

**CHAPTER 3**  
**CABLE COMMUNICATIONS ENABLING ORDINANCE**

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**§6-3-1: SHORT TITLE:**

This Chapter shall be known and may be cited as the *TOWER LAKES CABLE TELEVISION ENABLING ORDINANCE* (hereinafter “the Ordinance”). (Ord. 2002-015, 8-19-2002)

**§6-3-2: DEFINITIONS:**

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

*ADDITIONAL SERVICE:* 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.

*BASIC SERVICE:* All subscriber services provided by the grantee in one or more service tiers, which includes the delivery of local broadcast stations, and public, educational and government access channels. The basic service does not include optional program and satellite service tiers, a la carte services (to the extent such services are not basic service under FCC rules), 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.

*CABLE MILE:* Any extension of feeder or trunk measured from the nearest point of distribution with adequate signal strength to allow for expansion.

*CABLE SYSTEM OR SYSTEM OR CABLE TELEVISION SYSTEM:* A system of antennas, cables, wires, lines, towers, waveguides, or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing, audio, video, data 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.

*CHANNEL:* 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.

*CONTROL AND/OR CONTROLLING INTEREST:* 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 holding twenty percent (20%) 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:* An electronic device which converts signals to a frequency 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:* The Federal Communications Commission and any legally appointed, designated or elected agent or successor.

*FRANCHISE FEE*: The fee that a company is required to pay to the Village pursuant to this Chapter. This fee includes any tax, fee or assessment of any kind imposed by the franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such. The term “franchise fee” does not include:

- (A) Any tax, fee or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators, or their services but not including a tax, fee or assessment which is unduly discriminatory against cable operators or cable subscribers);
- (B) In the case of any franchise in effect on the date of enactment of Cable Communications Policy Act of 1984, 47 USC Section 609 et seq. (hereinafter, the “1984 Cable Act”), payments which are required by the franchise to be made by the grantee during the term of such franchise for, or in support of the use of, public, educational or governmental access facilities;
- (C) In the case of any franchise granted after such date of enactment, capital costs which are required by the franchise to be incurred by the grantee for public, educational, or governmental access facilities;
- (D) Requirements or changes incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or
- (E) Any fee imposed under Title 17, United States Code.

*GRANTEE*: 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*: All revenue collected by the grantee from the operation of the cable system to provide cable service 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; advertising revenues; revenues from home shopping channels; provided, however, that gross revenues 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, any uncovered bad debt and any PEG capital support recovered from subscribers. The term gross revenues also includes revenues collected from high speed cable modem/cable internet service as long as and to the extent that such service is deemed a cable service under applicable federal or state law.

*INITIAL GRANTEE*: The entity and its lawful successor who was granted a cable television franchise by the Village of Tower Lakes and proceeded to construct the first cable television system in the Village; “initial grantee” also includes the person who may obtain a renewal of the above referenced cable television franchise.

*INITIAL SERVICE AREA*: All areas within the corporate limits of the Village.

*INSTALLATION*: The connection of the system from feeder cable to subscribers’ terminals.

*MAY*: Is permissive.

*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:* 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.

*RENEWED FRANCHISE:* Any franchise renewed pursuant to the franchise renewal procedures in Section 626 of the 1984 Cable Act, as amended.

*SERVICE INTERRUPTION:* The loss of picture or sound on one or more cable channels.

*SHALL:* Is mandatory.

*STREET:* The surface of and all rights-of-way and the space above and below any dedicated right-of-way, which shall include, but not be limited to, public streets, roads, highways, freeways, lanes, paths, sidewalks, alleys, courts, boulevards, parkways, drives or easements 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, pedestals, and other property as may be ordinarily necessary and pertinent to a cable television system. Streets shall not include property of the Village which is not a dedicated public right-of-way.

*SUBSCRIBER:* Any person, firm, corporation, entity (including, but not limited to, any public or private entity including units of federal, state and local government and any and all of their units, subdivisions, or agencies), or association lawfully receiving any service provided by a grantee pursuant to this Chapter.

*USER:* 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:* The Village of Tower Lakes, Lake County, State of Illinois, its Village Board of Trustees, officers, agents, employees, committees, and/or commissions unless otherwise specifically designated, and all the area within the territorial limits of the Village, its future corporate boundaries, and including any area over which the Village exercises its jurisdiction.

(Ord. 2002-015, 8-19-2002)

### **§6-3-3: RIGHTS AND PRIVILEGES OF GRANTEE:**

Any franchise granted by the Village pursuant to the Illinois Municipal Code shall grant to the grantee, subject to the terms and conditions of the franchise agreement between the Village and the grantee, the 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. (Ord. 2002-015, 8-19-2002)

**§6-3-4: AGREEMENT AND INCORPORATION OF APPLICATION BY REFERENCE:**

- (A) Upon approval of any franchise agreement by ordinance as provided in this Chapter and execution thereof by the grantee, the grantee shall be bound by all the terms and conditions contained in this Chapter.
- (B) Any grantee also agrees to provide all services specifically set forth in its application, if there is one, 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, except that the grantee may from time to time change its services in response to market and financial decisions.

(Ord. 2002-015, 8-19-2002)

**§6-3-5: FRANCHISE TERRITORY:**

Any franchise granted by ordinance pursuant to this Chapter shall be deemed to be for the current territorial limits of the Village and for any area henceforth added thereto during the term of the franchise. (Ord. 2002-015, 8-19-2002)

**§6-3-6: DURATION AND ACCEPTANCE OF NONEXCLUSIVE FRANCHISE:**

- (A) 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 the grantee shall file acceptance of the franchise and its promise to comply with and abide by all its provisions, terms and conditions. Such franchise shall be nonexclusive and revocable only under the terms herein or in the franchise agreement with grantee.
- (B) In the event the Village enters into an additional franchise agreement to use and occupy the public right-of-way for the purpose of operating a cable system, said additional franchise agreement should only be granted if the terms, conditions, and requirements relating to payments, facilities, equipment and services to be provided by the subsequent cable operator satisfy the applicable requirements set forth in the Illinois Municipal Code, as now or hereafter amended. Notwithstanding the applicability or repeal of Section 11-42-11, to maintain a competitively neutral and nondiscriminatory environment as required by the Telecommunications Act of 1996, any additional grantee shall provide terms, conditions, and requirements relating to the payments, facilities, equipment and services and regulatory requirements for use of the public right-of-way that are substantially equivalent to the payments, facilities, equipment and services and regulatory requirements imposed on the grantee previously granted a franchise pursuant to this Chapter.

(Ord. 2002-015, 8-19-2002)

### **§6-3-7: FRANCHISE RENEWAL:**

Franchise renewal shall be prescribed by applicable law. The Village and any grantee by mutual consent may enter into informal renewal negotiations at any time during the term of the franchise.

Pursuant to 47 USC Section 546, the following procedure shall apply:

- (A) The Village may, on its own initiative, during the six (6) month period which begins with the thirty-sixth (36) 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 (6) 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 subsection (A) of this Section, 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 and renew the franchise or issue a preliminary assessment that the franchise should not be renewed, and at the request of the grantee or on its own initiative, commence 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 subsection (D) of this Section, 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 subsection (A) of this Section), 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 subsection (D) of this Section, 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 items 1 through 4 of subsection (D) of this Section pursuant to the record of the proceeding under said subsection. 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 item 2

of subsection (D) of this Section 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 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 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 items 1 through 4 of subsection (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 administrative proceeding.

(Ord. 2002-015, 8-19-2002)

**§6-3-8: FRANCHISE RENEWAL IN THE EVENT OF CHANGE IN FEDERAL LAW:**

In the event that any or all of the above referenced provisions of federal law are repealed, the Village and any grantee shall agree to continue to follow the procedures set forth in Section 6-3-7 of this Chapter to the extent permitted by law. (Ord. 2002-015, 8-19-2002)

**§6-3-9: POLICE POWERS:**

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. (Ord. 2002-015, 8-19-2002)

**§6-3-10: 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 without a franchise. (Ord. 2002-015, 8-19-2002)

**§6-3-11: USE OF GRANTEE FACILITIES:**

The Village shall have the right to install and maintain free of charge 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 of the poles in the manner set forth in this Section. (Ord. 2002-015, 8-19-2002)

**§6-3-12: INITIAL FRANCHISE COSTS:**

Costs to be borne by the grantee shall include any requirements or charges incidental to the awarding or enforcing of the initial franchise, but shall not be limited to: all costs of publications of notices prior to any public meeting provided for pursuant to this Chapter, 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, including reasonable fees for attorneys and cable television consultants. (Ord. 2002-015, 8-19-2002)

**§6-3-13: NOTICES:**

All notices from the grantee to the Village pursuant to any franchise shall be to the Village of Tower Lakes, Attn: Village President, 400 N. Route 59, Tower Lakes, IL 60010. 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 to address any issues relating to operating under this cable television ordinance. (Ord. 2002-015, 8-19-2002)

**§6-3-14: LETTER OF CREDIT:**

- (A) Within fifteen (15) days after the award of the franchise, the grantee shall deposit with the Village an irrevocable letter of credit from a financial institution in the amount of twenty five thousand dollars (\$25,000.00), with the form to be established by the Village. The form and content of such letter of credit 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 Chapter, 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 Chapter, 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) The letter of credit shall be maintained at the amount established above or as otherwise specified in a franchise agreement. The grantee shall replenish the security fund within fourteen (14) days after written notice from the Village that monies have been withdrawn from the fund, or if there is otherwise a deficiency in the amount of the fund.
- (C) If the grantee fails to pay to the Village any compensation within the time fixed in the franchise agreement; or fails after thirty (30) days' notice to pay to the Village any taxes due and unpaid; or fails to repay the Village within thirty (30) days, 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, after three (3) days' notice of such failure by the Village to comply with any provision of the franchise which the Village reasonably determines can be remedied by demand on the letter of credit, the Village may immediately demand payment of the amount thereof, with interest and any penalties, from the letter of credit. Upon such demand for payment, the Village shall notify the grantee of the amount and date thereof.
- (D) 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.



- (E) The letter of credit shall contain the following endorsement:

*It is hereby understood and agreed that this letter of credit 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.*

- (F) Receipt of the thirty (30) day notice shall be construed as a default granting the Village the right to demand payment from the bank for the letter of credit.
- (G) The Village at any time during the term of the franchise, may waive in writing grantee's requirement to maintain a letter of credit or may lessen the amount. The waiver of the requirement can be initiated by the Village or grantee.
- (H) The Village may review the amount of the letter of credit annually and require the grantee to increase the letter of credit commensurate with increases in the Chicago metropolitan area consumer price index during the annual period.

(Ord. 2002-015, 8-19-2002)

**§6-3-15: CONSTRUCTION BOND:**

- (A) Within thirty (30) days after the award of the franchise (excluding renewed franchises), the grantee shall file with the Village a performance 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.
- (B) If the grantee fails to comply with any law, ordinance or resolution governing the franchise, or fails to fulfill and perform each term and condition of the franchise as it relates to the conditions relative to the construction 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 fees, including the Village's legal staff, and costs, up to the full amount of the bond. The remedy provided by this Section shall be available in addition to, and not as an alternative to, the other remedies provided in this Chapter.
- (C) When the grantee has completed construction of the service area, the Village shall waive the requirement of the grantee to maintain the bond. However, the Village may require a construction bond to be posted by the grantee for any construction subsequent to the completion of the initial service areas where the estimated cost of the project exceeds forty thousand dollars (\$40,000.00), including, but not limited to, any construction which occurs during any renewed franchise term.
- (D) 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, of a written notice of such intent to cancel and not to renew.*

- (E) Receipt of a thirty (30) day notice shall be construed as default granting the Village the right to demand payment on the bond except to the extent another bond is provided.
- (F) At any time during the term of this Chapter, the Village may waive in writing grantee's requirement to maintain a performance bond. The waiver of the requirement can be initiated by the Village or the grantee.

(Ord. 2002-015, 8-19-2002)

**§6-3-16: 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; and
  - 4. Three million dollars (\$3,000,000.00) for personal injury from any one accident.
- (B) The certificate of insurance obtained by the grantee in compliance with this Section may be reviewed by the Village Attorney, shall name the Village as an additional insured, and shall be filed and maintained with the Village during the term of the franchise.
- (C) 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 or for damages.
- (D) All insurance policies maintained pursuant to the franchise 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, a written notice of such intention to cancel or not to renew. This insurance shall be primary to any insurance obtained by the Village on its own behalf, notwithstanding anything to the contrary herein.*

(Ord. 2002-015, 8-19-2002)

**§6-3-17: INDEMNIFICATION:**

- (A) Disclaimer of Liability: All franchise agreements shall provide that 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 television system or due to the act or omission of any person or entity other than the Village or those persons or entities for which the Village is legally liable as a matter of law.

- (B) **Indemnification**: In all franchise agreements 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 the following:
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.
  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 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 for consideration and in writing, and included in the offering materials with the express written approval of the Village prior to the offering.
- (C) **Assumption of Risk**: All franchise agreements shall provide that 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 that the grantee 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 except that nothing in the franchise agreement shall be construed to indemnify the above noted parties from negligent acts on their part or the Village’s part.
- (D) **Defense of Indemnitees**: All franchise agreements shall provide that in the event any action or proceeding shall be brought against the indemnitees by reason of any matter for which the indemnitees 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.

- (E) Notice, Cooperation and Expenses: All franchise agreements shall provide that 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 and that nothing in the franchise agreement 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.
- (F) Non-Waiver of Statutory Limits: All franchise agreements shall provide that nothing in the 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 may be increased from time to time by the legislature.

(Ord. 2002-015, 8-19-2002)

**§6-3-18: 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, sex, 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 potential subscribers throughout the service area or as otherwise specified in a franchise agreement.

(Ord. 2002-015, 8-19-2002)

**§6-3-19: 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 regional office of the grantee during regular office hours. (Ord. 2002-015, 8-19-2002)

**§6-3-20: SYSTEM CONSTRUCTION:**

- (A) New Construction Timetable:
  1. Within two (2) years from the date of the award of the initial franchise, the grantee must make cable television service available to every dwelling unit within the initial service area.

- (a) The grantee must make cable television service available to at least twenty percent (20%) of the dwelling units within the initial service area within twelve (12) months from the date of the award of the franchise.
  - (b) The grantee must make cable television service available to at least fifty percent (50%) of the occupied dwelling units within the initial service area within eighteen (18) months 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 initial 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. 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 percent (95%). Justification for less than one hundred percent (100%) must be submitted subject to the satisfaction of the Village.
4. The grantee shall install conduit, pedestals and vaults underground as required by Section 6-3-21 of this Chapter.

(B) Line Extensions:

1. Requirements: 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 subdivision, the Village will forward to the grantee an approved engineering plan of each project. Subject to the density requirements in subsection (B)1(b) of this Section, 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.
  - (b) The grantee shall extend and make cable television service available to every dwelling unit in all unserved, developing areas having at least twenty (20) occupied dwelling units per cable mile, as measured from the existing system, and shall extend its system simultaneously with the installation of utility lines to the extent practical.
  - (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 twenty five foot (125') 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 within a period of thirty six (36) months of payment. In the event the area subsequently reaches the density required for mandatory extension, such payments which exceed the standard installation costs for said installation 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 to the grantee, then should the trenches be closed after the ten (10) day period, the cost of new trenching is to be borne by the grantee.

(C) Special Agreements: Nothing in the franchise agreement shall be construed to prevent the grantee from serving geographical areas not covered under this Section upon agreement with developers, property owners, residents, or businesses.

(D) Line Extension Policy: The grantee, in its application, may propose a line extension policy that will result in serving more residents of the Village than as required above, in which case the grantee's policy will be incorporated into the franchise agreement and will be binding on the grantee.

(Ord. 2002-015, 8-19-2002)

### **§6-3-21: 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, and governmental requirements. 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) 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.
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. 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 all the cables, wires and other like facilities of public utilities are placed underground, the grantee shall place its cables, wires and other like facilities underground. When public utilities relocate their facilities from pole to underground, the grantee must concurrently do so. If said utilities are reimbursed for such relocation, the grantee shall be entitled to like reimbursement.
9. In accordance with and at the time required by the provisions of FCC regulations part 11, subpart D, Section 11.51, and as such provisions may from time to time be amended, the grantee shall install, if it has not already done so, and maintain an Emergency Alert System (EAS) for use in transmitting Emergency Act Notifications (EAN) and Emergency Act Terminations (EAT) in local and statewide situations as may be designated to be an emergency by the Local Primary (LP), the State Primary (SP) and/or the State Emergency Operations Center (SEOC), as those authorities are identified and defined within FCC Regulations Section 11.18. The Village shall permit only appropriately trained and authorized persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the grantee's cable system in any manner that results in inappropriate use thereof, or any loss or damage to the cable system. Except to the extent expressly prohibited by law, the Village shall hold the grantee, its employees, officers and assigns harmless from any claims arising out of the emergency use of its facilities by the Village, including, but not limited to, reasonable attorney fees and costs.

(Ord. 2002-015, 8-19-2002)

**§6-3-22: 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 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. Village approval shall not be unreasonably withheld.

(C) Erection, Removal And Common Uses Of Poles:

1. No poles or other freestanding wire holding structures for aerial plant 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 freestanding wire holding structure of the grantee shall be a vested interest and such poles or structures shall be removed or modified by the grantee whenever the Village determines that the public convenience would be enhanced thereby.
2. Where poles or other freestanding wire holding structures for aerial plant 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, or the Village shall use the public way for any public purpose which will conflict with the grantee's use, 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 seventy two (72) hours' advance notice to arrange for such temporary wire changes.

(F) Tree Trimming: The grantee shall not remove any tree without the prior consent of the Village, and must trim trees in accordance with all Village regulations and procedures.

(Ord. 2002-015, 8-19-2002)

**§6-3-23: OPERATIONAL STANDARDS:**

- (A) The grantee shall maintain all parts of the system in good condition throughout the entire franchise period.
- (B) Upon the reasonable request for service by any person located within the franchise territory, the grantee shall, within thirty (30) days, furnish the requested service to such person within terms of the line extension policy in subsection 6-3-20 (B) of this Section. A request for service shall be unreasonable for the purpose of this subsection if no trunk or feeder 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.
- (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 nor shall other utilities interfere with the grantee's system.
- (E) The grantee shall be responsible for any damages resulting from any toxic waste or hazardous substances resulting from the grantee's installations or from the grantee's use of the franchise, and grantee shall be responsible for the removal of same, which obligation shall survive the termination of the franchise.

(Ord. 2002-015, 8-19-2002)

**§6-3-24: CUSTOMER SERVICE STANDARDS:**

- (A) Enforcement of Law: 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) Telephone Access Line: The grantee shall maintain a Chicago area (standard metropolitan statistical area) 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) Answer Time: 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) Busy Signal: 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) Service Centers and Bill Payment Locations: 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.
- (F) Standards Under Normal Operating Conditions: 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 feet (125') 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 workweek for that system except to the extent that other arrangements acceptable to the customer can be made. The appointment window alternatives for installations, service calls and other installation activities will be: “morning” or “afternoon”; not to exceed a four (4) hour “window” during normal business hours for the system, or at a time that is mutually acceptable. The grantee may schedule supplemental hours during which appointments can be scheduled based on the needs of the consumers. 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.
- (G) Subscriber Credit For Outages: Upon service interruption of a subscriber’s cable service, and upon subscriber request, the following shall apply:
1. The grantee shall provide a credit for lost cable service of not less than the value of the actual time without service, due to an outage or interruption of cable service lasting at least four (4) or more hours.
- (H) Cable Service Information: 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, and
  4. How to use the cable television services.
- (I) Unambiguous Bills: Bills will be clear, concise and understandable, with all charges for cable services and packages itemized.
- (J) Additional Fees: A grantee may impose a late, administrative or other fee on a customer for nonpayment of a bill after thirty (30) days have elapsed in the billing cycle which is the subject of the unpaid bill.
- (K) Rate Or Channel Change: The grantee shall notify customers a minimum of thirty (30) days in advance of any rate or channel change.
- (L) Maintenance, Operation: The grantee shall maintain and operate its network in accordance with the rules and regulations incorporated in this Chapter and in the franchise agreement, or as may be promulgated by the Federal Communications Commission, the United States Congress, or the State of Illinois.
- (M) Quality Service Maintained: The grantee shall continue, through the term of the franchise, to maintain the technical standards and quality of service set forth in this Chapter. Should the Village obtain evidence and determine by findings of fact that the grantee has failed to maintain the technical standards and quality of service, and should it, by resolution, specifically enumerate said failures, the grantee shall correct said failures. Failure to make such improvements within three (3) months of such resolution will constitute a breach of a condition for which the liquidated damages contained in Section 6-3-46 of this Chapter are applicable.

- (N) Monthly Service Log: The grantee shall keep a monthly service log which indicates the nature of each service complaint received in the last six (6) 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. (Ord. 2002-015, 8-19-2002)

**§6-3-25: CONTINUITY OF SERVICE MANDATORY:**

- (A) It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the grantee are honored. If the grantee elects to overbuild, rebuild, modify or sell the system, the grantee shall reasonably act so as to ensure that the system provides continuous, uninterrupted service regardless of the circumstances.
- (B) If there is a change of franchise, or if a new operator acquires the system, the grantee shall cooperate with the Village, new franchisee 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.

(Ord. 2002-015, 8-19-2002)

**§6-3-26: COMPLAINT PROCEDURE:**

- (A) The Village President or his/her designee is designated as having primary responsibility for the continuing administration of the franchise and implementation of complaint procedures.
- (B) During the terms of the franchise and any renewal thereof, the grantee shall maintain a central office reachable by a Chicago area (standard metropolitan statistical area) 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 within twenty (20) miles of the Village.
- (C) 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.
- (D) When there have been similar complaints made, or where there exists recurring evidence, which 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 a report, if requested, 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.
- (E) The Village may require that tests be observed by an independent professional engineer or equivalent of the Village's choice at the Village's expense. The engineer shall be given records of special tests and may forward to the Village such records with a report interpreting the results of the tests.
- (F) The Village's rights under this Section shall be limited to requiring tests, analysis and reports covering specific subjects and characteristics based on recurring complaints or other evidence when and under such circumstances as the Village has reasonable grounds in its judgment to believe that the complaints or other evidence require that tests be performed to protect the public against violations of this Chapter and an attendant franchise agreement.

(Ord. 2002-015, 8-19-2002)

**§6-3-27: 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. (Ord. 2002-015, 8-19-2002)

**§6-3-28: FRANCHISE FEE:**

- (A) A grantee shall pay to the Village a franchise fee in the amount designated in the franchise agreement. Unless otherwise specified in the franchise agreement, such franchise fee shall be five percent (5%) of the grantee's gross revenues. If the statutory five percent (5%) limitation on franchise fees is raised or the federal statute deletes the franchise fee limitation entirely, then the parties to any franchise agreement made pursuant to this Chapter may, but are not required to, renegotiate the franchise fee.
- (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 penalties assessed shall be payable quarterly on a calendar year basis to the Village within sixty (60) 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 sixty (60) 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, except where grantee may reasonably dispute such an amount. If such additional amount exceeds three percent (3%) of the total franchise fee which the audit determines should have been paid for any calendar year, the grantee shall pay the Village's audit costs.
- (E) If any franchise payment or recomputed amount, 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%).

(Ord. 2002-015, 8-19-2002)

**§6-3-29: TRANSFER OF OWNERSHIP OR CONTROL:**

- (A) A franchise shall not be assigned or transferred, either in whole or in part, without the prior written consent of the Village. The grantee may, however, 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 possess the necessary legal, technical and financial qualifications to establish its ability to operate the system in conformity with federal law and this Chapter, proof of which shall be provided by the grantee and/or assignee to the reasonable satisfaction of the Village. Any proposed assignee must agree to comply with all provisions of the franchise. The Village shall have one hundred 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. 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 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 pending 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 percent (20%) 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 investigate the legal, technical, and financial qualifications of the prospective controlling party, and the grantee and/or assignee shall reasonably cooperate with the Village's investigation.
- (C) The consent or approval of the Village to any transfer of the grantee, franchise, or control thereof, 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 the initial construction of the proposed system.
- (E) In no event shall a transfer of ownership or control be approved without the successor(s) in interest executing a written acceptance of the franchise agreement.

(Ord. 2002-015, 8-19-2002)

**§6-3-30: 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 or desirable 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 however, that where volume and convenience necessitate, the grantee may require inspection to take place on the grantee premises.
- (B) The following records and/or reports are to be made available to the Village upon request, but not more frequently than on a quarterly basis, unless mutually agreed upon by the grantee and the Village:
  - 1. A quarterly progress report submitted by the grantee to the Village which may include major construction progress reports, service call reports and outage history;
  - 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 on an aggregate basis periodically with respect for federal subscriber privacy legislation;
  - 5. During the rebuild of a substantial portion or all of the system in the Village, periodic construction update reports including, the submission of information which provides the location and description of the facilities as installed.

(Ord. 2002-015, 8-19-2002)

**§6-3-31: OTHER PETITIONS AND APPLICATIONS:**

Upon request, a grantee shall submit copies of any public document issued or filed by any federal or state regulatory agencies which are nonroutine in nature that will materially and directly affect the grantee's cable television operations within the franchise area. (Ord. 2002-015, 8-19-2002)

**§6-3-32: 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 the chief financial officer of the grantee. (Ord. 2002-015, 8-19-2002)

**§6-3-33: REMOVAL OF CABLE TELEVISION SYSTEM:**

Upon termination of the rights granted in a franchise agreement pursuant to this Chapter, the grantee shall remove designated portions of the cable television system from the streets and public property within the Village as may be required to serve the public interest. Upon such notice of removal, a bond shall be furnished or an existing bond maintained by the grantee in an amount sufficient to cover this expense. (Ord. 2002-015, 8-19-2002)

**§6-3-34: REQUIRED SERVICES AND FACILITIES:**

- (A) Minimum Bandwidth: The cable television system plant shall have a minimum bandwidth of 750 MHz.
- (B) “Two-Way” Communications: Such system shall include the technical ability to be activated for "two-way" communications.
- (C) Specially Designated Channels: The grantee shall maintain the following:
  - 1. At least one specially designated channel for use by local educational authorities;
  - 2. At least one specially designated channel for local governmental uses.
- (D) Emergency Alert Override System: The grantee shall incorporate into its cable television system the capacity to permit the Village, in times of emergency, to override by telephone the audio of all analog channels simultaneously, which the grantee may lawfully override. The grantee shall cooperate with the Village in the use and operation of the emergency alert override system. The Village agrees to indemnify and hold the grantee harmless from any damages or penalties arising out of the actions of the Village, its employees or agents in using such service.
- (E) Capacity For Educational And Governmental Use: Any grantee shall provide channel capacity on grantee owned institutional networks for educational and governmental use. Any such network shall be referred to in the franchise agreement as the Institutional Network (I-NET). The I-NET shall be capable of transmitting two-way audio, video and data information. The terms and conditions for such usage by educational and governmental authorities, including compensation to the grantee for such usage, if any, shall be set forth in the franchise agreement.
- (F) Cooperation Required: The grantee shall cooperate to a reasonable degree with any interconnection corporation, regional interconnection authority or village, county, state and federal regulatory agency which may be hereafter established for the purpose of regulating, financing, or otherwise providing for the interconnection of cable systems beyond the boundaries of the Village.

(Ord. 2002-015, 8-19-2002)

**§6-3-35: RULES AND REGULATIONS:**

- (A) In addition to the statutory 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 a franchise agreement, 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 police powers, provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions herein, or those in a franchise agreement or applicable state and federal laws, rules and regulations.
- (B) The Village may also adopt such regulations at the request of grantee upon application.

(Ord. 2002-015, 8-19-2002)

**§6-3-36: PERFORMANCE EVALUATION SESSIONS:**

- (A) The Village and the grantee may hold scheduled performance evaluation sessions within thirty (30) days of the third, sixth, and twelfth anniversary dates of the grantee's award or renewal of the franchise and as may be required by federal and state law. All such evaluation sessions shall be open to the public.
- (B) Special evaluation sessions may be held at any time during the term of the franchise at the request of the Village or the grantee.
- (C) 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 Chapter; judicial and FCC rulings; line extension policies; and grantee or Village rules.

(Ord. 2002-015, 8-19-2002)

**§6-3-37: RATE CHANGE PROCEDURES:**

Pursuant to the Cable Television Consumer Protection and Competition Act of 1992, as amended, the Village of Tower Lakes may regulate the basic service rates charged by grantee. Under these rules, grantee may be 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 the basic service the Village of Tower Lakes may assume such rate regulation and adopt appropriate procedures for such regulation. (Ord. 2002-015, 8-19-2002)

**§6-3-38: INVOLUNTARY TERMINATION:**

- (A) Substantial Breach: In addition to all other rights and powers retained by the Village under this Chapter or otherwise, the Village may terminate the franchise agreement 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:



1. The grantee continues to violate a material provision of the franchise or any material rule, order, regulation or determination after written notice from the Village and reasonable opportunity to cure;
  2. The grantee practices any material fraud in its conduct in obtaining or operating the franchise;
  3. The grantee fails to begin or complete system construction, or to complete any upgrade of the cable system required in a franchise agreement;
  4. The grantee fails to pay taxes or franchise fees, or penalties when and as due the Village;
  5. The grantee fails to maintain required insurance coverage;
  6. The grantee fails to restore system wide service after forty eight (48) consecutive hours of interrupted service, provided the grantee's failure to restore system wide service is not caused by circumstances or events beyond the grantee's reasonable control;
  7. Insolvency or bankruptcy of the grantee;
  8. The grantee transfers the franchise without Village approval pursuant to Section 6-3-29 of this Chapter;
  9. The grantee abandons its franchise. The grantee shall be deemed to have abandoned its franchise if it willfully refuses or is unable to operate the cable system as required by this franchise, when there is no event beyond the grantee's control that prevents the operation of the cable system, and where operation would not endanger the health or safety of the public or property.
- (B) Exception: 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) Written Demand: The Village, at its option, 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 is received by the grantee 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 give the grantee written notice, at least twenty (20) days prior to the date of such meeting of the Village Board, of its intent to request such termination and the time and place of the Board meeting. Public notice shall be given of the meeting and the issue(s) which the Board is to consider.
- (D) Hearing: The Village Board shall hear and consider the issue(s) and shall hear any person interested therein and shall determine findings of fact concerning whether or not any violation by the grantee has occurred.
- (E) Determination of Fault: 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 ordinance declare that the franchise of the grantee shall be involuntarily terminated; however, the Village shall also allow the grantee an

opportunity for compliance within such period as the Board may fix, which period shall be reasonable to effect compliance;

- (F) Involuntary Termination: The issue of involuntary termination may automatically be placed upon the Village's agenda at the expiration of the time set by it for compliance. The Village 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) Removal of Cable System Plant and Equipment: If, upon revocation of grantee's franchise, the Village does not elect to purchase the cable system, and no sale of the cable system is made to a successor grantee, then the Village shall require that grantee terminate and dismantle the cable system, including its wiring, equipment, headend facilities, if located within the Village limits, and related appurtenances except that in the event that the grantee is providing telecommunications services as defined by the Cable Act the grantee shall not be required to remove those facilities which provide said services. Upon completion of termination and dismantling of the cable system, grantee shall, upon direction by the Village, restore any property, public or private, to the condition in which it existed prior to erection or construction of the cable system, including any improvements made to such property subsequent to construction of the system. Restoring of village property, including all public streets and public ways as defined herein, and other public lands, shall be in accordance with the directions and specifications of the Village set forth herein and all applicable laws. Grantee shall restore said public streets, public ways and properties at its expense. (Ord. 2002-015, 8-19-2002)

#### **§6-3-39: FORECLOSURE:**

Upon the foreclosure or other judicial sale of 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. (Ord. 2002-015, 8-19-2002)

#### **§6-3-40: RECEIVERSHIP:**

- (A) 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 or presented a reasonable plan for said remedy; 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 or as may otherwise be agreed to by the Village.

(Ord. 2002-015, 8-19-2002)

**§6-3-41: COMPLIANCE WITH STATE AND FEDERAL LAWS:**

- (A) Notwithstanding any other provisions of the franchise to the contrary, the grantee and the Village shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof.
- (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 shall modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this Chapter to the extent practicable and enforceable.

(Ord. 2002-015, 8-19-2002)

**§6-3-42: 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.

(Ord. 2002-015, 8-19-2002)

**§6-3-43: APPLICANTS' BIDS FOR INITIAL FRANCHISE:**

- (A) All bids received by the Village from the applicants for an initial franchise will become the sole property of the Village.
- (B) The Village reserves the right to reject any and all bids and waive informalities and/or technicalities where the best interest of the Village may be served.
- (C) All questions regarding the meaning or intent of this Chapter or application documents shall be submitted to the Village in writing. Replies will be issued by addenda mailed or delivered to all parties recorded by the Village as having received the application documents. The Village reserves the right to make extensions of time for receiving bids as it deems necessary. Questions received less than fourteen (14) days prior to the date for the opening of bids will not be answered. Only replies to questions by written addenda will be binding. All bids must contain an acknowledgment of receipt of all addenda.
- (D) Bids must be sealed, and submitted at the time and place indicated in the application documents for the public opening. Bids may be modified at any time prior to the opening of the bids, provided that

any modifications must be duly executed in the manner that the applicant's bid must be executed. No bid shall be opened or inspected before the public opening.

- (E) Before submitting a bid, each applicant must:
  - 1. Examine this Chapter and the application documents thoroughly;
  - 2. Familiarize himself/herself with local conditions that may in any manner affect performance under the franchise;
  - 3. Familiarize himself/herself with federal, state and local laws, ordinances, rules and regulations affecting performance under the franchise; and
  - 4. Carefully correlate the bid with the requirements of this Chapter and the application documents.
- (F) The Village may make such investigations as it deems necessary to determine the ability of the applicant to perform under the franchise, and the applicant shall furnish to the Village all such information and data for this purpose as the Village may request. The Village reserves the right to reject any bid if the evidence submitted by, or investigation of, such applicant fails to satisfy the Village that such applicant is properly qualified to carry out the obligations of the franchise and to complete the work contemplated therein. Conditional bids will not be accepted.
- (G) All bids received shall be placed in a secure depository approved by the Village and shall not be opened nor inspected prior to the public opening.

(Ord. 2002-015, 8-19-2002)

**§6-3-44: 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 technology disclosures 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 into the franchise agreement 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.
  5. Applicants shall also provide the following information to establish their technical, legal and financial qualifications: a) a detailed corporate structure of the applicant including identities of parent and subsidiary corporations or partnership; b) the identities of shareholders of five percent (5%) or more of the stock of applicant and any parent organizations, and the identities of all officers and directors of the applicant; and c) a detailed financial pro forma for the proposed cable system including sources and uses of funds and detailed capital and operating projections by category.

(Ord. 2002-015, 8-19-2002)

**§6-3-45: FRANCHISE VIOLATION; NOTICE AND PROCEDURES:**

A grantee shall comply with the requirements of this Chapter and the franchise agreement at all times during the term of its franchise. If the Village has reason to believe that a grantee has committed a certain violation of this Chapter or the franchise agreement, the Village may act to remedy the violation.

- (A) Remedies Retained: No provision of this Chapter shall be deemed to bar or otherwise limit the right of the Village to seek or obtain judicial relief from a violation of any provision of the franchise or any rule, regulation, requirement, or directive promulgated thereunder. Neither the existence of other remedies identified in this Chapter nor the exercise thereof shall be deemed to bar or otherwise limit the right of the Village to recover monetary damages, except where liquidated damages are otherwise prescribed, for such violation by the grantee, or judicial enforcement of the grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy available contractually, at law or in equity.

- (B) Liquidated Damages: By acceptance of the franchise, each grantee shall agree that failure to comply with any time and performance requirements as stipulated in this Chapter and the franchise agreement will result in damage to the Village that is not readily ascertainable. The applicable franchise agreement shall include provisions for liquidated damages to be paid by the grantee, in amounts set forth below.
- (C) Violation Procedures:
1. Notice of Violations: Written notice shall be given to a grantee setting forth the nature of the violation and a reasonable period of time for a grantee to correct the violation. Unless the Village determines that the violation is of such a nature that a lesser period of time is warranted for remedying the violation, a grantee shall be given thirty (30) days after receipt of such notice to remedy the violation.
  2. Answer to Notice of Violations: Within thirty (30) days, or such other period of time specified by the Village in its notice to a grantee, a grantee shall respond in writing to the Village:
    - (a) That it contests the Village's notice of violation and requests an opportunity to be heard as provided herein. A grantee shall submit supporting documentation with its response to the notice, or
    - (b) That it contests the Village's notice of violation for the reasons that the violation was beyond the reasonable control of a grantee and requests an opportunity to be heard as provided herein. A grantee shall submit supporting documentation with its response to the notice, or
    - (c) That a grantee will remedy the violation within the time specified by the Village in its notice to a grantee.
    - d) If a grantee contends that an extended period of time is reasonably needed to remedy the violation, it shall submit a written request for an extension, together with supporting documentation that a grantee cannot reasonably remedy the violation within the time period specified by the Village in its notice to a grantee. The Village shall not unreasonably deny an extension of time to remedy the violation. If the Village grants the extension, a grantee shall proceed to remedy the violation within the extended time prescribed, provided that a grantee also informs the Village on a regular basis of the steps being taken to remedy the violation.
  3. Hearing: The Village shall give a grantee not less than fourteen (14) days' written notice of the date, time and place of the public hearing to be held before the Village Board. At the public hearing, the Village Board shall hear and determine the issues and render its findings and its decision. If a hearing officer has been appointed by the Village, the hearing officer shall hear the relevant evidence and shall render a record of the administrative hearing and recommended findings and decision to the Village Board.
  4. Determination: If the grantee fails to submit a written response to the Village's notice of violation as provided in subsection (C)2 of this Section, or if a grantee fails to remedy the violation within the time period specified by the Village in its notice to a grantee, or any extensions thereto granted by the Village, or if the Village Board is persuaded after a hearing that a grantee has committed a violation as provided herein, the Village Board may, after giving a grantee an opportunity to be heard:

- (a) Order a grantee to remedy the violation within a reasonable period of time specified by the Village Board;
  - (b) Assess liquidated damages against a grantee in accordance with the franchise agreement;
  - (c) Impose any lesser sanction permitted by a franchise agreement.
5. Judicial Relief Not Barred: No provision of this Section shall be deemed to bar or otherwise limit the right of the franchising authority to seek or obtain judicial relief to enforce the provisions of this Chapter, including, but not limited to, fines and/or injunctive relief. (Ord. 2002-015, 8-19-2002)

**§6-3-46: LIQUIDATED DAMAGES:**

- (A) Amounts: Because grantee's failure to comply with or to perform certain obligations under this Chapter or the franchise agreement, or its failure to do so in a timely manner, may result in damage to the Village that is difficult to determine, the Village and the grantee agree to the following liquidated damages as the liquidated sum or sums to be reasonable paid in light of the anticipated loss caused by or resulting from the specified violation, default and resulting injury:
- 1. Failure to provide data, documents, applications or reports, including financial reports, with the Village: Up to one hundred dollars (\$100.00)/day or any part thereof until filed.
  - 2. Failure of grantee to provide or maintain required insurance coverage: Up to two hundred dollars (\$200.00)/day from time insurance lapsed until policy is reinstated.
  - 3. Failure of grantee to maintain required bonds, letters of credit or security fund: Up to two hundred dollars (\$200.00)/day from time due.
  - 4. Failure of grantee to comply with customer service standards subject to applicable law: Up to one hundred dollars (\$100.00)/day.
  - 5. Failure to substantially complete required restoration of public ways disturbed by the grantee or its contractors, unless delay has been approved by the Village: Up to one hundred dollars (\$100.00)/day until restoration is completed.
  - 6. Working in the public street or way without a required village permit: Up to five hundred dollars (\$500.00)/day.
  - 7. Willful failure to carry PEG programming generated within the Village by the Village or its designated programmers in compliance with the franchise agreement: One hundred dollars (\$100.00)/day.
- (B) Accrual of Liquidated Damages: Unless otherwise specified in this Chapter, liquidated damages accrue from the date written notice of the violation is given.
- (C) Assessment of Liquidated Damages: Before assessing liquidated damages against the grantee, the Village shall give written notice to the grantee, and an opportunity to cure the violation as provided herein.

- (D) Effect on Grantee's Franchise Duties: The assessment and collection of liquidated damages shall not affect grantee's obligation to comply with the provisions of this Chapter, the agreement, or applicable law.
- (E) Other Remedies: If the Village elects to assess liquidated damages, such election shall constitute the exclusive remedy for a period of thirty (30) days. Thereafter, if the grantee remains in noncompliance with the requirement of this Chapter or the franchise agreement, the Village may pursue any remedy, pursuant to this code, this Chapter, the franchise agreement, or pursuant to law, including, but not limited to, fines and/or injunctive relief.

(Ord. 2002-015, 8-19-2002)