Chapter 5.04 Cable Television Franchise

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5.04.010 Definition

When used in this ordinance, unless the context otherwise requires, the following terms and their derivatives shall have the meaning herein given (and when not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular, and words in the singular number include the plural):

1. “Basic Cable Service” means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7) (1993).
2. “Cable Act” means Title VI of the Communications Act of 1934, as amended.
3. “Cable Programming Service” means any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than:
   * + 1. Video programming carried on the Basic Service Tier;
       2. Video programming offered on a pay-per-channel or pay-per-program basis; or
       3. A combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service:
4. Consists of commonly-identified video programming; and
5. Is not bundled with any regulated tier of service.
   * + 1. Cable Programming Service as defined herein shall not be inconsistent with the definition as set forth in 47 U.S.C. § 543(1)(2) (1993) and 47 C.F.R. 76.901(b) (1993).
6. “Cable Services” shall mean:
   1. the one-way transmission to Subscribers of:
      1. video programming, or
      2. other programming service, and
   2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
7. "Cable System" shall mean a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within the Service Area, but such term does not include:

1. a facility that serves only to retransmit the television signals of one or more television broadcast stations;

2. a facility that serves subscribers without using any public right-of-way;

3. a facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201 et seq., except that such facility shall be considered a cable system (other than for purposes of 47 U.S.C. § 541 (c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;

4. an open video system that complies with 47 U.S.C. § 653.

5. any facilities of any electric utility used solely for operating its electric utility systems.

1. “CATV” means a cable television system.
2. “City” means the Local Government of the City of Dillon, State of Montana.
3. “City Council” means the governing body of the City.
4. "Converter" means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the service.
5. "Drop" means the cable that connects the ground block on the Subscriber's residence to the nearest feeder cable of the System.
6. "FCC" means the Federal Communications Commission, or successor governmental entity thereto.
7. "Franchise" means an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to 47 U.S.C. § 546) issued by a Grantor, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system.
8. “Franchise area” means that area within the geographic limits of the City.
9. "Franchise Fee" means any tax, fee, or assessment of any kind imposed by the City or other governmental entity on a Franchisee or its Cable Subscribers, or both, solely because of their status as such, pursuant to this Ordinance. The term "Franchise Fee" does not include:

1. any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators or their Cable Services but not including a tax, fee, or assessment that is unduly discriminatory against Franchisees or Cable Subscribers);

2. Capital Costs that are required by a Franchise to be incurred by a Franchisee for public, educational or governmental ("PEG") Access facilities;

3. requirements or charges incidental to the award or enforcement of a Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or

4. any fee imposed under Title 17 of the United States Code.

1. "Grantee" means Bresnan Communications, LLC, or the lawful successor, transferee, or assignee thereof.
2. "Grantor" means the City of Dillon or any lawful successor.
3. "Gross Revenue" means revenue received by the Grantee from the provision of Cable Services over the Cable System in the Service Area, including Franchise Fees, provided, however, that such phrase shall not include:

1. any tax, fee or assessment of general applicability collected by the Grantee from Subscribers for pass-through to a government agency, including the FCC User Fee; and

2. unrecovered bad debt.

1. "Open Video Services or OVS" means any video programming Services provided to any person by a Franchisee certified by the FCC to operate an Open Video System pursuant to Section 47 U.S.C. 573, as may be amended, regardless of the Facilities used.
2. “Person” means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
3. “Property of Grantee” means all property owned, installed or used by the Grantee in the conduct of a CATV business in the City.
4. “Public Way” means the surface of and the space above and below any public street, public way, road, highway, freeway, bridge, tunnel, lane, land path, alley, bike-path, alley, court, boulevard, sidewalk, parkway, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Grantor in the Service Area which shall entitle the Grantor and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Grantor within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Grantor and the Grantee to the use thereof for the purposes of installing and operating the Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.
5. "Service Area" means the present boundaries of the Grantor, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in section 5.04.070.
6. "Standard Installation" is defined as any service installation that can be completed using a Drop of one hundred twenty five (125) feet or less.
7. “Subscriber” means any person who lawfully receives Cable Service of the Cable System with the Grantee's express permission.
8. "Video Programming" means any programming provided by, or generally considered comparable to programming provided by a television broadcast station.

Enc Ord 369 April 22, 1993, Amended Ord 466 February 19, 2019

5.04.020 Grant of Authority

There is hereby granted by the City to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System.

Enc Ord 369 April 22, 1993, Amended Ord 466 February 19, 2020

5.04.030 Non-exclusive Grant

Any Franchises granted by the Grantor shall only authorize or permit any Person providing Video Programming to enter into the Grantor's Public Ways on the same terms or conditions as those contained in this Franchise Agreement in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

Enc Ord 369 April 22, 1993, Amended Ord 466 February 19, 2020

5.04.035 Franchise Required

It shall be unlawful for any Person to construct, operate or maintain a Cable System or to provide Cable Service or other competing multichannel video services, including OVS, in the City without a Franchise in the form of a Franchise Agreement authorizing the same, unless applicable federal or State law prohibits the City's enforcement of such a requirement.

Enc Ord 466 February 19, 2020

5.04.040 Term of Franchise

The franchise and rights herein granted shall commence thirty (30) days from the final passage hereof and shall continue in force and effect for twenty (20) years after said effective date unless otherwise lawfully terminated in accordance with the terms of this title.

Enc Ord 369 April 22, 1993, Amended Ord 466 February 19, 2020

5.04.050 Condition of Street Occupancy

1. The Cable System installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.
2. Grantee shall follow the City's procedure for working in the public right-of-way as set forth in Title 12.24 Street Obstructions and Excavations of the Dillon Municipal Code. If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.
3. Upon its receipt of reasonable advance written notice, to be not less than five (5) business days, the Grantee shall protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the Grantor by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of public structures or improvements which are not used to compete with the Grantee's services. The Grantee shall in all cases have the right of abandonment of its property.
4. The Grantee shall, on the request of any Person holding a lawful permit issued by the Grantor, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided:

1. the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and

2. the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

1. The Grantee, with approval of the Grantor’s Tree Board, shall have the authority to trim trees or other natural growth in order to access and maintain the Cable System. In the event of an emergency, the Grantee may take necessary steps to preserve and protect persons and property, but shall file a report of the actions taken with the Tree Board for its review, the Tree Board upon review of the actions taken, may make suggestions to the Grantee about future actions in emergency situations.
2. In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain its Cable System underground. Nothing contained in this Section shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances.
3. The Grantor agrees to include the Grantee in the platting process for any new subdivision. At a minimum, the Grantor agrees to require as a condition of issuing a permit for open trenching to any utility or developer that

1. the utility or developer give the Grantee at least ten (10) days advance written notice of the availability of the open trench, and

2. the utility or developer provide the Grantee with reasonable access to the open trench. It is understood and agreed that the word "utility" as used herein shall not mean city water, sewer or storm drains. The location of all underground lines will be subject to the final review and approval of the City of Dillon.

Enc Ord 369 April 22, 1993, Amended Ord 466 February 19, 2020

5.04.060 Safety Requirements

Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations and the National Electric Safety Code. The Cable System shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area.

Enc Ord 369 April 22, 1993, Amended Ord 466 February 19, 2020

5.04.070 System Construction and Extension

1. The Grantee is hereby authorized to extend the system within the franchise area to the extent that such extension is or may become technically and economically feasible.
2. Whenever the Grantee receives a request for Cable Service from a Subscriber in a contiguous unserved area where there are at least ten (10) residences within 1320 cable-bearing strand feet (one-quarter cable mile) from the portion of the Grantee's trunk or distribution cable which is to be extended, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for the Cable System extension, other than the published Standard/non-Standard Installation fees charged to all Subscribers.
3. No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of subsection “B” above, the Grantee shall only be required to extend the Cable System to Subscriber(s) in that area if the Subscriber(s) are willing to share the capital costs of extending the Cable System. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet from the Grantee's trunk or distribution cable, and whose denominator equals ten (10). Subscribers who request service hereunder shall bear the remaining cost to extend the Cable System on a pro rata basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any non-Standard Installation charges to extend the Cable System from the tap to the residence.
4. The Grantee, upon request, shall provide without charge, a Standard Installation and one outlet of Basic Cable to those administrative buildings owned and occupied by the Grantor, fire station(s), police station(s), and K-12 public school(s) that are within one hundred fifty feet of its Cable System. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from the Grantee. The Cable Service provided shall not be used for commercial purposes, and such outlets shall not be located in areas open to the public. The Grantor shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. The Grantor shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this subsection. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the Grantor or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation. If additional outlets of Basic Cable are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.
5. If the Grantee provides an Emergency Alert System ("EAS"), then the Grantor shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the Grantor shall hold the Grantee, its employees, officers and assignees harmless from any claims arising out of use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.
6. If funds are available to any Person using the Public Way for the purpose of defraying the cost of any of the foregoing, the Grantor shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Grantor shall make application for such funds on behalf of the Grantee.

Enc Ord 369 April 22, 1993, Amended Ord 466 February 19, 2020

5.04.080 Operational Standards; Force Majeure

1. The Grantee shall operate and maintain its cable television system in full compliance with the standards set forth by the Federal Communications Commission.
2. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.
3. Furthermore, the parties hereby agree that it is not the Grantor's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Grantor and/or Subscribers.

Enc Ord 369 April 22, 1993, Amended Ord 466 February 19, 2020

5.04.090 Local Office, Complaints

The Grantee shall maintain a local business office or agent which subscribers may telephone during regular hours without incurring added message or toll charges, so that complaints regarding cable television operations may by promptly reported to the Grantee.

The Grantee agrees that the Grantor, upon thirty (30) days written notice to the Grantee, may review such of its books and records at the Grantee's business office, during normal business hours and on a non-disruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the Section of the Franchise which is under review, so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate which is not providing Cable Service in the Service Area. The Grantor agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

Enc Ord 369 April 22, 1993, Amended Ord 466 February 19, 2020

5.04.100 Rates

The Grantor may regulate rates for the provision of Basic Cable and equipment as expressly permitted by federal or state law.

Enc Ord 369 April 22, 1993, Amended Ord 466 February 19, 2020

5.04.110 Franchise Fee

1. The Grantee shall pay to the Grantor an annual franchise fee of three percent (3.00%) of annual Gross Revenue (as defined in subsection 5.04.010 of this Franchise). In accordance with the Cable Act, the twelve (12) month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. The franchise fee payment shall be due annually and payable within ninety (90) days after the close of the preceding calendar year. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation.
2. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due.
3. Renewal of Franchise.
   * + 1. The Grantor and the Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act.
       2. In addition to the procedures set forth in said Section 626(a), the Grantor agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the then current Franchise term. The Grantor further agrees that such assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal under Section 626(b) of the Cable Act and complete renewal of the Franchise prior to expiration of its term.
       3. Notwithstanding anything to the contrary set forth in this subsection 4.3, the Grantee and the Grantor agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Grantor and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Grantor may grant a renewal thereof.
       4. The Grantee and the Grantor consider the terms set forth in this subsection 4.3 to be consistent with the express provisions of Section 626 of the Cable Act.

Enc Ord 369 April 22, 1993 Amended Ord 394 April 2, 1998, Amended Ord 466 February 19, 2020

5.04.120 Indemnification of City

The Grantee agrees to indemnify, save and hold harmless, and defend the Grantor, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its Cable System, provided that the Grantor shall give the Grantee written notice of its obligation to indemnify the Grantor within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, the Grantee shall not indemnify the Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of the Grantor.

The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance in the amount of $1,000,000 combined single limit for bodily injury and property damage. The Grantor shall be designated as an additional insured. Such insurance shall be non-cancellable except upon thirty (30) days prior written notice to the Grantor. Upon written request, the Grantee shall provide a Certificate of Insurance showing evidence of the coverage required by this subsection.

Enc Ord 369 April 22, 1993, Amended Ord 466 February 19, 2020

5.04.130 Procedures

1. In any action by the Grantor or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.
2. This Franchise constitutes the entire agreement between the Grantee and the Grantor. Amendments to this Franchise shall be mutually agreed to in writing by the parties.
3. Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Grantor or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope:
   * + 1. upon receipt when hand delivered with receipt/acknowledgment,
       2. upon receipt when sent certified, registered mail, or
       3. within five (5) business days after having been posted in the regular mail.
4. The notices or responses to the Grantor shall be addressed as follows:

City of Dillon

125 N. Idaho

Dillon, MT 59725

1. The notices or responses to the Grantee shall be addressed as follows:

Robert V. Bresnan

Senior Vice President and General Counsel

Bresnan Communications, LLC

One Manhattanville Road

Purchase, NY 10577

1. with a copy to:

Bresnan Communications

511 W. Mendenhall Dr.

Bozeman, MT 59715

Mike Oswald

General Manager

Bresnan Communications, LLC

1. The Grantor and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this subsection.
2. The captions to Sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

Enc Ord 369 April 22, 1993, Amended Ord 466 February 19, 2020

5.04.135 Notice of Violation

1. In the event that the Grantor believes that the Grantee has not complied with the terms of the Franchise, the Grantor shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Grantor shall notify the Grantee in writing of the exact nature of the alleged noncompliance.
2. The Grantee shall have thirty (30) days from receipt of the notice described in subsection 5.04.135(A):
   * + 1. to respond to the Grantor, contesting the assertion of noncompliance, or
       2. to cure such default, or
       3. in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Grantor of the steps being taken and the projected date that they will be completed.
3. In the event that the Grantee fails to respond to the notice described in subsection 5.04.135(A) pursuant to the procedures set forth in subsection 5.04.135(B), or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 5.04.135(B)(3) above, if it intends to continue its investigation into the default, then the Grantor shall schedule a public hearing. The Grantor shall provide the Grantee at least ten (10) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide the Grantee the opportunity to be heard.
4. Subject to applicable federal and state law, in the event the Grantor, after the hearing set forth in subsection 5.04.135(C), determines that the Grantee is in default of any provision of the Franchise, the Grantor may:
5. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
6. Commence an action at law for monetary damages or seek other equitable relief; or
7. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise in accordance with subsection 5.04.135(E).
8. Should the Grantor seek to revoke the Franchise after following the procedures set forth in subsections 5.04.135(A) through (D) above, the Grantor shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Grantor has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public hearing. The Grantor shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.
9. At the designated hearing, the Grantor shall give the Grantee an opportunity to state its position on the matter, after which it shall determine whether or not the Franchise shall be revoked. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Grantor de novo. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Grantor.
10. The Grantor may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Grantor's rights under the Franchise in lieu of revocation of the Franchise.

Enc Ord 466 February 19, 2020

5.04.140 Procedure Upon Termination

Upon expiration of the franchise, if the Grantee shall not have acquired an extension renewal thereof and accepted the same, it may have and it is hereby granted, the right to enter upon the streets or other property of the City, for the purposed of removing there from any or all of its property or otherwise in so removing said property, the Grantee shall refill, at its expense, and excavation that it shall make and shall leave said streets is as good condition as that prevailing prior to the Grantee’s removal of its property.

Enc Ord 369 April 22, 1993

5.04.150 Approval of Transfer

1. The Grantee and the Grantor agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Grantor, the Grantee and the Grantor may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Grantor or the Grantee.
2. The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Grantor, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Grantor has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Grantor shall be deemed given.

Enc Ord 369 April 22, 1993, Amended Ord 466 February 19, 2020

5.04.160 Miscellaneous Provisions

At such time that the Cable system has the channel capacity to do so and upon request by the Franchising Authority, the Grantee shall make available one (1) channel to be used for public, educational and governmental cablecast programming. The Grantee reserves the right to program the designated public, educational and governmental channel during the hours not used by the Franchising Authority or other governmental Authority or other governmental entities. Access to the channel shall be shared with all municipalities receiving programming from the common head end site location. The Franchising Authority shall agree to indemnify, save hold harmless the Grantee from and against any liability resulting from the use of the aforementioned public, educational and governmental channel by the Franchising Authority.

Any time during the term of this Franchise the Franchising Authority may require that the Grantee prospectively provide a "Capital Contribution," paid annually during the remaining term of the Franchise, to be used specifically for public, educational and governmental access as provided for in Section 5 ("Public, Educational and Government Access Channel".) The Franchising Authority shall give the Grantee ninety (90) days notice of such requirement. The amount of the Capital Contribution payable by the Grantee to the Franchising Authority shall not exceed One Dollar and Twenty cents ($1.20) per year per primary connection. The Franchising Authority agrees that all amounts due to the Franchising Authority by the Grantee as the Capital Contribution may be added to the price of cable services, prorated monthly, and collected from the Grantee's Subscribers as "external costs," as such term is used in 47 C.F.R. 76.922. In addition, all amounts paid as the Capital Contribution may be separately stated on Subscribers' bills as permitted in 47 C.F.R. 76.985. The Capital Contribution will be payable by Grantee to the franchising Authority after;

1. the approval of the Franchising Authority, if required to the inclusion of the Capital Contribution on Subscribers' bills including any required approval pursuant to 47 C.F.R. 76.933;
2. notice to Grantee's subscribers of the inclusion; and
3. the collection of the Capital Contribution by the Grantee from its Subscribers. The "Capital Contributions" are not to be considered in the calculation of Franchise Fees pursuant to this Franchise.

Enc Ord 369 April 22, 1993, Amended Ord 466 February 19, 2020

5.04.170 Compliance with Applicable Laws and Ordinances

The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, including, but not limited to, the requirements for obtaining street opening permits and applicable fees as set out in Title 12.24 Street Obstructions and Excavations of the Dillon Municipal Code, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Neither party may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control, provided however that the Grantee agrees that it is subject to the lawful exercise of the police power of the Grantor.

Enc Ord 369 April 22, 1993, Amended Ord 466 February 19, 2020

5.04.180 Violations: Penalties

1. From and after the effective date of this Ordinance, it shall be unlawful for any person to construct, install or maintain within any public street within the City, or within any other public property of the City, or within any privately-owned area within the City which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision may approved by the City, any equipment or facilities for distributing any television signals or radio signals through a CATV system, unless a franchise authorizing such use of such street or property or area has first been obtained, and unless such franchise is in full force and effect.
2. It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductive, or otherwise, with any part of the franchised CATV system within the City for the purpose of enabling anyone to receive any television signal, radio signal, picture, sound, or other transmission without payment to Grantee.
3. It shall be unlawful for any person, without the consent of the owner, willfully to tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, sound or other transmission.
4. Any person violating or failing to comply with any of the provisions of this Section shall be guilty of a misdemeanor and for each day of violation of failure to comply may be punished by a fine not to exceed five hundred ($500.00) dollars. Jurisdiction for such violation shall be in the City Court of Dillon.

Enc Ord 369 April 22, 1993; Amended Ord 425 May 4, 2010, Amended Ord 466 February 19, 2020

5.04.190 Line Severing

If any time the Grantee’s cable and/or other equipment is disturbed, damaged, or severed the cost of repair shall be paid by the party responsible for said damage. The Grantee may charge the responsible party for the time and materials expended for repair of said damage. The City will cooperate with the Grantee to assist in enforcing any charge or penalty arising from cable severing or other damage to Grantee’s property.

Enc Ord 369 April 22, 1993

5.04.200 Severability

If any Section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

Enc Ord 369 April 22, 1993, Amended Ord 466 February 19, 2020