

CHAPTER 5

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ARTICLE I

Cable Television System

Sec. 5-1. Grant of franchise—term.

Pursuant to that cable franchise agreement between the Town and AT&T Broadband HC of Colorado, LLC, duly authorized and approved by the Board of Trustees on April 9, 2002, a nonexclusive franchise is hereby granted to AT&T Broadband HC of Colorado, LLC, to occupy and use public rights-of-way within the Town for the construction, installation, maintenance, operation, expansion, repair, upgrading and rebuilding of a cable television system for a term of five (5) years commencing April 13, 2002, and terminating on April 12, 2007. If the cable television system operated under the franchise granted under this Section is upgraded to a minimum bandwidth of not less than 550 MHz and can deliver both upstream and downstream transmissions prior to the expiration of the initial five-year term of the franchise as provided for in Section 11-1 of the franchise agreement, then the term of the franchise shall be extended by an additional term of ten (10) years, or to and until April 12, 2017. (Ord. 6-2002 §2)

Sec. 5-2. Use of public rights-of-way and easements.

(a) Subject to the Town's regulations governing access and excavations or construction on or within public rights-of-way and/or other property, the franchise awarded the franchise specified in this Article may erect, install, construct, repair, replace, reconstruct and retain such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as necessary and appurtenant to the operation of the cable television system within the Town in, on, over, under, upon, across and along rights-of-way, easements and other real property dedicated to or owned by the Town for public use.

(b) The franchisee must follow established requirements for the placement of cable system facilities in public rights-of-way and easements, including the specific location of facilities in such rights-of-way or easements, and must in any event install cable system facilities in a manner that minimizes interference with the use of the rights-of-way and/or easements by others, including others who may install communications facilities. Within limits reasonably related to protecting public health, safety and welfare, the Town may require that cable system facilities be installed at a particular time, at a specific place, or in a particular manner as a condition of access to a particular right-of-way or easement, and access may be denied if the franchisee is not willing to comply with Town's lawful requirements. Franchisee may also be required, at its cost, to remove any facility that is not installed in compliance with the requirements lawfully established by the Town, and may be required to cooperate with others to minimize adverse impacts on rights-of way and easements through joint trenching and other arrangements. (Ord. 6-2002 §2)

Sec. 5-3. Franchise nonexclusive.

The franchise awarded under this Article shall be nonexclusive and subject to all prior rights, interests, easements or licenses granted by the Town to any person to use or occupy any property, right-of-way, interest or license for any purpose whatsoever, including the right of the Town to use same for any purpose it deems fit, including the same or similar purposes allowed the franchisee under this Article. The Town may also at any time in the future grant authorization to use the rights-of-way and easements for any purpose not incompatible with franchisee's authority under the franchise, inclusive of franchises for additional cable television systems as the Town deems appropriate.

Sec. 5-4. Reservation of police powers.

The rights and interests vested in the franchisee under the franchise awarded under this Article shall remain subject to the Town's police powers, and the Town shall maintain authority and power to adopt from time to time ordinances of general application that are necessary to protect the public health, safety and welfare, provided that such ordinances shall not be destructive of the rights granted to the franchisee under the franchise. Any conflict that may arise between the provisions of the franchise agreement and the present or future lawful exercise by the Town of its police power shall be resolved in favor of the latter. (Ord. 6-2002 §2)

Sec. 5-5. Tree Trimming.

Franchisee may prune or cause to be pruned, using proper pruning practices, any tree in or encroaching upon a public right-of-way or easement that interferes with the proper operation or maintenance of franchisee's cable system. Franchisee shall comply with all general ordinances or regulations of the Town regarding tree trimming. Except in emergencies, franchisee may not prune trees at a point below thirty (30) feet above sidewalk grade unless one (1) week's prior written notice of such pruning has been given to the owner or occupant of the premises abutting the right-of-way or easement in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at his or her own expense during the one-week notice period. If the owner or occupant fails to do so, franchisee may prune such tree as necessary at its own expense. For purposes of this Section, emergencies exist when it is necessary to prune to protect public safety or the franchisee's facilities from imminent injury or destruction. (Ord. 6-2002 §2)

Sec. 5-6. Stop work orders.

(a) Upon notice to the Town that any work is being performed contrary to the provisions of this Article or the franchise agreement awarded thereunder, or in an unsafe or dangerous manner as determined by the Town, or in violation of the terms of any generally applicable permit, law, regulation, ordinance or standard, such work may immediately be stopped by the Town by written order.

(b) A stop work order shall:

- (1) Be in writing;
- (2) Be given to the person doing the work if present to receive same at the work site and/or posted on the work site;
- (3) Be sent to the franchisee by overnight delivery or by facsimile at the address and/or number given in the franchise agreement;
- (4) Indicate the nature of the alleged violation or unsafe condition; and
- (5) Establish conditions under which work may be resumed.

(c) The provisions contained in this Section shall be in addition to any and all other police powers and law enforcement authority possessed by the Town. (Ord. 6-2002 §2)

Secs. 5-7—5-50. Reserved.

ARTICLE II

Electric Franchise

Sec. 5-51. Definitions.

The word *Town*, as hereinafter employed, shall designate the Town of Buena Vista, Chaffee County, Colorado, the grantor, and the word *Association* shall designate the Sangre de Cristo Electric Association, Inc., a corporation, its successors and assigns, the grantee. (Ord. 3-1972 Art. I; Ord. 4-1997 Art. I)

Sec. 5-52. Grant of franchise.

The franchise and right are hereby granted by the Town to the Association, its successors and assigns, to locate, build, construct, acquire, extend, maintain and operate into, within and through said Town, a plant or plants and works, for the purchase, manufacture, generation, transmission and distribution of electricity for illuminating, heating and power, or other purposes, with the right and privilege for the period and upon the terms and conditions hereinafter specified, to furnish, sell and distribute electricity to the Town and the inhabitants thereof by means of generating plants, substations, transmission lines, conduits, cables and lines or poles with wires strung thereon, or otherwise, on, over, under, along, across and through any and all streets, alleys, viaducts, bridges, roads, public ways and places in the Town; and to build, construct, extend, maintain and operate into and through the corporate limits, or any additions thereof, for distribution of electric energy within, without and beyond the corporate limits of the Town or any additions thereto; and on, over, under, along, across and through any extension, connection with or continuation of the same, and/or on, over, under, along, across and through any and all new streets, alleys, viaducts, bridges, roads, public ways and places, as may be hereafter laid out, opened, located or constructed within the territory now or hereafter included in the boundaries of the Town. (Ord. 3-1972 Art. II §1; Ord. 4-1997 Art. II §1)

Sec. 5-53. Nonexclusive right.

The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive, and the Town reserves the right to grant a similar use of said streets, alleys and other public ways and places, to any other person or corporation at any time during the period of this franchise. (Ord. 3-1972 Art. II §2; Ord. 4-1997 Art. II §2)

Sec. 5-54. Location of equipment.

All transmission and distribution structures, lines and equipment erected by the Association within the Town shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of said streets, alleys or other public ways and places. Should it become necessary for the Association in exercising its rights and performing its duties hereunder to interfere with any sidewalk or pavement, or any other public or private improvement, the Association shall repair such sidewalk, pavement or other improvement and leave it in as good order and condition as it formerly was. (Ord. 3-1972 Art. II §3; Ord. 4-1997 Art. II §3)

Sec. 5-55. Generation of electricity.

The Association shall have the right, power and authority to employ any means, in its discretion, to secure, acquire or generate electric energy to operate any of its structures or plants, in order to supply and

furnish electricity for light, heat, power and other purposes, to the Town and inhabitants thereof under this franchise. (Ord. 3-1972 Art. II §4; Ord. 4-1997 Art. II §4)

Sec. 5-56. Maintenance of equipment.

The Association shall so maintain its structures, apparatus and equipment as to afford all reasonable protection against injury or damage to persons or property therefrom; and the Town shall be saved harmless from any liability or damage accruing against the Town arising out of the negligent exercise by the Association of the rights and privileges hereby granted. The Town shall have the right, without cost, to use all poles of the Association within the Town for the purpose of stringing wires thereon for its fire alarm and police signal systems; provided, however, that the Association assumes, and shall be subjected to, no liability, and shall be subjected to no additional expense in connection therewith. It is further provided that the use of said poles by the Town shall not interfere in any unreasonable manner with the Association's use of the same. (Ord. 3-1972 Art. II §5; Ord. 4-1997 Art. II §5)

Sec. 5-57. Maintenance of electric service.

In consideration of and as compensation for the granting of this franchise, the Association will maintain twenty-four-hour electric service except when prevented from so doing by acts of God, unavoidable accidents, strikes or other causes beyond its control, in which event the Association shall restore its service as promptly as possible and will supply and distribute electricity for lighting, heating, power and other lawful purposes to the Town and its inhabitants. (Ord. 3-1972 Art. II §6; Ord. 4-1997 Art. II §6)

Sec. 5-58. Service to new areas.

The Association shall furnish electricity and electric power for light, heat, power or for any other lawful purpose under the terms and provisions of this franchise within the corporate limits of the Town, or any additions thereto, at rates and upon such conditions and regulations as may be hereafter filed with or promulgated by the Public Utilities Commission of the State, or by any other regulatory commission, board or authority which may hereafter acquire and have jurisdiction thereof. (Ord. 3-1972 Art. III §1; Ord. 4-1997 Art. III §1)

Sec. 5-59. Review of rate.

Nothing in Section 5-58 shall be construed to limit the right of the Association or the Town to a review of any rates so filed with or promulgated by said Public Utilities Commission of the State, or other authority having jurisdiction thereof, at any time as may be by law provided. (Ord. 3-1972 Art. III §2; Ord. 4-1997 Art. III §2)

Sec. 5-60. Rules and regulations on file with Town.

The Association, from time to time, may promulgate such rules, regulations, terms and conditions governing the conduct of its business, including the utilization, extension and protection of service and property, as shall be reasonably necessary to enable the Association to exercise its rights and perform its obligations under this franchise, and to assure uninterrupted service to each and all of its consumers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or laws of the State, and shall be subject to approval by the Public Utilities Commission of the State or other competent authority having jurisdiction in the premises. The Association shall keep on file in its office, available to the public, copies of such rules, regulations, terms and conditions from

time to time adopted by it for the conduct of its business, and copies thereof shall also be filed with the Town Clerk. (Ord. 3-1972 Art. III §3; Ord. 4, 1997 Art. III §3)

Sec. 5-61. Franchise fee.

As further consideration for this franchise, the privileges granted and the obligations imposed hereunder, the Association shall pay to the Town a sum equal to a percentage of its gross revenues arising from the sale of electric energy, including consumer charges and fixed charges, within the corporate limits of the Town to the inhabitants thereof, under the terms and provisions of this franchise, as follows: 1997 - three and one-half percent (3½%), 1998 – three percent (3%), 1999 – two and one-half percent (2½%), 2000 – two percent (2%), 2001 – one and one-half percent (1½%), 2002 and thereafter for the balance of the term of the agreement - one percent (1%); provided, however, that the income derived from the sale of electricity to the Town shall not be subject to the franchise fee, and no franchise fee shall be charged or paid for said income. It is hereby agreed that the amount above specified shall be and hereby is accepted by the Town in lieu of any and all license or occupation taxes and all other special taxes, assessments or excises upon the poles, wires or other property of the Association, either as a franchise tax, occupation tax, license tax or for the inspection of poles, wires or other property of the Association or otherwise. Payment of the franchise fee accruing after the effective date of the ordinance codified herein shall be made in quarterly installments not more than thirty (30) days following the close of the calendar quarter for which payment is to be made. The initial and final payments shall be prorated for the portions of the quarters at the beginning and the end of the term of the ordinance codified in this Article. (Ord. 3-1972 Art. IV §1; Ord. 4-1997, Art. IV §1)

Sec. 5-62. Effective date.

The ordinance codified in this Article shall be in full force and effect from and after its passage, approval and publication, as by law required, and acceptance and approval thereof in writing by the Association within thirty (30) days from and after said publication. (Ord. 3-1972 Art. V §1; Ord 4-1997 Art. V §1)

Sec. 5-63. Town's right to purchase or condemn.

The Town may, as provided by law, by purchase or condemnation, and upon payment of just compensation therefor, acquire and take over the property of the Association actually used and useful for the convenience of the Town and its inhabitants. (Ord. 3-1972 Art. V §2; Ord. 4-1997 Art. V §2)

Sec. 5-64. Term of franchise.

The franchise and rights herein granted shall take effect and be in force from and after the final passage and publication hereof, as required by law, and upon filing of acceptance by the Association as provided elsewhere herein; and shall continue in force and effect for a term of twenty-five (25) years from and after the effective date of the ordinance codified in this Article and franchise. (Ord. 3-1972 Art. V §3; Ord. 4-1997 Art. V §3)

Secs. 5-65—5-80. Reserved.

ARTICLE III

Gas Franchise

Sec. 5-81. Definitions.

In this Article, unless the context otherwise requires, the following words and phrases shall have the following meanings:

(1) *Company* means Com Fur T Gas, Incorporated, a Colorado corporation.

(2) *Facilities* means facilities reasonably necessary or actually used to provide gas into, within and through the Town and includes plants, works, systems, substations, transmission and distribution structures, lines, equipment, pipes, mains, conduit, underground lines, gas compressors, meters and other appurtenances used in connection with the sale, transmission or distribution of gas within the Town.

(3) *Gas* means such gaseous fuels as natural gas, artificial gas, liquefied natural gas, liquefied petroleum gas, manufactured gas or any mixture thereof.

(4) *Public place* means and includes any street, alley, viaduct, bridge, road, lane, highway or dedicated public easement or right-of-way.

(5) *Residents* means and includes all persons, businesses, industries, governments or governmental agencies and other entities located, in whole or in part, within the Town.

(6) *Revenues* means the total amount of money which the Company receives from the sale of gas within the Town, less adjustments for refunds, uncollectible accounts, corrections and required regulatory adjustments. (Prior code 5.32.010)

Sec. 5-82. Grant of franchise.

The Town hereby grants the Company, subject to the terms of this Article, a nonexclusive right and duty to furnish, sell and distribute gas to the Town and to all residents of the Town; to install, maintain and operate facilities reasonably necessary for gas service to the Town; and a nonexclusive right to make reasonable use of such public places as may be necessary to carry out the terms of this franchise. (Prior code 5.32.020)

Sec. 5-83. Term of franchise.

This franchise shall take effect on April 1, 1988. The term of this franchise shall be for twenty-five (25) years, beginning with said effective date and expiring on March 31, 2013. (Prior code 5.32.030)

Sec. 5-84. Franchise fee and payment schedule.

Not later than the last day of January of each year during the term of this franchise, the Company shall pay to the Town one percent (1%) of its revenues for the preceding calendar year. The payment due January 30, 1989, shall be one percent (1%) of the Company's revenues from April 1, 1988, through December 31, 1988. The payment due January 30, 2014, shall be one percent (1%) of the Company's revenues from January 1, 2013, through March 31, 2013. (Prior code 5.32.040)

Sec. 5-85. Change of franchise fee or consideration.

(a) Once each year the Board of Trustees may, by ordinance, change the consideration under this franchise to that paid by the Company under any other municipal franchise in Colorado, after thirty (30) days' notice to the Company.

(b) The Company shall report to the Town within sixty (60) days the execution or change of any franchise under which a municipality in Colorado receives from the Company greater consideration than is provided herein.

(c) For purposes of this Section, *consideration* means the franchise fee established in Section 5-84, and any other provision of significant financial benefit to the Town or to any other municipality under the terms of their franchise with the Company. (Prior code 5.32.050)

Sec. 5-86. Franchise fee payment in lieu of other fees.

The franchise fee is the only monetary payment to the Town for the rights granted in this franchise. The Company is not exempt, however, from any property tax, any sales or use tax, any other tax not related to the franchise, other fees or taxes assessed generally upon businesses within the Town, or reasonable street or curb cut permit and inspection fees. (Prior code 5.32.060)

Sec. 5-87. Contract obligation.

If the franchise fee specified in this Article is declared illegal, unconstitutional or void for any reason by any court or proper authority, the Company shall be contractually bound to pay the Town the amount which would have been paid to the Town as a franchise fee at the same times and in the same manner as provided for the franchise fee. (Prior code 5.32.070)

Sec. 5-88. Supply of gas.

The Company shall make available an adequate supply of gas to provide service throughout the Town when needed by customers and potential customers. The Company shall supply gas at the lowest reasonable cost. If the supply of gas is limited or interrupted, the Company shall immediately take all necessary actions to restore such supply as soon as possible. (Prior code 5.32.080)

Sec. 5-89. Obligations regarding Company facilities.

(a) Work. All work by the Company shall be done:

- (1) In a good workmanlike manner;
- (2) In a timely and expeditious manner;
- (3) In a manner which minimizes inconvenience to the public and individuals; and
- (4) In a cost-effective manner, which may include the use of qualified private contractors.

(b) Restoration. All public and private property and lawfully installed improvements which are disturbed by Company activities shall be restored as soon as possible by the Company at its expense to substantially their former condition.

(c) Location of facilities. Company facilities shall not interfere with water facilities, sewer facilities or other public use of public places. Company facilities shall be installed so as to minimize interference with other property and improvements.

(d) Repair of damage. The Company shall promptly repair all damage caused by Company activities or facilities. If such damage poses an immediate threat to health, safety or welfare of the public or individuals, the Town may cause repairs to be made at the Company's expense unless the Company makes such repairs promptly upon the Town's request.

(e) Inspections. All work performed by the Company is subject to inspection by the Town Administrator or his or her designee. The Company shall promptly perform all reasonable remedial action required by the Town pursuant to said inspection.

(f) Quality. The Company's facilities shall be of sufficient quality, durability and redundancy to provide adequate and efficient gas service to the Town and its residents. The Company shall keep its facilities in good working order. (Prior code 5.32.090)

Sec. 5-90. Relocation of Company facilities.

(a) Any relocation of the Company's facilities in any public place required, caused or occasioned by any Town project shall be at the cost of the Company. Relocation shall be completed within a reasonable time from the date when the Town makes its request, such time to be established by the Company as soon as possible after the Town's request. The Company shall be granted an extension of time for completion of any relocation due to any delay caused by conditions not under its control, provided that the Company proceeds with due diligence at all times.

(b) Nothing contained in this Section shall impose any obligation upon the Town to pay for relocation of any Company facilities. (Prior code 5.32.100)

Sec. 5-91. Service to new areas.

If the boundaries of the Town are expanded during the term of this franchise, the Company shall extend service to residents of the newly annexed area as soon as possible, subject to the payment provisions of the Company's extension policy. Such service shall be in accordance with all of the terms of this Article. (Prior code 5.32.110)

Sec. 5-92. Town not required to advance funds.

Upon receipt of the Town's authorization for billing and construction, the Company shall extend its facilities to provide gas service for municipal uses within or outside the Town. The Town shall not be required to advance funds prior to construction. (Prior code 5.32.120)

Sec. 5-93. Technological improvements.

The Company shall use its best efforts to introduce and install, as soon as practicable, technological advances in its equipment and service within the Town. Upon request by the Town, the Company shall promptly review and report advances which it is aware have occurred in the gas utility industry and report whether it believes it appropriate to incorporate such advances into the Company's operations. (Prior code 5.32.130)

Sec. 5-94. Use of Company facilities by other.

The Town may use Company facilities, without cost, for public purposes. Such uses shall not unreasonably interfere with the use of such systems for the distribution of gas nor create an unreasonable hazard. Further, the Company hereby assumes no liability in connection with the use of Company facilities by the Town. (Prior code 5.32.140)

Sec. 5-95. Underground pipes.

If the Company installs new underground pipe (or similar instruments for the conveyance or transportation of gas), opens a trench or replaces pipe (or similar instruments for the conveyance or transportation of gas), the Company shall provide adequate advance notice to the Town so as to permit additional installation by the Town of Town-owned utility transmission lines at the Town's expense. (Prior code 5.32.150)

Sec. 5-96. Town regulations.

The Town expressly reserves, and the Company expressly recognizes, the Town's right to adopt, from time to time, in addition to the provisions herein contained, such ordinances, rules and regulations as it may deem necessary for the protection of the health, safety and welfare of its residents and their properties. (Prior code 5.32.160)

Sec. 5-97. Compliance with Town requirements.

The Company shall comply with all Town ordinances, rules and regulations and shall obtain all required permits. The Company shall submit, in advance, reports of annual and long-term planning for capital improvement projects with descriptions of planned curb and street cuts and other work. All work shall be coordinated with the Town's public improvement projects. (Prior code 5.32.170)

Sec. 5-98. Town review of construction and design.

Before construction or installation of any significant aboveground gas facilities, transmission lines, generating plant, building, substation or similar structure within the Town, the Company shall furnish the Town with plans and specifications for such facilities. In addition, the Company shall assess and report on the impact of its proposed construction on the Town environment. Such plans and reports may be reviewed by the Town to ensure, inter alia:

- (1) That all applicable laws are complied with;
- (2) That aesthetic and good planning principles have been given due consideration; and
- (3) That adverse impact has been minimized.

The Company shall incorporate all reasonable changes requested by the Town. (Prior code 5.32.180)

Sec. 5-99. Inspection, audit and quality control.

The Town shall have the right to inspect at all reasonable times any portion of the Company's system used to serve the Town and its residents. The Town shall also have the right to inspect and audit Company records relevant to this franchise at all reasonable times. The Company agrees to cooperate

fully with the Town in any inspection or audit and to correct any discrepancies affecting the Town's interest in a prompt and efficient manner. (Prior code 5.32.190)

Sec. 5-100. General.

The Company shall keep the Town informed as to existing and planned system capacity, construction and other activities. The Town shall keep the Company informed as to existing and planned development, construction and other activities. Regular planning and coordination meetings will be held. (Prior code 5.32.200)

Sec. 5-101. Emergencies.

If there is an emergency affecting Company operations or service, the Company shall maintain ongoing communication with the Town as to the nature of the problem and its anticipated duration and resolution. The Company shall develop and keep up to date and on file with the Town a mutually agreeable plan to facilitate such communication. At all times the Company shall have on file with the Town a special twenty-four (24) hour telephone number which the Town government can use to communicate with the Company in the event of an emergency. In addition, the Company shall make information available to residents as to any problem and its anticipated duration and resolution. (Prior code 5.32.210)

Sec. 5-102. Reports on Company operations.

The Company shall submit reasonable reports requested by the Town with respect to Company operations. Initially, the Town requests, and the Company shall provide, the following:

- (1) An annual report of the return earned by the Company on its operations and the base used for calculation of such return;
- (2) An annual list of all real property and leasehold interests in real property owned by the Company in the Town;
- (3) An annual report of the gas revenues received from residents of the Town, showing each adjustment to gross revenue; and
- (4) An annual report showing the performance standards or goals which the Company uses to monitor the quality of service provided as compared to actual performance. (Prior code 5.32.220)

Sec. 5-103. Copies of tariffs, all PUC filings.

The Company shall keep on file in a local Company office all tariffs, rules, regulations and policies approved by the Colorado Public Utilities Commission ("PUC") relating to service by the Company to the Town and its residents. Upon request by the Town, the Company shall provide the Town with copies of such documents and of filings it makes with the PUC. (Prior code 5.32.230)

Sec. 5-104. Town held harmless; attorney's fees.

The Company shall hold harmless and indemnify the Town from and against all liability, damage and claims, and shall reimburse reasonable expenses related thereto, including reasonable attorney's fees incurred by the Town, arising out of the operations of the Company under this franchise or relating to the granting of this franchise by the Town. No expenses reimbursed by the Company under this Section shall

be surcharged to customers. In the event of litigation between the parties regarding this franchise, the prevailing party shall be entitled to recover its costs, including reasonable attorneys' fees. The Company shall not be obligated to hold harmless or indemnify the Town from claims or demands to the extent such claims or demands arise out of, or are in connection with, any negligent act or failure to act of the Town or any of its officers or employees. (Prior code 5.32.240)

Sec. 5-105. Notice to Company.

The Town shall provide notice to the Company of any claim or action against the Town arising out of this franchise or Company operations. The Company may, at its own expense, appear and defend or assist in the defense of such claim or action. (Prior code 5.32.250)

Sec. 5-106. Consent of Town required.

The Company shall not sell, transfer or assign any rights under this franchise to another entity without the Board of Trustees' written approval, which shall not be unreasonably withheld. (Prior code 5.32.260)

Sec. 5-107. Transfer fee.

In the event of a sale, transfer or assignment of rights under this franchise, excepting only a corporate reorganization of the Company not involving a third party, the transferee shall be required to promptly pay to the Town a transfer fee equivalent to the amount of the last annual franchise fee paid by the Company pursuant to Section 5-84. The charging or collecting of such transfer fee is conclusively deemed to be reasonable. (Prior code 5.32.270)

Sec. 5-108. Town's right to purchase or condemn.

The right of the Town to construct, purchase or condemn utility facilities and the rights of the Company in connection therewith, as provided by the Colorado Constitution and statutes, are expressly recognized. (Prior code 5.32.280)

Sec. 5-109. Negotiations and condemnations.

In connection with negotiations involving the purchase or condemnation by the Town of the Company's facilities, no value shall be given to the rights granted under this franchise. If the Town desires to purchase the Company's system, the parties shall negotiate in good faith to determine a mutually acceptable purchase price. If the Town and the Company cannot agree within ninety (90) days, the Town may commence condemnation proceedings. (Prior code 5.32.290)

Sec. 5-110. Continued cooperation by Company.

If the Town purchases or condemns, the Company shall continue service, in whole or in part, at the Town's request for the duration of this franchise pursuant to terms and conditions negotiated for such continued operation. The Company shall take no action which could inhibit the Town's ability to effectively or efficiently use the acquired system. At the Town's request, the Company shall supply gas for use by the Town in the Town's system. (Prior code 5.32.300)

Sec. 5-111. Right of first purchase.

In the event the Company at any time during the term of this franchise proposes to sell or dispose of any of its real property located within the Town, it shall grant to the Town the right of first purchase of

the same. The Company shall obtain a qualified appraisal on any such property and the Town shall have sixty (60) days in which to exercise the right of first purchase by giving written notice to the Company. Should the Town not provide the required written notice, the Company may proceed to negotiate with others for the sale of such property provided that the Company may not sell such property for an amount less than ninety-five percent (95%) of the appraised value without first providing the Town an opportunity to purchase such property at such lesser price, in which event the Town must notify the Company in writing within thirty (30) days if it wishes to purchase such property. It is understood that nothing in this paragraph shall preclude the Company from transferring real property to a subsidiary or affiliate without first according the Town the rights referred to above, provided that if the transferee proposes to sell or dispose of such property within one (1) year, it shall not do so without first affording the Town the rights referred to above. (Prior code 5.32.310)

Sec. 5-112. Limitation on Company removal.

If this franchise is not renewed or is forfeited, or the Company terminates any service provided for herein for any reason, and the Town has not provided for service, the Company shall not remove its gas system pending resolution of its disposition. The Company shall withhold any temporary services necessary to protect the public and in such event shall be entitled only to monetary compensation in no greater amount than it would have been entitled to were such services provided during the term of this franchise. Only upon receipt of written notice from the Town shall the Company remove its system. (Prior code 5.32.320)

Sec. 5-113. Forfeiture.

Both the Company and the Town recognize there may be circumstances whereby compliance with this franchise is impossible or is delayed. In those instances, the Company shall use its best efforts to comply in a timely manner and to the extent possible. If the Company fails to perform any of its obligations under this franchise, the Board of Trustees may determine after hearing whether such failure is of a substantial nature. Upon receiving notice of such determination, the Company shall have a reasonable time, not to exceed six (6) months, in which to remedy the violations unless the parties otherwise agree in writing. If after such time corrective actions have not been successfully taken, the Board of Trustees may declare the franchise forfeited. This shall not limit or restrict any other rights or remedies available to the Town at law or in equity. (Prior code 5.32.330)

Sec. 5-114. Annexation to the Town.

When any property owned by the Company becomes eligible for voluntary annexation to the Town and is not simultaneously eligible for voluntary annexation to another municipal corporation, the Company will take whatever action is necessary to annex that property to the Town upon request by the Town. No condition of such annexation shall impair the Company's ownership of its property or its use of its land for utility purposes. Except as herein provided, the Company shall comply with all terms and conditions imposed upon the annexation by the Town which are no more stringent than those generally imposed upon the property owners seeking annexation of their land to the Town. (Prior code 5.32.340)

Sec. 5-115. Amendments.

If the Board of Trustees or the Company proposes amendments hereto, both parties will negotiate within a reasonable time in good faith in an effort to agree on mutually satisfactory amendments. As used in this Section, *amendment* does not include a change in the franchise fee authorized in Section 5-85. (Prior code 5.32.350)

Sec. 5-116. Successors and assigns.

The provisions of this Article shall inure to the benefit of and be binding upon successors and assigns of the Town and of the Company. (Prior code 5.32.360)

Sec. 5-117. Representatives.

Each party shall have a representative to whom notices shall be sent regarding this franchise. Initially, the Town's representative shall be the Town Clerk and the Company's representative shall be the district manager. Notices, including notice of any change of representative, shall be in writing and forwarded by certified mail or hand delivery to the designated representative of the other party. (Prior code 5.32.370)

Sec. 5-118. No waiver.

Neither the Town nor the Company shall be excused from complying with any provision of this franchise by any failure of the other to insist upon or to seek compliance with such provision. (Prior code 5.32.390)

Sec. 5-119. Payment of expenses.

At the Town's option, the Company shall either pay in advance or reimburse the Town for all expenses incurred in publication of notices and ordinances and for photocopying of documents arising from the negotiation of this franchise. (Prior code 5.32.400)

Sec. 5-120. Breach of contract.

If the Company fails to fulfill any substantial obligation under this Article, the Town shall have a breach of contract claim against the Company, in addition to any other remedy provided by law. (Prior code 5.32.410)

Sec. 5-121. Company approval.

The Company shall file with the Town Clerk its written acceptance of this franchise and of the provisions of this Article within thirty (30) days following adoption of the ordinance codified in this Article by the Board of Trustees. The acceptance shall be in form and content approved by the Town Attorney. If the Company fails to timely file its written acceptance, this franchise shall be null and void. (Prior code 5.32.420)

Secs. 5-122—5-140. Reserved.

ARTICLE IV

Emergency Telephone Service

Sec. 5-141. Definitions.

As used in this Article:

(1) *Emergency telephone charge* means the charge to pay the equipment costs, the installation costs and the directly related costs of the continued operation of an emergency telephone service according to the rates and schedules filed with the Public Utilities Commission, if applicable.

(2) *Emergency telephone service* means a telephone system utilizing the single three-digit number 911 for reporting police, fire, medical or other emergency situations.

(3) *Exchange access facilities* means the access, as defined in the tariffs approved by the Public Utilities Commission, from a specific customer's premises to the telecommunications network to effect the transfer of information.

(4) *Service supplier* means any person providing exchange telephone services to any service user in the State.

(5) *Tariff rates* means the rates billed by a service supplier, as stated in the service supplier's tariffs, which rates have been approved by the Public Utilities Commission and which represent the service supplier's recurring charges for exchange access facilities or their equivalent, exclusive of all taxes, fees, licenses or similar charges. (Prior code 5.40.010)

Sec. 5-142. Initial emergency telephone charge.

Pursuant to Section 29-11-101, *et seq.*, C.R.S., there is hereby imposed upon all telephone exchange access facilities within the Town a monthly emergency telephone charge in an amount not to exceed fifty cents (\$.50). (Prior code 5.40.020; Ord. 11-1990 §1)

Sec. 5-143. Annual fixing of emergency telephone charge.

Commencing in 1991, the Board of Trustees shall, at least once each year, establish a rate of charge, not to exceed the fifty cent (\$.50) limitation set forth in Section 5-142 above, which, together with any surplus revenues carried forward, will produce sufficient revenues to fund the expenditures required to operate the emergency telephone service within the Town for the next year. The Board of Trustees shall make its determination of such rate not later than September 1 of each year, commencing in 1991, and shall fix the new rate to take effect commencing with the first billing period of each customer on or following the next January 1. Immediately upon making such determination and fixing such rate, the Board of Trustees shall publish in its minutes the new rate, and shall notify by registered mail every service supplier at least ninety (90) days before such new rate will become effective. (Prior code 5.40.030; Ord. 11-1990 §2)

Sec. 5-144. Collection of emergency telephone charge.

Telephone service suppliers providing telephone service in the Town are hereby authorized to collect the emergency telephone charge imposed by this Article in accordance with Section 29-11-101, *et seq.*, C.R.S., commencing with the effective date of the ordinance codified in this Article. Remittance of charges so collected shall be made to the Town on a monthly basis in accordance with the provisions of Section 29-11-103, C.R.S. (Prior code 5.40.040; Ord. 11-1990 §3)

Sec. 5-145. Use of funds collected.

Funds collected from the charge imposed pursuant to this Article shall be spent solely to pay for the equipment costs, installation costs and monthly recurring charges billed by the service supplier for the Town's emergency telephone service. Funds collected from the charge imposed pursuant to this Article shall be credited to a special cash fund, apart from the Town's general fund, for payments to be made as set forth above. Any moneys remaining in such cash fund at the end of any fiscal year shall remain therein for payments required to be made during the succeeding year. (Prior code 5.40.050)

Sec. 5-146. Limitation on emergency telephone charge.

The emergency telephone charge imposed by this Article shall not impose upon more than one hundred (100) exchange access facilities or their equivalent per customer billing. Such charge shall be imposed only upon service users in those portions of the Town for which emergency telephone service shall be provided. No emergency telephone charge shall be imposed upon any state or local governmental entity. (Ord. 11-1990 §4)

Secs. 5-147—5-160. Reserved.

ARTICLE V

Telephone Utility Tax

Sec. 5-161. Levy of tax.

There is levied against every telephone utility which is engaged in the business of furnishing local exchange telephone service within the Town a tax on the privilege of engaging in such business. The amount of the tax shall be three thousand dollars (\$3,000.00). (Prior code 5.08.010)

Sec. 5-162. Payment of tax.

The tax levied by this Article shall be due on the fifteenth day of January, April, July and October of each year and shall be paid in quarterly installments of seven hundred fifty dollars (\$750.00) each. (Prior code 5.08.020)

Sec. 5-163. Inspection of records.

The Town, its officers, agents or representatives shall have the right at any reasonable time to examine the books and records of any telephone utility which is subject to the tax imposed by this Article, and to make copies of the entries or contents thereof. (Prior code 5.08.030)

Sec. 5-164. Local purpose.

The tax provided herein is upon the affected occupations and businesses in their performance of local functions and is not a tax upon those functions relating to interstate commerce. (Prior code 5.08.040)

Sec. 5-165. Failure to pay.

If any telephone utility subject to this Article fails to pay the taxes as provided herein, the full amount thereof shall be due and collected from such company, and the same, together with an additional ten percent (10%) of the amount of taxes due, shall be and is declared to be a debt due and owing from such utility to the Town. (Prior code 5.08.050)

Sec. 5-166. Certain offenses and liabilities to continue.

All offenses committed and all liabilities incurred prior to the effective date of the ordinance codified in this Article shall be treated as though all prior applicable ordinances and amendments thereto were in full force and effect for the purpose of sustaining any proper suit, action or prosecution with respect to such offenses and liabilities. All taxes, the liability for which has been accrued under the terms and provisions of Ordinance No. 1974-4 on or before the effective date of the ordinance codified in this

Article, shall be and remain unconditionally due and payable, and shall constitute a debt to the Town, payable in conformity with the terms and provisions of said Ordinance 1974-4 prior to the adoption of the ordinance codified in this Article, shall be and remain in full force and effect for the purpose of the collection and payment of any and all such taxes due and payable thereunder, notwithstanding the provisions of this Article. (Prior code 5.08.060)

Sec. 5-167. Tax in lieu of other occupation taxes.

The tax herein provided shall be in lieu of all other occupation taxes, or taxes on the privilege of doing business within the Town, on any telephone utility subject to the provisions of this Article. (Prior code 5.08.070)

Secs. 5-168—5-180. Reserved.

ARTICLE VI

Cable Television Rate Regulations

Sec. 5-181. Definitions.

As used in this Article, unless the context clearly requires otherwise:

(1) *Basic cable rates* means the monthly charges for a subscription to the basic service tier and the associated equipment.

(2) *Basic service tier* means a separately available service tier to which subscription is required for access to any other tier of service, including as a minimum, but not limited to, all must-carry signals, all PEG channels and all domestic television signals other than superstations.

(3) *Benchmark* means a per channel rate of charge for cable service and associated equipment which the FCC has determined is reasonable.

(4) *Cable Act of 1992* means the Cable Television Consumer Protection and Competition Act of 1992.

(5) *Cable operator* means any person or group of persons:

a. Who provide cable service over a cable system and directly or through one (1) or more affiliates owns a significant interest in such a cable system; or

b. Who otherwise control or are responsible for, through any arrangement, the management and operation of such a cable system.

(6) *Channel* means a unit of cable service identified and selected by a channel number or similar designation.

(7) *Cost of service showing* means a filing in which the cable operator attempts to show that the benchmark rate or the price cap is not sufficient to allow the cable operator to fully recover the costs of providing the basic service tier and to continue to attract capital.

(8) *FCC* means the Federal Communications Commission.

(9) *Initial basic cable rates* means the rates that the cable operator is charging for the basic service tier, including charges for associated equipment, at the time the Town notifies the cable operator of the Town's qualification and intent to regulate basic cable rates.

(10) *Must-carry signal* means the signal of any local broadcast station (except superstations) which is required to be carried on the basic service tier.

(11) *PEG channel* means the channel capacity designated for public, educational or governmental use and facilities and equipment for the use of that channel capacity.

(12) *Price cap* means the ceiling set by the FCC on future increases in basic cable rates regulated by the Town, based on a formula using the GNP fixed weight price index, reflecting general increases in the cost of doing business and changes in overall inflation.

(13) *Reasonable rate standard* means a per channel rate that is at, or below, the benchmark or price cap level.

(14) *Superstation* means any nonlocal broadcast signal secondarily transmitted by satellite. (Ord. 3-1994 §1)

Sec. 5-182. Initial review of basic cable rates.

(a) Notice. Upon the adoption of this Article and the certification of the Town by the FCC, the Town shall immediately notify all cable operators in the Town by certified mail, return receipt requested, that the Town intends to regulate subscriber rates charged for the basic service tier and associated equipment as authority by the Cable Act of 1992.

(b) Cable operator response. Within thirty (30) days of receiving notice from the Town, a cable operator shall file with the Town its current rates for the basic service tier and associated equipment and any supporting material concerning the reasonableness of its rates.

(c) Expedited determination and public hearing.

(1) If the Board of Trustees is able to expeditiously determine that the cable operator's rates for the basic service tier and associated equipment are within the FCC's reasonable rate standard, as determined by the applicable benchmark, the Board of Trustees shall:

a. Hold a public hearing at which interested persons may express their views; and

b. Act to approve the rates within thirty (30) days from the date the cable operator filed its basic cable rates with the Town.

(2) If the Board of Trustees takes no action within thirty (30) days from the date the cable operator filed its basic cable rates with the Town, the proposed rates will continue in effect.

(d) Extended review period.

(1) If the Board of Trustees is unable to determine whether the rates in issue are within the FCC's reasonable rate standard based on the material before it, or if the cable operator submits a cost-of-service showing, the Board of Trustees shall, within thirty (30) days from the date the cable operator

filed its basic cable rates with the Town, and by adoption of a formal resolution, invoke the following additional periods of time, as applicable, to make a final determination:

a. Ninety (90) days if the Board of Trustees needs more time to ensure that a rate is within the FCC's reasonable rate standard; and

b. One hundred fifty (150) days if the cable operator has submitted a cost-of-service showing seeking to justify a rate above the applicable benchmark.

(2) If the Board of Trustees has not made a decision within the ninety (90) or one hundred fifty (150) day period, the Board of Trustees shall issue a brief written order at the end of the period requesting the cable operator to keep accurate account of all amounts received by reason of the proposed rate and on whose behalf the amounts are paid.

(e) Public hearing. During the extended review period and before taking action on the proposed rate, the Board of Trustees shall hold at least one (1) public hearing at which interested persons may express their views and record objections.

(f) Objections. Any interested person who wishes to make an objection to the proposed initial basic rate may request the Town Clerk to record the objection during the public hearing or may submit the objection in writing anytime before the decision resolution is adopted. In order for an objection to be made part of the record, the objector must provide the Town Clerk with the objector's name and address.

(g) Benchmark analysis. If a cable operator submits its current basic cable rate schedule as being in compliance with the FCC's reasonable rate standard, the Board of Trustees shall review the rates using the benchmark analysis in accordance with the standard form authorized by the FCC. Based on the Board of Trustees' findings, the initial basic cable rates shall be established as follows:

(1) If the current basic cable rates are below the benchmark, those rates shall become the initial basic cable rates and the cable operator's rates will be capped at that level.

(2) If the current basic cable rates exceed the benchmark, the rates shall be the greater of the cable operator's per channel rate on September 30, 1992, reduced by ten percent (10%), or the applicable benchmark, adjusted for inflation and any change in the number of channels occurring between September 30, 1992, and the initial date of regulation.

(3) If the current basic cable rates exceed the benchmark, but the cable operator's per channel rate was below the benchmark on September 30, 1992, the initial basic cable rate shall be the benchmark, adjusted for inflation.

(h) Cost-of-service showings. If a cable operator does not wish to reduce the rates to the permitted level, the cable operator shall have the opportunity to submit a cost-of-service showing in an attempt to justify initial basic cable rates above the FCC's reasonable rate standard. The Board of Trustees will review a cost-of-service submission pursuant to FCC standards for cost-of-service review. The Board of Trustees may approve initial basic cable rates above the benchmark if the cable operator makes the necessary showing; however, a cost-of-service determination resulting in rates below the benchmark or below the cable operator's September 30, 1992 rates minus ten percent (10%), will prescribe the cable operator's new rates.

(i) Decision.

(1) By formal resolution. After completion of its service of the cable operator's proposed rates, the Board of Trustees shall adopt its decision by formal resolution. The decision shall include one (1) of the following:

a. If the proposal is within the FCC's reasonable rate standard or is justified by a cost-of-service analysis, the Board of Trustees shall approve the initial basic cable rates proposed by the cable operator; or

b. If the proposal is not within the FCC's reasonable rate standard and the cost-of-service analysis, if any, does not justify the proposed rates, the Board of Trustees shall establish initial basic cable rates that are within the FCC's reasonable rate standard or that are justified by a cost-of-service analysis.

(2) Rollbacks and refunds. If the Board of Trustees determines that the initial basic cable rates as submitted exceed the reasonable rate standard or that the cable operator's cost-of-service showing justifies lower rates, the Board of Trustees may order the rates reduced in accordance with subparagraph (g) or (h) above, as applicable. In addition, the Board of Trustees may order the cable operator to pay to subscribers refunds of the excessive portion of the rates with interest (computed at applicable rates published by the Internal Revenue Service for tax refunds and additional tax payments), retroactive to September 1, 1993. The method for paying any refund and the interest rate will be in accordance with FCC regulations as directed in the Board of Trustees' decision resolution.

(3) Statement of reasons for decision and public notice. If rates proposed by a cable operator are disapproved in whole or in part, or if there were objections made by other parties to the proposed rates, the resolution must state the reasons for the decision and the Board of Trustees must give public notice of its decision. Public notice will be given by advertisement once in the official newspaper of the Town.

(j) Appeal. The Board of Trustees' decision concerning rates for the basic service tier or associated equipment may be appealed to the FCC in accordance with applicable federal regulations. (Ord. 3-1994 §1)

Sec. 5-183. Review of request for increase in basic cable rates.

(a) Notice. A cable operator in the Town who wishes to increase the rates for the basic service tier or associated equipment shall file a request with the Town and notify all subscribers at least thirty (30) days before the cable operator desires the increase to take effect. This notice may not be given more often than annually and not until at least one (1) year after the determination of the initial basic cable rates.

(b) Expedited determination and public hearing.

(1) If the Board of Trustees is able to expeditiously determine that the cable operator's rate increase request for basic cable service is within the FCC's reasonable rate standard, as determined by the applicable price cap, the Board of Trustees shall:

a. Hold a public hearing at which interested persons may express their view; and

b. Act to approve the rate increase within thirty (30) days from the date the cable operator filed its request with the Town.

(2) If the Board of Trustees takes no action within thirty (30) days from the date the cable operator filed its request with the Town, the proposed rates will go into effect.

(c) Extended review period.

(1) If the Board of Trustees is unable to determine whether the rate increase is within the FCC's reasonable rate standard based on the material before it, or if the cable operator submits a cost-of-service showing, the Board of Trustees shall, by adoption of a formal resolution, invoke the following additional periods of time, as applicable, to make a final determination:

a. Ninety (90) days if the Board of Trustees needs more time to ensure that the requested increase is within the FCC's reasonable rate standard as determined by the applicable price cap; and

b. One hundred fifty (150) days if the cable operator has submitted a cost-of-service showing seeking to justify a rate increase above the applicable price cap.

(2) The proposed rate increase is tolled during the extended review period.

(3) If the Board of Trustees has not made a decision within the ninety (90) or one hundred fifty (150) day period, the Board of Trustees shall issue a brief written order at the end of the period requesting the cable operator to keep accurate account of all amounts received by reason of the proposed rate increase and on whose behalf the amounts are paid.

(d) Public hearing. During the extended review period and before taking action on the requested rate increase, the Board of Trustees shall hold at least one (1) public hearing at which interested persons may express their views and record objections.

(e) Objections. Any interested person who wishes to make an objection to the proposed rate increase may request the Town Clerk to record the objection during the public hearing or may submit the objection in writing anytime before the decision resolution is adopted. In order for an objection to be made part of the record, the objector must provide the Town Clerk with the objector's name and address.

(f) Delayed determination. If the Town Council is unable to make a final determination concerning a requested rate increase within the extended time period, the cable operator may put the increase into effect, subject to subsequent refund if the Board of Trustees later issues a decision disapproving any portion of the increase.

(g) Price cap analysis. If a cable operator presents its request for a rate increase as being in compliance with the FCC's price cap, the Board of Trustees shall review the rate using the price cap analysis in accordance with the standard form authorized by the FCC. Based on the Board of Trustees' findings, the basic cable rates shall be established as follows:

(1) If the proposed basic cable rate increase is within the price cap established by the FCC, the proposed rates shall become the new basic cable rates.

(2) If the proposed basic cable rate increase exceeds the price cap established by the FCC, the Board of Trustees shall disapprove the proposed rate increase and order an increase that is in compliance with the price cap.

(h) Cost-of-service showings. If a cable operator submits a cost-of-service showing in an attempt to justify a rate increase above the price cap, the Board of Trustees will review the submission pursuant the

FCC standards for cost-of-service review. The Board of Trustees may approve a rate increase above the price cap if the cable operator makes the necessary showing; however, a cost-of-service determination resulting in a rate below the price cap or below the cable operator's then current rate will prescribe the cable operator's new rate.

(i) Decision. The Board of Trustees' decision concerning the requested rate increase shall be adopted by formal resolution. If a rate increase proposed by a cable operator is disapproved in whole or in part, or if objections were made by other parties to the proposed rate increase, the resolution must state the reasons for the decision. Objections may be made at the public hearing by a person requesting the Town Clerk to record the objection or may be submitted in writing at anytime before the decision resolution is adopted.

(j) Refunds. The Board of Trustees may order refunds of subscribers' rate payments with interest if:

(1) The Board of Trustees was unable to make a decision within the extended time period as described in Paragraph (c) above;

(2) The cable operator implemented the rate increase at the end of the extended review period; and

(3) The Board of Trustees determines that the rate increase as submitted exceeds the applicable price cap or that the cable operator failed to justify the rate increase by a cost-of-service showing, and the Board of Trustees disapproves any portion of the rate increase.

(k) Appeal. The Board of Trustees' decision concerning rates for the basic service tier or associated equipment may be appealed to the FCC in accordance with applicable federal regulations. (Ord. 3-1994 §1)

Sec. 5-184. Cable operator information.

(a) Town may require.

(1) In those cases when the cable operator has submitted initial rates or proposed an increase that exceeds the reasonable rate standard, the Board of Trustees may require the cable operator to produce information in addition to that submitted, including proprietary information, if needed to make a rate determination. In these cases, a cable operator may request the information be kept confidential in accordance with this Section.

(2) In cases where initial or proposed rates comply with the reasonable rate standard, the Board of Trustees may request additional information only in order to document that the cable operator's rates are in accord with this Section.

(b) Request for confidentiality.

(1) A cable operator submitting information to the Board of Trustees may request in writing that the information not be made routinely available for public inspection. A copy of the request shall be attached to and cover all of the information and all copies of the information to which it applies.

(2) If feasible, the information to which the request applies shall be physically separated from any information to which the request does not apply. If this is not feasible, the portion of the information to which the request applies shall be identified.

(3) Each request shall contain a statement of the reasons for withholding inspection and a statement of the facts upon which those reasons are based.

(4) Casual requests which do not comply with the requirements of this Subsection shall not be considered.

(c) Board of Trustees action. Requests which comply with the requirements of Subsection (b) will be acted upon by the Board of Trustees. The Board of Trustees will grant the request if the cable operator presents by a preponderance of the evidence a case for nondisclosure consistent with applicable federal regulations. If the request is granted, the ruling will be placed in a public file in lieu of the information withheld from public inspection. If the request does not present a case for nondisclosure and the Board of Trustees denies the request, the Board of Trustees shall take one (1) of the following actions:

(1) If the information has been submitted voluntarily without any direction from the Town, the cable operator may request that the Town return the information without considering it. Ordinarily, the Town will comply with this request. Only in the unusual instance that the public interest so requires will the information be made available for public inspection.

(2) If the information was required to be submitted by the Board of Trustees, the information will be made available for public inspection.

(d) Appeal. If the Board of Trustees denies the request for confidentiality, the cable operator may seek review of that decision from the FCC within five (5) working days of the Board of Trustees' decision and the release of the information will be stayed pending view. (Ord. 3-1994 §1)

Sec. 5-185. Automatic rate adjustments.

(a) Annual inflation adjustment. In accordance with FCC regulations, the cable operator may adjust its capped base per channel rate for the basic service tier annually by the final GNP-PI index.

(b) Other external costs.

(1) The FCC regulations also allow the cable operator to increase its rate for the basic service tier automatically to reflect certain external cost factors to the extent that the increases in cost of those factors exceed the GNP-PI. These factors include retransmission consent fees, programming costs, state and local taxes applicable to the provision of cable television service, and costs of franchise requirements. The total cost of an increase in a franchise fee may be automatically added to the base per channel rate, without regarding to its relation to the GNP-PI.

(2) For all categories of external costs other than retransmission consent and franchise fees, the starting date for measuring changes in external costs for which the basic service per channel rate may be adjusted will be the date on which the basic service tier becomes subject to regulation, or February 28, 1994, whichever occurs first. The permitted per channel charge may not be adjusted for costs of retransmission consent fees or changes in those fees incurred before October 6, 1994.

(c) Notification and review. The cable operator shall notify the Town at least thirty (30) days in advance of a rate increase based on automatic adjustment items. The Town shall review the increase to determine whether the item or items qualify as automatic adjustments. If the Town makes no objection within thirty (30) days of receiving notice of the increase, the increase may go into effect. (Ord. 3-1994 §1)

Sec. 5-186. Enforcement.

(a) Refunds. The Town may order the cable operator to refund to subscribers a portion of previously paid rates under the following circumstances:

(1) A portion of the previously paid rates have been determined to be in excess of the permitted tier charge or above the actual cost of equipment; or

(2) The cable operator fails to comply with a valid rate order issued by the Town.

(b) Fines. If the cable operator fails to comply with a rate decision or refund order, the cable operator shall be subject to a fine of five hundred dollars (\$500.00) for each day the cable operator fails to comply. (Ord. 3-1994 §1)

Secs. 5-187—5-200. Reserved.