

**CHAPTER 10**

**CABLE TELEVISION**

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

**10-1-1**     **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 5/21-801(b).
- (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 5/21-801(c)(1)(vi).
  - (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 5/21-801(b) 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 5/21-801(b) 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 5/21-401.

(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 5/21-401.

(F) **"Service Provider Fee"** means the amount paid under this Article and 220 ILCS 5/21-801 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.

**10-1-2 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 **three percent (3%)** 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 5/21-401(b)(6) 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 5/21-301(c) with credit to prepaid franchise fees under that agreement may deduct the amount of such credit from the fees that operator owes under Section 116.02(b).

**10-1-3 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 10-1-2(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 10-1-2(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 5/21-301(c)** 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 10-1-3(B)**.

**10-1-4 APPLICABLE PRINCIPLES.** All determinations and calculations under this Article shall be made pursuant to generally accepted accounting principles.

**10-1-5 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.

**10-1-6 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.

**10-1-7 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 5/21-801)**

**ARTICLE II - CABLE AND VIDEO CUSTOMER PROTECTION LAW**

**10-2-1      CUSTOMER SERVICE AND PRIVACY PROTECTION LAW.**

(A)      **Adoption.** The regulations of 220 ILCS 5/70-501 are hereby adopted by reference and may 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 municipality'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.

**10-2-2      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.

**10-2-3      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 5/70-501(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.

**10-2-4      PENALTIES.** The Village, pursuant to **220 ILCS 5/70-501(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).

**ARTICLE III - CABLE FRANCHISE**

**10-3-1**     **FRANCHISE APPROVED.**     The following Cable Television agreement has been adopted between the Village and Triax Cablevision USA, L.P.

**Section I - Granting Of Authority**

In consideration of the faithful performance and observance of the conditions and reservations hereinafter specified, the right, privilege and franchise is hereby granted to the Company, to erect, maintain, and operate a system of antennas, cables, wires, lines, facilities, and additions thereto, in, under, over, along, across, and upon the lanes, streets, avenues, sidewalks, alleys, and any easement or right-of-way for or hereinafter held by the Village, or dedicated for use by the Village or the general public, for the purpose of transmission and distribution of Television signals in accordance with laws and regulations of the United States of America, the State of Illinois, and the ordinances and regulations of the Village, and for such other uses compatible with the Cable System as the Company may, from time to time, determine, including, but not limited to, the transmission of voice and data.

The Company is hereby granted the further right, privilege and authority to lease, rent or in any lawful manner, obtain the use of towers, poles, lines, cables, underground conduits and other equipment and facilities from any and all holders of public licenses and/or franchises within the limits of the Village and to use such towers, poles, lines, cables and underground conduits and other equipment and facilities subject to all existing ordinances and regulations of the Village. The poles predominantly used by the Company shall be those wholly owned by the Village where the Village owns poles which may be utilized. Where the Village poles cannot be used for the distribution of the Cable System, the Company shall have the right to erect and maintain its own poles, as may be necessary for the proper construction and maintenance of the television distribution of Cable System, or poles provided by any local public utility company when and where practical, providing mutually satisfactory rental agreements, if needed, can be entered into with said companies.

**Section II - Non-Exclusive Franchise (From Other Franchise)**

The right, privilege, and franchise granted by this Ordinance is not exclusive. The Village shall have the right to grant to other persons or entities who own and operate community antenna television systems rights similar to those granted to the Company herein at any time during the term of this franchise and renewal thereof, upon such terms and conditions as the Village may determine and as may be permitted under applicable law with due consideration of the interests of the public and the Company; provided that no other franchise shall be granted upon terms which are more favorable to the operator than the terms hereunder.

**Section III - Definitions**

**"Cable System"** shall mean a system designed to receive, transmit, amplify and distribute Television, radio, and satellite signals, data and electronic communications, and/or designed for such other uses which are compatible therewith, including, but not limited to, the transmission of voice and data.

**"Basic Service"** shall mean the initial service including, but not limited to, mandatory carriage signals and local access channels and such other service as the Federal Communications Commission (the "FCC") may mandate or the Company may include. This shall not include optional premium services, as long as they are sold separately from basic tier service.

**"Satellite Tier(s)"** shall mean non-broadcast/television programming typically satellite delivered cable only programming which is marketed and sold as an optional additions to the Basic Service.

**"Subscriber(s)"** shall mean any person who pays the applicable rates to receive cable Television or other communications service from the Company.

**"Television"** shall mean any transmission of audio, video, digital, or other electrical signals and any other transmission by means of impulses.

**"Gross Revenue(s)"** shall mean any and all compensation or receipts derived by the Company from the transmission and carriage of broadcast signals and FCC mandated non-broadcast services, satellite tiers, and any premium channels, such as HBO, Cinemax and Disney within the Village, but shall not include any deposits delivered to the Company until such time as the Company legally is entitled to the same, nor installations, additional outlets, converters, disconnections, reinstallation charges, inspections, repairs or modifications of any installation and shall be net of all refunds or credits made to Subscribers and any taxes imposed upon or with respect to the services furnished by the Company. Nor shall Gross revenues include revenue from "ancillary" or "auxiliary" services, which include but are not limited to advertising, leased channels, pay-per-view and programming supplied on a per program or per channel charge basis, if any.

**"Developer"** shall mean any individual, company or corporation which engages in a business venture to develop any unimproved property within the franchised area.

**Section IV - Conditions of Street/Public Way Occupancy**

1. All poles, wires, cables, underground conduits and facilities of every kind shall be located, installed and maintained so as to cause minimum interference with the proper use of streets, and to assure that the safety, functioning and appearance of the property, and the convenience and safety of other persons and the public shall not be adversely affected thereby. The Cable System shall be constructed, installed, operated, and maintained in compliance with applicable governmental regulations. All equipment and facilities shall be installed in accordance with good engineering practices.



2. The Company shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixtures, water hydrant or main and all such poles or other fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curb line and those placed in alleys shall be placed close to the lien of the lot abutting on said alley.

3. In case of disturbance of any street, sidewalk, or paved area caused by the Cable System or the Company, the Company shall, at its expense, and in a manner approved by the Village, replace and restore such street or paved area to a condition which is reasonably similar to the condition existing prior to the disturbance.

4. In case of fire, earthquake, flood, or other similar occurrence, the Village may temporarily remove any of the Company's facilities or equipment, with advance notice to the Company being given as promptly as possible. The Company shall not be entitled to payment for any damage caused by this removal, unless the Village acted with gross negligence or willful misconduct.

5. If the Village decides to alter or change any street, sidewalk, alley or other public way, or to undertake any improvements on, or about the street, sidewalk, alley or other public way, the Village shall give the Company a **ninety (90) day** advance notice of such alteration and the Company shall relocate its facilities and equipment or take such other reasonable action as may be necessary to accommodate the public improvements, at the Company's expense.

6. The Company agrees to temporarily remove, reroute or move any or all of its equipment and facilities to accommodate public or private works or construction, and movement of buildings or extra large truckloads, etc. The Company shall be entitled to both a **ninety (90) day** notice prior to such event and reasonable costs for such relocations from any private party causing such relocation but not from the Village.

7. Before undertaking any construction or installation of equipment or facilities which would materially disrupt the use of rights-of-way, the Company shall provide the Village with reasonable prior notice of the work to be performed and location and period of time involved in the undertaking. The Village shall have the right to inspect the work at any time to be certain it is being done in accordance with this Ordinance. When completed, the Company shall, upon request, submit a plan to the Village showing the location of facilities and equipment and identifying the equipment and facilities comprising the Cable System.

8. The Company agrees to compensate property owners for or to restore all damages caused to private and public property including landscaping by the construction, operation or maintenance of its Cable System. Notwithstanding any agreement it may have with any construction company, the Company shall be primarily responsible for all such damages.

9. The Company shall have the authority and is hereby required to trim trees upon and overhanging streets, alleys, sidewalks and public places of the Village to prevent the branches of such trees from coming in contact with the wires, cables and distribution system components of the Company, all trimming to be done under the supervision and direction of the Village and at the sole expense of the Company.

**Section V - Indemnification and Insurance**

1. The Company shall at all times indemnify, protect and hold the Village harmless from all claims, actions, suits, liabilities, losses, expenses, or damages of every kind and description, including investigation costs, court costs and reasonable attorneys' fees which may accrue to or be suffered or claimed by any person or persons by reason of or relating to the ownership, construction, repair, replacement, operation and maintenance of the Cable System and by reason of any license, copyright, property right or patent of any article or system used in said system.

2. In order for the Village to assert its rights to be indemnified, defended, and held harmless, the Village shall provide:

- a. Prompt notice to the Company of any claim or legal proceeding which gives rise to such rights;
- b. Full cooperation with the requests of the Company with respect to the Company's participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding.

3. The Company shall maintain in full force and effect public liability and property insurance with the following minimal coverage: property damage -- \$100,000.00 per occurrence, \$300,000.00 aggregate; bodily injury -- \$1,000,000.00 per occurrence, \$1,000,000.00 aggregate, which insurance shall name the Village as additional insured and which shall require **thirty (30) days** notice of cancellation to be given to the Village. The Company also shall carry insurance coverage for all claims under any applicable Workers' Compensation law. On the request of the Village, the Company shall file with the Village, certificates of insurance for the above coverage.

**Section VI - Franchise Fee**

1. The Company shall pay to the Village a franchise fee in an amount equal to **five percent (5%)** of all Gross Revenue received from Subscribers located within the Village.

2. The Company shall pay this fee to the Village within **sixty (60) days** after the end of each calendar year, and the fee shall be based on the total Gross Revenue received by the Company from Subscribers located within the Village during the preceding year.

3. The Company shall submit with each payment a report concerning the information upon which the fee owed the Village was based and shall provide additional information or records as the Village may reasonably request in order to review and determine the fee obligation.

4. Nothing in this Ordinance shall waive, limit, or otherwise affect the right of the Village to adopt ordinances or to enforce existing ordinance regarding, and to collect other fees and taxes permitted by law.

**Section VII - Village Expenses and Fees**

The Company shall pay or reimburse the Village for costs, fees, expenses, and charges reasonably incurred by the Village for the following:

1. Protection, removal or relocation of the Company's equipment or facilities if such action has been reasonably requested by the Village and the Company has failed to perform the work within a reasonable period of time.
2. Restoring or remedying any damage or condition resulting from the construction, installation, maintenance, removal or any work performed by the Company.
3. Any costs, fees, expenses and charges incidental to the awarding or renewal of the franchise provided that the Village will provide the Company with advance notice of any anticipated extraordinary charges to be incurred.
4. Any costs, fees, expenses and charges, including reasonable attorneys' fees incurred in the collection of fees or expenses or in the enforcement of this Ordinance.
5. Any costs, fees, expenses and charges, including reasonable attorneys' fees incurred by reason of the Company's failure to comply with its obligations under this Ordinance or under state or federal laws and regulations.

**Section VIII - Term**

The initial term of this franchise shall be **fifteen (15) years** from the effective date of this Ordinance. At the end of this initial term, the Company may renew the franchise by giving written notice to the Village not less than **ninety (90) days** prior to the expiration hereof, unless the consent of the Village to such renewal is required by applicable federal, state or local laws and regulations, which consent shall not be withheld unreasonably after public notice and opportunity to be heard; in determining whether to grant a renewal, the Village shall consider those factors prescribed by applicable law and, among other things, (1) whether the Company has substantially complied with the material terms of this franchise and with applicable law; (2) the extent and quality of the Company's service; (3) whether the Company remains financially, legally and technically qualified; and (4) whether the Company's renewal would reasonably meet the future cable-related community needs and interests. Any renewal of the initial hereof shall be for an additional **ten (10) years**.

**Section IX - Service Standards**

1. Technical and Operational Standards.
  - a. The Company shall maintain the Cable System so that it has quality reception and service to Subscribers.

- b. The Company shall make repairs promptly. Service interruptions due to Cable System repairs, maintenance modifications or installations shall be for the shortest time possible, and shall, to the extent practicable, be preceded by notice to Subscribers and shall occur during periods of minimal viewership.
  - c. The Company shall maintain the Cable System so that it meets the technical standards applied by the FCC. Procedures for testing the technical capacity of the Cable System shall conform with the technical and testing standards applied to Cable Systems by the FCC.
  - d. The Company shall maintain sufficient replacement and repair equipment, facilities and supplies, and trained personnel to perform necessary and prompt repairs to the Cable System in the event of damage thereto. In the event of major damage to the equipment and facilities, the Company shall make every effort to restore service as expeditiously as possible and to provide for alternative means of providing service to as many Subscribers as possible while making necessary repairs.
  - e. The Company agrees to have a technician living within a **twenty-five (25) mile** radius of the Village.
2. Subscriber Service Standards.
- a. The Company shall maintain a publicly listed, toll-free telephone number to receive Subscriber complaints, and the Company shall notify Subscribers of this telephone number on a periodic basis. The Company may provide separate telephone numbers for complaints made after normal business hours, but must be capable of handling complaints **twenty-four (24) hours** a day.
  - b. The Company shall investigate all Subscriber complaints regarding quality of service, equipment malfunctions and similar matters expeditiously and no later than the next business day. Upon notification of a service complaint, the Company shall dispatch a qualified employee to investigate the complaint and adjust, repair or replace Company equipment as necessary to resolve the complaint.
  - c. If there is an interruption of service for **forty-eight (48) consecutive hours** or more, the affected Subscribers shall receive, upon request, a pro-rate reduction of charges, provided that the Subscriber has notified the Company immediately of the outage and made claim for credit within **ninety (90) days** of its occurrence. The loss of service must be caused directly by failure of the Company's equipment in order to qualify for a credit. No credit will be given if the service interruption is caused by any of the Subscriber's equipment or any action taken with respect to the

Company's equipment by someone other than the Company's employees. The Company is not responsible for the operation, maintenance, service or repair of any Subscriber's Televisions, radios, VCRs, other receivers and related equipment.

- d. Notwithstanding any provision contained herein to the contrary, the Company will not be liable for any inconvenience, loss, liability or damage resulting from any circumstance beyond its control, and any such circumstance also shall toll the Company's obligation to perform hereunder until such circumstance has passed.
3. Services to be Provided.
    - a. The Company shall provide a Basic Service to all Subscribers within the area of the Village reasonably serviceable by the Cable System installed.
    - b. The Company shall provide upon request and without charge, Basic Service to each governmental building, fire station, police station, or public school building located in an area served by the Cable System.
    - c. The Company also agrees to give access to the public school on the local access channel, provided it does not interfere with other programming.
    - d. No landlord shall demand or accept payment from Company for permitting Company to provide cable television service on or within said landlord's property or premises provided, however, that such landlord may be entitled to reasonable reimbursement for any direct expenses incurred by him in connection with the installation of cable television service.
    - e. No landlord shall interfere with the installation of cable television facilities upon his property or premises nor shall such landlord discriminate in rental charges, or otherwise, between tenants who receive or do not receive cable service. No landlord shall demand or accept payment from any tenant, in any form, for permitting cable television service on or within his property or premises.
  4. Rate and Regulation by Other Agencies.
    - a. The Ordinance granted shall be subject to and controlled by all of the provisions of the laws of the State of Illinois and of the United States federal and state regulations, now existing or hereafter enacted.
    - b. The Company shall comply with all federal and state guidelines pertaining to Equal Employment Opportunity (EEO) policies. The Company is an Equal Opportunity Employer.
  5. Theft of Services and Tampering.
    - a. No person whether or not a Subscriber to the Cable System, shall willfully, maliciously or otherwise damage or cause to be damaged

any wire, cable, conduit, apparatus, appurtenance or equipment of the Company operating a cable television system within the Village, or commit any act with intent to cause such damage, or to tap, tamper or otherwise connect any wire or device to a wire, cable, conduit, apparatus, appurtenance or equipment of said Company with the intent to obtain a signal or impulse from the Cable System without authorization from or compensation to the Company, or to obtain cable television or other communication service with intent to cheat or defraud the Company of any lawful charge to which it is entitled.

- b. Whoever shall violate any provision of the above section shall be guilty of a misdemeanor and shall be liable to a penalty of not less than **One Hundred Dollars (\$100.00)** for a first offense and not less than **Five Hundred Dollars (\$500.00)** for a second and every subsequent offense. The penalties provided in this section shall be enforced by appropriate proceedings instituted by the Village or the Company. The courts of Moultrie County, Illinois shall have jurisdiction to enforce this section.
- c. Persons receiving Cable Service may not alter, extend or otherwise tamper with the Company's facilities to serve more equipment than being contracted for.

### **Section X - Developer Requirements**

The Developer of any new subdivision within the franchised area is responsible for paying the Company for constructing cable into the subdivision. The Company will reimburse the Developer an amount agreed upon by both parties. The Company should be notified of the new subdivision by the Village and the Developer upon the approval by the Village for the subdivision or the annexation of the subdivision.

### **Section XI - Report Requirements**

In addition to the other reporting requirements set forth in this Ordinance, the Company shall, upon request, submit to the Village copies of reports submitted to the FCC which relate to the Cable System. The Village may on reasonable notice inspect the FCC public files and technical files maintained by the Company at its local office with respect to the Cable System.

### **Section XII - Assignment of Transfer**

The right, privilege and franchise given to the Company by this Ordinance shall not be assigned or transferred without the prior approval of such transfer by the Village. Such approval shall not be withheld unreasonably. For the purpose of this paragraph,

an "assignment" or a "transfer" shall not be deemed to include any (i) transfer to an entity which is affiliated with the Company through common control, ownership or otherwise, (ii) transfer of a portion of all of the control of the Company or any of its affiliates, (iii) restructuring of the Company or any of its affiliates, and (iv) security interest or collateral assignment of the Cable System or the Company's rights hereunder to secure repayment of indebtedness.

**Section XIII - Franchise Subject to Police Power**

The Company shall at all times during the term of this franchise be subject to all lawful exercise of the police power by the Village, which reserves the right to adopt from time to time such ordinance as may be necessary to the exercise of that police power as it may related to this franchise.

**Section XIV - Other Permits Required**

This franchise does not supersede any other provisions of any of the Village Ordinance or regulation which may require the Company to obtain other permits, licenses, etc., or relieve the Company from compliance with such ordinances. Specifically, the Company is not relieved from the requirements to obtain building permits, utility pole agreements, etc.

**Section XV - Modification of Ordinance**

This Ordinance contains the entire agreement between the Village and the Company, and may be amended or modified as agreed upon by the Village and the Company.

**Section XVI - Franchise Violations and Enforcement**

1. If the Company violates any provision of this Ordinance, the Village:
  - a. Shall comply with subsection 2 hereafter; and
  - b. If such hearing and procedures set forth in subsection 2 hereof have not resolved the dispute, the Village may proceed in any appropriate court of law or administrative agency to compel compliance with the provisions of this Ordinance, to collect any sums due hereunder which have not been paid, or to terminate the franchise granted hereby. Except as expressly provided herein, the Company shall not otherwise be liable to the Village. In no event shall the Company be liable for any consequential damages.
2. If the Village believes that the Company has violated any provision of this Ordinance, it shall hold a hearing and take the actions as set forth hereafter.

The Village shall notify the Company in writing, with a certified letter of the alleged violations and of the Village's proposed remedy; the Company shall have **forty-five (45) days** after its actual receipt of such notice to cure such violations.

If the Company disputes the existence of the violation or the proposed remedy, or if such default is not cured within the **forty-five (45) days** after the Company's actual receipt of such default notice, then the matter shall be referred to a public hearing to be held after public notice at least **ten (10) days** in advance, and written notice of the hearing and the alleged violations to the Company not less than **ten (10) days** prior to the date of the hearing.

At the hearing, the Village shall publicly list all the alleged violations, and shall give the Company and all other interested parties an opportunity to be heard as to the alleged violation.

Within a reasonable time after the hearing, the Village shall determine whether the Company has violated this Ordinance and the remedy for the violation, and shall issue written findings and conclusions with respect thereto, and the Company shall be given a reasonable opportunity of not less than **forty-five (45) days** after the issuance of said findings and conclusions to remedy the matter or comply with this Ordinance.

3. Prevention or delay of any performance under this franchise due to circumstances beyond the reasonable control of Company, unforeseen circumstances, or acts of God, shall not be deemed noncompliance with or a violation of this franchise.

### **Section XVII - Severability**

The provisions of this Ordinance shall be severable, and if any provision hereof shall be held to be unconstitutional, invalid or illegal, by any court of competent jurisdiction, such decision shall not affect the validity of any of the remaining provisions of this Ordinance. It is hereby declared as legislative intent that this Ordinance would have been enacted had such unconstitutional, invalid or illegal provisions not been included herein, and that any court of competent jurisdiction should reform such unconstitutional, invalid or illegal provision to the minimum extent necessary to make such constitutional, valid and legal.

### **Section XVIII - Final Termination of the Ordinance**

Upon termination of the Ordinance, the Company shall remove its cables, wires and equipment from all poles of the Village and all space reserved for the Village's use on poles belonging to others, within a **six (6) month** period. If not so removed, the Village shall have the right to remove or have its contractor remove them at the risk, cost and expense of the Company and without any liability therefore.

**(Ord. No. 547; 09-14-95)**