and home delivery if the system's subscriber list or any portion thereof is utilized for purposes of solicitation;

Any activity, product or service in the production or provision of which any of the assets of the system including but not limited to cable, production facilities, and administrative facilities are included, unless reasonable consideration is paid to the system for such utilization;

Any television programming or other services offered to the citizens of the Town within the term of the franchise by any means of delivery whatsoever where such programming or services are or could be offered by means of the system.

Initial Service Area - means all that area within the Town of Mead at the time the franchise is granted having a ratio equivalent to thirty-five (35) occupied dwelling units per street mile, or such larger area as may be set forth in the application for franchise.

Leased Access - means the use on a fee-for-service basis of the Cable Television System by business enterprises (whether profit, nonprofit or governmental) to render services to the citizens of the Town and shall include without limitation all use pursuant to Section 612 of the Cable Communications Policy Act of 1984 (47 USC 521 et. seq.)

Programmer - means any person who is or who produces or otherwise provides program material for transmission by audio, video, digital or other signals, either live or from recorded tapes, to subscribers, by means of the Cable Television system.

Return Signals - means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system. May include "Class IV Channels" as defined by the F.C.C.

Street - means the surface of and the space above and below any public street, road, highway, freeway, land, path, public way, or place, alley, court, sidewalk, boulevard, parkway, drive, or other easement now or hereafter held by the Town for the purpose of public travel, and shall include such other easements or rights-of-way as shall be now held or hereafter held by the Town

which shall, within their proper use and meaning, entitle the Town and the Grantee to the use thereof for the purpose of installing or transmitting signals over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, applications, attachments and such other property as may be ordinarily necessary and pertinent to a Cable Television system.

Subscriber or User - means any person or entity receiving for any purpose any service of the Grantee including without limitation the conventional Cable Television system service of re-transmission of television broadcast, radio signals, Grantee's original broadcasting, and the local government, education, public access, and leased channels and other services, including without limitation the leasing of channels, data and facsimile transmission, pay television, and police, fire and similar public service communication and services associated with the production and presentation of access channel programming.

Town - means the Town of Mead, a statutory town of the State of Colorado and all the territory within its present and future boundaries and including any area over which the Town exercises jurisdiction. The Town Board of Trustees is authority of the Town.

Two-way Capability - means the technical capacity for return communications.

12-5-2. Police Powers.

Nothing in this Ordinance or in any agreement awarding a franchise in accordance herewith shall be construed as an abrogation by the Town of any of its police powers.

12-5-3. Franchise Required.

No CATV system shall be allowed to occupy or use any right-of-way of the Town or be allowed to operate in the Town without a CATV franchise granted pursuant to this Ordinance.

12-5-4. Application Form and Content.

- 4.1 Any person who desires a franchise pursuant to this Ordinance may file with the Town Clerk a written application therefore. The application shall be in the form provided by the Town and shall be subscribed and verified by the applicant. Sufficient copies of the application shall be provided to the Town Clerk for distribution to all required parties.
- 4.2 Statements and representations set forth in the application shall be deemed and construed to be warranties, as to accuracy, which shall be fully enforceable as if the same were set forth in this Ordinance as requirements and standards imposed upon Grantee in the event the franchise is granted.
- 4.3 The application form shall be adopted by resolution of the Board of Trustees but in any event shall require the following:

- 4.3.1 The name and address of the applicant and the date of the application.
- 4.3.2 A description of the applicant's organizational structure, identifying by name and address its owners and principal officers (including corporate directors).
- 4.3.3 A statement describing all intra-company relationships of the applicant, including parent, subsidiary and affiliated companies.
- 4.3.4 A statement identifying each existing franchise for CATV held by the applicant, and as to each such franchise the date it was issued, the date the system was constructed, and the name, address and telephone number of a government official knowledgeable of the applicant and its performance in such franchise area.
- 4.3.5 A statement detailing prior CATV experience of the applicant and identifying the applicant's officers, management and staff proposed to be associated with its operations in Mead.
- 4.3.6 A statement, including maps as may be appropriate, of the applicant's construction plans, including without limitation the following:
- (a) Identification of the initial service area and criteria and timetable for extension of service to new areas.
  - (b) Construction timetable for the initial service area, including a firm completion date.
  - (c) Description of network configuration.
  - (d) Identification of specific areas proposed for underground and for above ground installation of cables.
- 4.3.7 A technical description of the network, including without limitation statements as to the following:
- (a) Channel capacity.
  - (b) Two-way and return signal capability.
  - (c) Technical performance standards.
  - (d) Emergency communications capabilities including override capability.

- 4.3.8 A description of the proposed operation of the applicant, including without limitation statements as to the following:
- (a) Location of the business office from which applicant proposes to conduct its operations in Mead.
  - (b) Programming material to be provided, including broadcast TV and radio stations, satellite programming, automated and nonautomated programming, if any, to be provided locally by the applicant.
  - (c) The availability of public, education and government access channels.
  - (d) Rules of operation for any public access channels proposed, and an explanation of any assistance, in terms of personnel or equipment, to be provided by Grantee for programming or programming assistance for proposed public access channels and for the required educational/local government access channels.
  - (e) Subscriber rates and charges for all services, including a statement of any services to be provided free-of-charge, together with a description of the criteria to be used by applicant in making changes in any such rates and charges.
  - (f) Average repair service interval (i.e., time between time of notification to company and completion of repairs) for subscribers in the Town of Mead.
- 4.3.9 The name and address of applicant's principal or primary source of financing for its operations in Mead, and the dollar amount of credit which such lender has committed in writing to provide for such operations.
- 4.3.10 A statement as to whether applicant or any of its principals have ever been a party to a civil proceeding in which it was held that there were unfair or anticompetitive business practices, antitrust violations, violations of securities laws or false or misleading advertising committed by the applicant or any of its principals; whether applicant or any of its principals have been found in violation of any franchise; and whether applicant or any of its principals have ever initiated litigation against a franchising authority or had a franchising authority initiate litigation against them.
- 4.3.11 Such other and further information as the applicant deems appropriate.
- 4.4 The following attachments shall accompany the application.

- 4.4.1 Copies of financial statements for the applicant's two (2) most recent fiscal years unless the applicant has not been in existence at least two (2) years, in which case the applicant shall furnish the same for the entire period that the applicant has been existence. The financial statements shall be certified as to their accuracy by the applicant's chief financial officer or accountant.
- 4.4.2 A certified check made payable to the Town in the amount of SEVEN HUNDRED FIFTY AND NO/100 DOLLARS (\$750.00), which check will be deposited to an account of the Town as a deposit against all costs and expenses incurred by the Town in considering the application as provided by Chapter 12, 12-5-4, et. seq., of the Mead Municipal Code. Such expenses shall include without limitation consultants' expenses, reasonable value of services performed by the Town's employees, agents, or contractors, legal fees, the costs of elections, if any, advertising, and publication charges. Any funds remaining after all expenses have been paid will be refunded to the applicant. All expenses incurred by the Town over and above the \$750 initial deposit shall be billed to the applicant and become due immediately upon billing.

12-5-5. Procedure for Grant, Change or Renewal of Franchise.

- 5.1 When an applicant for a franchise files its application with the Town Clerk, the Clerk shall transmit copies thereof to Mayor and each member of the Board of Trustees, the Superintendent of the Maintenance Department, the Town Engineer, the Town Administrator or Manager, the Town Attorney and to any other person selected or designated by the Town to give professional assistance and advice in connection with the consideration of the application. In addition, the Clerk shall maintain at least one (1) copy of the application in the Clerk's office to be available for inspection by members of the public during the Clerk's regular office hours.
- 5.2 If the application and all attachments, together with any supplementary materials requested by the Town, are found to be in proper form and complete in all respects, the Board of Trustees shall fix a date for public hearing on the application. Such hearing shall be held within one hundred-twenty (120) days of the application submittal, unless more time is required because of failure of the applicant to make timely submission of additional or corrected information or materials. The public hearing shall be for the purpose of receiving evidence and comments from the applicant, members of the public, and any other interested persons. Written notice of such hearing shall be posted for at least thirty (30) days prior to the date thereof in the Clerk's office and shall further be published in a newspaper of general circulation in the Town once a week for the three (3) successive weeks next preceding the week in which the hearing is to be held.



- 5.3 Any franchise granted pursuant to this Ordinance shall be granted by ordinance after the public hearing provided in Subsection 12-5-5.2 above.
- 5.4 Applications for modification or renewal of any franchise granted pursuant to this Ordinance shall be considered in accordance with the procedure above specified for consideration of applications of new franchises.
- 5.5 No applicant, successful or otherwise, shall have any recourse against the Town to recover any losses, expenses or alleged damages claimed to have been caused by or incurred in connection with such applicant's complying or attempting to comply with any of the requirements of this Ordinance concerning application for grant, modification, or renewal of a franchise.

12-5-6. Grant, Acceptance and Effective Date of Franchise.

- 6.1 A franchise for CATV service granted pursuant to this Ordinance shall grant to the Grantee the nonexclusive right and privilege to erect, construct, operate and maintain in, upon, along, across, above, over and under streets, highways, sidewalks, easements, dedications and other public property now in existence and as may be created or established during its term such poles, wires, cable, underground conduits, manholes, and other television conductors and fixtures as may be necessary for the maintenance and operation of the CATV system for the interception, sale, transmission, and distribution of television programs and other audio/visual electrical signals, and the right to transmit the same to and from the inhabitants of the Town on the terms and conditions hereinafter set forth. The grant of any franchise shall not relieve the Grantee of the obligation to secure consent of other utilities prior to using any of the poles of such firm.
- 6.2 The term of the franchise granted pursuant to this Ordinance shall be seven (7) years from the effective date thereof, or unless terminated by the Town as provided herein.
- 6.3 Any franchise granted and regulated hereunder, together with the rights, privileges and authority granted thereby, shall take effect and be in force from and after the effective date of the ordinance granting the franchise and after the Grantee has taken all of the following actions:
  - 6.3.1 Filed with the Town Clerk an unconditional acceptance of the franchise grant and enter into and execute such documents as required by the Town consistent with the terms and provisions of this Ordinance. Said acceptance shall be in a form prescribe by the Town and shall contain provisions that the Grantee, by its acceptance, agrees to provide all services specifically set forth in its application and further, that its application is incorporated by reference

into and made a part of the franchise and this Ordinance. In the event of conflict between the application and the provisions of this Ordinance, that provision which provides the greatest benefit to the Town, in the opinion of the Board of Trustees, shall prevail. Any acceptance filed by the Grantee pursuant to this Section shall be in writing, duly executed and acknowledged by and on behalf of the Grantee before a Notary Public or other officer authorized by law to administer oaths.

- 6.3.2 File certificates of insurance with the Town Clerk as set forth in Section 12-5-29 of this Ordinance.
  - 6.3.3 File with the Town Clerk the letter of credit or cash deposit required in Sections 12-5-23 and 12-5-31 of this Ordinance.
  - 6.3.4 Reimburse the Town for the remaining balance of any costs incurred in investigating the Grantee's application and conducting the public hearing in connection with the grant of the franchise as provided by 12-5-4.4.2 of this ordinance.
  - 6.3.5 Pay to the Town an advance franchise fee of ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) to be credited against sums due under 12-5-7 of this Ordinance.
  - 6.4 In the event a Grantee fails within thirty (30) days of the effective date of the ordinance granting the franchise to comply in full with Subsection 12-5-6.3 above, it shall be conclusively considered that the Grantee has abandoned its application and rights to such grant and to any and all appurtenant rights, and the Grantee shall have no further right, privilege, or authority whatsoever under this Ordinance, In the event that the applicant has paid the initial franchise fee of ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00), the same shall be refunded except to the extent necessary to discharge in full any unpaid costs of awarding the franchise.
  - 6.5 The Grantee, by acceptance of any franchise awarded pursuant to this Ordinance acknowledges that it has relied upon its own investigation and understanding of the power and authority of the Town to grant such a franchise.
  - 6.6 The franchise governed by this Ordinance shall not be exclusive, and the Town reserves the right to grant a similar franchise to any other person or firm.
- 12-5-7. Franchise Fee.
- 7.1 A Grantee shall pay to the Town for use of the streets and other facilities of the Town during the term of its franchise, a sum

equal to five percent (5%) of its gross revenues earned in the Town.

The franchise shall set forth the manner in which franchise payments shall be made. Not later than the date of each payment, each Grantee shall file with the Town Clerk, a written statement signed under penalty of perjury by an officer of the Grantee, which identifies in detail the sources and amounts of Gross Revenues received by a Grantee during the time period for which payment is made.

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 which the Town may have for further or additional sums payable under the provisions of this Section or for any other performance or obligation of the Grantee hereunder.

- 7.2 If the franchise is terminated or forfeited prior to the end of its term, the Grantee shall submit to the Town an audited statement showing its gross revenues earned in the Town since the end of the period covered by the most recently filed annual statement until the date the Grantee's operations cease in the Town. Such statement shall be submitted no later than thirty (30) days following the cessation of Grantee's operations in the Town.
- 7.3 In the event that any payment is not made on or before the applicable date fixed in Subsections 12-5-7.1 and 12-5-7.2 hereof, the Grantee shall be subject to the penalty provided for in 12-5-25 of this Ordinance.
- 7.4 Not less than annually, the Grantee shall provide the Board of Trustees with an unqualified Certification of an independent certified public account certifying the accuracy of the Franchise Fee payments paid within the preceding twelve (12) months pursuant to 12-5-7 above. Said certification shall be prepared in accordance with generally accepted accounting standards as established by the Financial Accounting Standards Board (FASB).

The Town shall have the right to inspect the Grantee's records showing the gross revenues from which its franchise payments are computed. The right of audit and recomputation of any and all amounts paid under this franchise shall be always accorded to the Town.

- 7.5 Payments of compensation made by a Grantee to the Town pursuant to the provisions of this Ordinance shall be considered in addition to and exclusive of any and all taxes, business license fees or other levies or assessments which are now or which may hereafter be authorized by the laws of the United States, State of Colorado, or the Town.

12-5-8. Construction Standards.

8.1 All construction by Grantee, both initial and for purposes of extending, maintaining, repairing and removing the network, shall comply with all applicable state, federal, and local laws, statutes, rules and regulations, present and future.<sup>1</sup> All such construction shall be done in an orderly and workmanlike fashion, and no Grantee or any of its agents, employees, or contractors may enter upon or in any way injure any real property within the Town lying outside of any recorded or otherwise clearly recognized easement for public utilities or public right-of-way without the express consent of the owner of such property. All equipment and apparatus of the Grantee shall be approved by the Town, acting through the Superintendent of the Maintenance Department, and the Grantee shall repair any disturbance or excavation so that the pavement, sidewalk, curb, gutter or other street installation is returned to at least as good a condition as existed prior to said disturbance or excavation.

8.2 Initial construction and construction of any extensions shall additionally comply with the following rules:

8.2.1 All transmission and distribution structures, lines, and equipment erected by the Grantee within the Town shall be so located as to cause minimum interference with the proper use of streets, and equipment erected by the Grantee within the Town shall be so located as to cause minimum interference with the proper use of streets alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets, alleys or other public ways and places. All construction shall be underground where both telephone and electrical power are underground. Cable(s) installed underground shall be placed at least twenty-four (24) inches below the surface unless unusual circumstances require a lesser depth. Where one or both of such utilities are on poles, Grantee will use the poles of such utility whenever possible. Grantee shall be solely responsible for securing the necessary pole permits from the utilities. Where Grantee installs its own poles, it shall do so in the manner least likely to obstruct the easements or to endanger persons or property located therein or

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<sup>1</sup> Uniform building Code; National Electric Code; National Bureau of Standards Handbook 81 (Part 2); Structural Standards for steel antenna towers and antenna supporting structures, EIA Standards RS-222-C as published by the Engineering Department of the Electronic Industries Association, 2001 L Street N.W., Washington, D.C. 20006; Bell Telephone System Code of Pole Line Construction; applicable F.C.C. or other federal, state and local regulations and technical standards; 14 CFR 77.1. et seq.; 47 CFR 17.1 et seq.; Mead Municipal Code, Chapter 1.

nearby, and only upon the specific approval of the Superintendent of the Maintenance Department as to location of all such poles.

- 8.2.2 The Grantee shall keep accurate maps and records of all of its facilities and furnish copies of such maps and records as and when requested by the Town.
- 8.3 All maintenance construction shall comply additionally with the following rules:
- 8.3.1 The Town shall give the Grantee notice of plans for street improvement where paving or resurfacing of a permanent nature is involved in sufficient time for the latter to make any additions, alterations or repairs to its facilities it deems necessary before the commencement of work.
- 8.3.2 The Grantee shall, upon a forty-eight (48) hour written advance notice by the Town, at its expense, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the Town by reason of traffic conditions, public safety, street vacation, street construction, change in establishment of street grade, installation of sewers, drains, water pipes, tracks or any other type of structural improvement by any public agency.
- 8.3.3 The Grantee shall, upon a forty-eight (48) hour written advance notice by any person holding a building moving permit, temporarily raise or lower its wires to permit the moving of said building. The expense of such temporary removal, raising or lowering, and reconnecting of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance.
- 8.3.4 The Grantee shall, upon a forty-eight (48) hour written advance notice by any person holding a building permit, and at no cost to the building permit holder, locate and mark the location of underground cables and other facilities of the company.
- 8.3.5 Grantee shall have the authority to trim trees overhanging street edges, alleys, sidewalks and any other public place so as to prevent branches of the same from coming in contact with its wires and cables. All trimming is to be done at the expense of the Grantee. Grantee shall make every effort to preserve the health and aesthetic appearance of a trees or shrubbery trimmed. It may contract for such services with any person licensed by the Town. Except in cases of emergency, Grantee shall notify the owner of any property which may be affected by such trimming operations at least ten (10) days prior to the commencement of the work. All

cuttings and other refuse shall be removed by Grantee at its expense. Each Grantee shall be responsible for, shall indemnify, defend and hold harmless the Town and its officers, agents and employees from and against any and all damages arising out of or resulting from the removal, trimming, mutilation or any injury to any tree or trees proximately caused by the Grantee or its officers, agents, employees, contractors or subcontractor.

- 8.4 Grantee shall additionally at all times conduct its construction operations in such a way as to comply with all applicable provisions of its application for franchise.

12-5-9. Technical Standards.

- 9.1 The CATV system shall be installed and maintained in accordance with the highest standards promulgated by the Federal Communications Commission and other regulatory bodies having jurisdiction over the system, and in such a way that the subscriber may receive the best form of service. Each Grantee shall provide to the Town, upon request, written reports of the Grantee's annual proof of performance tests conducted pursuant to FCC standards and requirements.

It shall additionally meet the following minimum specifications and requirements:

- 9.1.1 It shall be and remain capable of using all band equipment and of passing the entire VHF and FM spectrum and capable of converting UHF for the distribution to subscribers on the VHF band.
- 9.1.2 It shall be and remain capable of transmitting and passing the entire color television signal spectrum without the introduction of material degradation of color fidelity and intelligence.
- 9.1.3 It shall be designed and rated for 24 hours a day continuous operation.
- 9.1.4 It shall be and remain capable of producing a picture upon an operable television screen in black and white or color (Grantee may use a television set maintained by it for any test of this requirement) that is undistorted and free from ghost images and accompanied by proper sound.
- 9.1.5 It shall transmit or distribute signals of adequate strength, produce pictures with sound in operable television receivers to current Federal Communications Commission standards without causing cross modulation in the cable amplifiers or interference with other electrical or electronic systems.

- 9.1.6 It shall have a capacity of at least 35 potential channels.
- 9.1.7 It shall operate throughout the temperature range of minus thirty (-30°) to one hundred ten (110°) degrees Fahrenheit without degradation of audio or video fidelity.
- 9.1.8 It shall provide the capability of two-way transmission although the two-way capability shall not be required to be activated until such time as deemed appropriate by the Board of Trustees, and only after giving one hundred eighty (180) days advanced notice of such requirement to the Grantee.
- 9.1.9 It shall provide an emergency alert override system which shall at all times be capable of overriding simultaneously on all channels with audio and/or audio and video character (letter) announcements of an emergency and notification that emergency information and instructions are being broadcast on the educational/local government channel.
- 9.2 Grantee shall additionally at all times maintain its technical standards in such a way as to comply with all applicable provisions of its application for the franchise and meet or exceed all applicable Federal Communications Commission technical standards.

12-5-10. Required Services.

- 10.1 The Grantee shall provide a minimum of the following services within the geographic area specified in Subsections 12-5-10.2 and 12-5-10.3 of this Section:
  - 10.1.1 All signals of over-the-air television broadcasters required by F.C.C. rules and regulations to be carried by a CATV system as defined by the F.C.C.; and
  - 10.1.2 At least three (3) specially designated noncommercial educational, local government and public access channels, one of which shall be located on the low range channel numbers of the tuner.

At least one (1) channel of this type shall be at all times ready and available to the Town or its designate to broadcast information or instructions in times of emergency pursuant to the provisions of 12-5-12 of this Ordinance. In connection with this service, Grantee shall provide sufficient equipment and technical assistance for production of audio and character generation at Grantee's expense. The specific amount of equipment and level of technical assistance to be provided shall be determined by the Town after consultation with Grantee and shall be incorporated in specific terms into the ordinance granting the franchise.

This channel may be shared among noncommercial educational, local government and public access programming.

A second of these specially designated channels may be a shared channel and is to be provided and made available within 180 days after the Town delivers written notice of its desire for the same to be activated. In connection with this service, Grantee shall provide sufficient equipment and technical assistance for production of programming at Grantee's expense. The specific amount of equipment and level of technical assistance to be provided shall be determined by the Town after consultation with Grantee and shall be incorporated in specific terms into the ordinance granting the franchise.

At such time as the Board of Trustees determines that an additional channel of this kind is necessary, the Grantee shall activate the third such channel, together with required equipment and technical assistance. Activation shall be within 180 days after written notice is given to Grantee by the Town.

- 10.1.3 All broadcast or cablecast services set forth in Grantee's application for franchise.
- 10.2 Grantee shall provide the broadcast and cablecast services specified in Subsection 12-5-10.1 of this Section in the entire initial service area defined in its application within the time stated in the application for franchise, or within 18 months of the effective date of the franchise, whichever is less.
- 10.3 Grantee shall extend the broadcast and cablecast services specified in Subsection 12-5-10.1 of this Section to areas in the Town having a ratio equivalent of at least 35 occupied dwelling units per street mile within the time specified for such extensions in its application for franchise or within 12 months from the date the area qualifies for such extension (i.e., attains the required population density, or is annexed to the Town having such density), whichever is less.
- 10.4 In addition to any other rights reserved, the Board of Trustees reserves the right, after notice and a hearing, to require that Grantee provide such additional broadcast or cablecast services as the state of the art at the time may reasonable permit without undue hardship to Grantee.
- 10.5 The Grantee shall install, operate and maintain, free of charges and liens, facilities for reception of its cable television distribution services through an outlet at each of the following:
  - 10.5.1 Each public elementary and secondary school within the Town.



- 10.5.2 The Town Hall and any fire station located within the corporate boundaries of the Town.
- 10.5.3 Each Town owned or leased building.
- 10.5.4 Each public library within the Town.
- 10.5.5 Any of the foregoing may request the installation of one (1) or more additional outlets, and the same shall be installed by the Grantee at no charge to the entity. In no event shall the Grantee charge a monthly service fee to said establishments, regardless of the number of outlets installed.
- 10.6 The Grantee(s) shall interconnect its system with other CATV companies within the Town, St. Vrain School District, and others providing educational programming services for St. Vrain School District.
- 10.7 The Grantee shall make available to subscribers for rental or purchase, remote control devices for use with the Grantee supplied converter for non-cable ready television sets.
- 10.8 The franchise shall make available to subscribers, upon request, a keyed locking device or other means of preventing or restricting access to individual channels or programming by minor children.
- 10.9 The franchise shall make available to subscribers, upon request, an RF Switch (and A-B Switch) permitting conversion from cable to antenna reception.
- 10.10 When five thousand (5,000) dwelling units exist within the corporate limits of the Town, or two thousand five hundred (2,500) subscribers to the basic monthly service are recorded, whichever occurs first, the Grantee(s) shall provide at no cost to the Town, a television studio equipped with state-of-the-art cable television equipment, connected to the CATV system. One percent of the franchise fee(s) shall be used by the Town to employ a trained, experienced person who shall act as a local access coordinator.
- 12-5-11. Repairs and Service.
  - 11.1 The Grantee shall maintain a published local telephone number throughout the term of the franchise by which subscribers may make inquiry regarding a complaint, twenty-four (24) hours per day, seven (7) days per week, and shall maintain sufficient employees and other resources in or near the Town to enable it to maintain a repair service capability which complies with all applicable requirements of this Ordinance.

- 11.2 Grantee shall at all times render sufficient service, make repairs promptly and interrupt service only for good cause for the shortest time possible. Any scheduled interruptions shall be preceded by reasonable notice to affected subscribers and shall occur during periods of minimum use of the CATV system when practicable. Grantee shall respond to all service calls as soon as possible and correct malfunctions as promptly as possible, but in any event within forty-eight (48) hours after notice thereof is received by the Grantee. Provisions shall be made for "after hours" and weekend repair services.
- 11.3 Each Cable television System shall include equipment capable of providing standby powering for headend, transportation and truck amplifiers for a minimum of two (2) hours. The equipment shall be so constructed as to automatically notify the cable office when it is in operation and to automatically revert to the standby mode when the AC power returns. The system shall incorporate safeguards necessary to prevent injury to a lineman resulting from a standby generator powering a "dead" utility line.
- 11.4 Grantee shall additionally at all times conduct its repair and service operations in such a way as to comply with all applicable provisions of its application for franchise.
- 11.5 Should a subscriber have an unresolved complaint regarding the quality of cable television service, equipment malfunction or similar matters, the subscriber shall be entitled to meet jointly with the Mead Cable Commission and a representative of the Grantee to fully discuss and resolve such matters. This meeting shall take place within fifteen (15) days of the subscriber's giving written notice of said complaint to the Commission. If such matters are not resolved, the Commission shall arbitrate and render a decision regarding such service through arbitration procedures established by the Commission for the orderly resolution of such complaints.
- 12-5-12. Emergencies.
- 12.1 Each Cable Television System shall include an "Emergency Alert Capability" which will permit the Town, in times of emergency, to override by remote control alternatively the audio and/or the audio and video of all channels simultaneously. Each Cable Television System shall include the capability to broadcast from the Town's headquarters for Civil Defense, Disaster and Emergency Services.
- 12.2 If during an emergency it becomes reasonably necessary in the judgment of the Town's engineer to cut or move any of the Grantee's property, such cutting or removal may be done and any repairs made necessary thereby shall be made by the Grantee at its sole expense, provided that such repairs are not necessitated by a

negligent act or omission of the Town, in which case such costs shall be paid by the Town.

12-5-13. Availability of Access Facilities.

Use of facilities for public, educational and governmental access upon the Cable Television System pursuant to 12-5-10 above shall be made available without rental, deposits, or any other charge whatsoever, for use twenty four (24) hours per day, seven (7) days a week in connection with the production of public, educational and/or governmental access programming cablecast upon the Cable Television System. A Grantee shall:

- 13.1 allow all persons and entities desiring to cablecast public, educational and/or governmental access programming to produce programming upon and electronically interface directly with the Cable Television System of Grantee so as to effectively cablecast the public, educational and/or governmental access programming, or, in the alternative;
- 13.2 establish such reasonable rules and procedures, designed to promote the utilization of such public, educational and/or governmental access programming subject to the approval of the Board of Trustees, which approval shall not be unreasonably withheld, whereby the Grantee shall accept and cablecast such public, educational and/or governmental access programming upon the Cable Television System as shall be provided to the Grantee by such persons and entities.

A Grantee shall make all reasonable efforts to coordinate the cablecasting of public, educational and/or governmental access programming upon the Cable Television System at the same time and upon the same channel designations as such programming is cablecast upon other cable television systems within the community.

12-5-14. Support for Use of Access.

Nothing contained in this Ordinance shall be construed to limit the authority of the Grantee to make payments in support of the use of public, educational and/or governmental access channels. However, such payments are expressly not a requirement of any franchise granted hereunder and shall in no event be considered in the calculation of the franchise fee pursuant to this ordinance.

12-5-15. Subscriber Privacy.

- 15.1 It shall be unlawful for Grantee or any other person acting with Grantee's consent or cooperation to initiate or use any form, procedure or device for procuring information or data from any subscriber's premises by use of the CATV system or to activate or utilize return signals in any manner from the subscriber's premises without prior valid written authorization from the subscriber affected.

- 15.2 Valid authorization shall mean written approval from the subscriber not obtained as a condition for providing service not requiring return path monitoring and specifying the following:
  - 15.2.1 The period of time, not to exceed one (1) year, during which the authorization is effective.
  - 15.2.2 The type or types of information or data covered.
  - 15.2.3 The parties authorized to collect, receive, store, record, transmit or otherwise convey the information or data.
- 15.3 Nothing contained in this Section shall prohibit the Grantee from conducting system-wide or individually addressed "sweeps" for the purpose of verifying system integrity, controlling return path transmission, or billing for pay services.

12-5-16 Abandonment and Removal of Facilities.

- 16.1 If the use of any part of the system is discontinued for any reason for a period of twelve (12) consecutive months, or if the system or any part thereof has been unlawfully installed in any utility easement or public right-of-way, or if the rights granted hereunder have been terminated, cancelled or have expired, the Grantee shall promptly remove, in the manner prescribed by the Town, from such utility easements or public rights-of-way all such property other than any which the Town may permit to be abandoned in place. Any property to be abandoned in place shall be abandoned in such manner as the Town may prescribe. Upon a permanent abandonment of property in place, the Grantee shall submit to the Town an instrument approved as to form by the Town attorney transferring ownership of such property to the Town.
- 16.2 If the Grantee fails to remove any such property on proper demand, the Town may perform the work at the Grantee's expense.

12-5-17. Continuity of Service.

- 17.1 Grantee shall provide continuous service to all subscribers in return for payment of the fees and charges assessed by Grantee.
- 17.2 If Grantee elects to over-build, rebuild, modify or sell, or determines to abandon the system, or the Town terminates, forfeits, or fails to renew the franchise or elects to purchase it, or if the franchise otherwise becomes void, Grantee is required as part of its franchise to continue to operate the system and to provide continuous, uninterrupted service until an orderly and lawful change of operation is effected, regardless of the circumstances. Under no circumstances shall this period of operation exceed three (3) months from the date of the occurrence of any of the above specified events.

12-5-18. Transfer Restrictions.

- 18.1 Except in cases found by the Board of Trustees to involve extreme hardship, no franchise granted pursuant to this Ordinance may be transferred until construction of the system for which the franchise was issued shall be eighty-five percent (85%) completed in the initial service area. Thereafter, a franchise may be transferred only upon the prior written consent of the Town, which consent shall not be unreasonably withheld.
- 18.2 A transfer of more than percent (20%) of the capital stock of a corporate Grantee not registered as a publicly held corporation with the United States Securities Exchange Commission, or a transfer of a controlling interest in a Grantee organized as a partnership shall be deemed to be a transfer of a franchise for the purposes of this Section. No sale or transfer shall be effective until the vendee, assignee or lessee has filed in the office of the Town Clerk an instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the franchise and agreeing to perform all the conditions thereon.
- 18.3 The proposed assignee must show technical ability, financial capability, legal qualifications and general character qualifications as determined by the Town and must agree to comply with all provisions of the franchise and such conditions as may be prescribed by the Board of Trustees expressed by resolution. Town shall be deemed to have denied a proposed transfer or assignment in the event that its consent is not communicated in writing to the Grantee within one hundred twenty (120) days following receipt of written notice of the proposed transfer or assignment.
- 18.4 The Grantee shall promptly notify the Town of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the Grantee as defined in Subsection 12-5-18.2 above. Every change, transfer, or acquisition of control of the Grantee shall make the franchise subject to cancellation unless and until the Town shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the Town may inquire into the qualifications of the prospective controlling party and the Grantee shall assist the Town in any such inquiry.
- 18.5 The consent or approval of the Board of Trustees to any transfer of the franchise shall not constitute a waiver or release of the rights of the Town in and to the streets, and any transfer shall by its terms, be expressly subordinate to the terms and conditions of a franchise.
- 18.6 The Board of Trustees reserves the right of "first refusal" to purchase a cable system at the market value price if and when it is placed on the market for sale.

18.7 In no event shall a transfer of ownership or control be approved without successor in interest becoming a signatory to the franchise agreement.

12-5-19. Renewal.

19.1 Any franchise granted pursuant to this Ordinance may be renewed by the Town for a period not to exceed ten (10) years if, upon a review of the Grantee's performance during the initial term, it is determined that such a renewal would be in the Town's best interests. Renewal of a franchise shall be in accordance with Title VI, Section 626, of the (Federal) Communications Act of 1934, as amended.

19.2 An application for renewal shall be filed not later than one hundred twenty (120) days prior to the expiration of the initial franchise term.

19.3 Any renewal granted pursuant to this Section shall be by ordinance adopted pursuant to the procedure specified in Section 12-5-4 of this Ordinance.

12-5-20. Subscriber Fees and Charges.

20.1 The Town expressly reserves the right to regulate the rates which the Grantee charges its subscribers for basic service and the rates for such other services to the extent permitted by law. It is recognized by the Town that Subsections 12-5-20.1 through 12-5-20.10 may be subject to pre-emption by federal or state law or regulation. However, those sections or parts thereof which are not pre-empted shall be in full force and effect. The Grantee shall not deny, delay interrupt or terminate cable communications services or the use of community communications facilities to subscribers or users because the Board of Trustees denies a request for a rate increase, provided, however, that nothing herein shall be construed to limit the Grantee's right to seek judicial review of such action.

20.2 No rate, fee or charge of any kind shall be charged or collected from subscribers by the Grantee for basic service or other regulated services without the written authorization of the Board of Trustees. Violation of this section shall subject the Grantee to the provisions of Section 26 and shall be deemed to be a material breach of any agreement awarding a franchise in accordance herewith and shall subject the Grantee to all remedies and penalties prescribed therein and to all other remedies, legal and equitable, which are available to the Town.

20.3 The Grantee may request rate increases or decreases at any time in accordance herewith, provided, however, that the initial rates to be charged and collected from subscribers for basic service shall be established in the agreement awarding a Franchise in accordance

herewith and shall remain in force for a minimum of thirty (30) months from and after the date of execution of the agreement.

- 20.4 The Grantee shall file with the Town on or before December 31 of each year a full schedule of all subscriber and user rates and all other charges including, but not limited to, pay TV, lease channel and discrete services, made in connection with the cable communication system.
  - 20.4.1 All rates shall be published and on file with the Town.
  - 20.4.2 The Grantee shall not discriminate in the assessment, levy, charge, imposition or collection of rates on the basis of age, race, creed, color, religion, national origin, sex or martial status.
- 20.5 Nothing in this chapter shall be construed to prohibit the reduction or waiving of charges in conjunction with promotional campaigns for the purpose of attracting subscribers or users.
- 20.6 The Grantee may require all subscribers to pay for basic service not more than two (2) months in advance. The Grantee shall require no other advancement of payment for basic service, provided, however, that nothing herein shall be construed to prohibit an advancement of payment for installation of Cable Communication Services.
- 20.7 The grantee shall neither impose nor collect any additional charge for the disconnection of any installation or outlet.
- 20.8 In the event that a subscriber fails to pay as properly due and owing a fee or charge, the Grantee may disconnect the subscriber's service outlet, upon giving ten (10) days written notice thereof.
- 20.9 The Grantee shall establish and conform to the following policy regarding refunds to subscribers and users:
  - 20.9.1 If the Grantee collects a deposit or advance charge on any service or equipment requested by a subscriber or user, the Grantee shall provide such service or equipment within thirty (30) days of the collection of the deposit or charge or it shall refund such deposit or charge within five (5) days thereafter.
    - (a) Nothing in this section shall be construed to relieve the Grantee of any responsibility to subscribers or users under any contractual agreements into which it enters with them.
    - (b) Nothing in this section shall be construed as limiting the Grantee's liability for fines or penalties which may be imposed under this chapter or any agreement

awarded in accordance herewith for violation or breach of any of their provisions.

- (c) Nothing in this section shall be construed to limit the Grantee's liability for damages because of its failure to provided the service for which the deposit or charge was made.

20.9.2 In the event that a subscriber terminates basic service during the first twelve (12) months of service because of the failure of the Grantee to render the service in accordance with the requirements set forth in this chapter or in any agreement awarded in accordance herewith, the Grantee shall refund to such subscriber an amount equal to the initial applicable installation or reconnection charge paid by the subscriber.

- (a) In the event that such subscriber has made an advance payment, the amount so advanced shall be refunded to such subscriber by the Grantee. Nothing in this provision shall be construed to relieve the Grantee of any liability established under any other provision of this ordinance or any agreement awarding a franchise in accordance herewith.

20.9.3 In the event that a subscriber terminates basic service prior to the end of a prepaid period, the pro-rata portion of any prepaid subscriber fee which represents payment for services which are no longer to be rendered shall be refunded promptly, but in no case more than thirty (30) days after receipt of the request for termination.

20.10 The Grantee shall not charge a converter security deposit greater than such converter's actual cost to the Grantee.

20.10.1 Any converter security deposit collected by the Grantee shall be returned to the subscriber twenty-four (24) months after the installation of such converter or upon termination of service by the subscriber and return of such converter undamaged, with allowance for reasonable wear and tear, and payment of any outstanding balance due and payable, whichever occurs first.

12-5-21. Flow-Through of Refunds.

If during the term of a franchise, the Grantee receives refunds of any payments made for television or radio signals, it shall without delay notify the Town, suggest a plan for flow-through of the refunds to its subscribers, and retain such refunds pending order of the Town. After considering the plan submitted by the Grantee, the Board of Trustees shall order the flow-through of the refunds to the Grantee's subscribers in a fair and equitable manner.



The Grantee shall than immediately flow-through the refunds to its subscribers in accordance with the order of the Board of Trustees.

12-5-22. Communication with Regulatory Agencies.

Copies of all petitions, applications, communications, and reports submitted by a Grantee to the FCC or any other Federal or State regulatory commission or agency having jurisdiction in respect to any matters affecting construction or operation of a Cable Television System or services provided through such a System, shall be filed simultaneously with the Town. Copies of responses or any other communications from the regulatory agencies to a Grantee likewise shall be filed immediately on receipt with the Town.

12-5-23. Performance Bond, Letter of Credit/Cash Deposit.

- 23.1 Grantee shall file and maintain with the Town Clerk a performance bond, cash bond or an irrevocable letter of credit (the form of the letter to be approved by the Town Attorney) in the amount set forth in Subsection 3. hereof to guarantee the full and faithful performance of all material terms and conditions of the franchise. The Town shall not draw upon a cash deposit or make demand on the letter of credit without prior or contemporaneous notification to Grantee of the amount of and reasons for the same. Failure of the Grantee within fifteen (15) days thereafter to restore or replenish a cash deposit or letter of credit to the required amount shall be deemed a material breach of the franchise.
- 23.2 If the Grantee elects to deposit cash, the Town shall invest the same in any investment approved by state law for municipal corporations which the Grantee may select. So long as there has been no default in the terms and conditions of the franchise by Grantee and so long as the principal amount of the deposit is at the required level, Grantee shall have the benefit of the income earned by such deposit, the same to be applied against the franchise fees due and payable pursuant to this Ordinance.
- 23.3 The amount of the performance bond, cash deposit or letter of credit shall be THIRTY THOUSAND AND NO/100 DOLLARS (\$30,000.00) during any construction phase (initial or extension), and FIFTEEN THOUSAND AND NO/100 DOLLARS (\$15,000.00) at other times. The Board of Trustees may by ordinance increase these amounts not more frequently than once every twenty-four (24) consecutive months to reflect increases in construction and labor costs. The Grantee shall increase the amount of the performance bond, cash deposit or letter of credit to comply with this Section within fifteen (15) days of the effective date of any ordinance promulgating such an increase, and failure to do so shall be deemed a material breach of the franchise.
- 23.4 The rights reserved to the Town with respect to the performance bond, cash deposit or letter of credit are in addition to all other rights of the Town, whether reserved by this Ordinance or

authorized by law, and no action, proceeding or exercise of a right with respect to such cash deposit or letter of credit shall affect any other right the Town may have.

12-5-24. Approval of Construction by Town; Inspection; Correction of Defects in System; Breach or Default by Grantee.

- 24.1 Except for individual service drops, the Grantee shall not, within the Town, run any line, make any attachment, nor shall any construction of any kind be commenced without the prior approval of the Town. Such approval shall not be unreasonably withheld and action shall be taken on any request for approval within three (3) business days of receipt of the request, or it shall be deemed granted. Grantee shall be able to make emergency repairs as needed. The Town shall have and maintain the right to inspect the construction, operation and maintenance of the system by the Grantee to insure the proper performance of the terms of this chapter.
- 24.2 In the event the Grantee should violate any of the terms of this chapter or any federal, State or local law or regulation, or any of the rules and regulations as may hereafter be from time to time lawfully adopted, or any provision of the Franchise Agreement, the Town shall promptly give the Grantee fifteen (15) days written notice of the violation, breach, default, or noncompliance. The Grantee shall within fifteen (15) days of receipt of written notice from the Town substantially undertake and promptly correct such default, breach, violation or noncompliance and certify the same to the Town. In the event that the Grantee fails to substantially undertake such corrective action within fifteen (15) days of receipt of such written notice and promptly complete the corrective action, the Town may:
- 24.2.1 Make such correction itself and charge the cost of the same to the Grantee; and/or
- 24.2.2 Secure the proceeds from any financial performance instrument posted by the Grantee or impose the sum of Fifty Dollars (\$50) per day for each day breach or violation following the cure date that the Grantee fails to meet an agreed upon limits for such activity or its contractual or legal obligations; and/or
- 24.2.3 In the case of a material breach of this chapter or the Franchise Agreement, declare the Grantee in default and terminate the franchise and rights granted under the franchise.
- 24.3 Upon any termination of the franchise by the Town or the Town's refusal to renew the same pursuant to applicable federal law, the Grantee shall within thirty (30) days of receipt of notice of termination or refusal to renew the franchise, remove its

facilities and equipment and in the event that the Grantee does not remove its facilities and equipment within the time provided in this section, the Town may do so, the removal cost to be borne in any event by the Grantee. Any enforcement action or remedy provided by this section or this chapter or by the Franchise Agreement shall not be deemed exclusive but shall be alternative or cumulative in nature. Notwithstanding anything to the contrary in this chapter, the Town shall not impose any penalty upon the Grantee where either the violation or failure to cure the same result from force majeure, labor dispute, declaration of war or other hostilities, Act of God, or any other reason beyond the control of the Grantee.

12-5-25. Liquidated Damages.

By acceptance of a franchise granted by the Town, a Grantee understands and shall agree that failure to comply with any time and performance requirements as stipulated in this chapter and the franchise agreement will result in damage to the Town, and that it is and will be impracticable to determine the actual amount of such damage in the event of delay or non performance; the franchise agreement shall include provisions for liquidated damages to be paid by the Grantee, in amounts set forth in the franchise agreement and chargeable to the security fund for the following concerns:

- 25.1 Failure to complete system construction or reconstruction in accordance with Section 12-5-24, unless the Board of Trustees specifically approves the delay by motion or resolution, due to the occurrence of conditions beyond the Grantee's control, a Grantee shall pay to the Town One Hundred Dollars (\$100) per day for each day or part thereof, the deficiency continues.
- 25.2 Failure to provide upon written request, data, documents, reports, information or to cooperate with the Town during an application process or CATV system review, a Grantee shall pay to the Town Fifty Dollars (\$50) per day for each day or part thereof, the violation occurs or continues.
- 25.3 Failure to test, analyze and report on the performance of the system following a written request pursuant to this chapter, a Grantee shall pay to the Town One Hundred Dollars (\$100) per day for each day or part thereof, that such noncompliance continues.
- 25.4 For failure to provide in a continuing manner the types of services proposed in the accepted franchise application, unless the Board of Trustees specifically approves Grantee a delay or change, or the Grantee has obtained modifications of its obligation under Section 625 of the Cable Communications Policy Act of 1984; the Grantee shall pay to the Town One Hundred Dollars (\$100) per day for each day or part thereof, that each noncompliance continues.

- 25.5 Any other action or non-action by the Grantee, as agreed upon between the Town and the Grantee, and set forth in the franchise agreement. Nothing in this section shall preclude further liquidated damages as agreed upon by parties in the franchise agreement.
- 25.6 If the Town concludes that a Grantee is liable for liquidated damages pursuant to this section it shall issue to Grantee by certified mail a notice of intention to assess liquidated damages. The notice shall set forth the basis for the assessment, and shall inform the grantee that liquidated damages will be assessed from the date of the notice unless the assessment notice is appealed for hearing before the Board of Trustees and the Board of Trustees rules (1) that the violation has been corrected, or (2) that an extension of time or other relief should be granted. A Grantee desiring a hearing before the Board of Trustees shall send a written notice of appeal by certified mail to the Town within ten (10) days of the date on which the Town sent the notice of intention to assess liquidated damages. The hearing on the Grantee's appeal shall be within thirty (30) days of the date on which the Town sent the notice of intention to assess liquidated damages. Unless the Board of Trustees indicates to the contrary, said liquidated damages shall be assessed beginning with the date on which the Town sent the notice of the intention to assess liquidated damages and continuing thereafter until such time as the violation ceases, as determined by the Town.

12-5-26. Procedure for Remediying Franchise Violations.

In the event that Town determines that Grantee has violated any material provision of the franchise, Town may make a written demand upon Grantee that it remedy such violation. If the violation is not remedied, or in the process of being remedied, to the satisfaction of Town within thirty (30) days following such demands, Town shall determine whether or not such violation by Grantee was excusable or inexcusable, in accordance with the following procedure:

- 26.1 An administrative hearing shall be held to review the alleged violation. If this hearing does not result in a satisfactory resolution, and/or Grantee request a public hearing, then a public hearing shall be held, and Grants shall be provided with an opportunity to be heard upon thirty (30) days written notice to Grantee of the time and place of the hearing provided and the allegations of franchise violations.
- 26.2 If, after notice is given and, at Grantee's option, a full public proceeding is held, Town determines that such violation by Grantee was excusable, Town shall direct Grantee to correct or remedy the same within such additional time, in such manner and upon such terms and conditions as Town may reasonably direct.

- 26.3 If, after notice is given and, at grantee's option, a full public proceeding is held, Town determines that such violation by Grantee was inexcusable, then Town may impose a remedy in accordance with Section 12-5-25.
- 26.4 Any hearing held may be conducted either by the Board of Trustees or, at the sole discretion of the Board, by a hearing officer appointed by the Board to conduct the hearing. Any such hearing officer shall be an attorney licensed to practice under the laws of the State of Colorado.
- 26.5 The cost of providing quarters for the hearing, compensation for the hearing officer, if any, and the per diem cost of any reporter retained to the record the proceedings shall be borne by the Town. The costs incurred by the parties for attorney's fees, expert witness fees and other expenses shall be borne solely by the party incurring the costs.
- 26.6 All witness testifying at any hearing held pursuant to this section shall be sworn witnesses and shall be subject to direct and cross-examination. However, formal rules of evidence applicable to the trial of civil and criminal proceedings in the trial courts of the State of Colorado shall not be applicable to the hearing. The provisions of the State Administrative Procedures Act, C.R.S. 24-4-101 to 24-4-108, or any successor legislative enactment, shall not be applicable to any such hearing. The hearing may be continued from time to time.
- 26.7 If the hearing is conducted by a hearing officer, the officer shall upon conclusion of the hearing, prepare a recommended decision which includes findings of fact and conclusions. The recommended decision shall be filed with the Town Clerk and mailed to the parties not later than thirty (30) calendar days after the conclusion of the hearing. Upon receipt of such a recommended decision, the Board of Trustees may, without a hearing except as otherwise required below, either:
- 26.7.1 Adopt the recommended decision, including findings of fact and conclusions submitted by the hearing officer;
- 26.7.2 Adopt the findings of fact and conclusions contained in the recommended decision, modify the decision, and adopt the recommended decision as so revised;
- 26.7.3 Based upon the record of the hearing, modify the findings of fact, conclusions or decisions, and adopt the recommended decision as so revised; or
- 26.7.4 Reject the recommended decision and conduct a new hearing.

- 26.8 If the hearing is conducted by the Board of Trustees, upon conclusion of the hearing, the Board of Trustees shall adopt a decision which includes findings of fact and conclusions.
- 26.9 If the decision by the Board of Trustees is that there are grounds for termination of the franchise and that the franchise shall be terminated, the Board of Trustees may adopt a resolution which terminates the franchise and includes its decision. The effective date of termination shall be such date as is prescribed by the Board of Trustees, within its sole discretion, in the resolution.

12-5-27. Alternative Remedies.

No provision of this chapter shall be deemed to bar the right of the Town to seek or obtain judicial relief from a violation of any provision of the franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in said chapter nor the exercise thereof shall be deemed to bar or otherwise limit the right of the Town to recover monetary damages (except where liquidated damages are otherwise prescribed) for such violation by the Grantee, or judicial enforcement of the Grantee's obligation by means of specific performance, injunction relief or mandate, or any other judicial remedy at law or in equity.

12-5-28. Non-Enforcement.

A Grantee shall not be relieved of any obligation to comply with any of the provisions of the franchise or any rule, regulation, requirement or directive promulgated thereunder by reason of any failure of the Town or its officers, agents or employees to enforce prompt compliance.

12-5-29. Indemnification by Grantee.

26.1 Each Grantee shall, at its sole expense, fully indemnify, defend and hold harmless the Town, and in their capacity as such, the officers, agents and employees thereof, from and against any and all claims, suits, actions, liability and judgments for damages or otherwise:

26.1.1 For actual or alleged injury to persons or property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through or alleged to arise out or through the acts or omissions of the Grantee or its officers, agents, employees or contractors acts or omissions in any way contribute;

26.1.2 Arising out of or alleged to arise out of any claim for damages for invasion of the right of privacy, for defamation of any person, firm or corporation, for civil rights or antitrust violations, for the violation or infringement or any copyright, trademark, trade name, service mark or

patent, or of any other right of any person, firm or corporation; and

- 26.1.3 Arising out of or alleged to arise out of Grantee's failure to comply with the provisions of any statute, regulation or ordinance of the United States, State of Colorado, or any local agency applicable to the Grantee in its business.
- 26.2 Each Grantee shall maintain throughout the term of the franchise and furnish the Town with proper evidence of liability insurance coverage with an approved company insuring both Grantee and the Town against all claims, demands for losses for injury to persons or damage to property resulting from or connected with the construction, operation or maintenance of the CATV system and business within the Town. Such liability insurance shall have minimum amounts of \$100,000.00 for property damage to any one person; \$300,000.00 for property damage in any one accident; \$300,000.00 for personal injury to any one person; and \$1,000,000.00 for personal injury in any one accident.
- 26.3 Nothing herein shall be deemed to prevent the parties indemnified and held harmless herein from participating in the defense of any litigation by their own counsel at the Grantee's sole expense. Such participation shall not under any circumstances relieve the Grantee from its duty of defense against liability or of paying any judgment entered against such party.

12-5-30. Reservation of Rights.

- 30.1 The Grantee shall have a continuing duty to take advantage of any new developments in the field of transmission of television and radio signals which would enable it more efficiently and economically to serve its subscribers and at all time to provide a CATV system which shall be no less advanced than any other system of comparable size, excepting only systems which are experimental, pilot or demonstration systems. The Town's policy is and shall be that all CATV systems within its jurisdiction shall, to the extent practicable, maintain the current state of the art. To this end, the Town may review the technology available at the end of each five (5) years of the franchise and may amend the franchise when, in the opinion of the Board of Trustees, such amendment is necessary to facilitate or promote the adoption of new/developments in the industry.
- 30.2 The Town further reserves the right and power to promulgate such additional regulations as it may find necessary in the exercise of its lawful powers and in furtherance of the terms and conditions of this Chapter. Such additional regulations may be promulgated by resolution of the Board of Trustees.
- 30.3 The Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general

citizens on the basis of race, color, religion, national origin, handicap, sex, or income.

12-5-31. Property Damage and System Maintenance Fund.

- 31.1 The Grantee shall, within thirty (30) days of granting a franchise, deliver to the Town Five Thousand Dollars (\$5,000) to be deposited in the Town of Mead Cable Property Damage and System Maintenance Fund. Said fund is to be used in the sole discretion of the Town for settlement of minor unresolved claims against the Grantee for damage to private property, including but not limited to shrubs, trees, fences, etc.; and in the correction of system maintenance problems unresolved by the Grantee. The Grantee shall restore this cash fund to the five thousand dollar (\$5,000) amount within fourteen (14) days after notification that the Town has drawn from the fund for a claim settlement. Interest earnings on this cash fund shall be returned to the Grantee annually.
- 31.2 Notwithstanding the above provisions of this section, the Board of Trustees may, in its sole discretion, waive the Property Damage and System Maintenance Fund requirement or reduce the required amount thereof if performance by the Grantee, its successors or assigns, in the sole opinion of the Board of trustees, has been satisfactory.
- 31.3 The procedure for utilization of the fund for restoration of private property damage shall be as follows:
  - 31.1.1 If a property owner has been unable to resolve settlement of a property damage claim against the Grantee within fourteen (14) calendar days, he may request resolution by the Town Engineer.
  - 31.1.2 The Town Engineer shall investigate the claim and notify the Grantee of his findings in writing.
  - 31.1.3 If, after fourteen (14) calendar days from notification by the Town Engineer, the Grantee has still not resolved the claim, the Town Engineer may draw from the fund and make payment to the claimant in an amount as deemed equitable by him up to the amount of Five Hundred (\$500) dollars.
- 31.4 The procedure for utilization of the fund for restoration of unresolved system maintenance problems shall be as follows:
  - 31.4.1 When unresolved system maintenance problems come to the attention of the Mead Cable Commission, the Commission shall meet with the Grantee to discuss the problem and determine a course of action to be taken by the Grantee to correct the problem. The Commission may set a time schedule for the activities involved in the problem correction.



- 31.4.2 If the Grantee is unresponsive to the system repair schedule established by the Commission, or the system malfunction continues beyond the date established for system restoration, the Commission shall have the authority to employ the services of technical consultant(s) or others qualified by training or experience to assist in the analysis and repair of any unresolved system malfunctions and to disburse the funds from the Property Damage and System Maintenance Fund necessary for this purpose.

12-5-32. Mead Cable Commission.

The Mead Cable Commission of the Town of Mead is hereby created.

32.1 Membership.

The Mead Cable Commission shall consist of one member of the Board of Trustees and four members-at-large and two alternates-at-large appointed by the Board of Trustees. The term of the Trustee member shall be two years. The terms of appointment for the at-large-members shall be three years on a staggered basis. Members must be residents of the Town at least one (1) year. Alternates serve only in the absence of one or two regular members.

32.2 Organization.

The Mead Cable Commission shall elect a chairman during its first meeting of each calendar year and may create and fill such other offices as it may determine. The Board shall adopt rules for transaction of business and shall keep a record of its resolutions, transactions, findings and determinations, which shall be a public record.

32.3 Authority.

The Mead Cable Commission shall have the powers and authority concerning the application and enforcement of this Code as follows:

- 32.3.1 To advise the Board of Trustees on applications for franchises.
- 32.3.2 To advise the Board of Trustees on matters which might constitute grounds for revocation of the franchise.
- 32.3.3 To resolve disagreements among Grantee(s)s and public and private users of the system, subject to appeal to the Board of Trustees.
- 32.3.4 To provide the technical oversight of the operation of the cable system to assure compliance with the requirements of

this ordinance and any franchise granted hereunder. This shall include the authority to employ the services of technical consultant(s) to assist in the analysis and repair of any unresolved system malfunctions and to disburse the funds from the Property Damage and System Maintenance Fund necessary for this purpose.

- 32.3.5 To coordinate the use of the public access channel(s) by the Town, Library, schools, and community groups.
- 32.3.6 To determine general policy relating to the service provided subscribers and the operation and use of public access channel(s), with a view to maximizing the diversity of programs and services to subscribers.
- 32.3.7 To encourage the use of public access channel(s) among the widest range of institutions, groups and individuals within the Town.
- 32.3.8 To submit an annual report to the Board of Trustees, including, but not limited to, a review of any plans submitted during the year by Grantees for development of new services and the total hours of utilization of access channels.
- 32.3.9 To cooperate with other systems and supervise interconnection of systems.
- 32.3.10 To maintain a knowledge of current developments in cable communications
- 32.3.11 To submit a budget request to the Town to cover expenses incurred; which may include funds to be used for the development of the use of access channels, including production grants to users and the purchase and maintenance of equipment not required to be provided by the Grantee, and funds to be used as per diem expenses and such salaries for the Commission members as may be prescribed from time to time by ordinance.
- 32.3.12 To audit all Grantee records required by the cable ordinance and in the commission's discretion, require the preparation and filing of information in addition to that required herein.
- 32.3.13 To conduct evaluations of the system at least every three years, with the Grantee, and pursuant thereto, make recommendations to the Board of Trustees for amendments to the CATV ordinance or the franchise agreement(s).
- 32.3.14 To employ the services of a technical consultant to assist in the analysis of any franchise under the CATV ordinance.

32.3.15 To act on behalf or as the designee of the Board of Trustees for the purpose of proposing regulations and arbitration procedures as deemed necessary by the Board of Trustees.

32.4 Appeals From the Commission.

Any appeal of the decision of the Mead Cable Commission may be made to the Board of Trustees, provided however, that such appeal is made prior to thirty (30) days following the date of the final action taken by the Commission.

12-5-33. Revocation and Termination.

33.1 On its own motion or upon complaint from any party that a material or substantial breach or violation of the franchise has occurred, the Town may initiate an investigation of the performance of a Grantee. If any such investigation is initiated, the Town shall promptly notify the Grantee of such fact and identify generally the matters under investigation. The Grantee shall on demand furnish the Town with information and documents reasonably related to the matters under investigation.

33.2 If at the conclusion of its investigation, the Board of Trustees finds probable cause to believe that the Grantee has committed a material or substantial breach or violation of the franchise, it shall specify each such breach or violation and set a hearing to consider the allegations, with notice to the Grantee not less than thirty (30) days prior to the date of hearing. Such specifications and notice shall be in writing. The Grantee and any interested parties may appear and be heard at the hearing.

33.3 If after the hearing the Board determines that the Grantee has caused or permitted any material or substantial breach or violation of the franchise through its own fault and has not cured such breach or violation within thirty (30) days (or within such longer period of time as the Board may have fixed for cure) from the date of written notice thereof to the Grantee, the Board may by ordinance revoke and terminate the franchise. If the breach or violation was a material misrepresentation or act of fraud or deceit committed by Grantee, there need be no finding that Grantee has failed to cure, it being the express intent of this Section that such misrepresentation, fraud or deceit is sufficient cause, in and of itself, for revocation and termination of the franchise.

33.4 For purposes of this Section, the term "material or substantial breach or violation of the franchise" shall mean any material representation or act of fraud or deceit committed by Grantee; a material or substantial deviation or departure from or breach of any provision of this Ordinance or of the ordinance granting the franchise; or any material deviation or departure from any statement or representation contained in the application filed by the Grantee.

12-5-34. Non-contestability.

By accepting a franchise, Grantee covenants and agrees that it will not at any time nor in any manner or proceeding set up against the Town any claim or proceeding challenging the effectiveness or legality of this Ordinance or of the ordinance granting the franchise as being unreasonable, arbitrary, voidable or void, or that the Town did not have the power or authority to make such term or condition, and Grantee shall be required to accept the validity of this Ordinance and the ordinance granting the franchise.

12-5-35. Notices.

All notices from the Grantee to the Town required by this Ordinance or any other provision of law shall be addressed to the Town Clerk at the Mead Town Hall. At all times during the term of this franchise, the company shall maintain with the Town Clerk an address for service of all notices required by the Town to be given to the Grantee. Unless otherwise notified by the Grantee, the Town shall use the Grantee's address as set forth in its application.

12-5-36. Administrative Costs of a Franchise.

- 36.1 The Grantee(s) shall bear and be responsible for all costs incurred by the Town in the ongoing administration of franchises granted under this Section 5. These cost shall include, but not be limited to, consultants' expenses; reasonable value of services performed by the Town's employees, agents, or contractors; legal fees; advertising and publication charges; and the costs of elections, if any. These administrative costs are in addition to the franchise fee required by Section 12-5-7.
- 36.2 Throughout the term of a franchise the Town shall maintain an account of all expenses incurred, including, but not limited to staff personnel costs, including overtime, expert consulting fees, publishing fees, legal fees and other related expenses.
- 36.3 The Town shall bill the franchisee monthly for all expenses incurred related to the administration of the franchise. The amount billed to the franchisee shall include but not be limited to Town staff personnel costs, including overtime, expert consulting fees, publishing fees, legal fees, and other related expenses.
- 36.4 The franchisee shall pay to the Town all such expenses incurred within thirty days of the mailing of the bill, unless the franchisee protests the reasonableness of the costs in the manner set forth in paragraph 5 of this Section 12-5-36. Failure to pay shall constitute a material breach of the terms of the franchise and the Town may proceed to remedy the violation as provided by Section 12-5-26.

- 36.5 If the franchisee disputes the reasonableness of the charges, it may seek review of the assessment by filing a protest with the Town Board within thirty (30) days of the mailing of the bill. The protest shall state the grounds on which the protest is based. Appeals shall be conducted as provided in Section 12-5-26,
- 36.6 Notwithstanding any of the remedies contained herein, the Town Attorney, acting on behalf of the Board of Trustees, may institute appropriate action in a court of competent jurisdiction to recover reasonable expenses incurred by the Town in the administering the franchise, including, but not limited to staff personnel costs, including overtime, expert consulting fees, publishing fees, legal fees, and other related expenses."

Section 2. Validity.

The provisions of this ordinance are hereby declared to be severable and if any section, provision or part thereof shall be held unconstitutional or invalid, the remainder of this ordinance shall continue in full force and effect, it being the intent of the Board of Trustees that this ordinance would have been adopted even if such unconstitutional or invalid matter had not been included herein. It is further declared that if any section, provision or part of this ordinance or the application thereof to any person or circumstances is held invalid, the remainder of this ordinance and the application thereof to other persons or circumstances shall not be affected thereby.

Section 3. Necessity. In the opinion of the Board of Trustees of the Town of Mead, this ordinance is necessary for the preservation and protection of the health, safety, welfare and property of the inhabitants and owners of property in the Town of Mead.

Section 4 Certification.

The Town Clerk shall certify to the passage of this ordinance and make not less than three copies of the adopted ordinance available for inspection by the public during regular business hours.

PASSED AND ADOPTED BY THE BOARD OF TRUSTEES OF THE TOWN OF MEAD, COLORADO, AND SIGNED THIS 9th DAY OF OCTOBER 1989.

Harvey O. Potts  
MAYOR  
TOWN OF MEAD

ATTEST:

Bertina B. Willden  
Town Clerk



3. Describe all intra-company relationships of the applicant, including parent, subsidiary and affiliated companies. (Attach additional sheets as necessary.)
4. Identify each existing franchise for CATV held by the applicant, and as to each such franchise the date it was issued, the date the system was constructed, and the name, address and telephone number of a government official knowledgeable of the applicant and its performance in such franchise area. (Attach additional sheets as necessary.)
5. Detail prior CATV experience of the applicant and identify the applicant's officers, management and staff proposed to be associated with its operations in Mead. (Attach additional sheets as necessary.)
6. State your construction plans, including without limitation the following: (Attach additional sheets as necessary.)
  - (a) Identification of the initial service area and criteria and timetable for extension of service to new areas.
  - (b) Construction timetable for the initial service area, including a firm completion date.
  - (c) Description of network configuration.
  - (d) Identification of specific areas proposed for underground and for above ground installation of cables.
7. Provide a technical description of the network, including without limitation statements as to the following: (Attach additional sheets as necessary.)
  - (a) Channel capacity.
  - (b) Two-way and return signal capability.
  - (c) Technical performance standards.
  - (d) Emergency communications capabilities.
8. Describe your proposed operation, including without limitation statements as to the following: (Attach additional sheets as necessary.)
  - (a) Location of the business office from which applicant proposes to conduct its operations in Mead.
  - (b) Programming material to be provided, including broadcast TV and radio stations, satellite programming, automated and nonautomated programming, if any, to be provided locally by the applicant.

- (c) The availability of public, education and government access channels.
  - (d) Rules of operation for any public access channels proposed, and an explanation of any assistance, in terms of personnel or equipment, to be provided by Grantee for programming or programming assistance for proposed public access channels and for the required educational/local government access channels.
  - (e) Subscriber rates and charges for all services, including a statement of any services to be provided free-of-charge, together with a description of the criteria to be used by applicant in making changes in any such rates and charges.
  - (f) Average repair service interval (i.e., time between time of notification to company and completion of repairs) for subscribers in the Town of Mead.
9. Provide the name and address of your principal or primary source of financing for its operations in Mead, and the dollar amount of credit which such lender has committed in writing to provide for such operations. (Attach additional sheets as necessary.)
  10. State as to whether you or any of your principals have ever been a party to a civil proceeding in which it was held that there were unfair or anti-competitive business practices, antitrust violations, violations of securities laws or false or misleading advertising committed by you or any of your principals; whether you or any of your principals have been found in violation of any franchise; and whether you or any of your principals have ever initiated litigation against a franchising authority or had a franchising authority initiate litigation against you or any of your principals. (Attach additional sheets as necessary.)
  11. Such other and further information as you deem appropriate. (Attach additional sheets as necessary.)
  12. The following attachments shall accompany the application.
    - (a) Copies of financial statements for the applicant's two (2) most recent fiscal years unless the applicant has not been in existence at least two (2) years, in which case the applicant shall furnish the same for the entire period that the applicant has been existence. The financial statements shall be certified as to their accuracy by the applicant's chief financial officer or accountant.
    - (b) A certified check made payable to the Town in the amount of SEVEN HUNDRED FIFTY AND NO/100 DOLLARS (\$750.00), which check will be deposited to an account of the Town as a deposit against all costs and expenses incurred by the Town in considering the application. Such expenses shall include without limitation consultants'



expenses, reasonable value of services performed by the Town's employees, agents, or contractors, legal fees, the costs of elections, if any, advertising, and publication charges. Any funds remaining after all expenses have been paid will be refunded to the applicant. The applicant shall pay the Town any amount by which the expenses exceed the total amount of the deposit and other funds previously collected from the applicant for these purposes within thirty (30) days of the grant of the franchise to the applicant. The Town reserves the right to require such supplementary, corroborating, additional and other information that it deems reasonably necessary in connection with its consideration of the application.

13. The Town reserves the right to require such supplementary, corroborating, additional and other information that it deems reasonably necessary in connection with its consideration of the application.

The applicant hereby submits the foregoing information and certifies to its accuracy and completeness. Furthermore, the Applicant recognizes and agrees to the conditions and reservations set forth in Ordinance No. 8-1985 of the Town of Mead. The Applicant specifically agrees that by accepting a franchise from the Town of Mead, the applicant covenants and agrees that it will not at any time nor in any manner or proceeding set up against the Town any claim or proceeding challenging the effectiveness or legality of Ordinance No. 8-1985 of the Town of Mead, or of the ordinance granting any franchise as being unreasonable, arbitrary, voidable or void, or that the Town did not have the power or authority to make such term or condition.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

By \_\_\_\_\_

Its \_\_\_\_\_

TABLE OF CONTENTS

	PAGE
12-5-1. <u>Definitions.</u>	1
12-5-2. <u>Police Powers.</u>	5
12-5-3. <u>Franchise Required.</u>	5
12-5-4. <u>Application Form and Content.</u>	5
12-5-5. <u>Procedure for Grant, Change or Renewal of Franchise.</u>	8
12-5-6. <u>Grant, Acceptance and Effective Date of Franchise.</u>	9
12-5-7. <u>Franchise Fee.</u>	11
12-5-8. <u>Construction Standards.</u>	12
12-5-9. <u>Technical Standards.</u>	14
12-5-10. <u>Required Services.</u>	16
12-5-11. <u>Repairs and Service.</u>	18
12-5-12. <u>Emergencies.</u>	19
12-5-13. <u>Availability of Access Facilities.</u>	19
12-5-14. <u>Support for Use of Access.</u>	20
12-5-15. <u>Subscriber Privacy.</u>	20
12-5-16. <u>Abandonment and Removal of Facilities.</u>	21
12-5-17. <u>Continuity of Service.</u>	21
12-5-18. <u>Transfer Restrictions.</u>	21
12-5-19. <u>Renewal.</u>	22
12-5-20. <u>Subscriber Fees and Charges.</u>	23
12-5-21. <u>Flow-Through of Refunds.</u>	25
12-5-22. <u>Communication with Regulatory Agencies.</u>	25
12-5-23. <u>Performance Bond, Letter of Credit/Cash Deposit.</u>	26
12-5-24. <u>Approval of Construction by Town; Inspection; Correction of Defects in System; Breach or Default by Grantee.</u>	26
12-5-25. <u>Liquidated Damages.</u>	28
12-5-26. <u>Procedure for Remedying Franchise Violations.</u>	29
12-5-27. <u>Alternative Remedies.</u>	31
12-5-28. <u>Non-Enforcement.</u>	31
12-5-29. <u>Indemnification by Grantee.</u>	31
12-5-30. <u>Reservation of Rights.</u>	32
12-5-31. <u>Property Damage and System Maintenance Fund.</u>	33
12-5-32. <u>Mead Cable Commission.</u>	34
12-5-33. <u>Revocation and Termination.</u>	36
12-5-34. <u>Non-contestability.</u>	37
12-5-35. <u>Notices.</u>	37
12-5-36. <u>Administrative Costs of a Franchise.</u>	37
Section 20. <u>Subscriber Fees and Charges.</u>	