

Section 14-6

Cable Television System Permits

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14-6-1 GENERAL PROVISIONS AND DEFINITIONS.

(A) For the purpose of this Section 6, TOWN shall mean the Town of Ridgway, Colorado, the Ridgway Town Council, or any other officer, employee, agent or body thereof authorized to act on behalf of the Town for purposes of the administration, enforcement or implementation of this Section.

(B) COMPANY, as used in this Section, shall mean any person or legal entity granted a Cable Television System Permit pursuant to this Section.

(C) TOWN COUNCIL means the governing body of the Town of Ridgway.

(D) PERSONS means any person, company, or entity.

(E) CABLE TV SYSTEM (CATV) means a system comprised of antenna, cables, towers, wires, microwave, or converters, designed for the purpose of distributing radio, stereo, or video signals to or from subscribers within the permit area.

(F) PERMIT shall mean a franchise.

14-6-2 PERMIT REQUIRED: GRANT OF AUTHORITY.

(A) It shall be unlawful for any person to use any Town owned street, alley, right-of-way, easement, or other property owned by the Town for purposes of the operation of a cable television (CATV) system or the installation or location of CATV lines, poles, cables or other facilities without a CATV System Permit granted in accordance with the provisions of this Section.

(B) Any CATV System Permit issued hereunder shall be non-exclusive. However, once a new CATV System is issued by the Town for initial construction of a CATV System, no additional permits shall be issued until either (1) the system for which the permit was issued is completed and activated, (2) the existing permit is revoked or abandoned, or (3) one year has passed, whichever comes first.

(C) No CATV System Permit shall be granted until the Town Council determines that:

- (1) The applicant, its proposed system and operation are financially viable.
- (2) The applicant has the technical ability and necessary experience to successfully operate a CATV system.
- (3) The applicant and its principals are of good moral character.
- (4) The applicant is proposing adequate service to promote the public convenience and necessity.
- (5) All requirements of this Section and other applicable requirements of law have been and will be complied with.

(D) Upon receipt of an application for a permit or renewal thereof, the Town Council may conduct such investigations and hold such hearings as it deems necessary and proper to determine if the criteria of this Section have been met. Reasonable notice of any hearings scheduled shall be given to the applicant.

(E) A CATV System Permit may be transferred or assigned only on approval by the Town Council. If the permit or the CATV system is transferred by bankruptcy, receivership, assignment for the benefit of creditors or by operation of law, this permit shall terminate 120 days thereafter, unless an extension is granted by the Town Council to allow time for application for a new permit to be filed. Transfer to an assignee will not be unreasonably denied. An application for assignment shall be submitted and reviewed pursuant to Subsections 14-6-2 and 14-6-4 to the extent applicable.

This Subsection or other Subsections of this permit shall not preclude the mortgaging or assigning of rights, or the pledge of stock by the Company, for financing purposes. The Town retains the right and option to purchase the Company's assets by meeting and equaling the offered price in any such sale.

14-6-3 TERM OF PERMIT.

Any Permit granted pursuant to this Section shall be valid for a term of 15 years, unless terminated prior to 15 years in accordance with other provisions of this Section. The 15 year term shall commence upon approval of the permit by the Town Council.

14-6-4 APPLICATION FOR NEW CATV SYSTEM PERMIT.

(A) Applications for a new Permit shall be made on forms provided by the Town. The burden shall be on the applicant to prove that it meets the criteria for issuance of the Permit as specified in Subsection 14-6-2(C) above. The applicant may submit such information as it desires to meet its burden, but, as a minimum, the application form shall be fully completed and accompanied by the following:

(1) An application fee as necessary to cover actual costs incurred by the Town in investigating and approving the permit, including publication costs and attorney's fees, not to exceed \$2,000. The Town shall give the applicant an initial estimate of such costs subject to adjustment for actual costs.

(2) The general description of all aspects of the proposed operation, including services to be provided, programming, office hours and location, etc.

(3) The proposed rates along with a guarantee that these rates will not be increased for a period of at least one year following original initiation of service.

(4) The complete plans for the construction of the proposed system and proposed system map unless the application is for a change of ownership of an existing system, in which event the existing system maps should be submitted.

(5) A list of other cable television franchises or permits held by the applicant, its parent, subsidiaries, or interlocking companies.

(B) The Town reserves the right to require any additional information necessary for its determination of whether or not the applicable criteria for granting the permit are met.

(C) Accompanying the application shall be a notarized certificate of the applicant stating that it accepts the authority of the Town to grant the permit, acknowledges the validity of all requirements of this Section, and certifies that the applicant will comply with all provisions of this Section.

14-6-5 REQUIRED CONSTRUCTION SCHEDULE.

(A) Within 6 months after approval of a permit for a system which is not installed, the company shall commence significant construction of the system and shall complete system construction with due diligence thereafter. Construction shall be completed within one year of the issuance of the Permit.

(B) (1) Within 30 days after approval of a permit for a system which is not installed, the company shall file with the Town a corporate surety bond, in a form acceptable to the Town in the amount of \$20,000 to guarantee the timely construction and full activation of the proposed cable system within nine months of reaching a pole agreement with the owner of the utility poles.

(2) The bond shall provide that the Town may recover against it, jointly and severably, from the principal and surety, any and all damages, loss or costs suffered by the Town resulting from the failure of the company to fully install and activate the cable TV system in accordance with the provisions of this Section.

14-6-6 RENEWAL OF EXISTING PERMIT.

(A) Applications for renewal of an existing CATV System Permit shall be submitted on forms provided by the Town and at a minimum accompanied by the following:

(1) An application fee as necessary to cover actual costs incurred by the Town in investigating and approving the permit, including publication costs and attorney's fees, not to exceed \$200. The Town shall give the applicant an initial estimate of such costs subject to adjustment for actual costs.

(2) The Company's existing rate schedule if not previously filed with the Town.

(3) Accompanying the application shall be a notarized certificate of the applicant stating that it accepts the authority of the Town to grant the permit, acknowledges the validity of all requirements of this Section, and certifies that the applicant will comply with all provisions of this Section.

(B) The Town may require any other additional information it deems necessary to determine whether or not the applicant for renewal meets the criteria set out in Subsection 14-6-2 above.

(C) Renewal procedures shall comply with any mandatory federal law as in effect from time to time.

14-6-7 REVOCATION.

(A) Any permit issued under this Section may be revoked by the Town Council if it determines that the company has failed to comply with any provision of this Section or the Permit, or is in violation of any applicable provision of any federal, state or local law, and the company fails to remedy the situation as provided in this Subsection.

(B) The Town shall provide the company with at least 10 days' notice of the hearing on the alleged failure or violation during which time the company may remedy the situation. If the Town Council determines, following the hearing, that the grounds specified in Subsection (A) above exist, it shall set a reasonable time period in which the company may remedy the situation. If the company fails to remedy the situation in any such period, the Town Council may revoke the Permit or take such other action as it deems appropriate.

14-6-8 ACQUISITION OF THE SYSTEM BY THE TOWN OR REMOVAL.

(A) (1) If the permit is revoked by the Town Council for cause, or if the Permit is not renewed, the Town may acquire the System for its fair market value as a going concern with no value attributed to the Permit itself in substantial conformity with these procedures.

(2) The Town shall mail or deliver written notice to the company at its office of its intent to purchase the system. Within ten days after delivery of the notice, the company and the Town shall each appoint an arbitrator. These arbitrators shall, within 15 days thereafter, appoint a third arbitrator. The arbitrators shall then determine fair market value of the property to be acquired and make a report to the Town and the company of their determination within 60 days of the date of the notice of intent to purchase.

(3) The Town shall have 30 days after receiving the report on the value to make a final determination whether or not to purchase the System. If the Town elects to purchase the System, it shall specify the closing date, which shall be within one year thereafter, at which time the payment determined in accordance with this Subsection shall be made to the company and the System with all appurtenances transferred to the Town. In the time prior to closing, the company shall continue to operate the System and maintain it in good working order.

(4) If the Town elects not to purchase the System, any permit in effect shall remain in effect.

(5) The expenses of the third arbitrator and common expenses of the three arbitrators shall be shared equally by the Town and the company. The expenses of the arbitrator appointed by each shall be paid by the Town and the company respectively.

(6) If the company fails or refuses to appoint an arbitrator or otherwise comply with this Subsection, the Town shall unilaterally determine the purchase price to be paid within the time limits provided in this Section or it may seek a court order enforcing compliance with this Subsection.

(B) The Town shall not be liable for severance damages on account of portions of the Company's system located outside of the Town limits which will be severed because of the purchase by the Town; however, the Town will, upon request of the Company, purchase such severed portions of the System located outside the Town on terms similar to those by which it may purchase the System within the Town.

(C) In the event of termination of a permit without renewal, or revocation of the permit, if the Town does not elect to acquire the System in accordance with the procedures outlined in Subsection (A) above, the Town may require the Company to remove all of its cables, lines and facilities from Town streets, alleys and easements within a period of 6 months, repairing and restoring any damage caused thereby. If the company fails to remove such components within that period, they shall become the property of the Town.

(D) The provisions of this Subsection are alternatives to the Town's power of Eminent Domain, which power is expressly reserved.

14-6-9 USE OF STREETS, ALLEYS AND EASEMENTS.

(A) Any permit issued under this Section gives the company the right to use Town owned streets and alleys, and those easements owned by the Town which, by their terms may be used for cable television facilities. Such use shall allow the installation and maintenance of wires, conduits, cables, poles and other appurtenant facilities used in the distribution and transmission of cable television. Such use shall be subject to the conditions of this Subsection. Nothing herein shall limit the Town's rights to vacate, sell or encumber any Town-owned property if easements are reserved for any existing CATV lines or facilities.

(B) The location of the lines and other facilities of the company shall be subject to the provisions of Section 14-5, notwithstanding anything in this Section 14-6 to the contrary. Existing overhead lines and facilities shall be undergrounded as may be required pursuant to Subsection 14-5-20. No new overhead lines may be constructed. All new lines shall be underground notwithstanding anything in this Section 14-6 to the contrary. (Ord 3-2001)

(C) The Company shall submit to the Town prior to construction, plans showing the location of all proposed lines and facilities to be installed in Town streets, alleys or easements. No such facilities or lines may be installed therein until the location has been approved by the Town. Within 24 hours of request by the Town, the company shall advise the Town of the location of any underground lines.

(D) The Town may require that any lines or other facilities be relocated or removed whenever necessary for the use, operation, maintenance, construction of Town streets, alleys and easements or other Town facilities. The cost of removal or relocation shall be borne by the Company.

(E) No excavation may be made in any Town street, alley or easement without obtaining a permit from the Town in compliance with the provisions of the Town's Excavation Permit Regulations. The Company, at its expense, shall repair any damages or disturbance to any public streets, alleys or easements or pavement, sidewalk or improvement thereon caused by the Company's operations, in accordance with Town specifications.

(F) The company shall furnish copies of its "as built" system map and keep an updated copy on file with the Town.

(G) All cables and lines shall be constructed underground when required by Town Subdivision Regulations or when located in areas where the power or telephone lines are underground.

(H) The Company shall convert any of its overhead lines to underground lines upon the request of any person willing to pay for the cost of such conversion, or if the costs are paid in accordance with provisions of C.R.S. 29-8-101, et seq., the Colorado Underground Conversion of Utilities Act.

(I) In the event that an overhead cable route is eliminated because of inability to continue the use of the poles of the telephone or power company, the Company shall underground its lines and facilities if the other utility is under-grounding its lines and facilities. If such is not the case, then the Company may install its own overhead pole lines if the Town determines that under-grounding is technically infeasible or too expensive.

14-6-10 SAFETY REQUIREMENTS.

The Company shall exercise due care in installation and maintenance of equipment so as to avoid damage, injury or nuisance to the public.

14-6-11 RATES.

(A) Rates charged to customers within the Town shall be just, reasonable and nondiscriminatory. Rates shall be based solely upon operations of the Company and revenues and expenses therefrom within the Town. The Company shall be entitled to fair and reasonable rates and charges for basic CATV service no higher than necessary to cover costs of service, assuming efficient and economical management, including a fair return on the fair value of the property devoted to such service.

(B) A current copy of the Company's rates, charges, rules and regulations, including charges for connections and extensions, shall be kept on file with the Town at all times. This shall include the Company's rules for termination of service for failure to pay charges due.

14-6-12 PERMIT OR FRANCHISE FEE.

(A) In consideration of the rights and privileges granted under a permit, the Company shall pay to the Town a permit fee as specified below. The amount of the Fee shall be 3% of gross revenues realized from operations from within the Town if system penetration is over 50% but less than 65%; 4% if system penetration is 65% or over but less than 75%; and 5% if system penetration is 75% or over, as determined on the last day of the quarter. No fee shall be charged if penetration is less than 50%. Such gross revenue shall not include sales taxes collected on behalf of the Town or State but shall include all service revenue and standard connection charges from operations within the Town.

(B) Payments shall be made quarterly to the Town and accompanied by penetration figures for the last day of the quarter. Payments are due within 30 days after each 3 months quarter of the calendar year, with the first payment for each year due on April 30. This permit fee is in addition to any and all taxes, fees or charges imposed by the Town or other governmental entity.

(C) Penetration shall be computed by dividing the number of existing customers by the total potential customers (including existing customers) which the Company would be required to serve at that time pursuant to Subsection 14-6-14(C).

14-6-13 INSURANCE AND LIABILITY.

(A) The Company shall fully indemnify, defend and hold harmless the Town and its officers, boards, commissions, employees and agents against any and all claims, suits, actions, liabilities, and judgments for damages, including but not limited to expenses for reasonable legal fees and disbursements and liabilities assumed by the Town in connection therewith, in any way arising out of or through the acts or omissions of the Company, its agents or employees, or the Company's cable television operations under the CATV System Permit. This shall include any liability with regard to a claim for a violation of any law, including civil rights or anti-trust claims, and any litigation contesting the validity of this Section or the permit granted hereunder.

(B) The Company shall maintain throughout the terms of the permit, liability insurance insuring the Town and the Company in amounts equal to or exceeding the current limits of the liability of the Town under the Governmental Immunity Act. Certificates of Insurance shall be filed with the Town for each policy containing an endorsement that it cannot be cancelled unless 30 days' written notice of cancellation is provided to the Town. The Company shall also maintain adequate fire and casualty insurance.

(C) By acceptance of the grant of any permit pursuant to this Section, the Company covenants and agrees that it will not at anytime or in any manner or proceeding set up against the Town any claim or proceeding challenging this Section or the grant of the Permit pursuant to this Section as being invalid for any reason.

14-6-14 SERVICE AREA AND LINE EXTENSIONS.

(A) The Company shall be required to provide service to all persons within the Town limits of Ridgway desiring service, subject to the exceptions of this Section.

(B) The Company shall not be required initially to serve any customers or area for which it requested authority not to serve in its initial application if the Town Council as part of the application review finds that service to any such area or customer was technically infeasible or economically unjustifiable.

(C) Following initial construction and activation of the system, service shall be extended, at the Company's expense, to any person within the Town limits requesting service including persons owning new construction, or annexed subsequently, if any of the following criteria are met:

(1) The building for which service is requested is within 150 feet of a Company trunk line.

(2) Service is requested from 15 or more subscribers who are located in a density greater than 15 customers per 1200 feet of cable required to be extended within the public right-of-way to be able to serve such subscribers.

(D) In other cases, service will be made available when the customer agrees to pay for the costs of extending service.

14-6-15 MINIMUM SERVICE AND OPERATION REQUIREMENTS.

(A) The Company shall maintain a business office in Ouray County open at least five hours a day, five days per week. Complaints from consumers shall be responded to promptly and courteously by the Company and a log listing all complaints, service requests and their dispositions shall be kept by the Company, available for inspection by the Town.

(B) The Company shall at all times comply with the regulations and laws of the State of Colorado and United States and any of its agencies.

(C) Construction and the operation of the System shall comply with the Town's Building and Electrical Codes and any other applicable regulations and ordinances.

(D) The System shall be designed to provide subscribers with a uniform high-quality of reception throughout the Town and shall be operated continuously. The System shall have a minimum capability of not fewer than twelve video channels.

(E) The Company shall provide continuous service to all subscribers in return for the payment of their fee. In the event the Company fails to operate the System for five days, the Town shall have the right to operate the System until such time as a new operator is approved and shall be reimbursed for any costs or expenses incurred as a result of the Company's failure to operate the System, unless such failure is on account of technical impossibility, acts of God, disaster, war, or other such reasons beyond the Company's control. Financial problems, misfeasance or malfeasance of the Company or its employees shall be no excuse for failure to operate.

(F) The Company shall, to the extent economically feasible, take advantage of new technical developments in the field of transmission of television or radio signals which would afford the Company the opportunity to be more efficient and to provide better service, and shall as far as reasonably practical, maintain the current state-of-the-art with regard to cable television systems.

(G) The Company shall temporarily move or relocate any of its lines, cables or other facilities

when necessary for construction, moving a building or otherwise, if the expense of such operation will be paid by the person requesting it.

14-6-16 LOCAL ACCESS.

(A) The Town or other governmental entity shall be authorized to make emergency use of the Company's system and the Company shall install a capability for emergency messages to be transmitted on all channels simultaneously, if economically feasible to install such capability.

(B) The Company shall provide at least one channel which can be used as a public access channel. The Company may devote the channel to other uses as long as public access uses are given priority.

(C) The Company shall make available to the public, without charge, a color camera, a video cassette recorder and lighting equipment for production of programming.

14-6-17 FINANCIAL REPORTS AND ACCESS TO RECORDS.

The Town shall have access to all business records and financial records of the Company upon request as necessary to audit payment of permit fees.

14-6-18 RESERVATION OF RIGHTS.

The Town reserves the right to adopt additional regulations and ordinances governing the operation of CATV systems in accordance with the lawful exercise of its police power.

14-6-19 NOTICES.

Any notices required to be given to the Town shall be delivered to the Mayor at Town Hall. Notices to the Company may be delivered or mailed to the local business office required to be kept by the Company.

14-6-20 FREE CONNECTIONS.

The Company shall provide, free of charge, one cable television connection outlet to each building owned by the Town, each public school located within the Town, each public library within the Town, any church, youth center or school for the handicapped, upon request. This shall not require the Company to provide channels which are premium pay channels.

14-6-21 TAMPERING WITH CATV FACILITIES.

It shall be unlawful for any person to interfere with, tamper with, damage, destroy, or operate any part of any CATV system, or to connect to such system, or utilize service from such system

without lawful authorization to do so.

14-6-22 ENFORCEMENT.

In addition to any other remedies, this Section may be enforced by an action for specific performance or injunction in a court of competent jurisdiction.