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CATV FRANCHISE ENABLING ORDINANCE

20.14.01 SHORT TITLE.

This ordinance shall be known and may be cited as the "CATV Franchise Enabling Ordinance.

20.14.02 DEFINITIONS.

For the purpose of this ordinance the following terms, phrases and words and their derivations shall have the meaning specified herein. When not inconsistent with the context, words used in the present tense include the future and words in the singular number include words in the plural number.

A.C. - abbreviation for alternating current.

Additional Service - a subscriber service provided by the Grantee for which a special charge is made based on program or service content time or spectrum space usage.

Administrator - the individual appointed by the Village President pursuant to Section 20.14.11 to manage and direct the Office of Broadband Telecommunications.

Annual Gross Revenues - all revenues received by the Grantee, its affiliates or subsidiaries from and in connection with the operation of the Broadband telecommunications Network in the Village as that term is defined by a court of competent jurisdiction, and shall include if so authoritatively determined, revenues from all sources, including without limitation revenues from advertising, channel leasing, data transmission and per program charges, in addition to the subscribers' regular monthly payments.

Automatic Gain Control (AGC) - an electronic circuit which automatically increases or decreases, within its design range, the gain of an amplifier in order to maintain a stable or fixed output level. Sometimes called ALC or AVC.

Automatic Slope or Tilt Control (ASC) - an electronic circuit or thermal device that compensates for changes in cable or amplifier characteristics caused by temperature variations.

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Basic Service - all subscriber services provided by the Grantee, including the delivery of broadcast signals and programming originated over the cable system, covered by the regular monthly charge paid by all subscribers.

Broadband Telecommunications Network (BTN) - any, network of cables, optical, electrical or electronic equipment, including cable television systems, used for the purpose of transmission of electrical impulses of television, radio and other intelligences, either analog or digital for sale or use by the inhabitants of the Village.

BTN Channel Capacity - the highest total number of cable television channels on which television signals from separate sources may be delivered downstream simultaneously to every subscriber in the network. The network may have additional channel capacity for specialized or discrete purposes, but the technical performance specified shall not be materially degraded thereby.

Cable Television Channel - a frequency band 6 Mhz in width within which a standard television broadcast signal is delivered by cable to a subscriber terminal (except that Class III & IV cable television channels as defined by the FCC may be either wider or narrower than this standard).

Channel Frequency Response - within a cable television channel, the relationship as measured at a subscriber terminal between amplitude and frequency of a constant-amplitude input signal at all specified frequencies within each channel.

Village - whenever reference is made to Village in this ordinance, it shall be construed to mean the Village of Deerfield, its officers and employees, unless otherwise specifically designated, and shall include that area within the territorial limits of the Village of Deerfield and such territory presently outside the Village limits over which the Village may assume jurisdiction or control by virtue of annexation.

Village Board - wherever reference is made to Village Board in this ordinance, it shall be construed to mean the Village Board of the Village of Deerfield and any legally appointed or elected successor or agency.

Class I Cable Television Channel - a signaling path provided by a cable television system to relay to subscriber terminals television broadcast programs that are received off-the-air or are obtained by microwave or by direct connection to a television broadcast station.

Class II Cable Television Channel - a signaling path provided by a cable television system to deliver to subscriber terminals television signals that are intended for reception by a television broadcast receiver.

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without the use of an auxiliary decoding device and which signals are not involved in a broadcast transmission path.

Class III Cable Television Channel - a signaling path provided by a cable television system to deliver to subscriber terminals signals that are intended for reception by equipment other than a television broadcast receiver or by a television broadcast receiver only when used with auxiliary decoding equipment.

Class IV Cable Television Channel - a signaling path provided by a cable television system to transmit signals of any type from a subscriber terminal to another point in the cable television system.

Commence Operation - operation will be considered to have commenced when sufficient distribution facilities have been installed so as to permit the offering of "full network services" to at least twenty-five percent (25%) of the dwelling units located within the designated "service area".

Committee - the Committee or Commission appointed by the Village Board pursuant to Section 20.14.10.

Data Grade - coded transmission primarily digital in nature.

Decibel (db) - the level in the network expressed in db's above or below a power corresponding to a root mean service voltage of one millivolt across seventy-five (75) ohms.

Discrete Cable Television Channel - a signaling path provided by a cable television system to transmit signals of any type to specified subscriber terminals within the cable television system.

Downstream - the direction of transmission over the BTN from the "head end" or "hub" to a subscriber's terminal.

Dual Cable System - a BTN design technology that includes the total duplication of all trunk cables, distribution cables, and may include the total duplication of the associated electronic equipment when the transmission of more than twelve (12) standard VHF channels of television information is required for delivery to subscribers without the use of a TV set convertor.

FCC - the Federal Communications Commission and any legally appointed or elected successor.

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Franchise Payment - includes all charges imposed for a franchise whether the object be regulation, revenue or one-time reimbursement of costs incurred by the Village in the award of this franchise.

Full Network Service - all "basic services" and "additional services" offered by the Grantee.

Grantee - all persons including, but not limited to, subsidiaries, parents, or affiliate companies, associations or organizations having any rights, powers, privileges, duties, liabilities or obligations, under this ordinance and under the franchise ordinance, collectively called the "Franchise", and also includes all persons having or claiming any title to or interest in the system, whether by reason of the franchise itself directly or by interest in a subsidiary, parent, or affiliate company, association or organization or by any subcontract, transfer, assignment, management agreement, or operation agreement, or whether otherwise arising or created.

Head End - the land, electronic processing equipment, antennas, tower, building and other appurtenances normally associated with and located at the starting point of a BTN, excluding the studio.

Network Noise - that combination of undesired and fluctuating disturbances within a cable television channel, exclusive of undesired signals of discrete frequency which degrade the reproduction of the desired signal and which are due to modulation processes, thermal effects and other noise-producing effects, not including hum. Network noise is specified in terms of its rms voltage or its mean power level as measured in a 4 Mhz band above the lower channel boundary of a BTN.

Physical Mile of Plant - messenger strand as measured from pole to pole without taking into consideration sag or downguys, and for buried plant, actual trench feet.

Reasonable Notice - the provision of notice of contemplated action delivered at least forty-eight (48) hours prior to such action.

Root-Mean-Square (RMS) - the effective value of an alternating current waveform which would be numerically equal in energy to a constant direct current.

Sale - includes any sale, exchange, barter or agreement to sell.

Service Area - that geographical area within the incorporated limits of the Village.

Streets - all streets, roadways, highways, avenues, lanes, alleys, courts, places, squares, curbs, sidewalks, easements, rights-of-way or other public ways in the Village

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which have been or may hereafter be dedicated and open to public use, or such other public property so designated by law.

Studio - an acoustically-acceptable room for local programming but not including electronic processing equipment, cameras and lights.

Subscriber - any person, firm, company, corporation or association receiving either "basic service" or "additional service" from the Grantee under the schedule of charges filed with and approved by the Village.

Subscriber Terminal - the BTN's 75 ohm cable terminal to which the subscriber's equipment is connected. Separate terminals may be provided for delivery of cable television signals, FM broadcast, or other signals of differing classifications.

Substantially Completed - operation will be considered substantially completed when sufficient distribution facilities have been installed so as to permit the offering of "full network service" to at least ninety percent (90%) of the dwelling units in the service area to which access is legally available.

Terminal Isolation - at any subscriber terminal, the attenuation between that terminal and any other subscriber terminal in that network.

Upstream - the direction of transmission over the BTN from a subscriber terminal to the network's "head end".

Video Grade - transmission primarily analog in nature including the picture phase of a television broadcast.

Visual Signal Level - the rms voltage produced by the visual signal during the transmission of synchronizing pulses.

Village President - wherever references is made to Village President in this ordinance, it shall be construed to mean the Village of Deerfield President of the Board of Trustees.

20.14.03 THE FRANCHISE.

- (1) Franchise Required. No person, firm, company, corporation or association shall construct, install, maintain or operate within any public street in the Village, or within any other public property of the Village, any equipment or facilities for the distribution of television signals or radio signals or other intelligences either analog or digital over a BTN to any subscriber unless a franchise authorizing the

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use of the streets or properties or areas has first been obtained pursuant to the provisions of this ordinance, and unless such franchise is in full force and effect.

- (2) Review of Qualifications. Specific permission to operate a BTN under the provisions of this ordinance may be granted by the Village Board to any Grantee after a review of the legal, character, financial, technical qualifications and the adequacy and feasibility of the Grantee's construction arrangements and after the Village Board has approved the Grantee's qualifications as a part of a public proceeding affording due process.
- (3) Duration of Franchise. Upon filing by the Grantee of the proper acceptance, the bond and the required insurance, the franchise shall take effect as provided in Section 20.14.08 and shall continue in full force and effect for a term of fifteen (15) years.
- (4) Quinquennial Franchise Review.
 - (a) On or about the fifth anniversary of the effective date of the franchise, the Village will schedule a public meeting or meetings with the Grantee to review the franchise performance, plans and prospects. The Village may require the Grantee to make available specified records, documents, and information for this purpose, and may inquire in particular whether the Grantee is supplying a level and variety of services equivalent to those being generally offered at that time in the industry in comparable market situations.
 - (b) The Village shall first confer with the Grantee regarding modifications in the franchise which might impose additional obligations on the Grantee, and the Grantee may in turn seek to negotiate relaxations in any requirements previously imposed on it which are subsequently shown to be impractical.
 - (c) Within thirty (30) days of the conclusions of such negotiations, the Village may direct the Grantee to show cause why specified terms and conditions should not be incorporated into the franchise and the Grantee may similarly file with the Village a written request that specified obligations of its franchise be removed or relaxed. Implementation of such requests shall correspond as nearly as possible with the procedures set forth in Section 20.14.10(3). The Village Board will order changes in the franchised rights and obligations of the Grantee only if it finds from all available evidence that such changes will not impair the economic

viability of the system or degrade the attractiveness of the system's service to present and potential subscribers.

(5) Review of Franchise Prior to Expiration.

- (a) Public Meeting to be Scheduled. At least six (6) months prior to the expiration of the franchise, the Village shall schedule a public meeting or meetings with the Grantee to review the performance of Grantee, including the results of the previous franchise reviews. The Village may require the Grantee to make available specified records, documents and information for this purpose, and may inquire in particular whether the Grantee is supplying a level and variety of services equivalent to those being generally offered at that time in the industry in comparable market situations.
- (b) Determination on Reissue. The Village shall, within forty-five (45) days of the conclusion of such meetings, provide a determination as to whether a BTN franchise or franchises will be reissued to the Grantee. In making said decision the Village shall consider the technical, financial and programming performances of the franchise holder and specifically with relation to any and all applications, promises or agreements made or entered into by the franchise holder and its performance of said applications, promises or agreements. In the event the Village determines not to reissue the franchise or franchises for reasons other than a material breach of the franchise or for causes unrelated to the performance thereunder, it shall be so stated for purposes of Section 20.14.09(3).

The Village shall establish public proceedings leading to a final decision and such public proceedings shall include but not be limited to a public hearing providing opportunity for the public and applicant for the reissued franchise to appear.

20.14.04 SIGNIFICANCE OF FRANCHISE.

- (1) Franchise Nonexclusive. Any franchise granted hereunder by the Village shall not be exclusive and the Village reserves the right to grant a similar franchise to any person, firm, company, corporation or association at any time.
- (2) Franchise Amendable. The scope of any franchise granted hereunder shall be deemed amendable from time to time to allow the Grantee to innovate and implement new services and developments exclusive of programming changes; provided, however, subject to preemption by the FCC, that no such services or

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developments by implemented without the expressed prior approval of the Village Board.

- (3) Privileges Must be Specified. No privilege or exemption shall be inferred from the granting of any franchise unless it is specifically prescribed. Nothing in this ordinance shall be deemed to require the granting of a franchise when in the opinion of the Village Board it would not be in the public interest to do so.
- (4) Authority Granted. Any franchise granted hereunder shall give to the Grantee the right and privilege to construct, erect, operate, modify and maintain, in, upon, along, above, over and under streets, as defined in Section 20.14.02 herein, which have been or may hereafter be dedicated and open to public use in the Village, towers, antennas, poles, cables, electronic equipment, and other network appurtenances necessary for the operation of a BTN in the Village; subject to the requirements of Section 20.14.26 of this ordinance.
- (5) Consent Prior to Transfer of Franchise. Any franchise granted hereunder shall be a privilege to be held for the benefit of the public by the Grantee. Said franchise cannot in any event, be sold, transferred, lease, assigned or disposed of in whole or part, either by forced or voluntary sale, merger, consolidation, trust, receivership or any other means without the prior consent of the Village expressed by a Village Board resolution and then only under such conditions as the Village Board may establish. Such consent shall not be withhold by the Village without showing of cause.
- (6) Consent Prior to Change of Control. Prior approval of the Village Board shall be required where ownership or control of more than five percent (5%) of the ownership equity of Grantee is acquired by a person or group of persons acting in concert, not of whom already owns or controls five percent (5%) or more of such right of control, singly or collectively. Such consent shall not be withheld by the Village without a showing of cause.
- (7) Mortgage or Pledge of Network. Nothing in this ordinance shall be deemed to prohibit the mortgage or the pledge of the network or any part thereof, or the interests of the Grantee. However, any such mortgage or pledge shall be subject to and subordinate to the right of the Village under this franchise or applicable laws.
- (8) Previous Rights Abandoned. A franchise granted hereunder shall be in lieu of any and all other rights, privileges, powers, immunities, and authorities owned, possessed, controlled, or exercisable by a Grantee or any successor pertaining to the construction, operation, or maintenance of a cable communications system in

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the Village. The acceptance of a franchise shall operate, as between Grantee and the Village, as an abandonment of any and all such rights, privileges, powers, immunities, and authorities within the Village. All construction, operation and maintenance by the Grantee of any cable system in the Village shall be under the franchise and not under any other right, privilege, power, immunity or authority.

- (9) Subject to Other Regulatory Agencies Rules and Regulations. The Grantee shall at all times during the life of any franchise granted hereunder be subject to all lawful exercise of the police power by the Village and other duly authorized regulatory State and Federal bodies and shall comply with any and all ordinances which the Village has adopted or shall adopt applying to the public generally and to other Grantees.
- (10) Compliance to Laws, Rules and Regulations. In the event any valid law, rule or regulation of any governing authority or agency having jurisdiction, including but not limited to the Federal Communications Commission, contravenes the provisions of this ordinance subsequent to its adoption; then the provisions hereof shall be superseded by any such valid law, rule or regulation to the extent that the provisions hereof are in conflict and contrary to any such law, rule or regulation.
- (11) Pole Use Agreements Required. Any franchise granted hereunder shall not relieve the Grantee of any obligation involved in obtaining pole- or conduit-use agreements from the gas, electric and the telephone companies, or others maintaining poles or conduits in the streets of the Village, whenever the Grantee finds it necessary to make use of said poles or conduits.
- (12) No Right of Property. Anything contained herein to the contrary notwithstanding, the award of any franchise hereunder shall not impart to the Grantee any right of property in or on Village-owned property.
- (13) Franchise Binding. Anything contained herein to the contrary notwithstanding, all provisions of this ordinance and any franchise granted hereto shall be binding upon the Grantee, its successors, lessees or assignees.

24.14.05 OPERATION OF FRANCHISE.

- (1) Operations to be in Accordance With Rules. The Grantee shall maintain and operate its BTN in accordance with the rules and regulations of the Federal Communications Commission, the State of Wisconsin and/or the Village as are incorporated herein or as may be promulgated.

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- (2) Office and Phone for Complaints. The Grantee shall maintain an office within thirty (30) miles of the Village limits which shall be open during all normal business hours, have a listed local telephone number, and be so operated that complaints and requests for repairs or adjustments may be received at any time.
- (3) Service Records Maintained. The Grantee shall at all times make and keep at an office maintained by the Grantee as provided above, a list of all complaints and interruptions or degradation of service received or experienced during the preceding five (5) years. The records maintained above shall also include complaint response time and service restoral period and shall be continuously open to inspection, examination or audit by any authorized representative of the Village.
- (4) 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 reasonable and necessary to enable the Grantee to exercise its rights and perform its obligations under this ordinance and any franchise granted hereunder.
 - (a) Rules to be in Conformance With Other Regulations. None of such rules, regulations, terms and conditions promulgated under Subsection (4) above shall be in conflict with the provisions hereof or the laws of the State, or the Rules and Regulations of the Federal Communications Commission, or any rules and regulations promulgated by the Village in the exercise of their regulatory authority granted hereunder.
 - (b) All Rules to be File With Village. One (1) copy of all rules, regulations, terms and conditions promulgated under Subsection (4) above, together with any amendments, additions or deletions thereto, shall be kept currently on file with the Village Clerk and another copy thereof shall be maintained for public inspection during normal business hours at Grantee's office as specified in subsection (2) above; no such rules, regulations, terms, conditions, or amendments, additions or deletions thereto shall take effect unless and until so filed and maintained.
- (5) Subscribers' Antennas. The Grantee shall not require the removal, or offer to remove or provide any inducements for removal of any potential or existing subscriber's antenna as a condition of provision of service.
- (6) Sale or Service of Television Receivers. Neither the Grantee during the period of the franchise nor any of its affiliated, subsidiary, parent organizations, officers or directors or stockholders holding (5%) or more of outstanding stock of the

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Grantee, shall within the corporate limits of the Village or within ten (10) miles in any direction, directly or indirectly, engage in the retail sale, renting leasing, or repairing of radio or television receivers, nor shall they require any subscriber to utilize the services of any specific television/radio service business for the repair or maintenance of the subscriber's receivers, either radio or television.

- (7) Antenna Switch/Lightening Grounder. The Grantee, upon request from any subscriber, shall install at no charge therefor, a lightning grounder and/or switching device so as to permit a subscriber to continue to utilize his own television antenna as he chooses.

20.14.06 RIGHTS RESERVED TO THE VILLAGE

- (1) Right of Amendment Reserved to Village. The Village may from time to time, add to, modify or delete provisions of this ordinance as it shall deem necessary in the exercise of its regulatory powers provided that such additions or revisions are reasonable and do not place an undue financial burden on the Grantee. Such additions or revisions shall be made only after a public hearing for which the Grantee shall have received written notice at least thirty (30) days prior to such hearing.
- (2) Grantee Agrees to Village Rights. The Village reserved every right and power which is required to be reserved or provided by an ordinance of the Village, and the Grantee by its acceptance of the franchise, agrees to be bound thereby and to comply with any action or requirements of the Village in its exercise of such rights or powers which have been or will be enacted or established.
- (3) Village's Right of Intervention. The Village shall have the right to intervene and the Grantee specifically agrees by its acceptance of the franchise not to oppose such intervention by the Village in any suit or proceeding to which the Grantee is a party.
- (4) Powers of the Village. Neither the granting of any franchise nor any provisions governing the franchise shall constitute a waiver or bar to the exercise of any governmental right or power of the Village.
- (5) Village's Transfer of Functions. Any right or power in, or duty imposed upon any elected official, officer, employee, department, or board of the Village shall be subject to transfer by the Village to any other elected official, officer, employee, department or board.

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- (6) Village's Right of Inspection. The Village reserves the right during the life of any franchise granted hereunder, to inspect and supervise all construction or installation work performed subject to the provisions of this ordinance and to perform network measurements to insure compliance with the terms of the ordinance.
- (7) Village's Right of Acquisition. Upon expiration of the term of the franchise, or revocation, or other termination as provided by law, or upon receipt of application for approval of an assignment of the franchise or upon change of defacto control, the Village shall have a right to purchase the BTN as set forth in Section 20.14.09(3) herein.
- (8) Village's Right of Network Installation. The Village reserves the right during the life of any franchise granted hereunder, to install and maintain free of charge upon or in the poles and conduits of the Grantee any wire and pole fixtures necessary for municipal networks on the condition that such installation and maintenance thereof does not unreasonably interfere with the operation of the Grantee.

20.14.07 APPLICATION FOR FRANCHISE

Applications for a franchise hereunder shall be filed with the Village Clerk or his/her appointee, in accordance with the filing instructions promulgated by the Village and shall contain the following information and provisions:

- (1) Proposal Bond and Filing Fee. Provision of the Proposal Bond as required in Section 20.14.15 and payment of a non-refundable filing fee to the Village of two hundred fifty dollars (\$250) which sum shall be due and payable concurrently with the request for application information.
- (2) Name and Address of Applicant. The name and business address of the applicant, date of application and signature of applicant or appropriate corporate officer(s).
- (3) Description of Proposed Operation. A general description of the applicant's proposed operation in the service area and in other areas within the State, including but not limited to: business hours; operating staff; maintenance procedures beyond those required in the ordinance; management and marketing staff complement and procedures; and, if available, the rules of operation for public access.
- (4) Signal Carriage. A statement of the television and radio services to be provided, including both off-the-air and locally originated signals.

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- (5) Special Services. A statement setting forth a description of the automated services proposed as well as a description of the production facilities to be made available by the Grantee for the public, municipal, and educational channels required to be made available by the provisions of this ordinance and the Federal Communications Commission.
- (6) Programming Assistance. A statement establishing any additional funding, facilities, equipment, or personnel beyond those required elsewhere to be designated to effect and promote local programming development. It is understood that the foregoing will be available without charge to all on a fair and nondiscriminatory basis and may be used by the Grantee as well. Such funding and services will be contingent upon a special showing, where required, that the proposed uses are consistent with the regulatory program of the FCC.
- (7) Schedule of Charges. A statement of the applicant's proposed Schedule of Charges as set forth by the provisions of Section 20.14.16 hereunder.
- (8) Corporate Organization. A statement detailing the corporate organization of the applicant, if any, including the names and addresses of its officers and directors and the number of shares held by each officer and director.
- (9) Stockholders. A statement identifying the number of authorized and outstanding shares of applicant's stock including a current list of the names and current addresses of its shareholders holding five percent (5%) or more of applicant's outstanding stock.
- (10) Intra-Company Relationships. A statement describing all intra-company relationships of the applicant, including parent, subsidiary or affiliated companies.
- (11) Agreements and Understandings. A statement setting forth all agreements and understandings, whether written or oral, existing between the applicant and any other person, firm, group or corporation with respect to any franchise awarded hereunder and the conduct of the operation thereof existing at the time of proposal submittal.
- (12) Financial Statement. If applicant is a corporation, audited financial statements for the two (2) previous fiscal years. If applicant is a partnership, copies of the "U.S. Partnership Return of Income (IRS Form 1065) for the two (2) previous fiscal years. If applicant is a sole proprietorship, copies of "U.S. Individual Income Tax Return" (IRS Form 1040) for the two (2) previous fiscal years.

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- (13) Financial Projection. A fifteen (15) year operations proforma which shall include the initial and continuing plant investment, annual profit and loss statements detailing income and expenses, annual balance sheets, and annual levels of subscriber penetration. Costs and revenues anticipated for voluntary services shall, if presented, be incorporated in the proforma as required in this ordinance, but shall be separately identified in the proforma.
- (14) Financial Support. Suitable written evidence from a recognized financing institution, addressed to both the applicant and to the Village, advising that the applicant's financial ability and planned operation have been analyzed by the institution and that the financing institution is prepared to make the required funds available to applicant if it is awarded a franchise. If the planned operation is to be internally financed, a board resolution shall be supplied authorizing the obtainment and expenditure of such funds as are required to construct, install and operate the BTN contemplated hereunder.
- (15) Technical Description. A technical description of the type of system proposed by the applicant, including but not limited to, system configuration (i.e, hub, dual cable), system capacity, two-way capability.
- (16) Technical Statement. A statement from the applicant's senior technical staff member or consultant advising that he has reviewed the Network Description, the Network Technical Standards, Performance Measurements, Channels to be Provided, Service Standards, Construction Standards and Conditions of Street Occupancy as set forth in or required by Section 20.14.20 through 20.14.26, respectively, hereunder and that the applicant's planned network and operations thereof will meet all the requirements set forth therein.
- (17) Existing, Pending and Proposed Franchises. A statement of existing, pending and proposed franchises held or applied for by the applicant which applicant proposes to apply for indicating as applicable when the franchises were issued and when the systems were constructed and the present state(s) of the system(s) or application in each respective governmental unit, together with the name and address and phone number of a responsible governmental official knowledgeable of the applicant.
- (18) Convictions. A statement as to whether the applicant or any of its officers or directors or holders of five percent (5%) or more of its voting stock has in the past ten (10) years been convicted of or has charges pending for any crime other than a routine traffic offense and the disposition of each such case.

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- (19) Operating Experience. A statement detailing the prior cable television experience of the applicant including that of the applicant's officers, management and staff to be associated with the proposed operation.
- (20) Franchise Reissuance Information. If an application is for reissuance of a franchise, the proposal must include, in addition to the information required in Subsection (1) through (18) above:
 - (a) A summary of the technical, financial and programming history of the network since the granting of the original franchise.
 - (b) A statement and timetable that outlines all proposed changes, expansion or improvements in the system as to services, programming or technical specifications during the forthcoming five (5) year review period.
- (21) Additional Requirements. The application for franchise shall respond specifically, and in sequence, to Subsections (1) through (19) of this section and shall be bound separately from any additional information proffered by the applicant. Five (5) copies of the application shall be supplied to the Village. Supplementary, additional or other information that the applicant deems reasonable for consideration may be submitted at the same time as its application, but must be separately bound and submitted in the above number of copies. The Village may, at its discretion, consider such additional information as part of the application.
- (22) Supplementation to Applications. The Village reserves the right to require such supplementary, additional or other information that the Village deems reasonably necessary for its determinations. Such modifications, deletions, additions or amendments to the application shall be considered only if specifically requested by the Village.

20.14.08 ACCEPTANCE AND EFFECTIVE DATE OR FRANCHISE

- (1) Franchise Acceptance Procedures. Any franchise awarded hereunder, and the rights, privileges and authority granted thereby shall take effect and be in force from and after the award thereof, provided that within thirty (30) days from the day of such award the Grantee shall file with the Village the following:
 - (a) An executed franchise license or permit, an example of which is the franchise agreement which is attached as Exhibit A.
 - (b) A certificate of insurance as set forth in Section 20.14.14(6) herein and

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- (c) A performance bond in the penal sum of ten thousand dollars (\$10,000.00) as set forth in Section 20.14.15(2) herein and
 - (d) Written notification of the Grantee's location and address for mail and official notifications from the Village.
- (2) Forfeiture of Proposal Bond. Should the Grantee fail to comply with Subsection (1) above it shall acquire no rights, privileges or authority under this ordinance whatever, and the amount of the Proposal Bond or certified check in lieu thereof, submitted with its application shall be forfeited in full to the Village as liquidated damages.
- (3) Grantee to Have No Recourse. The Grantee shall have no recourse whatsoever against the Village for and loss, cost, expense or damage arising out of any provision or requirements of this ordinance or its regulation or from the Village's exercise of its authority to grant additional franchises hereunder. This shall not include negligent acts of the Village, its agents or employees which are performed outside the regulatory or franchise awarding hereunder.
- (4) Acceptance of Power and Authority of Village. The Grantee expressly acknowledges that in accepting and franchise awarded hereunder, it has relied upon its own investigation and understanding of the power and authority of the Village to grant this franchise.
- (5) Inducements Not Offered. The Grantee by acceptance of any franchise awarded hereunder acknowledges that it has not been induced to enter into this franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of the Village concerning any term or condition of this franchise that is not included in this ordinance.
- (6) Grantee Accepts Terms of Franchise. The Grantee acknowledges by the acceptance of this ordinance and the franchise ordinance that it has carefully read its terms and conditions and it is willing to and does accept all the obligations of such terms and conditions and further agrees that it will not, prior to substantial completion of the system, set up as against the Village the Claim that any provision of this ordinance as adopted, and any franchise granted hereunder is unreasonable, arbitrary, invalid or void.
- (7) Incorporation of Proposals. The Grantee, by the acceptance of any franchise awarded hereunder, agrees that the matters contained in the Grantee's application

for franchise and as stated in oral presentation shall be incorporated into the franchise as though set out verbatim.

24.14.09 TERMINATION OF FRANCHISE.

- (1) Grounds for Revocation. The Village reserves the right to revoke any franchise and rescind all rights and privileges associated with the franchise in the following circumstances:
 - (a) If the Grantee should default in the performance of any of its material obligation under the franchise, and fails to cure the default within thirty (30) days after receipt of written notice of the default from the Village.
 - (b) If the Grantee should refuse to provide or maintain in-full force and effect, the performance bond and liability and indemnification coverage's as required in Section 20.14.15 and 20.14.14, respectively.
 - (c) If a petition is filed by or against the Grantee under the Bankruptcy Act, or any other insolvency or creditors' rights law, State of Federal, and the Grantee shall fail to have it dismissed.
 - (d) If a receiver, trustee or liquidator of the Grantee is applied for by Grantee or appointed for all or part of its assets.
 - (e) If the Grantee makes an assignment for the general benefit of creditors.
 - (f) If the Grantee should violate any orders or ruling of any regulatory body having jurisdiction over the Grantee, unless such violation is for the provision of additional service, or unless the Grantee is lawfully contesting the legality or applicability of such order or ruling.
 - (g) If the Grantee fails to receive any required governmental certifications unless such cause is directly attributable to an action or condition imposed by the Village.
- (2) Procedure Prior to Revocation. Upon the occurrences of any of the events enumerated in Subsection (1) of this section, the Village Board may, after hearing, upon thirty (30) days written notice to the Grantee citing the reasons alleged to constitute cause for revocation, set a reasonable time in which the Grantee must remedy the cause. If, during the thirty (30) day period, the cause shall be cured to the satisfaction of the Village, the Village shall declare the notice to be null and void. If the Grantee fails to remedy the cause within the time specified, the

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Village Board may revoke the franchise. In any event, before a franchise may be terminated, the Grantee must be terminated, the Grantee must be provided with an opportunity to be heard before the Village Board.

- (3) Purchase of System by Village. If the Village determines not to reissue the franchise for reasons other than a material breach of the franchise or reasons unrelated to the performance of the franchise holder or upon receipt of an application for assignment of the franchise, or upon change of defacto control, the Grantee shall first offer the BTN for sale to the Village at a fair and just market value, which value shall include the fair market value of the system as a going concern including the franchise itself and the rights and privileges granted by the Village.

When a franchise is revoked pursuant to this section or expires and is not renewed because of a material breach of the franchise, the Grantee shall first offer the BTN for sale to the Village at a fair and just market value, which value shall not include any value for the franchise itself or for any or the rights or privileges granted by the Village.

In the event the determination of fair market value cannot be negotiated or determined, said value shall be determined by an impartial arbitration procedure pursuant to Chapter 788, Wisconsin Statutes, wherein the Grantee and the Village shall each choose an arbitrator and the arbitrators chosen shall choose the third and the valuation determined by said arbitrators shall be considered the fair market value at which the system will be offered to the Village. The determination of the value of the system shall be decreased by the amount of any damages sustained by the Village in connection with revocation or expiration, including without limitation, payment made by the Village to another person or entity to operate the BTN for a temporary period after revocation. The cost of the arbitration procedure shall be shared equally by the Village and Grantee.

The Village shall have thirty (30) days to exercise the right to first refusal to purchase the Network, said thirty (30) days commencing on the day the fair market value of the system is determined either through negotiation or the arbitration procedure. If the Village does not exercise its option to purchase, and the BTN is not sold to another operation who has obtained a franchise from the Village in a reasonable period of time, the Grantee, upon request by the Village, shall promptly remove all its plant, structures and equipment; provided, however, that in the event the Village determines not to exercise its right of first refusal it shall not unreasonably refuse to renew or grant a cable television franchise during a reasonable interim period. While transfer of the system and franchise is being negotiated, arranged or ordered the Grantee may be required to continue service to

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the public unless for reasons beyond the control of the Grantee said operation will be economically unfeasible to the Grantee.

- (4) Restoration of Property. In removing its plant, structures and equipment, the Grantee shall refill at its own expense, and excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to the company's removal of its equipment and appliances, without affecting the electric or telephone cables, wires or attachments. The Village shall inspect and approve the condition of the public ways and public places and cables, wires, attachments and poles after removal. Liability insurance and indemnity provided in Section 20.14.14 and the performance bond in Section 20.14.15 shall continue in full force and effect during the period of removal.
- (5) Restoration by Village, Reimbursement of Costs. In the event of a failure by the Grantee to complete any work required by Subsection (4) above or any work required by Village law or ordinance within the time established and to the satisfaction of the Village, the Village may cause such work to be done and the Grantee shall reimburse the Village the costs thereof within thirty (30) days after receipt of an itemized list of such costs or the Village may recover such costs as provided in Section 20.14.15(2).
- (6) Lesser Sanctions. Nothing shall prohibit the Village, in its rules and regulations, from imposing lesser sanctions or censures than revocation for violations of provisions of this ordinance including the shortening of the franchise period for substantial and repeated violations.
- (7) Expiration; Extended Operation. Upon the expiration of a franchise the Village may, by resolution, on its own motion or request of the Grantee, require the Grantee to operate the franchise for an extended period of time not to exceed six (6) months from the date of any such resolution. All provisions of the franchise shall continue to apply to operations during an extension period. The Village shall serve written notice at the Grantee's business office of intent to extend under this section at least thirty (30) days prior to expiration of the original franchise or any extensions thereof.

20.14.10 REGULATORY JURISDICTION AND PROCEDURES.

- (1) Continuing Regulatory Jurisdiction. The Village shall have continuing regulatory jurisdiction and supervision over the operation of any franchise granted hereunder and may from time to time adopt such reasonable rules and regulations as it may deem necessary for the conduct of the business contemplated thereunder.

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- (2) Broadband Telecommunications Citizens Committee. The continuing regulatory jurisdiction of the Village shall be exercised by the Committee or Commission appointed by the Village Council. Such Committee or Commission may consist entirely of or include one or more members of the Village Council. The Committee shall perform the responsibilities and duties assigned by the Village Board, including but not limited to:
- (a) Assuring the general health of broadband telecommunications in the community.
 - (b) Resolving disputes or disagreements between subscribers and the Grantee after investigation, should the subscriber and the Grantee not first be able to resolve their dispute or disagreement. Said decisions or findings may be appealed, as set forth in Section 20.14.10(3).
 - (c) Reviewing and auditing all reports and filings submitted to the Village as required hereunder and such other correspondence as may be submitted to the Village concerning the operation of the BTN. Review the rules and regulations set by the Grantee under the provisions of Section 20.14.05 herein.
 - (d) Assuring that all tariffs, rates and rules pertinent to the operation of the BTN in the Village are made available for inspection by the public at reasonable hours and upon reasonable request.
 - (e) Conferring and coordinating with the Grantee on the interconnection of its BTN with other similar networks.
 - (f) Reviewing rates and recommending any rate changes to the Village Board as provided in Section 20.14.16 of this ordinance.
 - (g) Allocating funds it deems necessary to assist production and programming on the public access channels.
 - (h) Conduct or cause to be conducted from time to time a market survey to determine the quality and quantity of service being provided as viewed by existing and potential subscribers.
 - (i) Monitor and review programming provided over the BTN and to make recommendations to users especially with respect to public access and/or local origination programming.

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- (j) Delegate performance of any duties or functions to subcommittees.
- (3) Regulatory Procedures.
- (a) The committee shall first consider under 20.14.10(2) any inquiry or proceeding requiring Village Board action to be taken in regard to the BTN or franchise, whether upon application or request by the Grantee or any other party or on its own motion and shall submit such consideration, together with a recommendation, to the Village Board within sixty (60) days of the receipt of such request unless such time shall be extended by agreement between the Committee and the requesting party. Any final action by the Village Board on any recommendation shall be taken only after thirty (30) days notice of said proposed action, inquiry or proceeding is published in the official newspaper having general circulation and a copy of said notice is served upon the Grantee. The Grantee shall have an opportunity to respond at the hearing and/or in writing. Members of the public shall have an opportunity to respond or comment in writing on the proposed action and appear at said proceeding or hearing, however, the Village Board shall act no later than sixty (60) days after receiving the Committee's recommendation.
 - (b) The public notice required by this section shall state clearly the action or proposed action to be taken, the time provided for response, including response by the public, the person or persons in authority to whom such responses shall be addressed and such other procedures as may be specified by the Village Board. If a hearing is to be held, the public notice shall give the date, location and time of such hearing. The Grantee is a necessary party to any hearing conducted in regard to its operation.
- (4) Failure to Enforce Provisions. The Grantee shall not be excused from complying with any of the terms and conditions of the franchise by any failure of the Village upon one or more occasions to insist upon or to seek compliance with any such terms or conditions.
- (5) Contravention of Provisions. The cost of any successful litigation incurred by the Village to enforce provisions of this ordinance or of the franchise ordinance, or in relation to a franchise shall be reimbursed to the Village by the Grantee. Such costs shall include filing fees, costs of depositions, discovery, and expert witnesses, all other expenses of suit, and a reasonable attorney's fee.

20.14.11 OFFICE OF BROADBAND TELECOMMUNICATIONS ESTABLISHED.

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- (1) Establishment of Broadband Telecommunications Office. There is hereby created an office of Broadband Telecommunications within the Village for the purpose of exercising the Village's continuing regulatory jurisdiction over any franchise granted by the Village for the operation of a BTN.
- (2) Administrator of Broadband Telecommunications. The Office of Broadband telecommunications shall be managed and directed by an Administrator of Broadband Telecommunications who shall be appointed by the President, subject to the approval of the Village Board. Until such appointment is made, the President shall act as the Broadband Telecommunications Administrator.
- (3) Responsibilities of the Administrator. The Administrator shall be charged with such responsibilities as may be assigned him, including but not limited to the following:
 - (a) Receive and investigate such complaints, disputes or disagreements as may be directed or referred to the Village, between subscribers and Grantees of a BTN and other distribution systems interconnected with the BTN, not first able to resolve their differences.
 - (b) Report his recommendations upon complaints, disputes or disagreements after investigation to the Committee.
 - (c) Review and audit reports, records, communications and Grantee regulations submitted to the Village and conducting such inspections of the system as may be necessary in support of such review as provided for in the CATV Franchise Enabling Ordinance.
 - (d) The Administrator shall work with the Committee, the public and the media to assure that all tariffs, rates, charges and rules pertinent to the operation of the BTN in the Village are made available for inspection by the public at reasonable hours and upon reasonable request.
 - (e) The Administrator shall confer and coordinate with the Grantee on the interconnection of its BTN with other similar networks.
 - (f) Such other duties, including administrative services as the Village Board may assign to the Administrator and as are necessary to facilitate the functions of the Office of Broadband Telecommunications.
- (4) Relationship to Village Departments. All departments of the Village government shall cooperate with the Administrator to the end that he/she may discharge

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his/her duties and responsibilities as contemplated by this ordinance. Departments are directed to cooperate fully with the Administrator in this purpose.

- (a) All Village departments shall make available all such information pertaining to the BTN as may be required by the Administrator.
- (b) The Administrator shall keep the Village department heads informed on matters pertaining to the BTN which affect their operation.
- (c) The Village Attorney or his/her designated assistant shall provide legal counsel to the Administrator.

20.14.12 REPORTS AND RECORDS OF THE GRANTEE.

- (1) Annual Financial Reports Required. The Grantee shall file annually with the Village Clerk not later than three (3) months after the end of his/her fiscal year during which he/she accepted a franchise hereunder and within three (3) months after the end of each subsequent fiscal year, one (1) copy of:
 - (a) The report to his stockholders;
 - (b) An income statement identifying revenues, expenses and income applicable to his/her operations under said franchise during the fiscal year or fraction thereof; and
 - (c) A listing of his/her properties devoted to network operations together with an itemization of his/her investment in each of such properties on the basis of original cost, less depreciation. These reports shall include a balance sheet, listing of substantial liabilities and financing arrangements and such other reasonable information as the Village may request, and shall be prepared by a Certified Public Accountant.
- (2) Annual Facilities Report Required. The Grantee shall file annually with the Village Clerk not later than three (3) months after the end of his/her fiscal year during which he/she accepted a franchise hereunder and within three (3) months after the end of each subsequent fiscal year, one (1) copy of a total facilities report setting forth the total physical miles of plant installed or in operation during the fiscal year and a map showing the location of same.
- (3) Annual Service Record Report Required. The Grantee shall, if requested by the Village, file annually with the Village Clerk not later than three (3) months after the end of his/her fiscal year during which he/she accepted a franchise hereunder

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and within three (3) months after the end of each subsequent fiscal year, one (1) copy of a list of all trouble complaints and network "down-time" received or experienced during the fiscal year. All such submitted data shall also include complaint disposition and response time. For the purposes of this provision, certified copies of a "complaint" logbook reflecting all such incidents will suffice.

Also, if requested by the Village, uncertified additions to the annual complaint log shall be supplied in one (1) copy to the Village at intervals of not more than ninety (90) days following the filing of the annual report.

- (4) Annual Measurements Report Required. The Grantee shall, when requested by the Village, file annually with the Village Clerk not later than three (3) months after the end of his/her fiscal year during which he/she accepted a franchise hereunder and within three (3) months after the end of each subsequent fiscal year one (1) copy of a report on the network's technical measurements, as set forth in Section 20.14.22 herein.

- (5) Annual Operations Reports Required. The Grantee shall, when requested by the Village, file annually with the Village Clerk not later than three (3) months after the end of his/her fiscal year during which he/she accepted a franchise hereunder and within three (3) months after the end of each subsequent fiscal year one (1) copy of the following supplemental information:
 - (a) If a non-public corporation, a list of all current shareholders and bondholders both of record or beneficial. If a public corporation, a list of all shareholders who individually or as a concerted group hold five percent (5%) or more of the voting stock of the corporation.
 - (b) A current list of all Grantee's officers and directors including addresses and telephone numbers.
 - (c) Copies of all pertinent agreements or contracts, including pole-use agreements, entered into by the Grantee during the fiscal year in the conduct of its business under a franchise granted hereunder.
 - (d) The names and both business and addresses and phone numbers of the BTN manager and technician.
 - (e) Two (2) copies of all types of subscriber agreements shall be filed with the Village. Copies of individual subscribers' agreements are not to be filed with the Village.

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- (f) Copies of all rules and regulations promulgated by the Grantee during the fiscal year in the conduct of his business in accordance with the provisions of Section 20.14.05 hereunder.
 - (g) A copy of the annual report(s) of the parent firms(s) which own an interest or more than five percent (5%) or more of the voting stock of the Grantee; and such other annual reports(s) of subsidiaries or divisions of the parent firm(s) as the Village deems necessary.
- (6) Public Availability of Reports. Such reports as required under this ordinance must be available to the public in the office of the Village Clerk, during normal business hours. Subscribers shall be notified of the availability of such reports.
- (7) Correspondence. The Grantee and the Village shall simultaneously file with each other a copy of each petition, application and communication transmitted by the Grantee to, or received by the Grantee from, any Federal, State or other regulatory commissions or agencies have competent jurisdiction to regulate and pertaining to the operations of any BTN authorized hereunder.
- (8) City's Access to Records.
- (a) The Village reserves the right during the life of any franchise granted hereunder to have access at all normal business hours and upon the giving of reasonable notice, to the Grantee's contracts, engineering plans, accounting, financial data, and service records relating to the property and the operations of the Grantee and to all other records required to be kept hereunder. Nothing contained herein shall prevent the Grantee from enjoining the Village reviewing documents relating to proprietary interests not related to its operation under this ordinance in the Village's regulatory program.
 - (b) Records of subscriber lists and statistical data not otherwise required by this ordinance shall be made available only upon a ruling by a judge of competent jurisdiction that such records are material to the Village's regulatory program.
- (9) Subscriber Agreement. The form of Grantee's agreements with its subscribers shall be subject to the approval of the Village Board and two (2) copies of all types of agreements used by the Grantee shall be filed and maintained with the Village Clerk.

20.14.13 FRANCHISE PAYMENT.

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- (1) Filing Fee. Applicants for a franchise hereunder shall pay a nonrefundable filing fee to the Village of two hundred fifty dollars (\$250) which sum shall be due and payable concurrently with the request for the proposal information.
- (2) Franchising Compensation. Grantees of a franchise hereunder shall provide an initial payment to the Village in an amount equal to the direct costs of granting the franchise not to exceed ten thousand dollars (\$10,000), which sum shall be due and payable concurrently with the Grantee's acceptance of the franchise, to offset the Village's costs in the franchise awarding process.
- (3) Annual Franchise Payment. Grantees of a franchise hereunder shall pay to the Village an annual fee based upon a percentage of annual gross revenues. Such percentage shall be as adopted by resolution of the Village Board and as specified in the franchise agreement with individual Grantees. Said fee shall be offset the administrative and regulatory costs incurred by the Village with respect to the BTN and shall be in lieu of all other Village permits and fees but shall not be lieu of municipal property taxes, other state, county or local taxes or any other payment owed to the Village.
- (4) Method of Computation; Interest.
 - (a) Sales taxes or other taxes levied directly on a per-subscription basis and collected by the Grantee shall be deducted from the local annual gross subscriber revenues before computation of sums due the Village is made. Payments due the Village under the provisions of Subsection (3) above shall be computed annually as of December 31 for the preceding year and shall be paid simultaneously with the filing of annual reports required in Section 20.14.12 at the office of the Village Clerk during his/her regular business hours. The payment period shall commence as of the effective date of the franchise. The Village shall be furnished a statement with each payment, by a Certified Public Accountant, reflecting the total amounts of annual gross subscriber revenues, and the above charges, deductions and computations, for the annual payment period covered by the payment.
 - (b) In the event that any payment is not made as required, interest on the amount due, as determined from the annual gross subscriber revenues as computed by a Certified Public Accountant, shall accrue from the date of the required submittal at the prime rate of interest charged by the largest bank of financial institution in Dane County, Wisconsin. The percentages designated in this section may be amended no more than once each year by

the Village Board, consistent with increased costs for municipal facilities and supervision and applicable rules of other regulatory agencies.

- (5) Rights of Recomputation. No acceptance of any payment by the Village shall be construed as a release or as an accord and satisfaction of any claim the Village may have for further or additional sums payable as a franchise fee under this ordinance or for the performance of any other obligation of the Grantee.

20.14.14 LIABILITY AND INDEMNIFICATION.

- (1) Indemnification of Franchise. It shall be expressly understood and agreed by and between the Village and any Grantee hereunder that the Grantee shall save the Village and its officers, agents and employees harmless from all loss sustained by them an account of any suit, judgement, execution, claim or demand which they may legally be required to pay as a result of the enactment of this ordinance and the award of a franchise thereunder, except as such suit judgement, execution, claim or demand may arise from the process or action of selection of a Grantee or Grantees for award of a franchise as provided herein.
- (2) Indemnification of Village in Franchise Operation. It shall be expressly understood and agreed by and between the Village and any Grantee hereunder that the Grantee shall save the Village and its agents, officers, and employees harmless from and against all claims, damages, losses, and expenses, including attorney's fees sustained by them on account of any suit, judgment, execution, claim or demand whatsoever arising out of but not limited to copyright infringements and all other damages arising out of the installation, operation or maintenance of the BTN authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this ordinance and any franchise granted hereunder. This provision shall not apply to acts of the Village, its agents or employees.
- (3) Reimbursement of Costs. The Grantee shall pay and by its acceptance of any franchise granted hereunder agrees that it will pay all expenses incurred by the Village in defending itself with regard to all damages and penalties mentioned in Subsections (1) and (2) above, except as such expenses may arise from the process (as above). These expenses shall include all out-of-pocket expenses, such as consultants or attorney fees and shall also include the reasonable value of any services rendered by the Village Attorney or his/her staff or any other employee of the Village.

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(3a) The grantee shall pay all damages, costs and attorney's fees incurred by the Village in defence of the validity of or prosecution to enforce Section 20.14.29(3).

(4) Public Liability Insurance. The Grantee shall maintain and by its acceptance of any franchise granted hereunder agrees that he will maintain throughout the term of the franchise, and extensions thereto, or as required in Section 20.14.14(6) herein, a general comprehensive liability insurance policy naming as the additional insured the Village, its officers, boards, commissions, agents and employees, in a company approved by the Village and in a form satisfactory to the Village, protecting the Village and all persons against liability for loss or damage for personal injury, death or property damage, occasioned by the operations of Grantee under any franchise granted hereunder, in the amounts of:

(a) Two million dollars (\$2,000,000) for personal injury or death resulting from any one occurrence, and

(b) Five hundred thousand dollars (\$500,000) for property damage resulting from any one occurrence.

Village shall have the right, from time to time, to increase such amounts, as it in its discretion, deems reasonable or necessary.

(5) Notice of Cancellation or Reduction of Coverage. The insurance policies mentioned above shall contain an endorsement stating that the policies are extended to cover the liability assumed by the Grantee under the terms of this ordinance and shall contain the following endorsement:

It is hereby understood and agreed at this policy may not be cancelled nor the amount of coverage thereof reduced until thirty (30) days after receipt by the Administrator by registered mail of two (2) copies of a written notice of such intent to cancel or reduce the coverage.

(6) Evidence of Insurance Filed With Administrator. All policies of insurance or certified copies thereof and written evidence of payment of required premiums shall be filed and maintained with the Village during the term of any franchise granted hereunder, or any renewal thereof.

(7) No Waiver of Performance Bond. Neither the provisions of this ordinance nor any insurance accepted by the Village pursuant hereto, nor any damages recovered by the Village thereunder, shall be construed to excuse performance by the

Grantee or limit the liability of the Grantee under any franchise issued hereunder or for damages, either to the full amount of the bond or otherwise.

20.14.15 BONDS

- (1) Proposal Bond. Each applicant for a franchise hereunder shall submit a proposal bond in a form acceptable to the Village or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Village in an amount of ten thousand dollars (\$10,000). Upon acceptance of the franchise, the proposal bond shall be returned.

- (2) Performance Bond. The Grantee shall maintain, and by its acceptance of any franchise granted hereunder agrees that it will maintain through the term of the franchise, or any renewal or extension thereof or as required in Section 20.14.14(6), a performance bond running to the Village, with at least one good and sufficient surety or other financial guaranties approved by the Village, in the penal sum total of twenty thousand dollars (\$20,000.00) conditioned upon the performance of the Grantee and upon the further condition that in the event the Grantee shall fail to comply with any law, ordinance or regulation governing the franchise, 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 and costs, up to the full amount of the bond. The bond shall contain the following endorsement:

It is hereby understood and agreed that this bond may not be cancelled nor the intention not to renew be stated until thirty (30) days after receipt by the Administrator by registered mail of two (2) copies of a written notice of such intent to cancel or not renew.

Village shall have the right to increase such bond, at five-year intervals, to an amount it deems fair and reasonable.

- (3) Forfeit of Proposal Bond. Should the applicant fail or refuse to accept a franchise hereunder or fail or refuse to furnish the Performance Bond as set forth herein within thirty (30) days after written notification of the award of a franchise by the Village, said applicant will be considered to have abandoned its proposal and the Village shall enforce the proposal bond in accordance with its terms or retain the proceeds of the certified check.

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- (4) Return of Proposal Bond. Proposal Bonds or certified checks received in lieu thereof from applicants whose proposals are not accepted by the Village shall be returned to the applicant as soon as the proposal is rejected.
- (5) Bond Evidence to be Filed With Village. Two (2) copies of all bonds or certified copies thereof and written evidence of payment of required premium, shall be filed and maintained with the Administrator during the term of any franchise granted hereunder, or any renewal thereof.

20.14.16 FEES, RATES AND CHARGES.

- (1) Deregulation. Until such time as the Grantee provides service to a specified percentage of the legally available residential dwelling units, the fees rates and charges for the services provided by the Grantee shall not be regulated under this section. Such percentage shall be as adopted by resolution of the Village Board and as specified in the franchise agreement with individual Grantees.
- (2) Charges for Services. All the following charges for services shall be subject to Village Board approval, in accordance with the schedule of charges contained in the Grantee's application for franchise, which schedule is incorporated herein by reference, and any modifications to such schedule that may result from a review requested by the Village on its own motion or at the request of the Grantee. The charges shall be in accordance with the requirements set forth in Subdivisions (a) through (b) of this subsection.
 - (a) Basic Services Charges. The Grantee may make a charge to subscribers, private or commercial, for installation and connection and reconnection to its BTN and a fixed monthly charge for "basic service" within the meaning of Section 20.14.02 of this ordinance.
 - (b) Buried Service Charge. In the event that a subscriber requests a buried service drop to his residence; the Grantee shall bury such drop upon the payment of such fee(s) that have been approved by the Village Board.
- (3) Notification of Charges. The Grantee may establish charges for its services not specified in Subsection (2) above, however, all such charges, including but not limited to additional service, leased channel, discrete channel, production and advertising rates, and the charge to all users of the access channels for reasonable production and origination costs, shall be made public and one (1) copy of the schedule of charges, as originally established and thereafter modified, shall be filed with the Administrator.

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- (4) All Rates to be Fair and Reasonable. All charges set by the Grantee for services shall be fair and reasonable and calculated to offset all necessary costs for provision of the service, including a fair rate of return on its investment devoted thereto under efficient and economical management.
- (a) No Considerations Beyond Schedule. The Grantee shall receive no consideration whatsoever for or in connection with a service to its subscribers other than what may have been filed with and/or approved by the Village in accordance with this section.
- (b) Deposits on Advance Payments to be Approved. The Grantee shall receive no deposit, advance payment or penalty from any subscriber or potential subscriber other than those established in the schedule of charges previously filed with and/or approved by the Village Board.
- (c) Subscriber Refunds. If any subscriber of the Grantee of less than thirty (30) days terminates service due to:
1. Grantee's failure to render service to such subscriber of a type and quality provided for herein;
 2. If service to a subscriber is terminated by the Grantee without good cause; or
 3. If the Grantee ceases to operate the BTN authorized herein for any reason except termination or expiration of franchise granted hereunder;
- The Grantee shall refund to such subscriber an amount equal to the installation and connection charge paid by such subscriber in accordance with the then existing schedule of charges. Under the terms of this subsection the Grantee shall not be required to refund the monthly charge except as he may express a willingness to do so.
- (5) Acceptance of Village's Authority to Regulate Rates. The Grantee shall agree, and by its acceptance of a franchise, specifically agrees to be subject to the Village, or other regulatory bodies, having competent jurisdiction to fix just, reasonable and compensatory rates.
- (6) Rates Subject to Other Regulations. The Grantee in submitting its request for approval of initial rates or any subsequent rates shall do so for all services to be

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performed to or for subscribers described in Subsection (2). If FCC Rules and Regulations, shall subsequently determine that the Village has jurisdiction over other services or service to be offered or performed, said rates shall be subject to approval by the Village at that time.

(7) Rate Change Procedures.

- (a) Freeze on Initial Rates. The Grantee shall not file an application for an increase in fees, rates or charges until twenty-four (24) months have expired from the time the Grantee has been determined to have commenced operation or from date franchise is granted, whichever is later, except to seek relief from the imposition of any Federal, State or local taxes, copyright or other legally imposed fees not contemplated in the original rate determinations.
- (b) Limitation on Application for Increase in Rates. The Grantee shall not file more than one (1) application for an increase in fees, rates or charges during any calendar year except to seek relief from the imposition of Federal, State or local taxes, copyrights or other legally imposed fees not contemplated in the most recent rate determination.
- (c) Review of Rates. Grantee' schedule of fees, rates or charges and any contemplated modifications thereof shall be submitted to the Village Board. The Village Board may reduce or increase such fees, rates or charges by a resolution adopted for the purpose, and no change in the Grantee's schedule of fees, rates or charges shall be effective without the prior action of Village Board as expressed in such a resolution. No such resolution shall be adopted without prior public notice and opportunity for all interested members of the public, including the Grantee, to be heard, subject to the procedures set forth in Section 20.14.11(3) hereof. No charge in rates shall take effect until thirty (30) days after the approval of the rates by the Village Board.
- (d) Documentation of Request for Increase. Any increase requests, in addition to other factors described in this section, shall be supported by a showing of increased costs for the existing services or proposed services, and shall be filed in one (1) copy with the Village Clerk and the Administrator. If a Grantee requests a change, it shall present in detail in writing the statistical basis, in addition to other requirements as set out in this section, for the proposed fee change at least ninety (90) days prior to the proposed effective date.

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- (e) Records to be Made Available. In addition, for the purpose of determining the reasonableness of Grantee fees, rates or charges, all such information, in accordance with the provisions of Section 20.14.12, shall be made available to the Village.
- (f) Notification of Changes in Regulatory Fees. The Grantee shall provide written notification to the Village Board of any changes received in regulatory fees payable by it to any other agency having regulatory jurisdiction over the Grantee.

20.14.17 EDUCATION AND GOVERNMENTAL CONNECTION TO THE BROADBAND COMMUNICATION NETWORK.

The Grantee shall provide free of charge upon request within the Village one connection and monthly service for "basic service" to each public and parochial school and immediate Class I, II, III and IV cable television channels to such public service institutions as the Village may hereafter designate, provided that such designated locations are within three hundred (300) feet of any network cable route. The Grantee may charge for any excess footage on the basis of time and materials for any such locations beyond the three hundred foot limitation if such connection is designated by the Village. The Village reserves the right at its expense to extend service to as many areas within such schools, buildings and agencies as it deems desirable without payment of any additional fee to Grantee. All such extensions, however, shall be accomplished in such a way so as not to interfere with the operation of the BTN.

20.14.18 EXTENSION OF NETWORK.

- (1) Extension of Network Within Village Boundaries.
 - (a) Conditions of Required Extension. The Grantee shall at its expense extend its BTN so as to provide full network service to all residents of:
 1. Newly annexed areas of the Village not then served by a BTN, or
 2. New housing areas developed within the Village limits, or
 3. Any potential subscribers within the Village limits and three hundred (300) feet of existing network.

- (b) Extension Policy. The Grantee shall file with the Village Clerk one (1) copy of its extension policy for potential subscribers dwelling beyond three hundred (300) feet from the nearest point of the existing network but within the Village limits. Such policy must be approved by the Village and the Grantee shall not make, or refuse to make, any extension except as permitted by this approved policy.

20.14.19 TIME FOR PERFORMANCE.

- (1) Permit Application. It is hereby deemed in the public interest that the system be extended as rapidly as possible to all citizens within the Village. Within thirty (30) days of the effective date of a franchise granted hereunder, the Grantee shall file with the appropriate authorities and utilities all initial papers and applications necessary to comply with the terms of this ordinance, including the application for franchise and any additions or amendments thereto and shall thereafter diligently pursue all such applications. After the Grantee has diligently pursued the acquisition of necessary pole attachment contracts, or other necessary easements, and where such necessary contracts have not been executed or easements obtained after a reasonable period of time as determined by the Village, the Village may at its discretion, provide assistance to insure the extension of the system to all citizens.
- (2) Commencement of Construction. Within sixty (60) days of the effective date of the franchise agreement the Grantee shall initiate construction and installation of the BTN. Such construction and installation shall be pursued with reasonable diligence.
- (3) Commencement of Operation. Within six (6) months of the effective date of the franchise agreement, the Grantee shall "commence operation" within the meaning of Section 20.14.02 of this ordinance.
- (4) Substantial Completion of Construction. Within twelve (12) months of the effective date of the franchise agreement, the Grantee shall have "substantially completed" construction of the "service area" within the meaning set forth in Section 20.14.02 of this ordinance.
- (5) Provision of Basic Service. Within 24 months of the effective date of the franchise the Grantee shall have placed in use sufficient distribution facilities so as to offer basic service to one hundred percent (100%) of the potential subscribers in the service area, to which access is legally available in conjunction with the Grantee's filed line extension policy.

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- (6) Delays and Extension of Time. The Village may in its discretion extend the time for Grantee, acting in good faith, to perform any act required hereunder. The time for performance shall be extended or excused, as the case may be, for any period during which Grantee demonstrates to the satisfaction of the Village Board that Grantee is being subjected to delay or interruption due to any of the following circumstances if reasonably beyond its control:
- (a) Necessary utility rearrangements, pole change-outs or obtainment of easement rights;
 - (b) Governmental or regulatory restrictions;
 - (c) Labor strikes;
 - (d) Lock outs;
 - (e) War;
 - (f) National emergencies;
 - (g) Fire;
 - (h) Acts of God.

20.14.20 NETWORK DESCRIPTION

- (1) System Bandwidth Capability. The Grantee shall install a "single cable network" having a minimum initial forward bandwidth capability from 50 to 270 Mhz and a minimum reverse bandwidth capability of 5 to 30 Mhz. Whenever a reverse or feedback circuit is routed from a subscriber's premises, it shall be connected so as to permit subscriber notification and subscriber controlled deactivation. As total bi-directional capacity is of a great deal of interest to the Village, applicants for a franchise hereunder may propose greater channel capacities and more sophisticated two way capabilities than the minimums set forth herein. However, such proposal shall describe the particular community needs to be served thereby and shall detail, as part of the financial projection and support required in Section 20.14.07(13), the associated costs and revenues.

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- (2) Public and Educational Channels to be Provided. The Grantee shall provide basic downstream subscriber services to the following public and educational institutions within the Village:
- (a) All public and parochial schools;
 - (b) The Village library;
 - (c) The Community Center;
 - (d) The Village Hall;
 - (e) The main office of the Board of Education;
 - (f) Grantee's television facility for program insertion into the total communication network.

The Grantee shall also provide and maintain an educational access upstream channel and six (6) midband channels allocated for combined access use and shall also provide a character modulator for conveying visual information on a "community calendar."

Each of the locations above designated shall be interconnected with each other location as they may be established in a common "local distribution system."

20.14.21 NETWORK TECHNICAL REQUIREMENTS.

- (1) General Requirements. The BTN must be so designed, installed and operated as to meet the following general requirements:
- (a) Capable of continuous twenty-four (24) hour daily operation;
 - (b) Capable of operating over an outdoor temperature range of -40 degrees Fahrenheit to +140 degrees Fahrenheit without catastrophic failure or irreversible performance changes over variations in supply voltages from 105 to 130 volts AC;
 - (c) Capable of meeting all specifications set forth herein over an outdoor temperature range of -10 degrees Fahrenheit to +100 degrees Fahrenheit over variations in supply voltages from 105 to 130 volts AC;

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- (d) Operated in such a manner as to avoid causing interference with reception of off-the-air signals by nonsubscribers to the cable system;
 - (e) Designed, installed and operated so as to comply with all applicable rules and regulations promulgated by the Federal Communications Commission;
 - (f) Designed, installed and operated so as to assure the delivery to all subscribers of standard color and monochrome signals on the FCC-designated Class I cable television channels without noticeable picture degradation or visible evidence of color distortion or other forms of interference directly attributable to the performance of the BTN.
- (2) Class I Channel Performance Requirements. The following requirements apply to system performance on the FCC-designated Class I cable television channels as measured at any subscriber terminal with a matched termination:
- (a) The signal level as measured at the visual carrier frequency for each cable television channel shall not be less than 1,000 UV (microvolts) across a 75 ohm terminating impedance. The aural carrier level shall be maintained between 13 and 17 decibels below its associated visual carrier level.
 - (b) The visual carrier signal level on each television channel shall be maintained within:
 - 1. Twelve (12) decibels above its minimum value; and
 - 2. Three (3) decibels of the signal level of any visual carrier within six (6) Mhz nominal frequency separation; and
 - 3. Twelve (12) decibels of the visual carrier signal level on any other cable television channel.
 - (c) BTN frequency response as measured at any subscriber terminal shall not vary by more than \pm two (2) db over the six (6) MHz band-width of any VHF television channel or corresponding portion of the FM or midband frequency spectrums.
 - (d) The corrected ratio of visual signal level to system noise shall not be less than forty-two (42) decibels. This requirement is applicable only to the following signals:

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1. Each off-air signal carried by a BTN serving subscribers within the Grade B contour for that signal; or
 2. Each off-air signal which is first picked up within its Grade B contour; or
 3. Each off-air signal which is received by the cable system via microwave or other similar form of transmission.
- (e) Cross-modulation as measured at any visual carrier frequency from the cable system input to any subscriber terminal shall not exceed -46 db (as defined by MCTA Standard 002.0267) measured at approximately +70 degrees Fahrenheit.
- (f) The ratio of visual carrier signal level to the RMS amplitude of any coherent disturbances such as intermodulation products, system generated or induced co-channel signals or discrete frequency interfering signals shall not be less than forty-six (46) decibels except for officially assigned offset carriers for which it shall not be less than thirty-six (36) decibels.
- (g) The terminal isolation between subscribers shall not be less than twenty (20) decibels except that the isolation between multi-terminals of one subscriber shall not be less than eighteen (18) decibels.
- (h) The hum modulation as measured over the usable frequency bandwidth from BTN input to any subscriber terminal shall not exceed three percent (3%). The percent of hum modulation is defined as the ratio expressed in percent of the average level of the detected signal to one-half $\frac{1}{2}$ the indicated peak AC hum.
- (i) Radiation from a cable television system shall be in accordance with the limits set forth in Part 76, Section 76.605(a)(12) of the FCC Rules and Regulations.
- (3) Standards Modified Where Necessary. Notwithstanding the fact that the network may be in compliance with all the standards set forth herein, the Village may require a higher level of performance in any area to resolve signal quality or interference problems.
- (4) Specifications for Additional Channels to be Submitted. Proposed specifications for FCC designated Class II, III and IV channels shall be submitted by the Grantee to and approved by the Village as the use of these channels is implemented.

- (5) Interconnection With Redistribution Systems. A Grantee shall not interconnect with any distribution or redistribution system that does not meet or exceed the technical standards of any system operated under this ordinance.

20.14.22 PERFORMANCE MEASUREMENTS.

- (1) General Requirements. Test procedures used in verification of the performance criteria set forth herein shall be in accordance with good engineering practice. The test procedures specified in Subsection (2) of this section are designed as a guide and should be made under conditions which reflect system performance during normal system operations. As there is more than one technically acceptable method for performing many of the measurements, the technique and equipment utilized in each case if different from those set forth below shall be fully described in the annual certificate filed with the Village.
- (2) Measurements Procedures. All measurements shall be made from the "head end" of the BTN to at least three (3) subscriber locations in each "local distribution system", at least two (2) of which shall be "worst case" locations (system extremities). Measurement shall be at 75 ohms with the loss of the set transformer indicated where applicable for each test location. The measurements are to be made as follows:
 - (a) Network frequency response measurements may be made with a calibrated signal generator, variable attenuator and a frequency selective voltmeter (if an accurately calibrated field strength meter is used for the measurements, its date of calibration shall be indicated on the technical measurement certificate filed with the Village.) All television signals except for the ALC, AGC or ASC pilot carriers may be disconnected during this test. With all automatic gain control amplifiers in the section under test set to their normal operating mode, the signal generator shall be connected to the input of the BTN and set for a CW signal at the desired frequency and at the level normally present at that frequency and location. With the meter and variable attenuator connected in series to the subscriber terminal under test, the signal level shall be measured and recorded. Measurement shall then be made in a similar manner for all video carrier frequencies on the network at the levels normally carried on the network.
 - (b) Network signal-to-noise measurements may be made in accordance with NCTA Standard 005.0669 or with a calibrated signal generator and frequency selective voltmeter connected as described in Subdivision (a) above. The signal generator shall be tuned, in turn, to the visual carrier

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frequency of each FCC-designated Class I cable television channel and the signal level at the subscriber terminal recorded. The meter should then be tuned to a frequency 2.5 MHz above the visual carrier frequency of each channel described above and with the signal generator disabled, the indicated noise level recorded and corrected by an appropriate factor representing the ratio of 4 MHz to the noise bandwidth of the frequency selective voltmeter.

- (c) The network cross-modulation measurement shall be performed in accordance with NCTA Standard 002.0267.
 - (d) The amplitude of the discrete frequency interferences within a cable television channel may be determined with a frequency selective voltmeter, calibrated for adequate accuracy.
 - (e) The terminal isolation between any two subscriber terminals may be measured by applying a signal of predetermined amplitude from a signal generator to one terminal in the reverse direction and measuring the amplitude of that signal at the other terminal with a frequency selective Voltmeter.
 - (f) The system hum modulation may be measured at each visual carrier frequency on the system using a calibrated signal generator, a detector and an oscilloscope. The signal generator shall be connected, and the level and frequency set at a predetermined mode with all other channels set at their normal levels. With the detector and oscilloscope connected to the subscriber terminal, the average level of the detected signal and the peak-to-peak AC hum will be indicated on the oscilloscope. The percent of hum modulation for this purpose is defined as the ratio, expressed in percent, of the average level of the detected signal to one-half (1/2) the indicated peak-to-peak AC hum.
 - (g) Radiation measurements shall be made in accordance with the procedures established in Part 76, Section 76.609(b)(1) - (b)(5) of the FCC Rules and Regulations.
- (3) Additional Tests and Inspection. The Village reserves the right to:
- (a) Require additional tests at specific terminal locations; and
 - (b) Conduct its own inspections of the BTN on its own motion at any time during normal business hours with reasonable advance notice.

- (4) Report of Measurements Combined. To the extent that the report of measurements as required above may be combined with any reports of measurements required by the FCC or other regulatory agencies, the Village shall accept such combined reports, provided that all standards and measurements herein or hereafter established by the Village are satisfied.

20.14.23 CHANNELS TO BE PROVIDED

- (1) Public Access Channel. The Grantee shall provide at least two dedicated, noncommercial public access channels, for public, educational and governmental purposes and/or institutions.
- (2) Television Broadcast Signal Carriage. The Grantee shall carry those television broadcast signals which are in accordance with Part 76, Section 76.63 of the FCC Rules and Regulations. The provision of additional television broadcast signals as provided for in Part 76, Section 76.63(a) shall also be required.
- (3) FM Signal Carriage. In addition to the television signals set forth in Subsection (4) above the Grantee shall carry as a minimum the FM radio stations whose normal broadcast ranges fall within the Village limits. If the Grantee elects to carry any AM station, all AM stations licensed to municipalities within Dane County must thereafter be carried.
- (4) Time and Weather Programming. The Grantee shall provide news service, time and weather programming on a single channel other than public access.
- (5) Emergency Alert Override. The Grantee shall incorporate into its facilities the capability for an emergency override audio alert whereby a designee of the Village, in times of crisis, may introduce an audio message on all BTN appropriate channels simultaneously. The Grantee shall provide, in a location to be designated by the Village, all equipment necessary for use of the emergency alert system.

20.14.24 SERVICE STANDARDS.

- (1) Service Response and Rebate. The Grantee shall provide "same day service" response, seven (7) days a week for all complaints and requests for repairs or adjustments received prior to 2:00 p.m. each day. In no event shall the response time for calls received subsequent to 2:00 p.m. exceed twenty-seven (27) hours. Upon failing to correct total loss of customer service within twenty-seven (27)

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hours, the Grantee shall credit one-thirtieth (1/30) of the monthly charge for "basic service" to each subscriber for each twenty-four (24) hours following report of loss of service to the Grantee.

- (2) Service Interruptions and Notification. The Grantee, whenever it is necessary to interrupt service over the BTN for the purpose of network maintenance, alterations or repair, shall do so at such time as will cause the least amount of inconvenience to his subscribers, and unless such interruption is unforeseen and immediately necessary, he shall give reasonable notice thereof to the affected subscribers.
- (3) Upgrading of Facilities, Equipment and Service. The Grantee shall upgrade its facilities, equipment and service as subscribers' demands dictate so that its network is as advanced as the current state of technology with field-proven equipment will allow, whenever such upgrading will result in materially improved service to the subscribers and can be accomplished without undue financial burden to the Grantee.

20.14.25 CONSTRUCTION STANDARDS.

- (1) Compliance With Safety Codes. All construction practices shall be in accordance with all applicable section of the Occupational Safety and health Act of 1970 and any amendments thereto as well as all State and local codes where applicable.
- (2) Compliance With Electrical Codes. All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the applicable section of the current edition of the National Electric Safety Code and all State and local codes where applicable.
- (3) Antennas and Towers. Antenna supporting structures (towers) shall be designed for the proper loading zone as specified in Electronics Industry Association's R.S.-22A Specifications.
- (4) Compliance With Aviation Requirements. Antenna supporting structures (towers) shall be painted lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aeronautical Agency, the State Aeronautics Board governing the erection and operation of supporting structures or television towers, and all other applicable local of State codes and regulations.

20.14.26 CONDITIONS OF STREET OCCUPANCY.

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- (1) Approval of Proposed Construction. A Grantee shall first obtain the approval of the Village prior to commencing construction on the streets, alleys, easements, public grounds or places of the Village. Applications for approval of construction shall be in a form provided by the Village. Within 5 working days of notice, Grantee shall reimburse the Village or Village-owned utility company, if any, for costs incurred by them (including employees' time) in inspecting such construction or alterations thereto.
- (2) Excavating Permits. A Grantee shall not open or disturb the surface of any street, sidewalk, driveway, or public place for any purpose without first having obtained a permit to do so in the manner provided by ordinance.
- (3) Changes Required by Public Improvements. A Grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of the Grantee when required by the Village by reason of traffic conditions, public safety, street vacation, street construction, change or establishment of street grade, installation of sewers, drains, water pipes, Village-owned power or signal lines, and tracts or any other type of structure or improvement by public agencies.
- (4) Use of Existing Poles or Conduits. Nothing in this ordinance or any franchise granted hereunder shall authorize the Grantee to erect and maintain in the Village new poles where existing poles are servicing the area. The Grantee shall require permission from the Village before erecting any new poles, underground conduit or appurtenances where none exist at the time the Grantee seeks to install his network.
- (5) Facilities not to be Hazardous or Interfere. All wires, conduits, cables and other property and facilities of the Grantee shall be so located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic and travel upon the streets and public places of the Village. The Grantee shall keep and maintain all its property in good condition, order and repair. The Village reserves the right hereunder it inspect and examine at any reasonable time and upon reasonable notice the property owned or used, in part or in whole, by the Grantee. The Grantee shall keep accurate maps and records of all its facilities and furnish copies of such maps and records as requested by the Village under Section 20.14.12 herein. A Grantee shall not place poles or other equipment where they will interfere with the rights or reasonable convenience of adjoining property owners, or with any gas, electric or telephone fixtures or with any water hydrants or mains. All poles or other fixtures placed in a street shall be placed in the right-of-way between the roadway and the property, as specified by the Village.

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- (6) Method of Installation. All wires, cables, amplifiers and other property shall be constructed and installed in an orderly and workmanlike manner. All cables and wires shall be installed parallel with existing telephone and electric wires whenever possible. Multiple cable configurations shall be arranged in parallel and bundled, with due respect for engineering and safety considerations. All installations shall be underground in those areas of the Village where public utilities providing either telephone or electric service are underground at the time of installation. In areas where both telephone and electric utility facilities are aboveground at the time of installation, the Grantee may install its service aboveground provided that at such time as those facilities are required to be placed underground by the village or are placed underground, the Grantee shall likewise place its services underground without additional cost to the Village or to the residents of the Village other than as may be granted under the provisions of Section 20.14.16.
- (7) Protection of Facilities. Nothing contained in this section shall relieve any person, company or corporation from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing any work connected with grading, regrading or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.
- (8) Notice of Village Improvements. The Village shall give the Grantee reasonable notice of plans for street improvements where paving or resurfacing of a permanent nature is involved. The notice shall contain the nature and character of the improvements, the streets upon which the improvements are to be made, the extent of the improvements and the work schedule for the project. The notice shall give the Grantee sufficient time to make any additions, alterations or repairs of its facilities as it deems necessary in advance of the actual commencement of the work, so as to permit the Grantee to maintain continuity of service.
- (9) Requests for Removal of Change. The Grantee shall, on the request of any person holding a building moving permit, temporarily raise or lower its wires to permit the moving of said building. 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 ten (10) working days notice of any move contemplated to arrange for temporary wire changes.
- (10) Authority to Trim Trees. The Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and other public places of the Village

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so as to prevent the branches of such trees from coming in contact with the wires and cables of the company. All trimming is to be done under the supervision and direction of the Village after the explicit, prior written notification and approval of the Village and at the expense of the Grantee. The Grantee may contract for such services, however, any firm or individual so retained shall receive Village approval prior to commencing such activity.

- (11) Restoration or Reimbursement. In the event of disturbance of any street or private property by the Grantee, it shall, at its own expense and in manner approved by the Village and the owner, replace and restore such street or private property in as good a condition as before the work causing such disturbance was done. In the event the Grantee fails to perform such replacement or restoration the Village or the owner shall have the right to do so at the sole expense of the Grantee. Payment to the Village or owner for such replacement or restoration shall be immediate, upon demand, by the Grantee, All request for replacement or restoring of such streets or private property as may have been disturbed must be in writing to the Grantee.
- (12) Office and Records in Village. The Grantee shall at all times make and keep at its office as required under Section 20.14.05, full and complete plans and records showing the exact location of all BTN equipment installed or in use in the streets and other public places of the Village. The Grantee shall furnish the Village a current map or set of maps, drawn to scale, showing all BTN equipment installed and in place in streets and other public places of the Village.
- (13) Emergency Removal of Plant. If, at any time, in case of fire or disaster in the Village, it shall become necessary in the reasonable judgment of the Village to cut or move any of the wires, cables, amplifiers, appliances, or appurtenances thereto of the Grantee, such cutting or moving may be done and any repairs rendered necessary thereby shall be made by the Grantee, at its sole expense provided that such repairs are not necessitated by negligent act of the Village, in which case, cost for repairs shall be borne by the Village.
- (14) Alternate Routing of Plant. In the event continued use of a street is denied to the Grantee by the Village for any reason, the Grantee will make every reasonable effort to provide service over alternate routes.

20.14.27 INTERCONNECTION.

The Grantee may be required to connect its BTN with any other broadband telecommunications network operating in an adjacent territory, provided such connection may be accomplished without undue financial burden to the Grantee. Such

interconnection shall be made within sixty (60) days of a request by the Village. For good cause shown the Grantee may request and the Village Board may grant reasonable extensions of time to comply with the requirement.

20.14.28 UNAUTHORIZED CONNECTION OR MODIFICATIONS.

- (1) Unauthorized Connections Prohibited. It shall be unlawful for any firm, person, group, company, corporation or governmental body or agency, without the expressed consent of the Grantee, to make or possess any connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of a franchised BTN for any purpose whatsoever, except as provided in Section 20.14.17 herein.
- (2) Removal or Destruction Prohibited. It shall be unlawful for any firm, person, group, company, corporation, or government body or agency to wilfully interfere, tamper, remove, obstruct or damage any part, segment or content of a franchised BTN for any purpose whatsoever.

20.14.29 PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED.

- (1) Equal Employment. The Grantee shall establish and maintain a nondiscriminatory policy providing that no individual shall be discriminated against with respect to compensation, terms, conditions or other privileges of employment because of race, color, marital status, religion, sex, national origin, handicap or age.
- (2) Services and Facilities to be Equally Available. The Grantee shall not refuse cable television service to any person or organization who requests such service for lawful purpose, nor shall a company refuse any person or organization the right to cablecast pursuant to provisions of this ordinance. Except as provided herein the company shall not, as to rates, charges, service facilities, rules, regulations or in any other respect, make or grant any unreasonable preference or advantage, nor subject any person to any prejudice or disadvantage. The company shall take affirmative steps to disseminate information on a continuing basis concerning programming, the availability of its services and facilities. This shall include the training necessary to enable effective use of cablecasting facilities over public access channels. This provision shall not be deemed to prohibit promotional campaigns to stimulate subscription to the system or other legitimate uses thereof; nor shall it be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer

coming within such classifications shall be entitled, provided such schedules have been filed with and approved by the Village as provided in Section 20.14.16.

- (3) Fairness of Accessibility. The entire system of the Grantee shall be operated in a manner consistent with the principle of fairness and equal accessibility of its facilities, equipment, channels, studios, and other services to all citizens, businesses, public agencies, or other entities having a legitimate use for the system; and no one shall be arbitrarily excluded from its use; allocation of use of said facilities shall be made according to the rules or decisions of regulatory agencies affecting the same, and where such rules or decisions are not effective to resolve a dispute between conflicting users or potential users, the matter shall be submitted for resolution by the Office of Broadband Telecommunications and the Village.

20.14.30 SUBSCRIBER PRIVACY.

- (1) Use of Data From Subscriber. Grantee, Village or any person shall not, in addition to the requirements of Section 20.14.20(1), initiate or use any form, procedure or device for procuring information or data from cable subscribers terminals by use of the cable system, without prior written valid authorization from each subscriber so affected. Valid authorization shall mean written approval from the subscriber for a period of time not to exceed one (1) year and shall not have been obtained from the subscriber as a condition of service. Further, it shall be unlawful for a Grantee, without such authorization, to activate and/or utilize any "Class IV Cable Television Channel" in any manner from the subscribers' premises. In any case the subscriber shall retain the right to deactivate his terminal.
- (2) Subscriber Data. The Village, or a Grantee, or any person shall not, without prior written valid authorization from each subscriber so affected, provide any data identifying or designating subscribers. Any data so authorized will be made available to the authorizing subscriber in understandable fashion.
- (3) Subscriber Agreements. Any agreements or contract such as is necessary for Section 20.14.03(1) and (2) above shall not be part of any other contract or agreement and shall not be a condition of subscribing to the system.

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20.14.31 PENALTY.

The Grantee or any person who shall violate any provision of this ordinance shall be subject to a penalty as provided in Section 23.04 of the Deerfield Village Code.

20.14.32 ORDINANCES REPEALED.

- (1) Should any other ordinance or part thereof be in conflict with the provisions of this ordinance, this ordinance shall prevail insofar as it applies to a Boardband Telecommunications franchise.

20.14.33 SEPARABILITY.

If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase or word shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

If any required governmental certification of any system granted under this ordinance is denied, after exhaustion of all applicable appeals, the Village or the Grantee may agree the grant be null and void, and the franchise process reopened. In such case, every qualified applicant shall be eligible for consideration, including the applicant whose request for certification has been denied. This ordinance shall be in effect from and after its passage and publication in pamphlet form.