

Chapter 1

BROADBAND COMMUNICATIONS ORDINANCE, 1995¹

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Title 8B-1 (Ordinance 7-1984) is replaced (Ordinance 1-1995) due to a new company being granted the franchise agreement. (Ord. 1-1995, 4-4-1995)

8B-1-1: Name of Ordinance

This Ordinance shall be known and may be cited as the “Broadband Communications Ordinance, 1995.” No person shall construct, operate or maintain any Broadband Communications system upon, over, under, along, across or above, any public way (road, street, alley or sidewalk) or public property except under this or a subsequent ordinance of the Town of Westcliffe. (Ord. 1-1995, 4-4-1995)

8B-1-2: Definitions

The following terms and phrases, as used herein, shall have those meanings set forth below:

1. City is Westcliffe, Colorado, a Town and municipal corporation. (Ord. 1-1995, 4-4-1995)
2. City Council, Council or Town Council, is the Board of Trustees of the City. (Ord. 1-1995, 4-4-1995)
3. Broadband shall mean the system of antennas, towers, satellite Communications System, earth stations, microwave, coaxial cable, fiber or optics, waveguides, or other conductors, converters, equipment and facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video, digital and other forms of electronic and electrical signals to persons who subscribe to programs and services delivered by such signals. Said definition shall not include any such facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, and does not use City rights-of-way. (Ord. 1-1995, 4-4-1995)
4. Gross Revenue shall mean all revenues received by the Grantee, from monthly subscriber fees for basic cable television and cable programming services as defined in Section 76.901 of the Federal Communication Commissions Rules Part 76 and revenue from services offered on a per channel basis. The term shall not include any taxes on services furnished by the Grantee which are imposed directly on any subscriber or user by the City, State or

- other governmental unit and collected by the Grantee for such governmental unit. (Ord. 1-1995, 4-4-1995)
5. Proposal is the same as “Application.” (Ord. 1-1995, 4-4-1995)
6. Grantee or Operator is Galaxy Telecom, L.P., and it is the Grantee of rights under this franchise. Grantee will, during the term hereof and any extension, retain its lawful status to do business under the laws of and in the State of Colorado, and remain solvent and not in receivership. (Ord. 1-1995, 4-4-1995)
7. The Mayor of the Town of Westcliffe is the person authorized to act in behalf of the Town of Westcliffe in connection with matters relating to this ordinance, except to the extent that this ordinance specifically vests power or authority in the Board of Trustees of the Town of Westcliffe. If such position ceases to exist or is not filled at any time, then the duties and powers of such office, as created in this Ordinance, shall pass to the office or officer of the City as designated by the City Council. (Ord. 1-1995, 4-4-1995)

8B-1-3: Provisions of Services - Incorporation by Reference - Continuing Obligation

The Grantee shall provide services, technical standards and system design specifically set forth in its proposal to provide broadband communication service within Westcliffe, and by its acceptance of this ordinance, the Grantee specifically grants and agrees that its proposal is hereby incorporated by reference and made a part of this ordinance. (Ord. 1-1995, 4-4-1995)

8B-1-4: Grant of Authority

A. There is hereby granted to the Grantee the nonexclusive right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, alleys, public utility easements, public ways and public places now laid out or dedicated, and all extensions thereto in the City, according to the technical specifications of the Federal Communications Commission, all poles, wires, cables, underground conduits, manholes and other conductors and fixtures necessary for the transmission of communication signals and all other signals permitted by the Federal Communications Commission or its successor agency, either separately or upon or in conjunction with any public utility maintaining the same in the City, with all of the necessary and desirable appliances and appurtenances pertaining thereto. Without limiting the generality of the foregoing, this franchise and grant shall and does hereby

include the right in, over, under and upon the streets, sidewalks, alleys, public utility easements and public grounds and places in the City to install, erect, operate or in any way acquire the use of, as by leasing or licensing, all lines and equipment necessary to a broadband communication system and the right to make connections to subscribers and the right to repair, replace, enlarge and extend said lines, equipment and connections. Grantee shall have authority to trim trees that overhang the public right-of-way only when absolutely necessary and then in a good and workmanlike manner. This franchise and grant includes the right to use public property which shall have been acquired by the City in the future as well as public property currently owned by it, upon approval being granted by the City Council. (Ord. 1-1995, 4-4-1995)

B. The above grant to Grantee shall include the right to offer broadband communication service to residents within the present boundaries of the City as those boundaries may change from time to time by annexation or otherwise. Whenever the Company receives a request for service from at least ten (10) single family residence connections within one thousand five hundred (1500) feet of its distribution cable, it shall extend the system to such subscribers at no cost to the subscribers other than the usual connection and service fees for all subscribers, provided that such system extension is technically and physically feasible. Measurement of the general density standard for service to any area shall be from the closest existing point of the Company's system. No person, firm, or corporation in the Company's service area shall be arbitrarily refused service. However, in unusual circumstances, such as a requirement for underground cable that requires rock saw or service to subscribers of a density of less than ten (10) single family residences per one thousand five hundred (1500) feet of distribution cable, in order that the existing subscribers shall not be unfairly burdened, service may be made available on the basis of a capital contribution by the prospective subscribers to the Company, including reimbursement for the Company's cost of materials, labor and easements. (Ord. 1-1995, 4-4-1995)

8B-1-5: Police Power

At all times during the term of this franchise, Grantee shall be subject to all lawful exercise of the police power of the City. The right is hereby reserved to the City to adopt, in addition to the provisions herein contained and any other existing applicable ordinances, such additional applicable ordinances as it shall find necessary in the exercise of its police power; provided, however, that such additional ordinances shall be reasonable, shall not conflict with or substantially alter the rights granted herein, and shall not conflict with the laws of the State of Colorado, the laws of the United States of America, or the rules, regulations and policies of the Federal Communications Commission. (Ord. 1-1995, 4-4-1995)

8B-1-6: Liability - Indemnification - Insurance

- A. Damages. The Grantee shall pay, and by its acceptance of this authority, does specifically agree that it will pay all damages and penalties which the City legally may be required to pay as a result of granting this franchise. These damages or penalties shall include, but shall not be limited to: Damages arising out of copyright infringement, defamation, unauthorized taking, antitrust and royalty payments; any and all damages, including personal injury, death and property damages, arising out of the installation, operation or maintenance of the system authorized hereby. Provided, however, that this indemnification does not extend to causes of actions arising solely from the actions of the City, its officers and employees and for which Grantee has no responsibility. And further provided that the City shall be liable for damages to the equipment and facilities of the Grantee which are the result of negligent or deliberate acts of employees of the City. (Ord. 1-1995, 4-4-1995)
- B. Expenses of Litigation. Grantee shall pay and by its acceptance hereof specifically agrees that it will pay all expenses incurred by the City in defending itself with regard to all damages and penalties mentioned in Subsection 6(A) for which Grantee has any responsibility, including expenses of investigation, except causes of action arising solely from the actions of the City, its officers and employees and for which Grantee has no responsibility. These expenses include all out-of-pocket expenses, such as attorney fees, providing Grantee shall have exclusive right to retain counsel of its choice, and shall include also the reasonable value of any services rendered by the City Attorney or his assistants or any employees of the City. (Ord. 1-1995, 4-4-1995)
- C. Insurance. Grantee shall maintain, and by acceptance hereof specifically agrees that it will maintain, throughout the term of this authority and grant, liability insurance insuring the Grantee and the City (the City to be a named insured) with respect to all damages mentioned in Subsection 6(A), in the following minimum amounts:
1. Five Hundred Thousand and no/100 Dollars (\$500,000.00) for bodily injury or death to any one person; One Million and no/100 Dollars (\$1,000,000.00) for bodily injury or death resulting from any one accident; (Ord. 1-1995, 4-4-1995)
 2. Five Hundred Thousand and no/100 Dollars (\$500,000.00) for property damages resulting from one accident; (Ord. 1-1995, 4-4-1995)
 3. One Million and no/100 Dollars (\$1,000,000.00) for umbrella; and (Ord. 1-1995, 4-4-1995)
 4. Workmen's Compensation Insurance as required by all applicable Federal, State, Maritime or other laws, including Company's Liability, with a limit of at

least One Hundred Thousand and no/100 Dollars (\$100,000.00). (Ord. 1-1995, 4-4-1995)

- D. Casualty. Grantee shall keep the system and system facilities continuously insured against such risks as customarily are insured against by businesses of like size and type, including, but not limited to, insurance upon repair or replacement, if available, and to the full insurable value of the system facilities (with reasonable deductible provisions) against loss or damage by fire or lightning, with uniform standard coverage endorsement as in use in the State of Colorado. (Ord. 1-1995, 4-4-1995)
- E. Co-insurance. Such insurance policies provided for herein shall name the Grantor as additional insured, and shall be primary to any insurance carried by Grantor. As evidence thereof, Grantee shall file with the Grantor copies of all such policies, or in the alternative, certificates thereof issued by the carrier(s). All such policies shall provide the issuing insurance company will not cancel them without at least ten days prior notice to the Grantee and the Grantor. (Ord. 1-1995, 4-4-1995)

8B-1-7: General Construction and Performance Standards of the System

- A. All system facilities shall be installed, repaired and replaced by Grantee, or by someone in its behalf, and Grantee shall be solely responsible for and shall pay the expenses thereof, including the cost of promptly restoring the surface of any street, alley, other public way or any point of excavation, whether on public or private property. All such facilities erected, constructed or replaced by the Grantee within the City, including extensions of streets, alleys and other public ways and places, shall be erected so as to cause no interference with the rights or reasonable convenience of users or property owners whose property adjoins any of said streets, alleys, or public ways and places, and so as not to interfere with existing public utility installations or extensions thereof, or repair to either. All service lines shall be underground in those area of the City where either public utilities providing telephone or electric utility facilities are underground at the time of installation; otherwise the Grantee may install its services above ground. If, subsequently, the electric utility facilities go underground, then in that event the facilities of the Grantee also shall go underground simultaneously and Grantee shall pay for the costs of the same. The grant of authority hereunder includes the right of the Grantee to cut and trim trees to protect its facilities and Grantee shall pay for the costs of the same. Grantee accepts all legal and economic responsibility for actions taken to protect its system, including the cutting and trimming of trees. (Ord. 1-1995, 4-4-1995)
- B. Grantee shall have the right to make underground cable installations on property of the City consistent with existing underground installations for other utilities, and the City will make appropriate grants of easement to Grantee in such cases. Grantee shall advise

the City in advance of any excavation to be performed by Grantee. Grantee shall make no installation of poles on or adjacent to any public way or public property without the consent of the City. (Ord. 1-1995, 4-4-1995)

- C. During the term hereof, Grantee shall be responsible for all costs of moving any portions of the system in the event the City finds that the public needs require changes in the location or use of any public property, including streets, grades and curbs and sewer and water mains. (Ord. 1-1995, 4-4-1995)
- D. Grantee may be required by the City to permit joint use by utilities of Grantee's system facilities located in the streets, alleys or other public right-of-way in the City insofar as such joint use reasonably may be practicable, and upon payment of reasonable rental therefor. (Ord. 1-1995, 4-4-1995)
- E. Grantee shall construct, install, operate and maintain its system in a manner consistent with all Federal, State, County and City laws, ordinances, construction standards and governmental requirements, and with technical standards of the Federal Communications Commission. In addition, Grantee shall provide the City, upon request, with a written report of the results of Grantee's proof of performance tests conducted pursuant to the Federal Communications Commission standards and requirements. (Ord. 1-1995, 4-4-1995)
- F. Construction, installation and maintenance of the Grantee's system shall be accomplished in an orderly workmanlike manner. All cables and wires shall be installed parallel with electric and telephone lines, where practicable. Multiple cable configurations shall be arranged in parallel and shall be bundled with due respect for engineering considerations. Grantee shall provide the City with reports, every three (3) months during construction, of the progress made in constructing and activating the system. (Ord. 1-1995, 4-4-1995)
- G. The system shall not endanger or interfere with the safety of persons or property in the franchise area, or in other areas in which Grantee may have equipment activated or situated. (Ord. 1-1995, 4-4-1995)
- H. Any antenna structure used in the system shall comply with construction, marking and lighting of antenna structures, as may be required by the United States Department of Transportation. (Ord. 1-1995, 4-4-1995)
- I. All working facilities and conditions existing during construction, installation and maintenance of the system shall comply with the standards of the Federal and State Occupational Safety and Health Administration. (Ord. 1-1995, 4-4-1995)

Grantee shall at all times comply with the following:

1. National Electric Safety Code (National Bureau of Standards), as existing and as subsequently amended. (Ord. 1-1995, 4-4-1995)
 2. National Electric Code (National Bureau of Fire Underwriters), as existing and as subsequently amended. (Ord. 1-1995, 4-4-1995)
 3. Bell System Code of Pole Line Construction, as existing and as subsequently amended. (Ord. 1-1995, 4-4-1995)
 4. Applicable Federal Communications Commission or other federal, state and local regulations and codes, as existing and as subsequently amended. (Ord. 1-1995, 4-4-1995)
- J. Grantee shall monitor signal leakage performance and comply with signal leakage standards as outlined in Sections 76.611 through 76.619 of the Federal Communications Commission Rules and Regulations Part 76. A copy of Federal Communications Commission Form 325 shall be filed, upon request, with the City of Westcliffe. (Ord. 1-1995, 4-4-1995)
- K. Tests and measurements to insure compliance with technical standards shall be performed by the Grantee, in a manner that is consistent with the provisions and standards of the Federal Communications Commission, as amended from time to time. Results of all tests and measurements required to be taken by the Grantee shall be recorded, maintained and made available to the City upon request. Where there exists evidence which, in the judgment of the City Council, casts doubt on the reliability or quality of cable service, the City shall have the right to require Grantee to perform tests and analyses directed toward such suspected inadequacies. Grantee shall fully cooperate with the City 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: The nature of the complaint or problem which precipitated the special tests; what system components were tested; equipment used and procedure employed in testing; the method, if any, in which such complaint or problem was resolved; and any other information pertinent to said tests and analyses which may be required. The City may require that tests be supervised, at Grantors expense, by a licensed professional engineer. The engineer shall certify all records of special tests and forward to the City such records with a report interpreting the results thereof and recommending actions to be taken, if any. The City's right pursuant hereto shall be limited to requiring tests, analyses and reports pertaining to specific subjects and characteristics based on complaints or sufficient evidence which the City has grounds to believe will require testing to be performed to protect the public against

substandard cable service. In the event that the supervising engineer reports that action is necessary on the part of the Grantee, the Grantee will take such action within five (5) days of notice thereof. (Ord. 1-1995, 4-4-1995)

- L. Grantee shall put, keep and maintain all parts of the system in good condition throughout the entire period of the franchise. Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. (Ord. 1-1995, 4-4-1995)
- M. Grantee shall not allow its cable or other operations to interfere with television reception of persons not served by Grantee, nor shall the system interfere with, obstruct or hinder in any manner the operation of the various utilities serving the residents within the confines of the City. (Ord. 1-1995, 4-4-1995)
- N. Grantee shall maintain at a minimum, throughout the lifetime of this franchise, the technical standards and quality of said service set forth by Federal Communications Commission Rules and Regulations and Grantee will at its sole expense update and improve its system. The standard for determining quality and equipment will be based upon service and equipment which is technologically and economically reasonable and, to a lesser extent, based upon service and equipment provided to similar sized communities by unrelated cable companies in similar circumstances. Grantee shall, at least annually, advise the City Council of state of the art technology not currently a part of the Westcliffe system. (Ord. 1-1995, 4-4-1995)
- O. Grantee shall produce a picture, whether in black and white or in color, accompanied with proper sound on typical standard production television sets in good repair, that is as good as the Federal Communications Commission Technical Rules require. Grantee shall limit failures to a minimum by locating and correcting malfunctions promptly, but in no event longer than three (3) days after written notice by the City to Grantee unless the failure is beyond the control of the Grantee. (Ord. 1-1995, 4-4-1995)

8B-1-8: The System

A. The Communications system permitted and required to be installed and operated hereunder shall:

1. Be operated in conformance with the laws of the State of Colorado and with the Federal Communications Commission Technical Standards, 47 C.R.F., Section 76.601, *et seq.*, as from time to time amended. Should there be any modifications of the provisions of said Standards which are inconsistent with the franchise hereby granted, this ordinance shall be amended so as to conform to such modifications within one (1) year after the effective date of the Federal Communications Commission's adoption of the modification, or upon renewal of

this franchise. Grantee will advise the City of any such modifications in its annual report. (Ord. 1-1995, 4-4-1995)

2. Carry on the system all required broadcast signals pursuant to the Federal Communications Commission signals carriage rules and such other broadcast signals as are set forth in Grantee's application. (Ord. 1-1995, 4-4-1995)

3. The total capacity of the system, as constructed, shall be thirty (30) channels. The total number of channels which shall be available and initially utilized shall be at least twelve (12). The system shall be designed, established, constructed, operated and maintained so as to provide for twenty- four (24) hour per day continuous operation. (Ord. 1-1995, 4-4-1995)

4. Additional requirements:

Throughout the term of this ordinance, including during the construction phase and thereafter, Grantee shall maintain current, up to date maps and plans of the entire system and shall file the same with the City promptly if requested by the City. Where underground installations are involved, the City will not be responsible for damage to such underground facilities until the maps and plans of the system, in the hands of the City, have been updated to show such underground installations. Maps and plans provided to the City shall be at the expense of the Grantee. (Ord. 1-1995, 4-4-1995)

5. Technical standards:

The Broadband Communications System will be designed, installed, maintained and tested to conform to the technical performance specifications of the Federal Communications Commission as outlined in Section 76.601 through 76.630, as from time to time amended. (Ord. 1-1995, 4-4-1995)

8B-1-9: *FORCE MAJEURE*

The Grantee shall not be responsible for delays in construction or extension of the system for any cause wholly beyond Grantee's control, including acts of God, fire, flood, earthquakes, extraordinary delays in transportation, strikes, embargoes, enemy action, energy shortages and similar events. In the event of such, the City will reasonably grant extensions so long as the event is beyond the control of the Grantee. (Ord. 1-1995, 4-4-1995)

8B-1-10: *Franchise Term*

This grant of franchise shall be effective upon the closing of the sale by Vantage

Cable to Galaxy Cablevision of the cable television facilities serving the Town of Westcliffe, and shall continue for a period of ten years from such date. Galaxy shall notify the Town of the closing of such transaction within thirty (30) days after such closing, and shall provide the Town with a copy of the assignment and assumption of franchise by which the franchise is transferred and assigned by Vantage to Galaxy. The Grantor consents that the Grantee may conditionally assign or pledge such Franchise in connection with its Financing. (Ord. 1-1995, 4-4-1995)

8B-1-11: Franchise Renewal

- A. Pursuant to renewal procedures set forth in Section 626 of the 1984 Cable Act, as amended, Grantee will during the six-month period between the 36 and 30 month before the franchise expiration file a written request for renewal. At the time of such request, the Grantor may update this franchise and re-evaluate the needs of the Community for cable service and the performance of the Grantee. (Ord. 1-1995, 4-4-1995)
- B. To the extent applicable, the Cable Act shall govern the procedures and standards for renewal of any franchise. (Ord. 1-1995, 4-4-1995)

8B-1-12: Transfer of Control

- A. Except as provided in subparagraph (E), no transfer of control of the cable system shall take place without prior notice to and approval by the City Council which approval shall not be unreasonably withheld. This notice shall include full compliance with Section 76.502 of Part 76 Federal Communications Commission Rules identifying particulars of the proposed transaction, and the City Council shall act by resolution. The City Council shall have ninety (90) days within which to approve or disapprove a transfer of control. If no action is taken within the ninety (90) days, approval shall be deemed to have been given. (Ord. 1-1995, 4-4-1995)
- B. The consent or approval of the City Council to any assignment by Grantee shall not constitute a consent to any later assignment. (Ord. 1-1995, 4-4-1995)
- C. A transfer of control shall arise upon the acquisition or accumulation by any person or group of persons of fifty percent (50%) of the voting shares of the Grantee, but this shall not apply to any future public offering that Grantee may make of its capital stock. (Ord. 1-1995, 4-4-1995)
- D. A mortgage or pledge of the cable system equipment or any part thereof by Grantee for financing purposes may be made by Grantee without the consent of the City. The City acknowledges that, in the normal course of the Grantee's business, the entire system, after construction is completed, may be pledged to a lender to secure debts of the Grantee and the City will not deny any *bona fide* pledge for such purpose. (Ord. 1-1995, 4-4-1995)

- E. In the absence of extraordinary circumstances, the City Council shall not approve any transfer or assignment of the franchise before completion of construction of the energized cable. (Ord. 1-1995, 4-4-1995)
- F. All of the provisions of this ordinance shall be binding upon and inure to the benefit of the successors, assigns, heirs, (as the case may be), mortgagees, pledgees and transferees of the Grantee. (Ord. 1-1995, 4-4-1995)

8B-1-13: Franchise Fee

- A. For the reason that the streets of the City to be used by the Grantee for the operation of its system within the boundaries of the City of Westcliffe are valuable public properties acquired and maintained by the City at great expense to its taxpayers, and the grant to the Grantee of the limited use of said streets is a valuable property right without which the Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, the Grantee shall pay to the City an amount equal to three percent (3%) of Grantee's gross revenue as defined in 2(d) attributable to the operations of the Grantee within the confines of the City (hereinafter the "franchise fee"). Failure to pay this franchise fee is a material breach of this ordinance. (Ord. 1-1995, 4-4-1995)
- B. This payment shall be in addition to any other tax or payment owed to the City of Westcliffe by Grantee, including real and personal property taxes. (Ord. 1-1995, 4-4-1995)
- C. The franchise fee and any other cost or penalties assessed shall be payable annually, to the City Clerk's office and the Grantee shall file a complete and accurate verified statement of the gross revenue derived from the system covered by this franchise, during the period for which said annual payment is made, and said payment shall be made to the City not later than one hundred twenty (120) days after close of the fiscal year of the Grantee, and at the same time as submission of the annual reports as provided in Section 18 hereof. (Ord. 1-1995, 4-4-1995)
- D. The City shall have the right to inspect the Grantee's income records and the right to audit and to recompute any amounts determined to be payable under this Ordinance; provided, however, that such audit shall take place within twelve (12) months following the close of each of the Grantee's fiscal years. Any additional amount due to the City as a result of the audit shall be paid within thirty (30) days following written notice to the Grantee by the City, which notice shall include a copy of the audit report. The City Auditor is authorized to conduct said investigation or audit. (Ord. 1-1995, 4-4-1995)
- E. In the event any franchise payment or recomputed amount, cost or penalty, or any other moneys owed to the City by the Grantee, is not made on or before the applicable date herein

specified, interest shall be charged daily from such date at the annual rate of eighteen percent (18%). (Ord. 1-1995, 4-4-1995)

8B-1-14: Rates

- A. Grantee shall charge subscribers for the connection of system services, and for the providing of system services to subscribers in accordance with Federal Communication Commission Rules Part 76, Section 76.900 - 76.937, as may be amended. (Ord. 1-1995, 4-4-1995)
- B. All charges for services in connection with this grant shall be uniform and nondiscriminatory. (Ord. 1-1995, 4-4-1995)
- C. Charges shall abate *pro rata* in the event service to a subscriber is interrupted for more than twenty-four (24) hours provided that notice is given to the Grantee by the subscriber and provided that the interruption is not due to negligent or intentional acts on the part of the subscriber. (Ord. 1-1995, 4-4-1995)

8B-1-15: Regional Customer Service Center - Customers Service Standards - Records

- A. The Grantee shall maintain a Divisional Customer Service Center with a toll free telephone number for the purpose of receiving inquiries, requests, and complaints concerning all aspects of the establishment, construction, maintenance and operation of the system. (Ord. 1-1995, 4-4-1995)
- B. The Grantee shall make available a technician to provide prompt service and repairs to all of Grantee's facilities and equipment. Said technicians shall be fully trained, qualified and authorized to perform such duties. (Ord. 1-1995, 4-4-1995)
- C. The Grantee shall comply with the Customer Service obligations set forth by the Federal Communication Commissions as follows and as may be amended. (Ord. 1-1995, 4-4-1995)
- D. Grantee shall file with the City, upon request, copies of all of its Rules and Regulations in connection with the handling of inquires, requests and complaints. Grantee shall furnish in writing to subscribers, at the time they connect to the system, information concerning procedures for making inquires, requests, and complaints about the system. (Ord. 1-1995, 4-4-1995)
- E. Grantee shall keep full records in connection with all inquiries, complaints, and requests in connection with the system and the resolution of these matters. (Ord. 1-1995, 4-4-1995)

F. Any personally identifiable information collected from any customer by the Grantee in the normal course of business in providing service to that customer will not be used by the Grantee except to provide said service to the subscriber, or to detect unauthorized use of the Grantee's equipment or signals. The Grantee shall take such actions as necessary to prevent unauthorized access to such information by a person other than the customer or the Grantee as provided for in Part IV, Section 631 of the Communications Act of 1934. (Ord. 1-1995, 4-4-1995)

1. Cable system office hours and telephone availability. (Ord. 1-1995, 4-4-1995)

a. The cable operator will maintain a toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week. (Ord. 1-1995, 4-4-1995)

i. Trained company representative will be available to respond to customer telephone inquiries during normal business hours. (Ord. 1-1995, 4-4-1995)

ii. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day. (Ord. 1-1995, 4-4-1995)

b. Under normal operating conditions, telephone answer time by a customer service representative, including wait time, shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under the normal operating conditions, measured on a quarterly basis. (Ord. 1-1995, 4-4-1995)

c. The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply. (Ord. 1-1995, 4-4-1995)

d. Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time. (Ord. 1-1995, 4-4-1995)

2. Installations, outages and service calls. Under normal operating conditions, each of the following six standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:

a. Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system. (Ord. 1-1995, 4-4-1995)

b. Excluding conditions beyond the control of the operator, the operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem. (Ord. 1-1995, 4-4-1995)

c. Except when prevented from doing so by conditions beyond the control of the operator, and regardless of the underlying cause or causes, the operator will begin working to restore service following "system-wide service interruptions" within six (6) hours after the interruption becomes known. The operator shall also notify the city of the cause or causes of the "system-wide service interruption" immediately upon determining such cause or causes, and shall provide the city with an estimate of the time required to restore service. (Ord. 1-1995, 4-4-1995)

d. The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.) (Ord. 1-1995, 4-4-1995)

e. An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. (Ord. 1-1995, 4-4-1995)

f. If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer. (Ord. 1-1995, 4-4-1995)

3. Communications between cable operators and cable subscriber. (Ord. 1-1995, 4-4-1995)

a. Notifications to subscribers.(Ord. 1-1995, 4-4-1995)

i. The cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request: (Ord. 1-1995, 4-4-1995)

1. Products and service offered; (Ord. 1-1995, 4-4-1995)

2. Prices and options for programming services and conditions of subscription to programming and other services; (Ord. 1-1995, 4-4-1995)

3. Installation and service maintenance policies; (Ord. 1-1995, 4-4-1995)

4. Instructions on how to use the cable service; (Ord. 1-1995, 4-4-1995)

5. Channel positions and programming carried on the system; and, (Ord. 1-1995, 4-4-1995)

6. Billing and complaint procedures, including the address and telephone number of the local franchising authority. (Ord. 1-1995, 4-4-1995)

ii. Customers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph. (Ord. 1-1995, 4-4-1995)

b. Billing.

i. Bills will be clear, concise and understandable. Bills must be fully itemized. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates

and credits. (Ord. 1-1995, 4-4-1995)

ii. In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days. (Ord. 1-1995, 4-4-1995)

c. Refunds - Refund checks will be issued promptly, but no later than either:

i. The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or (Ord. 1-1995, 4-4-1995)

ii. The return of the equipment supplied by the cable operator if service is terminated. (Ord. 1-1995, 4-4-1995)

d. Credits - Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted. (Ord. 1-1995, 4-4-1995)

4. Definitions.

a. Normal business hours. (Ord. 1-1995, 4-4-1995)

The term "normal business hours" means those hours during which most similar business in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours. (Ord. 1-1995, 4-4-1995)

b. Normal operating conditions. (Ord. 1-1995, 4-4-1995)

The term "normal operating conditions" means those service conditions which are within the control of the operator. Those conditions which are not within the control of the operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the system. (Ord. 1-1995, 4-4-1995)

c. Service interruption. (Ord. 1-1995, 4-4-1995)

The term “service interruption” means the loss to one or more subscriber of one or more of the services offered by the operator. (Ord. 1-1995, 4-4-1995)

d. System-wide service interruption. (Ord. 1-1995, 4-4-1995)

The term “system-wide service interruption” means the loss of one or more of the services offered by the operator to seventy-five percent (75%) or more of the system’s subscribers. (Ord. 1-1995, 4-4-1995)

8B-1-16: Annual Reports

A. Within ninety (90) days of completion of Grantee’s Annual Report, Grantee shall file with the City such Annual report prepared, certified and audited by an agent of the Grantee in accordance with generally accepted accounting principles consistently applied, showing the financial status of the Grantee, and certifying the gross revenues of the Grantee for the report period, and data on the number of subscribers on the system. Upon termination of the grant at the expiration of a term or otherwise, Grantee shall continue to make the annual reports as provided in this section until such time as all payments due the City pursuant to this Ordinance shall have been paid and accounted for. Grantee will, file information, at least annually, regarding complaints of subscribers and the Grantee’s responses to such complaints, and amendments to Federal Communications Commission or other applicable regulations or law which are pertinent to the system and this Ordinance. The City Council may make written request for the above information other than annually and require a response within thirty (30) days. If the requested information is not provided within Fifteen (15) days, the Grantee will be subject to monetary penalty as provided in Section 25. (Ord. 1-1995, 4-4-1995)

B. All reports submitted by Grantee to the Federal Communications Commission and other pertinent agencies shall be furnished to the City upon request. (Ord. 1-1995, 4-4-1995)

8B-1-17: Public Buildings

Grantee agrees to and shall furnish without installation charge or monthly service fee, basic cable service to one location within the designated City-owned sites, and to all public schools situated within the City. The buildings so served shall be responsible for any other internal wiring from such energized connection source to activated locations. If any such connection is over five hundred (500) feet from the Grantee’s trunk line, Grantee may charge actual costs of installation

arising from the additional distance. (Ord. 1-1995, 4-4-1995)

8B-1-18: Foreclosure

Upon the foreclosure or other judicial sale of all or a substantial part of the system or upon the termination of any lease covering all or a substantial part of the system, the Grantee shall notify the City of such fact, and such notification shall be treated as a notification that a change in the control of the Grantee has taken place, and the provisions of this Ordinance governing the consent of the City Council to such change in control of the Grantee shall apply. The City shall have an option to purchase the system subject first to the rights of Grantees investor and creditors. (Ord. 1-1995, 4-4-1995)

8B-1-19: Receivership

A. The City Council shall have the right to cancel this Ordinance one hundred twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of the Grantee, 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 (120) days, or unless: (Ord. 1-1995, 4-4-1995)

1. Within one hundred twenty (120) 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 hereunder; and (Ord. 1-1995, 4-4-1995)

2. Such receiver or trustee, within one hundred twenty (120) days, shall have executed an agreement, duly approved by the Court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Ordinance granted to the Grantee. (Ord. 1-1995, 4-4-1995)

8B-1-20: Preferential or Discriminatory Practices

Grantee shall not, as to rates, charges, services, service facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any person. (Ord. 1-1995, 4-4-1995)

8B-1-21: Acceptance

This Ordinance shall become effective thirty (30) days following publication in the local newspaper. Grantee shall have ten (10) days after adoption by the City Council to accept this franchise and, when accepted by Grantee, this Ordinance shall be and become a valid and binding contract between the City and the Grantee; provided, however, that the Ordinance shall be void

unless Grantee shall, within ten (10) days after the final passage of this Ordinance, file with the City Clerk a written acceptance of this Ordinance, and the franchise herein granted, agreeing that it will comply with all of the provisions hereof and that it will refrain from doing any or all of the things prohibited by this Ordinance. (Ord. 1-1995, 4-4-1995)

8B-1-22: Unlawful Acts

A. It shall be unlawful for any person to:

1. Make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of Grantee's cable television signals, radio signals, pictures, programs, sounds or any other information or intelligence transmitted over Grantee's cable system without payment to Grantee or its approved successors, assigns or lessees. (Ord. 1-1995, 4-4-1995)

2. Without the consent of the Grantee, willfully tamper with, remove or injure any cable, wire or other equipment used for the distribution of television signals, radio signals, pictures, programs, sounds or any other information or intelligence transmitted over the Grantee's cable system. (Ord. 1-1995, 4-4-1995)

B. Any person who violates any provision of this Ordinance shall be guilty of a misdemeanor, and shall be punished by a fine of not more than Three Hundred and no/100 Dollars (\$300.00), or by imprisonment for a term not to exceed ninety (90) days, or by both such fine and imprisonment. (Ord. 1-1995, 4-4-1995)

8B-1-23: Grantees Remedies for Nonpayment of Subscriber Fees - Complaints - Requests For Service

A. Grantee has the right to use normal methods of collection of amounts owned by a subscriber, at its sole discretion, including disconnection of services for nonpayment of subscriber fees and may bring action in any court to recover unpaid fees and any other damages caused by any subscriber. (Ord. 1-1995, 4-4-1995)

B. Grantee shall respond to and resolve subscriber's complaints or request for service in connection with repairs and maintenance and malfunctions of system facilities. Grantee shall respond to and correct such complaints or requests as soon as possible after receipt of the complaint or request for service. Grantee may however, charge for a service call when such service call proves to be customer related as opposed to system related. Customer related problems are those arising from but not limited to equipment owned by the customer or, equipment owned by the Grantee which has been damaged by the negligent or deliberate acts of the customer. System related refers to the deficiency in or failure of any equipment owned by the Grantee, whether or not leased to any customer. (Ord. 1-1995, 4-4-1995)

- C. The Mayor is designated by the Town of Westcliffe as having primary responsibility for the continuing administration of the franchise and the implementation of complaint procedures. (Ord. 1-1995, 4-4-1995)
- D. The Grantee shall establish procedures, pursuant to Section 76.607 of Part 76 of the Federal Communications Commission Rules and Regulations, for receiving, acting upon, and resolving subscriber complaints. The Grantee shall furnish a notice of such procedures to each subscriber at the time of installation. A copy of the Grantee's procedure will be filed with the Grantor. (Ord. 1-1995, 4-4-1995)

In the event that a subscriber complaint is not resolved to the mutual satisfaction of the subscriber, said complaint must be referred to the local franchising authority and to the cable operator prior to being referred to the Federal Communications Commission. (Ord. 1-1995, 4-4-1995)

8B-1-24: Termination

- A. In addition to all other rights and powers of the City by virtue of this ordinance, or otherwise, the City reserves the right to terminate and cancel this franchise and all rights and privileges of the Grantee arising hereunder, in the event that the Grantee: (Ord. 1-1995, 4-4-1995)
1. Violates any material provision of this authority or any rule, order or determination of the City Council made pursuant to this authority, except where such violation (other than provisions concerning transfer without prior City Council approval) is beyond the control of the Grantee; (Ord. 1-1995, 4-4-1995)
 2. Becomes insolvent, or is unable or unwilling to pay its debts, or is adjudged bankrupt, or placed in receivership, or is no longer authorized to do business in the State of Colorado. (Ord. 1-1995, 4-4-1995)
 3. Attempts to dispose of any of the facilities or property of its system in violation of the terms of this authority; (Ord. 1-1995, 4-4-1995)
 4. Attempts to evade any of the material provisions of this authority or practices any fraud or deceit upon the City; (Ord. 1-1995, 4-4-1995)
 5. Fails to begin or complete construction and/or fails to provide services as required herein; (Ord. 1-1995, 4-4-1995)
 6. Fails to restore system wide service following twenty-four (24) consecutive hours of interrupted service, except where prior approval of such interruption

shall have been obtained from the City, or in the event that any such action is caused by acts of God, national emergency, war, strikes, or other actions beyond the control of the Grantee; (Ord. 1-1995, 4-4-1995)

7. Is found to have misrepresented any material fact in its application; and (Ord. 1-1995, 4-4-1995)

- B. Any termination proceeding initiated by the City shall occur only after thirty (30) days' written notice to Grantee. The Grantee shall have an opportunity to respond to such a claim at a public hearing held in this matter. Grantee shall be a necessary party to all public hearings regarding operations or terminations of said franchise. (Ord. 1-1995, 4-4-1995)
- C. Upon termination, cancellation or expiration of this authority, as provided for herein, the City shall have the right to require the Grantee to remove, at its own expense, all portions of the system from all public ways within the City within ninety (90) days of said termination, cancellation or expiration. Any of Grantee's property not removed within said ninety (90) days period shall be deemed abandoned. By action of this Ordinance, such abandoned property shall be the property of the City. Provided, however, that, should the City invoke this paragraph, Grantee may nonetheless negotiate a sale of the system subject to Section 11 hereof and consent to such sale shall not be unreasonably withheld. (Ord. 1-1995, 4-4-1995)

8B-1-25: Penalties

- A. For failure to provide data, documents, reports or information as requested herein in an annual report or within fifteen (15) days of a request by the City, Grantee shall pay to the City Twenty-Five and no/100 Dollars (\$25.00) for any such occurrence. (Ord. 1-1995, 4-4-1995)
- B. Forty-five (45) days following the adoption of a resolution by the City Council determining a failure of Grantee to comply with the construction, operational or maintenance standards, contained herein, Grantee shall pay to the City Fifty Dollars (\$50.00) for any such occurrence. (Ord. 1-1995, 4-4-1995)
- C. Grantee shall furnish a bond with a corporate surety authorized to do business in the state of Colorado in the sum of One Thousand Dollars (\$1,000) conditioned upon the faithful and timely payment of any penalties due the City, as provided in this Section. (Ord. 1-1995, 4-4-1995)
- D. The Mayor of the City may, in writing, grant reasonable extensions of the requirements of this section. (Ord. 1-1995, 4-4-1995)

8B-1-26: Severability

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Federal or State court or administrative or governmental agency of competent jurisdiction, specifically including the Federal Communications Commission, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, so long as the part held invalid or unconstitutional shall not go to the essence hereof, or increase the liability of the City in any manner or form whatsoever.