

CABLE COMMUNICATION SYSTEM  
GRANT OF LICENSE AND GENERAL PROVISION

ARTICLE I

Section 20-1. Title of ordinance.

This ordinance shall be known and may be cited as the “Multi-Channel T. V. Cable Communication License’, hereinafter “License”, and it shall become a part of the ordinances of the town.

Section 20 - 2. Definitions.

For the purpose of this ordinance the following terms, phrases, words and their derivations shall have the meaning given herein.

- (a) “Basic Service” shall mean all subscriber services provided by the company, including the delivery of broadcast signals, covered by the regular monthly charge paid by all subscribers, excluding optional services for which a separate charge is made.
- (b) “Cable Communication system” or ‘CATV System”, shall mean a system of antennas, cables, wires, towers, waveguides, 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 electronics or electrical signals, located in the jurisdictional area. Said definition shall not include any such facility that serves or will serve only subscribers in one or more multiple unit dwellings under common ownership, control or management, and does not use town right-of-way.
- (c) “Class IV Channel” 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 communication system.
- (d) “Town” is the Town of Floyd and its jurisdictions in the State of Virginia.
- (e) “Company” is Blue Ridge Cablevision, Inc. the grantee of rights under this ordinance, or its successor, transferee or assignee.
- (f) “Converter” means an electronic device, which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by an appropriate channel selector also permits a subscriber to view all signals included in the basic service delivered at designated converter dial locations.
- (g) “Council” shall mean the governing body of the Town of Floyd.
- (h) “FCC” shall mean the Federal Communications Commission and any legally appointed, designated or elect agent or successor.
- (i) “Gross Revenues” shall mean all revenue collected directly or indirectly by the Company, from or in connection with the operation of cable communication system pursuant to this ordinance; provided, however, all revenues, shall include but not be limited to, basic subscriber service monthly fees, net pay television fees, installation and reconnection fees, leased channel fees, converter rentals, studio rental, production equipment and personnel fees, and advertising revenues; and that this shall not include any taxes on services furnished by the Company herein imposed directly upon any subscriber or user by the state, city or other governmental unit and collected by the Company on behalf of said governmental unit.
- (j) “Installation” shall mean the connection of the system from feeder cable to subscribers’ terminals.

(k) "Jurisdictional area" area two miles from town corporate limits in which the town has jurisdiction over CATV.

Section 20-3. Grant.

The town hereby grants to company a CATV system License subject to all the terms and conditions as herein provided.

Section 20-4. Rights and privileges of company.

The license granted by the town pursuant to this ordinance shall grant to the Company the right and privilege to erect, construct, operate and maintain, in, upon, along, across, above, and over the public property of the town (including but not limited to streets and highways, easements, sidewalks and pedestrian rights-of-way, public alleys and other spaces owned by or dedicated to the town or to general public use) now in existence and as may be created or established during its term any poles, wires, cable, and other television conductors and fixtures necessary for the maintenance and operation of a 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 the inhabitants of the town of the terms and conditions hereinafter set forth.

Section 20-5. Agreement.

Upon adoption of this license and execution of a written acceptance of it by the Company, the Company agrees to be bound by all the terms and conditions contained herein.

Section 20-6. Term.

The term of the license to be granted by the town pursuant to this ordinance shall be for a period of ten years from and after the effective date.

Section 20-7. Effective date.

The license term shall commence ten days following the adoption of this ordinance or the first day of the month following adoption whichever is sooner.

Section 20-8. License area.

This license is granted for the entire area of the Town of Floyd as its boundaries are defined at the time of the adoption of this ordinance and its jurisdictional area. This license is also effective in areas where the jurisdiction of the town is maintained with the consent and permission of all other applicable governing bodies. The area for which the license is granted shall be referred to hereinafter as the License Area.

Section 20-9. Fees.

The town shall, by resolution, set a license fee not to exceed \$500.00 annually. This fee shall be paid as partial consideration for the rights granted in the license and shall be in addition to and not in lieu of, any business license tax levied upon the Company by the town pursuant to general law.

Section 20-10. Police Powers.

In accepting this license, the Company acknowledges that its rights hereunder are subject to the police power of the town to adopt and enforce general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the town.

Any conflict between the provisions of this license and any other present or future lawful exercise of the town's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction or applies exclusively to Company or CATV systems which contains provisions inconsistent with this license shall prevail only if upon such exercise, the town finds an emergency exists constituting a danger to health, safety, property or general welfare or such exercise is mandated by law.

Section 20-11. CATV License required.

No CATV system shall be allowed to occupy or use the streets of the town or be allowed to operate without having obtained a CATV license from the town.

Section 20-12. Use of company facilities.

The town shall have the right, during the life of this license, to install and maintain free of charge upon the poles of the grantee any wires, pole fixtures or traffic signs that do not unreasonably interfere with the CATV operations of the grantee. The town agrees to indemnify, defend, and hold the company harmless from actions resulting from the town's use thereof.

Section 20-13. Valuation of license.

The Company agrees by accepting this license that, for purposes of determining a fair return on invested capital, it shall not be permitted to assign any value to "goodwill" or to any right or privilege emanating from the grant of the license itself.

Section 20-14. Notices.

All notices from Company to the town pursuant to this license shall be to the mayor. Company shall maintain with the town, throughout the term of this license, an address for service of notices by mail. Company shall also maintain a local office and telephone number for the conduct of matters related to this license during normal business hours.

Section 20-15. Letter of credit.

- (a) Within thirty days after the award of this license, the Company shall deposit with the town a letter of credit from a financial institution in the amount of \$2,500.00. The form and content of such letter of credit shall be approved by the Town Attorney. The letter of credit shall be used to insure the faithful performance of the company of all provisions of this license; and compliance with all orders, permits and directions of any agency, commission, board, department, or office of the town having jurisdiction over its acts or defaults under this license, and the payment by the Company of any claims, liens and taxes due the town which arise by reason of the construction, operation or maintenance of the system.
- (b) The letter of credit shall be maintained at \$2,500.00 during the entire term of this license, even if amounts have to be withdrawn pursuant to subdivision (a) or (c) of this section.
- (c) If the Company fails to pay to the town any compensation within the time fixed herein, or fails after ten (10) days notice to pay to the town any taxes due and unpaid, or fails to repay the town within ten days any damages, costs or expenses which the town is compelled to pay by reason of any act or default of the company in connection with this license, or fails after ten (10) days notice

of such failure by the town to comply with any provision of this license which the town reasonably determines can be remedied by demand on the letter of credit, the town may immediately request payment of the amount thereof, with interest and any penalties, from the letter of credit. Upon such request for payment, the town shall notify the company of the amount and date thereof.

(d) The rights reserved to the town with respect to the letter of credit are in addition to all other rights of the town, whether reserved by this license or authorized by law. No action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the town may have.

(e) The letter of credit shall contain the following endorsement:

“It is hereby understood and agreed that this letter of credit may not be cancelled by the issuer nor the intention not to renew be stated by the issuer until thirty days after receipt by the town, by registered mail, of a written notice stating such intention to cancel or not to renew.

Section 20-16. Liability and insurance.

(a) The Company agrees by the acceptance of this license to indemnify the town and hold it harmless from liability on account of injuries or damage to persons or property arising out of the construction, maintenance, repair or operation of its cable television system. In the event that suit shall be brought against the town either independently or jointly with the company on account thereof, the Company upon notice by the town shall defend the town in any such suit at the cost of the company. In the event of final judgment being obtained against the town either independently or jointly with the company, the company shall indemnify the town and pay such judgment with all costs and hold the town harmless therefrom.

(b) The Company by its acceptance of the license specifically agrees that it will pay all expense, incurred by the town in defending itself with regard to all damages and penalties mentioned in subsection above. These expenses shall also include the reasonable value of any services rendered by the Town Attorney in defending itself with regard to all damages and penalties mentioned in subsection above. These expenses shall include all out-of-pocket expenses, such as attorney fees, and shall also include the reasonable value of any services rendered by the Town Attorney or his assistants or any employees of the town or its agents.

(c) The Company by its acceptance of the license specifically agrees that it will maintain, throughout the term of the license, liability insurance insuring the town and the company with regard:

- (1) \$100,000 for property damage to any one person;
- (2) \$300,000 for property damage in any one accident;
- (3) \$1,000,000 for personal injury to any one person;
- (4) \$1,000,000 for personal injury in any one accident.

(d) The insurance policy obtained by the Company in compliance with this section must name this town as an additional insured. Such insurance policy, along with written evidence of payment of required premiums, shall be filed and maintained with the Town Attorney and the Clerk of the Town during the term of the license, and may be changed from time to time to reflect changing liability limits. The Company shall immediately advise the Town Attorney and Mayor of any pending or threatened litigation that would affect this insurance.

(e) Neither the provisions of this section nor any damages recovered by the town thereunder, shall be construed to limit the liability of the company under this license for damages.

(f) All insurance policies maintained pursuant to this license shall contain the following endorsement;

“It is hereby understood and agreed that this insurance policy may not be cancelled by the surety nor the intention not to renew be stated by the surety until thirty days after receipt by the town, by registered mail, of a written notice of such intention to cancel or not to renew.

Section 20-17 Indemnification.

Company shall, at its sole cost and expense, fully indemnify, defend and hold harmless the town, its officers, boards, commissions and employees against any and all claims, suits, actions, liability and judgments for damages (including but not limited to expenses for reasonable legal fees and disbursements and liabilities assumed by the town in connection therewith):

- (a) To persons or property, in any way arising out of or through the acts or omissions of Company, its servants, agents or employees or to which Company’s negligence shall in any way contribute.
- (b) Arising out of any claim for invasion of the right of privacy, for defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation (excluding claims arising out of or relating to the towns own programming); and
- (c) Arising out of Company’s failure to comply with the provisions of any federal, state, or local statute, ordinance or regulation applicable to the company in its business hereunder.

The foregoing indemnity is conditioned upon the following:

The town shall give Company prompt notice of the receipt of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. Nothing herein shall be deemed to prevent the town from cooperating with company and participating in the defense of any litigation by its own council at its sole cost and expense. No recovery by the town of any sum by reason of the Letter of Credit required in Article 1, Section 15, hereof shall be any limitation upon the liability of the Company to the town under the terms of this section, except that any sum so received by the town shall be deducted from any recovery which the town might have against the company under the terms of this section.

Section 20-18. Rights of individuals.

- (a) Company 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, or sex. Company shall comply at all times with all other applicable federal, state and local laws and regulations, and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this ordinance by reference.
- (b) Company shall strictly adhere to the equal employment opportunity requirements of federal, state and local regulations, as amended from time to time.
- (c) No signals of a Class IV cable communication channel shall be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of this provision. Such authorization is required for each type or classification of Class IV cable communications activity planned; provided, however, that the Company shall be entitled to conduct system wide or individually addressed ‘sweeps’ for the purpose of verifying system integrity, controlling return path transmission, billing for pay service, or other lawful future services.

(d) The Company or any of its agents or employees, shall not, without the specific written authorization of the subscriber involved, sell, or otherwise make available to any party.

- (1) List of the names and addresses of such subscribers, or
- (2) Any list which identifies the individual viewing habits of subscribers.

Section 20-19. Severability.

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

ARTICLE II.  
CATV SYSTEM EXTENSION, OPERATION, AND PROCEDURES

Section 20-20. Service availability and record request.

The Company shall provide cable communications service throughout the entire license area pursuant to the provisions of this license and shall keep a record for at least two (2) years of all requests for service received by the Company. This record shall be available for public inspection at the local office of the Company during regular office hours.

Section 20-21. Levels of service and signal carriage.

The Company shall provide cable television programming services in four separate tiers. Separate rates shall be maintained, as provided in Article IV, for each tier of service.

(a) The first or basic service tier will offer the following programming:

	Network	Origination	Call Letters	Regular Channel	Cable Channel
1.	CBS	ROANOKE	WDBJ	7	
2.	NBC	ROANOKE	WSLS	10	
3.	ABC	LYNCHBURG	WSET	13	
4.	PBS	ROANOKE	WBRA	15	15
5.	INDEPENDENT	ATLANTA	WTBS	17	17
6.	INDEPENDENT	WASHINGTON	WTTG	5	6
7.	CBN	VA. BEACH	(CBN)		7
6.	CNN	ATLANTA	(CNN)		6
9.	INDEPENDENT	LOS ANGELES	(DISNEY)		9
10.	PUBLIC EDUCATION	FLOYD	(LOCAL)		
11.	LOCAL	FLOYD	(ACCESS		
12.	LOCAL	FLOYD	(		

(b) The second tier of service will offer the following Programming as a minimum

	Network	Origination	Call letters	Cable	Channels
13	Independent	ESPN (ESPN)	13		
14.	Independent	Nashville	(NTN)		12

An additional four channels will be set aside for new programming as it becomes available.

(c) The third tier of service will provide one channel for special pay television programming to include:

	Network	Call Letters	Cable Channel
15	Cinemax	CMX	11

A lockout device shall be provided for each customer who requests such a device for use on the converter needed for third tier services. The Company may charge the customer its actual cost for providing the lockout device.

(e) All channels shall be available for service within a reasonable period from the date the license is signed.

In the event any of the foregoing required channels or signals ceases to operate, or becomes unavailable for other reasons beyond the Company's control, the Company shall immediately notify the Mayor of the reasons for such unavailability, and shall within 12.0 days thereafter substitute some signal that is reasonably comparable, consistent with applicable FCC regulations.

#### Section 20-21. Underground wiring outside corporate limits.

In case of new construction or property development where utilities are to be placed underground, the developer or property owner shall give the Company reasonable notice of such construction or development, and of the particular date on which trenching will be available for the Company's installation of conduit, pedestals or vaults, and laterals to be provided at Company's expense. The Company shall also provide specifications as needed for trenching.

This section is to be enforced only with permission of any other applicable governing body.

#### Section 20-22. Installation and maintenance services.

Company shall provide at least the following services for installation and maintenance.

- (a) Standard Installation: Standard installation consisting of an aerial drop, not exceeding two hundred (200) feet, from a single pole attachment to the customer's residence. Drops in excess of two hundred (200') feet, concealed wiring, and underground drops shall be charged according to the rate schedule in Article IV.
- (b) Project pre-wiring:
  - (1) Company shall provide service to rewired projects according to the terms and conditions and at rates provided in the rate schedule.
  - (2) The Company shall review and approve methods and materials, supply specifications, technical assistance, and materials according to the rate schedule in Article IV.
- (c) Deposits: The Company may require a deposit for materials and services according to the rate schedule in Article IV.
- (d) Additional outlets: The Company shall provide additional outlets as customers may request according to the rate schedule in Article IV.

- (e) Transfer: When a current customer moves from one address within the license area to a second address within the license area and there is no lapse in service, the Company shall transfer service at a rate according to the rate schedule in Article IV.
- (f) Reconnections: The Company shall restore service to customers wishing reservations of service, provided the customer shall first satisfy any previous obligations owned.
- (g) Relocation or extension of cable: When a current customer requests that an extension or relocations of said customer's cable service be made, the Company shall do so according to the rate schedule in Article IV.
- (h) Service calls: Company shall provide CATV system repair service to customers' premises to test and repair service.

Section 20-23. Construction and technical standards.

- (a) Compliance with construction and technical standards:

The Company shall construct, install, operate and maintain its system in a manner consistent with all applicable laws, ordinances, construction standards, governmental requirements and FCC technical standards. The Company shall provide the town, upon request, with a written report of the results of the Company's annual proof of performance tests conducted pursuant to FCC standards and requirements.

- (b) Additional specifications

Construction, installation and maintenance of the cable communications system shall be performed in an orderly and workmanlike manner. Cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

The Company shall at all times comply with:

- (1) The National Electric Safety Code (National Bureau of Standards);
- (2) The National Electrical Code (National Bureau of Fire underwriters);
- (3) The Bell System Code of Pole Line Construction;
- (4) Applicable FCC or other federal, state and local regulations; and
- (5) Any other provisions which may be deemed necessary by Town resolutions.

In any event, the system shall not endanger or interfere with the safety of persons or property in the license area or other areas where the Company may have equipment located.

Any antenna structure used in the Company's cable communications system shall comply with construction, marking and lighting standards for antenna structures required by the United States Department of Transportation. Any antenna structure must conform to any local zoning ordinances if any are in effect.

All working facilities and conditions used during construction, installation and maintenance of the CATV system shall comply with the standards of the Occupational Safety and Health Administration.

Leakage shall be checked at reception locations for emergency radio service to prove no interference signal combinations are possible. Stray Radiation shall be measured adjacent to any proposed aeronautical navigation radio site to prove no interference is possible to airborne navigational reception in the normal flight patterns. FCC Rules and Regulations shall govern.

The Company shall maintain equipment capable of providing standby power for headend, transportation and trunk amplifiers to the 'hub' for a minimum of two hours.

The Company shall designate a channel which will be used for emergency broadcasts of both audio and video. The Company shall cooperate with the Town in the use and operation of an emergency alert override system.

In the construction, installation and maintenance of its system, Company shall use steel, cable and electronic devices, all of specialized and advanced design and type. In the operation of its system, the Company will employ personnel with training, skill and experience in electronics and communications. It shall not be deemed a breach of this provision or of this license if Company shows what material or personnel are not available to Company due to war or similar national emergency.

#### Section 20-24. Location and maintenance standards.

(a) Power to contract

Upon grant of this license to construct and maintain a CATV system in the Town, the Company may enter into contracts with any public utility companies or any other owner or lessee of any poles located within or without the Town for use of poles and posts necessary for proper installation of the system, obtain right-of-way permits from appropriate state, county or federal officials necessary to cross highways or roads under their respective jurisdictions to supply main trunk lines from the Company's receiving antennas, obtain permission from Federal Aviation Administration to erect and maintain antennas suitable to the needs of the system and its subscribers and obtain whatever other permits a town, county, state or federal agency may require.

(b) Interference with persons and improvements.

The Company's system, poles, wires, and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of person, or interfere with any improvements the Town may deem proper to make.

(c) Minimum interference with public ways.

All transmission and distribution structures, lines and equipment erected by the Company 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 of reasonable convenience of property owners who adjoin any of the said street, alleys or other public ways and places.

(c) (1). Notification

The Company shall notify the Mayor and the Superintendent of streets in writing or by telephone at least forty-eight (46) hours in advance of any proposed excavation in town streets or rights-of-way. Such notice shall include the time and place of the proposed excavation, in order to allow the town to locate and mark any town utility line which may be in the vicinity of such excavation. Compliance by the Company with the provisions of the Virginia Underground Utilities Damages Prevention Act (Code of Virginia, Section 58-

265.15, et seq.) shall be deemed compliance with the terms of this section.

(d) Restoration to prior condition.

In case of any disturbance of the pavement or surface of any street, sidewalk, alley or driveway, the Company shall, at its own cost and expense and in a manner approved by the town, replace and restore such pavement or surface to as good condition as existed before such work was commenced, and in accordance with standards for such work set by the Council. If the Company fails to make such adequate restoration of pavement within twenty-one (21) days after written notice from the Mayor, the Town may proceed to make such restoration and charge the cost thereof to the letter of credit as provided in Section 1-15.

(e) Relocation of the facilities.

In the event that at any time during the period of this license the Town shall lawfully elect to widen, improve, realign, change the grade of, any street, alley or public way, the Company shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures. The expense of such relocation shall be borne by the Company.

(f) Interference with utilities.

The Company shall not place poles or other fixtures where they will interfere with any gas, electric, or telephone facilities or obstruct or hinder in any manner the various utilities serving residents of the town.

(g) Easements.

All necessary easements over and under private property shall be arranged by the Company.

(h) Tree trimming.

The Company shall not remove any trees within any street, alley or public property without the prior consent of the town. All trimming of trees on public or private property by the Company or its agent of contracts shall be performed in accordance with the standards of the National Arborists' Association. The Company shall be responsible for any and all damages to any trees as a result of trimming, or to the land surrounding any trees which are trimmed or removed by the Company or its agents or contractors.

(i) Maintenance of system.

The Company shall maintain all parts of the system in good condition throughout the entire license period.

(j) Efficient service repairs.

The company shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use.

(k) Interference with reception.

Company shall not allow its cable or other operations to interfere with television reception of persons not served by the company.

Section 20-25. Continuity of Service Mandatory.

- (a) It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the Company are honored. In the event that the Company elects to overbuild, rebuild, modify, or sell the system, or the Town gives notice of intent to terminate or fails to renew this license, the Company shall make a reasonable effort to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances.

In the event of a change of license, or in the event a new operator acquires the system, the Company shall make a reasonable effort to cooperate with the Town and the new licensee or operator in maintaining continuity of service to all subscribers. During such period, the Company will be entitled to the revenues of any period during which it operates the system.

- (b) In the event Company fails to operate the system for seven (7) consecutive days without prior approval of the Town or without just cause, the Town may, at its option, operate the service under conditions acceptable to the Town or a permanent obligation for the Company, the Company shall reimburse the Town for all reasonable costs or damages, in excess of revenues from the system received by the Town, that are the result of the Company's failure to perform.

Section 20-26. Complaint Procedure.

- (a) During the term of this license, and any renewal thereof, the Company shall maintain within the Town a local business office for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, and similar matters. The office must be reachable by a local, toll-free telephone call. The Company shall provide the Town with the telephone number of the Company's agent to receive complaints regarding quality of service, equipment malfunctions and similar matters. The local office shall be open during normal business hours, and in no event less than 8:30 a.m. to 4:30 p.m., at least three days per week. Company shall provide the means to accept complaint calls 24 hours, seven days a week. Any device complaints from subscribers shall be investigated and acted upon as soon as possible. Any service complaint shall be resolved within three working days. Upon request by a subscriber, the Company shall credit that subscriber's account on a prorata basis for loss of service exceeding forty—eight (48) hours after notification. The Company shall keep a maintenance service log which will indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint and the time and date thereof. This log shall be maintained for two years and shall be made available for periodic inspection by the Mayor or his designee.
- (b) As new subscribers are connected to the system, the Company shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints including business address and local telephone number to which such inquiries or complaints are to be addressed.

Section 20-26. Company rules and regulations.

The Company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this license and to assure an uninterrupted service to each and all of its customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions of this license or applicable State and Federal Laws, rules and regulations.

Section 20-27. Payment of fee.

- a. The license fee required under Section 20-9 shall be payable semi-annually to the Town Treasurer.

When paying the fee the Company shall file with the Treasurer a complete and accurate verified statement of all gross receipts within the Town during the period for which said semi-annually payment is made. Such payment shall be made to the Town not later than thirty (30) days after the expiration of the period when due.

- b. The Town shall have the right to inspect the Company's income records and the right to audit and recompute any amounts determined to be payable under this ordinance; provided, however that such audit shall take place within thirty-six months following the close of each of the Company's fiscal years. Any additional amount due to the Town as a result of the audit shall be paid within thirty days following written notice to the Company by the Town. The notice shall include a copy of the audit report.
- c. This license shall not be assigned or transferred, either in whole or in part, or leased, sublet, or mortgaged in any manner, nor shall legal or equitable title thereto, or any right, interest or property therein, pass to or vest in any person without the prior written consent of the Town. The Company may, however, transfer or assign the license to a wholly— owned subsidiary of the Company and such subsidiary may transfer or assign the license back to the Company without such consent. Any proposed assignee must show financial responsibility as determined by the Town. The Town shall be deemed to have consented to a proposed transfer or assignment in the event its refusal to consent is not communicated in writing to Company within sixty days following receipt of written notice of the proposed transfer or assignment.
- d. The Company 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 Company. The word "control as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. Every change, transfer, or acquisition of control of the Company shall make the license subject to cancellation unless and until the Town shall have consented thereto, but such consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer, or of the prospective controlling party, and the Company shall assist the Town in any such inquiry. The Town shall have the right to issue a new license or renew this one at the Town's pleasure.
- e. In no event shall a transfer of ownership or control be approved unless the successor in interest becomes a signatory to this license agreement.

#### Section 20-27. Availability of books and records.

The Town shall have the right to inspect the books, records, maps, plans and other like materials of the Company applicable to its Floyd CATV system, at any time during normal business hours; provided that where volume and convenience necessitate, Company may require inspection to take place on Company premises.

#### Section 20-28. Other petitions and applications.

Copies of all petitions, applications, communications and reports submitted by the Company to the Federal Communication Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to the license, shall be provided to the Town no later than the filing date for such petitions, applications, communications and reports.

#### Section 20 - 29 Fiscal reports.

The Company shall file annually with the Mayor, no later than one hundred twenty (120) days after the end of the Company's fiscal year, a copy of a financial report applicable to the Floyd CATV system

including an income statement applicable to its operations during the preceding twelve month period, a balance sheet, and statement of its investment in such properties on the basis of original cost, less applicable depreciation and identifying the method of calculating such depreciation. These reports shall be certified as correct by an authorized officer of the Company, and there shall be submitted along with them such other reasonable information as the Town shall request with respect to the Company's properties and expense related to its CATV system operations within the Town.

Section 20-30. Removal of CATV system.

At the expiration of the term for which this license is granted, or upon its termination as provided herein, Company shall forthwith, after notice by Town, remove, at its own expense, all designated portions of the CATV system from all highways, sidewalks, easements, dedications and public property within the Town. If Company fails to do so, Town may perform the work at Company's expense.

ARTICLE III  
ADMINISTRATION AND REGULATIONS

Section 20-31. Reservation of Town's powers.

In addition to the inherent powers of the Town to regulate and control this license, and those powers expressly reserved by the Town or agreed to and provided for herein, the right and power is hereby reserved by the Town to adopt such additional general ordinances or regulations as it shall find necessary in the exercise of its lawful police and taxing powers. In the event of a conflict between this license ordinance and such other provisions, the more restrictive provision shall be deemed controlling.

Section 20-32. Application procedure.

Except as otherwise specifically provided for herein, following the adoption and acceptance of this license, all applications by the Company such as for changes in rate, services, transfer of ownership, or proposed changes in regulations or ordinances, as otherwise authorized by or made pursuant to this license shall be made and processed according to the following procedure.

- a. Applications shall be in a form containing sufficient facts and information acceptable to the Town.
- b. An application may be rejected for inadequacy by Town if it contains an inadequate description of what is being applied for, is not in an acceptable form, or contains insufficient facts and information for adequate consideration.
- c. A rejection of an application for inadequacy shall be in writing by notice which shall state the deficiencies. The notice shall not be construed to limit further and different deficiencies or subsequent applications.

Section 20-33. Performance evaluations.

- a. The Town and the Company shall hold scheduled performance evaluation sessions within thirty (30) days of the second, fourth, sixth and eighth anniversary dates of the Company's award of the license and as required by Federal and State law.
- b. Special evaluation sessions may be held at any time during the term of the license at the request of the Town or the Company.
- c. A rejection of an application for inadequacy shall be in writing by notice which shall state the

deficiencies. The notice shall not be construed to limit further and different deficiencies or subsequent applications.

- d. During a review and evaluation by the Town, the Company shall fully cooperate with the Town and shall provide such information and documents as the Town may need to reasonably perform the review.
- e. If at any time during its review, the Town determines that reasonable evidence exists of inadequate CATV system performance, it may require the Company to perform tests and analyses directed toward such suspected inadequacies. The Company shall fully cooperate with the Town in performing such testing and shall prepare results and a report, if requested, within thirty days after notice. Such report shall include the following information:
  - (1) The nature of the complaint or problem which precipitated the special tests.
  - (2) What system component was tested.
  - (3) The equipment used and procedures employed in testing.
  - (4) The method, if any, in which such complaint or problem was resolved.
  - (5) Any other information pertinent to said tests and analyses which may be required.

The Town may require that tests be supervised, at the Company's expense, by a professional engineer, not on the permanent staff of the Company. The engineer should sign all records of special tests and forward to the Town such records with a report interpreting the results of the tests and recommending actions to be taken.

#### Section 20-34. Supervision of the license.

The Mayor or his designee shall be responsible for the continued administration of this license ordinance.

#### Section 20-35. Penalties.

Commencing thirty days after the adoption of a resolution by Town Council finding that the Company is failing to comply with any provision of this license, the Town shall be entitled to a penalty payment from the Company of \$100 for each day such noncompliance continues. Such penalty shall be chargeable to the letter of credit posted by the Company to insure compliance herewith. The right to assess this penalty shall be in addition to, and not in lieu of, the Town's other rights under this license ordinance.

#### Section 20-36. Termination

- a. In addition to all other rights and powers retained by the Town under this license or otherwise, the Town reserves the right to terminate the license and all rights and privileges of the Company hereunder in the event of a substantial breach of its terms and conditions. A substantial breach by Company shall include but shall not be limited to the following:
  - (1) Violation of any material provision of the license or any material rule, order, regulation or determination of the Town made pursuant to the license;
  - (2) Attempt to evade any material provision of the license or practice any fraud or deceit upon the Town or upon subscribers or customers;
  - (3) Failure to provide the types of services promised herein;
  - (4) Failure to restore service after ninety—six (96) consecutive hours of interrupted service,

- except when approval of such interruption is obtained from the Town; or
- (5) Material misrepresentation of fact in the application for or negotiation of the license.
- b. The foregoing shall not constitute a major breach if the violation occurs but it is without fault of the Company or occurs as a result of force majeure. The Company shall not be excused by mere economic hardship nor by misfeasance of its directors, officers or employees.
- c. The Town may make a written demand that the Company comply with any such provision, rule, order, or determination under or pursuant to this license. If the violation by the Company continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the Town may place the issue of termination of the license before the Town Council. The Town shall cause to be served upon Company, at least twenty (20) days prior to the date of such Council meeting, and place of the meeting. Public notice shall be given of the meeting and issue which Council is to consider.
- d. The Town Council shall hear and consider the issue and shall hear any person interested therein, and shall determine in its discretion, whether or not any violation by the Company has occurred.
- e. If the Town Council shall determine the violation by the Company was the fault of Company and within its control, the Town Council may, by resolution, declare that the license of the Company shall be forfeited and terminated unless there is compliance within thirty (30) days or such longer period as the Town Council may fix, provided, that no opportunity for compliance need be granted in the case of fraud or misrepresentation.
- f. The issue of forfeiture and termination shall automatically be placed upon the Town Council agenda at the expiration of the time set by it for compliance. The Council then may terminate the license forthwith upon finding that Company has failed to achieve compliance, or may further extend the period, in its discretion.

#### Section 20-37. Foreclosure.

Upon the foreclosure or other judicial sale of all or a substantial part of the CATV system, or upon the termination of any lease governing all or a substantial part of the CATV system, the Company shall notify the Town of such fact, and such notification shall be treated as a notification that a change in control of the Company has taken place, and the provisions of this license governing the consent of the Town Council to such change in control of the Company shall apply.

#### Section 20-38. Receivership.

The Town Council shall have the right to cancel this license one hundred twenty days after the appointment of a receiver, or trustee, to take over and conduct the business of the Company, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty days, or unless:

- (a) Within one hundred twenty days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this ordinance and remedied all defaults thereunder; and
- (b) Such receiver or trustee, within said one hundred twenty days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this ordinance and the license granted to the Company.

#### Section 20-39. Compliance with State and Federal Laws.

Notwithstanding any other provisions of this license to the contrary, the Company shall at all times comply with all laws and regulations of the State and Federal Government or any administrative agencies thereof. Provided, however, if any such state or federal law or regulation shall require the Company to perform any service, in or shall prohibit the Company from performing any service, in conflict with the terms of this license or of any law or regulation of the Town then as soon as possible following knowledge thereof, the Company shall notify the Mayor of the point of conflict believed to exist between such regulation and law and the laws or regulations of the Town or his license.

If the Town Council determines that a material provision of his ordinance is affected by any subsequent action of the state or Federal Government, the Town Council shall have the right to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intended purpose of this agreement.

ARTICLE V RATES IV

Section 20-40.1-1. General statement as to rates.

All rates established by this ordinance have been agreed to by the Company as part of the consideration for the granting of this license. Rates for monthly service charges to the several levels of service shall be applied uniformly to all subscribers and shall not be discounted or reduced for any subscriber except as specifically permitted by this article.

Rates for connection charges and other one—time charges established by this article shall be deemed to be maximum rates, which may be reduced by the Company for promotional or other reasons, at the Company’s discretion, provided such reductions are offered on a fair and non—discriminatory basis.

Discounts not affected by this section will include all senior citizens discount.

Section 20-40.1 - 2. Rate increases.

Application for all rate increases in basic services shall be made in writing to the Town Council at least one hundred twenty days prior to the planned implementation. Application must include clear evidence of a need for a rate •increase. All proof of such increase must be made available for Council by the Company at time .of application. A majority vote of Council is necessary for approval of application. A public hearing thirty (30) days prior to council approval of application. Any rate increase will be deemed to be in effect on the first day of the month after approval of application.

Section 20-40.2. Monthly Service Charges.

- a. The following monthly rates are hereby fixed and established for each level or tier of service as defined in Section 20—1.1, and for the respective indicated calendar years during which this license will be in effect.

Level or Tier of Service	<u>Monthly Charge During:</u>	
	1983*	1984
First Tier or Basic Service	9.95	9.95
Second Tier	5.00	5.00
Third Tier**	8.95	8.95
Fourth Tier**	10.95	10.95

\* The third and fourth tiers consist of optional “pay TV channels, with the stated price being the monthly charge for such channels. The Company and the Town understands and agrees that the price for such services is not subject to local control, that such price may be raised or lowered

without Town consent and that it is stated in this ordinance for informational purposes only.

\*\*If applicable.

- b. Rates stated in this section are for the first outlet in a residential dwelling unit (whether a single family residence, or a unit in a multiple—family dwelling), or the first outlet in an individual business or commercial premises.
- c. Neither second, third nor mini—pay tiers of service shall be available unless the subscriber purchases the basic or first tier service.

#### Section 20-40.3. Additional outlets.

The monthly charge shall be \$1.50 for additional outlets to receive the basic service in a dwelling unit or individual business premises.

#### Section 20-40.4 Converter Deposit.

The Company may charge a maximum deposit of \$15.00 for each converter required for the provision of second, third and fourth tier services. Such deposit shall be refunded in full if the subscriber returns the converter in the same condition, normal wear and tear excepted, when service is terminated.

#### Section 20-40.5. Connection and reconnection charges

The following maximum charges are hereby established for the types of connection and reconnection services hereinafter set forth, each of which shall be provided by the Company within a reasonable period of time after subscriber requests.

##### (a) Standard Connection

For an overhead drop up to 200 feet from a trunk line, to provide first outlet, basic service to a dwelling unit or business premises the maximum installation charge shall be \$35.00.

##### (b) Additional outlets

For each additional basic service outlet to a dwelling unit or business premises the maximum installation charge shall be \$10.00.

##### (c) Non-Standard Connections

For installation of overhead basic service connection to a dwelling unit or business premises in excess of 200 feet from the Company's trunk line, or for underground installation of a basic service connection the maximum connection charge shall be \$35.00 plus the amount by which the Company's documented actual cost of such connection exceeds \$35.00. Provided that in areas of the Town in which electric, telephone and CATV lines are already underground, there shall be no such additional charge for underground connections.

##### (d) Connection for additional service levels

- (1) For installation of 2<sup>nd</sup> tier or mini-pay service to an outlet already receiving 1<sup>st</sup> tier service, the maximum connection charge shall be \$15.00.
- (2) For installation of 3<sup>rd</sup> tier service to an outlet already receiving 2<sup>nd</sup> or 1<sup>st</sup> tier service the maximum connection charge shall be \$15.00.
- (3) For installation simultaneously of 2<sup>nd</sup>, 3<sup>rd</sup> tier and/or mini-pay to an outlet already receiving 1<sup>st</sup> tier service, the maximum connection charge shall be \$35.00.
- (4) For simultaneous installation of 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> tier and/or mini-pay service the maximum

connection charge shall be \$35.00.

(e) Relocation charge

For relocation of an outlet within a dwelling unit or place of business the maximum charge shall be \$12.50.

(f) Transfer charge

For transfer of a subscribers' service from one location to another location already wired for cable service within the license area, the maximum charge shall be \$12.50.

(g) Reconnection charge

For reconnection of a subscriber's service at the same location after disconnection at the subscribers request or due to non—payment the subscriber shall first pay any outstanding balance due.

(h) Charge for Internal Wiring of Certain Installations

For providing internal wiring of hotels, motels, hospitals, apartment buildings, nursing homes and similar facilities, the Company shall be entitled to charge the property owner, or builder in addition to the standard connection fee, the amount by which its actual documented cost of such installation exceeds the standard connection fee. Provided, however, that the monthly service charges for such installation shall in no way be based upon whether or not the Company has performed such internal wiring.

(i) Work not appropriate for Company

The company will not engage in the selling, leasing, or renting of receiving equipment (excluding descramblers) nor perform repair service on customer owned equipment. Company will exert no control of customers use of any signal received beyond outlets termination. Company to replace no restrictions or requirements concerning customers existing equipment, antenna, or related services.

Section 20-40.6 Application.

The Company may apply for renewal of the license no earlier than two (2) years before the expiration date. If Company proposes newer or improved services which do not fall within the scope of this license, Company may apply at any time for a license amendment to commence earlier than the expiration date of this license.

Such application shall be adequate and in a form acceptable to the Town and should include the applicant's present name, business form and proposal including types of service and operation, technical standards, and any other proposed amendments.

Section 20-40.7. Grant of license renewal.

If, based upon Company's performance during this license term, the proposal study and other available information, Town Council finds a renewal of the license with Company to be in the public interest, Council may but is not in any way obligated to enter into a renewal of the license with Company under specified terms and conditions and for a term of not more than 10 years.

ARTICLE V.

INSTALLATION

The Company to begin installation of CATV system within 60 days of the effective date of this license. This can be extended by Company for 60 days on execution of a bond in favor of the town in the penalty of \$500.00.

ARTICLE VI. RELEASE FROM AGREEMENT

In the event the Company is denied the right to install the said system by any state or federal agency, court or lawmaking body or otherwise prohibited from operating said system, then this license shall become null and void and the rights and duties hereby granted shall cease to exist and the Company shall suffer no penalty or forfeiture, and both parties shall be fully released.

ARTICLE VII. EFFECTIVE DATE

The Company will not be required to place cable in areas where there are less than thirty (30) houses per mile.

This agreement will be in force only in the town until a letter granting the town authority over Cable T.V. in a two mile area from the town. This letter has been received by the town from the Board of Supervisors.

This license will be effective when signed by an official of the town and official of the Company and all other applicable organizations as provided by law.