

CHAPTER 8

CABLE TELEVISION

ARTICLE I - CABLE COMMUNICATIONS REGULATORY CODE

DIVISION I - GENERAL PROVISIONS

8-1-1 **TITLE.** This Article shall be known and may be cited as the "Cable Communications Regulatory Code".

8-1-2 **PURPOSE.** The Village finds that further development of Cable Systems has the potential to be of great benefit to the Village and its residents and businesses. Cable technology is rapidly changing, and cable plays an essential role as part of the Village's basic infrastructure. Cable Systems extensively make use of scarce and valuable Public Right-of-Ways, in a manner different from the way in which the general public uses them, and in a manner reserved primarily for those who provide services to the public, such as utility companies. A cable company currently typically faces very limited competition; thus, the grant of a Franchise has the effect of giving the holder extensive economic benefits and places the holder in a position of public trust. Because of these facts, the Village finds that public convenience, safety, and general welfare can best be served by establishing regulatory powers vested in the Village or such Persons as the Village so designates to protect the public and to ensure that any Franchise granted is operated in the public interest. In light of the foregoing, the following goals, among others, underlie the provisions set forth in this Code:

(A) Cable Service should be available to as many Village residents and businesses as possible and provide the widest possible diversity of information sources and services to the public.

(B) A Cable System should be capable of accommodating both present and reasonably foreseeable future cable-related needs of the community.

(C) A Cable System should be constructed and maintained during a Franchise term so that changes in technology may be integrated to the maximum extent possible into existing System facilities, taking into account all relevant factors including costs.

(D) A Cable System should grow and develop and be responsive to the needs and interests of the community.

The Village intends that all provisions set forth in this Code be construed to serve the public interest and the foregoing public purposes, and that any Franchise issued pursuant to this Code be construed to include the foregoing findings and public purposes as integral parts thereof.

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8-1-3 **EXISTING FRANCHISE AND AGREEMENTS.** To the extent permitted by law, this Code shall apply to Franchises and other Agreements in effect at the time of adoption of this Code.

8-1-4 **RESERVED.**

DIVISION II - DEFINITIONS AND WORD USAGE

8-1-5 **DEFINITIONS AND USAGE - GENERAL.** For the purposes of this Code, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. When not inconsistent with the context, words used in the present tense include the future tense and vice versa, words in the plural number include the singular number, and vice versa, and the masculine gender includes the feminine gender and vice versa. The words "shall" and "will" are mandatory, and "may" is permissive. Unless otherwise expressly stated or clearly contrary to the context, terms, phrases, words, and abbreviations not defined herein shall be given the meaning set forth in Title 47 of the United States Code, Chapter 5, Subchapter V-A, 47 U.S.C. §§ 521 et seq., as amended, and regulations issued pursuant thereto, and, if not defined therein, their common and ordinary meaning. For convenience, Federal and State definitions are set forth in the glossary to this Code, which glossary may be revised by the Village Attorney to reflect subsequent changes in federal law without the need for an amendment of this Code. For further convenience, the first letter of terms, phrases, words, and abbreviations defined in this Code or by federal law have been capitalized, but an inadvertent failure to capitalize such letter shall not affect meaning.

8-1-6 **CABLE ACT.** "Cable Act" shall mean Title 47 of the United States Code, Chapter 5, Subchapter V-A, 47 U.S.C. §§ 521 et seq., as amended from time to time.

8-1-7 **VILLAGE.** "Village" shall mean the Village of St. Jacob, Illinois, and its agencies, departments, agents, and employees acting within their respective areas of authority.

8-1-8 **VILLAGE BOARD.** "Village Board" or "Board" shall mean the governing body of the Village.

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8-1-9 **FCC.** "FCC" shall mean the Federal Communications Commission, its designee, or any successor governmental entity thereto.

8-1-10 **FRANCHISE AGREEMENT.** "Franchise Agreement" shall mean a contract entered into in accordance with the provisions of this Code between the Village and a Franchisee that sets forth, subject to this Code, the terms and conditions under which a Franchise will be exercised.

8-1-11 **FRANCHISE AREA.** "Franchise Area" shall mean the area of the Village that a Franchisee is authorized to serve by its Franchise Agreement.

8-1-12 **FRANCHISE TRANSFER.**

(A) **"Franchise Transfer"** shall mean any transaction in which:

- (1) any ownership or other right, title, or interest of more than **ten percent (10%)** in a Franchisee or its Cable System is transferred, sold, assigned, leased, sublet, mortgaged, or otherwise disposed of or encumbered directly or indirectly, voluntarily or by foreclosure or other involuntary means, in whole or in part; or
- (2) there is any change in or substitution of, or acquisition or transfer of Control of, the Franchisee or any Person which has more than a **ten percent (10%)** interest in a Franchisee or has responsibility for or Control over a Franchisee's operations or over the System; or
- (3) the rights or obligations held by the Franchisee under the Franchise are transferred, directly or indirectly, to another Person.

(B) **"Control"** means the legal or practical ability to direct the affairs of another Person, either directly or indirectly, whether by contractual agreement, majority ownership interest, any lesser ownership interest, or in any other manner.

(C) A rebuttable presumption that a change, acquisition, or transfer of Control has occurred shall arise upon the acquisition or accumulation of a **ten percent (10%)** or larger ownership interest by any Person or group of Persons acting in concert, none of whom already have more than a **fifty percent (50%)** ownership interest, alone or collectively.

(D) Notwithstanding the foregoing, "Franchise Transfer" does not include:

- (1) disposition or replacement of worn out or obsolete equipment, property or facilities in the normal course of operating a Cable System, including the renewal or extension of equipment or property leases and contracts; or
- (2) acquisition, transfer, sale or other disposition of leases, licenses, easements, and other interests in real property in the normal

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- course of operating a Cable System and not involving the relinquishment of any right or power affecting the Franchisee's ability to provide services in whole or in part; or
- (3) pledge or mortgage of a Franchisee's assets to a financial institution in return for sums necessary to construct or operate (or both) the Cable System, provided that such pledge or mortgage and related agreements obligate and limit such financial institution as follows: any foreclosure or exercise of lien over the Franchise or facilities shall only be by assumption of Control over the entire Cable System; prior to assumption of Control, the institution shall notify the Village that it or a designee acceptable to the Village will take Control of and operate the System, and shall submit a plan for such operation insuring continued service and compliance with this Code and all Franchise obligations during the term the institution exercises such Control; and the institution shall not exercise Control for longer than **one (1) year** unless extended by the Village for good cause and shall prior to the expiration of such period (as extended) obtain the Village's approval of a Franchise Transfer for the remaining term of the Franchise or award of a new Franchise to another qualified Person pursuant to this Code.

8-1-13 **FRANCHISEE.** "Franchisee" shall mean a Person that has been granted a Franchise by the Village in accordance with this Code.

8-1-14 **GROSS REVENUES.** "Gross Revenues" shall mean any and all cash, credits, property or other consideration of any kind or nature, received directly or indirectly, by a Franchisee or its Affiliates or any Person, arising from, attributable to, or in any way derived from the operation of a Cable System to provide Cable Services, including the studios and other facilities associated therewith, within the Village. "Gross Revenues" include, by way of illustration and not limitation, monthly fees charged Subscribers for any basic, optional, premium, per-channel, per-program, or other service; installation, disconnection, reconnection, and change-in-service fees; leased channel fees; late fees and processing fees; fees or payments received from programmers for carriage of programming on the System (which does not include contributions of joint marketing efforts); revenues from rentals or Sales of converters or other equipment; studio rental and production fees; advertising revenues; revenues from program guides; and revenues from home shopping and bank-at-home channels. "Gross Revenues" shall not include any Franchise fees hereunder or any taxes on services furnished by a Franchisee or other Person which are imposed directly on any Subscriber or User by the United States, the State of Illinois, the Village, or other governmental unit and which are collected by a Franchisee or other Person on behalf of said

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governmental unit. "Gross Revenues" shall not include revenues of another Person to the extent already included in the "Gross Revenues" of one Person hereunder, or any proceeds from the sale or exchange of the System. "Gross Revenues" shall not include revenues for goods and services which are not provided over the System, even if such goods and services are ordered using the System. In the event a Person receives revenues for operations within and without the Village of which no specific portion can be attributed to operations in the Village, "Gross Revenues" with respect to such revenues shall mean the portion thereof derived by multiplying such revenues by a fraction, the numerator of which is the number of Subscribers in the Village and the denominator of which is the total number of Subscribers in the area generating such revenues.

8-1-15 NORMAL BUSINESS HOURS. "Normal Business Hours" means 8 a.m. to 5 p.m. Monday through Friday.

8-1-16 NORMAL OPERATING CONDITIONS. "Normal Operating Conditions" means those service conditions that are within the control of a Franchisee. Conditions that are not within the control of a Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages in excess of **two (2) hours** in length, telephone network outages, and severe or unusual weather conditions. Conditions that are within the control of a Franchisee include, but are not limited to, special promotions, rate increases, regular peak or seasonal demand periods, maintenance or upgrade of the Cable System, and power outages of **two (2) hours** or less in length.

8-1-17 PERSON. "Person" shall mean an individual, partnership, limited liability corporation or partnership, association, joint stock company, trust, organization, corporation, or other entity, or any lawful successor thereto or transferee thereof, but such term does not include the Village.

8-1-18 PUBLIC RIGHT-OF-WAYS. "Public Right-of-Ways" shall mean the surface, the air space above the surface, and the area below the surface of any public street, right-of-way, highway, lane, path, alley, way for public service facilities, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway, easement, playgrounds, school grounds, or similar property in which the Village now or hereafter holds any property interest, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a Cable System. No reference herein, or in any Franchise Agreement, to a "Public Right-of-Way" shall be deemed to be a representation or guarantee by the Village that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a Franchisee shall be deemed to gain only those rights to use as are properly in the Village and as the Village may have the undisputed right and power to give.

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8-1-19 **RFP.** “RFP” stands for request for proposal.

8-1-20 **SALE.** “Sale” shall mean any sale, exchange, or barter transaction.

8-1-21 **SERVICE INTERRUPTION.** “Service Interruption” means the loss of picture or sound on one or more cable channels.

8-1-22 **SUBSCRIBER.** “Subscriber” shall mean any Person who legally receives any cable service delivered over a Cable System and the Village in its capacity as a recipient of such service.

8-1-23 **USER.** “User” shall mean a Person utilizing part or all of a Cable System for purposes of producing or transmitting Video Programming or Other Programming services as contrasted with the receipt thereof in the capacity of a Subscriber.

8-1-24 - 8-1-27 **RESERVED.**

DIVISION III - GRANT OF FRANCHISE

8-1-28 **GRANT OF FRANCHISE.** The Village may grant **one (1)** or more cable television Franchises containing such provisions as are reasonably necessary to protect the public interest, and each such Franchise shall be awarded in accordance with and subject to the provisions of this Code. This Code may be amended from time to time, and in no event shall this Code be considered a contract between the Village and a Franchisee such that the Village would be prohibited from amending any provision hereof; provided, no such amendment shall in any way impair any contract right or increase obligations of a Franchisee under an outstanding and effective Franchise except in the lawful exercise of the Village’s police power.

8-1-29 **FRANCHISE REQUIRED.**
(A) No Person may construct, operate, or maintain a Cable System or provide Cable Service over a Cable System within the Village without a Franchise granted by the Village authorizing such activity. No person may be granted a Franchise without having entered into a Franchise Agreement with the Village pursuant to this Code. For the purpose

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of this provision, the operation of part or all of a Cable System within the Village means the use or occupancy by facilities of Public Right-of-Ways within the Village whether or not any Subscriber within the Village is served. A System shall be deemed as using or occupying Public Right-of-Ways even though such use or occupancy is solely by reason of use of distribution facilities furnished by a telephone or other company pursuant to tariff or contract. A System shall not be deemed as operating within the Village even though service is offered or rendered to **one (1)** or more Subscribers within the Village, if no Public Right-of-Way is used or occupied. The location within the Village of a microwave or similar relay, interconnection or program origination facility not involving the use or occupancy of Public Right-of-Ways shall not be deemed operation within the Village. In all respects, Franchise Agreements shall be issued so as to provide equal protection under the law and to prevent unlawful disparate treatment of Persons which operate or construct Cable Systems or provide Cable Services over a Cable System, including as required by **65 ILCS Sec. 5/11-42-11**.

(B) To the extent a Common Carrier (or any other Person) is providing Video Programming to subscribers using Radio Communications, such Common Carrier (or other Person) must obtain a Franchise as required pursuant to this Code but shall not be subject to requirements imposed by the Cable Act through this Code. To the extent a Common Carrier is providing transmission of Video Programming on a Common Carrier basis, such Common Carrier must obtain a Franchise as required pursuant to this Code but shall not be subject to requirements imposed by the Cable Act through this Code (but this Section shall not affect the treatment of a facility of a Common Carrier as a Cable System). To the extent a Common Carrier (or any other Person) is providing Video Programming by means of an Open Video System pursuant to certification approved by the FCC, such Common Carrier (or other Person) need not obtain a Franchise pursuant to this Code but shall be subject to requirements imposed by the Cable Act through this Code as permitted by federal law, and shall pay to the Village fees on Gross Revenues for the provision of Cable Service equal to and in lieu of the franchise fee imposed hereunder on Cable Operators in accordance with the provisions of this Code. To the extent that a Common Carrier is providing Video Programming to its Subscribers in a manner other than that described above in this Subsection (B) such Common Carrier must obtain a Franchise as required pursuant to this Code and shall be subject to requirements imposed by the Cable Act through this Code.

8-1-30 LENGTH OF FRANCHISE. No Franchise shall initially be granted for a period of more than **twenty (20) years** or less than **four (4) years**, except that a Franchisee may apply for renewal or extension pursuant to this Code.

8-1-31 FRANCHISE CHARACTERISTICS.

(A) A Franchise authorizes use of Public Right-of-Ways for installing, operating, and maintaining cables, wires, lines, optical fiber, underground conduit, and other devices necessary and appurtenant to the operation of a Cable System to provide Cable

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Services within a Franchise Area, but does not expressly or implicitly authorize a Franchisee to provide service to, or install a Cable System on private property without owner consent through eminent domain or otherwise (except for use of compatible easements pursuant to and consistent with Section 621 of the Cable Act, 47 U.S.C. § 541(a)(2)), or to use publicly or privately owned poles, ducts or conduits without a separate agreement with the owners.

(B) A Franchise shall not mean or include any franchise, license, or permit for the privilege of transacting and carrying on a business within the Village as generally required by the ordinances and laws of the Village other than this Cable Communications Regulatory Code, or for attaching devices to poles or other structures, whether owned by the Village or other Person, or for excavating or performing other work in or along Public Right-of-Ways. A Franchise shall not confer any authority to provide Telecommunications Services or any other communications services besides Cable Services. A Franchise shall not confer any implicit rights other than those mandated by federal, state or local law.

(C) A Franchise is non-exclusive and will not explicitly or implicitly: preclude the issuance of other Franchises to operate Cable Systems within the Village; affect the Village's right to authorize use of Public Right-of-Ways by other Persons to operate Cable Systems or for other purposes as it determines appropriate; or affect the Village's right to itself construct, operate, or maintain a Cable System, with or without a Franchise; provided, however, that in considering whether to grant a franchise in addition to an existing franchise or to own, lease, and/or operate a municipal system, the Village shall comply with State law, including **65 ILCS Sec. 5/11-42-11**.

(D) Once a Franchise Agreement has been accepted and executed by the Village and a Franchisee, such Franchise Agreement shall constitute a valid and enforceable contract between the Franchisee and the Village, and the terms, conditions, and provisions of such Franchise Agreement, subject to this Code and all other duly enacted and applicable laws, shall define the rights and obligations of the Franchisee and the Village relating to the Franchise.

(E) All privileges prescribed by a Franchise shall be subordinate to any prior lawful occupancy of the Public Right-of-Ways, and the Village reserves the right to reasonably designate where a Franchisee's facilities are to be placed within the Public Right-of-Ways through its generally applicable permit procedures without materially adding to the obligations of the Franchisee.

(F) A Franchise shall be a privilege that is in the public trust and personal to the original Franchisee. No Franchise Transfer shall occur without the prior written consent of the Village upon application made by the Franchisee pursuant to this Code and the Franchise Agreement, which consent shall not be unreasonably withheld, and any purported Franchise Transfer made without application and prior written consent shall be void and shall be cause for the Village to revoke the Franchise Agreement.

8-1-32 FRANCHISEE SUBJECT TO OTHER LAWS, POLICE POWER.

(A) A Franchisee shall at all times be subject to and shall comply with all applicable federal, state, and local laws, including this Code. A Franchisee shall at all times

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be subject to all lawful exercise of the police power of the Village, including but not limited to all rights the Village may have under 47 U.S.C. § 552, all powers regarding zoning, supervision of construction, assurance of equal employment opportunities, control of Public Right-of-Ways, and consumer protection.

(B) No course of dealing between a Franchisee and the Village, or any delay on the part of the Village in exercising any rights hereunder, shall operate as a waiver of any such rights of the Village or acquiescence in the actions of a Franchisee in contravention of such rights except to the extent expressly waived in writing or expressly provided for in a Franchise Agreement.

(C) The Village shall have full authority to regulate Cable Systems, Franchisees, and Franchises as may now or hereafter be lawfully permissible. Except where rights are expressly waived by a Franchise Agreement, they are reserved, whether or not expressly enumerated.

8-1-33 INTERPRETATION OF FRANCHISE TERMS.

(A) In the event of a conflict between this Code and a Franchise Agreement, the provisions of the Franchise Agreement control except where the conflict arises from the lawful exercise of the Village's police power.

(B) The provisions of this Code and a Franchise Agreement will be liberally construed in accordance with generally accepted rules of contract construction and to promote the public interest.

8-1-34 OPERATION OF A CABLE SYSTEM WITHOUT A FRANCHISE.

Any person who occupies Public Right-of-Ways for the purpose of operating or constructing a Cable System or provides Cable Service over a Cable System and who does not hold a valid Franchise from the Village shall be subject to all requirements of this Code, including but not limited to its provisions regarding construction and technical standards and Franchise fees. In its discretion, the Village at any time may by ordinance: require such Person to enter into a Franchise Agreement within **thirty (30) days** of receipt of a written notice to such Person from the Village that a Franchise Agreement is required; require such Person to remove its property and restore the affected area to a condition satisfactory to the Village within such time period; grant a revocable permit to operate for a period not to exceed **two (2) years** provided such period begins on the expiration date of a Franchise previously issued to such Person; direct municipal personnel to remove the property and restore the affected area to a condition satisfactory to the Village and charge the Person the costs therefor, including by placing a lien on the Person's property as provided in connection with abating nuisances; or take any other action it is entitled to take under applicable law. In no event shall a Franchise be created unless it is issued by ordinance of the Village pursuant to this Code and subject to a written Franchise Agreement.

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8-1-35 ACTS AT FRANCHISEE'S EXPENSE. Any act that a Franchisee is or may be required to perform under this Code, a Franchise Agreement, or applicable law shall be performed at the Franchisee's expense, without reimbursement by the Village, unless expressly provided to the contrary in this Code, the Franchise Agreement, or applicable law.

8-1-36 EMINENT DOMAIN. Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, the Village's power of eminent domain. The Village may exercise its right of eminent domain on behalf of a Franchisee consistent with **65 ILCS Sec. 5/11-42-11.**

8-1-37 EXCLUSIVE CONTRACTS AND ANTICOMPETITIVE ACTS PROHIBITED.

(A) No Franchisee or other multi-channel video programming distributor shall enter into or enforce an exclusive contract for the provision of Cable Service or other multi-channel video programming with any Person, or demand the exclusive right to serve a Person or location, as a condition of extending service to that or any other Person or location.

(B) No Franchisee or other multi-channel video programming distributor shall engage in acts that have the purpose or effect of limiting competition for the provision of Cable Service or services similar to Cable Service in the Village, except for such actions as are expressly authorized by law.

(C) Property owners, condominium associations, managing agents, lessees, and other persons in possession or control of any residential building within a Franchise Area shall comply with **65 ILCS Sec. 5/11-42-11.1.**

8-1-38 - 8-1-39 RESERVED.

**DIVISION IV - APPLICATIONS FOR GRANT, RENEWAL, MODIFICATION,
OR TRANSFER OF FRANCHISES**

8-1-40 WRITTEN APPLICATION.

(A) A written application shall be filed with the Village Clerk for: grant of an initial Franchise; renewal of a Franchise under 47 U.S.C. § 546(a)-(g) or § 546(h); modification of a Franchise Agreement; or Franchise Transfer. An applicant shall demonstrate in its application compliance with all requirements of this Code and all applicable laws.

(B) To be acceptable for filing, a signed original of the application shall be submitted together with **ten (10) copies.** The application must be accompanied by the required

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filing fees, conform to any applicable request for proposals, and contain all required information. All applications shall include the names, addresses, and telephone numbers of Persons authorized to act on behalf of the applicant with respect to the application.

(C) All filed applications shall be made available by the Village Clerk for public inspection. Each filed application shall be reviewed promptly by the Village for completeness.

8-1-41 APPLICATION FOR GRANT OF A FRANCHISE, OTHER THAN A CABLE ACT RENEWAL FRANCHISE.

(A) Upon receipt of an application for a Franchise other than a Cable Act Renewal Franchise, the Village Board may commence a proceeding to identify the future cable-related needs and interests of the community. Upon completion of that proceeding, or after receipt of the application if no such proceeding is commenced, the Village Board shall either evaluate the application or issue an RFP, which shall be mailed to the applicant and made reasonably available to any other interested Person. The procedures, instructions, and requirements set forth in an RFP shall be followed by each applicant as if set forth and required herein. The Village may seek additional information from any applicant and establish deadlines for the submission of such information. If the Village issues an RFP, it shall evaluate all timely responses.

(B) In evaluating an application for a Franchise including a response to an RFP, the Village shall consider, among other things, the following factors:

- (1) The extent to which the applicant substantially complied with the applicable law and the material terms of any franchises in other communities.
- (2) Whether the quality of the applicant's service under any franchises in other communities, including signal quality, response to customer complaints, billing practices, and the like, was reasonable in light of the needs and interest of the communities served.
- (3) Whether there is adequate assurance that the applicant has the financial, technical, and legal qualifications to provide Cable Service in the Village.
- (4) Whether the application satisfies any minimum requirements established by the Village and is otherwise reasonably likely to meet the future cable-related needs and interest of the community, taking into account the cost of meeting such needs and interests.
- (5) Whether there is adequate assurance the applicant will provide suitable Public, Educational, and Governmental Access Facilities.
- (6) Whether issuance of a Franchise is warranted and in the public interest considering the immediate and future effect on the Public Right-of-Ways that would be used by the Cable System, including the extent to which installation or maintenance as

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planned would require replacement of property or involve disruption of property, public services, or use of the Public Right-of-Ways.

- (7) Whether the applicant or an Affiliate of the applicant owns or controls any other Cable System in the Village, or whether grant of the application may eliminate or reduce competition in the delivery of Cable Service in the Village.

(C) If the Village Board finds that it is in the public interest to issue a Franchise considering the factors set forth above, the Village shall prepare a final written Franchise Agreement under this Code that incorporates, as appropriate, the commitments made by the applicant and establish a deadline for the applicant to sign it and submit it for approval. If the applicant signs the Franchise Agreement and timely submits it for approval, the Village shall issue a Franchise by ordinance adopted no less than **thirty (30) days** after the filing of the original application.

(D) If the Village Board denies a Franchise, it will issue a written decision explaining why the Franchise was denied.

(E) Prior to deciding whether or not to issue a Franchise, the Village Board shall hold a public hearing; however, the Village may reject without hearing any application that is incomplete or fails to respond fully to an RFP.

(F) This Code is not intended and shall not be interpreted to grant standing to challenge the issuance of a Franchise to another Person, or to limit such standing.

(G) If an application seeks authority for a Franchise in addition to an existing Franchise, the Village shall comply with State law, including **65 ILCS Sec. 5/11-42-11**.

8-1-42 APPLICATION FOR GRANT OF A CABLE ACT FRANCHISE

RENEWAL. Applications for Franchise renewal under the Cable Act shall be received and reviewed in a manner consistent with Section 626 of the Cable Act, 47 U.S.C. § 546. If neither a Franchisee nor the Village activates in a timely manner, or can activate, the renewal process set forth in 47 U.S.C. § 546(a)-(g) (including, for example, if the provisions are repealed), and except as to applications submitted pursuant to 47 U.S.C. § 546(h), the provisions of **Section 8-1-41** shall apply and a renewal request shall be evaluated using the same criteria as any other request for a Franchise. The following requirements shall apply to renewal requests properly submitted pursuant to the Cable Act:

- (A)
- (1) If the provisions of 47 U.S.C. § 546(a)-(g) are properly invoked, the Village Board shall, in accordance with the time limits of the Cable Act, commence and complete a proceeding to review the applicant's performance under the Franchise during the then current Franchise term and to identify future cable-related community needs and interests. Upon completion of the proceeding, the Village Board may issue a RFP. The Village

Board, or its designee, shall establish deadlines and procedures for responding to the RFP, may seek additional information from the applicant, and shall establish deadlines for the submission of such additional information. Alternatively, an applicant can submit a proposal for renewal on its own initiative.

- (2) Following receipt of renewal proposals (and such additional information as may be provided in response to requests), the Village Board will provide prompt notice of such proposals and thereafter either determine that the Franchise should be renewed or make a preliminary assessment that the Franchise should not be renewed. This determination shall be made in accordance with the time limits established by the Cable Act, including sufficient time to comply with the following procedures.
- (3) If the Village Board preliminarily determines that the Franchise should not be renewed, which determination can be made by resolution, and the applicant that submitted the renewal proposal notifies the Village Clerk in writing within **twenty (20) days** after receipt of the preliminary determination that it wishes to pursue any rights to an administrative proceeding it has under the Cable Act, then, if required, the Village Board shall commence an administrative proceeding after providing prompt public notice thereof, in accordance with the Cable Act. The Village may also commence such a proceeding on its own initiative if it so chooses.
- (4) If the Village Board decides to grant renewal, which decision shall be made by resolution, the Village shall prepare a final written Franchise Agreement that incorporates, as appropriate, the commitments made by the applicant in the renewal proposal and establish a deadline for the applicant to sign it and submit it for approval. If the applicant signs the Franchise Agreement and timely submits it for approval, the Village shall issue a Franchise by ordinance. If the Franchise Agreement is not so accepted and approved within the time limits established by 47 U.S.C. § 546(c)(1) and the Village, renewal shall thereupon be deemed preliminary denied, and if the applicant notifies the Village Clerk in writing within **twenty (20) days** after the expiration of the time limit established by 47 U.S.C. § 546(c)(1) that it wishes to pursue any rights to an administrative proceeding it has under the Cable Act, then, if required, the Village Board shall commence an administrative proceeding after providing prompt public notice thereof, in accordance with the Cable Act. The Village may also commence such a proceeding on its own initiative if it so chooses.

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(B) If an administrative proceeding is commenced pursuant to 47 U.S.C. § 546(c), the applicant's renewal proposal shall be evaluated considering such matters as may be considered consistent with federal law. The following procedures shall apply:

- (1) The Village Board shall, by resolution, appoint an administrative hearing officer or officers (referred to hereafter as "hearing officer"). The Village Board may appoint itself or **one (1)** or more of its members as hearing officer or any other qualified person.
- (2) The hearing officer shall establish a schedule for proceeding which allows for written discovery (requests for admissions, production of documents and interrogatory responses), production of evidence, and subpoenaing and cross-examination of witnesses. Depositions shall not be permitted unless the party requesting the deposition shows that written discovery and hearing subpoena will not provide it an adequate opportunity to require the production of evidence necessary to present its case. The hearing officer shall have the authority to require the production of evidence as the interests of justice may require, including to require the production of evidence by the applicant that submitted the renewal proposal and any Affiliate of such applicant. The hearing officer shall not prohibit discovery on the ground that evidence sought is proprietary or involves business secrets, but rather shall issue protective orders which allow reasonable and necessary discovery without making such information available to competitors. Any order of the hearing officer may be enforced by imposing appropriate sanctions in the administrative hearing or by action of the Village Board.
- (3) The hearing officer may conduct a prehearing conference and establish appropriate prehearing orders. The Village and the applicant shall be the only parties. The Village may have special counsel to represent its interests at the hearing so that the Village Attorney may advise the Village Board as it makes its decision.
- (4) The hearing officer may require the Village and the applicant to submit prepared written testimony prior to the hearing. Unless the parties agree otherwise, the applicant shall present evidence first, the Village shall present evidence second, and the applicant shall be allowed the opportunity to present rebuttal evidence. Any reports or the transcript or summary of any proceedings conducted pursuant to 47 U.S.C. § 546(a) shall for purposes of the administrative hearing be regarded no differently than any other evidence. The Village and the applicant must be afforded full procedural protection regarding evidence related to these proceedings, including the right to refute any evidence introduced

in these proceedings or sought to be introduced by the other party. Both shall have the opportunity to submit additional evidence related to issues raised in the proceeding conducted pursuant to 47 U.S.C. § 546(a).

- (5) There shall be a transcribed proceeding during which each party will be allowed to present testimony (live, or written if so required) and cross-examine the witnesses of the other party.
- (6) Following completion of any hearing, the hearing officer shall require the parties to submit proposed findings of fact with respect to the matters that the Village Board is entitled to consider in determining whether renewal ought to be granted. Based on the record of the hearing, the hearing officer shall then prepare written findings with respect to those matters, and submit those findings including a decision and the reasons therefor, to the Village Board and to the parties (unless the hearing officer is the Village Board, in which case the written findings shall constitute the final decision of the Village).
- (7) If the hearing officer is not the Village Board, the parties shall have **thirty (30) days** from the date the findings are submitted to the Village Board to file exceptions to those findings. The Village Board shall thereafter issue a written decision granting or denying the application for renewal, consistent with the requirements of the Cable Act, based on the record of such proceeding, stating the reason for the decision. A copy of the final decision of the Village Board shall be provided to the parties.
- (8) The proceeding shall be conducted with due speed. Any decision to renew a Franchise shall be made by ordinance enacted no less than **thirty (30) days** after the filing of the application, and subsequent to preparation of a written Franchise Agreement consistent with the decision by the Village and signature thereof by the applicant.
- (9) In conducting the proceeding, and except as inconsistent with the foregoing, the hearing officer will follow the Illinois Administrative Procedures Act (**5 ILCS Sec. 100/1-1 et seq.**), as amended. The hearing officer may request that the Village Board adopt additional reasonable and necessary procedures and requirements by resolution.

(C) This Section does not prohibit any Franchisee from submitting or the Village from considering an informal renewal application pursuant to 47 U.S.C. § 546(h), which application may be granted or denied in accordance with the provisions of 47 U.S.C. § 546(h). If such an informal renewal application is granted, including during the course of formal renewal proceedings, then the steps specified in subsections (A) and (B) of this Section

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need not be taken, notwithstanding the provisions of those subsections. However, the Village will provide the public with adequate notice before making a decision on such an application, and will make any decision to renew by ordinance enacted no less than **thirty (30) days** after the filing of the application, and subsequent to the preparation of a written Franchise Agreement by the Village and signature thereof by the applicant. Unless otherwise directed by the Village, an informal renewal application shall contain the information required under **Section 8-1-43**.

(D) The provisions of this Code shall be read and applied so that they are consistent with Section 626 of the Cable Act, 47 U.S.C. § 546, as amended.

8-1-43 CONTENTS OF FRANCHISE AND RENEWAL APPLICATIONS.

An RFP for the grant of a Franchise, including for a Franchise renewal shall require, and any application submitted shall contain, at a minimum, the following information:

(A) Name and address of the applicant and identification of the ownership and Control of the applicant, including: the names and address of all Persons with more than a **ten percent (10%)** ownership interest in the applicant and all Persons in Control of the applicant and/or the operations or System of the applicant; and any other business affiliation and Cable System ownership interest of each named Person.

(B) A demonstration of the applicant's technical ability to construct and/or operate the proposed or existing Cable System, including identification of key personnel and their cable television experience.

(C) A demonstration of the applicant's legal qualifications to construct and/or operate the proposed or existing Cable System, including but not limited to a demonstration that the applicant meets the following criteria:

- (1) The applicant has not had any cable television franchise validly revoked by any franchising authority within **three (3) years** preceding the submission of the application. If any revocation action is pending, it must be identified and explained.
- (2) The applicant has the necessary authority under Illinois law to operate a Cable System.
- (3) The applicant has authority to hold the Franchise as a matter of federal law. An applicant must have, or show that it is qualified to obtain, any necessary federal franchises or waivers required to operate the proposed or existing Cable System.
- (4) The applicant and its key personnel have not, at any time during the **ten (10) years** preceding the submission of the application, been convicted of any criminal act or omission or civil violation of such character that the applicant cannot be relied upon to comply substantially with its lawful obligations under applicable law, including obligations under consumer protection laws and laws prohibiting anticompetitive acts, fraud, racketeering, or other similar conduct. This criteria can be met by submission of a statement that there are no convictions, or by submission of a list reflecting that all convictions are of a minor nature.

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- (5) The applicant has not filed materially misleading information in its application or intentionally withheld information that the applicant lawfully is required to provide.
- (6) No elected official or employee of the Village holds a controlling interest in the applicant or an Affiliate of the applicant, or has received any promise of such an interest, or has received any gratuity, commission, percentage, brokerage, or contingency fee or other compensation for issuance or renewal of a Franchise, or promise thereof.
- (D) A statement prepared by a certified public accountant regarding the applicant's financial ability to complete any proposed construction and to operate the proposed or existing Cable System.
- (E) A description of the applicant's prior experience in Cable System ownership, construction, and operation, and identification of communities in which the applicant or any of its Affiliates have, or have had, a cable Franchise or franchise or any interest therein.
- (F) Identification of the area of the Village to be served by the proposed Cable System, including a description of the proposed Franchise Area's boundaries.
- (G) A detailed description of existing and any proposed physical facilities, including channel capacity, technical design, performance characteristics, headend, and access facilities.
- (H) A description of any promised construction including an estimate of plant mileage and its location; the proposed construction schedule.
- (I) A description, where appropriate, of how services will be converted from existing facilities to new facilities.
- (J) A demonstration of how the applicant will reasonably meet the future cable-related needs and interest of the community, including descriptions of how the applicant will meet or disagrees with the needs described in any recent community needs assessment conducted by or for the Village.
- (K) A description of Public, Educational, and Governmental Access Facilities to be provided.
- (L) If the applicant proposes to provide Cable Service to an area already served by an existing Franchisee, the identification of the area where the overbuild would occur, the potential Subscriber density in the area that would encompass the overbuild, and the ability of the Public Right-of-Ways and other property that would be used by the applicant to accommodate an additional System.
- (M) Any other information as may be reasonably necessary to demonstrate compliance with the requirements of this Code.
- (N) Information that the Village may reasonably request of the applicant that is relevant to the Village's consideration of the application.
- (O) An affidavit or declaration of the applicant or authorized representative certifying the truth, accuracy, and completeness of the information in the application, acknowledging the enforceability of application commitments upon acceptance through the

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granting of a Franchise, and certifying that the application is consistent with all federal, state, and local laws.

(P) Applicants for renewals may refer to prior applications as long as they submit such updated information as required to make the application current.

8-1-44 APPLICATION FOR MODIFICATION OF A FRANCHISE.

(A) An application for modification of a Franchise Agreement shall include, at minimum, the following information:

- (1) The specific modification requested;
- (2) The justification for the requested modification, including the impact of the requested modification on Subscribers and others, and the financial impact on the applicant if the modification is approved or disapproved, demonstrated through, among other things, submission of financial pro formas covering the period of time in which the modification would be in effect if approved, including a statement of projected Gross Revenues and income;
- (3) A statement whether the modification is sought pursuant to Section 625 of the Cable Act, 47 U.S.C. § 545, and, if so, a demonstration that the requested modification meets the standards set forth in 47 U.S.C. § 545;
- (4) Any other information that the applicant believes is necessary for the Village to make an informed determination on the application for modification; and
- (5) An affidavit or declaration of the applicant or authorized officer certifying the truth, accuracy, and completeness of the information in the application, acknowledging the enforceability of application commitments upon acceptance through the granting of the modification, and certifying that the application is consistent with all federal, state, and local laws.

(B) If the request for modification is subject to 47 U.S.C. § 545, the Village Board will conduct its review and makes its decision in conformity with that statute. If the request for modification is not subject to 47 U.S.C. § 545, the Village Board will conduct its review and make its decision by Ordinance enacted no less than **thirty (30) days** after the application is filed, subsequent to preparation of a modified written Franchise Agreement by the Village and signature thereof by the applicant.

(C) An extension of a Franchise term by less than **four (4) years** shall constitute a modification. An extension of a Franchise term by **four (4) years** or more shall be processed through formal or informal renewal procedures.

*Revised Code***8-1-45****FRANCHISE TRANSFERS.**

(A)

Village Approval Required. No Franchise Transfer shall occur without prior written application to and written approval of the Village Board by ordinance enacted after a public hearing, and only then upon such terms and conditions as the Village Board reasonably deems necessary and proper. Approval shall not be unreasonably withheld. Any purported Franchise Transfer made without such prior approval shall be void and shall be cause for the Village to revoke the Franchise Agreement. A grant of a Franchise involves personal credit, trust, and confidence in the Franchisee, and Franchise Transfer without the prior written approval of the Village Board shall be considered to impair the Village's assurance of due performance. The granting of approval for a Franchise Transfer in one instance shall not render unnecessary approval of any subsequent Franchise Transfer.

(B)

Application.

- (1) The Franchisee shall promptly notify the Village Clerk in writing of any proposed Franchise Transfer. If any Franchise Transfer should take place without prior notice to the Village, the Franchisee will promptly notify the Village Clerk in writing that such a Franchise Transfer has occurred.
- (2) At least **one hundred twenty (120) calendar days** prior to the contemplated effective date of a Franchise Transfer, the Franchisee shall submit to the Village Clerk an application for approval of the Franchise Transfer. Such an application shall provide information on the proposed transaction, including details on the legal, financial, technical, and other qualifications of the transferee, any waivers required from the Village under applicable law, and on the potential impact of the Franchise Transfer on Subscriber rates and service. At a minimum, the following information must be included in the application:
 - (a) all information and forms required under federal law;
 - (b) all information described in **Section 8-1-43(A-E), (I), (K), (M-O)** of this Code, regarding the transferee instead of the applicant, and regarding the Franchise Transfer rather than initial or renewal Franchise;
 - (c) a description of any business relationships or transactions of any kind, past, present, or anticipated, between the Franchisee, or its owners or Affiliates, and the transferee, or its owners or Affiliates, other than the proposed transaction;
 - (d) any contracts, financing documents, or other documents that relate to the proposed transaction, and all documents, schedules, exhibits, or the like referred to therein;
 - (e) a description of the sources and amounts of the funds to be used in the proposed transaction, indicating how the debt-equity ratio of the System will change in the course

- of the transaction; what entities will be liable for repayment of any debt incurred; what interest, payment schedule, and other terms or conditions will apply to any debt financing; any debt coverages or financial ratios any potential transferees will be required to maintain over the Franchise term if the proposed transaction is approved; what financial resources would be available to the System under the control of the proposed transferee;
- (f) any other information necessary to provide a complete and accurate understanding of the financial position of the System before and after the proposed Franchise Transfer, including but not limited to projected income statements and cash flow statements, including capital investments, for at least **five (5) years** after the proposed Franchise Transfer, assuming the Franchise Transfer is approved, stating specifically what assumptions are being made with respect to any rebuild or upgrade of the System;
 - (g) a statement that the Franchisee is in compliance with its Franchise obligations over the term of the Franchise, or specific descriptions of any noncompliance of which the Franchisee or any potential transferee is aware.
- (3) For the purposes of determining whether it shall consent to a Franchise Transfer, the Village Board and its agents may inquire into the qualifications of the prospective transferee and such other matters as the Village Board may deem necessary to determine whether the Franchise Transfer is in the public interest and should be approved or denied. The Franchisee and any prospective transferees shall assist the Village Board in any such inquiry, and if they fail to reasonably cooperate, the request for approval of Franchise Transfer may be denied. Proprietary information shall be protected from disclosure to competitors to the extent permitted by law.

(C) **Determination by Village.**

- (1) In making a determination as to whether to grant, deny, or grant subject to conditions an application for approval of a Franchise Transfer, the Village Board shall consider the legal, financial, and technical qualifications of the transferee to operate the System; whether any required waivers under the applicable law are in the best interests of the public; whether the Franchisee is in compliance with its Franchise Agreement and this Code and, if not, the proposed transferee's commitment to cure such noncompliance; and whether operation by the transferee on approval of the Franchise Transfer would adversely affect the

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Village's interest under this Code, the Franchise Agreement, other applicable law, or the public interest, or make it less likely that the future cable-related needs and interests of the community would be satisfied.

- (2) The Village shall make its determination in accordance with any time limits imposed by Federal law, including under 47 U.S.C. § 537.
- (3) Any purported Franchise Transfer made without the Village Board's prior written approval shall be void, and shall make a Franchise subject to revocation at the Village Board's sole discretion, and make any other remedies available to the Village under the Franchise or other applicable law. Acceptance of filing of an application for approval of a Franchise Transfer later than **one hundred twenty (120) days** before the purported effective date of the Franchise Transfer shall not validate the transaction or excuse the late filing, and in such an instance the Village shall retain the right to make its decision regarding such a Franchise Transfer within **one hundred twenty (120) days** unless action is required sooner by law.

(D) **Transferee's Agreement.** No application for approval of a Franchise Transfer shall be granted unless and until the proposed transferee submits an agreement in writing that it will abide by and accept all terms of this Code and the Franchise Agreement, and that it will assume the obligations and liabilities, known and unknown, of the previous Franchisee under this Code and the Franchise Agreement for all purposes, including renewal, unless the Village Board approves a modification of the Franchise Agreement pursuant to **Section 8-1-44** in conjunction with its approval of the Franchise Transfer, in which case the proposed transferee's agreement shall refer to the Franchise Agreement as so modified.

(E) **Approval Does Not Constitute Waiver.** Approval by the Village Board of a Franchise Transfer does not constitute a waiver or release of any of the rights of the Village under this Code or a Franchise Agreement, whether arising before or after the date of the Franchise Transfer; however, upon approval of a Franchise Transfer, the former Franchisee shall be released from prospective liability under the Franchise.

8-1-46 **FILING FEES AND DEPOSITS.** To be acceptable for filing, an application under this Division IV shall be accompanied by a filing fee in the following amounts to cover the Village's internal administrative costs incidental to the franchising process:

(A)	For a initial Franchise	\$1,000.00
(B)	For renewal of a Franchise under 47 U.S.C. § 546(a)-(g)	\$1,000.00
(C)	For renewal of a Franchise under 47 U.S.C. § 546(h)	\$500.00
(D)	For modification of a Franchise Agreement	\$500.00
(E)	For approval of a Franchise Transfer	\$500.00

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(F) **Public Proceedings.** An applicant shall be notified of any public proceedings held in connection with the evaluation of its application and shall be given an opportunity to be heard thereat. Notice of all public proceedings of the Village shall be published and posted in accordance with its usual practices.

8-1-47 **INTERGOVERNMENTAL COOPERATION.** By resolution of the Village Board, any part or all of the process established by this **Division IV** may be conducted in concert with other political subdivisions served or to be served by the applicant.

8-1-48 - 8-1-49 **RESERVED.**

DIVISION V - CONSTRUCTION PROVISIONS

8-1-50 **SYSTEM CONSTRUCTION SCHEDULE.** Every Franchise Agreement shall specify the construction schedule that will apply to any required construction, upgrade, or rebuild of the Cable System. Failure on the part of a Franchisee to commence and diligently pursue such requirements and complete the matters set forth in its Franchise Agreement or to comply with the System design and construction plan submitted to the Village, including by providing the equipment specified (or its equivalent) and by following generally accepted installation practices (except insofar as those plans or practices, if carried out, would result in construction of a System which could not meet requirements of federal, state or local law; and except for such minor modifications as are typical in the industry), shall be grounds for revocation of its Franchise under and pursuant to the terms of **Section 8-1-111**; provided, however, that the Village Board in its discretion may extend the time for the completion of construction and installation for additional periods by resolution in the event a Franchisee, acting in good faith, experiences delays by reason of circumstances beyond its control and requests such an extension in writing. A Franchisee's failure to comply with provisions of the construction plan approved by the Village Board shall also be grounds for imposition of penalties pursuant to **Section 8-1-114**.

8-1-51 **CONSTRUCTION PROCEDURES.**

(A) A Franchisee shall construct, operate and maintain the Cable System subject to the supervision of all of the authorities of the Village who have jurisdiction in such matters, and in compliance with all laws, ordinances, departmental rules and regulations affecting the System.

(B) The System, and all parts thereof, shall be subject to periodic inspection by the Village.

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(C) No construction, reconstruction or relocation of the System or any part thereof within the Public Right-of-Ways shall be commenced until written permits have been obtained from the proper Village officials. In any permit so issued, such officials may impose such conditions and regulations as a condition of the granting of the permit as are reasonably necessary for the purpose of protecting any structures or facilities in the Public Right-of-Ways and for the proper restoration of such Public Right-of-Ways and structures and facilities, and for the protection of the public and the continuity of pedestrian and vehicular traffic.

(D) The Village Board may by resolution or ordinance, from time to time, issue such reasonable rules and regulations concerning the construction, operation and maintenance of the System as are consistent with the provisions of this Code and Franchises issued pursuant to this Code.

8-1-52 CONSTRUCTION STANDARDS.

(A) The construction, operation, maintenance, and repair of a Cable System shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, the National Electrical Safety Code, the National Electric Code, national Cable Television Association Standards of Good Engineering Practices; Obstruction Marking and Lighting, Federal Aviation Administration; Construction, Marking and Lighting of Antenna Structures, Federal Communications Commission Rules Part 17; AT&T Manual of Construction Procedures (Blue Book); Franchisee's Construction Procedures Manual; other federal, state, or local laws and regulations that may apply to the operation, construction, maintenance, or repair of a Cable System, including, without limitation, local zoning and construction codes, and laws and accepted industry practices, all as hereafter may be amended or adopted. In the event of a conflict among codes and standards, the most stringent code or standard shall apply (except insofar as that code or standard, if followed, would result in a System that could not meet requirements of federal, state or local law). The Village may adopt additional reasonable standards as required to ensure that work continues to be performed in an orderly and workmanlike manner, or to reflect changes in standards which may occur over a Franchise term.

(B) All wires, cable lines, and other transmission lines, equipment, and structures shall be installed and located to cause minimum interference with the rights and convenience of property owners, including the Village.

(C) All electronic equipment shall be of good and durable quality.

(D) Without limiting the foregoing, antennae and their supporting structures (towers) shall be designed in accordance with the Uniform Building Code and Electronics Industry Association RS-22A Specifications, as amended, and shall be painted, lighted, erected, and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable federal, state, or local laws, codes, and regulations, all as hereafter may be amended or adopted.

(E) Without limiting the foregoing, all of a Franchisee's plant and equipment, including, but not limited to, the antennae site, headend and distribution system, towers, house connections, structures, poles, wires, cable, coaxial cable, fiber, optic cable,

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fixtures, and apparatuses shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained, and operated in accordance with good engineering practices, performed by experienced and properly trained maintenance and construction personnel so as not to endanger any Person or property or to unreasonably interfere in any manner with the Public Right-of-Ways or legal rights of any property owner including the Village or unnecessarily hinder or obstruct pedestrian or vehicular traffic.

(F) All safety practices required by law shall be used during construction, maintenance, and repair of a Cable System. A Franchisee shall install and maintain in use commonly accepted methods and devices to prevent failures and accidents that are likely to cause damage, injury, or nuisance to the public.

(G) A Franchisee shall not place facilities, equipment, or fixtures where they will interfere with any cable, gas, electric, telephone, water, sewer, or other utility facilities, or obstruct or hinder in any manner the various utilities serving the residents and businesses in the Village of their use of any Public Right-of-Ways.

(H) Any and all Public Right-of-Ways, public property, or private property disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, or construction of a System shall be repaired or replaced by the Franchisee within a reasonable time specified by the Village.

(I) A Franchisee shall, by a reasonable time specified by the Village, protect, support, temporarily disconnect, relocate, or remove discrete portions of its property when required by the Village by reason of traffic conditions; public safety, Public Right-of-Way construction; Public Right-of-Way maintenance or repair (including resurfacing or widening); change of Public Right-of-Way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned utility; Public Right-of-Way vacation; or for any other purpose where the convenience of the Village would be reasonably served thereby; provided, however, that the Franchisee may abandon any property in place if approved by the Village in writing, and provided further that the Franchisee shall not be required to make permanent changes in its facilities to accommodate the installation of another Cable System, nor should it be required to make temporary changes solely to disrupt its business or otherwise provide an unfair advantage to a competitor. No action hereunder shall be deemed a taking of the property of a Franchisee and a Franchisee shall not be entitled to any compensation therefor. No location of any pole or wire-holding structure of a Franchisee shall be a vested interest.

(J) If any action under the preceding paragraph is reasonably required to accommodate the construction, operation, or repair of the facilities of another Person that is authorized to use the Public Right-of-Ways, a Franchisee shall, after **thirty (30) days'** advance written notice, take action to effect the necessary changes requested. The Franchisee shall be reimbursed by such other Person for costs reasonably incurred in taking such action. The Village Board may resolve disputes as to responsibility for costs associated with the removal, relaying, or relocation of facilities as among entities authorized to install facilities in the Public Right-of-Ways if the parties are unable to do so themselves, and if the matter is not governed by a valid contract between the parties. All charges shall be consistent with **65 ILCS Sec. 5/11-42-11.**

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(K) In the event of an emergency, or where a Cable System creates or is contributing to an imminent danger to health, safety, or property, the Village may remove, relay, or relocate the pertinent parts of that Cable System without prior notice. No charge shall be made by Franchisee against the Village for restoration and repair.

(L) A Franchisee shall, on the request of the Village or any Person holding a permit issued by the Village, temporarily raise or lower its wires to permit the moving of buildings or oversized vehicles. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting same, and the Franchisee shall have the authority to require such payment in advance, except in the case where the request is made by the Village on its own behalf, in which case no such payment shall be required. The Franchisee shall be given not less than **forty-eight (48) hours'** advance notice to arrange for such temporary wire changes unless the Village Board has declared an emergency. All charges shall be consistent with **65 ILCS Sec. 5/11-42-11**.

(M) A Franchisee shall have the authority to trim trees that overhand a Public Right-of-Way of the Village so as to prevent the branches of such trees from coming in contact with the wires and cables of the Franchisee, at its own expense subject to the supervision and direction of the Village. Trimming of trees on private property shall require written permission of the property owner. All cut materials shall be properly disposed.

(N) A Franchisee shall use, with the owner's permission, existing underground conduits or overhead utility facilities whenever feasible and may not erect poles in Public Right-of-Ways without the express written permission of the Village board, which permission shall not be unreasonably withheld. Copies of agreements for use of conduits or other facilities shall be filed with the Village Clerk as required by a Franchise Agreement or upon Village request.

(O) Trunk, feeder and drop cable may be constructed overhead where poles exist and electric, cable television or telephone lines are overhead, but where no overhead lines exist all trunk, feeder and drop cable shall be constructed underground. Whenever and wherever all electric lines and telephone lines are moved from overhead to underground placement, all Cable System cables shall be similarly moved and the cost of movement of its cable shall be solely the obligation of the Franchisee. In cases of new construction or property development where utilities are to be placed underground, on request of Franchisee the developer or property owner shall give a Franchisee reasonable notice of the particular date on which open trenching will be available to Franchisee for installation of conduit, pedestals and/or vaults, and laterals to be provided at the Franchisee's expense. The Franchisee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring facilities within the development shall be borne by the developer or property owner; except that if the Franchisee fails to install its conduit, pedestals and/or vaults, and laterals within **five (5) working days** of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the **five (5) day** period, the cost of new trenching is to be borne by the Franchisee.

(P) The Village shall have the right to install and maintain free of charge upon any poles or within any conduit owned by a Franchisee any wire and pole fixtures that do not reasonably interfere with the Cable System operations of the Franchisee.

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(Q) Prior to construction or rebuild of a Cable System, a Franchisee shall first submit to the Village Board for approval a concise description of the Cable System proposed to be erected or installed, including engineering drawings, if required by the Village Board, together with a map and plans indicating the proposed location of all such facilities, and obtain written approval therefor from the Village Board, which approval shall not be unreasonably withheld.

(R) Any contractor or subcontractor used for work or construction, installation, operation, maintenance, or repair of System equipment must be properly licensed under laws of the State and all applicable local ordinances, and each contractor or subcontractor shall have the same obligations with respect to its work as a Franchisee would have under the Franchise Agreement and applicable laws if the work were performed by the Franchisee. The Franchisee must ensure that contractors, subcontractors and all employees who will perform work for it are trained and experienced. The Franchisee shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with the Franchise and applicable law, shall be fully responsible for all acts or omissions of contractors or subcontractors, shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor, and shall implement a quality control program to ensure that the work is properly performed.

(S) Upon failure of a Franchisee to commence, pursue or complete any work required by law or by the provisions of this Code to be done in any street, within the time prescribed and to the reasonable satisfaction of the Village, the Village may, at its option, after **thirty (30) days** notice to Franchisee, cause such work to be done and the Franchisee shall pay to the Village the cost thereof in the itemized amounts reported by the Village to Franchisee within **thirty (30) days** after receipt of such itemized report.

(T) The Franchisee shall make no paving cuts or curb cuts except after written permission has been given by the Village, which permission shall not unreasonably be withheld.

(U) The Franchisee shall install in conduit all cable passing under any major roadway.

8-1-53 **AREA SERVED.** A Franchisee shall build and maintain its System so that within a reasonable period of time, as established by the Franchise, it is able to provide service to all households desiring service located within the Franchise Area without any construction charges (other than standard connection charges and drop charges as indicated in **Section 8-1-54(B)**). A Franchisee must build and maintain its System so that it can extend service to households desiring service located outside the Franchise Area in accordance with **Section 8-1-54(A)** through **(D)**. Connections to commercial customers shall be governed by **Section 8-1-54(E)**.

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8-1-54

(A)

LINE EXTENSION REQUIREMENTS.

- (1) For areas within the Village but outside the Franchise Area, including areas annexed after the effective date of its Franchise (subject to **55 ILCS Sec. 5/5-1095**), a Franchisee shall upon request of the Village Board extend its trunk and distribution System to serve households desiring service without any construction charge (other than standard connection charges and drop charges as indicated in **Section 8-1-54(B)**), unless the Franchisee demonstrates to the Village Board's satisfaction evidenced by written decision that circumstances justify a specific charge, where: the new Subscriber requesting service is located within **five hundred (500) feet** from the termination of the Cable System, or the number of potential Subscribers to be passed by such extension is equal to or greater than **six (6)** potential households per quarter mile measured from any point on the System.
- (2) In the event that the requirements set forth in the foregoing paragraph (1) are not met, the Franchisee shall on request of the Village Board extend its Cable System based upon the following cost-sharing formula. The Franchisee shall contribute an amount equal to the construction costs per mile multiplied by the length of the extension in miles, multiplied by a fraction where the numerator equals the number of potential households per quarter mile at the time of the request and the denominator equals **six (6)**. Households requesting service as of the completion of construction can be required to bear the remainder of the total construction costs on a pro rata basis.

The "construction costs" are defined as the actual turnkey cost to construct the entire extension including lines, materials, electronics, pole make-ready charges, and labor, but not the cost of drops except as provided below. If the Franchisee proposes to require a household requesting extension to make a contribution in aid of extension, it must (1) notify the Village Board in advance; (2) send the Village Board a copy of the invoice showing the amount actually charged each household requesting extension; and (3) within **thirty (30) days** of completion of the extension, furnish proof of the total cost of the extension and make any appropriate refunds if the total cost is less than the amounts charged in advance of construction. At the end of each calendar year, the Franchisee must calculate the amount any contributing Person would have paid based on the number of Persons served at that time and pay back the difference between the amount actually collected from that Person and the amount which would then be owed. The Franchisee shall report such calculations and refunds to the Village Clerk by the end of January of the following year.

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(B) **Installation of Drops.** Except as federal rate regulations may otherwise require, the Franchisee shall not assess any additional cost for service drops of **one hundred fifty (150) feet** or less unless the Franchisee demonstrates to the Village Board's satisfaction, evidenced by written decision, that circumstances justify a specific charge. Where a drop exceeds **one hundred fifty (150) feet** in length, a Franchisee may charge the Subscriber for the difference between Franchisee's actual costs associated with installing a **one hundred fifty (150) foot drop**, and the Franchisee's actual cost of installing the longer drop, provided that drop length shall be the shorter of (1) the actual length of installed drop or (2) the shortest practicable distance to the point where the Franchisee would be required to extend its distribution System.

(C) **Location of Drops.** Except as federal rate regulations may otherwise require, in any area where a Franchisee would be entitled to install a drop above ground, the Franchisee will provide the Subscriber the option to have the drop installed underground, but may charge the Subscriber the difference between the actual cost of the above-ground installation and the actual cost of the underground installation.

(D) **Time for Extension.** A Franchisee must extend service to any Person who requests it (1) within **seven (7) days** of the request within the Franchise Area or where service can be provided by activating or installing a drop within **one hundred fifty (150) feet** of the existing distribution system; (2) within **ninety (90) days** of the request for service outside the Franchise Area where an extension of **one-half (1/2) mile** or less (but more than **one hundred fifty (150) feet**) is required; or (3) within **six (6) months** for service outside the Franchise Area where an extension of **one-half (1/2) mile** or more is required.

(E) Because existing conditions can vary dramatically, Franchisee may in its discretion require commercial customers to pay all reasonable costs (including time and materials) in excess of the average cost of connection for residential services.

8-1-55 **SYSTEM TESTS AND INSPECTIONS.**

(A) **Tests.** A Franchisee shall perform the following tests to demonstrate compliance with the requirements of the Franchise and other performance standards established by federal law. All tests shall be conducted in accordance with federal rules and in accordance with the most recent edition of NCTA's "Recommended Practices for Measurements on Cable Television Systems", or if no recent edition exists, such other appropriate manual as the parties may designate.

(1) Preconstruction quality control on cable and equipment. A Franchisee shall perform preconstruction quality tests on System components. In case of passive components, this will include testing a significant sample of devices to verify compliance with manufacturer's specifications.

(a) All trunk and distribution cable shall be sweep-tested on the reels to verify compliance with manufacturer's specifications for frequency response and loss.

- (b) All trunk and distribution amplifiers shall be bench-tested to verify compliance with manufacturer's specifications.
 - (c) No component shall be used in the System which fails to meet manufacturer's specifications. A Franchisee shall maintain in Madison County, Illinois, records of all preconstruction tests, which the Village may inspect during Normal Business Hours on reasonable notice.
- (2) **Acceptance Tests.** A Franchisee shall perform acceptance tests prior to Subscriber connection. The tests shall demonstrate that the System components are operating as expected. The test results shall be submitted to the Village Clerk for review by the Village. The Franchisee shall have the obligation, without further notice from Village, to take corrective action if any System components are not operating as expected. Unless the Village determines test results are not adequate to demonstrate System compliance with the standards described above and objects within **three (3) working days** of receipt of the test results, the portion of the System covered by the tests will be deemed approved for Subscriber connection.
- (3) **Continuing Tests.**
- (a) The Franchisee shall select locations at the extremities of the System to install equipment to establish sufficient permanent test points in accordance with federal law and sound engineering practices. The Franchisee shall perform proof of performance tests at these locations at least once every **six (6) months** through the life of the Franchise except as federal law otherwise limits its obligation, and at other times and points where complaints indicate tests are warranted. The tests shall demonstrate System compliance with technical specifications established pursuant to Franchise, or other applicable law. If the Village requests to witness the tests, it shall be notified in writing delivered to the Village Clerk at least **forty-eight (48) hours** in advance of any testing.
 - (b) A written report of all test results shall be kept on file by the Franchisee and provided to the Village Clerk on request. If a location fails to meet performance specifications, the Franchisee, shall take corrective action and retest the location. The Village shall have the option of witnessing such follow-up tests and shall be notified in writing delivered to the Village Clerk at least **forty-eight (48) hours** in advance of any such follow-up testing.

- (c) At any time after commencement of service to Subscribers the Village may require additional tests, full or partial repeat tests, different test procedures, or tests involving a specific Subscriber's terminal. Requests for such additional tests will be made on the basis of complaints received or other evidence indicating an unresolved controversy or significant non-compliance, and such tests will be limited to the particular matter in controversy. The Village may conduct such tests independently on **three (3) days** advance notice to Franchisee. The Village will endeavor to so arrange its requests for such special tests so as to minimize hardship or inconvenience to the Franchisee and the Subscriber(s).
- (4) All reports of test results shall include executive summaries.
- (5) Test procedures used in verification of the performance criteria set forth herein, if not as set forth in Section 76.609, Subpart K of the FCC Rules and Regulations, shall be in accordance with good engineering practice and shall be fully described in an attachment to the annual certificate filed with the Village.
- (6) To the extent that the report of measurements as required above may be combined with any reports of measurements required by the FCC or other regulatory agencies, the Village shall accept such combined reports, provided that all standards and measurements herein or hereafter established by the Village are satisfied.

(B) **Inspections.** The Village may conduct inspections of the System, including to assess compliance with the construction and installation practices manuals and design plans. The Franchisee shall be notified in writing of any violations found during the course of inspections. The Franchisee must bring violations into compliance within thirty (30) days of the date notice of violation is given, and must submit a report to the Village Clerk describing the steps taken to bring itself into compliance. Inspection does not relieve the Franchisee of its obligation to build in compliance with all provisions of the Franchise.

8-1-56 USE OF PUBLIC PROPERTY.

(A) Should the grades or boundaries of the Public Right-of-Ways which the Franchisee is authorized to use and occupy be changed at any time during the term of the Franchise granted, the Franchisee shall, if necessary, at its own cost and expense, relocate or change its System so as to conform with the new grades or boundaries.

(B) Any alteration to the existing water mains, sewerage or drainage system or to any Village, state or other public structures or facilities in the Public Right-of-Ways required on account of the construction of the System in the Public Right-of-Ways shall be made at the sole cost and expense of the Franchisee. During any work of constructing,

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operating or maintaining of the System, the Franchisee shall also, at its own cost and expense, protect any and all existing structures and facilities belonging to the Village and any other Person. All work performed by the Franchisee pursuant to this Section shall be done in such manner prescribed by the Village or other officials having jurisdiction thereover.

8-1-57 INTERFERENCE WITH PUBLIC PROJECTS. Nothing in this Code shall be in preference or hinderance to the right of the Village and any board, authority, commission or public service corporation to perform or carry on any public works or public improvements of any description.

8-1-58 PUBLICIZING PROPOSED CONSTRUCTION WORK. Unless not possible due to emergency circumstances, Franchisee shall publicize proposed construction work at least **ten (10) days** prior to commencement of that work by causing written notice of such construction work to be delivered to the Village Clerk. In addition, unless not possible due to emergency circumstances, before entering onto any Person's property, a Franchisee shall contact the property owner or occupant at least **one (1) day** in advance. If a Franchisee must enter a private building, it must have permission of the owner or occupant.

8-1-59 SYSTEM MAINTENANCE.

(A) **Interruptions to be Minimized.** A Franchisee shall schedule maintenance so that activities likely to result in an interruption of service are performed during periods of minimum Subscriber use of the system.

(B) **Maintenance Practices.** In addition to its other obligations, a Franchisee shall (A) use replacement components of good and durable quality, with characteristics better or equal to replaced equipment; and (B) follow the more stringent of maintenance standards specified in the Franchise Agreement, cable televisions industry maintenance standards or Franchisee's maintenance standards.

8-1-60 CONTINUITY OF SERVICE.

(A) It shall be the right of all Persons in a Franchisee's Franchise Area to receive all available services from the Franchisee as long as their financial and other obligations to the Franchisee are satisfied, and subject to reasonable construction standards and schedules, and subject to availability of legal access to the location.

(B) A Franchisee shall make every reasonable effort to provide all Subscribers with continuous uninterrupted service. At the Village's request, a Franchisee shall operate its System for a temporary period under the revocable permit granted expressly by ordinance or tacitly following the termination of its Franchise or Franchise Transfer as necessary to maintain service to Subscribers, and shall cooperate with the Village to assure an orderly transition from it to another Franchisee or System operator (the "Transition Period").

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The Transition Period shall be no longer than the reasonable period required for another Franchisee to commence service, and shall not be longer than **two (2) years**. During the Transition Period, the Franchisee shall continue to be obligated to comply with the terms and conditions of its Franchise Agreement and applicable laws and regulations, and will thereupon continue to receive operating revenues during such Transition Period.

8-1-61 - 8-1-63 RESERVED.

*Revised Code***DIVISION VI - SYSTEM FACILITIES, EQUIPMENT, AND SERVICES**

8-1-64 **COMPLIANCE WITH FRANCHISE AGREEMENT.** In addition to satisfying such requirements as may be established through the application process and incorporated in its Franchise Agreement including but not limited to those pertaining to Public, Educational and Governmental Access Facilities, every Franchisee shall comply with the conditions set forth in this Division, except as provided by federal law.

8-1-65 **FULL SERVICE TO MUNICIPAL BUILDINGS.** A Franchisee shall, on request of the Village, install, at no charge, at least **one (1)** service outlet at all municipal buildings and all primary and secondary education public and private schools within the Franchise Area, and shall install and charge only its reasonable costs for any additional service outlets requested for such locations, so long as such additional installations will not interfere with the quality and operation of the Franchisee's System or signal thereon, and the quality and manner of installation of such additional outlets shall have been approved by the Franchisee (which approval shall not be unreasonably withheld) and shall comply with all local, state and federal laws and regulations. The Franchisee shall provide Basic Cable Service and Expanded Basic Cable Service to all outlets in such buildings free of charge. A Franchisee may specify other requirements regarding the availability of facilities for municipal use.

8-1-66 **CABLE CHANNELS FOR COMMERCIAL USE, LOCAL COMMERCIAL TELEVISION SIGNALS, AND NON-COMMERCIAL EDUCATIONAL TELEVISION.** A Franchisee shall designate channel capacity for commercial and non-commercial use by Persons unaffiliated with the Franchisee as required by federal law, consistent with the principle of fairness and equal accessibility to all Persons and the Village to the extent they have a legitimate use for such capacity.

8-1-67 **TECHNICAL STANDARDS.**
(A) Any Cable System within the Village shall meet or exceed the technical standards set forth in 47 C.F.R. § 76.601 et seq. and any other applicable federal technical standards, including any such reasonable standards as hereafter may be amended or adopted by the Village Board in a manner consistent with federal law.

(B) A Franchisee shall use equipment generally used in high-quality, reliable, modern Systems of similar design, including, but not limited to, back-up power supplies at the fiber nodes and head-ends capable of providing power to the System for a minimum of **two (2) hours** in the event of an electrical outage, plus adequate portable generators to cover longer outages. The obligation to provide backup power supplies requires the Franchisee to install equipment that will (A) cut in automatically on failure of commercial

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utility AC power, (B) revert automatically to commercial power when it is restored, and (C) prevent the standby power source from powering a "dead" utility line. In addition, the design and construction of a System shall include modulators, antennae, amplifiers, and other electronics that permit and are capable of passing through the signal received at the headend with minimal alteration or deterioration.

8-1-68 INTERCONNECTION.

(A) A Franchisee shall design its System so that it may be interconnected with any or all other Systems or similar communications systems in the area. Interconnection of Systems may be made by direct cable connection, microwave link, satellite or other appropriate methods.

(B) Upon receiving the directive of the Village Board to interconnect, the Franchisee shall immediately initiate negotiations with the other affected System or Systems so that costs may be shared proportionately for both construction and operation of the interconnection link.

(C) The Village Board may in writing grant reasonable extensions of time to interconnect or rescind its request to interconnect upon its own initiative or upon petition by the Franchisee to the Village Board. The Village Board shall rescind the request if it finds that the Franchisee has negotiated in good faith and the cost of interconnection would cause an unreasonable increase in Subscriber rates.

(D) No interconnection shall take place without prior written approval of the Village Board. A Franchisee seeking approval for interconnection shall demonstrate that all signals to be interconnected will comply with FCC technical standards for all classes of signals and will result in no more than a low level of distortion.

(E) The Franchisee shall cooperate with any interconnection corporation, regional interconnection authority or state or federal regulatory agency which may be established for the purpose of regulating, facilitating, financing or otherwise providing for the interconnection of communications systems beyond the boundaries of the Village.

8-1-69 INTEGRATION OF ADVANCEMENTS IN TECHNOLOGY.

A Franchise Agreement may require a Franchisee to periodically upgrade its Cable System to integrate advancements in technology as may be necessary to meet the needs and interests of the community in light of the costs thereof, and/or to submit periodic reports on cable technology and competition to the Village Clerk.

8-1-70 SYSTEM DESIGN REVIEW PROCESS. In addition to any requirements included in a Franchise Agreement, at least **sixty (60) days** prior to the date construction of any rebuild is scheduled to commence, the Franchisee shall provide the Village Clerk with notice that a detailed system design and construction plan is available for review by the Village at a specific office of the Franchisee located in Madison County, Illinois, which shall include at least the following elements:

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- (A) Design type, trunk and feeder design, and number and location of hubs or nodes.
- (B) Distribution system-cable, fiber, and equipment to be used.
- (C) Plans for standby power.
- (D) Longest amplifier cascade in system (number of amplifiers, number of miles, type of cable/fiber).
- (E) Design maps and tree trunk maps for the System.

The System design will be shown on maps of industry standard scale using standard symbols, and shall depict all electronic and physical features of the cable plant. The Village may review the plan and, within **thirty (30) days** of the date the plan is made available for Village review, submit comments to the Franchisee. Within **fifteen (15) days** of receipt of the comments, the Franchisee shall notify the Village Clerk that a revised plan is available for review by the Village at a specific office located in Madison County, Illinois, either incorporating the comments or explaining why the comments were not included. The Village's review does not excuse any non-performance under a Franchise Agreement, this Code or other applicable law.

8-1-71 EMERGENCY ALERT SYSTEM. A Franchisee shall comply with 47 U.S.C. § 544(g) and all regulations issued pursuant thereto.

8-1-72 RESERVED.

DIVISION VII - OPERATION AND REPORTING PROVISIONS

8-1-73 OPEN BOOKS AND RECORDS.

(A) Subject to the provisions herein, the Village shall have the right to inspect and copy at any time during Normal Business Hours at an office of the Franchisee located in Madison County, Illinois, all books, receipts, maps, plans, financial statements, contracts, service complaint logs, performance test results, records of requests for service, computer records, codes, programs, and disks and other storage media and other like material which are reasonably necessary to monitor compliance with the terms of this Code, a Franchise Agreement, or applicable law, except such records as are privileged or protected from disclosure under applicable law. The Franchisee is responsible for collecting the information and producing it at the location specified above, and by accepting its Franchise it affirms that it can and will do so. The Franchisee will make suitable copying equipment available to the Village and will bear the cost of such copying, which cost is not a Franchise fee and falls within **one (1)** or more of the exceptions of 47 U.S.C. § 542(g)(2).

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(B) A Franchisee shall maintain sufficient financial records governing its operations in the Franchise Area to document accurate payment of Franchise fees.

(C) All such information received by the Village shall remain confidential insofar as permitted by the Illinois Open Meetings Act (5 ILCS Sec. 120/1 et seq.) and Freedom of Information Act (5 ILCS Sec. 140/1 et seq.) and other applicable state and federal law.

(D) The Franchisee shall maintain a file of records open to public inspection in accordance with applicable FCC rules and regulations.

8-1-74 COMMUNICATION WITH REGULATORY AGENCIES.

A Franchisee shall file with the Village Clerk copies of all reports required by and certifications issued by the FCC, including, but not limited to, any proof of performance tests and results, Equal Employment Opportunity reports, and also all petitions, applications, and communications of all types regarding the Cable System, or a group of Cable Systems of which the Franchisee's Cable System is a part, submitted or received by the Franchisee, an Affiliate, or any other Person on behalf of the Franchisee, either to or from the FCC, the Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction over any matter affecting operation of the Franchisee's System. This material shall be submitted to the Village Clerk at the time it is filed or within **thirty (30) days** of the date it is received. Public access to such reports received by the Village Clerk shall not be denied.

8-1-75 REPORTS.

(A) No later than **ninety (90) days** after the end of its fiscal year, a Franchisee shall file a written report with the Village Clerk, which shall include:

- (1) An annual financial report from the previous year.
- (2) An ownership report, indicating all Persons who at any time during the preceding year did control or benefit from an interest in the Franchise of **ten percent (10%)** or more;
- (3) A list of key employees of the Franchisee;
- (4) Such other information as the Village Board may reasonably direct;
- (5) To the extent there has been no change since the preceding annual report, that fact may be noted in lieu of an additional report.

(B) Opinion Survey Report. The Franchisee shall submit to the Village Clerk the results of any opinion survey conducted, within **thirty (30) days** of completion of the survey.

(C) Special Reports. Franchisees shall deliver the following special reports to the Village Clerk:

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- (1) The Franchisee shall submit quarterly construction reports for any construction that may be specified in the Franchise.
- (2) Copies of any notice of deficiency, forfeiture, or other document issued by any state or federal agency instituting any investigation or civil or criminal proceeding regarding the Cable System, the Franchisee, or any Affiliate of the Franchisee, to the extent the same may affect or bear on operations in the Village. This material shall be submitted to the Village Clerk at the time it is filed or within **thirty (30) days** of the date it is received.
- (3) Copies of any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the Franchisee or by any Person that owns or controls the Franchisee directly or indirectly. This material shall be submitted to the Village Clerk at the time it is filed or within **thirty (30) days** of the date it is received.
- (4) Technical tests required by the Village as specified in this Code and the Franchise Agreement shall be submitted to the Village Clerk within **thirty (30) days** after completion of such tests.
- (5) Franchisee shall keep on file with the Village Clerk its current schedule of charges.

(D) **General Reports.** Each Franchisee shall prepare and furnish to the Village Clerk, at the time and in the form prescribed by the Village Board, such reports with respect to its operation, affairs, transactions or property, as may be reasonably necessary or appropriate to the performance of any of the rights, functions or duties of the Village in connection with this Code.

8-1-76

(A)
County, Illinois:

RECORDS REQUIRED.

A Franchisee shall at all times maintain at an office within Madison

- (1) Records of all written or recorded complaints received. The term "complaints" as used herein and throughout this Code refers to complaints about any aspect of the Cable System or Franchisee's operations, including, without limitation, complaints about employee courtesy.
- (2) A full and complete set of plans, records, and "as built" maps showing the exact location of all System equipment installed or in use in the Village, exclusive of Subscriber service drops.
- (3) Records of outages, indicating date, duration, area, and the estimated number of Subscribers affected, type of outage, and cause.
- (4) Records of service calls for repair and maintenance indicating the date and time of the service call, the date of acknowledgment and

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date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was solved.

- (5) Records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and the date and time service was extended.
- (6) A public file showing its plan and timetable for any construction regarding the Cable System.
- (7) All rules, regulations, terms and conditions adopted for conduct of Franchisee's business.

(B) The Village Board may request Franchise to provide such records and may require retention of additional information, records, and documents from time to time, as may be reasonably necessary or appropriate to the performance of any of the rights, functions or duties of the Village in connection with this Code.

8-1-77 PERFORMANCE EVALUATION.

(A) A Franchise may require specific performance review sessions. The Village Board may, at its discretion, hold additional performance evaluation sessions, but not more frequently than once every **three (3) years** except as otherwise agreed to by Franchisee. All such evaluation sessions shall be open to the public, and announced in a newspaper of general circulation. Franchisee shall be notified by mail.

(B) Topics that may be discussed at any evaluation session may include, but are not limited to, System performance and construction, Franchisee compliance with this Code and a Franchise Agreement, customer service and complaint response, Subscriber privacy, services provided, programming offered, service rate structures, Franchise fees, penalties, free or discounted services, applications of new technologies, judicial and FCC filings, and line extensions.

(C) During the review and evaluation by the Village, a Franchisee shall fully cooperate with the Village and shall promptly provide such information and documents as the Village may need to reasonably perform its review.

8-1-78 VOLUMINOUS MATERIALS. If any books, records, maps or plans, or other requested documents are too voluminous, or for security reasons cannot be moved, then a Franchisee may request that the inspection take place at some other location outside Madison County, Illinois, provided that the Franchisee must pay all reasonable travel expenses incurred by the Village in inspecting those documents or having those documents inspected by its designee. Any payments made by the Franchisee hereunder are not a Franchise fee and fall within one or more of the exceptions in 47 U.S.C. § 542(g)(2).

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8-1-79 RETENTION OF RECORDS; RELATION TO PRIVACY RIGHTS.

Each Franchisee shall take all steps required, if any, to ensure that it is able to provide the Village all information which must be provided or may be reasonably requested under this Code or a Franchise Agreement, including by providing appropriate Subscriber privacy notices. Nothing in this Section shall be read to require a Franchisee to violate 47 U.S.C. § 551.

8-1-80 RESERVED.**DIVISION VIII - CONSUMER PROTECTION AND CUSTOMER SERVICE
PROVISIONS****8-1-81 TELEPHONE AND OFFICE AVAILABILITY.**

(A) Each Franchisee shall maintain an office at a convenient location to Subscribers, not necessarily within the Franchise Area, that shall be open during Normal Business Hours to allow Subscribers to request service, pay bills, and conduct other business. Each Franchisee shall perform service calls, installations, and disconnects at least during Normal Business Hours, provided that a Franchisee shall respond to outages **twenty-four (24) hours** a day, **seven (7) days** a week. Outage reports should be addressed within **twenty-four (24) hours**. Each Franchisee shall establish a publicly listed local toll-free telephone number. The phone must be answered by customer service representatives at least during Normal Business Hours for the purpose of receiving requests for service, inquiries, and complaints from Subscribers; after those hours a Franchisee shall arrange for the phone to be answered so that customers can register complaints and report service problems on a **twenty-four (24) hour** per day, **seven (7) day** per week basis, and so that the Franchisee can respond to service outages as required herein.

(B) Under Normal Operating Conditions, telephone answering time shall not exceed **thirty (30) seconds** or **four (4) rings**, and the time to transfer the call to a customer service representative (including hold time) shall not exceed an additional **thirty (30) seconds**. Under Normal Operating Conditions a customer will receive a busy signal less than **three percent (3%)** of the time. These standards shall be met **ninety percent (90%)** of the time, measured quarterly. When the business office is closed, an answering machine or service capable of receiving and recording service complaints and inquiries shall be employed. The after-hours answering service shall comply with the same telephone answer time standard set forth in this Section. Upon request by the Village, Franchisee shall supply information demonstrating that it is meeting the standards set forth herein.

(C) A Franchisee must hire sufficient staff so that it can adequately respond to customer inquiries, complaints, and requests for service in its office, over the phone, and at the Subscriber's residence.

*Revised Code***8-1-82 SCHEDULING WORK.**

(A) All appointments for service, installation, or disconnection shall be specified by date. Each Franchisee shall specify a specific time at which the work shall be done, or offer a choice of time blocks, which shall not exceed **four (4) hours** in length, unless the Subscriber agrees to a longer period of time. Franchisee may also, upon request, offer service installation calls outside Normal Business Hours, for the express convenience of the customer. If at any time an installer or technician believes it impossible to make a scheduled appointment time, an attempt to contact the customer will be made prior to the time of appointment and the appointment rescheduled at a time convenience to the customer.

(B) Subscribers who have experienced **two (2)** missed appointments due to the fault of a Franchisee shall receive installation free of charge, if the appointment was for installation. If an installation was to have been provided free of charge, or for other appointments, the Subscriber shall receive a **fifty percent (50%) discount on one (1) month** of Basic Cable Service Tier or its equivalent.

(C) With regard to mobility-limited customers, upon Subscriber request, each Franchisee shall arrange for pickup and/or replacement of converters or other Franchisee equipment at the subscriber's address or by a satisfactory equivalent (such as the provision of a postage-prepaid mailer).

(D) Under Normal Operating Conditions, requests for service, repair, and maintenance must be acknowledged by a trained customer service representative within **twenty-four (24) hours**, or prior to the end of the next business day, whichever is earlier. A Franchisee shall respond to all other inquiries (including billing inquiries) within **five (5) business days** of the inquiry or complaint.

(E) Under Normal Operating Conditions, installations made within **one hundred fifty (150) feet** of the existing distribution system shall be completed within **seven (7) business days** after the order is placed. Repairs and maintenance for Service Interruptions and other customer location repairs must be completed within **twenty-four (24) hours**, or if it is not possible to be complete such work within **twenty-four (24) hours**, then work must have commenced within such time period and be diligently continued thereafter until completed. Work on all other requests for service on Franchisee's facilities must be begun by the next business day after notification of the problem, and must be completed within **three (3) days** from the date of the initial request, except installation requests, provided that a Franchisee shall complete the work in the shortest time possible where, for reasons beyond the Franchisee's control, the work could not be completed in those time periods even with the exercise of all due diligence; the failure of a Franchisee to hire sufficient staff or to properly train its staff shall not justify a Franchisee's failure to comply with this provision. Except as federal law permits, no charge shall be made to the Subscriber for this service, unless required due to damage caused by a Subscriber.

(F) Franchisee shall not cancel a service or installation appointment with a customer after the close of business on the business day preceding the appointment.

(G) The standards of paragraphs (D) and (E) of this Section shall be met at least **ninety-five percent (95%)** of the time, measured on a quarterly basis.

*Revised Code***8-1-83****NOTICE TO SUBSCRIBERS.**

(A) A Franchisee shall provide in writing to each Subscriber at the time Cable Service is installed, and at least annually thereafter, the following information:

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Installation and service maintenance policies;
- (4) Instructions on how to use the cable service;
- (5) Channel positions of programming carried on the system;
- (6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office; and
- (7) Refund and credit procedures.

(B) Upon request, copies of the materials specified in the preceding subsection shall be provided to the Village. Franchisee shall provide all Subscribers and the Village at least **thirty (30) days'** notice of any significant changes in the information required to be provided by this Section. Such notice shall be in writing and by announcement on the System. Franchisee may provide notice of service and rate changes to Subscribers using any reasonable written means at its sole discretion. Franchisee need not provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the Franchisee and the subscriber.

(C) All Franchisee promotional materials, announcements, and advertising of residential Cable Service to Subscribers and the general public, where price information is listed in any manner, shall clearly and accurately disclose price terms. In the case of pay-per-view or pay-per-event programming, all promotional materials must clearly and accurately disclose price terms and in the case of telephone orders, a Franchisee shall take appropriate steps to ensure that the customer service representative clearly and accurately disclose price terms to potential customers in advance of taking the order.

(D) Each Franchisee shall maintain a public file containing all notices provided to Subscribers under these customer service standards, as well as all written promotional offers made to Subscribers.

8-1-84**INTERRUPTIONS OF SERVICE.**

A Franchisee may intentionally interrupt service on the Cable System only for good cause and for the shortest time possible and, except in emergency situations, only after a minimum of **forty-eight (48) hours'** prior notice to Subscribers and the Village of the anticipated Service Interruption; provided, however, that planned maintenance that occurs between the hours of **12:00 Midnight** and **6:00 a.m.** shall not require such notice to Subscribers, so long as notice to the Village is given no less than **twenty-four (24) hours** prior to such an anticipated Service Interruption.

Revised Code**8-1-85 BILLING.**

(A) A Franchisee's first billing statement after a new installation or service change shall be prorated as appropriate and shall reflect any security deposit.

(B) A Franchisee's billing statement must be clear, concise and understandable, must itemize each category of service and equipment provided to the Subscriber and must state clearly the charge therefor.

(C) A Franchisee's billing statement must be mailed on or before the **first (1st) day** of the month (or equivalent period) and must show a specific payment due date not earlier than the **fifteenth (15th) day** of the month (or equivalent period) in which the service being billed is rendered. Any balance not received within **fifteen (15) days** after the due date may be assessed a reasonable processing charge based on costs and/or a late fee. Late fees shall not exceed **0.75%** per month.

(D) A Franchisee must notify the Subscriber that he or she can remit payment in person at the Franchisee's office(s) and inform the Subscriber of the address of the office(s).

(E) Subscribers shall not be charged a processing fee or late fee or be otherwise penalized for any failure by a Franchisee, including failure to timely or correctly bill the Subscriber, or failure to properly credit the Subscriber for a payment timely made.

(F) On request, the account of any Subscriber shall be credited a prorated share of the monthly charge for the service if said Subscriber is without service or if service is substantially impaired for any reason for a period exceeding **four (4) hours** during any **twenty-four (24) hour** period, except where it can be documented that a Subscriber seeks a refund for an outage or impairment which that Subscriber caused, or in the case of a planned outage occurring between the hours of **12:00 Midnight** and **6:00 a.m.** of which the Village received the required prior notice.

(G) Franchisee shall respond to all written billing complaints from Subscribers within **thirty (30) days**.

(H) Refund checks to Subscribers shall be issued no later than (1) the Subscriber's next billing cycle following resolution of the refund request; or (2) the date of return of all equipment to Franchisee, if service has been terminated.

(I) Credits for service shall be issued no later than the Subscriber's next billing cycle after the determination that the credit is warranted.

8-1-86 DISCONNECTION/DOWNGRADES.

(A) A Subscriber may terminate service at any time.

(B) A Franchisee shall promptly disconnect or downgrade any Subscriber who so requests by giving at least **one (1) day** notice and reasonably cooperating with the Franchisee regarding the removal of the Franchisee's equipment from the Subscriber's location. No charge may be imposed for any voluntary disconnection, and downgrade charges must comply with the requirements of federal law. No charge may be imposed by any Franchisee for any Cable Service delivered after the requested date of disconnection.

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(C) A Subscriber may be asked, but not required, to disconnect a Franchisee's equipment and return it to the nearest business office.

(D) Any security deposit and/or other funds due the Subscriber shall be refunded on disconnected accounts after the equipment has been recovered by the Franchisee. The refund process shall take a maximum of **thirty (30) days**, from the date disconnection was requested to the date the customer receives the refund.

(E) If a Subscriber fails to pay a monthly Subscriber or other fee or charge, a Franchisee may disconnect the Subscriber's service outlet; however, such disconnection shall not be effected until after **thirty (30) days** from the due date. If the Subscriber pays all amounts due, including late charges, before the date scheduled for disconnection, the Franchisee shall not disconnect service. After disconnection, upon payment by the Subscriber in full of all fees or charges due, including the payment of the reconnection charge, if any, and any reasonable security deposit, the Franchisee shall promptly reinstate service on request.

(F) A Franchisee may immediately disconnect a Subscriber if the Subscriber is damaging or destroying the Franchisee's Cable System or equipment. After disconnection, the Franchisee shall restore service after the Subscriber provides adequate assurance that it has ceased the practices that led to disconnection, and paid all proper fees and charges, including any reconnect fees and amounts owed the Franchisee for damage to its Cable System or equipment and any reasonable security deposit.

(G) A Franchisee may also disconnect a Subscriber that causes signal leakage in excess of federal limits. It may do so without notice, provided that the Franchisee shall immediately notify the Subscriber of the problem and, once the problem is corrected, reconnect the Subscriber.

(H) Except as federal law may otherwise provide, a Franchisee may remove its property from a Subscriber's premises within **sixty (60) days** of the termination of service, voluntarily or involuntarily. If a Franchisee fails to remove its property in that period, the property shall be deemed abandoned.

8-1-87 CHANGES IN SERVICE.

(A) Before a Franchisee unilaterally alters the service it provides to a class of Subscribers, it must provide the Village and each affected Subscriber **thirty (30) days'** written notice, by any reasonable means at its sole discretion, explain the substance and full effect of the alteration, and provide the Subscriber the right within the **thirty (30) day** period following notice to opt to receive any combination of services offered by Franchisee. Except as federal law otherwise provides, Subscribers may not be required to pay any charge (other than the regular service fee), including an upgrade or downgrade charge, in order to receive the services selected. No charge may be made for any service or product that the Subscriber has not affirmatively indicated it wishes to receive. Payment of the regular monthly bill does not in and of itself constitute such an affirmative indication.

(B) If a Franchisee plans to provide a Premium Channel without charge to Subscribers who do not subscribe to such Premium Channel, the Franchisee shall, not later than **thirty (30) days** before such Premium Channel is provided without charge, notify all

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Subscribers in writing by any reasonable means at its sole discretion of its plans including the time period involved, notify all Subscribers they have a right to request that the Premium Channel be blocked, and block the Premium Channel upon the request of a Subscriber. For purposes of this Section, the phrase "Premium Channel" shall mean any pay service offered on a per channel or per program basis which offers movies rated by the Motion Picture Association of America as X, NC-17, or R.

8-1-88 DEPOSITS. A Franchisee may require a reasonable, non-discriminatory deposit on equipment provided to Subscribers. Deposits shall be placed in an interest-bearing account, and the Franchisee shall return the deposit upon return of the equipment, plus interest earned to the date repayment is made to the Subscriber, less any deduction for damages to the equipment or unpaid charges.

8-1-89 SUBSCRIBER CONTROL. A Franchisee shall comply with all applicable laws regarding Subscriber ability to block audio and/or video signals.

DIVISION IX - RATE REGULATIONS

8-1-90 REGULATION OF RATES. The Village reserves the right to regulate service and equipment rates to the maximum degree permitted by applicable state and federal law. Each Franchisee shall comply with all such regulation provisions that the Village may adopt, and all Federal laws regarding rates. Failure to comply shall constitute a material violation of a Franchise.

8-1-91 RESERVED.

DIVISION X - FRANCHISE FEE

8-1-92 FINDING. The Village finds that Public Right-of-Ways of the Village to be used by a Franchisee or any other Person for the provision of Cable Service over a Cable System are valuable public property acquired and maintained by the Village at great expense to taxpayers. The Village further finds that the grant of a Franchise to use Public Right-of-Ways is a valuable property right without which a Franchisee would be required to invest substantial capital.

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8-1-93 PAYMENT TO VILLAGE. As compensation for use of a Public Right-of-Ways, a Franchisee and any other Person providing Cable Service over a Cable System shall pay the Village Franchise fees. Every Franchise Agreement shall specify the amounts a Franchisee is initially required to pay as a percentage of Gross Revenues, but if the specified amount is less than the maximum or if the maximum amount permitted increases, the Village may increase it to any amount up to the maximum allowed by law after **sixty (60) days** notice to the Franchisee, so long as the increase may by law be passed on to Subscribers.

8-1-94 NOT A TAX OR IN LIEU OF ANY OTHER TAX OR FEE.
(A) The Franchise fee is not a tax, license or fee subject to any requirement or voter approval, but rather is a rental charge for special and individualized use of public property.

(B) The Franchise fee is in addition to all other fees and all taxes and payments that a Franchisee or other Person may be required to pay under any federal, state, or local law, including any applicable property and amusement taxes, except to the extent that such fees, taxes, or assessments are a Franchise fee under 47 U.S.C. § 542.

8-1-95 PAYMENTS.
(A) The Franchise fees and any other costs or penalties assessed by the Village against a Franchisee or any other Person shall be paid quarterly to the Village and shall commence as of the effective date of a Franchise. The Village shall be furnished at the time of each payment with a statement certified by the Franchisee's or other Person's respective chief financial officer or an independent certified public accountant reflecting the total amount of Gross Revenues for the payment period. Payments shall be made to the Village no later than **thirty (30) days** following the end of each calendar quarter.

(B) In the event any Franchise fee or other payment is not made on or before the date specified herein, the Franchisee and any other Person shall pay interest charges computed from such due date, at an annual rate equal to the commercial prime interest rate of the Village's primary depository bank during the period such unpaid amount is owed, plus **two percent (2%)** of the amount due to defray the Village's additional expenses by reason of the delinquency.

8-1-96 NO ACCORD OR SATISFACTION. No acceptance of any payment by the Village shall be construed as a release or an accord and satisfaction of any claim the Village may have for further or additional sums payable as Franchise fees under this Code or for the performance of any other obligation of a Franchisee or other Person.

Revised Code**8-1-97 AUDIT.**

(A) The Village shall have the right to inspect all reasonably necessary records and the right to audit and to recompute any amounts determined to be payable under this Code. The Franchisee shall be responsible for providing the records to the Village at an office located within Madison County, Illinois. Such records shall be maintained for at least **five (5) years**. The Village's audit expenses shall be borne by the Franchisee if the franchise fees paid during the audit period are less than **ninety-eight percent (98%)** of the amount owed according to the audit. Any additional amounts due to the Village as a result of the audit shall be paid within **thirty (30) days** following written notice to the Franchisee by the Village of the underpayment, which notice shall include a copy of the audit report. If recomputation results in additional revenue to be paid to the Village, such amount shall be subject to interest as specified in **Section 8-1-95(B)**. All costs incurred by a Franchisee hereunder are not Franchise fees, and fall within one or more of the exceptions set forth in 47 U.S.C. § 542(g)(2) and shall not be passed on to the Subscribers in any form.

(B) A Franchisee shall maintain its fiscal and financial records and have all relevant fiscal and financial records maintained by others on its behalf in such a manner as to enable the Village to determine the cost of assets of the Franchisee which are used in providing services within the Village and to determine Gross Revenues.

(C) A Franchisee shall report on a quarterly basis to the Village Clerk the name and address of each and every Person providing Telecommunications and other communications services over the Cable System for which charges are assessed to Subscribers but not received by the Franchisee, as well as all such services being provided by the Franchisee in addition to Cable Service unless Franchisee already has a separate written franchise or license from the Village to provide such other services.

8-1-98 - 8-1-99 RESERVED.

DIVISION XI - INSURANCE; SURETY; INDEMNIFICATION

8-1-100 INSURANCE REQUIRED. A Franchisee shall maintain, and by its acceptance of a Franchise specifically agrees that it will maintain, throughout the entire length of the Franchise period, at least the following liability insurance coverage insuring the Village and the Franchisee: worker's compensation and employer liability insurance to meet all requirements of Illinois law and comprehensive general liability insurance with respect to the construction, operation, and maintenance of the Cable System, and the conduct of the Franchisee's business in the Village, in the minimum amounts of:

(A) **One Million Dollars (\$1,000,000.00)** for property damage resulting from any **one (1) accident**;

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(B) **Five Million Dollars (\$5,000,000.00)** for personal bodily injury or death resulting from any **one (1) accident**; and

(C) **Two Million Dollars (\$2,000,000.00)** for all other types of liability.

These insurance requirements shall not be construed to limit the liability of a Franchisee for damages under any Franchise issued hereunder.

8-1-101 QUALIFICATIONS OF SURETIES. All insurance policies shall be with sureties qualified to do business in the State of Illinois, with an B+7 or better rating of insurance by Best's Key Rating Guide, Property/Casualty Edition, and in a form approved by the Village.

8-1-102 POLICIES AVAILABLE FOR REVIEW. All insurance policies shall be available for review by the Village, and a Franchisee shall keep on file with the Village certificates of insurance.

8-1-103 ADDITIONAL INSURED; PRIOR NOTICE OF POLICY CANCELLATION. All general liability insurance policies shall name the Village, its officers, boards, board members, commissions, commissioners, agents, and employees as additional insureds and shall further provide that any cancellation or reduction in coverage shall not be effective unless **thirty (30) days'** prior written notice thereof has been given to the Village Clerk. A Franchisee shall not cancel any required insurance policy without submission of proof that the Franchisee has obtained alternative insurance reasonably satisfactory to the Village Board which complies with this Code.

8-1-104 FAILURE CONSTITUTES MATERIAL VIOLATION. Failure to comply with the insurance requirements set forth in this Section shall constitute a material violation of a Franchise.

8-1-105 INDEMNIFICATION.
(A) A Franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the Village, its officials, boards, board members, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of its Cable System; copyright infringements or a failure by the Franchisee to secure consents from the owners, authorized distributors, or licenses of programs to be delivered by the Cable System; the conduct of the Franchisee's business in the Village; or in any way arising out of the granting of a Franchise or a Franchisee's enjoyment or exercise of a Franchise granted hereunder, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this Code or a Franchise Agreement.

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(B) Specifically, but not by way of limitation on the scope of (A) above, a Franchisee shall, at its sole cost and expense, fully indemnify, defend, and hold harmless the Village, and in their capacity as such, the officers, agents, and employees thereof, from and against any and all claims, suits, actions, liability, and judgments for damages or otherwise subject to Section 638 of the Cable Act, 47 U.S.C. § 558, arising out of or alleged to arise out of the installation, construction, operation, or maintenance of its System, including but not limited to any claim against the Franchisee for invasion of the right of privacy, defamation of any Person, or the violation or infringement of any copyright, trade mark, trade name, service mark, or patent, or of any other similar right of any Person. This indemnify does not apply to programming carried on any channel set aside for public, educational, or government use, or channels leased pursuant to 47 U.S.C. § 532, unless the Franchisee was in any respect engaged in determining the editorial content of the program, or prescreened the programming for the purported purpose of banning or regulating indecent or obscene programming.

(C) The indemnity provision includes, but is not limited to, the Village's reasonable attorneys' fees incurred in defending against any such claim, suit, or proceeding prior to Franchisee assuming such defense. The Village shall notify a Franchisee of claims and suits as soon as practicable, but failure to give such notice shall not relieve a Franchisee of its obligations hereunder. Once a Franchisee assumes such defense, the Village may at its option continue to participate in the defense at its own expense.

(D) Notwithstanding anything to the contrary contained in this Code, the Village shall not be so indemnified or reimbursed in relation to any amounts attributable to the Village's own negligence, willful misconduct, intentional or criminal acts, including in the performance of its obligations under this Code or a Franchise Agreement.

8-1-106 RESERVED.**DIVISION XII - PERFORMANCE GUARANTEES AND REMEDIES****8-1-107 SECURITY FUND.**

(A) Prior to a Franchise becoming effective and on each anniversary date thereafter during the Franchise term including the date of termination, the Franchisee shall post with the Village Clerk sufficient funds to service as a cash security deposit to be used as a security fund to ensure the Franchisee's faithful performance of and compliance with all provisions of this Code, the Franchise Agreement, and other applicable law, and compliance with all orders, permits, and directions of the Village, and the payment by the Franchise of any claims, liens, fees, or taxes due the Village which arise by reason of the construction, operation, or maintenance of the System. The amount of the security fund on deposit shall be equal to **three percent (3%)** of the Franchisee's projected annual Gross Revenues for the upcoming year, or in the instance of the final deposit, **three percent (3%)** of the actual Gross Revenues for the preceding year.

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(B) In lieu of a cash security fund, a Franchisee may file and maintain with the Village Clerk an irrevocable letter of credit with a surety acceptable to the Village in the amount specified in the preceding paragraph to serve the same purposes as set forth therein. Said letter of credit shall remain in effect for the full term of the Franchise plus an additional **six (6) months** thereafter, or longer if there is any outstanding obligation or default on the part of the Franchisee, as determined by the Village Board. The Franchisee and its surety shall be jointly and severally liable under the terms of the letter of credit for the Franchisee's failure to ensure its faithful performance of and compliance with all provisions of this Code, the Franchise Agreement, and other applicable law, and compliance with all orders, permits, and directions of the Village, and the payment by the Franchisee of any claims, liens, fees, or taxes due the Village which arise by reason of the construction, operation, or maintenance of the System. The letter of credit shall provide for **thirty (30) days'** prior written notice to the Village of any intention on the part of the Franchisee to cancel, fail to renew, or otherwise materially alter its terms. Neither the filing of a letter of credit with the Village, nor the receipt of any damages recovered by the Village thereunder, shall be construed to excuse unfaithful performance by the Franchisee or limit the liability of the Franchisee under the terms of its Franchise for damages, either to the full amount of the letter of credit or otherwise.

(C) The rights reserved to the Village with respect to the security fund are in addition to all other rights of the Village, whether reserved by this Code or authorized by other law or a Franchise Agreement, and no action, proceeding, or exercise of a right with respect to such security fund or letter of credit will affect any other right the Village may have.

(D) The following procedures shall apply to drawing on the security fund and letter of credit:

- (1) If the Franchisee fails to make timely payment to the Village of any amount due as a result of a Franchise, fails to make timely payment to the Village of any amounts due under a Franchise Agreement or applicable law, fails to make timely payment to the Village of any taxes due, or fails to compensate the Village within **ten (10) days** of written notification that such compensation is due for any damages, costs, or expenses the Village suffers or incurs by reason of any act or omission of the Franchisee in connection with its Franchise Agreement or the enforcement of its Franchise Agreement, the Village may withdraw the amount thereof, with interest and any penalties, from the security fund or from funds available under the letter of credit.
- (2) Within **three (3) days** of a withdrawal from the security fund or under the letter of credit, the Village shall mail, by certified mail, return receipt requested, written notification of the amount, date, and purpose of such withdrawal to the Franchisee.

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- (3) If at the time of a withdrawal from the security fund and under the letter of credit by the Village, the amounts available are insufficient to provide the total payment towards which the withdrawal is directed, the balance of such payment shall continue as the obligation of the Franchisee to the Village until it is paid.
- (4) No later than **thirty (30) days** after mailing of notification to the Franchisee by certified mail, return receipt requested, of a withdrawal under the security fund or letter of credit, the Franchisee shall deliver to the Village for deposit in the security fund an amount equal to the amount so withdrawn or shall restore the letter of credit. Failure to make timely delivery of such amount to the Village or to restore the letter of credit shall constitute a material violation of the Franchise.
- (5) Upon termination of the Franchise under conditions other than those stipulating forfeiture of the Security Fund, the balance then remaining in the Security Fund shall be withdrawn by the Village and paid to the Franchisee within **six (6) months** of such termination, provided that there is then no outstanding obligation or default on the part of the Franchisee.
- (6) In addition to or in lieu of a security fund or letter of credit, a Franchise may require such guarantees as the Village deems to be in the public interest.

8-1-108 PERFORMANCE BOND.

(A) Prior to any Cable System construction, upgrade, or other such work in the Public Right-of-Ways, a Franchisee shall establish in the Village's favor a performance bond to ensure the Franchisee's faithful performance of the construction, upgrade, or other work. The amount of such performance bond shall be equal to **ten percent (10%)** of the total cost of the work unless otherwise specified in the Franchise Agreement.

(B) In the event a Franchisee subject to such a performance bond fails to complete the Cable System construction, upgrade, or other work in the Public Right-of-Ways in a safe, timely, and competent manner, after notice and a reasonable opportunity to cure, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the Village as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Franchisee, or the cost of completing or repairing the System construction, upgrade, or other work in the Public Right-of-Ways, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond. The Village may also recover against the bond any amount recoverable against a security fund where such amount exceeds that available under a security fund.

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(C) Upon completion of the System construction, upgrade, or other such work in the Public Right-of-Ways and payment of all construction obligations of the Cable System to the satisfaction of the Village Board, the Village Board shall eliminate the bond after a time appropriate to determine whether the work performed was satisfactory, which time shall be established considering the nature of the work performed.

(D) The performance bond shall be issued by a surety with an B+7 or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the Village Attorney; and shall contain the following endorsement:

"This bond may not be canceled, or allowed to lapse, until **sixty (60) days** after receipt by the Village, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

8-1-109 **FAILURE CONSTITUTES MATERIAL VIOLATION.** Failure to maintain a required security fund, letter of credit, or performance bond shall constitute a material violation of a Franchise.

8-1-110 **REMEDIES.** In addition to any other remedies available at law or equity, the Village may apply any one or a combination of the following remedies in the event a Franchisee violates this Code, its Franchise Agreement, other applicable ordinances, or applicable state or federal law:

(A) Revoke the Franchise or shorten the term pursuant to the procedures specified in this Code.

(B) Impose penalties available under **Section 8-1-114** and other applicable state and local laws for violation of Village ordinances.

(C) In addition to or instead of any other remedy, seek legal or equitable relief from any court of competent jurisdiction.

(D) Apply any remedy provided for in a Franchise Agreement, including enforcing provisions, if any.

8-1-111 **SHORTENING, REVOCATION, OR TERMINATION OF FRANCHISE.**

(A) The Village shall have the right to shorten the term of a Franchise to a term not less than **thirty-one (31) months** from the date of the action shortening the Franchise term, or to revoke the Franchise, for a Franchisee's substantial and ongoing failure to construct, operate, or maintain the Cable System as required by this Code or a Franchise Agreement; for defrauding or attempting to defraud the Village or Subscribers; if the Franchisee is declared bankrupt; or for any other substantial and ongoing material violation of this Code or substantial and ongoing material violation of a Franchise Agreement. To invoke the provisions of this Division, the Village Board shall give the Franchisee written notice of

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such intent. If within **thirty (30) calendar days** following such written notice from the Village to the Franchisee, the Franchisee has not completed corrective action or corrective action is not being actively and expeditiously pursued to the satisfaction of the Village Board, the Village Board may give written notice to the Franchisee of its decision to commence a proceeding to consider shortening the term of or revoking the Franchise, stating its reasons; provided that no opportunity to cure shall be afforded in the event the Franchisee is declared bankrupt. Revocation for bankruptcy shall be governed by **Section 8-1-111(C)**.

(B) Prior to shortening the term of or revoking a Franchise, the Village Board shall hold a public hearing, after giving at least **fifteen (15) calendar days'** notice by posting and publication, at which time the Franchisee and the public shall be given an opportunity to be heard. Following the public hearing, the Village Board may determine whether to shorten the Franchise term or to revoke the Franchise based on the information presented at the hearing, and other information of record. If the Village Board determines to shorten a Franchise term or revoke a Franchise, it shall make such decision by ordinance setting forth the reasons for its decision. The Village may make such decision conditional on a Franchisee's failure to resolve outstanding problems or take appropriate steps to resolve such problems within a specific period of time. A copy of such decision shall be provided to the Franchisee.

(C) Any Franchise may, at the option of the Village Board following a public hearing, be revoked by ordinance **one hundred twenty (120) calendar days** after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Franchisee, whether in a receivership, reorganization, bankruptcy, assignment for the benefit of creditors, or other action or proceeding, unless within that **one hundred twenty (120) day** period:

- (1) Such assignment, receivership, or trusteeship have been vacated;
or
- (2) Such assignee, receiver, or trustee has fully complied with the terms and conditions of this Code and the existing Franchise Agreement and has executed an agreement, approved by a court of competent jurisdiction, assuming and agreeing to be bound by the terms and conditions of this Code and the existing Franchise Agreement.
- (3) In the event of foreclosure or other judicial Sale of a material portion of the facilities, equipment, or property of a Franchisee (other than pursuant to a pledge or mortgage which qualified as an exception to the definition of a "Franchise Transfer" and after which the Franchise Transfer was ultimately approved), the Village Board may revoke the Franchise, following a public hearing before the Village Board, by serving notice on the Franchisee and the successful bidder, in which even the Franchise and all rights and privileges of the Franchise will be revoked and will terminate **thirty (30) calendar days** after serving such notice, unless:

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- (a) The Village Board has approved the Franchise Transfer; and
- (b) The successful bidder has covenanted and agreed with the Village to assume and be bound by the terms and conditions of the Franchise Agreement and this Code.

(D) If the Village Board revokes a Franchise, if a Franchise expires, or if for any other reason a Franchisee abandons, terminates, or fails to operate or maintain service to its Subscribers after notice and reasonable opportunity to cure of at least **thirty (30) days**, the following procedures and rights are effective:

- (1) The Village Board may require the former Franchisee to remove its facilities and equipment at the former Franchisee's expense. If the former Franchisee fails to do so within a reasonable period of time, the Village Board may have the removal done at the former Franchisee's or surety's expense. In removing its plant, structures, and equipment, the Franchisee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as prevailed prior to the Franchisee's removal of its equipment and appliances without affecting the electrical or telephone cable wires, or attachments. The Village shall inspect and approve the condition of the public ways and public places; and cables, wires, attachments and poles after removal. The liability, indemnity and insurance as provided herein shall continue in full force and effect during the period of removal and until full compliance by the Franchisee with the terms and conditions of this Section and this Code. In the event of a failure by the Franchisee to complete any such work or any other work required by Village law or ordinance within the time as may be established and to the reasonable satisfaction of the Village, the Village may cause such work to be done and the Franchisee shall reimburse the Village the reasonable cost thereof within **thirty (30) days** after receipt of an itemized list of such costs.
- (2) At the expiration of the term for which any Franchise is granted (if renewal is either not sought or denied) the Village, at its election, shall have the right to purchase and take over all or any part of a Cable System located within the Village upon the payment to the Franchisee of a sum equal to the fair market value of the System or the part taken (based on System value as a going concern). In the event of revocation, as provided for in this Code, the Village at its election, shall have the right to purchase and take over all or any part of a Cable System located within the Village upon payment to the Franchisee of a sum equal to an equitable price for the System or the part taken. If the Village

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elects to purchase only a part of the System, the fair market value shall include both the fair market value of the part purchased together with the diminution in value of the part not purchased. The price for the Cable System or the part taken, shall not include, and the Franchisee shall not receive, anything for the value allocated to the franchise itself unless such valuation is now or subsequently provided for by the Cable Act or in the franchise itself. Upon the exercise of the option by the Village and its service of an official notice of such action upon the Franchisee, the Franchisee shall immediately transfer to the Village possession and title to all of the purchased facilities and property, real and personal, of the Cable System, with any existing liens and encumbrances (provided the Village can require application of purchase price to such liens and encumbrances at closing); and the Franchisee shall execute such warranty deeds or other instruments of conveyance to the Village as shall be reasonably necessary for this purpose. Each contract entered into by Franchisee with reference to its operations under the Franchise shall be subject to the exercise of this option by the Village.

- (3) If a Cable System is abandoned by a Franchisee during the Franchise term, or if the Franchisee fails to operate its System in accordance with this Code during any Transition Period, or the Franchisee otherwise terminates the Franchise, upon decision of the Village Board made after providing the Franchisee reasonable notice of at least **thirty (30) days** and an opportunity to be heard, the ownership of all portions of the Cable System in Public Right-of-Ways shall revert to the Village and the Village may sell, assign, or transfer all or part of the assets of the System, or the Village Board, at its option, may operate the System, designate another entity to operate the System temporarily until the Franchisee restores service under conditions acceptable to the Village or until the Franchise is revoked and a new Franchisee selected by the Village is providing service, seek an injunction requiring the Franchisee to continue operations, and/or seek to recover all damages sustained as a result of such abandonment or failure to operate. A Franchisee retains all rights to contest such actions and all rights to compensation provided by law.

A Franchisee shall be deemed to have abandoned its System, or failed to operate its System during any Transition Period, if:

- (a) The Franchisee fails to provide Cable Service in accordance with its Franchise over a substantial portion of the Cable System for **ninety-six (96) consecutive hours**,

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unless the Village Board authorizes a longer interruption of service in writing; or

- (b) The Franchisee, for any period, willfully and without cause refuses to provide Cable Service in accordance with its Franchise over a substantial portion of the Cable System.

(E) Notwithstanding any other provision of this Code, where the Village has issued a Franchise requiring the completion of construction, System upgrade, or other specific obligation by a specified date, failure of the Franchisee to complete such construction or upgrade, or to comply with such other specific obligations as may be required, within such time limits, as same shall be extended by the Village Board for good cause shown by the Franchisee, will result in the forfeiture of the Franchise upon decision of the Village Board made after providing the Franchisee with reasonable notice of at least **thirty (30) days** and an opportunity to be heard.

8-1-112 REMEDIES CUMULATIVE. All remedies under this Code and the Franchise Agreement are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment of penalties relieve a Franchisee of its obligations to comply with its Franchise. Remedies may be used along or in combination as permitted by law; in addition, the Village may exercise any rights it has at law or equity.

8-1-113 RELATION TO INSURANCE AND INDEMNITY REQUIREMENTS. Recovery by the Village of any amounts under insurance, a performance bond, a security fund or letter of credit, or otherwise does not limit a Franchisee's duty to indemnify the Village in any way; nor shall such recovery relieve a Franchisee of its obligations under a Franchise, limit the amounts owed to the Village, or in any respect prevent the Village from exercising any other right or remedy it may have.

8-1-114 PENALTIES. For violation of provisions of this Code, subject to judicial procedures, penalties shall be chargeable to the Franchisee as follows:

(A) For purportedly transferring the Franchise without approval: **Seven Hundred Fifty Dollars (\$750.00)** per day for each violation for each day the violation continues;

(B) For violation of customer service standards: **One Hundred Dollars (\$100.00)** per violation for each day the violation continues; and

(C) For all other material violations for which actual damages may not be ascertainable: **Seven Hundred Fifty Dollars (\$750.00)** per day for each violation for each day the violation continues.

8-1-115 RESERVED.

Revised Code**DIVISION XIII - RIGHTS OF INDIVIDUALS PROTECTED****8-1-116 DISCRIMINATORY PRACTICES PROHIBITED.**

(A) A Franchisee shall not deny service, deny access, or otherwise discriminate against Subscribers, Users, programmers, or residents or businesses in the Village on the basis of race, color, religion, national origin, sex, or age.

(B) A Franchisee shall not unreasonably discriminate among similarly situated Persons or take any retaliatory action against a Person because of that Person's exercise of any right it may have under federal, state, or local law, nor may the Franchisee require a Person to waive such rights as a condition of providing service.

(C) A Franchisee shall not deny access to Cable Service or levy different rates and charges on any group of potential residential cable Subscribers because of the income of the residents of the local area in which such group resides.

(D) A Franchisee is prohibited from unreasonably discriminating in its rates or charges or from granting undue preferences to any Subscriber, potential Subscriber, or group of Subscribers or potential Subscribers; provided, however, that a Franchisee may offer temporary, bona fide promotional discounts in order to attract or maintain Subscribers, so long as such discounts are offered on a non-discriminatory basis to similar classes of Subscribers throughout the Village; and a Franchisee may offer reasonable discounts for senior citizens or the economically disadvantaged, discounts or customer specific pricing for bulk rate customers, and such other discounts as it is expressly entitled to provide under federal law, if such discounts are applied in a uniform and consistent manner. A Franchisee shall comply at all times with all applicable federal, state, and local laws, and all executive and administrative orders relating to non-discrimination.

8-1-117 EQUAL EMPLOYMENT OPPORTUNITY. A Franchisee shall not refuse to employ, discharge from employment, or discriminate against any Person in compensation or in terms, conditions, or privileges of employment because of race, color, religion, national origin, sex, or age. A Franchisee shall comply with all federal, state, and local laws and regulations governing equal employment opportunities, as the same may be from time to time amended, including but not limited to 47 U.S.C. § 554.

8-1-118 SUBSCRIBER PRIVACY. A Franchisee shall at all times abide by and protect the privacy of all Subscribers pursuant to the provisions of Section 631 of the Cable Act, 47 U.S.C. § 551. A Franchisee shall not condition Subscriber service on the Subscriber's grant of permission to disclose information which, pursuant to federal or state law, cannot be disclosed without the Subscriber's explicit consent.

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DIVISION XIV - MISCELLANEOUS PROVISIONS

8-1-119 **COMPLIANCE WITH LAWS.** Each Franchisee shall comply with all federal and state laws, as well as local ordinances, resolutions, rules and regulations heretofore and hereafter adopted or established during the entire term of its Franchise.

8-1-120 **CAPTIONS.** The captions to sections throughout this Code are intended solely to facilitate reading and reference to the sections and provisions of this Code. Such captions shall not affect the meaning or interpretation of this Code.

8-1-121 **NO RECOURSE AGAINST THE VILLAGE.** Without limiting such immunities as the Village or other Persons may have under applicable law, including but not limited to 47 U.S.C. § 555a, a Franchisee shall have no recourse whatsoever against the Village or its officials, members, boards, commissions, agents or employees for any loss, costs, expense, liability, or damage arising out of any action undertaken or not undertaken pursuant to a Franchise Agreement or any provision or requirement of this Code or because of the enforcement of this Code or the Village's exercise of its authority pursuant to this Code, a Franchise Agreement, or other applicable law, unless such recourse is expressly authorized by statute, this Code, or other ordinance.

8-1-122 **RIGHTS AND REMEDIES.**

(A) The rights and remedies reserved to the Village by this Code are cumulative and shall be in addition to and not in derogation of any other rights and remedies which the Village may have with respect to the subject matter of this Code.

(B) The Village hereby reserves to itself the right to intervene in any suit, action or proceeding involving any provision of this Code.

(C) Specific mention of the materiality of any of the provisions herein is not intended to be exclusive of any others for the purpose of determining whether any failure of compliance hereunder is material and substantial.

(D) No Franchisee shall be relieved of its obligation to comply with any of the provisions of this Code by reason of any failure of the Village to enforce prompt compliance. Nor shall any inaction by the Village be deemed to waive a provision or render void any provision of this Code.

8-1-123 **INCORPORATION BY REFERENCE.** Any Franchise granted pursuant to this Code shall by implication include a provision which shall incorporate by reference this Code into such Franchise as fully as if copied therein verbatim.

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8-1-124 **FORCE MAJEURE.** A Franchisee shall not be deemed in default of provisions of its Franchise where performance was hindered by war or riots, civil disturbances, floods, or other natural catastrophes beyond the Franchisee's control, and a Franchise shall not be revoked or a Franchisee penalized for such noncompliance, provided that the Franchisee takes prompt and diligent steps to bring itself back into compliance and to comply as soon as reasonably possible under the circumstances with its Franchise without unduly endangering the health, safety, and integrity of the Franchisee's employees or property, or the health, safety, and integrity of the public, Public Right-of-Ways, public property, or private property.

8-1-125 **PUBLIC EMERGENCY.** In the event of a public emergency or disaster as determined by the Village, acting through such officials as may be available given the emergency conditions, a Franchisee immediately shall make the Cable System, employees, and property, as may be reasonably necessary, available for use by the Village or other civil defense or governmental agency designated by the Village for the term of such emergency or disaster for emergency purposes. In the event of such use, a Franchisee shall waive any claim that such use by the Village constitutes a use of eminent domain, provided that the Village shall return use of the System, employees, and property to the Franchisee promptly after the emergency or disaster has ended.

8-1-126 **CONNECTIONS TO SYSTEM; USE OF ANTENNAE.**

(A) Subscribers shall have the right to attach devices to a Franchisee's System to allow them to transmit signals or services for which they have paid to VCR's, receivers, and other terminal equipment. Subscribers also shall have the right to use their own remote control devices and converters, inside wire, and other similar equipment, subject to market availability, and a Franchisee shall provide information to Subscribers which will allow them to adjust such devices so that they may be used with the Franchisee's System.

(B) A Franchisee shall not, as a condition of providing service, require a Subscriber or potential Subscriber to remove any existing antenna, or disconnect an antenna except at the express direction of the Subscriber or potential Subscriber, or prohibit or discourage a Subscriber from installing an antenna switch, provided that such equipment and installation are consistent with applicable codes.

(C) Regardless of changes in technology and equipment, channels, facilities, and equipment for Public, Educational, and Governmental use will remain accessible to Subscribers and Users.

8-1-127 **CALCULATION OF TIME.** Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this Code or any Franchise Agreement, and a period of time is prescribed and is fixed herein, the time shall be computed so as to exclude the day of the act, event, or default after which the designated

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period of time begins to run and include the last day of the prescribed or fixed period of time, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the next day which is neither a Saturday, Sunday or legal holiday. If the period is less than **seven (7) days**, intermediate Saturday, Sunday and legal holidays shall be excluded in the computation. This Section shall not apply in the context of obligations which continue on a daily basis, such as the obligation to operate a Cable System.

8-1-128 SEVERABILITY. If any term, condition, or provision of this Code shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the Village and shall thereafter be binding on the Franchisee and the Village.

8-1-129 EFFECTIVE DATE. This Code shall become effective upon its passage and approval as provided by law.

(Ord. No. 96-384; 09-19-96)

ADDENDUM "A"

GLOSSARY

Activated Channel means those Channels engineered at the headend of a Cable System for the provision of services generally available to residential Subscribers of the Cable System, regardless of whether such services actually are provided, including any Channel designated for Public, Educational, or Governmental use.

Affiliate means a Person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another Person. For purposes of this definition, the term "own" means to own an equity interest (or the equivalent thereof) of more than **ten percent (10%)**.

Basic Cable Service means any Service Tier which includes the retransmission of local television broadcast signals.

Cable Channel or **Channel** means a portion of the Electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel (as television channel is defined by the Federal Communications Commission by regulation).

Cable Operator means any Person or group of Persons (A) who provides Cable Service over a Cable System and directly or through one or more Affiliates owns a significant interest in such Cable System, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System.

Cable Service means (A) the one-way transmission to Subscribers of (i) Video Programming, or (ii) Other Programming Service, and (B) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service.

Cable System means 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 a community, but such term does not include (A) a facility that serves only to retransmit the television signals of **one (1)** or more television broadcast stations; (B) a facility that serves Subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of Chapter 5 of Title 47 of the United States Code, except that such facility shall be considered a Cable System (other than for purposes of Section 541(c) of Title 47 of the United States Code) to the extent such facility is used in the transmission of Video Programming directly to

ADDENDUM "A"

subscribers unless the extent of such use is solely to provide Interactive On-Demand Services; (D) an open video system that complies with Section 653 of the Telecommunications Act of 1996; or (E) an facilities of any electric utility used solely for operating its electric utility system. Cable System also means a "Community antenna television system" as defined in 65 ILCS Sec. 5/11-42-11.

Common Carrier means any person engaged as a common carrier for hire, in interstate or foreign communications by wire or radio or in interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this chapter; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.

Federal Agency means any agency of the United States, including the Federal Communications Commission.

Franchise means an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to Section 546 of Title 47 of the United States Code), issued by a Franchising Authority, 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.

Interactive On-Demand Services means a service providing video programming to subscribers over switched network on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming provider.

Multichannel Video Programming Distributor means a Person such as, but not limited to, a Cable Operator, multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by Subscribers or customers, multiple channels of Video Programming.

Other Programming Service means information that a Cable Operator makes available to all Subscribers generally.

Public Education or Governmental Access Facilities means (A) Channel capacity designated for public, educational, or governmental use; and (B) facilities and equipment for the use of such Channel capacity;

Radio Communications means the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

ADDENDUM "A"

Service Tier means a category of Cable Service or other services provided by a Cable Operator and for which a separate rate is charged by the Cable Operator.

Telecommunications means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or control of the information as sent and received.

Telecommunications Service means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Usable Activated Channels means activated Channels of a Cable System, except those Channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations as determined by the Federal Communications Commission.

Video Programming means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

ARTICLE II - CHARTER COMMUNICATIONS FRANCHISE

8-2-1 FRANCHISE GRANTED. A nonexclusive cable television franchise is hereby renewed in the name of Charter Communications Entertainment I, L.P. and guaranteed by Charter Communications, Inc., CCA Holding Corporation and CCT Holding Corporation, under the terms and conditions stated in the Franchise Agreement attached hereto as Addendum "B" and as amended in Addendum "C".

(Ord. No. 96-31; 12-18-96)
(Ord. No. 98-417; 11-05-98)

ADDENDUM "B"

**CABLE TELEVISION FRANCHISE AGREEMENT
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CABLE TELEVISION FRANCHISE AGREEMENT

On this **19th** day of **December, 1996**, this CABLE TELEVISION FRANCHISE AGREEMENT (the "Franchise Agreement") is entered into by and between the Village of St. Jacob, Illinois ("Village"), a municipal corporation, Charter Communications Entertainment I, L.P., a Delaware limited partnership ("CCE"); Charter Communications, Inc., a Delaware corporation ("Charter"), CCA Holding Corporation, a Delaware corporation ("CCA"), and CCT Holding Corporation, a Delaware corporation ("CCT").

WHEREAS, CCE, Charter, CCA and CCT have applied to the Village for informal renewal of CCE's nonexclusive franchise (the "Prior Franchise") to provide cable television service in the Village in the name of CCE; and

WHEREAS, the Village has reviewed performance under the Prior Franchise, has identified the future cable-related needs and interests of the community, has considered the financial, technical and legal qualifications of CCE, Charter, CCA, CCT, and has considered CCE's, Charter's, CCA's and CCT's plans for operating and maintaining their Cable System; and

WHEREAS, the Village has relied on CCE's, Charter's, CCA's and CCT's representations and has considered the information that CCE, Charter, CCA and CCT have presented to it, including that Charter, CCA and CCT will guarantee CCE's obligations under this Agreement; and

WHEREAS, after adequate public notice, based on CCE's, Charter's, CCA's and CCT's representations and information, and in response to the application for renewal, the Village Board of the Village of St. Jacob has determined that, subject to the provisions of **Ordinance 96-384** known as the Cable Communications Regulatory Code of the Village of St. Jacob (the "Cable Ordinance"), and the terms and conditions set forth herein, the grant of a new nonexclusive franchise to CCE, to supersede the Prior Franchise, is consistent with the public interest, and has therefore enacted **Ordinance 96-384** more than **thirty (30) days** after the filing of CCE's, Charter's, CCA's and CCT's application for renewal; and

WHEREAS, the Village, CCE, Charter, CCA and CCT have reached agreement on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the Village's grant of a new franchise to CCE, and Charter's, CCA's and CCT's, and CCE's promise to provide Cable Service to residents of the Village pursuant to and consistent with the Cable Ordinance, the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which is hereby acknowledged;

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THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:**1. Definitions.**

Except as otherwise provided herein, the definitions and word usage set forth in Section 2 of the Cable Ordinance are incorporated herein and shall apply in this Franchise Agreement. In addition, the following definitions shall apply:

- (a) *Cable Ordinance*: **Ordinance 96-384**, as it may be amended from time to time.
- (b) *Franchise Agreement or Agreement*: This contract and any amendments, exhibits or appendices hereto.
- (c) *Franchisee*: Charter Communications Entertainment I, L.P., a Delaware limited partnership.
- (d) *Guarantors*: Charter Communications, Inc., a Delaware corporation, CCA Holding Corporation, a Delaware corporation, and CCT Holding Corporation, a Delaware corporation.

2. Grant of Authority; Limits and Reservations.

(a) *Grant of Authority*: The Franchise issued to the Franchisee is subject to the terms and conditions of this Franchise Agreement and to the provisions of the Cable Ordinance. The Franchise grants the Franchisee the right to construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area, for the purpose of providing Cable Service, but no other communications services. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement. This Agreement does not confer any rights other than as expressly provided herein or as mandated by federal, state or local law.

(b) *Franchise Area*: The Franchise is issued for the entire present territorial limits of the Village of St. Jacob, Illinois.

(c) *Term*: The Franchise and this Franchise Agreement shall expire as **12:01 a.m. on December 1, 2006**, unless the Franchise is earlier revoked or its term extended or shortened as provided herein or in the Cable Ordinance.

(d) *Grant Not Exclusive*: The Franchise and the right it grants to use and occupy the Public Rights-of-Way are not exclusive and do not explicitly preclude the issuance of other franchises to operate Cable Systems or other communications systems within the Village, affect the Village's right to authorize use of Public Rights-of-Way by other Persons to operate Cable Systems or other communications systems or for other purposes as it determines appropriate, or affect the Village's right to itself construct, operate or maintain a Cable System or other communications system, with or without a Franchise.

(e) *Franchise Agreement Subject to Other Laws*: This Franchise Agreement is subject to and shall be governed by all terms, conditions and provisions of the Cable Ordinance and any applicable provision of federal, state, and local law.

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(f) *Franchise Agreement Subject to Exercise of Police Powers:* All rights and privileges granted herein are subject to the police powers of the Village and its rights under applicable laws to regulate the Franchisee and the construction, operation and maintenance of the Franchisee's Cable System, including, but not limited to, the right to adopt and enforce additional ordinances and regulations as the Village shall find reasonably necessary in the exercise of its police powers, the right to adopt and enforce generally applicable zoning, building, permitting and safety ordinances and regulations, the right to adopt and enforce generally applicable ordinances and regulations relating to equal employment opportunities, and the right to adopt and enforce ordinances and regulations containing right-of-way, telecommunications, utility, cable television consumer protection, service standards, or rate regulation provisions, consistent with federal and state law.

(g) *Incorporation of Cable Ordinance by Reference:* By acceptance of the Franchise, the Franchisee agrees to meet all requirements of the Cable Ordinance, which is hereby incorporated by reference into and made a part of this Franchise Agreement. Reporting requirements under the Cable Ordinance are hereby waived for the remainder of 1996.

(h) *Approval and Effective Date:* This Franchise Agreement shall be effective as of **12:01 a.m. on December 1, 1996**, upon its approval by the Village Board and execution by the Village, CCE, CCA, CCT, and Charter.

(i) *Effect of Acceptance:* By accepting the Franchise and executing this Franchise Agreement, the Franchisee and Guarantors: (1) acknowledge and accept the Village's legal right to grant the Franchise, to enter into this Franchise Agreement, and to enact and enforce ordinances and regulations related to the Franchise; (2) agree that they will not oppose participation by the Village in any proceeding affecting the Franchisee's Cable System; (3) accept and agree to comply with each provision of this Agreement; and (4) agree that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that they will not raise any claim to the contrary.

(j) *Prior Franchise:* The Prior Franchise is hereby terminated and superseded prospectively.

(k) *Franchisee Bears Its Own Costs:* Unless otherwise expressly provided in this Franchise Agreement, all acts that the Franchisee is required to perform under the Cable Ordinance, this Agreement or applicable law shall be performed at the Franchisee's own cost and expense, without reimbursement by the Village.

(l) *No Waiver:* (1) The failure of the Village on one or more occasions to exercise a right or to require compliance or performance under this Franchise Agreement, the Cable Ordinance or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the Franchisee, unless such right or such compliance or performance has been specifically waived in writing.

(2) Waiver of a breach of this Agreement shall not be a waiver of any other breach, whether similar to or different from that waived. Neither the granting of the Franchise, nor any provision herein, nor any action by the Village hereunder shall constitute a waiver of or a bar to the exercise of any governmental right or power of the Village, including without limitation the right of eminent domain.

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(m) *No Recourse:* The Franchisee and Guarantors shall have no recourse against the Village for any loss, cost, expense, claim, liability or damage arising out of any action undertaken or not undertaken by Franchisee pursuant to the Franchise, this Franchise Agreement or the Cable Ordinance, whether or not such action or non-action was required by the Franchise, the Agreement or the Cable Ordinance, arising out of the enforcement or non-enforcement by the Village of any provision or requirement of this Agreement or the Cable Ordinance, or otherwise arising out of the Franchise, the Agreement or the Cable Ordinance, except as otherwise expressly permitted by federal law or this Agreement.

(n) *Construction of Franchise Agreement:* The provisions of this Franchise Agreement shall be liberally construed in accordance with generally accepted rules of contract construction and to promote the public interest. The express provisions of the Franchise Agreement constitute a valid and enforceable contract between the parties. In the event of a clear conflict between the Cable Ordinance and this Agreement, the Agreement shall prevail, except where the conflict arises from the lawful exercise of the Village's police power.

(o) *Amendment of Franchise Agreement:* The Village shall liberally amend this Franchise Agreement upon the application of the Franchisee whenever necessary to enable the Franchisee to take advantage of developments in the field of cable communications which, in the Village's opinion, will afford the Franchisee an opportunity to serve its Subscribers more efficiently, effectively and economically. Such amendments shall be subject to such conditions as the Village determines are reasonably necessary to protect the public interest. Such amendments shall not affect Guarantors' obligations hereunder.

(p) **Six (6) years** from the effective date of this Franchise, the Franchise shall submit a report to the Village which identifies **five (5)** similar Cable Systems of the Franchisee and its Affiliates, the capacity and interactivity of those systems, and any then-existing commitments to upgrade the capacity and/or interactivity of those systems. In the event that the majority of those systems have (or will have pursuant to a then-existing commitment) a capacity and/or interactivity which exceeds the Cable System serving the Franchise Area, then at the Village's written request made within **sixty (60) days** of receipt of the report the Franchisee shall meet and confer with the Village to discuss the report and specifically any plans the Franchisee may have to upgrade the Cable System serving the Franchise Area to at least the average channel capacity and interactivity of the majority of such other systems identified in the report. Following good faith discussion and upon mutual agreement of the Village and Franchisee on an upgrade plan and schedule and new term of the Franchise, a new Franchise Agreement shall be negotiated and executed by the Parties.

3. Regulation and Oversight.

(a) *Severability:* In the event that a court or agency of competent jurisdiction declares by final decision that any provision of this Franchise Agreement is unenforceable according to its terms or is otherwise void, said provision shall be considered a separate, distinct and independent part of this Agreement, and such declaration shall not affect the validity and enforceability of all other provisions of this Agreement. Alternatively, the

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Village may modify any such provisions to the reasonable extent necessary to make such provision enforceable if such modifications are consistent with the full intent and purposes of this Agreement.

(b) *Preemption:* In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Agreement, then, subject to the Village's rights under the foregoing subsection, the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the Village.

(c) *Notice:* As soon as reasonably practicable following knowledge thereof, the Franchisee and/or Guarantors shall notify the Village of any point of conflict believed to exist between the Cable Ordinance or this Agreement and any other provisions of law. By executing this Agreement, Franchisee and Guarantors represent that they are not aware of any such conflict at the time of such execution.

4. Provision of Cable Service.

The Franchisee shall make Cable Service available to all Persons within the Franchise Area who request Service, so long as their financial and other obligations to the Franchisee are satisfied, and subject to reasonable construction standards and schedules and subject to availability of legal access to the location. Franchisee shall extend its System as required by the Cable Ordinance. Free municipal service as required by the Regulatory Code shall be provided, upon request, at one free service outlet for each parochial and public school building, municipal and county government building, and fire and police station located within the Franchise Area and within **one hundred fifty (150) feet** of Franchisee's facilities including cable line, and shall include (but not be limited to) the locations set forth on **Exhibit "B"** attached hereto.

5. System Facilities, Equipment and Services.

(a) *System:* The Franchisee's Cable System shall at all times meet or exceed its capacity and quality as of the last day of the Prior Franchise and within **thirty-six (36) months** of the effective date of this Franchise shall meet or exceed the following requirements.

(1) The System shall have a rating of at least **550 mHz** on all active components and a capacity of at least **78 6-mHz** channels downstream to all Subscribers.

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(2) The System shall at a minimum utilize a fiber-optic backbone trunk configuration which extends from the headend into the Franchise Area. The distribution system may be coaxial cable. A single fiber node will serve no greater than **five thousand five hundred (5,500) households**.

(3) There shall be no more than **eight (8)** active components in a cascade measured from the headend to the Subscriber.

(4) Subject to Section 6, the Franchisee shall provide, install and maintain the necessary equipment for amplification, conversion, receiving, transmitting, switching and headend processing of signals to deliver **three (3) 6-mHz** access channels for public, educational, and governmental (PEG) use. Such channels shall be shared by all PEG users served by the headend.

(5) The System shall be capable of continuous **twenty-four (24) hour** daily operation without severe material degradation of signal except during extremely inclement weather or immediately following extraordinary storms that adversely affect utility services or damage major system components.

(6) The System shall be capable of operating over an outdoor temperature range of **-20 degrees F to +120 degrees F** and over variation in supply voltages from **105 to 130 volts AC** without catastrophic failure of irreversible performance changes.

(7) The System shall meet all specifications as set forth herein or in the Cable Ordinance over an outdoor temperature range of **0 degrees F to 100 degrees F** and over variation in supply voltages from **105 to 130 volts AC**.

(8) The System shall be operated in such a manner as to avoid causing interference with the reception of off-the-air signals by a Subscriber.

(9) The upstream capacity of the System shall be such that there is only normal signal deterioration in the signal quality from the point of origin through the headend and PEG production facilities; and so that there is no more deterioration in the signal quality on PEG channels than on any other channel.

(10) The System shall use equipment generally used in high-quality, reliable, modern systems of similar design, including but not limited to back-up power supplies capable of providing power for **two (2) hours** in the event of an electrical outage, plus portable generators to cover longer outages. The obligation to provide back-up power supplies requires Franchisee to provide back-up power supplies at each fiber optic node, and the headend. The obligation to provide backup power supplies required the Franchisee to install equipment that will (A) cut in automatically on failure of commercial utility AC power, (B) revert automatically to commercial power when it is restored, and (C) prevent the standby power source from powering a "dead" utility line. In addition, the design and construction of the System shall include modulators, antennae, amplifiers and other electronics that permit and are capable of passing through the signals received at the headend without substantial alteration or deterioration.

(11) The headend shall be capable of providing at least **78 6-mHz** channels in full configuration and shall develop signals of high quality throughout the service area (including on channels retransmitting upstream signals received through the headend), and the headend shall have adequate ventilation and space to be able to meet or exceed applicable design and technical requirements. It shall be located in Maryville.

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(12) The System shall allow all unscrambled channels on all Service Tiers to be received by cable-ready television sets without the aid of a converter, and shall minimize, the maximum extent feasible, interference with consumer electronic equipment.

(13) The capability must exist for Subscribers to be able to block out audio and video at least on all premium and pay-per-view channels, and video on all channels.

(14) All closed-caption programming retransmitted by the System shall include the closed-caption signal.

(15) All System connectors shall have external waterproofing, all System expansion loops shall be properly formed, all components including drops shall be properly grounded, and adequate spacing shall be maintained from power conductors. Any variations in place from construction under the Prior Franchise shall be corrected during routine maintenance and replacement.

(b) *Interconnection:* The Franchisee shall cooperate on a reasonable basis with any interconnection corporation, regional interconnection authority or city, county, state or federal regulatory agency which may be hereafter established for the purpose of regulating, financing, or otherwise providing for the interconnection of cable systems beyond the boundaries of the Village. Compliance with these requirements shall satisfy the interconnection requirements of the Cable Ordinance.

6. Channels and Facilities for Public, Educational and Governmental Use.

(a) *Access Channels:* (1) The Franchisee shall continue to provide and maintain channels, facilities, personnel, and financial support for PEG use at least to the same extent as was being provided on the last day of the Prior Franchise, and additionally shall within **thirty-six (36) months** of the effective date of this Franchise provide and maintain dedicated channels, facilities, personal and financial support for PEG use consistent with Section 5(a)(4) hereof.

(2) In the event Franchisee increases the active channel capacity of its System beyond **78 6-mHz** channels, the Village may require the Franchisee to make available **one (1)** additional standard (**6-mHz**) video channel for PEG use, provided the Village requests such channel within **ninety (90) days** of written notice from Franchisee of the capacity increase.

(3) The Franchisee shall provide upstream channels for PEG use. Any reference to an upstream or downstream channel for PEG use refers to a **6-mHz** channel; an access channel may be used to provide one or more channels of service. PEG channels shall have the same level of interactivity as other channels, at the Village's request. Any existing local audio/video insertion sites shall continue to be available. Additionally, within **thirty-six (36) months** of the effective date of this Franchise the Franchisee shall provide local audio/video insertion capability (including fiber connections to headend, splice panel, modulator, reverse laser transmitter, and headend switching hardware), at up to **three (3) sites** in the Franchise Area designated by the Village on Exhibit "C" attached hereto or otherwise designated by the Village within **thirty-six (36) months**, for purposes of PEG programming

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so that such programming may be delivered to subscribers within the Franchise Area alone or together with one or more other franchise areas served by the headend (up to all of such areas), provided: Franchisee shall not have to provide such insertion capability beyond the first site designated by the Village unless either: (a) the Village demonstrates a minimum of **twenty (20) hours** of video programming specific to and originating from the site will be generated for a second and/or third site in each **thirty (30) day** period, or (b) the Village commits to pay the reasonable cost of provision of such additional insertion capability.

(4) The dedicated access channels to be provided under this Franchise Agreement shall be in use and programmed with qualified PEG access programming during at least **eighty percent (80%)** of the cumulative time between the test hours of **5:00 p.m. and Midnight**, Monday through Friday, for a period of **ten (10) consecutive weeks**. All qualified programming shall count in this measurement for actual running time shown. Repeat programs are qualified programming only to a maximum of **twenty-five percent (25%)** of total qualified programming. Programs that are neither locally produced nor programming related to the Franchise Area are qualified programming only to a maximum of **fifty percent (50%)** of total qualified programming. Any program broadcast locally within **three (3) years** of the measurement period is not qualified programming.

For purposes of this Section:

(a) **"broadcast locally"** means transmitted on the signal of a local commercial television station or a qualified local noncommercial educational television station with signal carriage rights on the Grantee's system pursuant to 47 U.S.C. § 535, as in effect on the effective date of this Agreement.

(b) **"repeat program"** means the running time of any program only to the extent it is shown more than **two (2) times** during the test hours over the **ten (10) week** measurement period.

(c) **"locally produced programming"** means programming (a) produced within the Franchise Area or (b) produced by a resident or any agency, public or private, which provides services to residents within the Franchise Area regardless of the location at which the programming was produced.

(d) **"programming related to the Franchise Area"** means programming which addresses the educational, political, social or cultural interests of any segment of the residents of the Franchise Area.

(e) **"qualified PEG access programming"** includes video bulletin board material only if the material consists of multiple and different text (or video and text) screens transmitted to different subscribers simultaneously. The term does not include video bulletin board material such as character generated or similar material to the extent the same text (or video and text) screen is sent simultaneously without variation to all system subscribers; or non-video, data uses of the system by subscribers.

To avoid underutilization of PEG access channels, other than the first channel dedicated, upon **thirty (30) days** notice to Village, Franchisee may make use of any access channel for its own purposes if, for a period of **ten (10) consecutive weeks**, said

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channel no longer fits the above criteria. Upon **one hundred eighty (180) days** notice, the Village may reclaim use of such channel(s) for transmission of access programming.

(b) *Equipment Repairs and Replacement:* Throughout the Franchise term, the Franchisee shall provide for the timely repair and replacement for normal wear and tear of all of its access equipment being used by the Village, Schools, or any of their designated providers, in producing or providing public, educational or governmental programming, including equipment provided under or used during the Prior Franchise. Franchisee will not be responsible for repairing or replacing equipment owned by the Village or other entities not affiliated with Franchisee.

(c) *Access and Program Support:* The Franchisee shall provide sufficient staff support (including a designated coordinator who shall be reasonably available during Normal Business Hours) to provide to interested members of the public and Village and school personnel training in the use of PEG access equipment and assistance in the production of PEG programming, to provide community education and outreach regarding the availability of PEG access, to acquire and maintain all PEG access equipment, to provide for the check-in and check-out of PEG access equipment, to schedule the use of the Franchisee's facilities by persons producing PEG programs, and to perform related matters, all to the extent required to fulfill the reasonable production requests of such interested persons within a reasonable time.

(d) *Management of Channels:* The Village and other franchising authorities using PEG access channels may designate **one (1)** or more entities, including a non-profit access management corporation, to manage the use of all or part of the public, educational, and governmental access channels. Until such an entity has been designated, the Franchisee shall be responsible for all such scheduling functions.

(e) *Governmental Programming Services:* Starting within **ninety (90) days** of written request by the Village, Franchisee shall provide the Village with grants of **Ten Cents (10¢)** per Subscriber per month within the Franchise Area payable in each January after such start date, to be used in the Village's discretion but solely for government and educational access equipment, facilities and operations (including but not limited to videotaping of programming). Provided the Village enters into a cooperative agreement with other franchising authorities whose areas are served by Franchisee, which provides for use of the aforesaid grants for the aforesaid purposes, Franchisee shall also provide the Village with an additional one time grant of **Six Thousand Dollars (\$6,000.00)** together with the next annual grant due after such entry into such cooperative agreement, to be used under the terms of the cooperating agreement solely for government and educational access equipment, facilities, and operations (including but not limited to videotaping of programming). Franchisee's obligation to make such grants shall be contingent upon the Village committing to match such grants with equal funds to be used for the same purposes and to hold such funds in a special account for such purposes and representing that all previous grants and matching funds shall have been expended for such purposes no later than **sixty (60) days** after each annual due date. On request the Village shall document such expenditures. Franchisee will work with the Village and schools to explore alternatives to efficiently expand and better utilize PEG access.

(f) *Costs and Payments Not Franchise Fees:* The parties for purposes of this Agreement agree that any costs to the Franchisee associated with the provision of support for

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public, educational or governmental access pursuant to this Franchise Agreement, including the grants described in Section 6(e), do not constitute and are not part of a franchise fee, and fall within one or more of the exceptions to U.S.C. § 542.

(g) *Editorial Control:* Except as expressly permitted by federal law, the Franchisee shall not exercise any editorial control over the content of programming on the designated PEG access channels (except for Franchisee's own programming cablecast on those channels).

(h) *Institutional Network:* Franchisee shall install for the Village for its exclusive use **four (4)** strands of dark inactivated single mode fiber optic cable in a separate sheath to and/or from those locations specified by the Village to Franchisee in writing by **March 1, 1997**. Installation shall be complete within **thirty-six (36) months** of the effective date. Franchisee shall cooperate with Grantor to allow activation and connection of the dark fiber at the headend and other locations, including by providing available space at the headend property at fair market rent, but shall not be required to provide equipment or facilities. The Village shall lease the dark fiber strands at the rate of **One Thousand Eight Hundred Dollars (\$1,800.00)** per mile along routes where the Franchisee has or intends to make other fiber installations and **Fourteen Thousand Six Hundred Sixty-Seven Dollars (\$14,667.00)** per mile along other routes. Building entry and fiber termination hardware shall cost **Three Thousand Two Hundred Ninety-One Dollars (\$3,291.00)** per site. The total lease amount shall be amortized into an initial payment equal to **fifty percent (50%)** of the amount due at the commencement of construction and an additional payment of the remaining **fifty percent (50%)** on completion of installation. There shall be no pass-thru to Subscribers attributable to the installation of such fiber. The Village shall have exclusive control over use of the fiber, but such use shall be limited to non-commercial governmental purposes. Franchisee shall continue to own and maintain the fiber, but repairs outside of ongoing regular maintenance will be assessed as additional rent (time and materials) due upon completion of the repairs. Franchisee shall provide an estimate of repair costs in advance of performing the work, and the Village shall have discretion as to whether and when work shall proceed. After the Village designates the locations and the Franchisee identifies the construction costs, the Village shall pass an ordinance authorizing the total expenditures as stated herein before Franchisee has to commence construction.

7. Franchise Fee.

Each year during the Franchise term, as compensation for use of Public Rights-of-Way, the Franchisee shall pay to the Village, on a quarterly basis, Franchise fees in the amount of **three percent (3%)** of the Franchisee's Gross Revenues. The Village may, in its sole discretion, increase the amount of the Franchise fees up to the maximum amount permitted under state and federal law at any time, so long as the increase may by law be passed on to Subscribers, and so long as the fee does not exceed **seven percent (7%)** of Gross Revenues. However, the Village shall provide the Franchisee with **sixty (60) days'** advance notice of such an increase.

Revised Code**8. Insurance, Indemnification**

(a) *Insurance Required:* Franchisee shall maintain throughout the entire length of the Franchise period, at least the following liability insurance coverage insuring the Village and the Franchisee: worker's compensation and employer liability insurance to meet all requirements of Illinois law and comprehensive general liability insurance with respect to the construction, operation, and maintenance of the Cable System, and the conduct of the Franchisee's business in the Village, in the minimum amounts of:

(1) **One Million Dollars (\$1,000,000.00)** for property damage resulting from any **one (1) accident**;

(2) **Five Million Dollars (\$5,000,000.00)** for personal bodily injury or death resulting from any **one (1) accident**; and

(3) **Two Million Dollars (\$2,000,000.00)** for all other types of liability.

Neither the provisions of this Section nor any damages recovered by the Village shall be construed to limit the liability of Franchisee for damages under the Franchise.

(b) *Qualifications of Sureties:* All insurance policies shall be with sureties qualified to do business in the State of Illinois, with an B+7 or better rating of insurance by Best's Key Rating Guide, Property/Casualty Edition, and in a form approved by the Village.

(c) *Policies Available for Review:* All insurance policies shall be available for review by the Village, and Franchisee shall keep on file with the Village certificates of insurance.

(d) *Additional Insureds; Prior Notice of Policy Cancellation:* All general liability insurance policies shall name the Village, its officers, boards, board members, commissions, commissioners, agents, and employees as additional insureds and shall further provide that any cancellation or reduction in coverage shall not be effective unless **thirty (30) days'** prior written notice thereof has been given to the Village Clerk. Franchisee shall not cancel any required insurance policy without submission of proof that the Franchisee has obtained alternative insurance reasonably satisfactory to the Village Board which complies with the Cable Ordinance and this Franchise Agreement.

(e) *Failure Constitutes Material Violation:* Failure to comply with the insurance requirements set forth in this Section shall constitute a material violation of the Franchise.

(f) *Indemnification:* (1) Franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the Village, its officials, boards, board members, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of its Cable System, copyright infringements or a failure by the Franchisee to secure consents from the owners, authorized distributors, or licensees of programs to be delivered by the Cable System; the conduct of the Franchisee's business in the Village; or in any way arising out of the granting of the Franchise or Franchisee's enjoyment or exercise of this Franchise, regardless of whether the act or omission complaints of is authorized, allowed, or prohibited by the Cable Ordinance or this Franchise Agreement.

(2) Specifically, but not by way of limitation on the scope of (1) above, Franchisee shall, at its sole cost and expense, fully indemnify, defend, and hold harmless the

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Village, and in their capacity as such, the officers, agents, and employees thereof, from and against any and all claims, suits, actions, liability, and judgments for damages or otherwise subject to Section 638 of the Cable Act, 47 U.S.C. § 558, arising out of or alleged to arise out of the installation, construction, operation, or maintenance of its System, including but not limited to any claim against the Franchisee for invasion of the right of privacy, defamation of any Person, or the violation of infringement of any copyright, trade mark, trade name, service mark, or patent, or of any other similar right of any Person. This indemnify does not apply to programming carried on any channel set aside for public, educational, or government use, or channels leased pursuant to 47 U.S.C. § 532, unless the Franchisee was in any respect engaged in determining the editorial content of the program, or prescreened the programming for the purported purpose of banning or regulating indecent or obscene programming.

(3) The indemnity provision includes, but is not limited to, the Village's reasonable attorneys' fees incurred in defending against any such claim, suit, or proceeding prior to Franchisee assuming such defense. The Village shall notify Franchisee of claims and suits as soon as practicable, but failure to give such notice shall not relieve Franchisee of its obligations hereunder. Once Franchisee assumes such defense, the Village may at its option continue to participate in the defense at its own expense.

(4) Notwithstanding anything to the contrary contained in this Agreement, the Village shall not be so indemnified or reimbursed in relation to any amounts attributable to the Village's own negligence, willful misconduct, intentional or criminal acts, including in the performance of its obligations under the Cable Ordinance or this Franchise Agreement.

9. Miscellaneous Provisions.

(a) *Governing Law:* This Franchise Agreement was made in and shall be governed in all respects by the law of the State of Illinois.

(b) *Notices:* Unless otherwise expressly stated herein, notices required under this Franchise Agreement shall be mailed first class, postage prepaid, to the addressees below. Each party may change its designee by providing written notice to the other party, but each party may only designate one entity to receive notice.

(1) Notices to the Franchisee shall be mailed to:

James Bogart
 Charter Communications Entertainment I, L.P.
 12444 Powerscourt, Suite 160
 St. Louis, Missouri 63131

with a copy to: David Miller
 Charter Communications Entertainment I, L.P.
 210 West Division Street
 Maryville, Illinois 62062

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- (2) Notices to the Guarantors shall be mailed to:

James Bogart
Charter Communications Entertainment I, L.P.
12444 Powerscourt, Suite 160
St. Louis, Missouri 63131

Robert C. Bailey
CCA Holding Corporation
12444 Powerscourt, Suite 160
St. Louis, Missouri 63131

Robert C. Bailey
CCT Holding Corporation
12444 Powerscourt, Suite 160
St. Louis, Missouri 63131

- (3) Notices to the Village shall be mailed to:

Village Clerk
Village of St. Jacob
213 N. Douglas
St. Jacob, Illinois 62281

(c) *Time of Essence:* In determining whether the Franchisee has substantially complied with this Franchise Agreement, the parties agree that time is of the essence. In the event Franchisee fails to complete its upgrade of the Cable System as required herein within **thirty-six (36) months** of the effective date of this Franchise, the Village may impose liquidated damages of **Two Hundred Fifty Dollars (\$250.00)** per day until the upgrade is completed, subject to the force majeure provisions of the Cable Ordinance.

(d) *Captions:* The captions and headings of this Agreement are for convenience and reference purposes only, and shall not affect in any way the meaning and interpretation of any provisions of this Agreement.

(e) *Integration:* This Agreement and the accompanying application for franchise renewal (attached hereto as Addendum "A") set forth the entire agreement between the parties respecting the subject matter hereof. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party to another with respect to the subject matter of this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and therein and superseded hereby and thereby.

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Charter Communications Entertainment I, L.P., Franchisee
BY: CCA Acquisition Corporation, its general partner

By: /s/ Stephen J. Rabbitt
Name: Stephen J. Rabbitt
Title: Senior Vice President - Central Region Operations

Charter Communications, Inc., Guarantor

By: /s/ M. James Bogart
Name: M. James Bogart
Title: Vice President - Government Relations

CCA Holdings Corporation, Guarantor

By: /s/ Kent D. Kalkwarf
Name: Kent D. Kalkwarf
Title: Vice President - Finance and Acquisitions

CCT Holdings Corporation, Guarantor

By: /s/ Ralph G. Kelly
Name: Ralph G. Kelly
Title: Senior Vice President - Treasurer

Exhibit "A"
Participating in Cable Franchise Renewal Consortium

City of Collinsville
City of Edwardsville
City of Highland
City of Madison
City of Troy

City of Waterloo
Madison County
Village of Glen Carbon
Village of Maryville
Village of St. Jacob

Exhibit "B"
Free Accounts - Government Buildings

St. Jacob

St. Jacob Fire Dept.
201 Napoleon
St. Jacob, IL 62281

St. Jacob Village Hall
213 N. Douglas
St. Jacob, IL 62281

Exhibit "C"
Local Audio/Video Insertion Capability

St. Jacob

St. Jacob Village Hall
213 N. Douglas
St. Jacob, Illinois 62281

St. Jacob Grade School
305 Jacob St.
St. Jacob, IL 62281

ADDENDUM "C"

**AN ORDINANCE GRANTING THE CONSENT OF THE VILLAGE OF ST. JACOB,
COUNTY OF MADISON TO THE TRANSFER OF CONTROL OF THE
NON-EXCLUSIVE CABLE TELEVISION FRANCHISE**

WHEREAS, the Village of St. Jacob, County of Madison ("Grantor") granted to Charter Communications Entertainment I, L.P., as franchise as set forth in Ordinance Number 96-384, enacted on September 19, 1996 (as amended by Ordinance Number 96-386, dated December 12, 1996) to own and operate a cable television system in the Village of St. Jacob (the "Franchise");

WHEREAS, on July 29, 1998, Charter Communications, Inc., et al., entered into a Purchase Agreement (the "Agreement") with Paul G. Allen ("Applicant");

WHEREAS, the Agreement provides for the sale of stock, the transfer of control and/or restructuring of Grantee;

WHEREAS, Grantee filed an FCC Form 394 Application for Franchise Authority consent to Assignment or Transfer of control of Cable Television Franchise with Grantor on or about August 18, 1998.

WHEREAS, Grantor has duly conducted a thorough review and investigation into the legal, technical and financial qualifications of Applicant to own and operator the cable television system in light of the above-referenced FCC Form 394; and

WHEREAS, all written comments and staff reports have been received, and made a part of the record; and

WHEREAS, the proposed restructuring calls for Charter Communications Entertainment I, L.P. be converted to a limited liability corporation; and

WHEREAS, following review and investigation, the Grantor has concluded that the Applicant has established that it meets the legal, technical and financial criteria to operate the cable television system and has satisfied all criteria set forth in and/or under all applicable or required municipal or federal documents, law, rules and regulations, including FCC Form 394 for the Village of St. Jacob.

NOW, THEREFORE BE IT ORDAINED by the Village Board of the Village of St. Jacob, Illinois and in consideration of the foregoing and the promises set forth herein, the Grantor agrees to the following:

1. Grantor consents to the transfer of control of the Franchise of the cable system serving Grantor effective upon the closing of the transactions contemplated by the Agreement;
2. Grantor further consents to the change of corporate designation attendant with the restructuring of Grantee, Charter Communications Entertainment I, L.P. to Charter Communications Entertainment, LLC;
3. Grantor confirms that (a) the Franchise is valid and outstanding and in full force and effect; (b) there have been no amendments or modifications to the Franchise, except as set forth herein; (c) Grantee is materially in compliance with the provisions of the Franchise; and (d) there are no defaults under the Franchise, or events which, with the giving of notice or passage of time or both, could constitute events of default thereunder.
4. Upon acceptance of the Ordinance and the Franchise, by signing below Grantee may (a) assign to transfer its assets, including the Franchise provided however, that such assignment or transfer is to a parent or subsidiary of Grantee or another entity under direct or indirect control of Paul Allen; (b) restructure debt or change the ownership interests among existing equity participants in Grantee, and/or its affiliates; (c) pledge or grant a security interest to any lender(s) of Grantee's assets, including but not limited to the Franchise, or of interests in Grantee, for purposes of securing an indebtedness, without obtaining prior consent of Grantor; (d) sell capital stock of Grantee, or any of Grantee's affiliated companies, in a transaction commonly known as and "initial public offering" provided that: Grantee represents in writing to Grantor that such transactions will have no foreseeable effect on the agreement between Grantor and Grantee relating to the management and operation of the cable system in the franchise service area.

(Ord. No. 98-417; 11-05-98)

ARTICLE III**HOMETEL ENTERTAINMENT**

8-3-1 APPROVAL. The Application for Franchise Authority to serve the Village of St. Jacob, Illinois submitted by HomeTel Entertainment, Inc. is approved.

8-3-2 PUBLIC HEARING OF HOMETEL ENTERTAINMENT. After conducting a public hearing pursuant to 65 ILCS Sec. 5/11-42-11, it has been determined that it is in the best interest of the Village to grant an additional cable television franchise to HomeTel Entertainment, Inc.

8-3-3 EXECUTION OF AGREEMENT. The Mayor and the Village Clerk are hereby authorized and directed to execute on behalf of the Village, the Cable Television Franchise Agreement with HomeTel Entertainment, Inc., a copy of which is attached hereto as "Exhibit 1" and incorporated herein by reference.

(Ord. No. 02-455; 10-03-02)

**ARTICLE IV - CABLE/VIDEO SERVICE PROVIDER FEE
AND PEG ACCESS FEE**

8-4-1 **DEFINITIONS.** As used in this Article, the following terms shall have the following meanings:

(A) **"Cable Service"** means that term as defined in 47 U.S.C. § 522(6).
(B) **"Commission"** means the Illinois Commerce Commission.
(C) **"Gross Revenues"** means all consideration of any kind or nature, including, without limitation, cash, credits, property, and in-kind contributions received by the holder for the operation of a cable or video system to provide cable service or video service within the holder's cable service or video service area within the Village.

- (1) Gross revenues shall include the following:
 - (a) Recurring charges for cable or video service.
 - (b) Event-based charges for cable service or video service, including, but not limited to, pay-per-view and video-on-demand charges.
 - (c) Rental of set top boxes and other cable service or video service equipment.
 - (d) Service charges related to the provision of cable service or video service, including but not limited to activation, installation, and repair charges.
 - (e) Administrative charges related to the provision of cable service or video service, including but not limited to service order and service termination charges.
 - (f) Late payment fees or charges, insufficient funds check charges, and other charges assessed to recover the costs of collecting delinquent payments.
 - (g) A *pro rata* portion of all revenue derived by the holder or its affiliates pursuant to compensation arrangements for advertising or for promotion or exhibition of any products or services derived from the operation of the holder's network to provide cable service or video service within the Village. The allocation shall be based on the number of subscribers in the Village divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement.
 - (h) Compensation received by the holder that is derived from the operation of the holder's network to provide cable service or video service with respect to commissions that are received by the holder as compensation for promotion or exhibition of any products or services on the holder's network, such as a "home shopping" or similar channel, subject to subsection (i).
 - (i) In the case of a cable service or video service that is bundled or integrated functionally with other services, capabilities, or applications, the portion of the holder's revenue attributable to the other services, capabilities, or applications shall be included in the gross revenue unless the holder can reasonably identify the division or exclusion of the revenue from its books and records that are kept in the regular course of business.
 - (j) The service provider fee permitted by 220 ILCS 5/22-501.
- (2) Gross revenues do not include any of the following:
 - (a) Revenues not actually received, even if billed, such as bad debt, subject to 220 ILCS 5/22-501.

- (b) Refunds, discounts, or other price adjustments that reduce the amount of gross revenues received by the holder of the State-issued authorization to the extent the refund, rebate, credit, or discount is attributable to cable service or video service.
 - (c) Regardless of whether the services are bundled, packaged, or functionally integrated with cable service or video service, any revenues received from services not classified as cable service or video service, including, without limitation, revenue received from telecommunication services, information services, or the provision of directory or Internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing or any other revenues attributed by the holder to noncable service or non-video service in accordance with the holder's books and records and records kept in the regular course of business and any applicable laws, rules, regulations, standards, or orders.
 - (d) The sale of cable services or video services for resale in which the purchaser is required to collect the service provider fee from the purchaser's subscribers to the extent the purchaser certifies in writing that it will resell the service within the Village and pay the fee permitted by 220 ILCS 5/22-501 with respect to the service.
 - (e) Any tax or fee of general applicability imposed upon the subscribers or the transaction by a city, state, federal, or any other governmental entity and collected by the holder of the State-issued authorization and required to be remitted to the taxing entity, including sales and use taxes.
 - (f) Security deposits collected from subscribers.
 - (g) Amounts paid by subscribers to "home shopping" or similar vendors for merchandise sold through any home shopping channel offered as part of the cable service or video service.
- (3) Revenue of an affiliate of a holder shall be included in the calculation of gross revenues to the extent the treatment of the revenue as revenue of the affiliate rather than the holder has the effect of evading the payment of the fee permitted by 220 ILCS 5/22-501) which would otherwise be paid by the cable service or video service.

(D) ***"Holder"*** means a person or entity that has received authorization to offer or provide cable or video service from the Commission pursuant to 220 ILCS 5/22-501.

(E) ***"Service"*** means the provision of "cable service" or "video service" to subscribers and the interaction of subscribers with the person or entity that has received authorization to offer or provide cable or video service from the Commission pursuant to 220 ILCS 5/22-501.

(F) ***"Service Provider Fee"*** means the amount paid under this Article and 220 ILCS 5/22-501 by the holder to a Village for the service areas within its territorial jurisdiction.

(G) ***"Video Service"*** means video programming and subscriber interaction, if any, that is required for the selection or use of such video programming services, and which is provided through wireline facilities located at least in part in the public right-of-way without regard to delivery technology, including Internet protocol technology. This definition does not include any video programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d) or any video programming provided solely as part of, and via, service that enables users to access content, information, electronic mail, or other services offered over the public Internet.

8-4-2 CABLE/VIDEO SERVICE PROVIDER FEE IMPOSED.

(A) **Fee Imposed.** A fee is hereby imposed on any holder providing cable service or video service in the Village.

(B) **Amount of Fee.** The amount of the fee imposed hereby shall be **five percent (5%)** of the holder's gross revenues.

(C) **Notice to the Village.** The holder shall notify the Village at least **ten (10) days** prior to the date on which the holder begins to offer cable service or video service in the Village.

(D) **Holder's Liability.** The holder shall be liable for and pay the service provider fee to the Village. The holder's liability for the fee shall commence on the first day of the calendar month following **thirty (30) days** after receipt of the ordinance adopting this Article by the holder. The ordinance adopting this Article shall be sent by mail, postage prepaid, to the address listed on the holder's application notice sent pursuant to 220 ILCS 5/22-501 to the Village.

(E) **Payment Date.** The payment of the service provider fee shall be due on a quarterly basis, **forty-five (45) days** after the close of the calendar quarter. If mailed, the fee is considered paid on the date it is postmarked. Each payment shall include a statement explaining the basis for the calculation of the fee.

(F) **Exemption.** The fee hereby imposed does not apply to existing cable service or video service providers that have an existing franchise agreement with the Village in which a fee is paid.

(G) **Credit for Other Payments.** An incumbent cable operator that elects to terminate an existing agreement pursuant to 220 ILCS 5/22-501(c) with credit to prepaid franchise fees under that agreement may deduct the amount of such credit from the fees that operator owes under the law.

8-4-3 PEG ACCESS SUPPORT FEE IMPOSED.

(A) **PEG Fee Imposed.** A PEG access support fee is hereby imposed on any holder providing cable service or video service in the Village in addition to the fee imposed pursuant to **Section 8-4-2(B)**.

(B) **Amount of Fee.** The amount of the PEG access support fee imposed hereby shall be **one percent (1%)** of the holder's gross revenues or, if greater, the percentage of gross revenues that incumbent cable operators pay to the Village or its designee for PEG access support in the Village.

(C) **Payment.** The holder shall pay the PEG access support fee to the Village or to the entity designated by the Village to manage PEG access. The holder's liability for the PEG access support fee shall commence on the date set forth in **Section 8-4-2(D)**.

(D) **Payment Due.** The payment of the PEG access support fee shall be due on a quarterly basis, **forty-five (45) days** after the close of the calendar quarter. If mailed, the fee is considered paid on the date it is postmarked. Each payment shall include a statement explaining the basis for the calculation of the fee.

(E) **Credit for Other Payments.** An incumbent cable operator that elects to terminate an existing agreement pursuant to **220 ILCS 5/22-501** shall pay, at the time they would have been due, all monetary payments for PEG access that would have been due during the remaining term of the agreement had it not been terminated pursuant to that section. All payments made by an incumbent cable operator pursuant to the previous sentence may be credited against the fees that the operator owed under **Section 8-4-3(B)**.

8-4-4 APPLICABLE PRINCIPLES. All determinations and calculations under this Article shall be made pursuant to generally accepted accounting principles.

8-4-5 NO IMPACT ON OTHER TAXES DUE FROM HOLDER. Nothing contained in this Article shall be construed to exempt a holder from any tax that is or may later be imposed by the Village, including any tax that is or may later be required to be paid by or through the holder with respect to cable service or video service. A State-issued authorization shall not affect any requirement of the holder with respect to payment of the Village's simplified municipal telecommunications tax or any other tax as it applies to any telephone service provided by the holder. A State-issued authorization shall not affect any requirement of the holder with respect to payment of the local unit of government's 911 or E911 fees, taxes or charges.

8-4-6 AUDITS OF CABLE/VIDEO SERVICE PROVIDER.
(A) **Audit Requirement.** The Village will notify the holder of the requirements it imposes on other cable service or video service providers to submit to an audit of its books and records. The holder shall comply with the same requirements the Village imposes on other cable service or video service providers in its jurisdiction to audit the holder's books and records and to recomputed any amounts determined to be payable under the requirements of the Village. If all local franchises between the Village and cable operator terminate, the audit requirements shall be those adopted by the Village pursuant to the Local Government Taxpayers' Bill of Rights Act, 50 ILCS 45/1 *et seq.* found in Chapter 36. No acceptance of amounts remitted should be construed as an accord that the amounts are correct. **(See Chapter 36 - Taxation)**

(B) **Additional Payments.** Any additional amount due after an audit shall be paid within **thirty (30) days** after the municipality's submission of an invoice for the sum.

8-4-7 LATE FEES/PAYMENTS. All fees due and payments which are past due shall be governed by ordinances adopted by this municipality pursuant to the Local Government Taxpayers' Bill of Rights Act, 50 ILCS 45/1 *et seq.*

(See 220 ILCS 5/22-501)

ARTICLE V - CABLE AND VIDEO CUSTOMER PROTECTION LAW

8-5-1 CUSTOMER SERVICE AND PRIVACY PROTECTION LAW.

(A) **Adoption.** The regulations of 220 ILCS 5/22-501 are hereby adopted by reference and may be applicable to the cable or video providers offering services within the Village's boundaries.

(B) **Amendments.** Any amendment to the Cable and Video Customer Protection Law that becomes effective after the effective date of this Article shall be incorporated into this Article by reference and shall be applicable to cable or video providers offering services within the Village's boundaries. However, any amendment that makes its provisions optional for adoption by municipalities shall not be incorporated into this Article by reference without formal action by the corporate authorities of the Village.

8-5-2 ENFORCEMENT. The Village does hereby pursuant to law declare its intent to enforce all of the customer service and privacy protection standards of the Cable and Video Protection Law with respect to complaints received from residents within the Village.

8-5-3 CUSTOMER CREDITS. The Village hereby adopts the schedule of customer credits for violations. Those credits shall be as provided for in the provisions of 220 ILCS 5/22-501(s) and applied on the statement issued to the customer for the next billing cycle following the violation or following the discovery of the violation. The cable or video provider is responsible for providing the credits and the customer is under no obligation to request the credit.

8-5-4 PENALTIES. The Village, pursuant to 220 ILCS 5/22-501(r)(1), does hereby provide for a schedule of penalties for any material breach of the Cable and Video Protection Law by cable or video providers in addition to the penalties provided in the law. The monetary penalties shall apply on a competitively neutral basis and shall not exceed **Seven Hundred Fifty Dollars (\$750.00)** for each day of the material breach, and shall not exceed **Twenty-Five Thousand Dollars (\$25,000.00)** for each occurrence of a material breach per customer.

(A) Material breach means any substantial failure of a cable or video provider to comply with service quality and other standards specified in any provision of the law.

(B) The Village shall give the cable or video provider written notice of any alleged material breaches of the law and allow such provider at least **thirty (30) days** from the receipt of the notice to remedy the specified material breach.

(C) A material breach, for the purposes of assessing penalties, shall be deemed to occur for each day that a material breach has not been remedied by the cable or video service provider after the notice in (B).

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EXHIBIT "1"**CABLE TELEVISION FRANCHISE AGREEMENT**

On this 3rd day of October, 2002, this CABLE TELEVISION FRANCHISE AGREEMENT (the "Franchise Agreement") is entered into by and between the Village of St. Jacob, Illinois ("Village"), a municipal corporation, and HomeTel Entertainment, Inc., an Illinois corporation ("HomeTel").

WHEREAS, HomeTel has applied to the Village for a nonexclusive franchise (the "Franchise") to provide cable television service in the Village; and

WHEREAS, after adequate public notice, based on HomeTel's representations and information, and in response to the application for the granting of a franchise, the St. Jacob Village Board has determined that, subject to the provisions of Ordinance 96-384 known as the Cable Communications Regulatory Code of the Village (the "Cable Ordinance"), and the terms and conditions set forth herein, the grant of a new nonexclusive franchise to HomeTel is consistent with the public interest, and has therefore enacted Ordinance; and

WHEREAS, the Village and HomeTel have reached agreement on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the Village's grant of a new franchise to HomeTel, and HomeTel's promise to provide Cable Service to residents of the Village pursuant to and consistent with the Cable Ordinance, the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which is hereby acknowledged;

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:**1. Definitions.**

Except as otherwise provided herein, the definitions and word usage set forth in Section 2 of the Cable Ordinance are incorporated herein and shall apply in this Franchise Agreement. In addition, the following definitions shall apply:

(a) *Cable Ordinance*: Ordinance 96-384, as it may be amended from time to time.

(b) *Franchise Agreement or Agreement*: This contract and any amendments, exhibits or appendices hereto.

(c) *Franchisee*: HomeTel Entertainment, Inc., an Illinois corporation.

2. Grant of Authority; Limits and Reservations.

(a) *Grant of Authority:* The Franchise issued to the Franchisee is subject to the terms and conditions of this Franchise Agreement and to the provisions of the Cable Ordinance. The Franchise grants the Franchisee the right to construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area, for the purpose of providing Cable Service, but no other communications services. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement. This Agreement does not confer any rights other than as expressly provided herein or as mandated by federal, state or local law.

(b) *Franchise Area:* The Franchise is issued for the entire present territorial limits of the Village of St. Jacob, Illinois.

(c) *Term:* The Franchise and this Franchise Agreement shall expire at 12:01 a.m. on October 3, 2012, unless the Franchise is earlier revoked or its term extended or shortened as provided herein or in the Cable Ordinance.

(d) *Grant Not Exclusive:* The Franchise and the right it grants to use and occupy the Public Rights-of-Way are not exclusive and do not explicitly preclude the issuance of other franchises to operate Cable Systems or other communications systems within the Village, affect the Village's right to authorize use of Public Rights-of-Way by other Persons to operate Cable Systems or other communications systems or for other purposes as it determines appropriate, or affect the Village's right to itself construct, operate or maintain a Cable System or other communications system, with or without a Franchise.

(e) *Franchise Agreement Subject to Other Laws:* This Franchise Agreement is subject to and shall be governed by all terms, conditions and provisions of the Cable Ordinance and any applicable provision of federal, state, and local law.

(f) *Franchise Agreement Subject to Exercise of Police Powers:* All rights and privileges granted herein are subject to the police powers of the Village and its rights under applicable laws to regulate the Franchisee and the construction, operation and maintenance of the Franchisee's Cable System, including, but not limited to, the right to adopt and enforce additional ordinances and regulations as the Village shall find reasonably necessary in the exercise of its police powers, the right to adopt and enforce generally applicable zoning, building, permitting and safety ordinances and regulations, the right to adopt and enforce generally applicable ordinances and regulations relating to equal employment opportunities, and the right to adopt and enforce ordinances and regulations containing right-of-way, telecommunications, utility, cable television consumer protection, service standards, or rate regulation provisions, consistent with federal and state law.

(g) *Incorporation of Cable Ordinance by Reference:* By acceptance of the Franchise, the Franchisee agrees to meet all requirements of the Cable Ordinance, which is hereby incorporated by reference into and made a part of this Franchise

Agreement. Reporting requirements under the Cable Ordinance are hereby waived for the remainder of 2002.

(h) *Approval and Effective Date:* This Franchise Agreement shall be effective as of 12:01 a.m. on **October 4, 2002**, upon its approval by the Village Board and execution by the Village and Franchisee.

(i) *Effect of Acceptance:* By accepting the Franchise and executing this Franchise Agreement, the Franchisee: (1) acknowledges and accepts the Village's legal right to grant the Franchise, to enter into this Franchise Agreement, and to enact and enforce ordinances and regulations related to the Franchise; (2) agrees it will not oppose participation by the Village in any proceeding affecting the Franchisee's Cable System; (3) accepts and agrees to comply with each provision of this Agreement; and (4) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

(j) *Franchisee Bears Its Own Costs:* Unless otherwise expressly provided in this Franchise Agreement, all acts that the Franchisee is required to perform under the Cable Ordinance, this Agreement or applicable law shall be performed at the Franchisee's own cost and expense, without reimbursement by the Village.

(k) *No Waiver:* (1) The failure of the Village on one or more occasions to exercise a right or to require compliance or performance under this Franchise Agreement, the Cable Ordinance or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the Franchisee, unless such right or such compliance or performance has been specifically waived in writing.

(2) Waiver of a breach of this Agreement shall not be a waiver of any other breach, whether similar to or different from that waived. Neither the granting of the Franchise, nor any provision herein, nor any action by the Village hereunder shall constitute a waiver of or a bar to the exercise of any governmental right or power of the Village, including without limitation the right of eminent domain.

(l) *No Recourse:* The Franchisee shall have no recourse against the Village for any loss, cost, expense, claim, liability or damage arising out of any action undertaken or not undertaken by Franchisee pursuant to the Franchise, this Franchise Agreement or the Cable Ordinance, whether or not such action or non-action was required by the Franchise, the Agreement or the Cable Ordinance, arising out of the enforcement or non-enforcement by the Village of any provision or requirement of this Agreement or the Cable Ordinance, or otherwise arising out of the Franchise, the Agreement or the Cable Ordinance, except as otherwise expressly permitted by federal law or this Agreement.

(m) *Construction of Franchise Agreement:* The provisions of this Franchise Agreement shall be liberally construed in accordance with generally accepted rules of contract construction and to promote the public interest. The express provisions of the Franchise Agreement constitute a valid and enforceable contract between the parties. In the event of a clear conflict between the Cable Ordinance and this

Agreement, the Agreement shall prevail, except where the conflict arises from the lawful exercise of the Village's police power.

(n) *Amendment of Franchise Agreement:* The Village shall liberally amend this Franchise Agreement upon the application of the Franchisee whenever necessary to enable the Franchisee to take advantage of developments in the field of cable communications which, in the Village's opinion, will afford the Franchisee an opportunity to serve its Subscribers more efficiently, effectively and economically. Such amendments shall be subject to such conditions as the Village determines are reasonably necessary to protect the public interest.

(o) To the extent the Franchisee or its Affiliates has additional Cable Systems that serve areas other than the Village, **six (6) years** from the effective date of this Franchise, the Franchise shall submit a report to the Village which identifies **five (5)** similar Cable Systems of the Franchisee and its Affiliates, the capacity and interactivity of those systems, and any then-existing commitments to upgrade the capacity and/or interactivity of those systems. In the event that the majority of those systems have (or will have pursuant to a then-existing commitment) a capacity and/or interactivity which exceeds the Cable System serving the Franchise Area, then at the Village's written request made within **sixty (60) days** of receipt of the report the Franchisee shall meet and confer with the Village to discuss the report and specifically any plans the Franchisee may have to upgrade the Cable System serving the Franchise Area to at least the average channel capacity and interactivity of the majority of such other systems identified in the report. Following good faith discussion and upon mutual agreement of the Village and Franchisee on an upgrade plan and schedule and new term of the Franchise, a new Franchise Agreement shall be negotiated and executed by the Parties.

3. Regulation and Oversight.

(a) *Severability:* In the event that a court or agency of competent jurisdiction declares by final decision that any provision of this Franchise Agreement is unenforceable according to its terms or is otherwise void, said provision shall be considered a separate, distinct and independent part of this Agreement, and such declaration shall not affect the validity and enforceability of all other provisions of this Agreement. Alternatively, the Village may modify any such provisions to the reasonable extent necessary to make such provision enforceable if such modifications are consistent with the full intent and purposes of this Agreement.

(b) *Preemption:* In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Agreement, then, subject to the Village's rights under the foregoing subsection, the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision

shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the Village.

(c) *Notice:* As soon as reasonably practicable following knowledge thereof, the Franchisee shall notify the Village of any point of conflict believed to exist between the Cable Ordinance or this Agreement and any other provisions of law. By executing this Agreement, Franchisee represents that it is not aware of any such conflict at the time of such execution.

4. Provision of Cable Service.

The Franchisee shall make Cable Service available to all Persons within the Franchise Area who request Service, so long as their financial and other obligations to the Franchisee are satisfied, and subject to reasonable construction standards and schedules and subject to availability of legal access to the location. Franchisee shall extend its System as required by the Cable Ordinance. Free municipal service as required by the Regulatory Code shall be provided, upon request, at one free service outlet for each parochial and public school building, municipal and Village government building, and fire and police station located within the Franchise Area and within **one hundred fifty (150) feet** of Franchisee's facilities including cable line, and shall include (but not be limited to) the locations set forth on **Exhibit "B"** attached hereto.

5. System Facilities, Equipment and Services.

(a) *System:* The Franchisee's Cable System shall at all times meet or exceed the following requirements:

(1) The System shall have a rating of at least **550 mHz** on all active components and a capacity of at least **78 6-mHz** channels downstream to all Subscribers.

(2) There shall be no more than **eight (8)** active components in a cascade measured from the headend to the Subscriber.

(3) Subject to Section 6, the Franchisee shall provide, install and maintain the necessary equipment for amplification, conversion, receiving, transmitting, switching and headend processing of signals to deliver **three (3) 6-mHz** access channels for public, educational, and governmental (PEG) use. Such channels shall be shared by all PEG users served by the headend.

(4) The System shall be capable of continuous **twenty-four (24)** hour daily operation without severe material degradation of signal except during extremely inclement weather or immediately following extraordinary storms that adversely affect utility services or damage major system components.

(5) The System shall be capable of operating over an outdoor temperature range of **-20 degrees F to +120 degrees F** and over variation in supply voltages from **105 to 130 volts AC** without catastrophic failure or irreversible performance changes.

(6) The System shall meet all specifications as set forth herein or in the Cable Ordinance over an outdoor temperature range of **0 degrees F to 100 degrees F** and over variation in supply voltages from **105 to 130 volts AC**.

(7) The System shall be operated in such a manner as to avoid causing interference with the reception of off-the-air signals by a Subscriber.

(8) The upstream capacity of the System shall be such that there is only normal signal deterioration in the signal quality from the point of origin through the headend and PEG production facilities; and so that there is no more deterioration in the signal quality on PEG channels than on any other channel.

(9) The System shall use equipment generally used in high-quality, reliable, modern systems of similar design, including but not limited to back-up power supplies capable of providing power for **two (2) hours** in the event of an electrical outage, plus portable generators to cover longer outages. The obligation to provide back-up power supplies requires the Franchisee to install equipment that will (A) cut in automatically on failure of commercial utility AC power, (B) revert automatically to commercial power when it is restored, and (C) prevent the standby power source from powering a "dead" utility line. In addition, the design and construction of the System shall include modulators, antennae, amplifiers and other electronics that permit and are capable of passing through the signals received at the headend without substantial alteration or deterioration.

(10) The headend shall be capable of providing at least **78 6-mHz** channels in full configuration and shall develop signals of high quality throughout the service area (including on channels retransmitting upstream signals received through the headend), and the headend shall have adequate ventilation and space to be able to meet or exceed applicable design and technical requirements. It shall be located in St. Jacob.

(11) The System shall allow all unscrambled channels on all Service Tiers to be received by cable-ready television sets without the aid of a converter, and shall minimize, to the maximum extent feasible, interference with consumer electronic equipment.

(12) The capability must exist for Subscribers to be able to block out audio and video at least on all premium and pay-per-view channels, and video on all channels.

(13) All closed-caption programming retransmitted by the System shall include the closed-caption signal.

(14) All System connectors shall have external waterproofing, all System expansion loops shall be properly formed, all components including drops shall be properly grounded, and adequate spacing, shall be maintained from power conductors.

(b) *Interconnection:* The Franchisee shall cooperate on a reasonable basis with any interconnection corporation, regional interconnection authority or Village, county, state or federal regulatory agency which may be hereafter established for the purpose of regulating, financing, or otherwise providing for the interconnection of cable systems beyond the boundaries of the Village. Compliance with these requirements shall satisfy the interconnection requirements of the Cable Ordinance.

6. Channels and Facilities for Public, Educational and Governmental Use.

(a) *Access Channels:* (1) The Franchisee shall provide and maintain channels, facilities, personnel, and financial support for PEG use and additionally shall within **thirty-six (36) months** of the effective date of this Franchise provide and maintain dedicated channels, facilities, personal and financial support for PEG use consistent with Section 6(a)(4) hereof.

(2) In the event Franchisee increases the active channel capacity of its System beyond **78 6-mHz** channels, the Village may require the Franchisee to make available **one (1) additional standard (6-mHz) video channel** for PEG use, provided the Village requests such channel within **ninety (90) days** of written notice from Franchisee of the capacity increase.

(3) The Franchisee shall provide upstream channels for PEG use. Any reference to an upstream or downstream channel for PEG use refers to a **6-mHz** channel; an access channel may be used to provide one or more channels of service. PEG channels shall have the same level of interactivity as other channels, at the Village's request. Any existing local audio/video insertion sites shall continue to be available.

(4) The dedicated access channels to be provided under this Franchise Agreement shall be in use and programmed with qualified PEG access programming during at least **eighty percent (80%)** of the cumulative time between the test hours of **5:00 p.m. and Midnight, Monday through Friday**, for a period of **ten (10) consecutive weeks**. All qualified programming shall count in this measurement for actual running time shown. Repeat programs are qualified programming only to a maximum of **twenty-five percent (25%)** of total qualified programming. Programs that are neither locally produced nor programming related to the Franchise Area are qualified programming only to a maximum of **fifty percent (50%)** of total qualified programming. Any program broadcast locally within **three (3) years** of the measurement period is not qualified programming.

For purposes of this Section:

(a) **"broadcast locally"** means transmitted on the signal of a local commercial television station or a qualified local noncommercial educational television station with signal carriage rights on the Grantee's system pursuant to 47 U.S.C. § 535, as in effect on the effective date of this Agreement.

(b) “repeat program” means the running time of any program only to the extent it is shown more than two (2) times during the test hours over the ten (10) week measurement period.

(c) “locally produced programming” means programming (a) produced within the Franchise Area or (b) produced by a resident or any agency, public or private, which provides services to residents within the Franchise Area regardless of the location at which the programming was produced.

(d) “programming related to the Franchise Area” means programming which addresses the educational, political, social or cultural interests of any segment of the residents of the Franchise Area.

(e) “qualified PEG access programming” includes video bulletin board material only if the material consists of multiple and different text (or video and text) screens transmitted to different subscribers simultaneously. The term does not include video bulletin board material such as character generated or similar material to the extent the same text (or video and text) screen is sent simultaneously without variation to all system subscribers; or non-video, data uses of the system by subscribers.

To avoid underutilization of PEG access channels, other than the first channel dedicated, upon thirty (30) days notice to Village, Franchisee may make use of any access channel for its own purposes if, for a period of ten (10) consecutive weeks, said channel no longer fits the above criteria. Upon one hundred eighty (180) days notice, the Village may reclaim use of such channel(s) for transmission of access programming.

(b) *Equipment Repairs and Replacement:* Throughout the Franchise term, the Franchisee shall provide for the timely repair and replacement for normal wear and tear of all of its access equipment being used by the Village, Schools, or any of their designated providers, in producing or providing public, educational or governmental programming. Franchisee will not be responsible for repairing or replacing equipment owned by the Village or other entities not affiliated with Franchisee.

(c) *Access and Program Support:* The Franchisee shall provide sufficient staff support (including a designated coordinator who shall be reasonably available during Normal Business Hours) to provide to interested members of the public and Village and school personnel training in the use of PEG access equipment and assistance in the production of PEG programming, to provide community education and outreach regarding the availability of PEG access, to acquire and maintain all PEG access equipment, to provide for the check-in and check-out of PEG access equipment, to schedule the use of the Franchisee’s facilities by persons producing PEG programs, and to perform related matters, all to the extent required to fulfill the reasonable production requests of such interested persons within a reasonable time.

(d) *Management of Channels:* The Village and other franchising authorities using PEG access channels may designate one (1) or more entities, including a non-profit access management corporation, to manage the use of all or part of the public,

educational, and governmental access channels. Until such an entity has been designated, the Franchisee shall be responsible for all such scheduling functions.

(e) *Governmental Programming Services:* Starting within **ninety (90) days** of written request by the Village, Franchisee shall provide the Village with grants of **Ten Cents (10¢)** per Subscriber per month within the Franchise Area payable in each January after such start date, to be used in the Village's discretion but solely for government and educational access equipment, facilities and operations (including but not limited to videotaping of programming). Provided the Village enters into a cooperative agreement with other franchising authorities whose areas are served by Franchisee, which provides for use of the aforesaid grants for the aforesaid purposes, Franchisee shall also provide the Village with an additional one time grant of **Six Thousand Dollars (\$6,000.00)** together with the next annual grant due after such entry into such cooperative agreement, to be used under the terms of the cooperating agreement solely for government and educational access equipment, facilities, and operations (including but not limited to videotaping of programming). Franchisee's obligation to make such grants shall be contingent upon the Village committing to match such grants with equal funds to be used for the same purposes and to hold such funds in a special account for such purposes and representing that all previous grants and matching funds shall have been expended for such purposes no later than **sixty (60) days** after each annual due date. On request the Village shall document such expenditures. Franchisee will work with the Village and schools to explore alternatives to efficiently expand and better utilize PEG access.

(f) *Costs and Payments Not Franchise Fees:* The parties for purposes of this Agreement agree that any costs to the Franchisee associated with the provision of support for public, educational or governmental access pursuant to this Franchise Agreement, including the grants described in Section 6(e), do not constitute and are not part of a franchise fee, and fall within one or more of the exceptions to 47 U.S.C. § 542.

(g) *Editorial Control:* Except as expressly permitted by federal law, the Franchisee shall not exercise any editorial control over the content of programming on the designated PEG access channels (except for Franchisee's own programming cablecast on those channels).

7. Franchise Fee.

Each year during the Franchise term, as compensation for use of Public Rights-of-Way, the Franchisee shall pay to the Village, on a quarterly basis, Franchise fees in the amount of **three percent (3%)** of the Franchisee's Gross Revenues. The Village may, in its sole discretion, increase the amount of the Franchise fees up to the maximum amount permitted under state and federal law at any time, so long as the increase may by law be passed on to Subscribers, and so long as the fee does not exceed **seven percent (7%)** of Gross Revenues. However, the Village shall provide the Franchisee with **sixty (60) days'** advance notice of such an increase.

8. Insurance, Indemnification

(a) *Insurance Required:* Franchisee shall maintain throughout the entire length of the Franchise period, at least the following liability insurance coverage insuring the Village and the Franchisee: worker's compensation and employer liability insurance to meet all requirements of Illinois law and comprehensive general liability insurance with respect to the construction, operation, and maintenance of the Cable System, and the conduct of the Franchisee's business in the Village, in the minimum amounts of:

(1) One Million Dollars (\$1,000,000.00) for property damage resulting from any one (1) accident;

(2) Five Million Dollars (\$5,000,000.00) for personal bodily injury or death resulting from any one (1) accident; and

(3) Two Million Dollars (\$2,000,000.00) for all other types of liability. Neither the provisions of this Section nor any damages recovered by the Village shall be construed to limit the liability of Franchisee for damages under the Franchise.

(b) *Qualifications of Sureties:* All insurance policies shall be with sureties qualified to do business in the State of Illinois, with an B+7 or better rating of insurance by Best's Key Rating Guide, Property/Casualty Edition, and in a form approved by the Village.

(c) *Policies Available for Review:* All insurance policies shall be available for review by the Village, and Franchisee shall keep on file with the Village certificates of insurance.

(d) *Additional Insureds; Prior Notice of Policy Cancellation:* All general liability insurance policies shall name the Village, its elected officials, officers, boards, board members, commissions, commissioners, agents, and employees as additional insureds and shall further provide that any cancellation or reduction in coverage shall not be effective unless **thirty (30) days'** prior written notice thereof has been given to the Village Clerk. Franchisee shall not cancel any required insurance policy without submission of proof that the Franchisee has obtained alternative insurance reasonably satisfactory to the Village Board which complies with the Cable Ordinance and this Franchise Agreement.

(e) *Failure Constitutes Material Violation:* Failure to comply with the insurance requirements set forth in this Section shall constitute a material violation of the Franchise.

(f) *Indemnification:* (1) Franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the Village, its officials, boards, board members, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of its Cable System; copyright infringements or a failure by the Franchisee to secure consents from the owners, authorized distributors, or licensees of programs to be delivered by the Cable System; the conduct of the Franchisee's business in the Village; or in any way arising out of the granting of the Franchise or Franchisee's enjoyment or

exercise of this Franchise, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by the Cable Ordinance or this Franchise Agreement.

(2) Specifically, but not by way of limitation on the scope of (1) above, Franchisee shall, at its sole cost and expense, fully indemnify, defend, and hold harmless the Village, and in their capacity as such, the elected officials, officers, agents, and employees thereof, from and against any and all claims, suits, actions, liability, and judgments for damages or otherwise subject to Section 638 of the Cable Act, 47 U.S.C. § 558, or arising out of or alleged to arise out of the installation, construction, operation, or maintenance of its System, including but not limited to any claim against the Franchisee for invasion of the right of privacy, defamation of any Person, or the violation of infringement of any copyright, trade mark, trade name, service mark, or patent, or of any other similar right of any Person. This indemnity does not apply to programming carried on any channel set aside for public, educational, or government use, or channels leased pursuant to 47 U.S.C. § 532, unless the Franchisee was in any respect engaged in determining the editorial content of the program, or prescreened the programming for the purported purpose of banning or regulating indecent or obscene programming.

(3) The forestated indemnity provision includes, but is not limited to, the Village's reasonable attorneys' fees incurred in defending against any such claim, suit, or proceeding prior to Franchisee assuming such defense. The Village shall notify Franchisee of claims and suits as soon as practicable, but failure to give such notice shall not relieve Franchisee of its obligations hereunder. Once Franchisee assumes such defense, the Village may at its option continue to participate in the defense at its own expense.

(4) Neither the Franchisee nor the Village will be required to pay an amount greater than its comparable or proportionate fault or negligence as to the personal injury or property damage for other losses indemnified hereby.

In any and all claims against the Village, by any employee of the franchise the indemnification obligation under this clause shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits by or for the franchise under Worker's or Workman's Compensation Acts, Disability Benefit Acts, or other employee benefits acts. The Franchisee shall require that all subcontractors as to this Cable System agree to waive any limitations of liability based on Worker's or Workmen's Compensation Acts, Disability Acts, or other employee benefit acts.

9. Miscellaneous Provisions.

(a) *Governing Law:* This Franchise Agreement was made in and shall be governed in all respects by the law of the State of Illinois.

(b) *Notices:* Unless otherwise expressly stated herein, notices required under this Franchise Agreement shall be mailed first class, postage prepaid, to the addressees below. Each party may change its designee by providing written notice to the other party, but each party may only designate one entity to receive notice.

- (1) Notices to the Franchisee shall be mailed to:

Eric Schmidt
Vice President
HomeTel Entertainment, Inc.
501 N. Douglas Street
P.O. Box 215
St. Jacob, Illinois 62281

- (2) Notices to the Village shall be mailed to:

Village Clerk
Village of St. Jacob
213 N. Douglas
St. Jacob, Illinois 62281

(c) *Time of Essence:* In determining whether the Franchisee has substantially complied with this Franchise Agreement, the parties agree that time is of the essence.

(d) *Captions:* The captions and headings of this Agreement are for convenience and reference purposes only, and shall not affect in any way the meaning and interpretation of any provisions of this Agreement.

(e) *Integration:* This Agreement and the accompanying application for franchise (attached hereto as Exhibit "A") set forth the entire agreement between the parties respecting the subject matter hereof. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party to another with respect to the subject matter of this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and therein and superseded hereby and thereby.

AGREED TO THIS 3RD DAY OF OCTOBER, 2002.

VILLAGE OF ST. JACOB, ILLINOIS

By: _____
Village Mayor

ATTEST:

/s/ Kelly Robards
Village Clerk

HOMETEL ENTERTAINMENT, INC.

By: _____
Eric Schmidt, Vice President

EXHIBIT "B"

FREE ACCOUNTS – GOVERNMENT BUILDINGS

St. Jacob

1. **St. Jacob Fire Department
201 Napoleon
St. Jacob, IL 62281**

2. **St. Jacob Village Hall
213 N. Douglas
St. Jacob, IL 62281**

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