

TITLE 18

CABLE TELEVISION

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CHAPTER 1 – IN GENERAL

SECTION 18-101 DEFINITIONS

For the purpose of this Ordinance, the following terms, phrases, and words shall have the meaning given herein. Then not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and vice versa. The word “shall is always mandatory:

- (a) **“TOWN”** is the Town of Pratt, West Virginia, a municipal corporation organized and existing under the laws of the State of West Virginia.
- (b) **“GRANTEE”** is Cedar Grove Cablevision Associates, L.P., a limited partnership organized and existing under the laws of the State of West Virginia.
- (c) **“COUNCIL”** is the Mayor and Council of Pratt, West Virginia, or its designated representatives.

- (d) **“FEDERAL COMMUNICATIONS COMMISSION” or “FCC”** is the present federal agency of the name as constituted by the Communications Act of 1934, or any successor agency created by the United States Congress.
- (e) **“PERSON”** is any person, firm, partnership, association, corporation, company, or organization of any kind.
- (f) **“GROSS SUBSCRIBER REVENUES”** shall include any and all compensation or receipts derived from recurring monthly Basic service charges in connection with the carriage of broadcast signals and Federal Communications Commission mandated non-broadcast services, but shall not include any refunds or credits made to subscribers or any taxes imposed on the services furnished by the Grantee. It does not include revenues derived from per-program or per-channel charges, Pay-TV revenues, leased channel revenues, advertising revenues, or any other income derived from the system.
- (g) **“REGULAR SUBSCRIBER SERVICES”** shall include the carriage of broadcast signals and FCC mandated non-broadcast services, but shall not include “auxiliary” services, which include, but are not limited to, advertising, leased channels, and Pay-TV services.
- (h) **“SYSTEM”** consists of poles, wires, cables, antennas, and other appliances for the reception, transmission, and distribution of television impulses and energy to be constructed, installed, maintained, repaired, replaced, operated and possibly removed by Grantee for the television/radio reception, transmission and distribution by what is commonly referred to as a cable television system, with areas to be constructed on the basis of 30 to 35 homes per mile. Any area with less than 30 homes per mile will be constructed, but installation fees will not be the normally-charges fees and will have to be negotiated with subscribers.
- (i) **“ENGINEER”** is the Town’s duly appointed Engineer and includes Town’s employee or officer qualified to discharge duties and obligations imposed under the provisions of this Ordinance.

SECTION 18-102 GRANT OF AUTHORITY

In consideration of the faithful performance and observance of the conditions and reservations hereinafter specified, there is hereby granted to the Grantee, its successors and assigns, the right to erect, maintain, and operate a television transmission and distribution system in, under, over, along, across, and upon the streets, lanes, avenues, sidewalks, alleys, bridges, and other public places in Pratt, West Virginia, and subsequent additions thereto provided that the Grantee has obtained permission from the legal owner of the premises prior thereto. Evidence of which shall be filed with the Town prior to commencement of any construction for the purpose of transmission and distribution of

audio and visual impulses of television energy and other services including but not limited to cable television, closed-circuit television and two-way communications so long as all such services are provided in accordance with the laws and regulations and the ordinances and regulations of the Federal Communications Commission, the State of West Virginia, and the ordinances and regulations of Pratt upon the stipulations and conditions hereinafter contained.

It is understood between the parties hereto that certain areas within the Town have been and will in the future be free of visible power, telephone, and television cable poles, cables, wires, and other appurtenances and that any use of these areas will require prior written approval from the Town. Upon request, the Town will provide the Company with a current list of designated restricted areas.

SECTION 18-103 USE OF EXISTING POLE LINE FACILITIES – NON-EXCLUSIVE GRANT

- (a) There is hereby granted the further right, privilege, and authority to the Grantee to lease, rent, or in any other manner obtain the use of towers, poles, lines, cables, and other equipment and facilities from any and all holders of public licenses and franchises within the limits of Pratt, including the telephone and power company and to use such towers, poles, lines, cables and other equipment and facilities, subject to all existing and future ordinances and regulations of the Town. The poles used for the Grantee's distribution system shall be those erected and maintained by the telephone and power companies, when and where practicable, providing mutually satisfactory rental agreements can be entered into with said companies. Copies of such executed agreements shall be filed with the Town upon request for the same.
- (b) Non-Exclusive Grant – The right and privilege herein granted by the Town for the purpose herein set forth is not exclusive and Town reserves the right to grant a similar right and privilege to any person, firm, corporation at any time during the term of the grant of this Franchise or any renewal thereof.
- (c) Grantee shall at all times during the continuance of the right and privilege herein granted or any renewal thereof, be subject to all lawful exercise of the police power by Town, and to such legal and reasonable regulations as Town shall hereafter by Ordinance or resolution enact.

SECTION 18-104 CONITIONS ON STREET OCCUPANCY AND SYSTEM CONSTRUCTION

- (a) All attachments, installations, construction, maintenance, repair, replacement, operation or removal of the System or parts thereof shall be made subject to the approval of Engineer. In cases where existing poles or other structures, conduits or other facilities owned or leased by public utilities having the right to permit attachment thereto or location therein or thereon of System by

Grantee are not available or are impractical for the purpose, then the proposed means of attachment, construction or conduit shall be submitted to the Engineer by drawings, plans and explanatory documents including agreements, leases or other papers granting the right of attachment, construction or conduit as in the case of original attachments, installations, or construction and shall be subject to approval in writing by Engineer before commencement of such attachment, installation or construction.

- (b) The Grantee's transmission and distribution system, poles, wires, and appurtenances shall be located, erected, and maintained so as not to endanger or interfere with the lives of persons or to interfere with new improvements this Town may deem proper to make, or to unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, or other public property; removal of poles to avoid such interference will be at the Grantee's expense.
- (c) Construction and maintenance of the transmission distribution system shall be in accordance with the provisions of the National Electrical Safety Code, prepared by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters, and such applicable ordinances and regulations of Pratt, West Virginia, affecting electrical installations, which may be presently in effect.
- (d) All installations of equipment shall be permanent of nature, durable, and installed in accordance with good engineering practices and of sufficient height to comply with all existing Town regulations, ordinances, and State laws and so as not to interfere in any manner with the right of the public or individual property owner, and such installations shall not interfere with the travel and use of public places by the public when installed or during construction, repair or removal thereof, nor shall they obstruct or impede traffic.
- (e) In the maintenance and operation of its television transmission and distribution system in the streets, alleys, and other public places and in the course of any new construction or addition to its facilities, the Grantee shall proceed so as to cause the least possible inconvenience to the general public. Any opening or obstruction in the streets or other public places made by the Grantee in the course of its operations shall be guarded and protected at all times by the placement of adequate barriers, fences, or boardings, the bounds of which, during periods of dusk and darkness, shall be clearly designated by red warning lights. Any excavation or taking up of pavement, curb or sidewalk shall be done only with the approval of the Town and shall be repaired by the Grantee.
- (f) In the event the Town shall relocate a street, raise or lower a bridge, or make any other changes requiring the removal of utility installations at said locations, Grantee shall, at its own costs either permanently or temporarily

relocate its affected lines and equipment as instructed by the Town, no later than thirty (30) days from receiving the Town's instruction.

- (g) In case of any disturbance by the Grantee of pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own costs and expense and in a manner approved by the Town, replace and restore all paving, sidewalk, driveway, and other surface so disturbed in as good condition as before said work was commenced. Repairs, replacements or restoration shall be completed within ten (10) days.
- (h) Grantee shall on the request of any person, firm or corporation holding a moving permit issued by the Town or other governmental regulatory agency having jurisdiction of the matter by which permit building or buildings, large pieces of equipment or structural materials or the like are to be moved from place to place, temporarily raise or lower its System necessary for so doing to permit the moving of such buildings, equipment, structural materials and the like. The expense of such temporary raising or lowering of System or any part thereof shall be paid by the person, firm or corporation requesting the same. Grantee shall be given seventy-two (72) hours' advance notice to arrange for such temporary changes.
- (i) Town shall have the right to inspect all work of attachment, installation, construction, maintenance, repair, replacement, operation or removal of System or any part thereof to insure Grantee's compliance with this Ordinance or any other Town Ordinance or governmental regulations applicable thereto.
- (j) All the Company's attachments and installations shall be made and maintained at the Company's sole expense, in safe condition and thorough repair and in such place and manner as shall be approved by the Town. Upon receipt of written notice at any time from the Town that said attachments interfere with Town property, endanger its employees or the public, or interfere with the primary use and purpose of said Town property or highways, the Company shall at its own expense remove, alter, rearrange, improve or repair such attachments in such manner as the Town may reasonably direct.

SECTION 18-105 INDEMNIFICATION AND LIABILITY

The Grantee shall indemnify, protect and save harmless the Town from and against losses or physical damage to property, and bodily injury or death to persons, including payments made under any Workmen's Compensation Law and further including attorney fees incurred by the Town in defending itself from such claims, etc./ which may arise out of or be caused by the erection, maintenance, presence, use or removal of the System within the Town or by any act of the Grantee, its agents or employees. The Grantee shall carry insurance, to protect the parties hereto from and

against all claims, demands, actions, judgments, costs, expenses, and liabilities which may arise or result, directly or indirectly from or by reason of such loss, injury or damage. The amount of insurance against liability due to physical damages to property shall not be less than One Million Dollars (\$1,000,000.00) as to any one accident and not less than One Million Dollars (\$1,000,000.00) aggregate in any single policy year, and against liability due to bodily injury or to death or person and not less than One Million Dollars (\$1,000,000.00) as to any person and no less than One Million Dollars (\$1,000,000.00) as to any one accident. The Grantee shall also carry such insurance required by West Virginia State Law to protect it from all claims under the Workmen's Compensation Laws in effect that may be applicable to the Grantee. All insurance required by this Ordinance shall be and remain in full force and effect for the entire life of this Ordinance and shall name the Town as co-insured. Said policy or policies of insurance or a certified copy or copies thereof shall be deposited with and kept on file by the Town clerk. Each policy shall contain a provision that no change or cancellation of that said policy may be made without first giving thirty (30) day's written notice in advance to the Town. In addition, the Grantee shall indemnify the Town and its officials and shall hold them and each of them harmless of and from any and all liability with respect to alleged copyright infringements, and with respect to the subject matter of any program transmitted by the Grantee.

SECTION 18-106 PROHIBITIONS

Interference with Existing TV Reception – Installation shall be maintained so as not to interfere with TV reception already in existence.

SECTION 18-107 PROVISION OF SERVICE

- (a) The Grantee shall install an "all band" CATV system carrying, so long as it is technically and economically practical to do so, the number of television broadcast signals permitted by the current regulations of the Federal Communications Commission and any other regulatory agency.
- (b) Upon the written request of the Town, the Company shall furnish free installation and free basic service for one (1) outlet in the Town Hall and Town firehouse, provided, however, that nothing herein shall require the Company to construct additional distribution facilities to service the Town Hall and/or Town firehouse. Upon the written request of any public, elementary, middle or secondary school in the Town, the Company shall furnish free installation and free basic service for one (1) outlet in each school in the Town, provided, however, that nothing herein shall require the Company to construct additional distribution facilities to service such school.
- (c) In the event additional adjacent territory is incorporated within the Town limits, by annexation or otherwise, the Town's rights and duties under this Ordinance shall be deemed to include such additional territory. The Company shall make cable service available to such annexed area as long as

it is economically feasible to do so. As used herein, “economically feasible” shall mean that there are at least 40 homes per mile of cable television system distribution plant.

- (d) All poles, ducts and other facilities of the Company shall be erected, constructed and maintained so as not to interfere with the traffic over public highways and to cause minimum interference with the rights and reasonable convenience of the property owners who adjoin any public highway. The Company shall have reasonable authority to trim trees upon, abutting and overhanging all streets, alleys, easements, sidewalks, and other areas where the CATV System may from time to time be located in public places of the Town so as to prevent the branches of such trees from coming into contact with or otherwise interfering with the facilities and service of the Company.
- (e) The Town shall have the right to approve the location of any poles or underground cable line required to be erected or installed by the Company.
- (f) If, at any time, the Town shall elect to alter or change the grade of any street, sidewalk, alley or other public way, the Company shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at the Company’s sole cost and expense.
- (g) The Company shall grant to the Town, free of charge, the joint use of any and all poles owned by the Company for any proper municipal use so long as such use by the Town does not interfere with the operation and maintenance of the CATV System.
- (h) The Company, during the installation, maintenance and operation of its television transmission and distribution system, must guard and protect any opening or obstruction in the streets or other public places by placing adequate barriers, fences or boardings, the bounds of which shall be clearly designated by warning lights during periods of dusk and darkness.
- (i) The Company agrees to restore to as good a condition as before entry, any pavement, sidewalk or other improvement of any streets, avenues, alleys or other public place disturbed by the company.

SECTION 18-108 COMPLAINT PROCEDURES

- (a) Grantee shall maintain a regional business office and shall maintain a toll-free telephone line to handle the receipt of complaints.
- (b) Grantee shall investigate and resolve all subscribers’ complaints regarding the quality or service, equipment malfunctions and similar matters expeditiously and in accordance with the following procedure:

- i. Grantee shall have qualified personnel available during normal working hours to investigate and resolve subscribers' complaints.
- ii. Upon notification of service complaint, Grantee shall dispatch a qualified employee to investigate the complaint and adjust, repair or replace Grantee's equipment as necessary to resolve the complaint. Grantee shall not be responsible for malfunctions of any television receivers owned or operated by any subscribers.
- iii. All complaints shall be investigated and resolved normally within a reasonable time after initial notification to Grantee: extenuating circumstances excepted.
- iv. Grantee shall maintain a service log in which an entry shall be made of each complaint, the date of notification thereof, the nature of the complaint and the means by which it was resolved. The log shall be made available to the Town for inspection upon request. Any service logs may be destroyed after a two (2) year period.
- v. Each new subscriber shall be given a telephone number where complaints may be made as to quality of service and charges.

SECTION 18-109 RULES AND REGULATIONS

The Grantee agrees to comply with all rules and regulations promulgated by the Federal Communications Commission with respect to the operation of cable television systems.

SECTION 18-110 FRANCHISE FEE

The Grantee shall pay to the Town as a franchise fee, a sum equal to five percent (5%) of the Grantee's gross Basic subscriber revenues per year in accordance with the definition of "Gross Subscriber Revenues" contained herein at Section 18-101, Paragraph F. Said payments shall be made quarterly within thirty (30) days after the end of the Grantee's calendar quarter.

SECTION 18-111 FRANCHISE CONTRACT; RENEWALS

The Franchise shall take effect and be in full force from and after the final passage hereof, subject to acceptance by the Grantee as herein provided, and the same shall continue in full force and effect for the term of twenty (20) years beginning with the date of such acceptance, provided, however, that should FCC certification be necessary prior to implementation of the cable television service contemplated under this Franchise,

then the term shall begin upon the effective date of the grant by the FCC of the necessary certification. Grantee shall have the option to request renewal of this Franchise for an additional period not to exceed fifteen (15) years. Should Grantee desire to exercise this option, it shall so notify the Town, in writing, not less than six (6) months prior to the expiration of this Franchise. The Town may consider the performance of Grantee under this Franchise and other factors enumerated in Section 626 of the Federal Cable Communications Policy Act of 1984 in determining whether to renew this Franchise. If this Franchise is renewed by the Town, all of the terms and provisions contained herein shall be controlling during the renewal period except to the extent that said terms and provisions are modified by the Town or unless this Franchise is superseded by a new franchise, and all obligations, duties, and liabilities of the Grantee, other than those liabilities then pending or liabilities that may arise as a result of the operation of the System prior to surrender date, in connection with the Franchise shall terminate.

City's Right to Terminate Franchise – Should Grantee violate any of the terms, conditions, and provisions of this Ordinance or any of the requirements of Section 626 of the Federal Cable Communications Policy Act of 1984 for a period of ninety (90) days after written notice thereof by Town to Grantee, then, in that event, Grantee shall be deemed to have forfeited the Franchise herein granted.

Removal of Equipment at Termination – Grantee shall, within ninety (90) days after written notice from the Town to Grantee, remove all of its equipment structures, facilities, apparatus and appurtenances and restores any disturbed areas to their original condition.

SECTION 18-112 TRANSFERS

All of the rights and privileges and all the obligations, duties and liabilities created by this Franchise shall pass to and be binding upon the successors of the Town.

SECTION 18-113 SEPARABILITY

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Federal or State court or administrative agency of competent jurisdiction, specifically including the Federal Communications Commission, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 18-114 ADDITIONAL FRANCHISE

The Town shall not permit any individual or company to provide services in the franchise area similar to those of the Company without first having secured a franchise from the Town. The Town shall not grant a franchise to individuals or companies offering or furnishing services similar to those of the Company on terms and conditions

more favorable to such individuals or companies than those contained herein, unless this Ordinance is amended to provide for such more favorable terms and conditions.

SECTION 18-115 NOTICES

All notices and other communications hereunder shall be in a writing and shall be deemed to have been given on the date of actual delivery of mailed, first class, registered or certified mail, return receipt requested, postage prepaid to the following respective addresses:

To the Town: Town of Pratt
 Pratt, West Virginia 26162

 Cedar Grove Cablevision
 P.O. Box 370
 Cabin Creek, West Virginia 25035

Any party to this Ordinance may change the address to which all communications and notices may be sent by addressing notices of such change in the manner provided hereunder.

SECTION 18-116 PUBLICATION OF NOTICE

The Company shall assume the cost of publications of this Ordinance, if such publication is required by law.

SECTION 18-117 SAVING CLAUSE

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held illegal, invalid, or unconstitutional by the decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The Town hereby declares that they would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared illegal, invalid, or unconstitutional. The invalidity of any portion of this Ordinance shall not abate, reduce or otherwise affect any consideration or other obligation required of the Company.

SECTION 18-118 ACCEPTANCE BY GRANTEE

This Ordinance when accepted by the Grantee shall be and become a valid and binding contract between the Town and Grantee, provided that this Ordinance shall be void unless the Grantee shall, within ninety (90) days after the final passage of this Ordinance, file with the Town Clerk a written acceptance of this Ordinance and the Franchise herein granted, agreeing that it will comply with all of the provisions and

conditions hereof and that it will refrain from doing all of the things prohibited by this Ordinance.