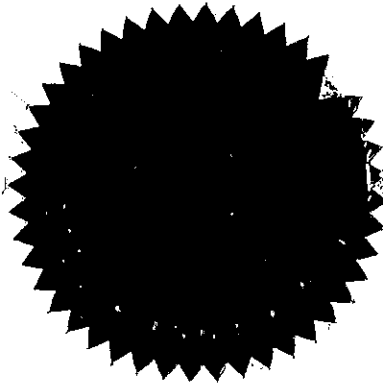


ORDINANCE 4434

PAMPHLET

FRONT OF PAMPHLET

PROVIDING FOR THE  
REGULATION OF CABLE TELEVISION  
IN THE VILLAGE OF LOMBARD



PUBLISHED IN PAMPHLET FORM THIS 10TH DAY OF MARCH, 1998.  
BY ORDER OF THE CORPORATE AUTHORITIES OF THE VILLAGE OF LOMBARD,  
DUPAGE COUNTY, ILLINOIS.

*Lorraine G. Gerhardt*  
Lorraine G. Gerhardt  
Village Clerk  
*Barbara Johnson*  
*Deputy Clerk*

AN ORDINANCE AMENDING TITLE 11, CHAPTER 117,  
OF THE LOMBARD VILLAGE CODE IN REGARDS  
TO THE CABLE TELEVISION ORDINANCE

BE IT ORDAINED by the President and Board of Trustees of the Village of Lombard, DuPage County, Illinois, as follows:

SECTION 1: That Title 11, Chapter 117, of the Lombard Village Code is hereby amended in its entirety to read as follows:

Please see "Exhibit A" attached hereto.

SECTION 2: That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

Passed on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

First reading waived by action of the Board of Trustees this 5th day of March, 1998.


Passed on second reading this 5th day of March, 1998.

Ayes: Trustees Borgatell, Tross, Schaffer, Jaugilas, Gatz & Kufrin

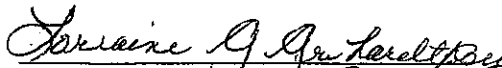

Nays: None

Absent: None

Approved by me this 5th day of March, 1998.

  
\_\_\_\_\_  
William J. Mueller  
Village President

ATTEST:

  
Lorraine G. Gerhardt  
Village Clerk  
  
Barbara Johnson  
Deputy Clerk

APPROVAL AS TO FORM:

\_\_\_\_\_  
Thomas P. Bayer  
Village Attorney

**Village of Lombard**

**Cable Television Ordinance**

**“Exhibit A”**

**Adopted: March 5, 1998**

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**§ 117.01. SHORT TITLE**

This chapter shall be known and may be cited as the "Cable Television Ordinance," hereinafter "Ordinance."

**§ 117.02. DEFINITIONS**

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

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

**Basic Service** means all subscriber services provided by the Grantee in one or more service tiers, which includes the delivery of local broadcast stations, and public, educational and governmental access channels. The Basic Service does not include optional program and satellite service tiers, a la carte services (to the extent such services are not Basic Service under FCC rules), per channel, per program or auxiliary services for which a separate charge is made. However, Grantee may include other satellite signals on the Basic Service.

**Cable Act** means the Cable Communications Policy Act of 1984, 47 U.S.C. ' 532, et seq., as now and hereafter amended.

**Cable Operator** means a cable communications carrier providing or offering to provide "cable service" within the Village as that term is defined in the Cable Act.

**Cable Service** means the same meaning provided by the Cable Act.

**Cable Television Franchise** means granting by the Village the right and privilege to establish, construct, operate and maintain a system and facilities in, over, upon and under the public right-of-way and within easements or other rights to use property which are effective for the purpose of that grant; said system defined in 65 ILCS 5/11-42-11.

**Cable Television System or CATV System** means Community antenna television system as defined in Section 11-42-11 of the Illinois Municipal Code, and as amended from time to time, including a system of antennas, cables, wires, lines, towers, wave guides or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing, audio, data, video and other forms of electric, electrical or optical signals, which includes cable television service and which is located in the Village. The definition shall not include any such facility that serves or will serve only subscribers which does not use Village rights-of-way.

**Channel** means a band of frequencies, six megahertz wide in the electro-magnetic spectrum capable of carrying either one audio-visual television signal and a few non-video signals or a large number of non-video signals.

**Control and/or Controlling Interest** shall mean actual working control or ownership of a System in whatever manner exercised. A rebuttable presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or indirectly, by any Person or Entity (except underwriters during the period in which they are offering securities to the public) holding twenty percent (20%) or more of a Cable System or the Franchise under which the System is operated. A change in the control or controlling interest of an Entity which has control or a controlling interest in a Grantee shall constitute a change in the control or controlling interest of the System under the same criteria. Control or controlling interest as used herein may be held simultaneously by more than one Person or Entity.

**Converter** means an electronic device which converts signals to a frequency within the television receiver of a subscriber and by an appropriate channel selector also permits a subscriber to view all signals delivered at designated dial locations.

**Corporate Authorities** means the President and Board of Trustees of the Village.

**FCC** means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

**Franchisee or Grantee** means the natural person, partnership, domestic and foreign corporation, association, joint venture or organization of any kind granted a franchise by the corporate authorities under this Chapter or its lawful successor, transferee, or assignee.

**Franchise Area** means that portion of the Village for which a Franchise is granted under the authority of this Chapter. If not otherwise stated in the franchise, the Franchise area shall be the corporate limits of the Village including all territory thereafter annexed to the Village.

**Franchise Fee** means the fee that a Grantee is required to pay to the Village pursuant to Chapter 117.29 of this Ordinance. This fee includes any tax, fee or assessment of any kind imposed by the franchising authority or other governmental entity on a cable operator or cable subscriber or both, solely because of their status as such. The term "Franchise Fee" does not include:

- (1) Any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services but not including a tax, fee or assessment which is unduly discriminatory against cable operators or cable subscribers);
- (2) In the case of any Franchise in effect on the date of enactment of the 1984 Cable Act, payments which are required by the franchise to be made by the cable operator during the term of such franchise for, or in support of the use of, public, educational or governmental access facilities;
- (3) In the case of any Franchise granted after such date of enactment, capital costs which are required by the Franchise to be incurred by the cable operator for public, educational or governmental access facilities;

(4) Requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or

(5) Any fee imposed under Title 17, United States Code.

**Gross Revenues** means all revenue collected directly or indirectly by the Grantee, arising from or attributable to the provision of cable service by the Grantee within the Village including, but not limited to: periodic fees charged Subscribers for any basic, optional, premium, per-channel or per-program service; franchise fees to the extent permissible under law; installation and reconnection fees; leased channel fees; converter rentals and/or sales; program guide revenues; late or administrative fees; upgrade, downgrade or other change-in-service fees; advertising revenues; revenues from home shopping channels; revenues from the sale, exchange, use or cablecast of any programming developed on the system for community or institutional use; and any value (at retail price levels) of any non-monetary remuneration received by Grantee in consideration of the performance of advertising or any other service of the system; provided, however, that this shall not include any taxes on services furnished by the Grantee herein imposed directly upon any subscriber or user by the state, local or other governmental unit and collected by the Grantee on behalf of the governmental unit. To the extent permitted by law, the term Gross Revenues also includes revenues collected directly or indirectly from other ancillary telecommunications services, including, but not limited to: point-to-point telecommunications, point-to-point multi-point telecommunications, data transmissions, etc., but only to the extent that all other providers of such telecommunications services in the Village are subject to the same compensation requirements of the Village.

**Initial Service Area** means all areas in the Village having a density of at least twenty (20) occupied dwelling units per cable mile.

**Installation** means the connection of the system from feeder cable to the subscribers' terminals.

**May** is permissive.

**Municipal Code** means the Municipal Code of the Village.

**Normal Business Hours**, as applied to the Grantee, shall mean those hours during which similar businesses in the Village are open to serve customers. In all cases, Normal Business Hours must include some evening hours at least one night per week and some weekend hours.

**Normal Operating Conditions** shall mean those service conditions that are within the control of the Grantee. Those conditions that are not within the control of the Grantee include, but are not limited to: natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods and maintenance or upgrade of the Cable System.

**Person** means corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals supports and foundations for such facilities.

**Public, Educational or Governmental Access Channels or PEG Access Channels** means the channel capacity designated for non-commercial public, educational or governmental access programming.

**Public, Educational or Governmental Access Facilities or PEG Access Facilities** means those facilities and equipment utilized for the production and playback of public, educational and governmental access programming.

**Public Street** means any highway, street, alley or other public right of way for motor vehicle travel under the jurisdiction and control of the Village which has been acquired, established, dedicated or devoted to highway purposes not inconsistent with cable communications facilities.

**Public Way** means all public streets and utility easements, as those terms are defined herein, now or hereafter owned by the Village, but only to the extent of the Village's right, title, interest or authority to grant a license or franchise to occupy and use such streets and easements for cable communications facilities.

**Renewed Franchise** means any franchise renewed pursuant to the franchise renewal procedures in Section 626 of the 1984 Cable Act, as amended.

**Requests for Proposal** means the Village's Requests for Proposal to initially construct and operate a cable communication system within the corporate limits of the Village.

**Shall** is mandatory.

**Service Interruption** means the loss of picture or sound on one or more cable channels.

**State** means the State of Illinois.

**Subscriber** means any member of the general public who receives the regular subscriber service and/or any one or more of such other services as may be provided by the Grantee's cable communications system and does not further distribute such service.

**Transfer** means any transactions or series of transactions which, singularly or collectively, result in the sale, assignment or transfer of all or a majority of the assets of the Grantee or the cable system or a change of twenty-five percent (25%) or more of the ownership or working control of the Grantee, of the ownership or working control of the Franchise or of the ownership or working control of affiliated entities having ownership or working control of the Grantee, the Franchise or cable system. Franchise transfers require Village approval as provided in this Ordinance. Transactions between Affiliates of the Grantee are not exempt from Village approval, except as specifically provided in a Franchise Agreement between the Village and the Grantee.

**Underground Facilities** means utility and cable communications facilities located under the surface of the ground, excluding the underground foundations or supports for Overhead Facilities.

**User** means a person or organization utilizing a system channel for purposes of production or transmission of material as contrasted with receipt thereof in a subscriber capacity.

**Utility Easement** means any easement owned by the Village and acquired, established, dedicated or devoted for public utility purposes not inconsistent with cable communications facilities.

**Village** means the Village of Lombard, DuPage County, Illinois.

**§ 117.03. RIGHTS AND PRIVILEGES OF GRANTEE**

Any franchise granted by the Village pursuant to Illinois Statutes and this Chapter shall grant to the Grantee, subject to the terms and conditions of the franchise agreement between the Village and a Grantee, the right and privilege to erect, construct, operate and maintain in, upon, along, across, above, over and under the streets now in existence and as may be created or established during its terms any poles, wires, cable, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation of a Cable System.

**§ 117.04. AGREEMENT AND INCORPORATION OF ORDINANCE AND APPLICATION BY REFERENCE**

**(A) Agreement and Execution:** Upon adoption of any franchise agreement and execution thereof by the Grantee, the Grantee agrees to be bound by all the terms and conditions contained in this Chapter.

**(B) Incorporation by Reference:** Any Grantee also agrees to provide all services specifically set forth in its application, if there is one, and to provide cable television service within the confines of the Village and by its acceptance of the Franchise, the Grantee specifically grants and agrees that its application is thereby incorporated by reference and made a part of the Franchise. Except that the Grantee may from time to time change its services in response to market and financial decisions.

**§ 117.05. FRANCHISE TERRITORY**

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

**§ 117.06. DURATION AND ACCEPTANCE OF NON-EXCLUSIVE FRANCHISE**

**(A) Duration and Acceptance:** Any Franchise and the rights, privileges and authority hereby authorized shall take effect and be in force from and after the signing of a Franchise Agreement by the Village as provided by law and shall continue in force and effect for a term of no longer than fifteen (15) years, provided that within the thirty (30) days prior to or after the passage and

signing of the Franchise Agreement by the Village, the Grantee indicates its acceptance of the Franchise and its promise to comply with and abide by all its provisions, terms and conditions by the signing of said Franchise Agreement. Such Franchise shall be non-exclusive and revocable only under the terms herein or in the Franchise Agreement with Grantee.

**(B) Equal Treatment:** In the event the Village grants an additional Franchise to use and occupy the public right-of-way for the purpose of operating a cable system, said additional Franchise should only be granted if the terms, conditions, and requirements of said subsequent Franchise relating to payments, facilities, equipment and services to be provided by the subsequent cable operator satisfy the applicable requirements set forth in Section 11-42-11 of the Illinois Municipal Code ( 65 ILCS 5/11-42-11), as now or hereafter amended. Notwithstanding the applicability or repeal of Section 11-42-11, to maintain a competitively neutral and nondiscriminatory environment as required by the Federal Telecommunications Act of 1996, any additional Franchise shall provide terms, conditions and requirements relating to the payments, facilities, equipment and services and regulatory requirements for use of the Public Ways that are substantially equivalent to the payments, facilities, equipment and services and regulatory requirements imposed on the Grantee previously granted a Franchise pursuant to this Ordinance.

#### § 117.07. FRANCHISE RENEWAL

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

Pursuant to 47 U.S.C. ' 546, the following procedure shall apply:

**(A) Public Proceeding:** The Village may, on its own initiative, during the six month period which begins with the thirty-six (36) months before the Franchise expiration, commence a proceeding which affords the public in the Village appropriate notice and participation for the purpose of (1) identifying the future cable-related community needs and interests and (2) reviewing the performance of the Grantee under the Franchise. If the Grantee submits, during such six month period, a written renewal notice requesting the commencement of such proceeding, the Village shall commence such proceeding not later than six months after the date such notice is submitted.

**(B) Proposal for Renewal:** Upon completion of the proceeding under Chapter 117.07(A) above, the Grantee may, on its own initiative or at the request of the Village, submit a proposal for renewal. The Village may establish a date by which such proposal shall be submitted.

**(C) Public Notice and Administrative Proceeding:** Upon submittal by the Grantee of a proposal to the Village for the renewal of the Franchise, the Village shall provide prompt, public notice of such proposal and renew the Franchise or issue a preliminary assessment that the Franchise should not be renewed and at the request of the Grantee or on its own initiative, commence an administrative proceeding, after providing prompt, public notice of such proceeding.

**(D) Consideration in Administrative Proceeding:** The Village shall consider in any administrative proceeding whether:

- (1) The Grantee has substantially complied with material terms of the existing Franchise and with applicable law;
- (2) The quality of the Grantee's service, including signal quality, response to consumer complaints and billing practices, but without regard to the mix or quality of cable services or other services provided over the System, has been reasonable in the light of community needs;
- (3) The Grantee has the financial, legal and technical ability to provide the services, facilities and equipment as set forth in the Grantee's proposal; and
- (4) The Grantee's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the costs of meeting such needs and interests.

**(E) Adequate Notice and Fair Opportunity:** In any proceeding under Chapter 117.07(D), the Grantee shall be afforded adequate notice and the Grantee and the Village or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to issues raised in the proceedings under Chapter 117.07(A) above), to require the production of evidence and to question witnesses. A transcript shall be made of any such proceeding.

**(F) Written Decision:** At the completion of a proceeding under Chapter 117.07(D), the Village shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding and transmit a copy of such decision to the Grantee. Such decision shall state the reasons therefore.

**(G) Denial of Renewal:** Any denial of a proposal for renewal that has been submitted in compliance with the procedures set forth above, shall be based on one or more adverse findings made with respect to the factors described in (1) through (4) of Chapter 117.07(D) pursuant to the record of the proceeding under said paragraph. The Village may not base a denial of renewal on a failure to substantially comply with the material terms of the Franchise or on events considered under Chapter 117.07(D)(2) unless the Village has provided the Grantee with notice and the opportunity to cure or in any case in which it is documented that the Village has waived its right to object.

**(H) Appeal of Decision:** The Grantee may appeal any final decision or failure of the Village to act in accordance with the procedural requirements of this Section. The court shall grant appropriate relief if the court finds that:

- (1) Any action of the Village is not in compliance with the procedural requirements of this Section; or



(2) In the event of a final decision of the Village denying the renewal proposal, the Grantee has demonstrated that the adverse finding of the Village with respect to each of the factors described in Chapter 117.07(D)(1) through (4) on which the denial is based is not supported by a preponderance of the evidence, based on the record of the administrative proceeding.

**§ 117.08 FRANCHISE RENEWAL IN THE EVENT OF CHANGE IN FEDERAL LAW**

In the event that any or all of the above-referenced provisions of federal law are repealed, the following relevant section(s) shall apply unless superseded by new law:

**(A) Notice of Renewal:** At least twenty-four (24) months prior to the expiration of the Franchise, the Grantee shall inform the Village in writing of its intent to seek renewal of the Franchise.

**(B) Content of Proposal for Renewal:** The Grantee shall submit a proposal for renewal which demonstrates:

- (1) That it has been and continues to be in substantial compliance with the terms, conditions and limitations of its Franchise;
- (2) That its system has been installed, constructed, maintained and operated in accordance with its Franchise;
- (3) That it has the legal, technical, financial and other qualifications to continue to maintain and operate its system, and to assure its subscribers high quality service; and
- (4) That it has made a good faith effort to provide services and facilities which accommodate the cable-related needs of the community as may be reasonably ascertained through finding of facts given due consideration to the cost of meeting such needs.

**(C) Consideration:** After giving public notice, the Village shall proceed to determine whether the Grantee has satisfactorily performed its obligations under the Franchise. To determine satisfactory performance, the Village shall consider technical developments and performance of the system, mix, quality and level of services received and any other particular requirements set forth in this Chapter. The Grantee will supply cable television services sufficient to meet cable-related community needs and interests given due consideration to the costs of meeting such needs.

**(D) Amendments:** The Village shall then work with the Grantee to prepare any amendments to this Ordinance and/or the Franchise Agreement that both parties agree evidence shows are required based on cable-related community needs and interests.

**(E) New Franchise:** If the Village finds the Grantee's performance satisfactory and finds the

Grantee's technical, legal and financial abilities acceptable and finds the Grantee's renewal proposal meets the future cable-related needs of the Village giving due consideration to the costs of meeting same, a new franchise shall be granted pursuant to this Ordinance as amended for a period to be determined.

**§ 117.09. POLICE POWERS**

In accepting a Franchise, the Grantee acknowledges that its rights thereunder are subject to the police power of the Village to adopt and enforce general ordinances necessary to ensure the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the Village pursuant to such power.

**§ 117.10. CABLE TELEVISION FRANCHISE REQUIRED**

No cable television system shall be allowed to operate or to occupy or use the streets (i.e., rights-of-way) for system installation and maintenance purposes without a Franchise.

**§ 117.11. USE OF GRANTEE FACILITIES**

The Village shall have the right to install and maintain free of charge upon the poles of the Grantee any wire or pole fixtures that do not unreasonably interfere with the cable television system operations of the Grantee. The Village shall indemnify and hold harmless the Grantee from any claim that might arise due to or as a result of the Village's use.

**§ 117.12. FRANCHISE COSTS**

Costs to be borne by the Grantee shall include any requirements or charges incidental to the awarding or enforcing of an initial franchise, excluding renewed franchises, but shall not be limited to: all costs of publications of notices prior to any public meeting provided for pursuant to this Chapter and any costs not covered by application fees, incurred by the Village in its study, preparation of proposal documents, evaluation of all applications and examinations of the applicant's qualifications, including reasonable fees for attorneys and cable television consultants.

**§ 117.13. NOTICES**

All notices from the Grantee to the Village pursuant to any Franchise shall be to the Village Manager's Office. The Grantee shall maintain with the Village, throughout the term of the Franchise, an address for service of notices by mail. The Grantee shall maintain a central office to address any issues relating to operating under this cable television ordinance.

**§ 117.14. SECURITY FUND**

On the effective date of the franchise, the Grantee shall establish a permanent security fund in the amount of Fifty Thousand and no/100ths Dollars (\$50,000.00) by depositing with the Village cash, an unconditional stand-by letter of credit or other instrument acceptable to the Village,

which fund shall be maintained at the sole expense of the Grantee so long as any part of the System is located within the public ways of the Village.

**(A) Use of Fund:** The fund shall serve as security for Grantee's full and faithful performance of this Ordinance, the Franchise Agreement, permits issued by the Village and applicable laws in constructing, operating and maintaining the cable system and providing cable service within the Village, including the payment of any penalties, judgments, fees or taxes that may be due the Village. Further, the Village may assess the fund in the event the Village has incurred any out-of-pocket cost, expense, damage or loss because of any act or omission attributable to the Grantee that constitutes a violation, default or failure to comply with the requirements of this Ordinance or the Franchise Agreement in connection with the construction, operation or maintenance of the cable system and the provision of cable service within the Village; but only to the extent that the amount of such out-of-pocket cost, expense, damage or loss is not greater than One Thousand Five Hundred (\$1,500.00) Dollars.

**(B) Reduction in Amount:** At Franchise renewal or after completion of any cable system construction, rebuild or upgrade, the required amount of the security fund may be reduced to a sum specified in the Franchise Agreement or as otherwise agreed by and between the Village and the Grantee.

**(C) Assessment:** In the case of any default or failure of the Grantee to pay any penalties, judgments, fees or taxes due the Village in connection with the construction, operation or maintenance of the cable system and the provision of cable service within the Village pursuant to the Franchise, the Village may assess the security fund pursuant to the procedures set forth in Chapter 117.46 below, or in the Franchise Agreement, if applicable.

**(D) Failure to Pay:** The Grantee shall promptly pay any undisputed penalties, judgments, fees or taxes due the Village. If the Grantee fails to pay any undisputed amounts due the Village within thirty (30) days after written notice from the Village, the Village may withdraw the amount thereof, together with interest at the judgment interest rate specified in Section 2-1303 of the Illinois Code of Civil Procedure.

**(E) Replenishment:** The Grantee shall replenish the security fund to its full amount within thirty (30) days after written notice from the Village that monies have been withdrawn from the fund.

**(F) Reserved Rights:** The rights reserved to the Village with respect to the security fund are in addition to all other rights and remedies of the Village, whether reserved by this Ordinance or authorized by law and no action or proceeding to exercise rights with respect to the security fund shall constitute an election of remedies or a waiver of any other rights the Village may have.

#### § 117.15 CONSTRUCTION AND COMPLETION SECURITY

**(A) Performance Bond:** Unless otherwise provided in an original Franchise Agreement, excluding renewed Franchises, a performance bond written by a corporate surety acceptable to the Village equal to at least one hundred percent (100%) of the estimated cost of constructing the

Grantee's cable communications facilities within the public ways of the Village shall be deposited before construction is commenced.

**(B) Construction Bond:** The construction bond shall remain in force until sixty (60) days after substantial completion of the work, as determined by the Village Engineer, including restoration of public ways and other property affected by the construction.

**(C) Guarantee of Construction Bond:** The construction bond shall guarantee to the satisfaction of the Village:

- (1) Timely completion of construction;
- (2) Construction in compliance with applicable plans, permits, technical codes and standards;
- (3) Proper location of the facilities as specified by the Village;
- (4) Restoration of the public ways and other property affected by the construction;
- (5) The submission of "as-built" drawings after completion of the work as required by this Chapter;
- (6) Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

#### **§ 117.16. LIABILITY AND INSURANCE**

**(A) Liability Insurance Minimums:** The Grantee shall maintain and by its acceptance of the Franchise specifically agrees that it will maintain throughout the term of the Franchise, liability insurance insuring the Village and the Grantee in the minimum amount of:

- (1) One million dollars (\$1,000,000.00) for property damage to any one person;
- (2) Three million dollars (\$3,000,000.00) for property damage from any one accident;
- (3) One million dollars (\$1,000,000.00) for personal injury to any one person;  
and
- (4) Three million dollars (\$3,000,000.00) for personal injury from any one accident.

**(B) Certificate of Insurance:** The certificate of insurance obtained by the Grantee in compliance with this section may be reviewed by the Village Attorney and shall be filed and

maintained with the Village during the term of the Franchise.

**(C) No Limit of Liability:** Neither the provisions of this Chapter nor any damages recovered by the Village thereunder, shall be construed to or limit the liability of the Grantee under any Franchise issued hereunder or for damages.

**(D) Contents of Insurance Policies:** All insurance policies maintained pursuant to the Franchise shall contain the following endorsement: "It is hereby understood and agreed that this insurance policy may not be canceled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the Village, by registered mail, a written notice of such intention to cancel or not to renew. This insurance shall be primary to any insurance obtained by the Village on its own behalf, notwithstanding anything to the contrary herein."

#### § 117.17. INDEMNIFICATION

**(A) Disclaimer of Liability:** The Village shall not at any time be liable for injury or damage occurring to any Person or property from any cause whatsoever arising out of the construction, maintenance, repair, use, operation, condition or dismantling of the Grantee's Cable Television System or due to the act or omission of any Person or entity other than the Village or those Persons or entities for which the Village is legally liable as a matter of law.

**(B) Indemnification:** The Grantee shall, at its sole cost and expense, indemnify and hold harmless the Village, all associated, affiliated, allied and subsidiary entities of the Village now existing or hereinafter created and their respective officers, boards, commissions, employees, agents, attorneys and contractors (hereinafter referred to as "Indemnitees") from and against the following:

(1) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or asserted against the Indemnitees by reason of any act or omission of the Grantee, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any Person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any Person, firm or corporation, which may arise out of or be in any way connected with the construction, installation, operation, maintenance, use or condition of the Cable Television System caused by Grantee, its subcontractors or agents or the Grantee's failure to comply with any federal, state or local statute, ordinance or regulation.

(2) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which are imposed upon, incurred by or asserted against the Indemnitees by reason of any claim or lien

arising out of work, labor, materials or supplies provided or supplied to the Grantee, its contractors or subcontractors, for the installation, construction, operation or maintenance of the Cable Television System.

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

**(C) Assumption of Risk:** The Grantee undertakes and assumes for its officers, agents, contractors and subcontractors and employees all risk of dangerous conditions, if any, on or about any Village-owned or controlled property, including Public Rights-of-Way and the Grantee hereby agrees to indemnify and hold harmless the Indemnitees against and from any claim asserted or liability imposed upon the Indemnitees for personal injury or property damage to any Person arising out of the installation, operation, maintenance or condition of the Cable Television System or the Grantee's failure to comply with any federal, state or local statute, ordinance or regulation except that nothing herein shall be construed to indemnify the above noted parties from negligent acts on their part or the Village's part.

**(D) Defense of Indemnitees:** In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, the Grantee shall, upon notice from any of the Indemnitees, at the Grantee's sole cost and expense, resist and defend the same.

**(E) Notice, Cooperation and Expenses:** The Village shall give the Grantee prompt notice of the making of any written claim or the commencement of any action, suit or other proceeding covered by the provisions of this Chapter. Nothing herein shall be deemed to prevent the Village from cooperating with the Grantee and participating in the defense of any litigation by the Village's own counsel.

**(F) Nonwaiver of Statutory Limits:** Nothing in this agreement is intended to express or imply a waiver by the Village of statutory provisions, privileges or immunities of any kind or nature as set forth in Illinois Statutes, including the limits of liability of the Village as exists presently or may be increased from time to time by the Legislature.

#### § 117.18. RIGHTS OF INDIVIDUALS

**(A) Nondiscrimination:** The Grantee shall not deny service, deny access, or otherwise

discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, income, sex, marital status, sexual preference or age. The Grantee shall comply at all times with all other applicable federal, state and local laws and regulations and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this chapter by reference.

**(B) Equal Employment Opportunity Requirements:** The Grantee shall strictly adhere to the equal employment opportunity requirements of the Federal Communications Commission and of state and local governments, and as amended from time to time.

**(C) Privacy Requirements:** The Grantee shall, at all times, comply with the privacy requirements of state and federal law.

**(D) Services Requirements:** Grantee is required to make all services available to all residential dwellings throughout the service area or as otherwise specified in a Franchise Agreement.

#### **§ 117.19. SERVICE AVAILABILITY AND RECORD REQUEST**

The Grantee shall provide cable television service to residential areas throughout the entire Franchise area pursuant to the provisions of the Franchise and shall use its best efforts to keep a record for at least three years of all requests for service received by the Grantee.

#### **§ 117.20. SYSTEM CONSTRUCTION**

**(A) New Construction Timetable:** New construction timetable for a new or a renewed Franchise, if applicable.

(1) Within two (2) years from the date of the award of a Franchise, the Grantee must make cable television service available to every dwelling unit within the initial service area.

(a) The Grantee must make cable television service available to at least twenty (20) percent of the dwelling units within the initial service area within twelve (12) months from the date of the award of the Franchise.

(b) The Grantee must make cable television service available to at least fifty (50) percent of the dwelling units within the initial service area within eighteen (18) months from the date of the award of the Franchise.

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

(3) In special circumstances the Village may waive one hundred percent (100%) completion within the two year time frame, provided substantial completion is accomplished within the allotted time frame, substantial completion to be not less than ninety-five percent (95%). Justification for less than one hundred percent (100%) must be submitted subject to the satisfaction of the Village.

(4) The Grantee shall install conduit, pedestals and vaults underground as required by Chapter 117.21(B)(8) below.

**(B) Line Extensions:**

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

(a) No customer shall be refused service arbitrarily. Grantee is hereby authorized to extend the Cable System as necessary within the Village. To expedite the process of extending the Cable System into a new sub-division, the Village will forward to the Grantee an approved engineering plan of each project. Subject to the density requirements in Chapter 117.21(B) below, the Grantee shall commence the design and construction process upon receipt of the final engineering plan. Upon notification from the Village that the first home in the project has been approved for a building permit, the Grantee shall have a maximum of three months to complete the construction/ activation process within the applicable project phase.

(b) The Grantee shall extend and make cable television service available to every dwelling unit in all unserved, developing areas having at least twenty (20) occupied dwelling units per cable mile, as measured from the existing system and shall extend its system simultaneously with the installation of utility lines to the extent practical.

(c) The Grantee shall extend and make cable television service available to any isolated resident outside the initial service area requesting connection at the standard connection charge, if the connection to the isolated resident would require no more than a standard one hundred and twenty-five (125) foot drop line.

(2) Early extension. In areas not meeting the requirements for mandatory extension of service, the Grantee shall provide, upon the request of a potential subscriber desiring service, an estimate of the Grantee's costs required to extend service to the subscriber. The Grantee shall then extend service upon request of the potential subscriber. The Grantee may require advance payment or assurance



of payment satisfactory to the Grantee within a period of 36 months of payment. In the event the area subsequently reaches the density required for mandatory extension, such payments which exceed the standard installation costs for said installation shall be refunded to the subscriber.

(3) New development under grounding. In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give the Grantee reasonable notice of such construction or development and of the particular date on which open trenching will be available for the Grantee's installation of conduit, pedestals and/or vaults and laterals to be provided at the Grantee's expense. The Grantee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if the Grantee fails to install its conduit, pedestals and/or vaults, and laterals within ten (10) working days of the date the trenches are available, as designated in the notice given by the developer or property owner to the Grantee, then should the trenches be closed after the ten (10) day period, the cost of new trenching is to be borne by the Grantee.

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

**(D) Line Extension Policy:** The Grantee, in its application, if there is one, may propose a line extension policy that will result in serving more residents of the Village than as required above, in which case the Grantee's policy will be incorporated into the Franchise Agreement and will be binding on the Grantee.

#### **§ 117.21. CONSTRUCTION AND TECHNICAL STANDARDS**

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

**(B) Additional Specifications:**

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

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

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

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

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

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

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

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

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

(6) RF leakage shall be checked at reception locations for emergency radio services to prove no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception in the normal flight patterns. FCC rules and regulations shall govern.

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

(8) In all areas of the Village where all the cables, wires and other like facilities of public utilities are placed underground, the Grantee shall place its cables, wires and other like facilities underground. When public utilities relocate their facilities from pole to underground, the cable operator must concurrently do so. If said utilities are reimbursed for such relocation, the Grantee shall be entitled to like reimbursement.

(9) All Grantees shall, before commencing any construction in the public ways, comply with all regulations of J.U.L.I.E. and in addition, shall join and maintain an annual membership.

(10) Unless directly caused by the willful, intentional or malicious acts by the Village, the Village shall not be liable for any damage to or loss of any cable

communications facility within the public ways of the Village as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling or work of any kind in the public ways by or on behalf of the Village.

(11) Each grantee shall provide the Village with an accurate map or maps certifying the location of its cable communications facilities within the public ways.

(12) Construction Schedule: The permittee shall submit a written construction schedule to the Village Engineer 10 working days before commencing any work in or about the public ways. The permittee shall further notify the Village Engineer not less than two working days in advance of any excavation or work in the public ways.

#### § 117.22. USE OF STREETS

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

**(B) Restoration to Prior Condition, Public Property:** In case of any disturbance of pavement, sidewalk, landscaping, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the Village, replace and restore all paving, sidewalk, driveway, landscaping, or surface of any public street or public way disturbed, in as good condition as before the work was commenced and in accordance with standards for such work set by the Village. Village approval must not be unreasonably withheld.

**(C) Restoration to Prior Condition, Private Property:** In case of any disturbance of pavement, sidewalk, landscaping, driveway or other surfacing, the Grantee shall, at its own cost and expense, replace and restore all paving, sidewalk, driveway, landscaping, or surface of any private property disturbed, in as good condition as before the work was commenced.

(1) The Grantee shall provide advance written or other notice of between 24 to 48 hours, to residents when performing scheduled system construction in the public easements, utility easements or otherwise on the resident's private property. Said notice may utilize door hangers, letters, bill stuffers or personal communication from a Grantee representative to the occupant of the property be it residential or commercial. Further, Grantee shall use its best efforts to notify the occupant of the property be it residential or commercial when performing non-scheduled system construction, including unanticipated work associated with a service call or service interruption.

**(D) Erection, Removal and Common Uses of Poles:**

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

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

**(E) Relocation of Facilities:** If at any time during the period of the Franchise the Village shall elect to alter, or change the grade of any street, alley or other public ways, the Grantee, upon reasonable notice by the Village, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

**(F) Cooperation with Building Movers:** The Grantee shall, on the request of any person holding a building moving permit issued by the Village, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than seventy-two (72) hours advance notice to arrange for such temporary wire changes.

**(G) Tree Trimming:** The Grantee shall not remove any tree without the prior consent of the Village.

**§ 117.23. OPERATIONAL STANDARDS**

**(A) Maintenance of the System:** The Grantee shall maintain all parts of the system in good condition throughout the entire Franchise period.

**(B) Request for Service:** Upon the reasonable request for service by any person located within the franchise territory, the Grantee shall, within thirty (30) days, furnish the requested service to such person within terms of the line extension policy in Chapter 117.20(B). A request for service shall be unreasonable for the purpose of this subsection if no trunk or feeder line installation capable of servicing that person's block has been installed.

**(C) Interruption of Service:** The Grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible.

**(D) Interference:** The Grantee shall not allow its cable or other operations to interfere with

television reception of subscribers or persons not served by the Grantee, nor shall the system interfere with, obstruct or hinder in any manner the operation of the various utilities serving the residents within the confines of the Village nor shall other utilities interfere with the Grantee's system.

**§ 117.24. CONSUMER PROTECTION AND CUSTOMER SERVICE STANDARDS**

**(A) Notifications to Subscribers:**

(1) The Grantee shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers and at any time upon request:

- (a) Products and services offered;
- (b) Prices and options for programming services and conditions of subscription to programming and other services;
- (c) Installation and service maintenance policies;
- (d) Instructions on how to use the cable service;
- (e) Channel positions of programming carried on the system; and
- (f) Billing and complaint procedures, including the address and telephone number of the local Franchise authority's cable office.

(2) Subscribers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee. In addition, Grantee shall notify subscribers a minimum of thirty (30) days in advance of any significant changes in the other information required by Chapter 117.24(A)(1)(a) above.

**(B) Subscriber Billing:**

(1) Subscriber bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(2) In case of a billing dispute, the Grantee must respond to a written complaint from a subscriber within 30 days.

(3) Credits for service will be issued no later than the subscriber's next billing cycle following the determination that a credit is warranted.

(4) Refund checks will be issued promptly, but no later than either:

(a) The subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier; or

(b) The return of the equipment supplied by the Grantee if service is terminated.

**(C) Telephone Service:**

(1) The Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers twenty-four (24) hours a day, seven days a week.

(a) Trained representatives will be available to respond to subscriber telephone inquiries during normal business hours.

(b) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained Grantee representative no later than the next business day.

(2) Under normal operating conditions, the telephone answer time by a customer service representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis.

(3) Under normal operating conditions, the subscriber will receive a busy signal less than three percent (3%) of the time.

**(D) Installations, Outages and Service Calls:**

(1) Under normal operating conditions, each of the following four standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

(a) Standard installations will be performed within seven business days after an order has been placed. "Standard" installations are those that are located up to one hundred and twenty-five (125) feet

from the existing distribution system.

(b) Excluding conditions beyond its control, the Grantee will begin working on "service interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known.

The Grantee must begin actions to correct other service problems the next business day after notification of the service problem.

(c) The "appointment window" alternatives for installations, service calls and other installation activities will be either a specific time or at maximum, a four hour time block during normal business hours. The Grantee may schedule service calls and other installation activities outside normal business hours for the express convenience of the subscriber.

(d) Grantee may not cancel an appointment with a subscriber after the close of business on the business day prior to the scheduled appointment.

(2) If Grantee's representative is running late for an appointment with a subscriber and will not be able to keep the appointment as scheduled, the subscriber will be contacted. The appointment will be rescheduled, as necessary at a time which is convenient for the subscriber.

#### § 117.25. CONTINUITY OF SERVICE MANDATORY

**(A) Continuity of Service:** If there is a change of Franchise or if a new operator acquires the system, the Grantee shall cooperate with the Village, new Franchisee or operator in maintaining continuity of service to all subscribers. During such period, the Grantee shall be entitled to the revenues for any period during which it operates the system and shall be entitled to reasonable costs for its services until it no longer operates the system.

**(B) Failure to Operate:** If the Grantee fails to operate the system for seven consecutive days without prior approval of the Village or without just cause, the Village may, at its option, operate the system or designate an operator until such time as the Grantee restores service under conditions acceptable to the Village or a permanent operator is selected.

#### § 117.26. CUSTOMER RELATIONS

**(A) Administration:** The Village Manager or his designee is designated as having primary responsibility for the continuing administration of the Franchise and implementation of complaint procedures.

**(B) Payment Location(s):** The Grantee will make good faith efforts to arrange for one or more payment locations in a central location where customers can pay bills within fifteen (15) miles of

the Village.

**(C) Credit for Lost Cable Service:** Upon request, Grantee shall provide a credit for lost Cable Service of not less than the value of the service lost due to a service interruption lasting at least four or more hours.

**(D) Late Fee:** Grantee may impose a late, administrative or other fee on a customer for non-payment of a bill after the end of the billing cycle which is the subject of the unpaid bill. The billing cycle shall be in no event less than thirty (30) days.

#### **§ 117.27. TECHNICAL COMPLAINTS AND TESTING**

**(A) Report on the Performance of the System:** Where there exists recurring evidence, which, in the judgment of the Village, casts doubt on the reliability or quality of cable service, the Village shall have the right and authority to require the Grantee to test, analyze and report on the performance of the system. The Grantee shall fully cooperate with the Village in performing such testing and shall prepare results and a report, if requested, within thirty (30) days after notice. Such report shall include the following information:

- (1) The nature of the complaint or problem that precipitated the special tests;
- (2) The system component(s) tested;
- (3) The equipment used and procedures employed in testing;
- (4) The method, if any, in which such complaint or problem was resolved;
- (5) Any other information pertinent to the tests and analysis which may be required.

**(B) Tests:** The Village may require that tests be observed by an independent professional engineer or equivalent of the Village's choice at the Village's expense. The engineer shall be given records of special tests and may forward to the Village such records with a report interpreting the results of the tests.

**(C) Failure to Make Improvements:** The Village's rights under this Chapter shall be limited to requiring tests, analysis and reports covering specific subjects and characteristics based on recurring complaints or other evidence when and under such circumstances as the Village has reasonable grounds in its judgment to believe that the complaints or other evidence require that tests be performed to protect the public against violations of this Ordinance and the attendant Franchise Agreement. Failure to make such improvements within three (3) months or such other timeframe as is reasonable and customary to effect such changes will constitute a breach of a condition for which penalties contained in Chapter 117.46 are applicable.



**§ 117.28. GRANTEE RULES AND REGULATIONS**

The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under the Franchise and to assure uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations.

**§ 117.29. FRANCHISE FEE**

**(A) Amount:** A Grantee shall pay to the Village a Franchise fee in the amount designated in the Franchise Agreement. Unless otherwise specified in the franchise agreement, such Franchise fee shall be five percent (5%) of the Grantee's gross revenues. If the statutory five percent (5%) limitation on Franchise fees is raised or the federal statute deletes the Franchise fee limitation entirely, then the Franchise fee may be subject to renegotiation.

**(B) Payment:** The Franchise fee payment shall be in addition to any other tax or payment of general applicability owed to the Village by the Grantee and shall not be construed as payment in lieu of municipal property taxes or other state, county or local taxes.

**(C) Payable Quarterly:** The Franchise fee and any other costs or penalties assessed shall be payable quarterly on a calendar year basis to the Village within sixty (60) days at the end of each quarter. The Grantee shall also file a complete and accurate statement of all gross receipts as previously defined within sixty (60) days after the end of the quarter.

**(D) Audit:** The Village shall have the right to inspect the Grantee's income records and the right to audit and to recompute any amounts determined to be payable under this Chapter; provided, however, that such audit shall take place within sixty (60) months following the close of each of the Grantee's fiscal years. Any additional amount due the Village as a result of an audit shall be paid within thirty (30) days following written notice to the Grantee by the Village, which notice shall include a copy of the audit report, except where Grantee may reasonably dispute such an amount.

**(E) Interest Charge:** If any Franchise payment or recomputed amount, cost or penalty, is not made on or before the applicable dates heretofore specified, interest shall be charged daily from such date at an annual rate of twelve percent (12%).

**§ 117.30. ASSIGNMENT OR TRANSFER OF FRANCHISE**

**(A) Assignment or Transfer:** The Grantee's Franchise shall not be transferred or assigned, in whole or in part, without the prior written consent of the Village. As used in this Section, the terms "assigned" and "transferred" shall mean any transaction or series of transactions defined as a "Transfer" in this Ordinance.

**(B) Granting of a Security Interest:** No consent from the Village is required prior to the granting of a security interest in any of the Grantee's assets by pledge, mortgage or other hypothecation to secure an indebtedness.

**(C) Notification of Foreclosure:** The Grantee shall notify the Village in writing of any foreclosure or any other judicial sale of the Franchise or of a substantial part of the assets of the Grantee or of the cable system. Such notification shall be considered by the Village as notice of a Franchise transfer and the provisions of this Chapter governing the application for Village consent to the transfer shall apply.

**(D) Written Application:** The Grantee and any proposed assignee or transferee of the Franchise shall submit a written application to the Village containing or accompanied by such information as is required in accordance with applicable law and FCC regulations.

**(E) Qualifications:** For the purpose of determining whether it shall consent to such Franchise transfer, the Village may inquire into the legal, financial and technical qualifications of the prospective transferee or controlling party to operate and maintain the system, to comply with all franchise obligations for the remainder of the Franchise term, and to promptly cure any present or ongoing Franchise violations or defaults. The Grantee and the prospective transferee or controlling party (the "applicants") shall provide reasonable information requested by the Village in connection with such inquiry.

**(F) Consent:** The consent of the Village shall not be unreasonably delayed or denied. As prescribed by the Cable Act (47 U.S.C. Section 537), the Village shall be deemed to have consented to a proposed transfer if the Village fails to render a final decision on the request for approval of the proposed transfer within one hundred and twenty (120) days following the Village's receipt of the written application for consent to the transfer, unless the Village and the applicant agree in writing to extend the time for the Village to review the application and to grant or deny its consent.

#### **§ 117.31. AVAILABILITY OF BOOKS AND RECORDS**

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

**(B) Available Records and/or Reports:** The following records and/or reports are to be made available to the Village upon request, but not more frequently than on a quarterly basis, unless mutually agreed upon by the Grantee and the Village:

- (1) A quarterly progress report submitted by the Grantee to the Village which may include major construction progress reports, service call reports and outage

history;

(2) Periodic preventive maintenance reports;

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

(4) Actionable, written subscriber inquiry/complaint resolution data and the right to review documentation concerning these inquiries and/or complaints on an aggregate basis with respect for federal subscriber privacy legislation periodically;

(5) During the rebuild of a substantial portion or all of the system in the Village, periodic construction update reports including, where appropriate, the submission of as-built maps.

#### **§ 117.32. OTHER PETITIONS AND APPLICATIONS**

Upon request, Grantee shall submit copies of any public document issued or filed by any federal or state regulatory agencies which are non-routine in nature that will materially and directly affect the Grantee's cable television operations within the Franchise area.

#### **§ 117.33. FISCAL REPORTS**

The Grantee shall file annually with the Village no later than one hundred twenty (120) days after the end of the Grantee's fiscal year, a copy of a gross revenues statement certified by the chief financial officer of the Grantee.

#### **§ 117.34. REMOVAL OF CABLE TELEVISION SYSTEM**

Upon termination of the rights granted hereunder the Grantee shall remove designated portions of the cable television system from the streets and public property within the Village as may be required to serve the public interest. Upon such notice of removal, a bond shall be furnished or an existing bond maintained by the Grantee in an amount sufficient to cover this expense.

#### **§ 117.35. REQUIRED SERVICES AND FACILITIES**

**(A) Minimum Channel Capacity:** The cable television system shall have a minimum channel capacity of seventy-nine (79) channels and at least 750 MHz of bandwidth or its electronic equivalent in channel capacity available for future use.

**(B) Two-Way Communications:** Such system shall include a plant having the technical ability to be activated for "two-way" communications.

**(C) Required Services:** The Grantee shall maintain the following:

(1) At least three specially designated, non-commercial public, educational and governmental (PEG) access channels available on a first-come, first-serve, non-discriminatory basis, whose utilization shall be designated by the Village.

(2) Provided, however, these uses may be combined on one or more channels until such time as additional channels become necessary in the opinion of the Village. Studios and associated production equipment will be located in a mutually agreed upon site designated in the Franchise Agreement to meet the public's need for public, educational and governmental access programming as noted above.

**(D) Emergency Alert Override:** The Grantee shall incorporate into its cable television system the capacity to permit the Village, in times of emergency, to override by telephone from a remote location the audio portion of all analog channels simultaneously, which the Grantee may lawfully override. The Grantee shall cooperate with the Village in the use and operation of the emergency alert override system. The Village agrees to indemnify and hold the Grantee harmless from any damages or penalties arising out of the actions of the Village, its employees or agents in using such service.

**(E) Institutional Network:** As more specifically delineated in a franchise agreement, any Grantee shall provide a separate network for the use of the franchising authority. Such network shall be referred to herein, as the Institutional Network (I-NET). The I-NET shall be capable of transmitting two-way audio, video and data information.

#### § 117.36. RULES AND REGULATIONS

**(A) Additional Regulations:** In addition to the statutory powers of the Village to regulate and control any cable television Franchise, and those powers expressly reserved by the Village, or agreed to and provided for herein, the right and power is hereby reserved by the Village to promulgate such additional regulations as it shall find necessary in the exercise of its lawful police powers provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions herein, in a Franchise Agreement or applicable state and federal laws, rules and regulations.

**(B) Adoption of Regulations:** The Village may also adopt such regulations at the request of Grantee upon application.

#### § 117.37. TECHNOLOGICAL SERVICE AND PERFORMANCE REVIEW

At the Village's sole option, within six to twelve (12) months after the completion of construction or rebuild of the system and every three years thereafter throughout the term of the Franchise, the Village and Grantee shall meet publicly to review the performance and quality of service of the cable communications system.

**(A) Topics for Discussion and Review:** Topics for discussion and review may include, but shall not be limited to, services provided, application of new technologies, system performance,

programming, developments in the law and technical and economic feasibility of system expansion or upgrading. Either the Village or the Grantee may select additional topics for discussion.

**(B) Report on System Adequacy:** Within thirty (30) days after the conclusion of the review the Village may issue a report with respect to the adequacy of system performance and quality of service. If inadequacies are found, Village may direct Grantee to correct the inadequacies within a reasonable period of time.

**(C) Failure to Correct Inadequacies:** Failure of Grantee, after due notice, to correct any inadequacies found during the review may be a violation of a specific provision of the Franchise or this Ordinance. The Village may, at its sole discretion, exercise any remedy within the scope of this Ordinance considered appropriate.

### **§ 117.38. RATE CHANGE PROCEDURES**

Pursuant to the Cable Television Consumer Protection and Competition Act of 1992, as amended, the Village of Lombard may regulate the Basic Service rates charged by Grantee. Under these rules, the Grantee may be required to obtain approval from the Village for a rate increase for any change to the rates for Basic Service. Should Federal or State law permit further rate regulation beyond the Basic Service the Village of Lombard may assume such rate regulation and adopt appropriate procedures for such regulation.

### **§ 117.39. FRANCHISE REVOCATION AND TERMINATION**

**(A) Cause for Revocation and Termination:** A Franchise granted by the Village pursuant to this Ordinance is subject to revocation in the event of any substantial breach of the Franchise Agreement or default in performance of the Grantee's performance of the Franchise. The following events, acts or omissions on the part of the Grantee may be considered cause for revocation of the Franchise and termination of the Franchise Agreement:

- (1) Repeated failure, after notice and an opportunity to cure, to comply with the material provisions of this Ordinance;
- (2) Repeated failure, after notice and an opportunity to cure, to comply with the material terms of the Franchise Agreement;
- (3) Repeated failure to cure material violations of this Ordinance or the Franchise Agreement within a reasonable time after notice from the Village;
- (4) Material fraud or misrepresentation in obtaining the Franchise;
- (5) Willful failure to pay taxes, franchise fees, costs or penalties when and as due the Village;
- (6) Willful failure to maintain required insurance coverage;

(7) Failure to restore system wide service after forty-eight (48) consecutive hours of interrupted service, provided the Grantee's failure to restore system wide service is not caused by circumstances or events beyond the Grantee's reasonable control;

(8) Insolvency or bankruptcy of the Grantee;

(9) Transfer of the Franchise without Village approval pursuant to Chapter 117.30, when the Grantee to whom the franchise is being transferred does not meet the technical, financial and legal requirements as set for in the Cable Act;

(10) The Grantee abandons its Franchise (the Grantee shall be deemed to have abandoned its Franchise if it willfully refuses or is unable to operate the cable system as required by this Franchise, when there is no event beyond the Grantee's control that prevents the operation of the cable system and where operation would not endanger the health or safety of the public or property);

(11) The Grantee refuses to provide subscribers service insofar as their financial and other obligations to the Grantee are honored.

**(B) Notice of Substantial Breach:** Written notice shall be given to the Grantee setting forth:

(1) The nature of the substantial breach or default by the Grantee;

(2) A written demand that the Grantee correct the violation;

(3) Notice that any failure to correct the remedy, the substantial breach or default within thirty (30) days, or such other period of time as may be stipulated in the Franchise Agreement, may be cause for revocation of the Franchise.

**(C) Answer to Notice of Breach:** Within thirty (30) days after the Village's written notice to the Grantee, the Grantee shall respond in writing to the Village, together with documentation in support of its response:

(1) That it contests the Village's notice of substantial breach and requests an opportunity to be heard as provided herein;

(2) That corrective action has been implemented by the Grantee and the substantial breach or default has been cured;

(3) That corrective action has been implemented by the Grantee and is being actively and diligently pursued in accordance with a written corrective action plan to be submitted to the Village.

**(D) Hearing:** If requested by the Grantee, or if the Village is not satisfied that sufficient corrective action is being actively and expeditiously pursued by the Grantee to remedy the

substantial breach or default, the Village shall schedule a public hearing to hear and determine the issues and to consider whether sufficient cause exists to revoke the Franchise. The Village shall give the Grantee not less than fourteen (14) days written notice specifying the Village's intent to consider the revocation of the Grantee's Franchise pursuant to this Ordinance and the date, time and place of the public hearing to be held before the corporate authorities or a hearing officer appointed by the corporate authorities. If a hearing officer has been designated, the hearing officer shall hear the relevant evidence and shall render a record of the administrative hearing and recommended findings and decision to the corporate authorities.

**(E) Determination:** After hearing the relevant evidence or considering the administrative record of the hearing, the corporate authorities shall determine whether or not a substantial breach or default by the Grantee has occurred, whether it has been cured or a satisfactory corrective action plan has been submitted and is being actively and diligently pursued and whether cause exists to revoke the Franchise. The Grantee shall be given an opportunity to be heard in connection with those issues. If the corporate authorities are persuaded that a substantial breach or default has occurred, the corporate authorities shall consider the nature, circumstances, extent and gravity of the substantial breach or default, as reflected the following factors, in considering whether some lesser sanction or cure, if any, should be imposed:

- (1) Whether the conduct was egregious;
- (2) Whether substantial harm resulted;
- (3) Whether the violation was intentional;
- (4) Whether there is a history of prior violations of the same or other requirements;
- (5) Whether there is a history of overall compliance.

**(F) Ordinance:** If the corporate authorities determine that cause exists to revoke the Franchise, it may by ordinance declare the Grantee's Franchise to be terminated and revoked, provided that the Village may grant the Grantee an additional period of time to remedy the substantial breach or default before such ordinance is fully effective.

#### **§ 117.40. FORECLOSURE**

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

#### **§ 117.41. RECEIVERSHIP**

The Village shall have the right to cancel a franchise one hundred and twenty (120) days after the

appointment of a receiver or trustee, to take over and conduct the business of the Grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of one hundred and twenty (120) days, or unless:

- (1) Within one hundred and twenty (120) days after his/her election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Chapter and remedied all defaults thereunder or presented a reasonable plan for said remedy; and
- (2) Such receiver or trustee, within the one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this chapter and the Franchise granted to the Grantee or as may otherwise be agreed to by the Village.

#### **§ 117.42. COMPLIANCE WITH STATE AND FEDERAL LAWS**

**(A) Compliance with Laws:** Notwithstanding any other provisions of the Franchise to the contrary, the Grantee shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof.

**(B) Modification of Provisions:** If the Village determines that a material provision of this Chapter is affected by any subsequent action of the state or federal government, the Village and the Grantee shall negotiate to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this agreement to the extent feasible and enforceable.

#### **§ 117.43. LANDLORD/TENANT**

**(A) Interference with Cable Service Prohibited:** Neither the owner of any multiple unit residential dwelling nor his agent or representative shall interfere with the right of any tenant or lawful resident thereof to receive cable television service, cable installation or maintenance from a cable television Grantee regulated by and lawfully operating under a valid and existing Franchise issued by the Village.

**(B) Penalties and Charges to Tenants for Service Prohibited:** Neither the owner of any multiple unit residential dwelling nor his agent or representative shall penalize, charge or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or receives cable television service from a Grantee operating under a valid and existing cable television Franchise issued by the Village.

**(C) Reselling Service Prohibited:** No person shall resell, without the expressed, written consent of both the Grantee and the Village, any cable service, program or signal transmitted by a



cable television Grantee under a Franchise issued by the Village.

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

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

**§ 117.44. APPLICANT'S BIDS FOR NEW FRANCHISE, EXCLUDING RENEWED FRANCHISE**

**(A) Bids:** All bids received by the Village from the applicants for a new, not including renewed, Franchise will become the sole property of the Village.

**(B) Rejection of Bids:** The Village reserves the right to reject any and all bids and waive informalities and/or technicalities where the best interest of the Village may be served.

**(C) Questions:** All questions regarding the meaning or intent of this chapter or application documents shall be submitted to the Village in writing. Replies will be issued by addenda mailed or delivered to all parties recorded by the Village as having received the application documents. The Village reserves the right to make extensions of time for receiving bids as it deems necessary. Questions received less than fourteen (14) days prior to the date for the opening of bids will not be answered. Only replies to questions by written addenda will be binding. All bids must contain an acknowledgment of receipt of all addenda.

**(D) Sealed Bids:** Bids must be sealed and submitted at the time and place indicated in the application documents for the public opening. Bids may be modified at any time prior to the opening of the bids, provided that any modifications must be duly executed in the manner that the applicant's bid must be executed. No bid shall be opened or inspected before the public opening.

**(E) Prior to Submittal:** Before submitting a bid, each applicant must:

- (1) Examine this chapter and the application documents thoroughly;
- (2) Familiarize himself/herself with local conditions that may in any manner affect performance under the Franchise;
- (3) Familiarize himself/herself with federal, state and local laws, ordinances, rules and regulations affecting performance under the Franchise; and
- (4) Carefully correlate the bid with the requirements of this Chapter and the application documents.

**(F) Investigations:** The Village may make such investigations as it deems necessary to determine the ability of the applicant to perform under the Franchise, and the applicant shall furnish to the Village all such information and data for this purpose as the Village may request. The Village reserves the right to reject any bid if the evidence submitted by or investigation of such applicant fails to satisfy the Village that such applicant is properly qualified to carry out the obligations of the franchise and to complete the work contemplated therein. Conditional bids will not be accepted.

**(G) Secure Depository:** All bids received shall be placed in a secure depository approved by the Village and shall not be opened nor inspected prior to the public opening.

**§ 117.45. FINANCIAL, CONTRACTUAL, SHAREHOLDER AND SYSTEM DISCLOSURE FOR FRANCHISE**

**(A) System Disclosure:** No new, excluding renewed, Franchise will be granted to any applicant until all requirements and demands of the Village regarding financial, contractual, shareholder and system disclosure have been met.

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

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

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

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

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

(4) Date for completion of construction as promised in the application for each system.

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

(1) Location of other Franchise applications and date of application for each system;

(2) Estimated dates of Franchise awards;

(3) Estimated number of miles of construction; and

(4) Estimated construction costs.

(5) Applicants shall also provide the following information to establish their technical, legal and financial qualifications:

(a) A detailed corporate structure of the applicant including identities of parent and subsidiary corporations or partnership; the identities of shareholders of five percent (5%) or more of the stock of applicant and any parent organizations; the identities of all officers and directors of the applicant.

(b) A detailed financial pro-forma for the proposed cable system including sources and uses of funds and detailed capital and operating projections by category.

#### § 117.46. FRANCHISE VIOLATION, NOTICE, PENALTIES AND PROCEDURES

**(A) General:** The Grantee shall comply with the requirements of this Ordinance and the Franchise Agreement at all times during the term of its Franchise.

**(B) Violations:** If the Village has reason to believe that the Grantee has committed a certain violation of this Ordinance or the Franchise Agreement, the Village may act to remedy the violation in accordance with the procedures set forth below. For the violation of any of the following provisions of this Ordinance, penalties shall be chargeable to the letter of credit, as follows: These violations shall include:

(1) Construction or operation in the Village or in the public ways of the Village without a required permit, license or authorization. Up to \$150 per day, per violation.

- (2) Construction or operation at an unauthorized location. Up to \$25 per day.
- (3) Unauthorized franchise transfer. Up to \$25 per day from date of transfer to cure.
- (4) Willful material misrepresentation by or on behalf of the Grantee in any application to the Village or in any report or document required to be filed with the Village. Up to \$100 per violation.
- (5) Failure to construct, complete, relocate or remove all or any part of the cable system as required by this Ordinance or the Franchise Agreement. Up to \$50 per day.
- (6) Failure to provide the services, facilities or resources required by this Ordinance or the Franchise Agreement. Up to \$25 per day.
- (7) Failure to pay taxes, franchise fees, costs or penalties when and as due the Village. Up to \$50 per day if no interest accrued.
- (8) Failure to file required documents, applications or reports, including financial reports, with the Village. Up to \$25 per day.
- (9) Failure to deliver evidence of Grantee's insurance coverage as specified in this Ordinance. Up to \$25 per day from request until evidence provided.
- (10) Failure to file and maintain with the Village all required bonds. Up to \$50 per day.
- (11) Failure to establish and maintain the security fund required pursuant to Chapter 117.14 of this Ordinance. Up to \$50 a day.
- (12) Failure to restore any amount withdrawn from the security fund within the time specified in Chapter 117.14. Up to \$50 a day.
- (13) Failure to commence or complete construction within the time specified in the Franchise Agreement hereof. Up to \$50 per day.
- (14) Systemic failure to comply with the Customer Service Standards as required by this Ordinance. Up to \$25 per day.
- (15) Failure to comply with enforceable technical standards. Up to \$50 a day.
- (16) Refusal to provide cable service to any potential subscriber eligible for standard installation within the Village upon order of the Village. Up to \$50 per day.

**(C) Notice of Violations:** Written notice shall be given to the Grantee setting forth the nature of the violation and a reasonable period of time for the Grantee to correct the violation. Unless the Village determines that the violation is of such a nature that a lesser period of time is warranted and feasible for remedying the violation, the Grantee shall be given thirty (30) days after receipt of such notice to remedy the violation.

**(D) Answer to Notice of Violations:** Within thirty (30) days, or such other period of time specified by the Village in its notice to the Grantee, the Grantee shall respond in writing to the Village:

(1) That it contests the Village's notice of violation and requests an opportunity to be heard as provided herein. The Grantee shall submit supporting documentation with its response to the notice.

(2) That it contests the Village's notice of violation for the reasons that the violation was beyond the reasonable control of the Grantee and requests an opportunity to be heard as provided herein. The Grantee shall submit supporting documentation with its response to the notice.

(3) That the Grantee will remedy the violation within the time specified by the Village in its notice to the Grantee.

(4) If the Grantee contends that an extended period of time is reasonably needed to remedy the violation, it shall submit a written request for an extension, together with supporting documentation that the Grantee cannot reasonably remedy the violation within the time period specified by the Village in its notice to the Grantee. The Village shall not unreasonably deny an extension of time to remedy the violation. If the Village grants the extension, the Grantee shall proceed to remedy the violation within the extended time prescribed, provided that the Grantee also informs the Village on a regular basis of the steps being taken to remedy the violation.

**(E) Hearing:** The Village shall give the Grantee not less than fourteen (14) days written notice of the date, time and place of the public hearing to be held before the corporate authorities. At the public hearing, the corporate authorities shall hear and determine the issues and render its findings and its decision. If a hearing officer has been appointed by the Village, the hearing officer shall hear the relevant evidence and shall render a record of the administrative hearing and recommended findings and decision to the corporate authorities.

**(F) Determination:** If the Grantee fails to submit a written response to the Village's notice of violation as provided in Chapter 117.46(D) above, or if the Grantee fails to remedy the violation within the time period specified by the Village in its notice to the Grantee or any extensions thereto granted by the Village or if the corporate authorities are persuaded after a hearing that the Grantee has committed a violation as provided herein, the corporate authorities may, after giving the Grantee an opportunity to be heard:

- (1) Order the Grantee to remedy the violation within a reasonable period of time specified by the corporate authorities;
- (2) Impose any lesser sanction permitted by the Franchise Agreement.

