

CHAPTER 113: TELECOMMUNICATIONS

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Cross-reference:

Emergency 911 telephone system surcharge, see §§ 37.085 et seq.

§ 113.01 SHORT TITLE.

This chapter shall be known and may be cited as the “Matteson Cable Television Franchise Ordinance,” hereinafter “franchise” or “ordinance.”
(Ord. 1678, passed 7-21-97)

§ 113.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

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. Basic service does not include optional

program and satellite service tiers, a la carte services, per channel, per program, or auxiliary services for which a separate charge is made. However, grantee may include other satellite signals on the basic service tier.

BOARD. The Matteson Village Board.

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

CLASS IV CHANNEL. A signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system.

COMPLAINT. Any complaint regarding service, picture quality, charges or other matter relating to the cable system made by a customer to the grantee, whether in written or oral form.

CONTROL or **CONTROLLING INTEREST.** 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 5% 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 not susceptible to interference within the television receiver of a subscriber, and by an appropriate channel selector also permits a subscriber to view more than 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.

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 directly or indirectly by the grantee, arising from or attributable to the provision of cable service by the grantee within the village including, but not limited to: periodic fees charged subscribers for any basic, optional, premium, per-channel or per-program service; installation and reconnection fees; leased channel fees; converter rentals and/or sales; program guide revenues; studio or production equipment rentals; late or administrative fees; upgrade, downgrade or other change-in-service fees; advertising revenues; revenues from home shopping and bank-at-home channels; revenues from the sale, exchange, use or cable cast of any programming developed on the system for community or institutional use; and any value (at retail price levels) of any non-monetary remuneration received by grantee in consideration of the performance of advertising or any other cable service of the system; and franchise fees, provided, however, that this shall not include any taxes on services furnished by the grantee herein imposed directly upon any subscriber or user by the state, local or other governmental unit and collected by the grantee on behalf of the governmental unit.

INITIAL SERVICE AREA. All areas in the village having a density of at least 20 dwelling units per street mile.

INSTALLATION. The connection of the system from feeder cable to subscribers' terminals.

MAY. This term is permissive.

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

NORMAL BUSINESS HOURS. As applied to the grantee shall mean those hours during which similar businesses in the village are open to serve customers. In all cases, **NORMAL BUSINESS HOURS** must include some evening hours at least one night per week, and some weekend hours.

NORMAL OPERATING CONDITIONS. Those service conditions that are within the control of the grantee. Those conditions that are not within the control of the grantee include, but are not limited to: natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

SHALL. This term is mandatory.

SERVICE INTERRUPTION. The loss of either picture or sound or both for a

single or multiple subscriber(s).

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

SUBSCRIBER. Any person, firm, grantee, corporation, 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 Matteson, Illinois.
(Ord. 1678, passed 7-21-97)

§ 113.03 RIGHTS AND PRIVILEGES OF GRANTEE.

Any franchise granted by the village pursuant to state statutes (ILCS Ch. 65, Act 5, § 11-42-11) shall grant to 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. Any such franchise granted shall be on the same and similar terms and conditions.

(Ord. 1678, passed 7-21-97)

§ 113.04 AGREEMENT AND INCORPORATION OF APPLICATION BY REFERENCE.

(A) Upon adoption of any franchise agreement and execution thereof by the grantee, the grantee agrees to be bound by all the terms and conditions contained in this chapter.

(B) Any grantee also agrees to provide all services specifically set forth in its application and to provide cable television service within the confines of the village; and by its acceptance of the franchise, the grantee specifically grants and agrees that its application is thereby incorporated by reference and made a part of the franchise. In the

event of a conflict between such proposals and the provisions of this chapter, the provisions of the franchise agreement shall control.

(Ord. 1678, passed 7-21-97)

§ 113.05 FRANCHISE TERRITORY.

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

(Ord. 1678, passed 7-21-97)

§ 113.06 DURATION AND ACCEPTANCE OF FRANCHISE.

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 an initial term of no longer than 12 years, provided that within 15 days after the date of village approval of the franchise the grantee shall file with the village its unconditional acceptance of the franchise and promise to comply with and abide by all its provisions, terms and conditions. Such acceptance and promise shall be in writing duly executed and sworn to, by, or on behalf of the grantee before a notary public or other officer authorized by law to administer oaths. Such franchise shall be non-exclusive and revokable.

(Ord. 1678, passed 7-21-97)

§ 113.07 FRANCHISE RENEWAL.

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

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

(B) Upon completion of the proceeding under division (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 division (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 division (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 division (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 subdivisions (1) through (4) of division (D) pursuant to the record of the proceeding under said division. 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 subdivision (D)(2) unless the village has provided the grantee with notice and the opportunity to cure or in any case in which it is documented that the village has waived its right to object.

(H) The grantee may appeal 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 any action of the village is not in compliance with the procedural requirements of this section; or 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 subdivisions (D)(1) through (4) on which the denial is based is not supported by a preponderance of the evidence, based on the record of the administrative proceeding.
(Ord. 1678, passed 7-21-97)

§ 113.08 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 following relevant section(s) shall apply:

(A) At least 24 months prior to the expiration of the franchise, the grantee shall inform the village in writing of its intent to seek renewal of the franchise.

(B) The grantee shall submit a proposal for renewal which demonstrates:

(1) That it has been and continues to be in substantial compliance with the material terms, conditions, and limitations of this chapter and its franchise;

(2) That its system has been installed, constructed, maintained and operated in accordance with the accepted standards of the industry, and this chapter and its franchise;

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

(4) That it has made a good faith effort to provide services and facilities which accommodate the demonstrated needs of the community as may be reasonably ascertained by the village through a public process.

(C) After giving public notice, the village shall proceed to determine whether the grantee has satisfactorily performed its obligations under the franchise. To determine satisfactory performance, the village shall consider technical developments and performance of the system, programming, other services offered, cost of services, and any other particular requirements set forth in this chapter. The village shall also consider the grantee's reports made to the village and to the FCC, and the village may require the grantee to make available specified records, documents, and information for this purpose, and may inquire specifically whether the grantee will supply services sufficient to meet community needs and interests. Industry performance on a national basis shall also be considered. Provision shall be made for public comment with adequate prior notice of at least ten days.

(D) The village shall then prepare any amendments to this chapter that it believes necessary.

(E) If the village finds the grantee's performance satisfactory, and finds the grantee's technical, legal, and financial abilities acceptable, and finds the grantee's renewal proposal meets the future cable-related needs of the village, a new franchise may be granted pursuant to this chapter as amended for a period to be determined.

(F) If the grantee is determined by the village to have performed unsatisfactorily, new applicants may be sought and evaluated and a franchise award shall be made by the village according to franchising procedures adopted by the village.
(Ord. 1678, passed 7-21-97)

§ 113.09 POLICE POWERS.

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

(B) Any conflict between the provisions of a franchise and any other present or future lawful exercise of the village's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction, or applies exclusively to the grantee or cable television systems which contains provisions inconsistent with this chapter, shall prevail only if upon such exercise the village finds a danger to health, safety, property or the general welfare or if such exercise is mandated by law.
(Ord. 1678, passed 7-21-97)

§ 113.10 CABLE TELEVISION FRANCHISE REQUIRED.

No cable television system shall be allowed to operate or to occupy or use the streets (that is, rights-of-way) for system installation and maintenance purposes without a franchise.
(Ord. 1678, passed 7-21-97)

§ 113.11 USE OF GRANTEE FACILITIES.

The village and the grantee shall work together to agree to terms and conditions which allow the village to install and maintain upon the poles of the grantee, any wire or pole fixtures that do not unreasonably interfere with the cable television system operations of the grantee, so long as the village maintains a similar right with the utilities operating in the village. 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.
(Ord. 1678, passed 7-21-97)

§ 113.12 INITIAL FRANCHISE COSTS.

Costs to be borne by a grantee shall include any requirements or charges incidental to the awarding or enforcing of its initial franchise, but shall not be limited to: reasonable administrative, engineering, legal and consulting expenses, all costs of publications of notices prior to any public meeting provided for pursuant to this 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.

(Ord. 1678, passed 7-21-97)

§ 113.13 NOTICES.

All notices from the grantee to the village pursuant to any franchise shall be sent to the Mayor's office, with a copy to the chief administrative officer. 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. 1678, passed 7-21-97)

§ 113.14 LETTER OF CREDIT/SECURITY DEPOSIT.

(A) Within 15 days after the award of an initial franchise, the grantee shall deposit with the village either an irrevocable letter of credit from a financial institution or a security deposit in the amount of \$100,000 with the form to be established by the village.

(B) Within 15 days after the award of a renewal franchise, the grantee shall deposit with the village either an irrevocable letter of credit from a financial institution or a security deposit in the amount of \$10,000 with the form to be established by the village.

(C) The form and content of such letter of credit or security deposit shall be approved by the Village Attorney. These instruments shall be used to ensure the faithful performance of the grantee of all provisions of this 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 ordinance, and to ensure the payment by the grantee of any claims, liens, and taxes due the village which arise by reason of the construction, operation or maintenance of the system.

(D) The letter of credit or security deposit shall be maintained at the amount established in division (A) of this section for the entire term of the franchise, even if amounts have to be withdrawn pursuant to this chapter.

(E) If the grantee fails to pay to the village any compensation within the time fixed herein; or fails to pay to the village any taxes due and unpaid; or fails to repay the village any damages, costs or expenses which the village is compelled to pay by reason of any act or default of the grantee in connection with the franchise, the village shall provide grantee with written notice informing grantee that such amounts are due to the village. The written notice shall describe in reasonable detail the specific reasons for the assessment. The grantee shall have 30 days subsequent to receipt of the notice in which to pay the amounts the village has stated it is owed, or within ten days of receipt of the village notice, notify the village that there is a dispute as to whether grantee believes such amounts are due the village. Such notice by the grantee to the village shall specify with particularity the basis of grantee's belief that such monies are not due the village, and shall stay the running of the 30-day cure period pending a Board decision. The Board shall hear the grantee's dispute. Grantee must be given at least ten days notice of the hearing. At the hearing, the grantee shall be entitled to the right to present evidence and the right to be represented by counsel. After the hearing, the village shall provide grantee a copy of its action, along with supporting documents. In the event the village upholds the finding of outstanding monies due the village by grantee, the village may immediately withdraw the amount thereof, with interest from the letter of credit or security deposit.

(F) 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.

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

(H) Upon receipt of the 30-day notice, this shall be construed as a default granting the village the right to demand payment from the bank for either the security deposit or letter of credit.

(I) The village at any time during the term of this chapter, may waive grantee's requirement to maintain a letter of credit or security deposit. The waiver of the requirement can be initiated by the village or grantee.
(Ord. 1678, passed 7-21-97)

§ 113.15 PERFORMANCE BOND.

(A) Within 30 days after the award of an initial or renewal franchise, the grantee shall file with the village a performance bond in the amount of \$100,000. This bond shall be maintained throughout the construction period, and until such time as determined by the village, unless specified in the franchise agreement.

(B) If the grantee fails to comply with any law, ordinance or resolution governing the franchise, or fails to well and truly observe, fulfill and perform each term and condition of the franchise, as it relates to the conditions relative to the construction, operation or maintenance of the system, including the franchise agreement that is incorporated herein by reference, there shall be recoverable jointly and severally, from the principal and surety of the bond, any damages or loss suffered by the village as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the grantee, plus a reasonable allowance for attorney's fees, including the village's legal staff, and costs, up to the full amount of the bond. This section shall be an additional remedy for any and all violations outlined in § 113.14.

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

(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 30 days after receipt by the village, by registered mail, a written notice of such intent to cancel and not to renew."

(E) Upon receipt of a 30-day notice, this shall be construed as default granting the village the right to demand payment on the bond.

(F) The village, at any time during the term of this chapter, may waive grantee's requirement to maintain a performance bond. The waiver of the requirement can be initiated by the village or the grantee.
(Ord. 1678, passed 7-21-97)

§ 113.16 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) \$1,000,000 for property damage to any one person;
- (2) \$3,000,000 for property damage from any one accident;
- (3) \$1,000,000 for personal injury to any one person; and
- (4) \$3,000,000 for personal injury from any one accident.

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

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

(Ord. 1678, passed 7-21-97)

§ 113.17 INDEMNIFICATION.

(A) *Disclaimer of liability.* The village shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of the 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.* The grantee shall, at its sole cost and expense, indemnify and hold harmless the village, all associated, affiliated, allied and subsidiary entities of the village now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys and contractors (hereinafter referred to as "indemnitees") from and against:

(1) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or asserted against the indemnitees by reason of any act or omission of the grantee, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person, or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, firm or corporation, which may arise out of or be in any way

connected with the construction, installation, operation, maintenance, use or condition of the cable television system caused by grantee, its subcontractors or agents or the grantee's failure to comply with any federal, state or local statute, ordinance or regulation.

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

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

(C) *Assumption of risk.* The grantee undertakes and assumes for its officers, agents, contractors and subcontractors and employees all risk of dangerous conditions, if any, on or about any village-owned or controlled property, including public rights-of-way and easements, and the grantee hereby agrees to indemnify and hold harmless the indemnitees against and from any claim asserted or liability imposed upon the indemnitees for personal injury or property damage to any person arising out of the installation, operation, maintenance or condition of the cable television system or the grantee's failure to comply with any federal, state or local statute, ordinance or regulation.

(D) *Defense of indemnitees.* In the event any action or proceeding shall be brought against the indemnitees by reason of any matter for which the 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 with legal counsel acceptable to the Village Attorney, provided further, however, that the grantee shall not admit liability in any such matter on behalf of the indemnitees without the written consent of the Village Attorney or the Village Attorney's designee.

(E) *Notice.* The village shall give the grantee prompt notice of the making of any written claim or the commencement of any action, suit or other proceeding covered by the provisions of this section.

(F) *Nonwaiver of statutory limits.* Nothing in this agreement is intended to express or imply a waiver by the village of statutory provisions, privileges or immunities of any kind or nature as set forth in Illinois Statutes, including the limits of liability of the village as exists presently or as may be increased from time to time by the legislature. (Ord. 1678, passed 7-21-97)

§ 113.18 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, gender, marital status, sexual preference or age. The grantee shall comply at all times with all other applicable federal, state and local laws and regulations and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this chapter by reference.

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

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

(D) Grantee is required to make all services available to all residential dwellings throughout the service area. (Ord. 1678, passed 7-21-97)

§ 113.19 PUBLIC NOTICE.

Minimum public notice of any public meeting relating to the franchise shall be by publication at least once in a local newspaper of general circulation at least ten days prior to the meeting, by posting at the Village Municipal Center by announcement and shall be on at least one channel of the grantee's system between the hours of 7:00 p.m. and 9:00 p.m., for five consecutive days prior to the meeting. (Ord. 1678, passed 7-21-97)

§ 113.20 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 years of all requests for service received by the grantee. This record shall be available for public inspection at the local office of the grantee during regular office hours. (Ord. 1678, passed 7-21-97)

§ 113.21 SYSTEM CONSTRUCTION.

(A) New construction timetable.

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

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

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

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

(3) Any delay beyond the terms of this timetable, unless specifically approved by the village, will be considered a violation of this chapter for which the provisions of either §§ 113.38 or 113.47 shall apply, as determined by the village.

(4) In special circumstances the village may waive 100% completion within the two year time frame, provided substantial completion is accomplished within the allotted time frame, substantial completion to be not less than 95%. Justification for less than 100% must be submitted subject to the approval of the village.

(B) Line extensions:

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

(a) No customer shall be refused service arbitrarily. Grantee is hereby authorized to extend the cable system as necessary within the village. To expedite the process of extending the cable system into a new subdivision, the village will forward to the grantee an approved engineering plan of each project. Subject to the density requirements, 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 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 20 dwelling units planned per street mile, as measured from the existing system, and shall make every effort to extend its system simultaneously with the installation of utility lines, provided that it can enter into such joint trench agreements on reasonable terms and conditions.

(2) In areas not meeting the requirements for mandatory extension of service, the grantee shall provide, upon the request of a potential subscriber desiring service, an estimate of the grantee's costs required to extend service to the subscriber. The grantee shall then extend service upon request of the potential subscriber. The grantee may require advance payment or assurance of payment satisfactory to the Grantee. In the event the area subsequently reaches the density required for mandatory extension, such payments shall be refunded to the subscriber.

(3) 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 working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the ten day period, the cost of new trenching is to be borne by the grantee. Except for the notice from the developer or property owner of the particular date on which trenching will be available to the grantee, notice provided to the grantee by the village of the opening of a trench shall also satisfy the requirement of reasonable notice if sent to the local general manager or system engineer of the grantee.

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

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

(E) The violation of this section shall be considered a breach of the terms of this chapter, for which the provisions of either §§ 113.39 or 113.47 shall apply, as determined by the village.

(Ord. 1678, passed 7-21-97) Penalty, see § 113.99

§ 113.22 CONSTRUCTION AND TECHNICAL STANDARDS.

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

(B) *Additional specifications.*

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

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

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

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

(c) Bell System Code of Pole Line Construction; and

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

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

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

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

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

normal flight patterns. FCC rules and regulations shall govern.

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

(8) In all areas of the village where 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 cable operator must concurrently do so.

(Ord. 1678, passed 7-21-97) Penalty, see § 113.99

§ 113.23 USE OF STREETS.

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

(B) *Restoration to prior condition.* In case of any disturbance of pavement, sidewalk, landscaping, driveway or other surfacing, the grantee shall, at its own cost and expense and in a manner approved by the village, replace and restore all paving, sidewalk, driveway, landscaping or surface of any street or alley disturbed, in as good condition as before the work was needed and in accordance with standards for such work set by the village.

(C) *Erection, removal and common uses of poles.*

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

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

(D) *Relocation of facilities.* If at any time during the period of the franchise the village shall elect to alter, or change the grade of any street, alley or other public

ways, the grantee, upon reasonable notice by the village, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

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

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

(Ord. 1678, passed 7-21-97) Penalty, see § 113.99

§ 113.24 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 30 days, furnish the requested service to such person within terms of the line extension policy.

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

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

(Ord. 1678, passed 7-21-97) Penalty, see § 113.99

§ 113.25 CUSTOMER SERVICE STANDARDS.

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

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

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

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

(E) Customer service centers and bill payment locations will be open for walk-in customer transactions a minimum of eight 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) Under normal operating conditions, each of the following standards will be met no less than 95% of the time, as measured on an annual basis.

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

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

(G) Upon service interruption of a subscriber's cable service, the following

shall apply:

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

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

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

- (1) Product and services offered;
- (2) Prices and service options;
- (3) Installation and service policies;
- (4) How to use the cable television services.

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

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

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

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

(M) The grantee shall notify customers a minimum of 30 days in advance of any rate or channel change.

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

(O) 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 find, by resolution, that the grantee has failed to maintain these technical standards and quality of service, and should it, by resolution, specifically enumerate improvements to be made, the grantee shall make such improvements. Failure to make such improvements within three months of such resolution will constitute a breach of a condition for which penalties contained in § 113.47 are applicable.

(P) The grantee shall keep a monthly service log which indicates the nature of each service complaint (excluding programming complaints) received in the last 24 months, the date and time each complaint was received, the disposition of each complaint, and the time and date thereof. This log shall be made available for periodic inspection by the village.

(Q) The grantee shall provide a copy of the customer service standards included in this section to every subscriber via a bill insert at least once every calendar year. The grantee shall also provide a copy of these customer service standards to every new customer within 30 days of connection.

(Ord. 1678, passed 7-21-97) Penalty, see § 113.99

§ 113.26 CONTINUITY OF SERVICE MANDATORY.

(A) It shall be the right of all subscribers to continue receiving service as long as their financial and other obligations to the grantee are honored. If the grantee elects to over build, rebuild, modify or sell the system, the grantee shall act so as to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances for a period not to exceed six months. If the village gives notice of intent to terminate or fails to renew the franchise, the grantee shall act so as to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances, for a period not to exceed three months after the franchise agreement has terminated.

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

(Ord. 1678, passed 7-21-97)

§ 113.27 COMPLAINT PROCEDURE.

(A) The Mayor or chief elected official is designated as having primary responsibility for the continuing administration of the franchise and for the implementation of complaint procedures.

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

(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 other evidence, which, in the judgment of the village, in consultation with the grantee, casts doubt on the reliability or quality of cable service, the village shall have the right and authority to require the grantee to test, analyze and report on the performance of the system. The grantee shall fully cooperate with the village in performing such testing and shall prepare results and a report, if requested, within 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 request that tests be supervised, at the village's expense, by an independent professional engineer or equivalent of the village's choice. The

engineer shall sign all records of special tests and forward to the village such records with a report interpreting the results of the tests and commending actions to be taken.

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

(Ord. 1678, passed 7-21-97)

§ 113.28 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. 1678, passed 7-21-97)

§ 113.29 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 the maximum amount as allowed by law or such lesser amount as may be designated by the village.

(B) The franchise fee payment shall be in addition to any other tax or payment owed to the village by the grantee and shall not be construed as payment in lieu of municipal property taxes or other state, county or local taxes.

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

(D) The village shall have the right to inspect the grantee's income records and the right to audit and to recompute any amounts determined to be payable under this chapter; provided, however, that such audit shall take place within 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 30 days following written notice to the grantee by the village, which notice shall include a copy of the audit report.

(E) If any franchise payment or recomputed amount, cost or penalty, is not

made on or before the applicable dates heretofore specified, interest shall be charged daily from such date at an annual rate of 12%. The grantee shall reimburse the village for any additional expenses and costs incurred by the village by reason of the delinquent payment(s).

(Ord. 1678, passed 7-21-97)

§ 113.30 TRANSFER OF OWNERSHIP OR CONTROL.

(A) A franchise shall not be assigned or transferred, either in whole or in part, or leased or sublet in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person without the prior written consent of the village, except that any financing arrangement, including but not limited to a mortgage or pledge, shall not be deemed a “transfer” controlled by this section. 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 show legal, technical and financial responsibility as determined by the village and must agree to comply with all provisions of the franchise. The village shall have 120 days to act upon any request for approval of a sale or transfer submitted in writing that contains or is accompanied by such information as is required in accordance with FCC regulations and by the village. The village shall be deemed to have consented to a proposed transfer or assignment if its refusal to consent is not communicated in writing to the Grantee within 120 days following receipt of written notice and receipt of all necessary information as to the effect of the proposed transfer or assignment upon the public, unless the requesting party and the village agree to an extension of time. The village shall not unreasonably withhold consent to a proposed transfer.

(B) The grantee shall promptly notify the village of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the grantee. The word “control” as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of 5% of the voting shares of the grantee. Every change, transfer or acquisition of control of the grantee that is not conducted pursuant to the terms and conditions of this chapter shall make the franchise subject to cancellation unless and until the village shall have consented thereto, which consent shall not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the village may inquire into the qualifications of the prospective controlling party, and the grantee shall assist the village in such inquiry.

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

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

(E) In no event shall a transfer of ownership or control be approved without the successor(s) in interest becoming a signatory to the franchise agreement.
(Ord. 1678, passed 7-21-97)

§ 113.31 AVAILABILITY OF BOOKS AND RECORDS.

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

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

(1) A quarterly review and resolution or progress report submitted by the grantee to the village;

(2) Periodic preventive maintenance reports;

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

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

(5) Periodic construction update reports including, where appropriate, the submission of as-built maps.

(Ord. 1678, passed 7-21-97)

§ 113.32 OTHER PETITIONS AND APPLICATIONS.

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

to the village.
(Ord. 1678, passed 7-21-97)

§ 113.33 FISCAL REPORTS.

The grantee shall file annually with the village no later than 120 days after the end of the grantee's fiscal year, a copy of a gross revenues statement certified by an officer of the grantee.
(Ord. 1678, passed 7-21-97)

§ 113.34 REMOVAL OF CABLE TELEVISION SYSTEM.

At the expiration of the term for which the franchise is granted or when any renewal is denied, or upon its termination as provided herein, the grantee shall forthwith, upon notice by the village, remove at its own expense all designated portions of the cable television system from all streets and public property within the village. If the grantee fails to do so, the village may perform the work at the grantee's expense. Upon such notice of removal, a bond shall be furnished by the grantee in an amount sufficient to cover this expense.
(Ord. 1678, passed 7-21-97)

§ 113.35 REQUIRED SERVICES AND FACILITIES.

(A) The grantee shall make available to subscribers the option to receive a minimum of 85 channels.

(B) The grantee shall maintain the following:

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

(2) At least one specially-designated channel per school district for use by local educational authorities;

(3) At least one specially-designated channel for local governmental uses;

(4) At least one specially-designated channel for leased access uses;
and

(5) An institutional network (I-Net) of cable, optical, electrical or electronic equipment, including cable television systems, used for the purpose of transmitting two-way telecommunications signals interconnecting designated entities to

be determined by the village. Such network may be provided as needed by utilizing capacity on the system.

(6) Provided, however, that the public access, education and local government channels shall be combined on one channel until such time as additional channels become necessary as mutually agreed to by the village and the grantee. The grantee shall make a channel available for leased access uses in accordance with the requirements of federal law. Studios and associated production equipment will be located in a mutually agreed upon site to meet the public's need for public access, education and local government channels as noted in subdivisions (1), (2) and (3). Financial and technical support and replacement and maintenance of equipment of this facility shall be separately incorporated into the franchise by agreement.

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

(D) Interconnection.

(1) The grantee may be requested to interconnect its system with other communication facilities. Such interconnection shall be made within the time limit established by the village.

(2) Upon receiving a request from the village to interconnect, the franchisee shall immediately initiate negotiations with the other affected system or systems in order that all costs may be shared equally among cable companies for both construction and operation of the interconnection link.

(3) The franchisee may be granted reasonable extensions of time to interconnect or the village may rescind its request to interconnect upon petition by the franchisee to the village if it finds that the franchisee has negotiated in good faith and has arrived at impasse with the operator or franchising authority of the system to be interconnected, or if the franchisee determines that the cost of the interconnection would cause an unreasonable or unacceptable increase in subscriber rates or that interconnection is technically unfeasible.

(4) The grantee shall cooperate 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.

(E) The grantee shall provide such additional services and facilities as are contained in its application, which is incorporated by reference herein.
(Ord. 1678, passed 7-21-97)

§ 113.36 RULES AND REGULATIONS.

(A) In addition to the inherent powers of the village to regulate and control any cable television franchise, and those powers expressly reserved by the village, or agreed to and provided for herein, the right and power is hereby reserved by the village to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers and furtherance of the terms and conditions of the franchise; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations.

(B) The village may also adopt such regulations at the request of grantee upon application.
(Ord. 1678, passed 7-21-97)

§ 113.37 PERFORMANCE EVALUATION SESSIONS.

(A) The village and the grantee may hold scheduled yearly performance evaluation sessions within 30 days of the third, sixth and ninth anniversary dates of the grantee's award or renewal of the franchise and as may be required by federal and state law.

(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) All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with legal notice. The grantee shall notify its subscribers of all evaluation sessions by announcements on at least one channel of its system between the hours of 7:00 p.m. and 9:00 p.m., for five consecutive days preceding each session.

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

(E) Members of the general public may add topics either by working through the negotiating parties or by presenting a petition. If such a petition bears the valid signatures of 50 or more residents of the village, the proposed topic or topics shall be added to the list of topics to be discussed at the evaluation session.
(Ord. 1678, passed 7-21-97)

§ 113.38 RATE CHANGE PROCEDURES.

Pursuant to the Cable Television Consumer Protection and Competition Act of 1992, being 47 USC 325 *et seq.* and 47 USC 521 *et seq.*, the village is currently certified to regulate the basic service rates charged by grantee. Under these rules, grantee is required to obtain approval from the village for a rate increase for any change to the rates for basic service. Should federal or state law permit further rate regulation beyond basic service, the village may assume such rate regulation and adopt appropriate procedures for such regulation.

(Ord. 1678, passed 7-21-97)

§ 113.39 FORFEITURE AND TERMINATION.

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

(1) Violation of any material provision of the franchise or any material rule, order, regulation or determination of the village made pursuant to the franchise;

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

(3) Failure to begin or complete system construction or system extension as provided under § 113.21;

(4) Failure to provide the services promised in the grantee's initial application as incorporated herein by § 113.04;

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

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

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

(C) The village may make a written demand that the grantee comply with any such provision, rule, order or determination under or pursuant to the franchise. If the violation by the grantee continues for a period of 30 days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the village may place the issue of termination of the franchise

before the Village Board. The village shall cause to be served upon the grantee, at least 20 days prior to the date of such meeting, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and the issue(s) which the Board is to consider.

(D) The Village Board shall hear and consider the issue(s) and shall hear any person interested therein and any relevant evidence, and shall determine whether or not any violation by a grantee has occurred, after affording grantee rights of due process to be heard and an opportunity to present all relevant evidence and witnesses. The grantee may, at its own expense, make a transcript of any such hearing.

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

(F) The issue of forfeiture and termination shall automatically be placed upon the Board agenda at the expiration of the time set by it for compliance. The Board may then terminate the franchise forthwith upon finding that the grantee has failed to achieve compliance or it may further extend the period, at its discretion.
(Ord. 1678, passed 7-21-97)

§ 113.40 FORECLOSURE.

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

(Ord. 1678, passed 7-21-97)

§ 113.41 RECEIVERSHIP.

The village shall have the right to cancel a franchise 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 120 days, or unless:

(A) Within 120 days after his/her election or appointment, such receiver or

trustee shall have fully complied with all the provisions of this chapter and remedied all defaults thereunder; and

(B) Such receiver or trustee, within the 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.

(Ord. 1678, passed 7-21-97)

§ 113.42 COMPLIANCE WITH STATE AND FEDERAL LAWS.

(A) Notwithstanding any other provisions of the franchise to the contrary, the grantee shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof; provided, however, if any such state or federal law or regulation shall require the grantee to perform any service, or shall permit the grantee to perform any service, or shall prohibit the grantee from performing any service, in conflict with the terms of the franchise or of any law or regulation of the village, then as soon as possible following knowledge thereof, the grantee shall notify the village of the point of conflict believed to exist between such regulation or law and the laws or regulations of the village or the franchise.

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

(Ord. 1678, passed 7-21-97) Penalty, see § 113.99

§ 113.43 LANDLORD/TENANT.

(A) *Interference with cable service prohibited.* Neither the owner of any multiple-unit residential dwelling nor his/her 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/her agent or representative shall penalize, charge or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or receives cable television service from a grantee operating under a valid and existing cable television franchise issued by the village.

(C) *Reselling service prohibited.* No person shall resell, without the expressed, written consent of both the grantee and the village, any cable service, program

or signal transmitted by a cable television grantee under a franchise issued by the village.

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

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

(Ord. 1678, passed 7-21-97)

§ 113.44 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 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 is encouraged to:

(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 an 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. 1678, passed 7-21-97)

§ 113.45 FINANCIAL, CONTRACTUAL, SHAREHOLDER AND SYSTEM DISCLOSURE FOR FRANCHISES.

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

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

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

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

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

- (1) Locations of all other franchises and the dates of award for each location;
- (2) Estimated construction costs and estimated completion dates for each system;
- (3) Estimated number of miles of construction and number of miles completed in each system as of the date of this application; and
- (4) Date for completion of construction as promised in the application for each system.

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

- (1) Location of other franchise applications and date of application for each system;
- (2) Estimated dates of franchise awards;
- (3) Estimated number of miles of construction; and
- (4) Estimated construction costs.

(Ord. 1678, passed 7-21-97)

§ 113.46 THEFT OF SERVICES AND TAMPERING.

- (A) No person may intentionally do any of the following:
 - (1) Obtain or attempt to obtain cable television service from a company by trick, artifice, deception, use of an illegal device or illegal decoder or other fraudulent means with the intent to deprive that company of any or all lawful compensation for rendering each type of service obtained. The intent required for a violation of this paragraph may be inferred from the presence on the property and in the actual possession of the defendant of a device not authorized by the cable television company, the major purpose of which is to permit reception of cable television services without payment. This inference is rebutted if the defendant demonstrates that he/she or she purchased that device for a legitimate use.
 - (2) Give technical assistance or instruction to any person in obtaining or attempting to obtain any cable television service without payment of all lawful compensation to the company providing that service. This division does not apply if the defendant demonstrates that the technical assistance or instruction was given or the

installation of the connection, descrambler or receiving device was for a legitimate use.

(3) Make or maintain a connection, whether physical, electrical, mechanical, acoustical or by other means, with any cables, wires, components or other devices used for the distribution of cable television services for the purpose of distributing cable television service to any other dwelling unit without authority from a cable television company.

(4) Make or maintain a connection, whether physical, electrical, mechanical, acoustical or by other means, with any cables, wires, components or other devices used for the distribution of cable television services for the purpose of obtaining cable television service without payment of all lawful compensation to the company providing the service. The intent required for a violation of this division may be inferred from proof that the cable service to the defendant's residence or business was connected under a service agreement with the defendant and has been disconnected by the cable television company and that thereafter there exists in fact a connection to the cable system at the defendant's residence or business.

(5) Make or maintain any modification or alteration to any device installed with the authorization of a cable television company for the purpose of intercepting or receiving any program or other service carried by that company which that person is not authorized by that company to receive. The intent required for a violation of this division may be inferred from proof that, as a matter of standard procedure, the cable television company places written warning labels on its converters or decoders explaining that the tampering with the device is a violation of law and that the converter or decoder is found to have been tampered with, altered or modified so as to allow the reception or interception of programming carried by the cable television company without authority to do so. The trier of fact may also infer that a converter or decoder has been altered or modified from proof that the cable television company, as a matter of standard procedure, seals the converters or decoders with a label or mechanical device, that the seal was shown to the customer upon delivery of the decoder and that the seal has been removed or broken. The inferences under this division are rebutted if the cable television company cannot demonstrate that the intact seal was shown to the customer.

(6) Possess without authority any device or printed circuit board designed to receive from a cable television system any cable television programming or services offered for sale over that cable television system, whether or not the programming or services are encoded, filtered, scrambled or otherwise made unintelligible, or perform or facilitate the performance of any of the acts under subdivisions (1) through (5) of this section with the intent that that device or printed circuit be used to receive that cable television company's services without payment. Intent to violate this division for direct or indirect commercial advantage or private financial gain may be inferred from proof of the existence on the property and in the actual possession of the defendant of a device if the totality of circumstances, including quantities or volumes, indicates possession for resale.

(7) Manufacture, import into this state, distribute, publish, advertise, sell, lease or offer for sale or lease any device, printed circuit board or any plan or kit for a device or for a printed circuit designed to receive the cable television programming or services offered for sale over a cable television system from a cable television system, whether or not the programming or services are encoded, filtered, scrambled or otherwise made unintelligible, with the intent that the device, printed circuit, plan or kit be used for the reception of that company's services without payment. The intent required for a violation of this paragraph may be inferred from proof that the defendant has sold, leased or offered for sale or lease any device, printed circuit board, plan or kit for a device or for a printed circuit board in violation of this paragraph and during the course of the transaction for sale or lease the defendant expressly states or implies to the buyer that the product will enable the buyer to obtain cable television service without charge.

(B) Civil liability for theft of cable television service.

(1) Any person who incurs injury as a result of a violation of § 113.99 may bring a civil action against the person who committed the violation.

(2) If the person who incurs the loss prevails against a person who committed the violation wilfully and for the purpose of commercial advantage or prevails against a person who has committed more than one violation of § 113.99, the court may grant the prevailing party any or all the following:

(a) Except as provided in subdivision (e), not more than \$10,000 per violation.

(b) Actual damages.

(c) Any profits of the violators that are attributable to the violation and that are not taken into account in determining the amount of actual damages under subdivision (b).

(d) Notwithstanding the limitations under Illinois State Statutes, §§ 799.25 or 814.04, costs, disbursement and reasonable attorney fees.

(e) If the court finds that the violation was committed wilfully and for the purpose of commercial advantage, the court may increase the amount granted under subdivision (a) not to exceed \$50,000 per violation.

(3) If damages under subdivision (2)(c) are requested, the party who committed the violation shall be required to provide information on the violator's gross revenues, the violator's deductible expenses and the elements of profit attributable to factors other than the violation.

(4) In addition to other remedies available under this section, the

courts may grant the injured party a temporary or permanent injunction.
(Ord. 1678, passed 7-21-97)

§ 113.47 PROCEDURES.

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

(B) The grantee may, within ten days of receipt of notice, notify the village that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by the grantee to the village shall specify with particularity the matters disputed by the grantee and shall stay the running of the 30 day cure period pending Board decision as required below. The Board shall hear the grantee's dispute, grantee must be given at least five days notice of the hearing. At the hearing, the grantee shall be entitled to the right to present evidence and the right to be represented by counsel. After the hearing, the village shall provide grantee a copy of its action, along with supporting documents. In the event the village upholds the finding of a violation, the grantee shall have 30 days subsequent, or such other time period as the grantee and the village mutually agree, to correct the violation.

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

(Ord. 1678, passed 7-21-97)

MUNICIPAL TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEE

§ 113.55 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

GROSS CHARGES. The amount paid to a telecommunications retailer for the act or privilege of originating or receiving telecommunications within the village, and for all services rendered in connection therewith, valued in money whether paid in money or otherwise, including cash, credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of the materials used, labor or services costs, or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. **GROSS CHARGES** for private line service shall include charges imposed at each channel termination point within the village, charges for the channel mileage between each channel termination point within the village and charged for that portion of the interstate inter-office channel provided within the village. However, **GROSS CHARGES** shall not include:

(1) Any amounts added to a purchaser's bill because of a charge made under the fee imposed by this subchapter, additional charges added to a purchaser's bill under Section 9-221 or 9-222 of the Public Utilities Act, ILCS Ch. 220, Act 5, §§ 9-221, 9-222, and 9-222.1, amounts collected under the Illinois Municipal Code, being ILCS Ch. 65, Act 5, § 8-11-17, the tax imposed by the Telecommunications Excise Tax Act, ILCS Ch. 35, Act 630, §§ 1 *et seq.*, 911 surcharges, or the tax imposed by Section 4251 of the Internal Revenue Code;

(2) Charges for a sent collect telecommunication received outside the village;

(3) Charges for leased time on equipment or charges for the storage of data or information of subsequent retrieval or the processing of data or information intended to change its form or content. Such equipment includes, but is not limited to, the use of calculator, computers, data processing equipment, tabulating equipment, or accounting equipment, and also includes the usage of computers under a time-sharing agreement;

(4) Charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges;

(5) Charges to business enterprises certified under the Public Utilities Act, being ILCS Ch. 220, Act 5, §§ 9-221, 9-222 and 9-222.1, to the extent of such exemption and during the period of time specified by the village;

(6) Charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, and only to the extent that the charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries represent expense allocation between the corporations and not the generation of profit other than a regulatory required profit for the corporation rendering such services;

(7) Bad debts (***BAD DEBT*** means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectible, as determined under applicable federal income tax standards; if the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made);

(8) Charges paid by inserting coins in coin-operated telecommunications devices; or

(9) Charges for telecommunications and all services and equipment provided to the village.

PUBLIC RIGHT-OF-WAY. Any municipal street, alley, water or public right-of-way dedicated or commonly used for utility purposes, including utility easements wherein the village has acquired the right and authority to locate or permit the location of utilities consistent with telecommunications facilities. ***PUBLIC RIGHT-OF-WAY*** shall not include any real or personal village property that is not specifically described in the previous sentence and shall not include village buildings and other structures or improvements, regardless of whether they are situated in the public right-of-way.

RETAILER MAINTAINING A PLACE OF BUSINESS IN THE STATE. Any retailer having or maintaining within the State of Illinois, directly or by a subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse, or other place of business, or any agent or other representative operating within this state under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this state.

SALE OF TELECOMMUNICATIONS AT RETAIL. The transmitting, supplying or furnishing of telecommunications and all services rendered in connection therewith for a consideration, other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, when the gross charge made by one such corporation to another such corporation is not greater than the gross charge paid to the retailer for their use or consumption and not for sale.

SERVICE ADDRESS. The location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received. If this is not a defined location, as in the case of wireless telecommunications, paging systems, maritime systems, ***SERVICE ADDRESS*** means the customer's place of primary use as defined in ILCS Ch. 35, Act 638, §§ 1 et seq. (the Mobile Telecommunications Sourcing Conformity Act). For air-to-ground systems, and the like, ***SERVICE ADDRESS*** shall mean the location of the customer's primary use of the telecommunications equipment as defined by the location in Illinois where bills are sent.

TELECOMMUNICATIONS. Messages or information transmitted through use of local, toll, and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange services, private line services, specialized mobile radio services, or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable fiber optics, laser, microwave, radio satellite, or similar facilities. Unless the context clearly requires otherwise, **TELECOMMUNICATIONS** shall also include wireless telecommunications as hereinafter defined. **TELECOMMUNICATIONS** shall not include value added services in which computer processing applications are used to act on the form, content, code, and protocol of the information for purposes other than transmission.

TELECOMMUNICATIONS shall not include purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by him/her or her to the ultimate retail consumer who originates or terminates the end-to-end communications. Retailer access charges, right of access charges, charges for use of inter company facilities, and all telecommunications resold in the subsequent provision and used as a component of, or integrated into, end-to-end telecommunications service shall not be included in gross charges as sales for resale. **TELECOMMUNICATIONS** shall not include the provision of cable services through a cable system as defined in the Cable Communications Act of 1984 (47 USC §§ 521 *et seq.*) as now or hereafter amended or cable or other programming services subject to an open video system fee payable to the village through an open system as defined in the Rules of the Federal Communications Commission (47 CFR 76.1550 and following) as now or hereafter amended. Beginning January 1, 2001, prepaid telephone calling arrangements shall not be considered **TELECOMMUNICATIONS** subject to the tax imposed under this Act. For purpose of this section, "prepaid telephone calling arrangements" means that term as defined ILCS Ch. 35, Act 120, § 2-27 (the Retailers' Occupation Tax Act).

TELECOMMUNICATIONS PROVIDER.

- (1) Any telecommunications retailer; and
- (2) Any person that is not a telecommunications retailer that installs, owns, operates or controls equipment in the public right-of-way that is used or designed to be used to transmit telecommunications in any form.

TELECOMMUNICATIONS RETAILER or **RETAILER** or **CARRIER.** Every person engaged in the business of making sales of telecommunications at retail as defined in this subchapter. The village may, in its discretion, upon application, authorize the collection of the fee hereby imposed by any retailer not maintaining a place of business of business within the village.

WIRELESS TELECOMMUNICATIONS. Cellular mobile telephones services, personal wireless services as defined in Section (C) of the Telecommunications Act of 1996 (Public Law No. 104-104), 42 USC 332(c)(7), as now or hereafter amended, including all commercial mobile radio services, and paging services.

(ILCS Ch. 35, Act 635, § 10) (Ord. 1692, passed 11-17-97)

Statutory reference:

Telecommunications Municipal Infrastructure Maintenance Fee Act, see ILCS Ch. 35, Act 635, §§ 1 et seq.

§ 113.56 REGISTRATION OF TELECOMMUNICATIONS PROVIDERS.

(A) Every telecommunications provider as defined by this subchapter shall register with the village within 30 days after the effective date of this subchapter or becoming a telecommunications provider, however, that any telecommunications retailer that has filed a return pursuant to § 113.58(C) of this subchapter shall be deemed to have registered in accordance with this section.

(B) Every telecommunications provider who has registered with the village pursuant to division (A) of this section has an affirmative duty to submit an amended registration form or current return as required by § 113.58(C), as the case the information provided by the telecommunications provider in the registration form or most recent return on file with the village.
(Ord. 1692, passed 11-17-97)

§ 113.57 MUNICIPAL TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEE.

(A) A village telecommunication infrastructure maintenance fee is hereby imposed upon all telecommunications retailers in the amount of 1.0% of all gross charges charged by the telecommunications retailer to service addresses within the village for telecommunications originating or received in the village.

(B) Upon the effective date of the infrastructure maintenance fee authorized in this subchapter, the village infrastructure maintenance fee authorized hereunder shall be the only fee or compensation for the use of all public rights-of-way within the village by telecommunications retailer. Imposition of the infrastructure maintenance fee provided under this subchapter does not, however, serve as a limitation on the levying of any taxes or imposition of any fees otherwise authorized by law.

(C) The village telecommunications infrastructure maintenance fee authorized by this subchapter shall be collected, enforced, and administered as set forth in § 113.58 of this subchapter.
(Ord. 1692, passed 11-17-97)

Statutory reference:

Limitation on municipal fee, see ILCS Ch. 35, Act 635, § 20

§ 113.58 COLLECTION, ENFORCEMENT, AND ADMINISTRATION OF VILLAGE FEES.

(A) A telecommunications retailer shall charge to and collect from each customer an additional charge in an amount equal to the village infrastructure maintenance fee attributable to that customer's service address.

(B) Unless otherwise approved by the Village Administrator the infrastructure maintenance fee shall be remitted by the telecommunications retailer to the village not later than the last day of the month subsequent to the month in which a bill is issued to the customer, provided, however, that the telecommunications retailer may retain an amount not to exceed 2% of the village infrastructure maintenance fee collected by it to reimburse itself for expenses incurred in accounting for and remitting the fee.

(C) Remittance of the municipal infrastructure maintenance fee to the village shall be accompanied by a return, in a form to be prescribed by the Village Administrator, which shall contain such information as the Village Administrator may reasonably require.

(D) Any infrastructure maintenance fee required to be collected pursuant to this subchapter and any such infrastructure maintenance fee collected by such telecommunications retailer shall constitute a debt owed by the telecommunications retailer to the village. The charge imposed under division (A) of this section by the telecommunications retailer pursuant to this subchapter shall constitute a debt of the purchaser to the telecommunications retailer who provides such services until paid and, if unpaid, is recoverable at law in the same manner as the original charge for such services.

(E) If it shall appear that an amount of infrastructure maintenance fee has been paid that was not due under the provisions of this subchapter, whether as a result of a mistake of fact or an error of law, then such amount shall be credited against any infrastructure maintenance fee due, or to become due, under this subchapter, from telecommunications retailer who made the erroneous payment; provided, however, the Village Administrator may request, and telecommunications retailer shall provide, written substantiation for such credit.

(F) Amounts paid under this subchapter by telecommunications retailers shall not be included in the tax base under any of the following acts as described immediately below:

(1) "Gross charges" for purposes of the Telecommunications Excise Tax Act, being ILCS Ch. 35, Act 630, §§ 1 *et seq.*;

(2) "Gross receipts" for purposes of the municipal utility tax as prescribed in the Illinois Municipal Code, being ILCS Ch. 65, Act 5, § 8-11-17;

(3) "Gross charges" for purposes of the municipal telecommunications

tax as prescribed in the Illinois Municipal Code, being ILCS Ch. 65, Act 5, § 8-11-17;

(4) “Gross revenue” for purposes of the tax on annual gross revenue of public utilities prescribed the Public Utilities Act, being ILCS Ch. 220, Act 5, §§ 9-221, 9-222 and 9-222.1.

(G) The village shall have the right, in its discretion, to audit the books and records of all telecommunications retailers subject to this subchapter to determine whether the telecommunications retailer has properly accounted to the village for the village infrastructure maintenance fee. Any underpayment of the amount of the village infrastructure maintenance fee due to the village by the telecommunications retailer shall be paid to the village plus 5% of the total amount of the underpayment determined in an audit. If the audit indicates that the underpayment was more than 3% of the amount remitted to the village in a timely manner as provided in this subchapter, then the telecommunication retailer shall reimburse the village for any costs incurred by the village in conducting the audit. Any amount payable to the village pursuant to this division (G) of this section shall be paid to the village within 21 days after the date of issuance of an invoice for same.

(H) The Village Administrator, or his/her or her designee, may promulgate such further or additional regulations concerning the administration and enforcement of this subchapter, consistent with its provisions, as may be required from time to time and shall notify all telecommunications retailers that are registered pursuant to § 126.02 of this subchapter of such regulations.

(Ord. 1692, passed 11-17-97)

§ 113.59 COMPLIANCE WITH OTHER LAWS.

Nothing in this subchapter shall excuse any person or entity from obligations imposed under any law, including but not limited to:

(A) Generally applicable taxes; and

(B) Standards for construction on, over, under or within, use of or repair of the public rights-of-way, including standard relating to free standing towers and other structures upon the public right-of-way, as provided; and

(C) Any liability imposed for the failure to comply with such generally applicable taxes or standards governing construction on, over, under, or within, use of or repair of the public rights-of-way; and

(D) Compliance with any ordinance or provision of this code concerning uses or structures not located on, over, or within the right-of-way.

(Ord. 1692, passed 11-17-97)

§ 113.60 EXISTING FRANCHISE AND LICENSES.

Any franchises, license, or similar agreements between telecommunications retailers and the village entered into before the effective date of this subchapter regarding the use of public rights-of-way shall remain valid according to and for their stated terms, except for any fees, charges or other compensation to the extent waived.
(Ord. 1692, passed 11-17-97)

§ 113.61 ENFORCEMENT.

Nothing in this subchapter shall be construed as limiting any additional or further remedies that the village may have for enforcement of this subchapter.
(Ord. 1692, passed 11-17-97)

§ 113.62 VIOLATIONS.

Any telecommunication provider who violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this subchapter shall be subject to fine in accordance with the general penalty provisions of this code.
(Ord. 1692, passed 11-17-97) Penalty, see § 10.99

§ 113.99 PENALTY.

For the violation of any of the following provisions of this chapter, penalties shall be chargeable to the letter of credit as follows and the village may determine the amount of the forfeiture for other violations which are not specified in a sum not to exceed \$750 for each violation, with each day constituting a separate violation:

- (A) Failure to furnish, maintain, or offer all cable services to any potential subscriber within the village upon order of the village: \$100 per day, per violation, for each day that such failure occurs or continues;
- (B) Failure to obtain or file evidence of required insurance, construction bond, performance bond, or other required financial security: \$200 per day, per violation, for each day such failure occurs or continues;
- (C) Failure to provide access to data, documents, records, or reports to the village as required by §§ 113.20, 113.30, 113.31, 113.32, and 113.38: \$100 per day, per violation, for each day such failure occurs or continues;
- (D) Failure to comply with applicable construction, operation, or maintenance standards: \$200 per day, per violation;

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(E) Failure to comply with a rate decision or refund order: \$500 per day, per violation, for each day such a violation occurs or continues.

(F) For any violations for non-compliance with the customer service standards of §§ 113.24 and 113.26 the grantee shall pay \$500 per day for each day, or part thereof, that such noncompliance continues;

(G) For any other violations of a franchise agreement to be determined by the grantor in a public hearing but not specifically noted in this section shall not exceed \$750 per day, per violation.

(Ord. 1678, passed 7-21-97)