

CHAPTER 8

CABLE TELEVISION

**8-1-1 TITLE.** This Chapter shall be known as and may be cited as the Village of Mulberry Grove, Illinois, Cable Television Franchise Code.

**8-1-2 PURPOSE.** The purposes of this Chapter are:

(A) To establish the terms and conditions under which a cable television system within the Village must operate;

(B) To provide for the payment of a franchise fee to the Village for the use of Village streets and other public rights of way and compensate the Village for costs associated with administering and regulating the system; and

(C) To grant a cable television franchise to such person or entity as hereafter approved by the Village.

**8-1-3 DEFINITIONS.** The word “shall” is always mandatory and is not merely discretionary. The words and phrases defined in this Section shall have the meanings ascribed to them as follows:

(A) **“Ancillary Services”** shall mean any other signals or services transmitted on the system which the Company offers for consumption by the Subscribers.

(B) **“Cable Act”** means the Cable Communications Policy Act of 1984, as amended, and the Cable Television Consumer Protection and Competition Act of 1992, P.L. 102-385, adopted October 5, 1992, as amended by the Telecommunications Act of 1996.

(C) **“Cable Service”** means:

(1) the one-way transmission to Subscribers of video programming or other programming service, and

(2) Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

(D) **“Cable Television System”** (hereafter “System”) means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Municipality.

(E) **“Channel”** means a band of frequencies in the electromagnetic spectrum capable of clearly and effectively carrying a television signal, as defined by the FCC Rules and Regulations.

(F) **“Company”** means such entity as is hereafter approved by the Village.

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(G) **“Converter”** means an electronic device which converts signals to a frequency not susceptible to interference within a fully functional television receiver of a Subscriber and which permits a Subscriber by an appropriate channel selector to receive all signals, referred to under this Chapter, to which Subscriber has subscribed.

(H) **“County”** shall be the County of Bond, in the State of Illinois.

(I) **“FCC”** means the Federal Communications Commission, established by the Communications Act of 1934, as amended, and shall include any successor agency or other agency with respect to the federal regulation and licensing in connection with the subject matter of this Chapter.

(J) **“FM Services”** means broadcast of audio signals only on a broad band standard FM frequency.

(K) **“Franchise Area”** means that portion of the Village for which a franchise is granted under the authority of this Chapter. If not otherwise stated, the Franchise Area shall be the legal and geographic limits of the Village, including all territory which may be hereafter annexed to the Village.

(L) **“Grant”** means the right, privilege and franchise provided in **Section 8-1-3(A)** of this Chapter.

(M) **“Grantee”** means a person or business entity or its lawful successor or assignee which has been granted a franchise by the Village Trustees pursuant to this Chapter.

(N) **“Gross Revenues”** means the revenues derived by the Company from Cable Service, generated by the System, or from the use of the System, including, but not limited to advertising revenue, charges to Subscribers for basic cable service, delinquency charges, connection and reconnection charges, Premium Programming, FM Services, Converter or similar sales of personal property to Subscribers, excluding any taxes or fees on services generated by the System which are imposed directly or indirectly on any Subscriber by any governmental unit or agency and which are collected by the Company on behalf of such governmental unit or agency. For purposes of this definition the franchise fees paid by the Company are not taxes.

(O) **“Municipality”** or **“Village”** means the Village of Mulberry Grove, Illinois.

(P) **“Person”** means any individual, firm, partnership, limited partnership, association, corporation, or organization of any kind.

(Q) **“Premium Programming”** means any programming, including but not limited to, movies, concerts, variety acts, sporting events and the like for which an additional charge is made.

(R) **“Programming Services”** shall mean the entertainment and information programs provided by the Company through the use of its system to the residents of the Municipality.

(S) **“Public Right-of-Way”** means all sidewalks, streets, alleys and easements and public property contiguous thereto in the Municipality which are dedicated to or by the Municipality for street, highway, sidewalk, lighting, drainage, utility or cable television purposes.

(T) **“Receiver Site”** shall mean the Company’s facility for receiving, amplifying and processing various electronic signals for the purpose of transmission through the system.

(U) **“Subscriber”** means any person lawfully receiving Cable Service from or using the Cable Television System under the Grant pursuant to this Chapter.

(V) **“System”** shall mean the Company’s entire electronic transmission and distribution facility located within the Municipality.

#### **8-1-4 GRANT OF FRANCHISE.**

(A) The Municipality, to the full extent that it may do so, hereby grants to the Company, in accordance with the terms, conditions and provisions of this Chapter, the right, privilege and franchise to establish, construct, operate and maintain the System in, upon, over and under the public right-of-way and within easements or other rights to use municipal property which are effective for the purposes of the Grant. However, nothing herein shall be construed to include the use of municipally-owned utility poles without receiving reasonable rental therefor, and that as used in this Section, “reasonable rental” shall be not more than the highest rate paid by any public utility operative in the Municipality. Upon acceptance of the Grant hereunder, the Company agrees to extend the System to and offer the services of the System to all potential Subscribers within the Municipality subject to the provisions of subsections (1) through (4) hereof; to acquire by lease, license, purchase or other right-to-use equipment, facilities and improvements, and land constituting all or part of the System, to connect Subscribers to the System; and to repair, replace, enlarge and extend the System.

- (1) Grantee is hereby authorized to extend the Cable System as necessary, as desirable, or as required, pursuant to the terms of this Agreement within the Municipality. Whenever Grantee shall receive requests for service from at least **five (5)** Subscribers within **six hundred sixty (660)** cable-bearing strand feet (**one-eighth (1/8) cable mile**) of its last terminating amplifier or node, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for such extension. If such extension can be made without any restriction caused by railroad crossings.
- (2) No Subscriber shall be refused service arbitrarily. However, for a Subscriber who is more than **one hundred fifty (150) feet** of distance from the last terminating amplifier or node, or a density of less than **five (5)** Subscribers per **six hundred sixty (660)** cable-bearing stand feet of trunk or distribution cable, Cable Service may be made available on the basis of a capital contribution in aid of construction, including costs of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by Grantee and Subscriber(s) in the area in which Cable Service may be expanded, Grantee shall provide **one hundred thirty-two (132) feet** of trunk and/or feeder cable per Subscriber, which is the number of feet of trunk and/or feeder which would be provided under the formula set forth in **Section 8-1-2(I)** hereof. Potential Subscriber(s) will bear the remainder of the construction and other costs

- (3) On or before **January 31** of each year, Grantee shall furnish a street map to the Municipality showing any changes in the location of the Cable System within the Municipality as of the preceding **January 1**.
- (3) Grantee shall offer all residential services at rates in compliance with federal law.

(B) The term of the Grant shall be **fifteen (15) years**. The term shall begin on the effective date of this Chapter as set forth in **Section 8-1-33(C)** hereof. The Company is further granted an option to extend said term for a period of **ten (10) years**, provided notice of such intent is served in writing upon the Municipality at least **six (6) months** prior to the expiration of the primary term of **fifteen (15) years** and such extension is approved by the Municipality.

(C) The Grant shall not be exclusive. The right, privilege, and franchise granted by this Chapter is not exclusive. The Village shall have the right to grant to other persons or entities who own and operate community antenna television systems rights similar to those granted in the Company herein at any time during the term of this franchise and renewal thereof, upon such terms and conditions as the Village may determine and as may be permitted under applicable law with due consideration of the interests of the public and the company; provided that no other franchise shall be granted upon terms which are more favorable or less burdensome to the operator than the terms hereunder.

#### **8-1-5 USE OF MUNICIPAL STREETS.**

(A) All System facilities erected, constructed or placed by the Company within the Municipality shall be located so as not to interfere with the proper use of the public right-of-way and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the public right-of-way and not to interfere with existing municipal or public utility installations. All service lines shall be underground in those areas providing telephone or electrical service underground at the time of installation. In areas where telephone or electric utility facilities are above ground at the time of installation, the Company may install its service above ground.

(B) In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Company shall, at its own expense, and in the manner required by applicable Municipal ordinances or policies, replace and restore all paving, sidewalk, driveway or other surface of any street or alley disturbed to a condition reasonably comparable to the condition of such paving, sidewalk, driveway or other surface of any street or alley disturbed existing immediately prior to such disturbance. In case of any disturbance on either private or public property, the land surface, including plantings and trees, shall be restored by the Company to substantially its previous condition.

(C) If at any time during the period of the franchise the Municipality shall lawfully elect to alter or change the grade or location of any street, alley or other public way, the Company shall, upon not less than **five (5) business days** notice for repair or **ninety (90) days** notice for major construction by the Municipality, remove, relay and relocate affected System facilities at its own expense, and in each instance comply with the requirements of the Municipality; provided, however, the Company shall in all cases have the right of abandonment of its property. The Company shall be entitled to seek reimbursement of expenses related to such move if provided by state or federal law.

(D) The Company may be required by the Municipality to permit joint use of its System located in the public right-of-way by Municipal or public Cable Television Systems insofar as such joint use may be reasonably practicable and upon payment of reasonable rental therefor.

(E) The Company shall, on request of any person holding a moving permit issued by the Municipality, temporarily move affected System Facilities to permit the moving of buildings, the expense of such temporary removal to be paid in advance by the person requesting such removal, and the Company shall be given not less than **one (1) week** advance notice to arrange for such temporary moves.

(F) The Company shall have the authority, except when in conflict with existing municipal ordinances, to trim any trees upon and overhanging the public right-of-way so as to prevent the branches of such trees from coming in contact with System facilities.

(G) The Municipality shall have the right to install and maintain upon the property of the Company its own equipment, including, but not limited to, its police and fire and emergency services and disaster communications system, on the condition that such equipment does not interfere with the Company's current or future establishment, construction, operation and maintenance of the System. The Municipality hereby indemnifies the Company against all claims, demands, costs or liabilities of every kind and nature whatsoever, except the negligence of the Company, arising out of the Municipality's use of the Company's property, including, but not limited to, reasonable attorneys' fees and costs.

(H) If the Company seeks to construct and maintain its cables and other System facilities on or above public or private property, and an easement for such use has already been granted to a telephone company, or electric or other public utility, said easement shall, if at all possible, be interpreted so as to grant the Company the same rights and privileges as have been granted to the telephone and electric companies and other public utilities. In such easements, the words "telephone" or "telephone company", "electric company" and the like, shall be interpreted to include the Company.

**8-1-6 JURISDICTION OF GRANT OF FRANCHISE.**

(A) The Grant shall apply within the corporate limits of the Municipality, including all territory hereafter annexed to the Municipality.

(B) Notwithstanding the Grant, the Company has or will obtain all necessary federal, state and local government permits, licenses and other required authorizations in connection with the establishment, construction, operation and maintenance of the System and will file copies of same with the Clerk of the Municipality.

(C) Where the density of residential dwelling and occupied commercial or industrial structures, adverse terrain, or other factors render extension of the System and offer of Cable Service impractical or technically infeasible or creates an economic hardship, the Municipality may, upon petition of the Company, either waive the extension of the System into such areas, or allow the extension and offer of services on such special terms, conditions and provisions as are reasonable and fair to the Municipality, the Company, and potential Subscribers in such areas.

**8-1-7 FRANCHISE FEE.**

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(A) The Company shall pay to the Municipality for the right, privilege and franchise in connection with the Grant, an amount equal to **five percent (5%)** of the Annual Gross Revenues for (the "Franchise Fee"), for the purpose of the calculation of Gross Revenues the amount paid for franchise fees shall not be included. Franchise will be paid quarterly, such payment to be payable to the Municipality within **forty-five (45) days** of the end of the prior quarter. Each payment shall be accompanied by a certificate signed by an official or representative of the Company having the requisite knowledge to make such a certificate in the form described herein certifying the Gross Revenues upon which the payment is based.

(B) Delinquent payments of the Franchise Fee shall bear interest at the rate of **one and one-half percent (1 ½%)** per month with the minimum delinquency being a **one (1) month** interest charge.

(C) Upon termination of the Grant at the expiration of the term provided in **Section 8-1-3(B)**, or otherwise, the Company shall continue to make the annual statements and certifications as provided in this Section until such time as all payments due the Municipality under this Chapter have been paid and accounted for to the reasonable satisfaction of the Municipality.

**8-1-8 RECORDS.** The Municipality shall have the right, upon reasonable notice to the Company and at reasonable times, hours, dates and frequencies, to inspect in the Company's Illinois offices or at an Illinois location all or any part of the Company's records and documents, engineering records and documents of every kind in connection with the Grant, the System, and the Company's undertakings with respect to this Chapter reasonably related to the Village's authority to regulate the Grantee. Notwithstanding anything to the contrary set forth herein, the Company shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature.

### **8-1-9 GENERAL SYSTEM STANDARDS.**

(A) The Company shall establish, construct, operate and maintain the System in accordance with all applicable technical standards of the Federal Communications Commission as respects cable communications technology and in accordance with the highest standards of conduct with respect to business of the size and type of that of the Company.

(B) The Company through the System shall provide effective and efficient service in accordance with the rules and regulations of all governmental units and agencies having regulatory and licensing authority in connection with the System.

(C) The Company through the System shall provide uniform, strong signals which are free from distortion and interference which is within its control.

(D) The Company shall not interrupt all or any part of the services of the System in the absence of absolute need or emergency circumstances. In the event of any sustained service interruption in excess of **twenty-four (24) hours**, each affected subscriber shall upon request be paid a pro rata credit for each such interruption.

(E) The Company shall establish, construct, operate and maintain the System so as to at all times meet FCC technical standards, including, without limitation, specifications for frequency

boundaries, visual carriers, frequency levels, aural carrier frequency levels, channel frequency response, terminal isolation and radiation.

(F) The Company shall establish, construct, operate and maintain the System in accordance with all applicable national, state and local building and safety codes. In the absence of any otherwise applicable building and safety codes, the Company shall establish, construct, operate and maintain the System in accordance with the most recent edition of the National Electrical Safety Code.

(G) The System shall be designed, established, constructed, operated and maintained for **twenty-four (24) hour-a-day** continuous operation.

(H) The System shall produce, for receipt on Subscribers' receivers which are in good working order signals which comply with FCC technical standards 47 C.F.R. 76.601 et seq.

(I) The System shall comply with the Emergency Broadcast Systems (EBS) rules as promulgated by the FCC. The Municipality shall hold the Company, its agents, employees, officers and assignees hereunder harmless from any claims, other than those based upon the negligence of the Company, arising out of the emergency use of its facilities by the Municipality, including, but not limited to, reasonable attorneys' fees and costs.

(J) In the event the Company is prevented or delayed in the performance of any of its obligations under this Chapter by reason of acts of God, flood, fires, hurricanes, tornadoes, earthquakes or other unavoidable casualty, acts of public enemy, insurrection, war, riot, sabotage, vandalism, strikes, boycotts, lockouts, labor disputes, shortage of labor, epidemic, freight embargoes, shortages or unavailability of materials or supplies, unusually severe weather conditions, acts or omissions of the Municipality or any other similar event beyond the reasonable control of the Company, the Company shall have a reasonable time under the circumstances to perform its obligations under this Chapter or to procure a substitute for such obligations which is satisfactory to the Municipality.

### **8-1-10 Reserved.**

### **8-1-11 BUSINESS OFFICE AND SERVICE CALLS.**

(A) The Company shall operate and maintain a public listed, toll-free telephone number for the purpose of receiving inquiries, requests and complaints concerning all aspects of the establishment, construction, maintenance, and operation of the System and questions regarding the payment of Subscribers' service charges. During reasonable business hours, the telephone may not be answered by a machine, however, it is understood that in exceptional circumstances the manual system may be overloaded and voice mail used.

(B) The Company shall respond to and resolve Subscribers' complaints or requests for service in connection with repairs and maintenance, service outages and malfunctions of the System. The Company shall respond as soon as possible to such complaints or request, but in any event not more than **twenty-four (24) hours** after receipt of the complaint.

(C) The Company shall file with the Municipality copies of all of its rules and regulations in connection with the handling of inquiries, requests and complaints. The Company shall furnish in writing to Subscribers at the time they connect to the System information concerning

procedures for making inquiries, requests and complaints about the System. The information shall at least include names, addresses and telephone numbers of the business office and agent. The Company shall provide such information as will reasonably permit Subscribers to effectively submit inquiries, requests and complaints and to obtain satisfactory resolution or handling in connection with the quality of the Company's delivery of services.

(D) The Company shall keep full records in connection with all inquiries, complaints and requests in connection with the System at its business office for a period of **one (1) year**. Minimally, such records shall identify the Subscriber, the date and subject matter of the contact and the method and time of resolution of the matter in question and the date of the action taken by the Company in connection with the contact.

(E) If the Company has notice of a channel change, the Company shall provide **thirty (30) days** advance written notice of any change in channel assignment or in the video program service provided over any system channel.

**8-1-12 PARENTAL CONTROL AVAILABILITY.** Grantee shall make available for sale or lease a parental control device which inhibits the viewing of a certain program, certain channel or certain channels provided by the System upon the request of Subscriber.

**8-1-13 SUPERVISION OF THE COMPANY.**

(A) Unless specifically otherwise provided in this Chapter, all administrative actions required to be taken or which shall or may be taken by the Municipality in connection with the System, shall be taken by the Mayor and Village Trustees.

(B) Unless specifically otherwise provided in this Chapter, all filings with the Municipality required by this Chapter shall be made with the Village Clerk.

**8-1-14 DEFAULT AND FORFEITURE.** In the event the Company shall fail or refuse to observe the terms and provisions of this Agreement, the Village shall be entitled to cancel and terminate this Agreement and all rights thereunder; provided, however, the Village shall serve upon the Company written notice of such violations and the Company shall thereupon correct such violations or show cause why such violations should or cannot be corrected no less than **ninety (90) days** from and after the date of receipt of said notice. In the event the Company fails to correct such violations, this Agreement shall thereupon be voidable by the Village, but all rights accruing to the Village against the Company shall continue in favor of the Village.

**8-1-15 LIABILITY, INSURANCE AND INDEMNITY.**

(A) The Company hereby agrees to indemnify, defend and save whole and harmless the Municipality and its officers and employees from liability and related expenses (including reasonable attorneys' fees) of any kind which arise from the construction, operation and maintenance of the System by the Company. The Municipality shall notify the Company in the event any person shall in any way notify the Municipality of any claim or demand from which the Company may be subject to liability under this Section or otherwise. The indemnification provisions of this Section shall include liability or claims of liability with respect to property damage, personal injury, invasions of the right of privacy, defamation of any person, and the violation or infringement of any copyright, trademark, trade name,



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service mark or patent, except that the Company shall have no liability arising from the use or operation of any public or leased access channels as provided in Section 612 of the Cable Act.

(B) The Company shall keep the System continuously insured against such risks as are customarily insured against by businesses of like size and type, including, but not limited to:

- (1) Insurance to the extent of **Five Hundred Thousand Dollars (\$500,000.00)** per person once over **One Million Dollars (\$1,000,000.00)** per occurrence against liability for bodily injury including death, **Five Hundred Thousand Dollars (\$500,000.00)** aggregate against liability for damage to property including loss of use, occurring on, arising out of or in any way related to the System.
- (2) During any period of construction, adequate coverage to meet liability under the Illinois Structural Work Act.
- (3) Workmen's Compensation Insurance within statutory limits and Employer's Liability Insurance of not less than **One Hundred Thousand Dollars (\$100,000.00)**.
- (4) Comprehensive Automobile Liability Insurance to the extent of **Five Hundred Thousand Dollars (\$500,000.00)** per occurrence against liability for bodily injury including death and to the extent of **Five Hundred Thousand Dollars (\$500,000.00)** per occurrence against liability for damage to property including loss of use occurring on, arising out of, or in any way related to the System.

This paragraph shall not be a limit on the Company's undertaking provided in paragraph (A) of this Section.

(C) The Company shall designate the Municipality as a co-insured on all insurance policies referred to in this Section. The Company shall file with the Municipality a certification of insurance. All such policies shall provide that the issuing insurance company will not cancel them without **thirty (30) days** prior notice to the Company and the Municipality. All such policies shall be issued by and maintained with generally recognized responsible insurance companies qualified to do business in the State of Illinois maintaining a Bests Rating of not less than A+15.

**8-1-16 PRIVACY RIGHTS.** The Company shall comply with the Subscriber privacy provisions of Section 631 of the Cable Act.

### **8-1-17 COMPLIANCE WITH LOCAL/STATE/FEDERAL JURISDICTION.**

(A) The Company shall establish, construct, operate and maintain the System subject to the reasonable supervisions of the Municipality and in strict compliance with all applicable laws, ordinances, rules and regulations.

(B) If at any time the vested powers of the Municipality, state or federal government or any agency or official thereof in connection with the System are duly transferred to or later reside in

any other board, authority, agency or official, such board, authority, agency or official shall have the power, rights and duties previously vested in addition to any other which they may acquire.

(C) Notwithstanding any other provisions of this Chapter, the Company shall at all times comply with all state and federal laws, rules and regulations, or any administrative agency thereof; provided, however, if any such ordinance, law, rule or regulation shall require the Company to perform any service in conflict with the provisions and terms of this Chapter or of any law, rule or regulation, then as soon as possible following knowledge thereof, the Company shall notify the Municipality of the point of conflict believed to exist. If either party determines that a material provision of this Chapter is affected by such action, both parties agree to negotiate in good faith any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this Chapter.

**8-1-18 UNLAWFUL ACTS.**

(A) It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of the Company's System for the purpose of enabling himself or others to receive any television signals, radio signals, picture, programs, sounds, or any other information or intelligence transmitted over the Company's System without payment to the Company.

(B) It shall be unlawful for any person, without the consent of the Company, to willfully tamper with, remove, or injure any cable, wires, or other equipment used for the distribution of television signals, radio signals, pictures, programs, sounds or any other information or intelligence transmitted over the Company's System.

(C) Violators of the provisions of this Section shall be guilty of a misdemeanor, and each and every day or portion thereof during which any violation of any of the provisions of this Section is committed, continued, or permitted shall be deemed a separate offense and upon conviction of any such violation shall be punishable by a fine of not less than **Twenty-Five Dollars (\$25.00)** nor more than **Five Hundred Dollars (\$500.00)**. Any equipment or structure erected or maintained and any work commenced or continued in violation of this Chapter shall be and is hereby declared unlawful.

**8-1-19 PERFORMANCE EVALUATION.**

(A) Upon the **fifth (5<sup>th</sup>)** and **tenth (10<sup>th</sup>) anniversaries** following the effective date of the Franchise, the Village may hold a performance evaluation session which shall be open to the public. As part of the evaluation session the Village may consider:

- (1) Whether the Company has complied with its obligation under the Franchise; and
- (2) Any other issues as may be raised by the Village, the Company or the public.

**8-1-20 SEPARABILITY.** If any section, subsection, sentence, phrase or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate and distinct and independent provision and such holding shall not affect the validity of the remaining portion thereof.

**8-1-21 NON-EXCLUSIVE FRANCHISE.** Municipality does hereby give and grant unto Company, its successors and assigns, the nonexclusive right and privilege, permission, authority and franchise for constructing, erecting, developing, keeping, holding, operating and maintaining a cable television system and to install, lay, clear, trench for and for such other purposes as may be necessary and incidental thereto, and recalling in, over and along present and future streets, alleys, stotted, including all annexations to the Municipality and the inhabitants thereof; even though the same may cross the streets, sidewalk, public lands and highways of the Municipality, and to use the same for the purpose of transmitting and distributing electrical impulses, television signals for television purposes, to reproduce pictures and sound in combination or independently, and especially for the conduct of a cable television system for the reception, sale and distribution of television signals.

**8-1-22 ASSIGNMENT OR TRANSFER.**

(A) The right, privilege and franchise under this Chapter and the System shall not be assigned or transferred, except to an affiliate of the Company, either in whole or in part or leased or sublet, in any manner, nor shall title thereto, either legal or equitable, or any right, interest, or property therein, pass to or vest in other than the Company either by the act of the Company or by operation of law without the prior express approval of the Municipality. The granting, giving or waiving of any **one (1)** or more of such approvals shall not render unnecessary any subsequent approvals. The Municipality shall not unreasonably withhold such approval. If the Municipality fails to grant consent within **sixty (60) days** following receipt of a request for consent to transfer by the Company, such consent will be deemed given.

(B) The consent or approval of the Municipality to any such assignment, lease, transfer, sub-lease, pledge or mortgage shall not constitute a waiver or release of the rights of the Municipality in and to the public right-of-way.

(C) Nothing in this Section shall prohibit a mortgage or pledge of the System or any part thereof or a leasing by the Company of the System or part thereof in order to secure indebtedness. Any such mortgage, pledge, or lease shall state on its face that it shall be subject and subordinate to the rights of the Municipality and Subscribers under this Chapter.

**8-1-23 ENFORCEMENT AND TERMINATION OF FRANCHISE.**

(A) In the event that the Municipality believes that the Grantee has not complied with the terms of the Franchise, it shall notify Grantee in writing of the exact nature of the alleged noncompliance.

(B) Grantee shall have **thirty (30) days** from receipt of the notice described in **Section 8-1-21(A)**:

- (1) to respond to the Franchising Authority contesting the assertion of noncompliance which shall toll the running of the time frame herein until Grantee can be heard by the Trustees pursuant to **Section 8-1-21(C)** herein, or

- (2) to cure such default, or
- (3) in the event that, by the nature of default, such default cannot be cured within the **thirty (30) day** period, initiate reasonable steps to remedy such default and notify the Municipality of the steps being taken and the projected date that they will be completed.

(C) In the event that Grantee fails to respond to the notice described in **Section 8-1-21(A)** pursuant to the procedures set forth in **Section 8-1-21(B)**, or in the event that the alleged default is not remedied within **sixty (60) days** after the Grantee is notified of the alleged default pursuant to **Section 8-1-21(A)**, the Municipality shall schedule a public meeting to investigate the default. Such public meeting shall be held at the next regularly scheduled meeting of the Franchising Authority which is scheduled at a time which is no less than **five (5) business days** therefrom. The Municipality shall notify the Grantee of the time and place of such meeting and provide the Grantee with an opportunity to be heard.

(D) Subject to applicable federal and state law, in the event the Municipality, after such meeting, determines that Grantee is in default of any provision of the Franchise, the Municipality may:

- (1) Foreclose on all or any part of any security provided under this Franchise, if any, including without limitation, any bonds or other surety; provided, however, the foreclosure shall only be in such a manner and in such amount as the Municipality reasonably determines is necessary to remedy the default;
- (2) Commence on action at law for monetary damages or seek other equitable relief;
- (3) In the case of a substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked; or
- (4) Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages.

The Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of the Municipality to enforce prompt compliance.

(E) The Grantee shall not be held in default or noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control.

(F) Upon termination of the Chapter, the Company shall remove its cables, wires and equipment from all the poles of the Village and all space reserved for the Village's use on poles belonging to others, within a **six (6) month** period provided, however, the Grantee shall not be subject to this provision if it is authorized to provide telecom services as per state or federal law. If not so

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removed, the Village shall have the right to remove or have its contractor remove them at the risk, cost and expense of the Company and without any liability therefore.

**8-1-24 RESERVATION OF RIGHTS.**

(A) The right is hereby reserved to the Municipality to adopt and enforce in addition to the terms, conditions and provisions contained in this Chapter and in otherwise existing applicable ordinances, such additional ordinances, rules and regulations as it shall find necessary in the exercise of its police powers; provided, that such ordinances, rules and regulations shall be reasonable and not materially or substantially in conflict with the rights herein granted.

(B) In addition to the specific rights of inspection otherwise provided for in this Chapter, the Municipality shall also have the right to make such inspections as it shall find necessary to insure compliance with the terms, provisions and conditions of this Chapter and other relevant provisions of the law, subject to the Grantee's assertion of subscriber privacy or confidentiality of information.

(C) Nothing in this Chapter shall limit the right of the Municipality to acquire all or any part of the System through the exercise of eminent domain in the manner provided by law, subject to 47 U.S.C. 547.

(D) From time to time the Municipality may by ordinance amend this Chapter upon **thirty (30) days** notice to the Company; provided, however, that any such amendment shall not impair the rights granted to or increase the obligations of the Company hereunder. No such amendment shall be effective as to the Company until the Company files with the Municipality an acceptance, with specific reference to the ordinance amending the Chapter, substantially in the form set forth in **Section 8-1-19** hereof.

**8-1-25 RENEWAL.** The Municipality and the Company agree that any proceedings undertaken by the Municipality that relate to the renewal of the Company's franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act (as such existed as of the effective date of the Cable Act, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law). Specifically, but without limitation, the Company shall comply with the provisions of 47 U.S.C. § 626.

**8-1-26 TERMINATION OF SERVICE.** Upon termination of Cable Service to any Subscriber the Company upon written request shall, without charge, promptly remove all in-home System facilities which it owns from the property of such Subscriber.

**8-1-27 PUBLIC BUILDINGS.** The Company agrees to and shall furnish upon request without installation charge or monthly service fees for standard installation basic cable service on **one (1) outlet** to the Village Hall and to each firehouse, public works building, and any other municipal building designated by the Village Trustees for public use; to all library buildings; and to all public and parochial elementary and secondary schools. Such service locations will be approved by the Village and limited to **five (5)**. The list of buildings to be served is at **Exhibit A**. Where the drop line from the feeder cable to a public building exceeds **one hundred fifty (150) cable feet**, the appropriate public entity shall pay the incremental cost of such drop line in excess of **one hundred fifty (150) cable feet**. The public buildings so served shall be responsible for the cost of installing all internal wiring from such energized connection source.

**8-1-28 RATE REGULATION.** The Village shall be entitled to and does hereby reserve unto itself to the fullest extent possible the power to regulate or otherwise control to the benefit of its citizens

the lowest reasonable cable television subscriber rates that may be permitted by the regulations promulgated by the Federal Communications Commission or its successor agency. Such regulation of rates shall be as expressly provided by federal or State of Illinois laws, rules or regulations. The Company agrees that it will be bound under the terms of this Agreement to those rates which may be fairly determined by the parties or by the Federal Communications Commission to be just and reasonable.

**8-1-29 NOTICES.** All notices herein provided for shall be sent prepaid registered or certified mail addressed to the Village as follows:

To the Municipality:

Village of Mulberry Grove  
Attn: Village President and Village Clerk  
205 N. Wood St.  
Mulberry Grove, Illinois 62262

**8-1-30 ACTIONS OF THE MUNICIPALITY.** In any action by the Municipality or representative thereof mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

**8-1-31 EXCLUSIVE JURISDICTION.** No community antenna television system shall be erected, maintained or operated in the Municipality without the passage of a franchise ordinance permitting the same.

**8-1-32 CONSTRUCTION.** Principles concerning the construction and interpretation of this Chapter shall be as follows:

(A) All ordinances or parts thereof in conflict with the provisions of this Chapter are to that extent hereby repealed.

(B) If any provision of this Chapter or the application thereof is for any reason held invalid, illegal, unconstitutional, or unenforceable, such holding shall not affect the remainder of this Chapter to any extent, each provision of this Chapter being a separate, distinct and independent part.

(C) In connection with all actions and decisions to be taken or made under this Chapter by the Municipality or the Company, due consideration shall be given the respective interests of the Municipality, the Company, Subscribers and potential Subscribers.

(D) Words in the present tense include the future.

(E) Words importing the singular number may extend to and include plural, words importing the plural number may extend to and include the singular, and words in masculine gender shall include female gender.

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(F) The Company shall not be excused from complying with any of the terms, conditions and provisions of this Chapter by any failure of the Municipality upon any one or more occasions to insist upon or to seek compliance with any such terms, conditions or provisions.

(G) The specification in this Section of principles to apply in the construction and interpretation of this Chapter shall not be a limitation as to others.

(H) Whenever this Chapter shall set forth any time for any act to be performed by or on behalf of the Company, such time shall be deemed of the essence and any failure of the Company to perform within time allotted shall be sufficient grounds for the Municipality to terminate, cancel and revoke the Franchise or use other remedies, unless such delays are caused by factors or events not within the reasonable control of the Company.