

TOWN OF HARPSWELL

Cable Television Ordinance Adopted March 5, 1998

Article 1 - Establishment and Purpose

An ordinance to (1) replace and substitute when appropriate for the CATV Ordinance adopted by the Selectmen of the Town of Harpswell on July 22, 1982 and in no case later than the entry into effect of the next franchise agreement occurring after the date of adoption, and (2) provide for regulation by the Town and use of the cable television system including its construction, operation, upgrading, improvement, modification and maintenance in, along, upon, across, over and under the roads, streets, alleys, easements, public ways and public places now existing or dedicated, and all extensions thereof and additions thereto in the Town of Harpswell, including poles, wires, cables, underground conduits, manholes, conductors and fixtures necessary for a cable television system and to provide conditions accompanying the grant of a franchise and providing for the Town's regulation of cable television system operation.

Article 2 – Definitions

2.01 “Cable Act” means the federal Cable Communications Policy Act of 1984, the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, as amended.

2.02 “Cable Service” means (a) the one-way transmission to subscribers of video programming, or other programming service; and (b) subscriber interaction, if any, or other programming which is required for the selection of such video programming service, or other programming service.

2.03 “Cable System” or “Cable Television System” means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service (as defined in the Cable Act) which includes video, voice or data programming, and which is provided to multiple subscribers within the Town. However, such terms do not include the following:

- I) a facility that serves only to retransmit the television signals of one (1) or more broadcast stations; or
- ii) a facility that serves only subscribers in one (1) or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities use any public rights-of-way; or
- iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that such facility shall be considered a cable system (other than for purposes of Section 621© of the Cable Act (codified at 47 USC Section 541) to the extent such facility is used in the transmission of video, voice, or data programming or services directly to subscribers; or

iv) facilities of any electric utility used solely for operating its electric utility.

2.04 "Cable Television Operator" or "Company" means any person, firm, partnership, limited partnership, limited liability company, corporation or similar entity controlling, operating, managing or leasing a cable television system within the Town of Harpswell.

2.05 "Easement" means and shall include any public easement or other compatible use created by dedication, or by other means, to the Town for public utility purposes or any other purpose whatsoever, including for Cable Service. "Easement" shall include a private easement used for the provision of Cable Service.

2.06 "FCC" means the Federal Communications Commission and/or such other federal regulatory agency, as now or in the future may have jurisdiction to oversee Cable Television Companies.

2.07 "Franchise" means the initial authorization or subsequent renewal granted by the Board of Selectmen in order for a person to construct, operate, and/or maintain a franchised Cable System in all, or part, of the Town.

2.08 "Franchise Agreement" means the separate contract by which the Board of Selectmen grants a Cable Television Company the right to operate a franchised Cable System within all, or a part, of the Town.

2.09 "Franchise expiration" or "Franchise Agreement expiration" means the date of expiration, or the end of the term, or any extension thereof, of a franchised Cable Television Operator, as provided in a franchise agreement.

2.10 "Franchise Fee" means a fee or charge that the Town requires as payment for the privilege of using roads, streets, alleys, easements, public ways and public places now existing or dedicated, and all extensions thereof and additions thereto in the Town in order to construct, operate, upgrade, improve, modify and maintain a franchised Cable System.

2.11 "Franchised Cable Television Operator" means a person that is awarded a franchise by the Board of Selectmen to construct, operate, upgrade, improve, modify and maintain a Franchised Cable System within all, or part, of the Town.

2.12 "Gross Revenues" for any period means any and all revenues for that period derived from, or attributable to, the operation of any Cable System within the Town, or in the case of a Franchised Cable Television Operator, derived from the exercise of its Franchise, unless excluded by the Board of Selectmen. "Gross revenues" include any and all revenues in whatever form (cash, exchange or other consideration) of the Franchisee, or any Related Entity, derived directly or indirectly from the operation of the Cable System or providing to any other party access to the subscribers of the Cable System within the Town, excluding however, revenues from activities by a Related Entity that are not ordinarily receivable by a Cable Television Operator (e.g., revenues from the production or sale of programming as such to both related and unrelated entities).

For purposes of this definition "Gross Revenues" derived from the operation of any Cable System within the Town include, but are not limited to: revenues from subscriber rates; bulk billing rates, menu-driven services; pay-per-view events or channels; premium channels; service tiers; service clusters; multi-plexing any channel and/or multi-channel programming services; institutional networks; infomercial channels; transmission of programming; channel leases, instruction programs; commercial access; advertising; installations; late charges; collection charges; and rebates or commissions received from services offered through the Cable System, including travel, home shopping services, digital radio, interactive game channels, or music services which allow a sharing of revenues from cassette or compact disc, or video disc sales.

Unless prohibited or preempted by either federal or state law, "Gross Revenues" shall mean any and all compensation from all ancillary multi-channel services, or other services provided by use of the system, multi-channel operations, and multi-channel service-related activities within the Town, including, but not limited to: user fees; sale of multi-channel service equipment; revenues from advertising inserts placed into periodic billing statements or other notices; revenues from pay-per-use telephone numbers (such as "900" or "700" numbers) or revenues from other interactive cable or informational services (including revenues or commissions from any interactive video game channels or services); revenues from any service providing signal alert, safety alert or related technology; revenues from personal communications networks or personal communications services; rental or sale of descrambling converters or other devices; rental or sale of remote control devices (including those with volume control); rental or sale of A/B or input selector switches; rental or sale of interactive games or software offered on, or via, the Cable System; and rental or sale of digital radio equipment.

Included within "Gross Revenues" are any revenues within the provisions of this paragraph to which the Franchised Cable Television Operator would have been entitled had the arrangement between itself and a Related Entity been at arms length between or with an unrelated entity.

"Gross Revenues" do not include:

- I) any revenues billed but not collected;
- ii) revenues credited or refunded to subscribers;
- iii) any taxes imposed and/or assessed by law on subscribers (including state sales or use taxes, but excluding any state or local franchise fees) which a Franchised Cable Television Operator collects and pays in full to the applicable authorities; and
- iv) except as provided hereinabove, any revenues received by any person other than such Franchised Cable Television Operator with respect to cable service or other service provided by such person over the Cable System for which charges are assessed to subscribers but not received by such Franchised Cable Television Operator.

2.13 "Person" means any individual, corporation, limited partnership, limited liability company, estate, trust, partnership, association of two (2) or more persons having a joint common interest, joint stock company, or governmental entity.

2.14 "Private Communications Network" means any ancillary or aligned component of a Cable System consisting of communications lines, cables, equipment or facilities which are used to provide tele-communications service that in any manner uses or occupies roads, streets, alleys, easements, public ways and public places now existing or dedicated, and all extensions thereof and additions thereto in the Town. However, "private communications network" does not include any part of a State or FCC-licensed local government local exchange telephone company, or any part of a federal, state, county, or local government-owned telecommunications system.

2.15 "Related Entity" means any affiliate, subsidiary, parent or other person, firm, limited partnership, limited liability company or corporation in which the Franchised Cable Television Operator has a financial interest, through record or beneficial ownership of stock or otherwise in such affiliate, subsidiary, parent or person, firm, limited partnership, limited liability company or corporation; and it further means any affiliate, subsidiary, parent or other person, firm, limited partnership, limited liability company or corporation which has a financial interest in the Franchised Cable Television Operator through record or beneficial ownership of stock or otherwise.

2.16 "Town" shall mean the Town of Harpswell organized and existing under the laws of the State of Maine and the area within its territorial limits.

Article 3 – Franchise Required

No person shall install, construct, operate, upgrade, improve, modify and maintain in, along, upon, across, over and under the roads, streets, alleys, public ways and public places now existing or dedicated, and all extensions thereof and additions thereto in the Town of Harpswell any equipment or facilities for the operation of a cable television system unless a franchise agreement authorizing the use of said public roads, streets, alleys, public ways and public places has first been obtained pursuant to the provisions of this Ordinance and unless said franchise agreement is in full force and effect.

Article 4 – Franchise Agreement

4.01 The Selectmen of the Town may contract on such terms, conditions and fees as are in the best interests of the Town and its residents with one or more Cable Television Companies for the operation of a cable television system within the Town, including the granting of non-exclusive franchise agreements for the operation thereof subject to a minimum period and maximum period determined by the Board of Selectmen.

4.02 Applicants for a franchise agreement, including applicants for renewal of a franchise agreement shall pay a reasonable fee to the Town to defray the cost of public notices, advertising and other expenses relating to, or incurred by the Town in acting upon

such applications, including the expense of any legal advice obtained by the Town in considering and reviewing such application. The amount of said fee is to be determined by the Selectmen. The application shall be filed with the Town Clerk and shall contain such information as the Town may require, including but not limited to:

- I) a general description of the applicant's proposed operation;
- ii) a schedule of proposed changes;
- iii) financial statements for each of its previous three (3) fiscal years;
- iv) an estimated ten-year financial projection of its proposed system, including an estimate of costs related to any upgrade, improvement or expansion of the system;
- v) its proposed annual Town franchise fee or the basis for determining the same; and
- vi) a statement detailing the prior operational experience of the applicant in cable television, microwave service, and any other services the applicant proposes to offer, including that of its officers, management and staff associated with the proposed operation.

4.03 Prior to issuing a request for proposals to any Cable Television Operator or companies for franchise agreements or renewals thereof, the Town shall hold a public hearing or conduct some other process to determine any special local needs or interests with respect to cable television service and shall allow for a period of public comment on the request for proposals.

4.04 Applications for a franchise, including applications to renew any existing franchise, and any submittals in response to a request for proposals or solicitation of bids and related documents, are public records. Upon the filing of such documents, the Town shall provide reasonable notice to the public that such documents are open to public inspection during reasonable hours.

4.05 A franchise agreement may be revoked by the Selectmen for good and sufficient cause after due notice to the Franchised Operator and a public hearing thereof, with the sole right to appeal to Superior Court.

Article 5 – Public Hearing

Before authorizing the issuance of any such franchise agreement, including renewals, and approvals of any transfers of ownership, property or rights under franchise agreements, the Selectmen shall review the applicant's character, financial and technical qualifications and the adequacy and feasibility of its qualifications to operate a cable television system within the Town, and shall conduct a public hearing thereon with at least seven days advertised notice prior to said public hearing. Such public hearing shall provide a

reasonable opportunity for public input on the proposed franchise agreement, renewal or transfer.

Article 6 – Performance Bond and Insurance Coverage

6.01 Upon the execution of any such franchise agreement the Cable Television Operator shall file a surety company performance bond in the amount and in such form as is acceptable to the Town.

6.02 The Town in making this determination may rely upon the advice of the Selectmen and/or other appropriate Town officials. The amount of said bond shall not be less than the estimated cost of performing any work specified in the franchise agreement. Said bond shall be conditioned upon the faithful performance of said contract and full compliance with any laws, ordinances, or regulations governing said franchise agreements.

6.03 When the Cable Television Operator has completed construction, upgrading, improvement, expansion or other modification of the system, as set forth in the franchise agreement and any amendment thereof, and provided that the Cable Television Operator is otherwise in compliance with the terms of the franchise agreement, the Selectmen may permit the Company to reduce said bond to an amount to be determined by the Selectmen.

6.04 The Cable Television Operator shall also, upon execution of any such franchise contract, provide evidence of such public liability, copyright infringement and other insurance coverage as the Selectmen may require.

6.05 The Selectmen may provide for a cash security bond in lieu of a Performance Bond and appropriately condition the security bond.

Article 7 – Cable Television Franchise Negotiating Committee

The Selectmen may establish a Cable Television Franchise Negotiating Committee comprised of up to five (5) volunteer members which shall advise and review the preparation of specifications for bids or requests for proposals for cable television franchises and invite bids or issue requests for proposals for said franchises. Before the Selectmen issue a request for proposals and soliciting bids, the Cable Television Franchise Negotiating Committee shall determine any special local needs or interests, whether by actively seeking to determine those needs or interests or by allowing a period for public comment on a proposed request for proposals. Upon receipt of bids or proposals, the Committee shall study same and make recommendations on the awarding of a franchise to the Selectmen for their approval.

Article 8 – Cable Television Advisory Board

8.01 The Selectmen may establish a Cable Television Advisory Board.

8.02 The Cable Television Advisory Board shall have the following duties:

- I) To propose such rules and regulations as it may deem necessary for monitoring the operation of the Cable Television System said rules and regulations being subject to the approval of the Selectmen. All such rules and regulations shall not be in conflict with those that have been or may be adopted by the FCC for the operation of such systems, but may, unless expressly preempted, be more detailed, more restrictive, or more strict than applicable FCC regulations;
- ii) To make recommendations to the Town and the Cable Television Operator concerning educational and local interest programming;
- iii) To resolve complaints, disputes, or disagreements between subscribers and the Company;
- iv) To annually review:
 - 1) the operation and performance of the Cable System to assure that it shall, at minimum, conform at all times to the specifications established by any federal or State regulatory agencies having jurisdiction thereof, and such specifications existing on the date of each such review;
 - 2) the Cable Operator's reports of complaints and requests for service;
 - 3) records and reports with respect to the calculation of the franchise fee and its payment to the Town; and
- v) Generally to assure and confirm that the Cable Operator is complying with its obligations under the Franchise Agreement and this Ordinance.

Article 9 – Contents of Franchise Agreement

Each franchise agreement between the Town and any Cable Television Operator shall contain, but is not limited to, the following provisions:

- I) A statement of the area or areas to be served by the Cable Television Operator;
- ii) A line extension policy;
- iii) Payment to the Town, as compensation for the Cable Television Operator's use of the roads, streets, alleys, easements, public ways and public places now existing or dedicated, and all extensions thereof and additions thereto in the Town, of a franchise fee calculated as a percentage of the Cable Television Operator's Gross Revenues.

- iv) A provision for renewal, with a minimum and maximum term to be determined by the Selectmen;
- v) Procedures for the investigation and resolution of subscriber complaints by the Cable Television Operator;
- vi) An agreement to comply with the requirements of Maine law regarding consumer rights and protection and any amendments thereto;
- vii) Any other terms and conditions that are in the best interest of the Town; and
- viii) A provision for access to, and facilities to make use of, one or more local public educational and governmental access channels.

Article 10 – Rules, Regulations and Procedures

The Selectmen of the Town shall, either directly or through their designees:

- i) Adopt such ordinances, rules and regulations as they may deem necessary for regulating the operation of a cable television system;
- ii) Make recommendations to the Cable Television Operator concerning educational and local interest programming;
- iii) Resolve complaints, disputes or disagreements between subscribers and the Company;
- iv) Conduct public hearings and issue such appropriate orders as may be necessary to enforce the provisions of this Ordinance and any regulations, rules and orders and franchise agreements, including the revocation of franchise agreements and the assessment of penalties for violations as well as to correct any deficiencies in the operation of the system. The Selectmen's decisions and findings shall be final and binding upon all parties including the Company, except such decision or finding may be appealed to Superior Court;
- v) All such ordinances, regulations, rules and orders of the Selectmen shall not be in conflict with those that have been or may be adopted by the FCC for the operation of such systems, except that unless expressly preempted, such ordinances, regulations, rules and orders may be more detailed, more strict, or more restrictive than applicable FCC regulations; and
- vi) As part of its enforcement authority, the Selectmen have the authority to bring legal action for damages, penalties and for injunctive relief. The Town shall be entitled to recover its costs, including reasonable

attorneys fees, incurred in the enforcement of this Ordinance, the provisions of a franchise agreement, or any local rules or regulations adopted pursuant to this Ordinance.

Article 11 – Compliance with all Laws

Cable Television Companies shall at all times comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, ordinances, codes and orders.

Article 12 – Severability

Should any section of this Ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

This Ordinance shall be effective on the date of its adoption by the Selectmen of the Town of Harpswell.