

## **Chapter 99**

### **CABLE TELEVISION**

**[HISTORY: Adopted by the Special Town Meeting of the Town of Lee 6-17-1992 by Art. 6. Amendments noted where applicable.]**

#### **§ 99-1. Statutory authority; intent; when effective; applicability.**

- A. Pursuant to the provisions of the United States Cable Communications Policy Act of 1984, as amended, and in compliance with MGL c. 166A, also as amended, and with all rules and regulations of the Federal Communications Commission and the Massachusetts Community Antenna Television Commission and all other applicable rules and regulations, the Town of Lee hereby enacts this chapter for the protection of consumers of cable television service within the Town.
- B. The intent of this chapter is not to replace the provisions of the Lee cable television license but rather to augment and supplement those provisions so as to provide cable television consumers with maximum protection of their rights under the terms of said license.
- C. This chapter shall take effect as a general bylaw of the Town upon approval by Town Meeting vote and shall apply to any cable television license or renewal or extension thereof granted by the Town of Lee after the date of said vote.

#### **§ 99-2. Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

**APPLICATION** — A completed Massachusetts Form 100 or any other application form prescribed by the state or federal law or regulations, along with all attachments thereto.

**CABLE TELEVISION SYSTEM or CABLE SYSTEM or CATV SYSTEM** — A facility consisting of a set of closed transmission paths and associated signal generation, reception or control equipment designed to provide cable television service, including audio and video programming, to multiple subscribers within the community through residential and/or institutional cable networks and, in particular, the cable system constructed and operated in the Town of Lee.

**COMMISSION or MASSACHUSETTS COMMISSION** — The Massachusetts Community Antenna Television Commission.

**FCC** — The Federal Communications Commission.

**ISSUING AUTHORITY** — The Board of Selectmen of the Town of Lee or its agents.

**LICENSE** — Any document granting any cable system the right to construct, operate and maintain a cable television system in, over, along, across and upon the streets, lanes, avenues, alleys, sidewalks, bridges, highways and other public places under the jurisdiction of the Town,

including property over which the Town has an easement or right-of-way, for the purpose of reception, transmission, amplification, origination, distribution or redistribution of audio, video and other electronic and/or electrical impulses in accordance with the laws of the United States of America and the Commonwealth of Massachusetts.

**LICENSEE** — Any company or individual constructing and/or operating a cable system within the Town under a license granted by the issuing authority.

**PUBLIC ACCESS CHANNEL** — A channel designated for local public, educational or governmental use, whether solely designated or shared with other uses.

**SUBSCRIBER** — A person who contracts with the licensee the signals amplified and redistributed by the cable system.

**TOWN** — The Town of Lee.

**§ 99-3. Term and contents of license; duty of licensee.**

- A. Any cable television license hereafter granted, renewed or extended shall expire no later than five years from the effective date of said grant, renewal or extension.
- B. Said license shall incorporate by reference all information included in the application for such grant, renewal or extension and shall be nonexclusive.
- C. The licensee shall abide by the terms of the cable television license so granted, renewed or extended. Further, when and if requested by the issuing authority and/or its designees, to amend said license to clarify its language and provisions to the satisfaction of both the Town and the licensee.

**§ 99-4. Area to be served; pattern of installation and service charges.**

The licensee shall construct the CATV system in such a way that it is capable of delivering all signals and services to all homes, businesses and institutions within the Town that are served by electrical power lines existing on the date of adoption of this chapter. There shall be an identical pattern of installation and service charges for all subscribers.

**§ 99-5. Basic level of service; notice.**

The licensee shall provide a basic level of service at a minimal rate to any subscriber who desires it and shall publicize that level of service at least twice a year by mailing to each subscriber a description of the programming offered, a notification of its availability without conversion charge to any subscriber receiving a higher level of service and a statement of the current monthly rate for the service. The same information shall be cablecast at least once a month for a continuous twenty-four-hour period on the cable system's public access channels.

**§ 99-6. Fees and charges.**

- A. The annual license fee payable to the Town shall be \$0.50 per subscriber within the Town of Lee or such other amount as may be authorized by the Commission or any other agency of the Commonwealth of Massachusetts or the United States. Further, the licensee shall pay

to the Town, for the sole purpose of producing local television programming, the difference between all other state and local payments and an amount equal to 5% of its annual gross revenues from doing business in Lee or such payment as may be authorized by federal and/or state authorities. Said sums shall be payable on or before the 15th day of March of each year.

- B. All charges and fees incidental to awarding, renewing, extending and/or enforcing the license, including but not limited to payments for bonds, security letters, letters of credit, insurance, indemnification, penalties, liquidated damages and reimbursement to the Town for legal advertising, attorney fees, consultant fees and any other applicable expenses associated with any appeal in which the Town prevails, shall be paid by the licensee.

**§ 99-7. Performance evaluation sessions; notice; reimbursement of costs.**

- A. The issuing authority shall hold annual performance evaluation sessions, open to the public, during the months of the anniversaries of the effective date of this license. The purpose of said evaluation sessions shall be to review, among other things, the licensee's compliance with the terms and conditions of the license and to hear comments, suggestions and complaints from the public. The issuing authority shall have the right to question the licensee on any aspect of the construction, operation or maintenance of the cable television system.
- B. During the review and evaluation by the issuing authority, the licensee shall fully cooperate with the issuing authority or its agents or designees and shall produce such documents or other materials as may be reasonably requested by the Town. In conjunction with such review and evaluation, the issuing authority shall have the right to initiate on its own motion, in accordance with the provisions of 207 CMR 5.03, or at the request of the licensee or at the request of the public, in accordance with the provisions of 207 CMR 5.04, proceedings to amend the license.
- C. The licensee shall notify its subscribers of all performance evaluation sessions by announcement on at least one channel of its cable system, as designated by the issuing authority, between the hours of 7:00 p.m. and 9:00 p.m. for at least five consecutive days preceding each session.
- D. Any and all reasonable costs incurred by the Town in connection with such evaluation sessions, including but not limited to attorney fees and consultant fees, shall be reimbursed to the Town by the licensee.

**§ 99-8. Right to privacy; restrictions on licensee.**

- A. The licensee shall maintain due vigilance with regard to possible misuse of the right of privacy of any subscriber, programmer or other citizen resulting from any device or signal associated with the cable system and shall take all reasonable steps necessary to prevent any such abuse and/or terminate it should it occur.
- B. No cable, line, wire, amplifier, converter or other piece of equipment owned or controlled by the licensee shall be installed on private property by the licensee or its agents without first obtaining permission of the owner of such property or the written permission of the

holder of the easement for utility lines or other purposes, except in accordance with the law. A request to have service connected shall constitute permission to use the affected private property.

- C. Neither the licensee nor any of its officers, employees or agents shall tap, monitor or arrange for the tapping of any cable, line, signal input device or subscriber outlet or receiver for any purpose whatsoever, other than legitimate technical testing or the monitoring of service status, without the prior written consent of all affected parties.
- D. The licensee shall not, without the consent of the subscriber, sell, disclose or otherwise make available to any person, agency or entity for any purpose whatsoever or permit the use of the names and/or addresses of its subscribers or any list or other information that identifies by name and/or address subscribers and/or subscribers' viewing habits. This provision shall not prevent the licensee from performing such acts as may be necessary for the purpose of service-related surveys.
- E. The licensee shall ensure that all its vehicles, employees, agents and contractors are clearly identified to the public as being associated with the licensee.
- F. Restrictions on transmission.
  - (1) The licensee shall not permit the transmission of any identifiable aural, visual or digital signal, including polling the channel selection, from any subscriber's premises without first obtaining the written consent of the subscriber. In the event that channel selection should be polled in a manner making it impossible to identify subscribers, such written permission shall not be required, but subscribers shall be advised that they have a right not to participate and shall further be advised how to deactivate the two-way capability of their television sets to make such participation impossible. (This provision is not intended to prohibit the transmission of signals useful only for the control or measurement of signal performance.)
  - (2) Further, the licensee shall not permit, without first obtaining written permission from the subscriber, the installation of any special technical equipment in any subscriber's premises that will permit transmission of aural, visual or digital signals from said premises. Notwithstanding the foregoing, the transmission of signals from any subscriber's premises for use solely in conjunction with the selection and delivery of pay-per-view programming is specifically permitted.
- G. The licensee shall comply with the privacy provisions of the Federal Cable Communications Policy Act of 1984, as well as all federal, state and local laws and regulations dealing with rights of privacy, including but not limited to:
  - (1) Chapter 166A of the Massachusetts General Laws.
  - (2) Federal Communications Commission regulations requiring that upstream devices attached to the subscriber's set be subject to deactivation by the subscriber.
  - (3) Any additional laws or regulations enacted by Congress, the FCC, the Commonwealth of Massachusetts or the Town as they become effective.
- H. Every subscriber shall be provided at the time of connection to the cable system with a

written statement of the licensee's policies regarding subscribers' rights to privacy and confidentiality of information.

- I. The licensee shall provide the issuing authority with a written statement containing a detailed description of all types of information that will be maintained regarding both individual subscribers and the aggregate of subscribers. The maintenance of such information shall be subject to approval by the issuing authority, which approval shall not be unreasonably or arbitrarily withheld, provided that the licensee presents sound business reasons for the need to maintain such information.
- J. Every subscriber shall have the right to inspect any and all records maintained by the licensee that pertain to the subscriber. Such records shall be made available at no cost to the subscriber within five business days after requesting them.
- K. All data collected by the operator, except data necessary for billing and/or service, shall be maintained in the aggregate except with the prior written consent of the subscriber. When written consent of the subscriber must be obtained, a written detailed explanation of the reasons the consent is sought shall be given to the subscriber.
- L. If subscriber information is to be released to third parties, a list of all persons and/or organizations to whom and to which the information will be furnished shall be part of the explanation. Under no circumstances shall information of any kind regarding individual subscribers, other than that necessary for billing or service procedures, be made available to any third party without the prior written consent of the subscriber. Any written consent of a subscriber so obtained shall automatically expire six months from the date it is given. Such consent may be revoked at any time during its six-month life span by written notification from the subscriber.
- M. Subscribers shall be informed of any survey that will yield information regarding their viewing preferences, economic status or political or religious opinions and shall have an unconditional right not to participate in such surveys.
- N. Any device capable of transmitting signals upstream must require some positive action by the subscriber to initiate such transmission and must be subject to deactivation by the subscriber. Each subscriber must be provided with a clearly written description of the purpose of the upstream device attached to his or her television set or cable equipment, the type of information obtainable through that device and the proposed use of this information. Additionally, the subscriber shall be instructed on how to operate and deactivate the device.
- O. Any proposed changes in the licensee's policies regarding subscribers' rights and information thereon shall be submitted to the issuing authority no less than 60 days prior to the effective date of the new policy. No such change in policy shall take place until approved by the issuing authority. Once such approval has been granted, a written statement of the policy change shall be made available to all subscribers no less than 30 days prior to the effective date of that change.
- P. Any breach of the privacy policy, whether by employees of the licensee or by a third party, shall be communicated, in writing, to the issuing authority within 10 days of discovery.

- Q. In any legally substantiated case in which information about a subscriber is released without the subscriber's permission, the licensee shall be assumed to be in direct violation of the subscriber's rights and shall be liable to civil and criminal penalties, including revocation of the license.

**§ 99-9. Severability.**

If any section, paragraph, term or provision of this chapter is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory agency having jurisdiction thereover, such determination shall have no effect on any other section, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the license or any renewal or renewals thereof.

**§ 99-10. Compliance with state and federal law; conflicts with license.**

This chapter is subject to all applicable state and federal law. In the event that any provision of this chapter conflicts with or is inconsistent with any provision in a cable license issued after the adoption of this chapter by the Board of Selectmen as issuing authority under MGL c. 166A, it is hereby deemed that the cable license provision shall be controlling. Where such cable license does not contain a provision on a particular matter covered by this chapter, then this chapter shall remain in effect.