

Meeting of September 6, 2017

South Portland City Council
Position Paper of the City Manager

Subject:

ORDINANCE #5-17/18 – Amending Chapter 14, “Licenses, Permits and Business Regulations Generally,” regarding CATV Franchising. First reading. Passage requires majority vote.

Position:

This item was discussed at the August 28th City Council Workshop. In February 2016, the City renewed its Cable TV Franchise Agreement with Time Warner Cable, now Charter Communications, for a period of fifteen years. Our franchise agreement is based on the Maine Model Franchise Agreement, which was created in 2008 by attorneys from MMA, Time Warner, Comcast, other telecommunications corporations that do business in Maine (AT&T, Verizon, etc.), and the ConnectME Authority, along with representatives from the Community Television Association of Maine.

Chapter 14, Article VII has had only minor administrative amendments since 1985 and is currently out of alignment with our most recent franchise agreement. Tony Vigue, former SPC-TV Manager, has updated Article VII to include aspects of our existing franchise agreement, feedback from Corporation Council Sally Daggett, and feedback from Tillman Lay of Spiegel & McDiarmid LLP. Tillman Lay is a national expert on municipal franchise agreements.

Attached is the current Cable TV franchise agreement with Time Warner and the proposed changes to Article VII. While there are several “cosmetic” and rewording changes to Article VII, the major changes are as follows:

- Sec. 14-202 – Changed the franchise duration from ten to fifteen years
- Sec. 14-205 – Changed the franchise payment from annually to quarterly
- Sec. 14-205 – Requiring detailed breakdown for basis of payment
- Sec. 14-206 – Changed the performance bond requirement of \$100k to \$50k

IT Director Chris Dumais will be at Wednesday night’s meeting to answer any additional questions.

Requested Action:

Council passage of first reading and set September 18, 2017 for second reading and action.



City Manager



CITY OF SOUTH PORTLAND

PATRICIA A. SMITH
Mayor

SCOTT T. MORELLI
City Manager

EMILY F. SCULLY
City Clerk

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

District One
CLAUDE V. Z. MORGAN

District Two
PATRICIA A. SMITH

District Three
EBEN C. ROSE

District Four
LINDA C. COHEN

District Five
BRAD FOX

At Large
MAXINE R. BEECHER

At Large
SUSAN J. HENDERSON

**IN CITY COUNCIL
ORDINANCE #5-17/18**

THE COUNCIL of the City of South Portland hereby ordains that Chapter 14, "Licenses, Permits and Business Regulations Generally," of the "Code of Ordinances of the City of South Portland, Maine" be and hereby is amended as follows (additions are underlined; deletions are ~~struck-out~~):

ARTICLE VII. CATVCABLE TV SYSTEM FRANCHISING ORDINANCE

Sec. 14-200. Short title; purpose.

This article shall be known and may be cited as the "South Portland CATVCable TV System Franchising Ordinance." The purpose of this article is to provide for City regulation and use of a cable television system including its construction, operation and maintenance in, along, upon, across, above, over and under the streets, alleys, public ways, and public places now laid out or dedicated, and all extensions thereof and additions thereto in the City of South Portland, including poles, wires, cables, underground conduits, manholes, conductors and fixtures necessary for the maintenance and operation in the City of the cable television system; and to provide conditions accompanying the grant of franchise; and to provide for City regulation of cable TV system operations.

Sec. 14-201. Definitions.

For the purpose of this article and any franchise granted hereunder, the following terms, phrases and words and their derivations shall have the meaning specified herein. When not inconsistent with the context, words used in the present tense include the future and words in the singular number include words in the plural number. The word "may" is permissive. The words "shall" and "must" are mandatory and not merely directory.

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

Annual Gross Revenue shall mean revenue of any form or kind received by the Company from the carriage of cable service over the cable system including, without limitation, the distribution of any cable service over the system; basic service monthly fees; all other cable service fees; fees paid for pay and/or pay-per-view services, installation, reconnection, downgrade, upgrade and any other similar fees; fees paid for channels designated for commercial use; converter, remote control and other equipment rentals, and/or leases and/or sales; all home shopping service(s) revenues; and advertising revenues. Annual Gross Revenue shall not include any taxes or fees other than franchise fees on services furnished by Company imposed directly on any Subscriber or user by any governmental unit and collected by Company for such governmental unit. In the event that an affiliate is responsible for advertising on the cable system in the City, advertising revenues shall be deemed to be the pro-rata portion of advertising revenues excluding commissions and/or applicable agency fees, paid to the Company by an affiliate for said affiliate's use of the cable system for the carriage of advertising. It is the intention of the parties here to that Gross Annual Revenues shall only include such revenue of affiliates and/or persons relating to the provision of cable service over the cable system and not the gross revenues of any such affiliate(s) and/or person(s) itself, where unrelated to cable services. Gross annual revenue shall be computed in accordance with Generally Accepted Accounting Principles.

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

"Cable TV System" shall be defined in accordance with Section 602 of the Cable Act. A facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment designed to provide cable service (including video programming) to multiple Subscribers within a head-end service area. This shall mean the facility serving the City owned, constructed, installed, operated and maintained by Company, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designated to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (b) a facility that serves subscribers without using any public right-of-way; (c) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, except that

such facility shall be considered a cable system (other than for purposes of Section 621(c) of the Cable Act) to the extent such facility is used in the transmission of video programming directly to subscribers unless the extent of such use is solely to provide interactive on-demand services; or (d) an open video system that complies with Section 653 of the Cable Act, or (e) any facilities of any electric utility used solely for operating its electric utility systems.

"Cable Television Company" or "Company" shall mean any person or persons owning, controlling, operating, managing or leasing a cable system within the City, pursuant to any Franchise granted to it by the City. This term shall include any lawful successor(s) to the interest of such person or persons where consent to such successor(s) is approved under any applicable terms of the Franchise Agreement.

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

Council shall mean the present governing body of the City of South Portland or any legally appointed or elected successor or agency constituting the governing body of the eCity.

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

Full network service shall mean all basic services and additional cable tv services to be offered by the grantee.

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

~~*May is permissive.*~~

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

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

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

State shall mean the State of Maine.

~~Subscriber shall mean any person, firm, company, municipality, corporation or association receiving either basic service or additional service from the grantee under the schedule of charges filed with and/or approved by the city.~~ any person, firm, corporation, or other entity who or which elects to subscribe to for any purpose, a cable service provided by the Company by means of, or in connection with, the cable TV system.

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

Sec. 14-202. The CATVCable TV system franchise.

The Council of the City may contract on such terms, conditions and fees as are in the best interests of the City and its residents with one or more cable television companies for the operation of a cable TV system throughout the City, including the granting of a non-exclusive franchise or franchises for the operation thereof.

- (a) *Franchise required.* No person, firm, company, corporation or association shall construct, install, maintain or operate within any public street in the eCity, or within any other public property of the eCity, or within any privately owned area within the corporate limits of the eCity, any equipment or facilities for the distribution of television signals, or radio signals or other intelligences either analog or digital over a broadband telecommunications network to any subscriber unless a franchise authorizing the use of the streets or properties or areas has first been obtained pursuant to the provisions of this article, and unless such franchise is in full force and effect.
- (b) *Review of qualifications.* Specific permission to operate a CATVcable TV system under the provisions of this article may be granted by the council to any grantee after a review of the grantee's legal, character, financial and technical qualifications and the adequacy and feasibility of the grantee's construction arrangements and has approved the grantee's qualifications as a part of a public proceeding affording due process.
- (c) *Duration of franchise.* Upon filing by the grantee of the proper acceptance, the bond and the required insurance, a franchise shall take effect as provided therein and shall continue in full force and effect for a maximum term of ~~ten (10)~~ fifteen (15) years.

(d) Any franchise agreement entered into after January 1, 2017, and any renewal of a franchise agreement, which renewal is entered into after January 1, 2017, between the City and any cable television company, shall be nonexclusive and shall contain the following provisions:

- (1) A statement of the area or areas to be served by the cable television company;
- (2) A line extension policy;
- (3) A provision for renewal, the terms of which may not exceed 15 years;
- (4) Procedures for the investigation and resolution of the complaints by the cable television company;
- (5) Provision for access to, and facilities to make use of, one or more local public, educational and governmental access channels; and
- (6) Any other terms and conditions that are in the best interests of the City.

Sec. 14-203. Applications for a franchise.

Applications for a franchise to operate a cable TV system in the City and related documents are public records maintained by the City Clerk pursuant to the Freedom of Access Act (1 M.R.S. § 401 *et seq.* as may be amended from time to time) and the public has the right to inspect and copy such applications and documents during the regular business hours of the City of South Portland Clerk's office.

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

- ~~(1) Proposal bond and f~~Filing fee. ~~Provision of the proposal bond as required in section 14-206(a) and p~~Payment of a nonrefundable filing fee to the city of twenty-five dollars (\$25.00) which sum shall be due and payable concurrently with the request for application information.
- ~~(2) Name and address of applicant.~~ The name and business address of the applicant, date of application and signature of applicant or appropriate corporate officer(s).
- ~~(3) Description of proposed operation.~~ A general description of the applicant's proposed operation including but not limited to business hours and business office location. The application shall be filed with the City Clerk and shall contain such information as the City may require, including but not limited to a general description of the applicant's proposed operation, a schedule of proposed charges, a statement detailing its business or corporate organization with a financial statement for the two previous fiscal years and a statement detailing the prior operational experience of the applicant in both cable TV and microwave service including that of its officers, management and staff to be associated with the proposed operation. ~~operating staff; maintenance procedures beyond those required in this article;~~

management and marketing staff complement and procedures; and, its proposed rules of operation for public access.

- (4) *Signal carriage.* A statement of all the television and radio services to be provided, including ~~both off the air~~ sources from satellite, broadcast and locally originated signals.
- (5) ~~*Proposed service area and line extension policy.*~~ *Special services.* ~~A statement setting forth a description of the automated services proposed as well as a description of the production facilities to be made available by the grantee for the public, municipal and educational channels required to be made available by the provisions of this article and the Federal Communications Commission.~~
- (6) *Programming assistance.* A statement establishing any additional revenues beyond those required in section 14-205 herein to be designated for the programming or ~~programming assistance~~ capital equipment to be used for the public, educational and government access channels.
- ~~(7) *Schedule of charges.* A statement of the applicant's proposed schedule of charges as set forth by the provisions of section 14-207 herein.~~
- ~~(8) *Corporate organization.* A statement detailing the corporate organization of the applicant, if any, including the names and addresses of its officers and directors and the number of shares held by each officer and director.~~
- (97) *Stockholders.* A statement identifying the number of authorized and outstanding shares of applicant's stock, including a current list of the names and current addresses of its shareholders holding ten (10) per cent or more of applicant's outstanding stock where neither the applicant nor its ultimate parent is a publicly held company.
- (108) *Intracompany relationships.* A statement describing all intracompany relationships of the applicant, including parent, subsidiary or affiliated companies.
- (149) *Agreements and understandings.* A statement setting forth all agreement and understandings whether written or oral existing between the applicant and any other person, firm, group or corporation with respect to any franchise awarded and the conduct of the operation thereof existing at the time of proposal submittal.
- (120) *Financial statement.* If applicant is a corporation, audited financial statements for the two (2) previous fiscal years. If applicant is a partnership, copies of the "US Partnership Return of Income" (IRS Form 1065) for the two (2) previous fiscal years. If applicant is a sole proprietorship, copies of personal financial statements for the two (2) previous fiscal years.

~~(13) *Financial projection.* An estimated ten (10) year operations proforma which shall include the initial and continuing plant investment, annual profit and loss statements detailing income and expenses, annual balance sheets, and annual levels of subscriber penetration. The proforma shall also state the average return on investment anticipated by the applicant for the ten (10) year operations period and shall state the method of computation thereof. Costs anticipated for voluntary services or contributions shall, if presented, be incorporated in the proforma as required in this article, but shall be separately identified in the proforma.~~

(141) *Financial support.* A corporate board resolution or statement from a qualified officer of the applicant shall be supplied authorizing the obtainment and expenditure of such funds as are required to construct and operate the CATV/cable TV system proposed herein. The applicant shall identify any external financing sources anticipated and shall explain the nature and extent of participation by such external financing sources. If external financing shall be accomplished through lines of credit with a lending institution, the applicant shall identify the available, uncommitted balance of such line of credit.

(152) *Technical description.* A technical description of the type of network proposed by the applicant including but not limited to network configuration, (i.e. hub, dual cable), network capacity, two-way capability and the proposed dates of commencement of construction and operation of said network.

(163) *Engineering statement.* A statement from a registered professional engineer advising that he has reviewed the technical description provided above and that the planned network and operation thereof meets all the technical standards set forth in Section 76.605 of the FCC's Third Report and Order, and any amendments thereto.

(174) *Existing franchises.* A disclosure of existing franchises held by the applicant indicating when the franchises were issued and when the networks were constructed in each respected government unit, together with the name and address and phone number of a responsible governmental official knowledgeable of the applicant.

(185) *Convictions.* A statement as to whether the applicant or any of its officers or directors or holders of ten (10) per cent or more of its voting stock has in the past ten (10) years been convicted of any crime other than a routine traffic offense and the disposition of each such case.

(196) *Operating experience.* A statement detailing the prior operational experience of the applicant including that of the applicant's officers, management and staff to be associated with the proposed operation.

(2017) *Franchise renewal information.* If an application is for renewal of a franchise, the proposal must include, in addition to the information required in subsections (1) through (196) above:

(a) A summary of the technical, financial and programming history of the network since the granting of the original franchise.

(b) A statement and timetable that outlines all proposed changes, expansion or improvements in the network as to services, programming or technical specifications during the renewal period.

~~(24)~~18 *Additional requirements.* The application for franchise shall respond specifically, and in sequence, to subsections (1) through ~~(19)~~6 of this section and shall be bound separately from any additional information proffered by the applicant. ~~Fifteen (15)~~ Two (2) copies of the application shall be supplied to the eCity. Supplementary, additional or other information that the applicant deems reasonable for considerations may be submitted at the same time as its application, but must be separately bound and submitted in the above number of copies. The eCity may, at its discretion, consider such additional information as part of the application.

~~(22)~~19 *Supplementation to applications.* The eCity reserves the right to require such supplementary, additional or other information that the eCity deems reasonably necessary for its determinations. Such modifications, deletions, additions or amendments to applications shall be considered only if specifically requested by the eCity.

~~(23)~~ *Grandfather clause.* Applications submitted on March 17, 1972 and all amendments thereto, shall be deemed to be in conformity to this section.

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

(a) *Annual financial reports required.* The grantee shall file annually with the eCity not later than three (3) months after the end of its fiscal year during which a franchise was accepted and within three (3) months after the end of each subsequent fiscal year, two (2) copies of:

(1) The report to its stockholders.

(2) An income statement identifying expenses and income applicable to its operations under said franchise during the fiscal year or fraction thereof.

(3) A listing of its properties devoted to network operations under the franchise together with an itemization of its investment in each of such properties. These reports along with other such reasonable information as the eCity may request, shall be certified by a certified public accountant.

(b) *Annual facilities report required.* The grantee shall file annually with the eCity not later than three (3) months after the end of its fiscal year during which a franchise was accepted and within three (3) months after the end of each subsequent fiscal year,

two (2) copies of a total facilities report setting forth the total physical miles of plant installed or in operation during the fiscal year. Such report shall also contain any revisions to the network "as built" maps filed with the eCity under the provisions of subsection (d) herein.

- (c) *Annual customer service records report required.* ~~The grantee shall, if requested by the city, file annually with the city not later than three (3) months after the end of its fiscal year during which a franchise was accepted and within three (3) months after the end of each subsequent fiscal year, a list of all trouble complaints and network "downtime" received or experienced during the fiscal year. All such submitted data shall also include complaint disposition and response time. For the purpose of this provision, a certified copy of a "complaint" logbook reflecting all such incidents will suffice. Also, if requested by the city, uncertified additions to the annual complaint log shall be supplied to the city at intervals to be established by the city.~~ The grantee shall maintain, in a manner consistent with the privacy rights of Customers, an accurate and comprehensive file of (1) any and all Complaints regarding the cable system or the grantee's operation of the cable system, by number and type and their disposition; (2) service request, identifying the number and nature of the requests and their disposition; (3) service interruptions and their disposition; and (4) requested grantee's contacts with Customers after a customer service complaint has been processed by the City.

If requested by the City, reports detailing compliance with the standards contained herein and in Section 14-207, shall be provided by the grantee on an annual basis within thirty (30) days of the end of the calendar year, and shall be in a format consistent with the output capabilities of the grantee's call tracking technology sufficient for the City to monitor compliance. If the grantee fails to provide such reports on a timely basis, or if they are incomplete, monetary sanctions of up to five hundred dollars (\$500.00) for the first offense, up to one thousand dollars (\$1000.00) for the second offense of noncompliance, up to one thousand five hundred dollars (\$1500.00) for the third consecutive offense of noncompliance and up to two thousand (\$2,000.00) for all subsequent requests may be imposed to encourage compliance. The grantee shall permit the City to review and audit the information at any time during normal business hours upon reasonable notice.

- (d) *Network maps required.* The grantee shall file with the eCity not later than three (3) months after the network is substantially completed, a set of network "as built" maps, drawn to scale, showing all of the CATV/cable TV system facilities installed in the eCity. Subscriber service drop facilities need not be shown.
- (e) *Certificate of performance.* The grantee shall file with the eCity not later than three (3) months after the network is substantially completed and within three (3) months after the end of its fiscal year during which a franchise was accepted and within three (3) months after the end of each subsequent fiscal year two (2) copies of the following supplemental information:

- ~~(1) If a nonprofit corporation, a list of all current bondholders both of record or beneficial. If a public corporation, a list of all shareholders who individually or as a concerted group hold ten (10) per cent or more of the voting stock of the corporation.~~
- (21) A current list of all grantee's officers and directors including addresses and telephone numbers.
- (32) Copies of all pertinent agreements or contracts, including pole-use agreements, entered into by the grantee during the fiscal year in the conduct of its business under a franchise granted.
- (43) The names and both business and residential addresses and phone numbers of the broadband telecommunications network resident manager and engineer.
- (54) If the grantee is a subsidiary, a copy of the annual report of the parent firm.
- (f) *Public availability of reports.* Such reports as required under this article must be available to the public in the office of the eCity Clerk, during normal business hours. Subscribers shall be notified of the availability of such reports by the inclusion of such notice in the subscriber agreement if used. Other methods of notification if required shall be approved by the broadband telecommunications Cable TV Regulatory Board. Applications for a franchise to operate a cable TV system in the City and related documents are public records maintained by the City Clerk pursuant to the Freedom of Access Act (1 M.R.S. § 401 et seq. as may be amended from time to time) and the public has the right to inspect and copy such applications and documents during the regular business hours of the City of South Portland Clerk's office.
- (g) *Correspondence.* The grantee shall simultaneously file with the eCity a copy of each petition, application, report and communication transmitted by the grantee to, or received by the grantee from, any federal, state or other regulatory commissions or agencies having competent jurisdiction to regulate and pertaining to the operations of any broadband telecommunications network authorized hereafter.
- (h) *City's access to records.* The eCity shall have access during all normal business hours and upon the giving of reasonable notice, to the grantee's contracts, engineering plans, accounting, financial data and service records relating to the property and the operations of the grantee and to all other records required to be maintained according to said franchise. Records of subscriber lists and statistical data shall be made available only upon showing to the grantee by the eCity that such records are material to the eCity's regulatory program.
- (i) *Subscriber agreement.* The form of grantee's agreements with its subscribers shall be subject to the approval of the council.

Sec. 14-205. Franchise payment.

- (a) *Filing fee.* Applicants for a franchise shall pay a nonrefundable filing fee to the eCity of twenty-five dollars (\$25.00) which shall be due and payable concurrently with the request for the proposal information.
- (b) *Reserved.*
- (c) *Annual Quarterly franchise payment.* A grantee of a franchise shall pay to the eCity an ~~annual~~ quarterly fee in the amount established in the franchise. This payment shall be based upon the grantee's ~~annual~~ quarterly gross subscriber revenues, as defined herein, and shall be in addition to any other payment owed to the eCity by the grantee and shall not be construed as payment in lieu of municipal property taxes or other state, county or local taxes.
- (d) *Method of computation; interest:*

Company shall provide a Franchise Fee to the City or its designee, equal to five percent (5%) of its Gross Annual Revenues. Said five percent (5%) Franchise Fee shall be made to the City, on a quarterly basis, no later than forty-five (45) days after the end of the calendar quarter for which payment is made. The payment for the last quarter of the last year of the term of the Franchise shall be due and payable sixty (60) days after the end of that quarter.

(1) Payments.

The quarterly payment shall include a statement showing the basis for the payment, including a breakdown by category (e.g., basic service, home shopping channels, advertising) and source of Gross Annual Revenues for the quarter. Sales taxes or other taxes levied directly on a per subscription basis and collected by the grantee shall be deducted from the local annual gross subscriber revenues before computation of sums due the City is made. Payments due the City under the provisions of subsection (c) above shall be computed annually for the preceding fiscal year and shall be paid simultaneously with the filing of annual reports required in Section 14-204 at the office of the City Clerk during its regular business hours. The first payment period shall commence as of the effective date of the franchise. The City shall be furnished a statement with each payment, by a certified public accountant, reflecting the total amounts of annual gross subscriber revenues, and the above charges, deductions and computations for the annual payment period covered by the payment.

(2) Late Payments.

In the event that the fees herein required are not tendered on or before the dates fixed herein, interest due on such fee shall accrue from the date due at one and one-half percent (1.5 %) per month.

(3) Acceptance of Payment.

Acceptance of payment by City shall not be construed as accord that amount paid is the correct amount. The City reserves its rights to inspect relevant books and seek any underpayments due. If the City has not begun process to challenge or audit payment of franchise fee within 24 months of receipt of final annual payment, and breakdowns provided pursuant to subsection (d)(1) are certified, payment is deemed accurate. If the breakdowns provided pursuant to subsection (d)(1) are not certified, the time frame hereunder is 48 months.

(24) In the event that any statement or payment is not furnished as required, interest on the amount due, as determined from the annual gross subscriber revenues as computed by a certified public accountant, selected by the eCity, shall accrue from the date of the required submittal at an annual rate of interest equal to that charged by the eCity that year for delinquent municipal real estate taxes.

(e) *Percentage amendments.* The percentages designated in this section may be amended no more than once each year by the council.

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

Sec. 14-206. Bonds.

~~(a) *Proposal bond.* Each applicant for a franchise shall submit a proposal bond in a form acceptable to the city or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the city in an amount of fifteen thousand dollars (\$15,000.00). The grantee's proposal bond shall be returned upon provision of the performance bond as required in subsection (b) below.~~

~~(b)~~ *Performance bond.* The grantee shall maintain, and by its acceptance of any franchise agrees that it will maintain, through the term of the franchise, any renewal or extension thereof, or during the restoration of property following franchise termination or revocation, a faithful performance bond running to the eCity, with a corporate surety licensed to do business in the State of Maine and approved by the eCity in the penal sum total of ~~one hundred thousand dollars (\$100,000.00)~~ at least fifty thousand dollars (\$50,000) conditioned upon the faithful performance of the grantee and upon further condition that in the event the grantee shall fail to comply with any law, ordinance or regulation governing the franchise, there shall be recoverable jointly and severally from the principal and surety of the bond, any damages or loss suffered by the eCity as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the grantee, plus a reasonable allowance for attorney's fees and costs, up to the full amount of the bond. During major

construction, such amount shall be increased to one hundred thousand dollars (\$100,000.00). The bond shall contain the following endorsement:

It is hereby understood and agreed that this bond may not be cancelled nor the intention not to renew be stated until thirty (30) days after receipt by the City of South Portland, Maine by registered mail of one (1) copy of a written notice of such intent to cancel or not renew.

~~(c) Return of proposal bond. Proposal bonds or certified checks received in lieu thereof from applicants whose proposals are not accepted by the city shall be returned to the applicant as soon as the proposal is rejected.~~

(db) Bond evidence to be filed with eCity. The performance bond and written evidence of payment of required premium, shall be filed and maintained with the eCity during the term of any franchise granted hereafter, or any renewal thereof.

(c) Forfeiture. Subject to the provisions in this section, the total amount of the bond shall be forfeited in favor of the City in the event the Company fails to complete its construction or rebuild obligations or breaches and material provision of this Franchise Agreement.

Sec. 14-207. ~~Reserved.~~Customer Service – Accessibility.

The grantee shall retain sufficient Customer Service Representatives (“CSR”s) and telephone line capacity to ensure that telephone calls to service/repair and billing inquiry lines are answered by a CSR within thirty (30) seconds or less, and that any transfers are made within thirty (30) seconds. The Customer shall be able to speak with a Customer Service Representative within five (5) minutes. If the call is answered by Interactive Voice Response (IVR), the IVR must allow the option to speak with a CSR within no more than three minutes. If a customer has exercised the option to speak with a CSR, the customer shall be able to speak with a CSR within 30 seconds once the call is transferred during normal business hours. These standards shall be met no less than ninety (80) percent of the time, measured on a quarterly basis under normal operating conditions. If requested by the City, compliance with this standard shall be reported by the grantee to the City on an annual basis.

Sec. 14-208. Complaint procedure.

- (a) Complaints. Complaints, dispute and disagreements which are not resolved by the grantee to the subscriber's satisfaction, may be filed with the eCity Manager, provided such filing complies with the time limits prescribed below.
- (b) Any complaint, dispute or disagreement may be filed with the eCity Manager provided it falls within the time limits set forth below:

- (1) Within thirty (30) days after final action on the complaint, dispute or disagreement by the grantees; or
 - (2) Within thirty (30) days after notice of the complaint, dispute or disagreement has been given to the grantee and the grantee has not resolved on the complaint, dispute or disagreement.
- (c) *Investigation and report.* Within ten (10) days after receiving notice of such complaint, dispute or disagreement, the eCity Mmanager shall cause an investigation of the same to be made. After completion of the investigation, the eCity Mmanager shall issue a report either dismissing the complaint or directing the grantee to take appropriate action to remedy the complaint, dispute or disagreement, and shall cause a copy of such report to be forwarded to each party.

The report of the eCity Mmanager shall be final unless either party appeals from it within ten (10) days as provided below.

- (d) *Appeal to regulatory board.* If either party is aggrieved by the decision of the eCity Mmanager, he may appeal to the regulatory board described in section 14-209. The regulatory board will hold a hearing on the appeal from the decision of the eCity Mmanager within seven (7) days after receiving the appeal and its decision will be rendered within seven (7) days after the hearing.
- (e) *Notice to parties.* The board shall provide reasonable advance notice of the time and place of the hearing to the parties.

Sec. 14-209. CATVCable TV System Regulatory Board.

- (a) *CATVCable TV system board established.* There is hereby established a CATVcable TV system board hereinafter referred to as the "board."
- (b) *Regulatory board composition:*
- (1) The board shall be composed of three (3) members of the eCity eCouncil, one of whom shall be elected chairman.
- (c) *Duties of the board.* The duties of the board shall be:
- (1) Reviewing appeals taken pursuant to section 14-208 of this article. Its decisions or findings shall be binding on all parties.
 - (2) Reviewing and auditing reports submitted to the eCity as required in section 14-204 herein, and such other correspondence as may be submitted to the eCity concerning the operation of the broadband telecommunications network

so as to insure that the necessary reports are completed and fulfilled pursuant to the terms of the article.

- (3) Work with the public and the media to assure that all records, rules and charges pertinent to the broadband telecommunications network in the City of South Portland are made available for inspection at reasonable hours upon reasonable notice.
- (4) Confer with the grantee and advise on the interconnection of the eCity's network with networks serving other governmental entities.
- (5) Solicit, review and provide recommendations to the council for selection of applicants for franchise.
- (6) Reserved.
- (7) Undertake such other duties as the council may assign from time to time.
- (8) Make recommendations to the grantee concerning educational and local interest programming.
- (9) Coordinate and advise the educational, governmental and public users of the ~~CATV~~cable TV system access channels in their programming efforts.
- (10) Monitor the procedural aspects and operation of the public access channel.
- (11) Perform such duties and functions relative to coordination with boards of similar networks to assume the mutually satisfactory interchange of programs between networks.
- (12) If requested by council, prepare and present an annual budget to the Council for the administration and operation of the committee.
- (13) The board shall have the authority to conduct public hearings in the performance of its duties.

Sec. 14-210. Reserved.

Sec. 14-211. Compliance.

The grantee shall at all times comply with all applicable federal, state and locality laws, ordinances and regulations, including, without limitation, 30-A M.R.S. § 3010, Consumer Rights And Protection Relating To Cable Television Service, as may be amended from time to time. Any franchise agreement entered into or renewed under

this article may be revoked by the Council for good and sufficient cause after due notice to the grantee and a public hearing thereon, with the right to appeal to the Superior Court (Cumberland County) under Rule 80B of the Maine Rules of Civil Procedure.

Sec. 14-212. Separability.

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

Secs. 14-213--14-249. Reserved.

Fiscal Note: Less than \$1,000

Dated: September 6, 2017