

ARTICLE VII. CATV FRANCHISING ORDINANCE**Sec. 14-200. Short title.**

This article shall be known and may be cited as the "Town of Standish CATV Franchising Ordinance."

Sec. 14-201. Definitions.

For the purpose of this article and any franchise granted hereunder, the following terms, phrases and words and their derivations shall have the meaning specified herein. When not inconsistent with the context, words used in the present tense include the future and words in the singular number include words in the plural number.

Annual gross subscriber revenues shall mean all revenues received by the licensee, its affiliates, subsidiaries or lessees from and in connection with the provision of basic service to subscribers over the broadband telecommunications system in the Town of Standish, Maine. It shall include revenues from all sources including, without limitation, revenues from advertising, channel leasing, data transmission and per program charges, in addition to the subscribers' regular monthly payments for basic service.

CATV system shall mean any system of cables, optical, electrical or electronic equipment, including cable television, used for the purpose of transmission of electrical impulses of television, radio and other intelligences, either analog or digital for sale or use by the inhabitants of the Town.

Town shall mean the Town of Standish, its council, officials, boards, commissions, agents and employees, unless otherwise specifically designated, the area within the territorial Town limits of the Town of Standish and such territory presently outside of the Town limits over which the Town may assume jurisdiction or control by virtue of annexation.

Council shall mean the present governing body of the Town of Standish or any legally appointed or elected successor or agency constituting the governing body of the Town.

Franchise payment shall include all charges imposed for a franchise whether the object be regulation, revenue or one-time reimbursement of costs incurred by the Town in the award of a franchise.

Full service shall mean all basic services and additional services to be offered by the licensee.

Licensee means all persons including, but not limited to, subsidiaries, parent or affiliate companies, associations or organizations having any rights, powers, privileges, duties, liabilities or obligations, under this article, and under the broadband telecommunications system franchise, collectively called the "franchise", and also includes all persons having or claiming any title to or interest in the system, whether by reason of the franchise itself directly or by interest in a subsidiary, parent or affiliate company, association or organization or by any subcontract, transfer, assignment, mortgage security agreement, management agreement or operating agreement, or whether otherwise arising or created.

May is permissive.

Physical mile of plant shall mean messenger strand as measured from pole to pole without taking into consideration sag or downguys, and for underground and buried plant, actual trench feet.

Service area shall mean that geographical area within the incorporated limits of the Town.

Shall and *must*. Each is mandatory and not merely directory.

State shall mean the State of Maine.

Subscriber shall mean any person, firm, company, municipality, corporation or association receiving either basic service or additional service from the licensee under the schedule of charges filed with and/or approved by the Town.

Substantially completed. Operation will be considered substantially completed when sufficient distribution facilities have been installed and activated so as to permit the offering of full service to at least ninety (90) per cent of the dwelling units in the service area.

Sec. 14-202. The CATV system franchise.

(a) *Franchise required*. No person, firm, company, corporation or association shall construct, install, maintain or operate within any public street in the Town, or within any other public property of the Town, or within any privately owned area within the corporate limits of the Town, any equipment or facilities for the distribution of television signals, or radio signals or other intelligences either analog or digital over a broadband telecommunications system to any subscriber unless a franchise authorizing the use of the streets or properties or areas has first been obtained pursuant to the provisions of this article, and unless such franchise is in full force and effect.

- (b) *Review of qualifications.* Specific permission to operate a CATV system under the provisions of this article may be granted by the council to any licensee after a review of the licensee's legal, character, financial and technical qualifications and the adequacy and feasibility of the licensee's construction arrangements and has approved the licensee's qualifications as a part of a public proceeding affording due process.
- (c) *Duration of franchise.* Upon filing by the licensee of the proper acceptance, the bond and the required insurance, a franchise shall take effect as provided therein and shall continue in full force and effect for a maximum term of ten (10) years.

Sec. 14-203. Applications for a franchise.

Applications for a franchise shall be filed with the Town in accordance with the filing instructions promulgated by the Town and shall contain the following written information and provisions:

- (1) *Proposal bond and filing fee.* Provision of the proposal bond as required in section 14-206(a) and payment of a nonrefundable filing fee to the Town in the amount of twenty-five dollars (\$25.00) which sum shall be due and payable concurrently with the request for application information.
- (2) *Name and address of applicant.* The name and business address of the applicant, date of application and signature of applicant or appropriate corporate officer(s).
- (3) *Description of proposed operation.* A general description of the applicant's proposed operation including but not limited to business hours; operating staff; maintenance procedures beyond those required in this article; management and marketing staff complement and procedures; and, its proposed technical reporting policy commensurate with applicable FCC rules and regulations.
- (4) *Signal carriage.* A statement of all the television and radio services to be provided, including both off-the-air and locally originated signals.
- (5) *Special services.* A statement setting forth a description of the automated services proposed as well as a description of the production facilities and capital funding to be made available by the licensee for the public, municipal and educational channels required to be made available by the provisions of this article and the Federal Communications Commission.

- (6) *Programming assistance.* A statement establishing any additional revenues beyond those required in section 14-205 herein to be designated for the programming or programming assistance for the public, educational and government access channels.
- (7) *Schedule of charges.* A statement of the applicant's proposed schedule of charges.
- (8) *Corporate organization.* A statement detailing the corporate organization of the applicant, if any, including the names and addresses of its officers and directors and the number of shares held by each officer and director.
- (9) *Stockholders.* A statement identifying the number of authorized and outstanding shares of applicant's stock including a current list of the names and current addresses of its shareholders holding ten (10) per cent or more of applicant's outstanding stock.
- (10) *Intracompany relationships.* A statement describing all intracompany relationships of the applicant, including parent, subsidiary or affiliated companies.
- (11) *Agreements and understandings.* A statement setting forth all agreement and understandings whether written or oral existing between the applicant and any other person, firm, group or corporation with respect to any franchise awarded and the conduct of the operation thereof existing at the time of proposal submittal.
- (12) *Financial statement.* If applicant is a corporation, audited financial statements for the two (2) previous fiscal years. If applicant is a partnership, copies of the "US Partnership Return of Income" (IRS Form 1065) for the two (2) previous fiscal years. If applicant is a sole proprietorship, copies of personal financial statements for the two (2) previous fiscal years.
- (13) *Financial projection.* An estimated ten (10) year operations proforma which shall include the initial and continuing plant investment, annual profit and loss statements detailing projected income and expenses, annual balance sheets, and annual levels of subscriber penetration. The proforma shall also state the average return on investment anticipated by the applicant for the ten (10) year operations period and shall state the method of computation thereof. Costs anticipated for voluntary services or contributions shall, if presented, be incorporated in the proforma as required in this article, but shall be separately identified in the proforma.

- (14) *Financial support.* A corporate board resolution or statement from a qualified officer of the applicant shall be supplied authorizing the securing and expenditure of such funds as are required to construct and operate the CATV system proposed herein. The applicant shall identify any external financing sources anticipated and shall explain the nature and extent of participation by such external financing sources. If external financing shall be accomplished through lines of credit with a lending institution, the applicant shall identify the available, uncommitted balance of such line of credit.
- (15) *Technical description.* A technical description of the type of communications system proposed by the applicant including but not limited to system configuration (i.e. hubs, nodes, etc.), system capacity, two-way capability, data Intra-nets and the proposed dates of commencement of construction and operation of said system.
- (16) *Engineering statement.* A statement from a registered professional engineer advising that he has reviewed the technical description provided above and that the planned system and operation thereof meets all the technical standards set forth in Section 76.605 of the FCC's Third Report and Order, and any amendments thereto.
- (17) *Existing franchises.* A disclosure of existing State of Maine franchises held by the applicant indicating when the franchises were issued and when the systems were constructed in each respected government unit, together with the name and address and phone number of a responsible governmental official knowledgeable of the applicant.
- (18) *Convictions.* A statement as to whether the applicant or any of its officers or directors or holders of ten (10) per cent or more of its voting stock has in the past ten (10) years been convicted of any crime other than a routine traffic offense and the disposition of each such case.
- (19) *Operating experience.* A statement detailing the prior operational experience of the applicant including that of the applicant's officers, management and staff to be associated with the proposed operation.
- (20) *Franchise renewal information.* If an application is for renewal of a franchise, the proposal must include, in addition to the information required in subsections (1) through (19) above:
- (a) A summary of the technical, financial and programming history of the system since the granting of the original franchise.

- (b) A statement and timetable that outlines all proposed changes, expansion or improvements in the system as to services, programming or technical specifications during the renewal period.
- (21) *Additional requirements.* The application for franchise shall respond specifically, and in sequence, to subsections (1) through (19) of this section and shall be bound separately from any additional information proffered by the applicant. Five (5) copies of the application shall be supplied to the Town. Supplementary, additional or other information that the applicant deems reasonable for considerations may be submitted at the same time as its application, but must be separately bound and submitted in the above number of copies. The Town may, at its discretion, consider such additional information as part of the application.
- (22) *Supplementation to applications.* The Town reserves the right to require such supplementary, additional or other information that the Town deems reasonably necessary for its determinations. Such modifications, deletions, additions or amendments to applications shall be considered only if specifically requested by the Town.
- (23) *Grandfather clause.* Applications submitted prior to June 22, 1998 and all amendments thereto, shall be deemed to be in conformity to this section.

Sec. 14-204. Reports and records of the licensee.

- (a) *Annual financial reports required.* The licensee shall furnish the Town, no later than one hundred twenty (120) days after the end of Licensee's Fiscal Year, two (2) copies of:
- (1) The report to its stockholders.
 - (2) A sworn statement of its Gross Annual Revenues pertaining to the Town of Standish.
 - (3) An income statement identifying expenses and income applicable to its operations under said franchise during the fiscal year or fraction thereof.
 - (4) A financial balance sheet and statement of ownership for the its operations within the Town of Standish which shall be open for public inspection. Said statements and balance sheet shall be sworn to by the person preparing same and by Licensee or an officer of Licensee.

- (5) A report containing the number of subscribers within the Town of Standish, as of December 31st, and the number of connections and disconnections made during the reporting year.
 - (6) A listing of its properties devoted to system operations under the franchise together with an itemization of its investment in each of such properties. This report along with the other reports listed above and any other such reasonable information as the Town may request, shall be certified by a certified public accountant.
 - (7) Any other reports required by State and/or federal law.
- (b) *Annual facilities report required.* The licensee shall file annually with the Town not later than one hundred and twenty (120) days after the end of its fiscal year and within (120) days after the end of each subsequent fiscal year, two (2) copies of a total facilities report setting forth the total physical miles of plant installed or in operation during the fiscal year. Such report shall also contain any revisions to the system "as built" maps filed with the Town under the provisions of subsection (d) herein. In addition, the licensee shall file quarterly construction reports with the Town during the initial build or subsequent rebuild of the system as required by the Franchise.
- (c) *Line extension reports required.* During the first year after the commencement of this Franchise Agreement, Licensee shall file with the Issuing Authorities, quarterly reports detailing the areas in the Towns in which the Cable System has been extended during said reporting period, the dates of said extensions and the number of households capable of receiving cable service(s). In succeeding years, Licensee shall file said report on an annual basis. This report shall also contain details of any and all line extension requests that have been made during the reporting period, the status of any such line extension requests, and all pending line extensions not yet completed.
- (d) *Customer service complaint reports.* Every three (3) months, beginning from the Effective Date of the Franchise Agreement, Licensee shall notify the Town, on forms approved by the Town a list of complaints of Subscribers received during the reporting period and the manner in which the complaints have been met, including the time required to make any necessary repairs or adjustments.
- (e) *System maps required.* The licensee shall file with the Town not later than three (3) months after the system is substantially completed, a set of system "as built" maps, drawn to scale,

showing all of the CATV system facilities installed in the Town. Subscriber service drop facilities need not be shown.

- (f) *Certificate of performance.* The licensee shall file with the Town not later than three (3) months after the system is substantially completed and within three (3) months after the end of its fiscal year during which a franchise was accepted and within three (3) months after the end of each subsequent fiscal year two (2) copies of the following supplemental information:
- (1) If a nonprofit corporation, a list of all current bondholders both of record or beneficial. If a public corporation, a list of all shareholders who individually or as a concerted group hold ten (10) per cent or more of the voting stock of the corporation.
 - (2) A current list of all licensee's officers and directors including addresses and telephone numbers.
 - (3) Copies of all pertinent agreements or contracts, including pole-use agreements, entered into by the licensee during the fiscal year in the conduct of its business under a franchise granted.
 - (4) The names and both business and residential addresses and phone numbers of the broadband telecommunications system resident manager and engineer.
 - (5) If the licensee is a subsidiary, a copy of the annual report of the parent firm.
- (f) *Public availability of reports.* Such reports as required under this article must be available to the public in the office of the Town clerk, during normal business hours. Subscribers shall be notified of the availability of such reports by the inclusion of such notice in the subscriber agreement if used. Other methods of notification if required shall be approved by the broadband telecommunications regulatory board.
- (g) *Correspondence.* The licensee shall simultaneously file with the Town a copy of each petition, application, report and communication transmitted by the licensee to, or received by the licensee from, any federal, state or other regulatory commissions or agencies having competent jurisdiction to regulate and pertaining to the operations of any broadband telecommunications system authorized hereafter.
- (h) *Town's access to records.* The Town shall have access during all normal business hours and upon the giving of reasonable notice, to the licensee's contracts, engineering plans, accounting, financial data and service records relating to the property and

the operations of the licensee and to all other records required to be maintained according to said franchise. Records of subscriber lists and statistical data shall be made available only upon showing to the licensee by the Town that such records are material to the Town's regulatory program.

- (i) *Subscriber agreement.* The form of licensee's agreements with its subscribers shall be subject to the approval of the council.

Sec. 14-205. Franchise payment.

- (a) *Annual franchise payment.* A licensee of a franchise shall pay to the Town a quarterly fee in the amount established in the franchise. This payment shall be based upon the licensee's quarterly gross subscriber revenues, as defined herein, and shall be in addition to any other payment owed to the Town by the licensee and shall not be construed as payment in lieu of municipal property taxes or other state, county or local taxes.

- (b) *Method of computation; interest:*

- (1) Sales taxes or other taxes levied directly on a per subscription basis and collected by the licensee shall be deducted from the local quarterly gross subscriber revenues before computation of sums due the Town is made. Payments due the Town under the provisions of subsection (c) above shall be computed quarterly for the preceding quarter and shall be paid on the first day of January, April, July and October at the office of the Town clerk during its regular business hours. The first payment period shall commence as of the effective date of the franchise. The Town shall be furnished a statement with each payment, by a certified public accountant, reflecting the total amounts of quarterly gross subscriber revenues, and the above charges, deductions and computations for the quarterly payment period covered by the payment.

- (2) In the event that any statement or payment is not furnished as required, interest on the amount due, as determined from the quarterly gross subscriber revenues as computed by a certified public accountant, selected by the Town, shall accrue from the date of the required submittal at a rate of interest of one and one-half per cent per month.

- (c) *Rights of recomputation.* No acceptance of any payment by the Town shall be construed as a release or as an accord and satisfaction of any claim the Town may have for further or additional sums payable as a franchise fee under this article or for the performance of any other obligation of the licensee.

Sec. 14-206. Bonds.

- (a) *Proposal bond.* Each applicant for a franchise shall submit a proposal bond in a form acceptable to the Town or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Town in an amount of fifteen thousand dollars (\$15,000.00). The licensee's proposal bond shall be returned upon provision of the performance bond as required in subsection (b) below.
- (b) *Performance bond.* The licensee shall maintain, and by its acceptance of any franchise agrees that it will maintain, through the term of the franchise, any renewal or extension thereof, or during the restoration of property following franchise termination or revocation, a faithful performance bond running to the six Towns comprising the Saco River Area, namely, Standish, Buxton, Hollis, Limington, Limerick and Waterboro, with a corporate surety licensed to do business in the State of Maine and approved by the Town in the penal sum total of five hundred thousand dollars (\$500,000.00) conditioned upon the faithful performance of the licensee and upon further condition that in the event the licensee shall fail to comply with any law, ordinance or regulation governing the franchise, there shall be recoverable jointly and severally from the principal and surety of the bond, any damages or loss suffered by the Town as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the licensee, plus a reasonable allowance for attorney's fees and costs, up to the full amount of the bond. Upon completion of the system rebuild, the amount of said bond shall be reduced to the sum of one hundred thousand dollars (\$100,000.00). The bond shall contain the following endorsement:
- "It is hereby understood and agreed that this bond may not be cancelled nor the intention not to renew be stated until thirty (30) days after receipt by the Town of Standish, Maine by registered mail of one (1) copy of a written notice of such intent to cancel or not renew."
- (c) *Return of proposal bond.* Proposal bonds or certified checks received in lieu thereof from applicants whose proposals are not accepted by the Town shall be returned to the applicant as soon as the proposal is rejected.
- (d) *Bond evidence to be filed with Town.* The performance bond and written evidence of payment of required premium, shall be filed and maintained with the Town during the term of any franchise granted hereafter, or any renewal thereof.

Sec. 14-207. Reserved.

Sec. 14-208. Complaint procedure.

- (a) *Complaints.* Complaints, dispute and disagreements which are not resolved by the licensee to the subscriber's satisfaction, may be filed with the Town, provided such filing complies with the time limits prescribed below.
- (b) Any complaint, dispute or disagreement may be filed with the Town provided it falls within the time limits set forth below:
- (1) Within thirty (30) days after final action on the complaint, dispute or disagreement by the licensees; or
 - (2) Within thirty (30) days after notice of the complaint, dispute or disagreement has been given to the licensee and the licensee has not resolved on the complaint, dispute or disagreement.
- (c) *Investigation and report.* Within ten (10) days after receiving notice of such complaint, dispute or disagreement, the Town manager shall request an investigation of the same to be made by the Town representative to the Saco River Cable Committee. After completion of the investigation, the Town manager shall issue a report either dismissing the complaint or directing the licensee to take appropriate action to remedy the complaint, dispute or disagreement, and shall cause a copy of such report to be forwarded to each party. The report of the Town manager shall be final.
- (e) *Notice to parties.* The Saco River Cable Committee shall provide reasonable advance notice of the time and place of any hearing to the parties.

Sec. 14-209. Saco River Cable Committee.

- (a) *Town Representative to Saco River Cable Committee appointed.* There is hereby established a Town Representative and an alternate member to the Saco River Cable Committee hereinafter referred to as the "Committee."
- (b) *Representation:*
- (1) The each town on the Saco River Cable System (see section 14-206 (b) above) shall be allowed to appoint two (2) members of the public to serve on this committee, one primary member and one alternate member.
- (c) *Duties of the members.* The duties of the members shall be:
- (1) Reviewing appeals taken pursuant to section 14-208 of this article. Its decisions or findings shall be reported to the Town Manager.

- (2) Reviewing and auditing reports submitted to the Town as required in section 14-204 herein, and such other correspondence as may be submitted to the Town concerning the operation of the broadband telecommunications system so as to insure that the necessary reports are completed and fulfilled pursuant to the terms of the article.
- (3) Work with the public and the media to assure that all records, reports, rules and charges pertinent to the broadband telecommunications system in the Town of Standish are made available for inspection at reasonable hours upon reasonable notice.
- (4) Confer with the licensee and advise on the interconnection of the Town's telecommunications system with systems serving other governmental or educational entities.
- (5) Solicit, review and provide recommendations to the council for selection of applicants for franchise.
- (6) Assist with development and oversight of a regional community television access center to provide the citizens of the Town of Standish and other Saco River Area Towns with the training and equipment to produce local community television.
- (7) Monitor the procedural aspects and operations of the local community television channels. Make recommendations to the operators of those channels if requested.
- (8) Coordinate and advise the educational, governmental and public users of the CATV system access channels in their programming efforts.
- (10) Perform such duties and functions relative to coordination with committees of other towns to assure the mutually satisfactory interchange of information between the towns on the Saco River System.
- (11) If requested by council, assist in the preparation of an annual budget to the council for the administration and operation of the committee.
- (12) Undertake such other duties as the council may assign from time to time and as may be required by the by-laws of the committee.

Sec. 14-210. Compliance.

The licensee shall at all times comply with all applicable federal, state and Town laws, ordinances and regulations.

Sec. 14-211. Separability.

If any section, subdivision, sentence, clause, phrase or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction or by any federal regulatory agency, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.