ORDINANCE NO. 98-18

CABLE TELEVISION FRANCHISE ORDINANCE OF THE VILLAGE OF INDIAN HEAD PARK

WHEREAS, the Village of Indian Head Park is authorized under Illinois law to grant one or more non-exclusive franchises for the right and privilege to erect, construct, operate and maintain a cable television system within the Village of Indian Head Park; and

WHEREAS, the Village has determined that it is in the best interest of the Village and its residents that certain terms and conditions be imposed in connection with the granting of any such cable television franchise.

NOW, THEREFORE, BE IT ORDAINED, by the President and Board of Trustees of the Village of Indian Head Park, Cook County, Illinois, as follows:

Sec. 1. Short title.

This chapter shall be known and may be cited as the "Indian Head Park Cable Television Franchise Ordinance," hereinafter "Franchise" or "Ordinance."

Sec. 2. Definitions.

For the purpose of this chapter the following terms, phrases, words and their derivations shall have the meaning given herein:

"Additional Service" means any subscriber service provided by the grantee for which a special charge is made based on program or service content, time, or spectrum space usage.

"Applicant" means any entity applying for a cable television franchise pursuant to this Ordinance.

"Basic Service" means all subscriber services provided by the Grantee in one (1) or more service tiers, which includes the delivery of local broadcast stations, and public, educational and government access channels. Basic Service does not include optional program and satellite service tiers, a la carte

services, per channel, per program, Additional Service, or auxiliary services for which a separate charge is made. However, Grantee may include other satellite signals on the Basic Service tier.

"Board" means the Indian Head Park President and Board of Trustees.

"Cable System" or "System" or "Cable Television System" means a system of antennas, cables, wires, lines, towers, wave guides, or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing, audio, video, and other forms of electronic, electrical or optical signals, which includes cable television service and which is located in the Village. The definition shall not include any such facility that serves or will serve only subscribers without using Village rights-of-way.

"Class IV Channel" means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system.

"Complaint" means any complaint regarding service, picture quality, charges or other matter relating to the cable system made by a customer to the Grantee, whether in written or oral form.

"Control" or "Controlling Interest" shall mean actual working control or ownership of a System in whatever manner exercised. A rebuttable presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or indirectly, by any Person or Entity (except underwriters during the period in which they are offering securities to the public) of ten percent (10%) or more of a Cable System or the Franchise under which the System is operated. A change in the control or controlling interest of an Entity which has control or a controlling interest in a Grantee shall constitute a change in the control or controlling interest of the System under the same criteria. Control or controlling interest as used herein may be held simultaneously by more than one Person or Entity.

"Converter" means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by an appropriate channel selector also permits a subscriber to view more than twelve (12) channels delivered by the system at designated converter dial locations.

"FCC" means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

"Grantee" means a person or entity to whom or which a Franchise under this chapter is granted by the Village, along with the lawful successors or assigns of such person or entity.

"Gross Revenues" means all revenue collected directly or indirectly by the Grantee, arising from or attributable to the provision of cable service by the Grantee within the Village including, but not limited to: periodic fees charged Subscribers for any basic, optional, premium, per-channel or per-program service; installation and reconnection fees; leased channel fees; converter rentals and/or sales; program guide revenues; studio or production equipment rentals; late or administrative fees; upgrade, downgrade or other change-in-service fees; advertising revenues; revenues from home shopping and bank-at-home channels; revenues from the sale, exchange, use or cable cast of any programming developed on the system for community or institutional use; provided, however, that this shall not include any taxes on services furnished by the Grantee herein imposed directly upon any subscriber or user by the state, local or other governmental unit and collected by the Grantee on behalf of the governmental unit.

"Initial Service Area" means all areas in the Village having a density of at least twenty (20) dwelling units per street mile.

"Installation" means the connection of the system from feeder cable to subscribers' terminals.

"May" is permissive.

"Monitoring" means observing a communications signal, or the absence of a signal, where the observer is neither the subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever; provided monitoring shall not include system-wide, non-individually addressed sweeps of the system for purposes of verifying system integrity, controlling return paths transmissions, or billing for pay services.

"Normal Business Hours" as applied to the Grantee shall mean those hours during which similar businesses in the Village are open to serve customers. In all cases, Normal Business Hours must include some evening hours at least one night per week, and some weekend hours.

"Normal Operating Conditions" shall mean those service conditions that are within the control of the Grantee. Those conditions that are not within the control of the Grantee include, but are not limited to: natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

"Shall" is mandatory.

"Service Interruption" is the loss of either picture or sound or both for a single or multiple subscriber(s).

"Street" means the surface of and all rights-of-way and the space above and below any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive or easement now or hereafter held by the Village for the purpose of public travel and shall include other easements or rights-of-way as shall be now held or hereafter held by the Village which shall, within their proper use and meaning entitle the Grantee to the use thereof for the purposes of installing poles, wires, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a cable television system.

"Subscriber" shall mean any person, firm, Grantee, corporation, or association lawfully receiving any service provided by a Grantee pursuant to this chapter.

"User" means a party utilizing a cable television system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt thereof in a subscriber capacity.

"Village" means the Village of Indian Head Park, Illinois.

Sec. 3. Rights and privileges of Grantee.

Any franchise granted by the Village pursuant to Illinois Statutes (Chapter 24, Article 11, Division 42, para. 11-42-11) shall grant to the Grantee the nonexclusive right and privilege to erect, construct, operate and maintain in, upon, along, across, above, over and under the streets now in existence and as may be created or established during its terms any poles, wires, cable, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation of a Cable System. Any franchise granted hereunder shall have the same or similar terms and conditions, including, but not limited to: 1) Franchise fees 2) Length of Franchise Term; and 3) Services, facilities, equipment and support for public, educational and governmental ("PEG") access, including channels used for PEG purposes.

Sec. 4. Agreement and incorporation of application by reference.

(a) Upon adoption of any Franchise Agreement and execution thereof by the Grantee, the Grantee agrees to be bound by all the terms and conditions contained in this Ordinance, without formal execution by the Grantee.

(b) The Grantee also agrees to provide all services specifically set forth in its application and to provide cable television service within the confines of the Village; and by its acceptance of the franchise, the Grantee specifically grants and agrees that its application is thereby incorporated by reference and made a part of the franchise. In the event of a conflict between such proposals and the provisions of this chapter, the provisions of this Chapter shall control.

Sec. 5. Franchise territory.

Any franchise is for the current territorial limits of the Village and for any area henceforth added thereto during the term of the franchise.

Sec. 6. Duration and acceptance of franchise by Grantee.

Any franchise and the rights, privileges and authority hereby authorized shall take effect and be in force from and after the signing of a Franchise Agreement by the Village, as provided by law, and shall continue in force and effect for a term of no longer than fifteen (15) years, provided that within thirty (30) days after the date of Village approval of the franchise the Grantee shall file with the Village its unconditional acceptance of the franchise and promise to comply with and abide by all its provisions, terms and conditions. Such acceptance and promise shall be in writing duly executed and sworn to, by, or on behalf of the Grantee before a notary public or other officer authorized by law to administer oaths. Such franchise shall be non-exclusive and revokable.

Sec. 7. Franchise renewal.

Pursuant to 47 U.S.C. §546, the following procedure shall apply:

(a) The Village may, on its own initiative, during the six-month period which begins with the thirty-sixth (36th) month before the Franchise expiration, commence a proceeding which affords the public in the Village appropriate notice and participation for the purpose of (1) identifying the future cable-related community needs and interests and (2) reviewing the performance of the Grantee under the Franchise. If the Grantee submits, during such six-month period, a written renewal notice requesting the commencement of such proceeding, the Village shall commence such proceeding not later than six (6) months after the date such notice is submitted.

(b) Upon completion of the proceeding under paragraph (a) above, the Grantee may, on its own initiative or at the request of the Village, submit a proposal for renewal. The Village may establish a date by which such proposal shall be submitted.

(c) Upon submittal by the Grantee of a proposal to the Village for the renewal of the Franchise, the Village shall provide prompt, public notice of such proposal for renewal of the Franchise and, during the four month period which begins on the date of submission of the Grantee's proposal, renew the franchise or issue a preliminary assessment whether or not the Franchise should or should not be renewed, and at the request of the Grantee or on its own initiative, commence within a reasonable time an administrative proceeding, after providing prompt, public notice of such proceeding.

(d) The Village shall consider in any administrative proceeding whether: (1) the Grantee has substantially complied with material terms of the existing Franchise and with applicable law; (2) the quality of the Grantee's service, including signal quality, response to consumer complaints and billing practices, but without regard to the mix or quality of cable services or other services provided over the System, has been reasonable in the light of community needs; (3) the Grantee has the financial, legal and technical ability to provide the services, facilities and equipment as set forth in the Grantee's proposal; and (4) the Grantee's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the costs of meeting such needs and interests.

(e) In any proceeding under paragraph (d), the Grantee shall be afforded adequate notice and the Grantee and the Village, or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to issues raised in the proceedings under paragraph (a) above), to require the production of evidence and to question witnesses. A transcript shall be made of any such proceeding.

(f) At the completion of a proceeding under paragraph (d), the Village shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding and transmit a copy of such decision to the Grantee. Such decision shall state the reasons therefor.

(g) Any denial of a proposal for renewal that has been submitted in compliance with the procedures set forth above, shall be based on one or more adverse findings made with respect to the factors described at (1) through (4) of paragraph (d) pursuant to the record of the proceeding under said paragraph. The Village may not base a denial of renewal on a failure to substantially comply with the material terms of the Franchise or on events considered under paragraph (d)(2) unless the Village has provided the Grantee with notice and the opportunity to cure or in any case in which it is documented that the Village has waived its right to object.

(h) The Grantee may appeal to a Cook County Circuit court having jurisdiction over such matters any final decision or failure of the Village to act in accordance with the procedural requirements of this Section. The court shall grant appropriate relief if the court finds that (1) any action of the Village, other than harmless error, is not in compliance with the procedural requirements of this

Section; or (2) in the event of a final decision of the Village denying the renewal proposal, the Grantee has demonstrated that the adverse finding of the Village with respect to each of the factors described in paragraph (d)(1) through (4) on which the denial is based is not supported by a preponderance of the evidence, based on the record of the administrative proceeding.

Sec. 7a. Franchise renewal in the event of change in federal law.

(a) To the extent applicable, current federal procedures and standards pursuant to 47 U.S.C. §546 shall govern the renewal of any franchise awarded under this Ordinance.

(b) In the event that any or all of the applicable provisions of federal law are repealed or otherwise modified, and to the full extent consistent with such applicable provisions then in effect, the following section(s) shall apply:

(1) At least twenty-four (24) months prior to the expiration of the franchise, the Grantee shall inform the Village in writing of its intent to seek renewal of the franchise.

(2) The Village shall within three months after the Village receives notice from Grantee of its intent to seek renewal of its franchise, commence a proceeding which affords the public in the Village appropriate notice and participation for the purpose of (1) identifying the future cable-related community needs and interests; and (2) reviewing the performance of the Grantee under the franchise. The Village shall complete these proceeding within six months of its commencement.

(3) Upon completion of the proceeding under subparagraph (2) above, the Grantee may, on its own initiative or at the request of the Village, submit a proposal for renewal. The Village may establish a reasonable date by which such proposal shall be submitted, but in no event shall such time be less than three months.

(4) The Grantee shall submit a proposal for renewal which demonstrates:

a. That it has been and continues to be in substantial compliance with the material terms, conditions, and limitations of this Ordinance and its franchise;

b. That the quality of Grantee's service, including signal quality, response to consumer complaints and billing practices, but without regards to the mix or quality of cable services or other services provided over the cable system, has been reasonable in light of community needs, balanced against the cost of meeting these needs.

c. That it has the legal, technical, financial, and other qualifications to provide the services, facilities, and equipment set forth in its proposal; and

d. That its proposal for services, facilities and equipment are reasonable to meet the demonstrated needs of the community balanced against the cost of meeting these needs as may be reasonably ascertained by the Village pursuant to the public process set forth in subparagraph (a) above.

(5) The Village shall within a reasonable time proceed to determine whether the Grantee has satisfactorily performed its obligations under the franchise and whether or not Grantee's proposal is reasonable to meet the future cable-related community needs and interest, taking into account the cost of meeting such needs. To determine satisfactory performance, the Village shall consider the performance of the system and the quality of the operator's service, including signal quality, response to customer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system. For such purposes, the Village shall be able to also consider the Grantee's reports made to the Village and to the FCC, and the Village may require the Grantee to make available specified records, documents, and information for this purpose.

(6) If the Village finds the Grantee's performance satisfactory, that Grantee has technical, legal, and financial ability to provide the services, facilities and equipment set forth in its proposal and that Grantee's renewal proposal meets the future cable-related needs of the Village, as ascertained by public process set forth above, balanced against the costs of meeting these needs and interests, a new franchise shall be granted pursuant to this Ordinance as amended for a period to be determined by the Village.

(7) If the Grantee is determined by the Village to have performed unsatisfactorily or that its proposal is not sufficient to meet the future cable related needs and interests of the community then the Village shall issue a preliminary assessment that the franchise should not be renewed, detailing in writing the basis for non-renewal. At the request of the operator or on its own initiative, the Village shall commence an administrative proceeding, after providing prompt public notice of such proceeding. Grantee shall be afforded adequate notice of the hearing and Grantee shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to the issues raised by the Village as the basis for non-renewal) to require the production of evidence, and to question witnesses. A transcript shall be made of any such proceeding.

(8) At the completion of a proceeding under this subsection the Village shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding, and transmit a copy of such decision to the cable operator. Such decision shall state the reasons therefor.

(9) A Grantee whose proposal for renewal has been denied by a final decision of the Village, or has been adversely affected by a failure of the Village to act in accordance with the procedural requirements of this section, may appeal such final decision or failure pursuant to a court of competent jurisdiction.

(10) The court shall grant appropriate relief if the court finds that:

(A) any action of the Village, other than harmless error, is not in compliance with the procedural requirements of this section; or

(B) in the event of a final decision of the Village denying the renewal proposal, Grantee has demonstrated that the adverse finding of the Village with respect to each of the factors described in subparagraphs (b) (4) (a) through (d) of this section on which the denial is based is not supported by a preponderance of the evidence, based on the record of the proceeding conducted under sub-section (b) (7).

(11) Any decision of the Village on a proposal for renewal shall not be considered final unless all administrative review by the State has occurred or the opportunity therefor has lapsed.

(12) Notwithstanding the provisions of this section Grantee may submit a proposal for the renewal of a franchise, and the Village may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time. The denial of a renewal pursuant to this subsection (12) shall not affect action on a renewal proposal that is submitted in accordance with the renewal provisions set forth in subsections (b)(1) - (11).

Sec. 8. Police powers.

(a) In accepting a franchise, the Grantee acknowledges that its rights thereunder are subject to the police power of the Village to adopt and enforce general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the Village pursuant to such power.

(b) Any conflict between the provisions of a franchise and any other present or future lawful exercise of the Village's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction, or applies exclusively to the Grantee or cable television systems which contains provisions inconsistent with this chapter, shall prevail only if upon such exercise the Village finds a danger to health, safety, property or the general welfare or if such exercise is mandated by law.

Sec. 9. Cable Television Franchise required.

No cable television system shall be allowed to operate or to occupy or use the streets (i.e., rights-of-way) for system installation and maintenance purposes within the Village without a franchise issued by the Village.

Sec. 10. Use of Grantee facilities.

The Village and the Grantee shall work together to agree to terms and conditions which allow the Village to install and maintain upon the poles of the Grantee, any wire or pole fixtures that do not unreasonably interfere with the cable television system operations of the Grantee. The Village shall indemnify and hold harmless the Grantee from any claim that might arise due to or as a result of the Village's use.

Sec. 11. Initial Franchise Costs.

Costs to be borne by a Grantee shall include any requirements or charges incidental to the review of application whether or not a franchise is awarded, the awarding or enforcing of its initial franchise, but shall not be limited to: reasonable administrative, engineering, legal and consulting expenses, all costs of publications of notices prior to any public meeting provided for pursuant to this ordinance, and any costs not covered by application fees incurred by the Village in its study, preparation of proposal documents, evaluation of all applications, and examinations of the applicant's qualifications. An estimate of such charges shall be paid initially with the application fee.

Sec. 12. Notices.

All notices from the Grantee to the Village pursuant to any franchise shall be sent to the Village Manager's Office, with a copy to the President of the Board of Trustees. The Grantee shall maintain with the Village, throughout the term of the franchise, an address for service of notices by mail. The Grantee shall maintain a central office in the greater Chicago area to address any issues relating to operating under this cable television ordinance.

Sec. 13. Letter of credit/security deposit.

(a) Within fifteen (15) days after the award of an initial franchise, the Grantee shall deposit with the Village either an irrevocable letter of credit from a financial institution or a security deposit in an amount of up to one hundred thousand dollars ($100,000.00) with the amount and form to be established by the Village, and specified in the Franchise Agreement. The form and content of such

letter of credit or security deposit shall be approved by the Village Attorney. These instruments shall be used to ensure the faithful performance of the Grantee of all provisions of this ordinance, and to ensure compliance with all orders, permits and directions of any agency, commission, board, department, division, or office of the Village having jurisdiction over its acts or defaults under this ordinance, and to ensure the payment by the Grantee of any claims, liens, and taxes due the Village which arise by reason of the construction, operation or maintenance of the system.

(b) Within fifteen (15) days after the award of a renewal franchise, the Grantee shall deposit with the Village either (i) an irrevocable letter of credit from a financial institution or a security deposit of Thirty Thousand dollars ($30,000.00) or (ii) a surety bond in the amount of $150,000.00 with the amount and form to be established by the Village. The form and content of such letter of credit, surety bond or security deposit shall be approved by the Village Attorney. These instruments shall be used to ensure the faithful performance of the Grantee of all provisions of this ordinance, and to ensure compliance with all orders, permits and directions of any agency, commission, board, department, division, or office of the Village having jurisdiction over its acts or defaults under this ordinance, and to ensure the payment by the Grantee of any claims, liens, and taxes due the Village which arise by reason of the construction, operation or maintenance of the system.

(c) The letter of credit, surety bond or security deposit shall be maintained at the amount established in Section 13(a) and (b) for the entire term of the franchise. If amounts have to be withdrawn pursuant to this chapter, the Grantee shall promptly restore the letter of credit or security deposit to the full amount

(d) If the Grantee fails to pay to the Village any compensation within the time fixed herein; or fails to pay to the Village any taxes due and unpaid; or fails to repay the Village, any damages, costs or expenses which the Village is compelled to pay by reason of any act or default of the Grantee in connection with the franchise, or fails, any provision of the franchise which the Village reasonably determines can be remedied by demand on the letter of credit, surety bond, or security deposit, the Village may demand payment of the amount thereof, with interest and any penalties, from the letter of credit or security deposit in accordance with the procedures set forth in this Section. Grantee will be provided 30 days by the Village and an opportunity to cure during such period. Grantee has the right to appeal the Village's determination to a court of competent jurisdiction.

(e) The rights reserved to the Village with respect to the letter of credit are in addition to all other rights of the Village, whether reserved by the franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the Village may have.

(f) The letter of credit shall contain the following endorsement: "It is hereby understood and agreed that this letter of credit or security deposit may not be canceled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the Village, by registered mail, of a written notice of such intention to cancel or not to renew."

(g) Upon receipt of the thirty-day notice, this shall be construed as a default granting the Village the right to demand payment from the bank for either the security deposit or letter of credit. Failure to renew the letter of credit or to post a substitute within ten (10) days of the notice shall be deemed a default.

(h) The Village at any time during the term of this Ordinance, may waive Grantee's requirement to maintain a letter of credit or security deposit.

Sec. 14. Construction bond.

(a) Within thirty (30) days after the award of an initial franchise, the Grantee shall file with the Village a construction bond in the amount of not less than fifty percent (50%) of the costs to install the system contained in the application in favor of the Village. This bond shall be maintained throughout the construction period and until such time as determined by the Village, unless specified in the Franchise Agreement. The bonding company shall be approved by the Village prior to the issuance of the bond.

(b) Within thirty (30) days after the award of a renewal franchise, the Grantee shall file with the Village a construction bond in the amount of one hundred thousand dollars ($100,000). This bond shall be maintained throughout the construction period and until such time as determined by the Village, unless specified in the Franchise Agreement. The bonding company shall be approved by the Village prior to the issuance of the bond.

(c) If the Grantee fails to comply with any law, ordinance or resolution as it relates to the conditions relative to the construction, operation or maintenance of the system, including the Franchise Agreement that is incorporated herein by reference, 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 Grantee, plus a reasonable allowance for attorney's fees, including the Village's legal staff, and costs, up to the full amount of the bond in accordance with the procedures set forth in Section 13(e). This section shall be an additional remedy for any and all violations outlined in Section 13.

(d) The Village may, upon completion of construction of the service area or the upgrade, waive or reduce the requirement of the Grantee to maintain the bond. However, the Village may require a performance bond to be posted by the Grantee for any construction subsequent to the completion of the initial service areas, in a reasonable amount and upon such terms as determined by the Village.

(e) The bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be canceled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the Village, by registered mail, a written notice of such intent to cancel and not to renew."

(f) Upon receipt of a thirty-day notice, this shall be construed as default granting the Village the right to demand payment on the bond.

(g) The Village, at any time during the term of this Ordinance, may waive Grantee's requirement to maintain a performance bond. The waiver of the requirement can be initiated by the Village or the Grantee.

Sec. 15. Liability and insurance.

(a) The Grantee shall maintain and by its acceptance of the franchise specifically agrees that it will maintain throughout the term of the franchise, liability insurance insuring the Village and the Grantee in the minimum amount of:

(1) One million dollars ($1,000,000.00) for property damage to any one person;

(2) Three million dollars ($3,000,000.00) for property damage from any one accident;

(3) One million dollars ($1,000,000.00) for personal injury to any one person;

(4) Three million dollars ($3,000,000.00) for personal injury from any one accident;

(5) An additional two million dollars ($2,000,000.00) for all other types of liability ("umbrella" policy); and

(6) Grantee shall also carry such insurance as it deems necessary to protect it from all claims under the Workmen's Compensation Law that may be applicable to the Grantee.

(b) The certificate of insurance obtained by the Grantee in compliance with this section must be approved by the Village Attorney and such insurance policy certificate of insurance, along with written evidence of payment of required premiums, shall be filed and maintained with the Village during the term of the franchise. The Grantee shall immediately advise the Village Attorney of any litigation that may develop that would or is likely to affect this insurance.

(c) Neither the provisions of this section nor any damages recovered by the Village thereunder, shall be construed to limit the recovery of the Village or the liability of the Grantee under any franchise issued hereunder.

(d) Such insurance policies provided for herein shall name the Village, its officers, boards, commissions, agents and employees as additional insured, and shall be primary to any insurance carried by the Village, and shall contain the following endorsement: "It is hereby understood and agreed that this insurance policy may not be canceled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the Village, by registered mail, of written notice of such intention to cancel or not to renew."

Sec. 16. Indemnification.

(a) Disclaimer of Liability. The Village shall not at any time be liable for injury or damage occurring to any Person or property from any cause whatsoever arising out of the actions of the Grantee in the construction, maintenance, repair, use, operation, condition or dismantling of the Grantee's Cable Television System or due to the act or omission of any Person or entity.

(b) Indemnification. The Grantee shall, at its sole cost and expense, indemnify and hold harmless the Village, all associated, affiliated, allied and subsidiary entities of the Village now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys and contractors (hereinafter referred to as "Indemnitees") from and against:

(1) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or asserted against the Indemnitees by reason of any act or omission of the

Grantee, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any Person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any Person, firm or corporation, which may arise out of or be in any way connected with the construction, installation, operation, maintenance, use or condition of the Cable Television System caused by Grantee, its subcontractors or agents or the Grantee's failure to comply with any federal, state or local statute, ordinance or regulation.

(2) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which are imposed upon, incurred by or asserted against the Indemnitees by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to the Grantee, its contractors or subcontractors, for the installation, construction, operation or maintenance of the Cable Television System. Upon the written request of the Village such claim or lien shall be discharged or bonded within fifteen (15) days following such request.

(3) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or asserted against the Indemnitees by reason of any financing or securities offering by Grantee or its Affiliates for violations of the common law or any laws, statutes or regulations of the State of Illinois or of the United States, including those of the Federal Securities and Exchange Commission, whether by the Grantee or otherwise; excluding therefrom, however, claims which are solely based upon and arise solely out of information supplied by the Village to the Grantee in writing and included in the offering materials with the express written approval of the Village prior to the offering.

(c) Assumption of Risk. The Grantee undertakes and assumes for its officers, agents, contractors and subcontractors and employees all risk of dangerous conditions, if any, on or about any

village-owned or controlled property, including public rights-of-way and easements, and the Grantee hereby agrees to indemnify and hold harmless the Indemnitees against and from any claim asserted or liability imposed upon the Indemnitees for personal injury or property damage to any Person arising out of the installation, operation, maintenance or condition of the Cable Television System or the Grantee's failure to comply with any federal, state or local statute, ordinance or regulation.

(d) Defense of Indemnitees. In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the indemnities are indemnified hereunder, the Grantee shall, upon notice from any of the Indemnitees, at the Grantee's sole cost and expense, resist and defend the same, provided further, however, that the Grantee shall not admit liability in any such matter on behalf of the Indemnitees without the written consent of the Village Attorney or the Village Attorney's designee. Such decision shall be made by the Village Attorney.

(e) Notice. The Village shall give the Grantee prompt notice of the making of any written claim or the commencement of any action, suit or other proceeding covered by the provisions of this section.

(f) Nonwaiver of Statutory Limits. Nothing in this agreement is intended to express or imply a waiver by the Village of statutory provisions, privileges or immunities of any kind or nature as set forth in Illinois Statutes, including the limits of liability of the Village as exists presently or as may be increased from time to time by the Legislature.

(g) Right to Defend. The Village reserves the right to hire counsel and participate in the defense of the Indemnities with Grantee.

Sec. 17. Rights of individuals.

(a) The Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, income, gender, marital status, sexual preference or age. The Grantee shall comply at all times with all other applicable federal, state and local laws and regulations and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this chapter by reference.

(b) The Grantee shall strictly adhere to the equal employment opportunity requirements of the Federal Communications Commission and of state and local governments, and as amended from time to time.

(c) The Grantee shall, at all times, comply with the privacy requirements of state and federal law.

(d) Grantee is required to make all services available to all residential dwellings throughout the service area in accordance with the line extension policies of Section 20.

Sec. 18. Public notice.

Unless additional notice is required by applicable federal or Illinois law, minimum public notice of any public meeting relating to the franchise shall be by publication at least once in a local newspaper of general circulation at least ten (10) days prior to the meeting, by posting at the Village Municipal Center by announcement and such public notice shall be cablecast on at least one (1) channel of the Grantee's System between the hours of 7:00 p.m. and 9:00 p.m., for five (5) consecutive days prior to the meeting.

Sec. 19. Service availability and record request.

The Grantee shall provide cable television service throughout the entire franchise area pursuant to the provisions of the franchise and shall keep a record for at least three (3) years of all requests for service received by the Grantee. This record shall be available for public inspection at the local office of the Grantee during regular office hours. However, nothing in this section shall be construed to require the production of any records to the extent that such production would be in violation of the privacy provisions of the Cable Act of 1984 as amended.

Sec. 20. System construction.

(a) New construction timetable.

(1) Within two (2) years from the date of the award of an initial franchise, the Grantee must make cable television service available to every dwelling unit within the service area.

a. The Grantee must make cable television service available to at least twenty (20) percent of the dwelling units within the service area within six (6) months from the date of the award of the franchise.

b. The Grantee must make cable television service available to at least fifty (50) percent of the dwelling units within the service area within one (1) year from the date of the award of the franchise.

(2) The Grantee, in its application, may propose a timetable of construction which will make cable television service available in the service area sooner than the above minimum requirements, in which case the said schedule will be made part of the Franchise Agreement, and will be binding upon the Grantee.

(3) Any delay beyond the terms of this timetable, unless specifically approved by the Village, will be considered a violation of this chapter for which the provisions of either 38 or 45 shall apply, as determined by the Village.

(4) In special circumstances the Village may waive one hundred percent (100%) completion within the two (2) year time frame, provided substantial completion is accomplished within the allotted time frame, substantial completion to be not less than ninety-five (95) percent. Any approval of such requests is within the sole discretion of the Village.

(b) Line extensions:

(1) In areas of the franchise territory not included in the initial service areas, the Grantee shall be required to extend its system pursuant to the following requirements:

a. No customer shall be refused service arbitrarily. Grantee is hereby authorized to extend the Cable System as necessary within the Village. To expedite the process of extending the Cable System into a new sub-division, the Village will forward to the Grantee an approved engineering plan of each project. The Grantee shall commence the design and construction process upon receipt of the final engineering plan. Upon notification from the Village that the first home in the project has been approved for a building permit, the Grantee shall have a maximum of three (3) months to complete the construction/activation process within the applicable project phase. Extensions may be granted by the Village based on unforeseen weather or ground conditions.

b. The Grantee shall extend and make cable television service available to every dwelling unit in all unserved, developing areas having at least thirty (30) dwelling units planned per street mile, as measured from the existing system, and shall make every effort to extend its system simultaneously with the installation of utility lines, provided that it can enter into such joint trench agreements on reasonable terms and conditions.

c. The Grantee shall extend and make cable television service available to any isolated resident outside the initial service area requesting connection at the standard connection charge, if the connection to the isolated resident would require no more than a standard one hundred and twenty-five (125) foot drop line.

(2) Early extension. In areas not meeting the requirements for mandatory extension of service, the Grantee shall provide, upon the request of a potential subscriber desiring service, an estimate of the Grantee's costs required to extend service to the

subscriber. The Grantee shall then extend service upon request of the potential subscriber. The Grantee may require advance payment or assurance of payment satisfactory to the Grantee. In the event the area subsequently reaches the density required for mandatory extension, such payments shall be refunded to the subscriber.

(3) New development undergrounding. In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give the Grantee reasonable notice of such construction or development, and of the particular date on which open trenching will be available for the Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at the Grantee's expense. The Grantee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if the Grantee fails to install its conduit, pedestals and/or vaults, and laterals within ten (10) 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 ten (10) day period, the cost of new trenching is to be borne by the Grantee. Except for the notice from the developer or property owner of the particular date on which trenching will be available to the Grantee, notice provided to the Grantee by the Village of the opening of a trench shall also satisfy the requirement of reasonable notice if sent to the local general manager or system engineer of the Grantee.

(c) Special agreements. Nothing herein shall be construed to prevent the Grantee from serving areas not covered under this section upon agreement with developers, property owners, residents, or businesses.

(d) A Grantee, in its application, may propose a line extension policy that will result in serving more residents of the Village than as required above. If such approval is approved by the Village, the Grantee's policy will be incorporated into the Franchise Agreement and will be binding on the Grantee.

(e) Where access to property is denied by the property owner or where a cost is imposed to cross private property, Grantee shall have the option not to provide cable service. In such

circumstances, however, Grantee will endeavor in good faith to reach agreement with those requesting service in an effort to make extension of the Cable System economically feasible by a contribution in aid of construction by those requesting service.

(f) The violation of this section shall be considered a breach of the terms of this ordinance, for which the provisions of either Sections 38 or 47 shall apply, as determined by the Village.

Sec. 21. Construction and technical standards.

(a) Compliance with construction and technical standards. The Grantee shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements, and FCC technical standards. In addition, the Grantee shall provide the Village, upon request, a written report of the results of the Grantee's annual proof of performance tests conducted pursuant to Federal Communications Commission standards and requirements.

(b) Additional specifications:

(1) Construction, installation and maintenance of the cable television system shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

(2) The Grantee shall at all times comply with:

a. National Electrical Safety Code (National Bureau of Standards);

b. National Electrical Code (National Bureau of Fire Underwriters);

c. Bell System Code of Pole Line Construction; and

d. Applicable FCC or other federal, state and local regulations.

(3) In any event, the System shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the Grantee may have equipment located.

(4) Any antenna structure used in the system shall comply with construction, marking, and lighting of antenna structure, required by the United States Department of Transportation and any local ordinances.

(5) All working facilities and conditions used during construction, installation and maintenance of the cable television system shall comply with the standards of the Occupational Safety and Health Administration.

(6) Radio frequency (RF) leakage shall be checked at reception locations for emergency radio services to prove no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception in the normal flight patterns. FCC rules and regulations shall govern.

(7) The Grantee shall maintain equipment capable of providing standby power for headend, transportation and trunk amplifiers for a minimum of two (2) hours.

(8) In all areas of the Village where the cables, wires and other like facilities of all public utilities are placed underground, the Grantee shall place its cables, wires and other like facilities underground. When all public utilities relocate their facilities from pole to underground, the Grantee must concurrently do so.

Sec. 22. Use of streets.

(a) Interference with persons and improvements. The Grantee's system, poles, wires and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons or interfere with the rights or reasonable convenience of property owners who adjoin any of the streets and public ways, or interfere with any improvements the Village may deem proper to make, or unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, easements or public property.

(b) Restoration to prior condition. In case of any disturbance of pavement, sidewalk, landscaping, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner

approved by the Village, replace and restore all paving, sidewalk, driveway, landscaping or surface of any street or alley disturbed, in as good condition as before the work was commenced and in accordance with standards for such work set by the Village.

(c) Erection, removal and common uses of poles:

(1) No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the Village with regard to location, height, types, and any other pertinent aspect. However, no location of any pole or wire-holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the Village determines that the public convenience would be enhanced thereby.

(2) Where poles or other wire-holding structures already existing for use in serving the Village are available for use by the Grantee, but it does not make arrangements for such use, the Village may require the Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.

(d) Relocation of facilities. If at any time during the period of the franchise the Village shall elect to alter, or change the grade of any street, alley or other public ways, the Grantee, upon reasonable notice by the Village, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

(e) Cooperation with building movers. The Grantee shall, on the request of any person holding a building moving permit issued by the Village, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

(f) Tree trimming. The Grantee shall not remove any tree or trim any portion, either above, at or below ground level, of any tree within any public place without the prior written consent of the Village. The Grantee shall provide notice to any affected residents at the same time that the Grantee applies to the Village for consent to perform tree trimming. The Village shall have the right to do the trimming requested by the Grantee at the cost of the Grantee. Regardless of who performs the work requested by the Grantee, the Grantee shall be responsible, shall defend and hold Village harmless from any and all damages to any tree as a result of trimming, or to the property surrounding any tree, whether

such tree is trimmed or removed, except for any damage attributable to the Villages negligence or willful misconduct.

Sec. 23. Operational standards.

(a) The Grantee shall maintain all parts of the system in good working order throughout the entire franchise period.

(b) Upon the reasonable request for service by any person located within the franchise territory, barring any unforeseen weather or ground conditions, the Grantee shall, within thirty (30) days, furnish the requested service to such person within terms of the line extension policy. A request for service shall be unreasonable for the purpose of this subsection if no trunk line installation capable of servicing that person's block has been installed.

(c) The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use.

(d) The Grantee shall not allow its cable or other operations to interfere with television reception of subscribers or persons not served by the Grantee, nor shall the system interfere with, obstruct or hinder in any manner the operation of the various utilities serving the residents within the confines of the Village.

Sec. 24. Customer service standards.

(a) Nothing in this chapter shall be construed to prohibit the enforcement of any federal, state or local law or regulation concerning customer service or consumer protection that imposes customer service standards or consumer protection requirements that exceed the customer service standards set out in this chapter or that address matters not addressed in this chapter.

(b) The Grantee shall maintain a local or toll-free telephone access line which is available to its subscribers and shall have knowledgeable, qualified representatives available to respond to customer telephone inquiries twenty-four (24) hours per day, seven (7) days per week.

(c) Under normal operating conditions, telephone answer time, including wait time and the time required to transfer the call, shall not exceed thirty (30) seconds. This standard shall be met no less than ninety percent (90%) of the time as measured on a quarterly basis.

(d) Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the total time that the office is open for business.

(e) The Grantee shall maintain a central office for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, and similar matters. The office must be reachable by a local and/or toll-free telephone call to receive complaints regarding quality of service, equipment functions and similar matters. The Grantee will make good faith efforts to arrange for one or more payment locations in a central location where customers can pay bills or conduct other business activities.

(f) Customer service centers and bill payment locations will be open for walk-in customer transactions a minimum of eight (8) hours per day Monday through Friday, unless there is a need to modify those hours because of the location or customers served. The Grantee and Village by mutual consent shall establish supplemental hours on weekdays and weekends as fits the needs of the community.

(g) Under normal operating conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time, as measured on an annual basis.

(1) Standard installations will be performed within seven (7) business days after an order has been placed. A standard installation is one that is within one hundred twenty-five (125) feet of the existing system.

(2) Excluding those situations that are beyond its control, the Grantee will respond to any service interruption promptly and in no event later than twenty-four (24) hours from the time of initial notification. All other regular service requests will be responded to within thirty-six (36) hours during the normal work week for that system. The appointment window alternatives for installations, service calls and other installation activities will be : "morning" or "afternoon"; not to exceed a four-hour "window" during normal business hours for the system, or at a time that is mutually acceptable. The Grantee shall schedule supplemental hours during which appointments can be scheduled based on the needs of the community. If at any time an installer or technician is running late, an attempt to contact the customer will be made and the appointment rescheduled as necessary at a time that is convenient to the customer.

(h) Subscriber Credit for Outages. Upon service interruption of a subscriber's cable service, the following shall apply:

(1) For Service Interruptions of more than four (4) hours and up to four (4) days, the Grantee shall provide, at the subscriber's request, a credit of one-thirtieth (1/30) of one month's fees for affected Services for each 24-hour period service is interrupted for an accumulated four (4) or more hours for any subscriber, with the exception of subscribers disconnected because of non-payment or excessive signal leakage.

(2) For interruptions of four (4) days or more in one month, the Grantee shall provide, at the subscriber's request, a full month's credit for affected services for all affected subscribers.

(i) The Grantee shall provide written information for each of the following areas at the time of installation and at any future time upon the request of the customer:

(1) Product and services offered

(2) Prices and service options

(3) Installation and service policies

(4) How to use the cable television services

(5) Customer service standards and credit for service outage policy as contained herein.

(j) Bills will be clear, concise and understandable, with all charges for cable services itemized.

(k) A Grantee may not impose a late, administrative or other fee on a customer for non-payment of a bill until 30 days have elapsed after the end of the billing cycle which is the subject of the unpaid bill.

(l) A Grantee may not disconnect a Customer for non-payment of disputed bills until such a time as the dispute has been resolved in accordance with the Grantee's customer service policies.

(m) Credits will be issued promptly, but no later than the customer's next billing cycle following the resolution of the request and the return of the equipment by the Grantee if service has been terminated.

(n) The Grantee shall notify the Village and customers a minimum of thirty (30) days in advance of any rate or channel change.

(o) The Grantee shall maintain and operate its network in accordance with the rules and regulations incorporated herein or as may be promulgated by the Federal Communications Commission, the United States Congress, or applicable laws of the State of Illinois.

(p) The Grantee shall continue, through the term of the franchise, to maintain the technical standards and quality of service set forth in this ordinance. Should the Village find, by resolution, that the Grantee has failed to maintain these technical standards and quality of service, and should it, by resolution, specifically enumerate improvements to be made, the Grantee shall make such improvements. Failure to make such improvements within three (3) months of such resolution will constitute a breach of a condition for which penalties contained in Section 45 are applicable.

(q) The Grantee shall keep a monthly service log which indicates the nature of each service complaint received in the last twenty-four (24) months, the date and time each complaint was received, the disposition of each complaint, and the time and date thereof. This log shall be made available for periodic inspection by the Village.

(r) The Grantee shall provide a copy of the Customer Service Standards included in this section to every subscriber via a bill insert at least once every calendar year. The Grantee shall also provide a copy of these Customer Service Standards to every new customer within thirty (30) days of connection.

Sec. 25. Continuity of service mandatory.

(a) It shall be the right of all subscribers to continue receiving service as long as their financial and other obligations to the Grantee are honored. If the Grantee elects to over build, rebuild, modify or sell the system, or the Village gives notice of intent to terminate or fails to renew the franchise, the Grantee shall act so as to ensure that all subscribers receive continuous, uninterrupted

service regardless of the circumstances for a period not to exceed twelve months after the Franchise Agreement has terminated.

(b) If there is a change of franchise, or if a new operator acquires the system, the Grantee shall cooperate with the Village, new Grantee or operator in maintaining continuity of service to all subscribers. During such period, the Grantee shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for its services until it no longer operates the system.

(c) If the Grantee fails to operate the system for seven (7) consecutive days without prior approval of the Village or without just cause, the Village may, at its option, operate the system or designate an operator until such time as the Grantee restores service under conditions acceptable to the Village or a permanent operator is selected. If the Village is required to fulfill this obligation for the Grantee, the Village shall be entitled to all revenues for any period during which it operates the system and the Grantee shall reimburse the Village for all reasonable costs or damages in excess of revenues from the system received by the Village that are the result of the Grantee's failure to perform.

Sec. 26. Complaint procedure.

(a) The Village Manager or chief elected official or his designee is designated as having primary responsibility for the continuing administration of the franchise and for the implementation of complaint procedures.

(b) As subscribers are connected or reconnected to the system, the Grantee shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed.

(c) When there have been similar complaints made, or where there exists other evidence, which, in the judgment of the Village, in consultation with the Grantee, casts doubt on the reliability or quality of cable service, the Village shall have the right and authority to require the Grantee to test, analyze and report on the performance of the system. The Grantee shall fully cooperate with the Village in performing such testing and shall prepare results and submit a report within thirty (30) days after notice. Such report shall include the following information:

(1) The nature of the complaint or problem that precipitated the special tests;

(2) The system component(s) tested;

(3) The equipment used and procedures employed in testing;

(4) The method, if any, in which such complaint or problem was resolved;

(5) Any other information pertinent to the tests and analysis which may be required.

(d) The Village may require that tests be supervised, at the Village's expense, by an independent professional engineer or equivalent of the Village's choice. The engineer shall sign all records of special tests and forward to the Village such records with a report interpreting the results of the tests and recommending actions to be taken. If tests show that 15% of the System's tests do not meet FCC technical standards, Grantee shall reimburse the Village for its expenses.

(e) The Village's rights under this section shall be limited to requiring tests, analysis and reports covering specific subjects and characteristics based on complaints or other evidence when and under such circumstances as the Village has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard cable service.

Sec. 27. Grantee rules and regulations.

The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under the franchise, and to assure uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations.

Sec. 28. Franchise fee.

(a) A Grantee shall pay to the Village a franchise fee in the amount designated in the Franchise Agreement. Such franchise fee shall be five percent (5%) of the Grantee's gross revenues, or such greater amount as allowed by law or such lesser amount as may be designated by the Village.

(b) The franchise fee payment shall be in addition to any other tax or payment owed to the Village by the Grantee and shall not be construed as payment in lieu of municipal property taxes or other state, county or local taxes, unless federal state, or local law so requires.

(c) The franchise fee and any other costs or penalties assessed shall be payable quarterly on a calendar year basis to the Village within thirty (30) days of the end of each quarter. The Grantee shall also file a complete and accurate verified statement of all gross receipts as previously defined within thirty (30) days after the end of the quarter.

(d) The Village shall have the right to inspect the Grantee's income records and the right to audit and to recompute any amounts determined to be payable under this chapter; provided, however, that such audit shall take place within sixty (60) months following the close of each of the Grantee's fiscal years. Any additional amount due the Village as a result of an audit shall be paid within thirty (30) days following written notice to the Grantee by the Village, which notice shall include a copy of the audit report.

(e) If any franchise payment or recomputed amount, cost or penalty, is not made on or before the applicable dates heretofore specified, interest shall be charged daily from such date at an annual rate of twelve percent (12%). The Grantee shall reimburse the Village for any additional expenses and costs incurred by the Village by reason of the delinquent payment(s).

Sec. 29. Transfer of ownership or control.

(a) A franchise shall not be assigned or transferred, pass to or vest in any person without the prior written consent of the Village. For the purposes of this section a trust, mortgage or other hypothecation in whole or in part to secure an indebtedness, shall not be considered a sale, transfer or assignment for which consent is required. In addition, the Grantee may transfer or assign the franchise to an affiliate or parent of the Grantee provided such assign does not relieve Grantee of its liabilities and obligations and such affiliate or parent may transfer or assign the franchise back to the Grantee without such consent, providing that such assignment is without any release of liability and obligations of the Grantee. Any proposed assignee must show legal, technical and financial responsibility as determined by the Village and must agree to comply with all provisions of the franchise. The Village shall have one hundred and twenty (120) days to act upon any request for approval of a sale or transfer submitted in writing and Grantee must accompany such request with such information as is reasonably required by FCC regulations and the Village. The Village shall be deemed to have consented to a proposed transfer or assignment if its refusal to consent is not communicated in writing to the Grantee within one hundred and twenty (120) days following receipt of written notice and receipt of all necessary information as to the effect of the proposed transfer or assignment upon the public, unless the requesting party and the Village agree to an extension of time. The Village shall not unreasonably withhold consent to a proposed transfer.

(b) The Grantee shall promptly notify the Village of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the Grantee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of ten percent (10%) of the voting shares of the Grantee. Every change, transfer or acquisition of control of the Grantee shall make the franchise subject to revocation unless and until the Village shall have consented thereto, which consent shall not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the Village may inquire into the qualifications of the prospective controlling party, and the Grantee shall assist the Village in such inquiry.

(c) The consent or approval of the Village to any transfer of the Grantee shall not constitute a waiver or release of the rights of the Village in and to the streets, and any transfer shall by its terms, be expressly subordinate to the terms and conditions of the franchise.

(d) In the absence of extraordinary circumstances, the Village shall not be required to approve any transfer or assignment of a new franchise prior to substantial completion of construction of the proposed system.

(e) In no event shall a transfer of ownership or control be approved without the successor(s) in interest becoming a signatory to the Franchise Agreement.

Sec. 30. Availability of books and records.

(a) The Grantee shall fully cooperate in making available at reasonable times, and the Village shall have the right to inspect, where reasonably necessary for the enforcement of the franchise, books, records, maps, plans and other like materials of the Grantee applicable to the cable television system, at any time during normal business hours; provided where volume and convenience necessitate, the Grantee may require inspection to take place on the Grantee premises.

(b) The following records and/or reports shall be sent to the Village upon request, but no more frequently than on an annual basis if so mutually agreed upon by the Grantee and the Village:

(1) a quarterly review and resolution or progress report submitted by the Grantee to the Village;

(2) periodic preventive maintenance reports;

(3) any copies of FCC Form 395-A (or successor form) or any supplemental forms related to equal opportunity or fair contracting policies;

(4) subscriber inquiry/complaint resolution data and the right to review documentation concerning these inquiries and/or complaints periodically;

(5) periodic construction update reports including, where appropriate, the submission of as-built maps. Prior to the submission of any maps under this section, the Village agrees to withhold such maps from inspection and copying in accordance with Illinois law, 5 Ill. Comp. Stat. Ann. 140/7(g) (West 1997).

(6) information related to connections, disconnections, outages, upgrades, downgrades. Prior to submission of any maps under this section, the Village agrees to withhold such information from inspection and copying in accordance with Illinois law, 5 Ill. Comp. Stat. Ann. 14017(g) (West 1997).

Sec. 31. Other petitions and applications.

Upon request, copies of all petitions, applications, communications and reports submitted by the Grantee to the Federal Communications Commission, to the Securities and Exchange Commission, or to any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to the franchise or received from such agencies shall be provided simultaneously to the Village.

Sec. 32. Fiscal reports.

(a) The Grantee shall file annually with the Village no later than one hundred twenty (120) days after the end of the Grantee's fiscal year, a copy of a gross revenues statement certified by an officer of the Grantee.

Sec. 33. Removal of Cable Television system.

At the expiration of the term for which the franchise is granted or when any renewal is denied, or upon its termination as provided herein, the Grantee shall forthwith, upon notice by the Village, remove

at its own expense all designated portions of the cable television system from all streets and public property within the Village. If the Grantee fails to do so, the Village may perform the work at the Grantee's expense. Upon such notice of removal, a bond shall be furnished by the Grantee in an amount sufficient to cover this expense.

Sec. 34. Required services and facilities.

(a) The cable television system shall have a minimum channel capacity of eighty-five (85) channels, and Grantee shall make available a minimum of eighty-five (85) channels of video programming.

(b) Such system shall maintain a plant having the technical capacity for "two-way" communications.

(c) The Grantee shall maintain the following:

(1) At least one (1) specially-designated, noncommercial governmental access channel available on a first-come, nondiscriminatory basis;

(2) At least one (1) specially designated non-commercial educational channel for use by local educational authorities;

(3) The Grantee shall make a channel available for leased access uses in accordance with the requirements of federal law. Studios and associated production equipment will be located in a mutually agreed upon site to meet the public's need for public access, education and local government channels as noted above. Financial and technical support and replacement and maintenance of equipment of this facility shall be separately incorporated into the franchise by agreement.

(d) The Grantee shall provide emergency broadcast capacity pursuant to FCC rules. The Grantee shall cooperate with the Village in the use and operation of the emergency alert override system.

(e) The Grantee shall provide such additional services and facilities as are contained in its application, which is incorporated by reference herein.

Sec. 35. Rules and regulations.

(a) In addition to the inherent powers of the Village to regulate and control any cable television franchise, and those powers expressly reserved by the Village, or agreed to and provided for herein, the right and power is hereby reserved by the Village to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers and furtherance of the terms and conditions

of the franchise; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations.

(b) The Village may also adopt such regulations at the request of Grantee upon application.

(c) the Village may operate through an organization of municipalities and name such as its designee for certain matters pursuant to Section 24.

Sec. 36. Performance evaluation sessions.

It is recognized that technology is rapidly changing and that it may become desirable to incorporate changed technology or services in this Agreement. Accordingly, Grantee shall be required to continuously monitor developments in cable technology and Grantee and the Village may hold regular review sessions within 30 days after the third, sixth, and ninth anniversary dates of the grant of this Franchise Agreement. All such evaluation sessions shall be open to the public.

(a) Special evaluation sessions may be held at any time during the term of the franchise at the request of the Village or the Grantee.

(b) Topics which may be discussed at any scheduled or special evaluation session may include, but are not limited to: service rate structures; franchise fee, penalties, free or discounted services; application of new technologies; system performance; services provided; programming offered; customer complaints; privacy; amendments to this ordinance; judicial and FCC rulings; line extension policies; and Grantee or Village rules.

(c) Members of the general public may add topics either by working through the negotiating parties or by presenting a petition.

(d) To facilitate this review, within 45 days of the scheduled review session, Grantee shall prepare and deliver a report to the Village describing developments in cable technology.

(e) Following the review session, the Village and Grantee may enter into good faith discussions to determine whether or not the System should be updated, changed, revised, or that additional services should be provided, but only if such update, change, revision or provision of additional services is economically and technically feasible, and if there is sufficient demand among the subscribers for such technology and/or services.

(f) Economic feasibility shall be determined in good faith following an evaluation of the Grantee's financial condition, economic waste, if any, that would occur should the changes be made, the remaining term of the Franchise, and the rate of return on Grantee's investment (both prior investment and proposed future investment) in the System. Grantee may require that the Village hold an additional public hearing as part of these negotiations. Grantee shall also provide the Village with financial information in order to facilitate the economic feasibility evaluation, provided the Village enters into a reasonable confidentiality agreement with Grantee covering these financial materials.

Sec. 37. Rate change procedures.

Pursuant to the Cable Television Consumer Protection and Competition Act of 1992, the Village of Indian Head Park is currently certified to regulate the Basic Service rates charged by Grantee. Under these rules, Grantee is required to obtain approval from the Village for a rate increase for any change to the rates for Basic Service. Should Federal or State law permit further rate regulation beyond Basic Service, the Village of Indian Head Park may assume such rate regulation and adopt appropriate procedures for such regulation.

Sec. 38. Forfeiture and termination.

(a) In addition to all other rights and powers retained by the Village under this ordinance or otherwise, the Village reserves the right to terminate the franchise and all rights and privileges of the Grantee hereunder in the event of a substantial breach of its terms and conditions. A substantial breach by the Grantee shall include, but shall not be limited to the following:

(1) Violation of any material provision of the franchise or any material rule, order, regulation or determination of the Village made pursuant to the franchise or other local, state, or federal law;

(2) Attempt to evade any material provision of the franchise or to practice any fraud or deceit upon the Village or its subscribers or customers;

(3) Failure to begin or complete system construction or system extension as provided under section 20;

(4) Failure to provide the services promised in the Grantee's initial application as incorporated herein by section 4;

(5) Failure to restore service after ninety-six (96) consecutive hours of interrupted service, except when approval of such interruption is obtained from the Village; or

(6) Material misrepresentation of fact in the application for or negotiation of the franchise.

(b) The foregoing shall not constitute a major breach if the violation occurs but is without fault of the Grantee or occurs as a result of circumstances beyond its control. The Grantee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

(c) The Village may make a written demand that the Grantee comply with any such provision, rule, order or determination under or pursuant to the franchise. If the violation by the Grantee continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the Village may place the issue of termination of the franchise before the Village Board. The Village shall cause to be served upon the Grantee, at least twenty (20) days prior to the date of such meeting, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and the issue(s) which the Board is to consider.

(d) The Village Board shall hear and consider the issue(s) and shall hear any person interested therein and shall determine in its discretion whether or not any violation by the Grantee has occurred. Grantee shall be afforded rights of due proceeds to be heard at this hearing. This shall include but is not limited to an opportunity to present all relevant evidence and witnesses. The Grantee may, at its own expense, make a transcript of the hearing.

(e) If the Village Board determines that the violation by the Grantee was the fault of the Grantee and within its control, the Board may, by resolution declare that the franchise of the Grantee shall be forfeited and terminated unless there is compliance within such period as the Board may fix, such period to not be less than thirty (30) days; provided, however, that no opportunity for compliance need be granted for fraud or misrepresentation.

(f) The issue of forfeiture and termination shall automatically be placed upon the Board agenda at the expiration of the time set by it for compliance. The Board may then terminate the franchise forthwith upon finding that the Grantee has failed to achieve compliance or it may further extend the period, at its discretion.

(g) Grantee may appeal a decision by the Village to forfeit or terminate the franchise under this section to a court of competent jurisdiction.

Sec. 39. Foreclosure.

Upon the foreclosure or other judicial sale of all or a substantial part of the system, or upon the termination of any lease covering all or a substantial part of the system, the Grantee shall notify the Village of such fact, and such notification shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of the franchise governing the consent of the Village to such change in control of the Grantee shall apply.

Sec. 40. Receivership.

The Village shall have the right to cancel a franchise one hundred twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of the Grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of one hundred twenty (120) days, or unless:

(1) Within one hundred twenty (120) days after his/her election or appointment, such receiver or trustee shall have fully complied with all the provisions of this chapter and remedied all defaults thereunder; and

(2) Such receiver or trustee, within the one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this chapter and the franchise granted to the Grantee.

Sec. 41. Compliance with state and federal laws.

(a) Notwithstanding any other provisions of the franchise to the contrary, the Grantee shall at all times comply with all laws and regulations of the State of Illinois and federal government or any administrative agencies thereof; provided, however, if any such state or federal law or regulation shall require the Grantee to perform any service, or shall permit the Grantee to perform any service, or shall prohibit the Grantee from performing any service, in conflict with the terms of the franchise or of any law or regulation of the Village, then as soon as possible following knowledge thereof, the Grantee

shall notify the Village of the point of conflict believed to exist between such regulation or law and the laws or regulations of the Village or the franchise.

(b) If the Village determines that a material provision of this chapter is affected by any subsequent action of the state or federal government, the Village and the Grantee shall negotiate to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this agreement.

Sec. 42. Landlord/tenant.

(a) Interference with cable service prohibited. Neither the owner of any multiple unit residential dwelling nor his agent or representative shall interfere with the right of any tenant or lawful resident thereof to receive cable television service, cable installation or maintenance from a cable television Grantee regulated by and lawfully operating under a valid and existing franchise issued by the Village.

(b) Penalties and charges to tenants for service prohibited.– Neither the owner of any multiple unit residential dwelling nor his agent or representative shall penalize, charge or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or receives cable television service from a Grantee operating under a valid and existing cable television franchise issued by the Village.

(c) Reselling service prohibited. No person shall resell, without the expressed, written consent of both the Grantee and the Village, any cable service, program or signal transmitted by a cable television Grantee under a franchise issued by the Village.

(d) Protection of property permitted. Nothing in this chapter shall prohibit a person from requiring that cable television system facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning, appearance and value of premises or the convenience and safety of persons or property.

(e) Risks assumed by Grantee. Nothing in this chapter shall prohibit a person from requiring a Grantee to agree to indemnify the owner, or his agents or representatives for damages or from liability for damages caused by the installation, operation, maintenance or removal of cable television facilities prior to such installation.

Sec. 43. Financial, contractual, shareholder and system disclosure for franchises.

(a) No franchise will be granted to any Applicant unless all requirements and demands of the Village regarding financial, contractual, shareholder and system disclosure have been met.

(b) Applicants, including all shareholders and parties with any interest in the applicant, shall fully disclose all agreements and undertakings, whether written or oral, or implied with any person, firm, group, association or corporation with respect to the franchise and the proposed cable television system. The Grantee of a franchise shall disclose all other contracts to the Village as the contracts are made. This section shall include, but not be limited to, any agreements between local applicants and national companies.

(c) Applicants, including all shareholders and parties with any interest in the applicant, shall submit all requested information as provided by the terms of this chapter or the application documents, which are incorporated herein by reference. The requested information must be complete and verified as true by the applicant.

(d) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose the numbers of shares of stock, and the holders thereof, and shall include the amount of consideration for each share of stock and the nature of the consideration.

(e) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose any information required by the application documents regarding other cable systems in which they hold an interest of any nature, including, but not limited to, the following:

(1) Locations of all other franchises and the dates of award for each location;

(2) Estimated construction costs and estimated completion dates for each system;

(3) Estimated number of miles of construction and number of miles completed in each system as of the date of this application; and

(4) Date for completion of construction as promised in the application for each system.

(f) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose any information required by the application documents regarding pending applications for other cable systems, including, but not limited to, the following:

(1) Location of other franchise applications and date of application for each system;

(2) Estimated dates of franchise awards;

(3) Estimated number of miles of construction; and

(4) Estimated construction costs.

Sec. 44. Force Majeure

Any delay, preemption, or other failure to perform, caused by factors beyond the parties' reasonable control, such as an act of God, labor dispute, non-delivery by suppliers, war, riot, technical breakdown of the Cable System or government, administrative, or judicial order or regulation, shall not result in a default of the Agreement. Each party shall exercise its reasonable efforts to cure any such delays and the cause of such delays, and performance under the terms of this Agreement shall be excused for the period of time during which such factor continues.

Sec. 45. Penalties.

For the violation of any of the following provisions of this ordinance, penalties shall be chargeable to the letter of credit as follows and the Village may determine the amount of the forfeiture for other violations which are not specified in a sum not to exceed one hundred and fifty dollars ($150.00) for each violation, with each day constituting a separate violation:

(a) Failure to furnish, maintain, or offer all cable services to any potential Subscriber within the Village upon order of the Village: two hundred and fifty dollars ($250.00) per day, per violation, for each day that such failure occurs or continues;

(b) Failure to obtain or file evidence of required insurance, construction bond, performance bond, or other required financial security: two hundred and fifty dollars ($250.00) per day, per violation, for each day such failure occurs or continues;

(c) Failure to provide access to data, documents, records, or reports to the Village as required by sections 19, 29, 30, 31 and 37: two hundred and dollars ($250.00) per day, per violation, for each day such failure occurs or continues;

(d) Failure to comply with applicable construction, operation, or maintenance standards: two hundred and fifty dollars ($250.00) per day, per violation;

(e) Failure to comply with a rate decision or refund order: five hundred dollars ($500.00) per day, per violation, for each day such a violation occurs or continues.

(f) Any violations for non-compliance with the customer service standards of Sections 23 through 25 the Grantee shall pay one hundred and fifty dollars ($150.00) per day for each day, or part thereof, that such noncompliance continues;

(g) Any other violations of a Franchise Agreement to be determined by the Grantor in a public hearing but not specifically noted in this section shall not exceed one hundred and fifty dollars ($150.00) per day, per violation.

Sec. 46. Procedures.

(a) Whenever the Village believes that the Grantee has violated one (1) or more terms, conditions or provisions of the franchise, and wishes to impose monetary penalties, a written notice shall be given to the Grantee informing it of such alleged violation or liability. The written notice shall describe in reasonable detail the specific violation so as to afford the Grantee an opportunity to remedy the violation. The Grantee shall have thirty (30) days subsequent to receipt of the notice in which to correct the violation before the Village may impose penalties unless the violation is of such a nature so as to require more than thirty (30) days and the Grantee proceeds diligently within the thirty (30) days to correct the violation. In any case where the violation is not cured within sixty (60) days of notice from the Village, or such other time as the Grantee and the Village may mutually agree to, the Village may proceed to impose penalties pursuant to Section 46.

(b) The Grantee may, within ten (10) days of receipt of notice, notify the Village that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by the Grantee to the Village shall specify with particularity the matters disputed by the Grantee and shall stay the running of the thirty (30) day cure period pending Board decision as required below. The Board shall hear the Grantee's dispute. Grantee must be given at least fifteen (15) days notice of the hearing. At the hearing, the Grantee shall be entitled to the right to present evidence and the right to be represented by counsel. After the hearing, the Village shall provide Grantee a copy of its action, along with supporting

documents. In the event the Village upholds the finding of a violation, the Grantee shall have thirty (30) days subsequent, or such other time period as the Grantee and the Village mutually agree, to correct the violation.

(c) The rights reserved to the Village under this section are in addition to all other rights of the Village whether reserved by this ordinance or authorized by law or equity, and no action, proceeding or exercise of a right with respect to penalties shall affect any other right the Village may have.

Sec. 47. Purchase of System.

In the event that a Franchise has been revoked or has not been renewed, the Village shall have the option, to the extent then permitted by law, to purchase the tangible assets of the Grantee's cable television system previously governed by the Franchise at its fair market value, to assign such rights to purchase, or to require removal of all Grantee's property located within the public ways of the Village at the Grantee's expense. Such an option must be exercised within 90 days from the date of the revocation or expiration of the Franchise, the entry of a final judgment by a court reviewing the question of the revocation or expiration, or the entry of a final order upon appeal of the same, whichever is later.

Sec. 48. Passage.

This Ordinance shall take affect on its passage and approval as required by law.

Passed this 24th day of September, 1998.

AYES: Beauford, Bermier, Coleman, Grane, Hoak, pellegrino
NAYES: -0-
ABSENT: -0-

Approved this 24th day of September, 1998.

President, Village of Indian Head Park,
Cook County, Illinois

ATTEST:

Village Clerk

CERTIFICATE

To All Whom These Presents Shall Come, Greeting:

I, Norman L. Schnaufer, Village Clerk, do hereby certify that the attached is a true and correct copy of Ordinance # 98-18, adopted by the Village of Indian Head Park, on September 24, 1998.

Village Clerk

(Seal)