

Chapter 3

Cable Communications (Cable Television) (Revised 12-1-98)

9-3-1	Grant of Franchise
9-3-2	Franchise Rights to Police Power
9-3-3	Definitions
9-3-4	Review and Renegotiation
9-3-5	Franchise Expiration and Cancellation; Continuity of Service
9-3-6	Transfer of Control
9-3-7	Territory and Extension of Service
9-3-8	Subscriber Privacy
9-3-9	Technical Standards and Complaints
9-3-10	Description of System
9-3-11	Rates
9-3-12	Grantee's Use of Village's Rights
9-3-13	Method of Installation
9-3-14	Indemnity
9-3-15	Fee
9-3-16	Severability
9-3-17	Removal of Equipment
9-3-18	Bid Bond
9-3-19	Acceptance and Effective Date of Franchise
9-3-20	Regulatory Jurisdiction
9-3-21	Unauthorized Connections or Modifications
9-3-22	Village's Right of Intervention
9-3-23	Further Agreements and Waivers
9-3-24	Miscellaneous Provisions
9-3-25	Protection of Nonsubscribers
9-3-26	Incorporation of Amendments
9-3-27	Penalties

Sec. 9-3-1 Grant of Franchise.

There is hereby granted to the Grantee from the effective date of the Franchise the right and privilege to construct, erect, operate, and maintain in, upon, along, across, above, over, and under the streets, alleys, public ways, and public places now laid out or dedicated, and all extension thereof and additions thereto, in the Village, poles, wires, cables, and underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation in the Village of a cable communications system. Any franchise granted under the terms of this Chapter shall be non-exclusive and shall be subject to the terms and conditions of this Chapter.

Sec. 9-3-2 Franchise Rights to Police Power.

- 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 current 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 ordinance, shall prevail only if upon such exercise the Village finds a danger to health, safety, property or general welfare or if such exercise is mandated by law.

Sec. 9-3-3 Definitions.

For the purpose of this Chapter the following terms, phrases, and words and their derivations shall apply:

- a) **Additional Service.** A Subscriber service provided by the Grantee for which a special charge is made based on program or service content or time of usage.
- b) **Basic Service.** 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, or auxiliary services for which a separate charge is made. However, Grantee may include other satellite signals on the Basic Service tier.
- c) **Board.** Village Board of the Village of Belleville.
- d) **Cable Communications System ("System").** A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television

signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of this Act, except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) to the extent such facility is used in transmission of video programming directly to Subscribers; or (D) any facilities of any electric utility used solely for operating its electric utility system.

- e) **Cable Service.** (A) The one-way transmission to Customers of (i) video programming, or (ii) other programming service, and (B) Customer interaction, if any, which is required for the selection or use of such video programming or other programming service.
- f) **Completed.** Operations shall be considered completed when sufficient distribution facilities have been placed in use to offer full network service to one hundred percent (100%) of the inhabitants in the initial area.
- g) **Commence Operation.** Operations shall be considered completed when sufficient distribution facilities have been placed in use to offer full network service to at least twenty-five percent (25%) of the inhabitants of the Village.
- h) **Full Network Service.** All "Basic and Additional Services" offered by the Grantee.
- i) **Grantee.** Any person, firm, company, corporation, association or governmental entity to whom a franchise is granted by the Village Board hereunder and the lawful successor or assignee of the same.
- j) **Gross Revenues.** All revenue collected 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; franchise fees; installation and reconnection fees; leased channel fees; converter rentals and/or sales; program guide revenues; late or administrative fees; upgrade, downgrade or other change-in-service fees; Local 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 Cable Communications 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.
- k) **Local Advertising Revenues.** Local and regional advertising revenues derived from the sale of locally and regionally inserted advertising, except such advertising sold by or through Grantee's national representative firm.
- l) **Office.** The use of the title of any office, employee or officer shall mean such officer, employee, or office of the Village unless otherwise specifically designated.
- m) **Street.** All streets, highways, avenues, lanes, alleys, courts, places, squares, curbs, sidewalks, or other public ways in the Village which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of the State.
- n) **Subscriber.** Any person, firm, company, corporation, or association receiving reception service from the Grantee in the Village.
- o) **User.** A party utilizing the Cable Communications System for purposes of production or transmission

of material to Subscribers, as contrasted with receipt thereof in a Subscriber capacity.

- p) **Village.** The Village of Belleville in its present form or as it may be changed by annexation.

Sec. 9-3-4 Review and Renegotiation.

In order to provide for a maximum degree of flexibility in the franchise, which covers a field that is relatively new and rapidly changing and which probably will see many regulatory, technical, financial, marketing, and legal changes during the term of the franchise, and to help achieve a continued advanced and modern system for the Village of Belleville, the following terms and conditions are part of the franchise granted:

- a) Each year during the month of March at the regular or special Village Board meeting, the Village and the Grantee at the Village's option shall meet to discuss application of new technologies, system performances, services provided, programming offered, customer complaints, privacy and human rights, amendments to this Chapter, undergrounding progress and judicial and FCC rulings. The parties may renegotiate any of the above provisions at that time. The Grantee (and its parent company, if any) shall provide year end financial statements and operating statements for review by the Village Board. The Village is to receive a copy of any report required to be filed with any regulatory agency having jurisdiction.
- b) Board members, administrative personnel, the public or the Grantee may add further topics to the list recited in Subsection (a).
- c) Current federal procedures and standards pursuant to 47 U.S.C. §546, shall govern the renewal of any Franchise awarded under this Ordinance.
- d) In the event that any or all of the applicable provisions of federal law are repealed or otherwise modified, the following relevant 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 Grantee shall submit a proposal for renewal that demonstrates:
 - a. That it has been and continues to be in substantial compliance with the terms, conditions, and limitations of this Ordinance and its Franchise;
 - b. That its System has been installed, constructed, maintained and operated in accordance with the FCC and this Ordinance and its Franchise;
 - c. That it has the legal, technical and financial qualifications to continue to maintain and operate its System; and
 - d. That it has made a good faith effort to provide services and facilities which accommodate the demonstrated needs of the community, taking into account the cost of meeting such needs.
 - 3) After giving public notice, the Village shall proceed to determine whether the Grantee has satisfactorily performed its obligations under the Franchise. To determine satisfactory performance, the Village shall consider technical developments and performance of the System, cost of services, and any other particular requirements set forth in this Ordinance. The Village shall 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, and may inquire specifically whether the Grantee will supply services sufficient to meet future community needs and interest, taking into account the cost of meeting such needs. Industry performance on a national basis shall also be considered. Provisions shall be made for public comment with adequate prior notice of at least ten (10) days.

- 4) The Village shall then prepare any amendments to this Ordinance that it reasonably believes necessary for the exercise of the Villages police powers.
- 5) If the Village finds the Grantee's performance satisfactory, and finds the Village's technical, legal, and financial abilities acceptable, and finds the Grantee's renewal proposal meets the future cable-related needs of the Village, a new Franchise shall be granted pursuant to this Ordinance as amended for a period to be determined.
- 6) If the Grantee is determined by the Village to have performed unsatisfactorily, new applicants may be sought and evaluated and a Franchise award shall be made by the Village according to franchising procedures adopted by the Village.

Sec. 9-3-5 Franchise Expiration and Cancellation; Continuity of Service.

- a) The Village Board may cancel the franchise granted by this Chapter, or provide for its termination at a date prior to expiration date of the franchise at any time upon a finding, made after thirty (30) days notice of proposed cancellation or reduction in duration and public hearing, that the Grantee has failed to cure one (1) or more of the following defects during a sixty (60) day period following written notice by the Village Clerk-Treasurer to the Grantee of such defect:
 - 1) Material breach, whether by act or omission, of any term or condition of the chapter; or
 - 2) Insolvency of the Grantee, or inability or unwillingness of the Grantee to pay its just debts when they accrue, or application by the Grantee for adjudication as a bankrupt, or the filing of a voluntary assignment for the benefit of creditor, or if a judgment, tax warrant or tax lien remains unsatisfied for a period of six (6) months.
- b) In the event any of the above-mentioned defects are caused by equipment failure or the Grantee's inability to obtain certain equipment for reasons beyond Grantee's control, then Grantee shall be allowed an additional sixty (60) days beyond the date of receiving the necessary equipment before there is deemed a ground for termination.
- c) Termination or forfeiture of the franchise shall in no way affect the rights of the Village under the franchise or any provision of law.
- d) In the period between expiration or cancellation of the franchise and the transfer of the cable system as provided in this Chapter, the Grantee shall continue to provide service to the public as if its franchise were still in effect, but in the capacity of a trustee for its successor in interest.

Sec. 9-3-6 Transfer of Control

- a) A Franchise shall not be assigned or transferred, either in whole or in part, leased or sublet, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person without the prior written consent of the Village. No such consent shall be required, however, for a transfer in trust, by mortgage, or by other hypothecation, or by assignment of any rights, title or interest of the Grantee in the Franchise or the Cable Communications System, which is made in order to secure indebtedness. The Grantee may transfer or assign the Franchise to a wholly owned subsidiary of the Grantee and such subsidiary may transfer or assign the Franchise back to the Grantee without such consent, providing that such assignment is without any release of liability of the Grantee. Any proposed assignee must show legal, technical and financial responsibility as determined by the Village, must agree to pay the costs of the Village (including reasonable attorneys' and consulting fees) in evaluating the request, 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 that contains or is accompanied by all such information as is required in accordance with FCC regulations and by the Village. The Village shall be deemed to have consented to a proposed transfer or assignment if its refusal to consent (including the reasons therefor) is not communicated in writing to the Grantee within one hundred and twenty (120) days following receipt of written notice together with 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 twenty-five percent (25%) of the voting shares of the Grantee. Every change, transfer or acquisition of control of the Grantee shall make the Franchise subject to cancellation 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 legal, technical and financial 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 agreeing in writing to abide by the terms and conditions of a franchise agreement between the Village

and the successor.

Sec. 9-3-7 Franchise Territory and Extension of Service.

The Grantee shall provide its service to all area within the limits of the Village that are within five hundred (500) feet of its then existing trunk cable. In the event that the Grantee is requested to extend its system beyond five hundred (500) feet of its then existing trunk cable or is requested to make an installation five hundred (500) feet beyond its main cable, the Grantee shall be allowed to recover its costs in making same from the Subscriber. In the event a Subscriber is not willing to pay same, Grantee shall not be required to either extend the system or make the installation.

Sec. 9-3-8 Subscriber Privacy.

- a) Grantee shall not, except as required by governmental action, provide any data concerning specific subscribers or users or their use of its services without first securing Village Board's written authorization for the provision of such data.
- b) Grantee shall, at all times, comply with all privacy requirements of federal and state law.

Sec. 9-3-9 Technical Standards and Complaints.

- a) The Grantee's operations shall conform to the technical standards set by the Federal government. The Grantee shall maintain on file consistent with the rules of the Federal government all testing results which shall be open to inspection by the Village Board. The Grantee shall, upon request, inform the Village of any audit by an employee of the Federal government together with the name(s) of the employee(s) who conduct such audit. The Grantee shall perform all tests required by the Federal government which are now in effect or which may be required in the future.
- b) Grantee shall keep a record of complaints received and shall make available to the Village upon request, a compilation of such complaints showing when received and the general nature of the complaint. Individual names will not be used, but it shall be possible to ascertain the action taken to satisfy the complainant.

Sec. 9-3-10 Description of System

The Cable Communications System shall have a minimum channel capacity of forty (40) channels within a reasonable time of the grant of a Franchise under this Ordinance.

- a) Such System shall maintain a plant having the technical capacity for "two-way" communications within 36 months of the grant of a Franchise under this Ordinance, at locations mutually agreed by the Village and the Grantee.

- b) The Grantee shall maintain the following:
- 1) At least one (1) specially-designated, noncommercial public access channel;
 - 2) At least one (1) specially-designated channel for use by local education authorities;
 - 3) At least one (1) specially-designated channel for local governmental uses;
 - 4) At least one (1) specially-designated channel for leased access uses
 - 5) If required by the Franchise Agreement, an Institutional Network (I-Net) of cable, optical, electrical or electronic equipment, including Cable Television Systems, used for the purpose of transmitting two-way video signals interconnecting designated entities to be determined by the Village. The cost of such network will be borne by the Village as negotiated between the Grantee and the Village. Such Network may be provided as needed by utilizing capacity on the System.
 - 6) Provided, however, these uses may be combined on one or more channels until such time as additional channels become necessary in the opinion of the Village. 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 in (1), (2) and (3). Financial and technical support and replacement and maintenance of equipment of this facility shall be separately incorporated into the Franchise by agreement.
- c) The Grantee shall incorporate into its Cable Television System the capacity to permit the Village, in times of emergency, to override by remote control the audio, video and/or text of all channels simultaneously, which the Grantee may lawfully override. 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.

Sec. 9-3-11 Rates.

Pursuant to the Cable Television Consumer Protection and Competition Act of 1992, if the Village is currently certified to regulate the Basic Service rates charged by Grantee, it may, under these rules, require the Grantee 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 may, if certified, assume such rate regulation and adopt appropriate procedures for such regulation.

Sec. 9-3-12 Grantee's Use of Village's Rights.

- 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 health, safety or welfare of property owners who adjoin any of the streets and public ways, or interfere with any improvements the Village may make, or 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. After thirty (30) days, if restoration measures are not performed to the reasonable satisfaction of the Village, the Village may undertake remedial restoration activities, such activities to be performed at the Grantee's expense.

- c) **Erection, Removal and Common Uses of Poles:**
- 1) No poles or other wire-holding or 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 health, safety or welfare 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 health, safety or welfare would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.
 - 3) Where the Village desires to make use of the poles or other wire-holding structures of the Grantee, the Village may require the Grantee to permit such use for reasonable consideration and terms.
- d) **Relocation of Facilities.** If at any time during the period of the Franchise the Village shall lawfully 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, at 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. Expenses of such temporary removal, raising or lowering of wires shall be paid by the person making the request, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given at least ten (10) days advance notice to arrange for such temporary wire changes.
- f) **Tree Trimming.** The Grantee shall not remove any tree or trim any portion of any tree within any public street as defined herein without the prior consent of the Village, except in an emergency situation. 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 Grantee's trimming, or to the property surrounding any tree, whether such tree is trimmed or removed.
- g) **Road Cuts.** The Grantee shall not use road cuts for the laying of cable or wires without the prior

approval of the Village. In the absence of such approval, the Grantee shall utilize auguring.

Sec. 9-3-13 Method of Installation.

- a) All installations made by the Grantee shall be made in good, substantial, safe condition and maintained in such condition at all times. The Grantee shall make no excavations in the streets, alleys and public places without first procuring a written permit from the Village Engineer or other authorized representative of the Village, and all work of such kind shall be done under the supervision of the Village authorities and so as to meet the approval of the Village authorities.
- b) Nothing in this Chapter or any franchise granted hereunder shall relieve the Grantee of the obligation of placing network facilities under ground in areas presently served or to be served in the future by underground electric utility facilities. The Grantee shall abide by the requirements of the Village in regard to the installation or relocation of such service facilities.
- c) All land shall be promptly restored to the condition which existed prior to the beginning of construction and/or excavation.
- d) The Grantee shall utilize the easements of other public utilities when possible and shall obtain the written permission of the utility for said use and the landowner's consent if required by said utility easement. All easements required from subscribers or nonsubscribers shall be on a standard form supplied by the company and approved by the Village Board or Village Attorney.
- e) In areas where either telephone or electric utility facilities are above ground at the time of installation, the Grantee may install its service above ground. However, when those facilities are placed underground, the Grantee shall likewise place its service underground.
- f) The Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and other public places of the Village so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee. All trimming is to be done under the supervision and direction of the Village after explicit prior written notification to the Village and the property owner, and written approval from the Village. The Grantee may contract for such services, however, any firm or individual so retained shall receive Village approval prior to commencing such activity.
- g) The Cable system shall be operated to comply with all guidelines and standards set by the FCC for signal quality and leakage. The Village reserves the right to test the system and independently measure the signal quality. The system shall comply at all times with the National Electrical Code of the National Fire Protection Association.

Sec. 9-3-14 Indemnity.

- 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 construction, maintenance, repair, use, operation, condition or dismantling of the Grantee's Cable Communications System or due to the act or omission of any person or legal entity other than the Village or those persons or legal entities for

which the Village is legally liable as a matter of law.

- b) **Indemnification.** The Grantee shall, at its sole cost and expense, indemnify and hold harmless the Village, its respective officers, boards, departments, commissions and employees (hereinafter referred to as “Indemnities”) 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 Indemnities 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, corporation or other legal entity, which may arise out of or be in any way connected with the construction, installation, operation, maintenance or condition of the Cable Communications System caused by Grantee, its subcontractors or agents or the Grantee's failure to comply with any federal, state or local law.
 - 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) imposed upon the Indemnities 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 written request by 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 Indemnities 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 Wisconsin 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.**
- 1) The Grantee undertakes and assumes for its officers, directors, agents, contractors and subcontractors and employees all risk of dangerous conditions, if any, on or about any Village-owned or controlled property, including public right-of-ways, and the Grantee hereby agrees to indemnify and hold harmless the Indemnities against and from any claim asserted or liability imposed upon the Indemnities for personal injury or property damage to any person arising out of the installation, operation, maintenance or condition of the Cable Communications System or the Grantee's failure to comply with any federal, state or local law.

- 2) The Village shall hold Grantee harmless for any damages resulting from the negligence or misconduct of the Grantor or its officials, boards, departments, commissions or employees in utilizing any PEG access channels, equipment or facilities.
- d) **Defense of Indemnities.** In the event any action or proceeding shall be brought against any or all of the Indemnities by reason of any matter for which the Indemnities are indemnified hereunder, the Grantee shall pay all costs incurred by the Village (including reasonable attorney's fees) in defending the claim. Grantee shall not admit liability in any such matter on behalf of the Indemnities without the written consent of the Village Attorney or the Village Attorney's designee.
- e) **Notice, Cooperation and Expenses.** The Village shall give the Grantee reasonably prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. Nothing herein shall be deemed to prevent the Village from cooperating with the Grantee and participating in the defense of any litigation by the Village's own counsel. No recovery by the Village of any sum under a letter of credit, security deposit or performance bond shall be any limitation upon the liability of the Grantee to the Village under the terms of this Section, except that any sum so received by the Village shall be deducted from any recovery which the Village might have against the Grantee under the terms of this Section.
- f) **Nonwaiver of Statutory Limits.** Nothing in this Ordinance 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 Wisconsin Statutes Section 893.80, et. seq., including the limits of liability of Village.
- g) 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 occurrence;
 - 3) One million dollars (\$1,000,000.00) for personal injury to any one person; and
 - 4) Three million dollars (\$3,000,000.00) for personal injury from any one occurrence.
- h) The certificate of insurance obtained by the Grantee in compliance with this section 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 affect this insurance.
- i) Neither the provisions of this section nor any damages recovered by the Village thereunder, shall be construed to or limit the liability of the Grantee under any Franchise issued hereunder.
- j) Such insurance policies provided for herein shall name the Village, its officers, boards, commissions and employees as additional insured, and shall be primary to any insurance carried by the Village, and shall contain an endorsement stating that the 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. 9-3-15 Fee.

- a) A Grantee shall pay to the Village a franchise fee in the amount designated in its franchise agreement. Unless otherwise specified in the franchise agreement, such franchise fee shall be three percent (3%) of the Grantee's Gross Revenues.
- 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.
- 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 Revenues as defined above within thirty (30) days of the end of each 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 Ordinance; 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 fee payment or recomputed amount, cost or penalty, is not made on or before the applicable dates heretofore specified, interest shall be charged 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), including, but not limited to, attorney's fees, consultant fees and audit fees.

Sec. 9-3-16 Severability.

Should any word, phrase, clause, sentence, paragraph, or portion of this Chapter and franchise be declared to be invalid by a court of competent jurisdiction, such adjudication shall not affect the validity of this Chapter and franchise as a whole, but shall only affect the portion thereof declared to be invalid; and the Village Board hereby expressly states and declares that it would nonetheless have passed this Chapter and granted this franchise had it known that any such word, phrase, clause, sentence, paragraph, or portion of said franchise were invalid.

Sec. 9-3-18 Removal of Equipment.

In the event this franchise terminates and neither the Village nor anyone else purchases Grantee's cable system, the Grantee shall remove its cable, wires, and appliances from the streets, alleys, public ways and places within the Village, except any underground cable, appliances, or other appurtenances.

Sec. 9-3-19 Bid Bond.

- a) Each initial applicant for a franchise hereunder shall submit a bid bond in a form acceptable to the Village Attorney or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Village in an amount of Five Thousand Dollars (\$5,000).
- b) Should the applicant fail or refuse to accept a franchise hereunder within thirty (30) days after notification of the award of a franchise by the Village, the applicant shall be considered to have abandoned the proposal and the Village shall enforce the bid bond in accordance with its terms or to retain the proceeds of the certified check.
- c) Bid bonds or certified checks received in lieu thereof from applicants whose proposals are not accepted by the Village shall be returned to the applicant as soon as the proposal is rejected.
- d) Bid bonds shall not be required for applications for franchise renewals.

Sec. 9-3-20 Acceptance and Effective Date of Franchise.

- a) Any franchise awarded hereunder and the rights, privileges and authority granted thereby shall take effect and be in force from and after the thirtieth (30th) day following the award thereof provided that within such thirty (30) day period the Grantee shall file with the Village the following:
 - 1) A notarized statement by the Grantee of unconditional acceptance of the franchise and an executed copy of the franchise agreement between the Village and the Grantee;
 - 2) A certificate of insurance as set forth in 9-3-14(b) herein.
- b) Should the Grantee fail to comply with (a) above, it shall acquire no rights, privileges or authority under this Chapter whatsoever, and the amount of bid bond or certified check in lieu thereof submitted with its application shall be forfeited in full to the Village as liquidated damages.
- c) The franchise shall take effect and be in force for fifteen (15) years from its effective date, subject to the duties and rights set forth in this Chapter.

Sec. 9-3-21 Regulatory Jurisdiction.

The Village shall have continuing regulatory jurisdiction and supervision over the operation of any franchise granted hereunder and may from time to time adopt such reasonable rules and regulations as they may deem necessary for the conduct of the business contemplated thereunder.

Sec. 9-3-22 Unauthorized Connections or Modifications.

- a) No person shall, without the express consent of the Grantee, make any connection, extension or division whether physically, acoustically, inductively, electronically or otherwise with or to any segment of a franchised broadband telecommunication network for any purpose whatsoever.
- b) No person shall willfully interfere, tamper, remove, obstruct or damage any part, segment or content of a franchised broadband telecommunications network for any purpose. This Section shall in no way

impair or infringe upon rights presently enjoyed by utilities in the Village.

- c) Any person convicted of a violation of this Section shall for each offense be fined in a sum not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), together with costs of such prosecution.

Sec. 9-3-23 Village's Right of Intervention.

The Village shall have the right to intervene and the Grantee specifically agrees by acceptance of a franchise hereunder not to oppose such intervention by the Village in any suit or proceeding to which the Grantee is a party.

Sec. 9-3-23 Further Agreements and Waivers.

The franchise granted hereunder shall be deemed to be the sole means, and to state the exclusive terms, by which the Village has authorized the construction, operation or maintenance by Grantee of a cable communications network within the Village.

Sec. 9-3-24 Miscellaneous Provisions.

- a) All applicants for a franchise hereunder, upon being designated a Grantee, shall file with the Village Clerk-Treasurer within thirty (30) days of such designation written notice of both the location and address for mail and official notifications.
- b) All reports, filings, notifications and official mail from any Grantee hereunder to the Village shall be forwarded to the attention of the Village Clerk-Treasurer, Village Hall, Belleville, Wisconsin.
- c) Anything contained herein to the contrary notwithstanding, the Grantee of any franchise awarded hereunder shall not be required to take any action hereunder which shall be in violation of any statutes, ordinances, rules or regulations promulgated by either a federal or state regulatory body having competent jurisdiction and the Grantee shall not be considered as having violated a provision of this Chapter; provided, however, that he or she notifies the Village of such conflict.
- d) The scope of any franchise granted hereunder shall be deemed amendable from time to time to allow Grantee to innovate and implement new services and developments provided that no such service or developments shall be implemented without the expressed prior approval of the Village Board.
- e) The Grantee of any franchise awarded hereunder shall at all times in the conduct of its business employ ordinary care and install and maintain in use commonly accepted methods and devices for preventing failure and accidents which are likely to cause damage, injuries or nuisances to the public in general.
- f) The Grantee of any franchise awarded hereunder shall provide free of charge one (1) connection and full monthly service for such public and nonprofit private schools, elementary and secondary, Village buildings and agencies as the Village may hereafter designate, provided that such designated locations are within five hundred (500) feet of any existing network cable. The Grantee may charge for any

excess footage on the basis of time and material for any such locations beyond the five hundred (500) feet location if such connection is designated by the Village. The Village reserves the right at its expense to extend service to as many areas within such schools, buildings and agencies as it deems desirable without payment of any fee to Grantee.

- g) Anything contained herein to the contrary notwithstanding, the award of any franchise hereunder shall not impart to the Grantee any right of property in or on Village-owned property.
- h) Anything contained herein to the contrary notwithstanding, all provisions of this Chapter and any franchise granted hereunder shall be binding upon the Grantee, his or her successors, lessees or assignees.
- i) If during the term of any franchise granted hereunder the Grantee receives refunds, or if the cost to the Grantee is reduced by order of any regulatory body having competent jurisdiction, the Grantee shall pass onto its subscribers on a prorated basis any such savings or reduced costs either in a lump sum payment or in the form of reduced monthly charges.
- j) 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 this Chapter. If there is a conflict between proposed services listed in such application and the provisions of this Chapter, that provision which provides the greatest benefit to the Village, in the opinion of the Village Board, shall prevail. Failure to provide services as promised in the Grantee's application as incorporated herein shall be deemed a breach of this Chapter.

Sec. 9-3-25 Protection of Nonsubscribers.

Grantees shall at all times keep its cables and other appurtenances used for transmitting signals shielded in such a manner that there will be no interference with signals received by private receiver's sets owned by persons not subscribing to the Grantee's service.

Sec. 9-3-26 Incorporation of Amendments.

The franchise shall be amended to incorporate all amendments to the statutes, rules and regulations of the federal government. Any provision herein, in conflict with or pre-empted by said rules and regulations or statutes, shall be superseded.

Sec. 9-3-27 Penalties.

- a) In the event that the Grantee fails to provide the service in this Chapter, the Village Board may, following notice and hearing, reduce any or all of the subscriber rates to reflect such reduction in service.
- b) In the event that the Grantee shall fail to comply with any of the provisions of this Chapter, the Grantee

shall be subject to a penalty in an amount not to exceed Five Hundred Dollars (\$500.00), plus costs of prosecution. Each day in which the Grantee remains in violation of the provisions of this Chapter shall be deemed to be a separate violation of this Chapter.

- c) Upon interruption of service, without express prior permission of the Village, the following rates shall apply:
 - 1) Over forty-eight (48) hours and up to seven (7) days, a fifty percent (50%) rebate of one (1) month's fees for all affected subscribers;
 - 2) A full month's rebate for any month in which one (1) week or more of the service is interrupted.

- d) Notwithstanding the foregoing, in the event that any reduction or interruption of service, or any violation of the provisions of this Chapter, shall be the result of acts of nature, strikes, government or military action, or other conditions beyond the control of the Grantee including the lack of material or parts, the Grantee shall not be deemed to be in violation of this Chapter and subject to the provisions of this Section until such conditions have ceased.