

CHAPTER 113: CABLE TELEVISION

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GENERAL PROVISIONS

§ 113.001 SHORT TITLE.

This chapter shall be known and may be cited as the “City of Hobart Cable Television Franchise Ordinance”.
(Ord. 2000-06, § 1)

§ 113.002 DEFINITIONS.

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

ACT or ***CABLE ACT***. The Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, as may be now or hereafter amended.

ADDITIONAL SERVICE. Any subscriber service provided by the grantee for which a special charge is made based on program or service content, time or spectrum space usage.

BASIC SERVICE. All subscriber services provided by the grantee in 1 or more service tiers for an established regular monthly fee, which includes at a minimum the delivery of local broadcast stations and public, educational and government access channels. ***BASIC SERVICE*** does not include optional program and satellite service tiers, a la carte services, per channel, per

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program or auxiliary services for which a separate charge is made. However, the grantee may include other satellite signals on the **BASIC SERVICE** tier.

CABLE OPERATOR.

(1) Any person or group of persons:

(a) Who provides cable service over a cable system and directly or through 1 or more affiliates owns a significant interest in such cable system; or

(b) Who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

(2) A **CABLE OPERATOR** shall include any person or persons who own or operate an open video system as defined by 47 U.S.C. § 573, or who are a multi-channel video provider whose service is transmitted on leased telecommunications lines located within a public street or a public way.

CABLE SERVICE. The 1-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, which is required for the selection or use of the programming or other programming service. This definition does not authorize, and shall not be construed, interpreted or applied to authorize, the use of the cable system for telephone, data or voice communication services, which services are not authorized by this chapter.

CABLE SYSTEM or **SYSTEM** or **CABLE TELEVISION SYSTEM.** A system of antennas, cables, wires, lines, towers, wave guides or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing, audio, video and other forms of electronic, electrical or optical signals, which includes cable television service, and which is located in the municipality. The definition shall not include any such facility that serves or will serve only subscribers without using municipal rights-of-way. The definition of **CABLE SYSTEM** shall not be construed, interpreted or applied to authorize telephone or voice communication services and no such telephone or voice communication services are authorized by this chapter. In addition, the definition of **CABLE SYSTEM** shall not be deemed to circumscribe any valid authority of any governmental body, including the municipality, to regulate the activities of telephone or telegraph companies, or the provision of any service over the cable system that is not a **CABLE SERVICE**, as such term is defined herein.

CITY COUNCIL. The Common Council of the City of Hobart.

COMPLAINT. Any correspondence, whether in writing or verbal in nature, whether in person, by telephone or by electronic mail, from any individual, business, unit of government or institution to the franchising authority concerning an unresolved alleged problem with the service or other function of the cable system or the franchise.

CONTROL or **CONTROLLING INTEREST.**

(1) Actual working control or ownership of a system in whatever manner exercised.

(2) A rebuttable presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or indirectly, by any person or entity (except

underwriters during the period in which they are offering securities to the public) of 5% or more of a cable system or the franchise under which the system is operated. A change in the control or controlling interest of an entity which has control or a controlling interest in a grantee shall constitute a change in the control or controlling interest of the system under the same criteria.

(3) **CONTROL** or **CONTROLLING INTEREST**, as used herein, may be held simultaneously by more than 1 person or group of persons.

CONVERTER. An electronic device which converts signals to a frequency not susceptible to interference, within the television receiver of a subscriber, and by an appropriate channel selector also permits a subscriber to view more than 14 channels delivered by the system at designated converter dial locations.

DWELLING UNIT. A single-family or multi-family residential place of occupancy or a business place of occupancy.

FCC. The Federal Communications Commission, and any legally appointed, designated or elected agent or successor.

FRANCHISE. The non-exclusive right and privilege granted through the authority of a franchise agreement between the municipality and any grantee hereunder which allows the grantee to own, operate, construct, reconstruct, relocate, test, use and maintain a cable system within the corporate boundaries of the municipality.

FRANCHISE AGREEMENT. That certain written agreement entered into between a grantee and the municipality wherein the franchise and the terms thereof are conferred upon the grantee.

FRANCHISE FEE. Any assessment imposed herein by the municipality on a grantee solely because of its status as a grantee. The term **FRANCHISE FEE** does not include 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 the grantee or cable subscribers; capital costs which are required by the franchise to be incurred by the grantee for the establishment of public, educational or governmental access facilities; requirements or charges incidental to the awarding, reviewing, enforcing or transferring, of the franchise, including payments for professional, legal or technical assistance, bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; any fee imposed under Title 17 U.S.C.

FRANCHISING AUTHORITY. The corporate authorities of the city, its Mayor or his or her designee, Common Council or any of its designated municipal officers or staff having responsibility over the supervision of the city's cable television franchise.

GRANTEE. A person or entity to whom or to which a franchise under this chapter is granted by the municipality, along with the lawful successors or assigns of the person or entity.

GROSS REVENUES.

(1) All revenue collected directly or indirectly by the grantee, arising from or attributable to the provision of cable service by the grantee within the franchise area, including, but not limited to: fees charged subscribers for any basic, optional, premium, per-channel or per-

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program service; franchise fees; installation and re-connection fees; leased channel fees; game channel fees; converter, remote control or modem rentals, including any internet services as defined by the FCC as being subject to Title VI of the Telecommunications Act of 1996 and bandwidth leased to unaffiliated internet service providers to the extent permitted by law; program guide revenues; studio or production equipment rentals; late or administrative fees; upgrade, downgrade or other change-in-service fees; advertising revenues, including commissions; revenues from “infomercials”, home shopping and bank-at-home channels; revenues from the sale, exchange, use or cable cast of any programming developed on the system for community or institutional use; and any value (at retail price levels) of any non-monetary remuneration received by grantee in consideration of the performance of advertising or any other service of the system which are treated as revenues. **GROSS REVENUES** shall include revenue received by any other entity other than the grantee where necessary to prevent evasion or avoidance of the obligation under this franchise to pay the franchise fees. Those gross revenues whose source cannot be specifically identified with a particular subscriber shall be allocated among the units of government served by the grantee from the cable system head-end serving the franchise area in proportion to the number of subscribers in each.

(2) **GROSS REVENUES** shall not include any bad debts, copyright fees or 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.

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

LAKE COUNTY, INDIANA CATV CONSORTIUM or **CONSORTIUM.** An Indiana agency formed by intergovernmental agreement between its members, local government subdivisions of the State of Indiana and the State of Illinois. The **CONSORTIUM** may be delegated the authority to enforce cable television franchises and cable system operations for its member communities.

MAY. The act referred to is permissive.

MULTICHANNEL VIDEO PROVIDER. Any system distributing video programming to subscribers which use all or part of a municipality’s right-of-way in order to distribute the video programming or which distributes the programming to subscribers over the lines of a common carrier which are located in all or part of the municipality’s right-of-way.

MUNICIPALITY. The city government which has issued a franchise to a grantee.

NORMAL BUSINESS HOURS.

(1) Those hours during which businesses are normally open to serve customers. In all cases, **NORMAL BUSINESS HOURS** must include some evening hours, at least 1 night per week, and some weekend hours.

(2) For the purpose of this chapter, the term **SOME EVENING HOURS** shall mean at least 1 to 4 hours during which customers may be served by a grantee on 1 or more evenings from Monday through Friday, and the term **SOME WEEKEND HOURS** shall mean at least 1 to 8 hours during which customers may be served by a grantee on Saturday and/or Sunday.

NORMAL OPERATING CONDITIONS. Those service conditions that are within the control of the grantee. Those conditions that are not within the control of the grantee are defined

herein.

PERSON. Any natural person, or any association, firm, partnership, joint venture, corporation or other legally recognized entity or organization, whether for-profit or not-for-profit, but excluding the municipality.

PUBLIC STREET.

(1) Except where expressly limited by this chapter or a franchise and, in any event, only to the extent necessary to permit the installation and maintenance of a cable system, the surface, the air space above the surface and the area below the surface of any public street, highway, court, road, freeway, lane, path, sidewalk, alley, boulevard, drive, bridge or tunnel now or hereafter held by, or dedicated to the municipality in which the rights and title of the municipality are such as to entitle the municipality and the grantee to the use thereof for the purpose of installing and maintaining the grantee's cable system.

(2) No reference in this chapter to ***PUBLIC STREET*** shall be deemed to be a representation or guarantee by the municipality that its title or interest in any property is sufficient to permit its use for such purpose, and a franchise shall, by the use of such term, be deemed to grant only the rights to use property in the municipality as the municipality may have the right and power to grant in the franchise.

PUBLIC WAY. Except where expressly limited by this chapter or a franchise and, in any event, only to the extent necessary to permit the installation and maintenance of a cable system, the surface, the air space above the surface and the area below the surface, of any conduit, park, parkway, waterway, utility easement (as defined in § 541 of the Cable Act) or other public right-of-way now or hereafter held by, or dedicated to, the municipality in which the rights and title of the municipality are such as to entitle the municipality and the grantee to the use thereof for the purpose of installing and maintaining the grantee's cable system. No reference in this chapter to ***PUBLIC WAY*** shall be deemed to be a representation or guarantee by the municipality that its title or interest in any property is sufficient to permit its use for such purpose, and a franchise shall, by the use of such term, be deemed to grant only such rights to use property in the municipality as the municipality may have the right and power to grant in the franchise.

SHALL. The act referred to is mandatory.

SERVICE AREA. All areas within the municipality as defined in the franchise agreement.

SERVICE INTERRUPTION. The loss of either picture or sound or both for any channel for single or multiple subscriber(s).

SUBSCRIBER. Any person, firm, grantee, corporation or association lawfully receiving cable service provided by a grantee pursuant to this chapter.

USER. A party utilizing a cable television system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt thereof in a subscriber capacity. (Ord. 2000-06, § 2)

FRANCHISE PROVISIONS

§ 113.020 RIGHTS AND PRIVILEGES OF GRANTEE.

(A) Any cable television franchise granted by the municipality shall grant to the grantee the right and privilege to erect, construct, operate and maintain in, upon, along, across, above, over and under the streets now in existence and as may be created or established during its terms any poles, wires, cable, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation of a cable system, but only in strict compliance with the provisions of the franchise and this chapter.

(B) Each such franchise shall include, but not necessarily be limited to, the following terms:

(1) A franchise fee not less than the fee required pursuant to [§ 113.046](#) of this chapter;

(2) Performance security not less than the security required pursuant to [§ 113.031](#) of this chapter;

(3) A franchise term not longer than the maximum term provided in [§ 113.023](#) of this chapter; and

(4) Specially designated non-commercial channels for use by local governmental, educational and public authorities as provided in [§ 113.052](#) of this chapter.

(Ord. 2000-06, § 3)

§ 113.021 AGREEMENT AND INCORPORATION OF APPLICATION BY REFERENCE.

(A) The execution of a franchise agreement by the grantee shall be the agreement and acknowledgment of the grantee to be bound by all the terms and conditions contained in this chapter now and as the same may be amended from time to time hereafter.

(B) In the event that a cable operator has provided an application for a new franchise or in the event that a grantee has provided an application for the renewal of an existing franchise, on a form either prescribed by the municipality in the case of a new franchise, or in an application document created by a grantee as a response to a request for a renewal proposal (RFRP), a grantee shall provide all services specifically set forth in its application and shall provide cable service within the boundaries of the municipality; and, by its acceptance of the franchise, a grantee specifically grants and agrees that its application is thereby incorporated by reference and made a part of the franchise.

(Ord. 2000-06, § 4)

§ 113.022 FRANCHISE TERRITORY.

Each franchise shall be for the incorporated areas within the municipality defined in the franchise agreement.

(Ord. 2000-06, § 5)

§ 113.023 DURATION AND ACCEPTANCE OF FRANCHISE.

Any franchise and the rights, privileges and authority hereby authorized shall take effect and be in force from and after the approval and execution of a franchise agreement by the municipality, as provided by applicable law, and shall continue in force and effect for a term which shall be agreed upon by the parties as part of a franchise agreement; provided, however, that, the franchise shall have no force or effect and shall be null and void unless the grantee, within 30 days after the date of the municipality's approval of the franchise, files with the municipality its unconditional acceptance of the franchise and promise to comply with and abide by all of its provisions, terms and conditions and the provisions of this chapter, now, and as hereafter amended from time to time. The acceptance and promise shall be in writing duly executed and sworn to, by or on behalf of the grantee before a notary public or other officer authorized by applicable law to administer oaths. The franchise shall be non-exclusive and revocable.

(Ord. 2000-06, § 6)

§ 113.024 FRANCHISE RENEWAL.

(A) To the extent applicable, current federal procedures and standards pursuant to 47 U.S.C. § 546 shall govern the renewal of any franchise awarded by the approval and passage of this chapter.

(B) In the event that any or all of the applicable provisions of federal law are repealed or otherwise modified, and to the full extent consistent with the applicable provisions then in effect, the following section(s) shall apply.

(1) At least 30 months prior to the expiration of the franchise, the grantee shall notify, in writing, the municipality of its intent to seek renewal of the franchise.

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

(a) That it has been and continues to be in substantial compliance with the terms, conditions and limitations of this chapter, as amended from time to time, and its franchise;

(b) That its system has been installed, constructed, maintained and operated in accordance with the accepted standards of the industry, and this chapter, as amended from time to time, and its franchise;

(c) That it has the legal, technical, financial and other qualifications as set forth in this chapter or a franchise agreement, to provide the services, facilities and equipment set forth in its proposal; and

(d) That it has made a good faith effort to provide services and facilities which accommodate the demonstrated needs and interests of the community as may be reasonably ascertained by the municipality, with public input; and that it has made a good faith effort to maintain, operate and extend its system as the state of the art progresses so as to assure its subscribers high quality service, balanced against the costs of the needs and interests.

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(3) The municipality shall proceed to determine whether the grantee has satisfactorily performed its obligations under the franchise. To determine satisfactory performance, the municipality shall consider all relevant criteria, including, but not limited to, technical developments, performance of the system and the quality of the operator's service, including signal quality, response to customer complaints, billing practices and the level of cable services or other services provided over the system. The municipality shall also consider the grantee's reports made to the municipality and to the FCC, and the municipality may require the grantee to make available specified records, documents and information for this purpose, and may inquire specifically whether the grantee will supply services sufficient to meet community needs and interests in light of the costs of the needs and interests. Provision shall be made for public comment with adequate prior notice of at least 10 days.

(4) The municipality shall then prepare any amendments to this chapter and the franchise that it believes necessary.

(5) In the event that the municipality 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 community, balanced against the costs of meeting these needs and interests, a new franchise shall be granted pursuant to this chapter as amended for a period to be determined by the municipality.

(6) In the event that the grantee is determined by the municipality to have performed unsatisfactorily, new applicants may be sought and evaluated and a franchise award shall be made by the municipality according to franchising procedures adopted by the municipality.
(Ord. 2000-06, § 7)

§ 113.025 FRANCHISE REVIEW AND MODIFICATION.

(A) To the extent applicable, the modification provisions of § 625 of the Cable Act, as the same may be amended from time to time, shall govern the procedures and standards for modification of a franchise. The grantee may file a request for modification of a franchise with the municipality in accordance with the modification provisions at any time during the term of the franchise.

(B) To the extent that the modification provisions of the Cable Act, as the same may be amended from time to time, are repealed or otherwise not applicable, a franchise may be modified to the extent permitted by applicable law, according to the standards set forth in division (C) below and in other applicable provisions of this chapter.

(C) It shall be the policy of the municipality to amend a franchise with the consent of the grantee when necessary to enable the grantee to take advantage of technological advancements that will afford the grantee an opportunity to more effectively, efficiently or economically serve the subscribers; provided, however, that, this division shall not be construed to require the municipality to adopt any such amendment.
(Ord. 2000-06, § 8)

§ 113.026 POLICE POWERS.

(A) In accepting a franchise, the grantee acknowledges that its rights thereunder are subject

to the police power of the municipality to adopt and enforce general ordinances necessary for the health, safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the municipality pursuant to such power.

(B) Any conflict between the provisions of a franchise and any other present or future lawful exercise of the municipality's police powers affecting the public health, safety and welfare shall be resolved in favor of the latter.

(Ord. 2000-06, § 9)

§ 113.027 FRANCHISE REQUIRED.

No cable television system owned or operated by a cable operator, as hereinabove defined, shall be allowed to operate or to occupy or use any public street or public way for system operation, installation, construction, reconstruction and maintenance purposes without a franchise.

(Ord. 2000-06, § 10)

§ 113.028 USE OF GRANTEE FACILITIES.

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

(Ord. 2000-06, § 11)

§ 113.029 INITIAL FRANCHISE COSTS.

The grantee shall pay all costs and charges incidental to the awarding or enforcing of its initial franchise, including, but not limited to: administrative, engineering, legal and consulting expenses, all costs of publications of notices prior to any public meeting or public hearing provided for pursuant to this chapter, as amended from time to time, and any costs not covered by application fees incurred by the municipality in its study, preparation of proposal documents, evaluation of all applications and examinations of the applicant's qualifications.

(Ord. 2000-06, § 12)

§ 113.030 NOTICES.

(A) All notices from the grantee to the municipality pursuant to any franchise shall be sent to the Office of the Mayor, City of Hobart, 414 Main Street, Hobart, Indiana 46342 and to the Office of the Clerk-Treasurer, City of Hobart, 414 Main Street, Hobart, Indiana 46342.

(B) The grantee shall maintain with the municipality, 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 chapter.

(Ord. 2000-06, § 13)

§ 113.031 LETTER OF CREDIT AND CASH SECURITY DEPOSIT.

(A) Within 15 days after the award of an initial franchise, the grantee shall deposit with the municipality either an irrevocable letter of credit from a financial institution acceptable to the Board or a cash security deposit in the amount of \$100,000. The form and content of the letter of credit shall be determined by the municipality's Attorney. No interest shall be paid on any cash deposit.

(B) Within 15 days after the award of a renewal franchise, the grantee shall deposit with the municipality an irrevocable letter of credit from a financial institution acceptable to the municipality in the amount of \$50,000 and a cash security deposit in the amount of \$15,000. The form and content of the letter of credit shall be determined by the municipality's Attorney. No interest shall be paid on any cash security deposit.

(C) The letter of credit and cash security deposit shall be used to ensure the faithful performance of the grantee of all provisions of this chapter, as may be amended from time to time, and to ensure compliance with all orders, permits and directions of any agency, commission, board, department, division or office of the municipality having jurisdiction over its acts or defaults under this chapter, and to ensure the payment by the grantee of any claims, liens and taxes and penalties assessed pursuant to [§ 113.999](#) of this chapter due the municipality which arise by reason of the construction, operation or maintenance of the cable system.

(D) The letter of credit and cash security deposit shall be maintained at the amount established herein, for the entire term of the franchise, even if amounts have to be withdrawn pursuant to this chapter. The grantee shall promptly replace any amounts withdrawn from the letter of credit or security deposit.

(E) In the event that the grantee fails to pay to the municipality any compensation within the time fixed herein; or fails to pay to the municipality any penalties assessed on taxes due and unpaid; or fails to repay the municipality any damages, costs or expenses which the municipality incurs as a result of the grantee's failure to comply with all rules, regulations, orders, permits and other directives of the municipality issued pursuant to a franchise or which the municipality is compelled to pay by reason of any act or default of the grantee in connection with a franchise; or fails to properly and adequately restore any public street, public way, public property or private property disturbed by the grantee's activities; or fails to pay any costs incurred by the municipality in connection with the award of any initial franchise or renewal franchise; or otherwise fails to faithfully perform the duties and responsibilities of a franchise, then the municipality may withdraw money from the letter of credit or cash security fund in accordance with the procedures set forth in division (F) below.

(F) The municipality shall provide grantee with written notice, informing the grantee that the amounts are due to the municipality. The written notice shall describe, in reasonable detail, the reasons for the assessment. The grantee shall have 15 days subsequent to receipt of the notice within which to cure every failure cited by the municipality or to notify the municipality that there is a dispute as to whether grantee believes the amounts are due the municipality. The notice by the grantee to the municipality shall specify with particularity the basis of grantee's belief that the monies are not due the municipality.

(G) The rights reserved to the municipality with respect to the letter of credit and cash security deposit are in addition to all other lawful rights of the municipality, whether reserved by the franchise or authorized by applicable law, and no action, proceeding or exercise of a right

with respect to the letter of credit and security deposit shall waive or otherwise affect any other lawful right the municipality may have.

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

“It is hereby understood and agreed that this letter of credit may not be canceled by the issuer bank nor the intention not to renew be stated by the issuer bank until 45 days after receipt by the municipality, by registered mail, of a written notice of the intention to cancel or not to renew.”

(I) Receipt of the 45-day notice by the municipality shall be construed as a default granting the municipality the right to immediate payment from the issuer bank of the entire amount of the letter of credit.

(J) The municipality, at any time during the term of a franchise, may waive, in writing, the grantee’s requirement to maintain a letter of credit or cash security deposit.
(Ord. 2000-06, § 14)

§ 113.032 PERFORMANCE BOND.

(A) Prior to being approved for an initial installation of a cable system, the grantee shall file with the municipality a construction bond in the amount of not less than 110% of the costs to install the system in the service area contained in the application or renewal proposal in favor of the municipality. This bond shall be maintained throughout the construction period and until such time as determined by the municipality, unless specified in the franchise agreement.

(B) Prior to being approved for an upgrade of the system that involves significant excavation or other disturbance of a public street or public way, the grantee shall file with the municipality a performance bond in the amount of not less than \$150,000. This bond shall be maintained throughout the upgrade period and until such time as determined by the municipality, unless specified in the franchise agreement.

(C) In the event that the grantee fails to diligently pursue and complete the construction required for the installation or upgrade of its cable system, or fails to observe, fulfill and perform each term and condition of this chapter or of the franchise as it relates to construction, installation or upgrade of the system, then there shall be recoverable, jointly and severally, from the principal and surety of the bond, the cost of completing the construction and any damages or loss suffered by the municipality as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the grantee, plus a reasonable allowance for attorney’s fees, including the municipality’s legal staff, and all costs, up to the full amount of the bond. This section shall be an additional remedy for any and all violations outlined in [§ 113.031\(E\)](#).

(D) The bond shall contain the following endorsement:

“It is hereby understood and agreed that this bond may not be canceled by the surety nor the intention not to renew be stated by the surety until 45 days after receipt by the municipality, by registered mail, a written notice of the intent to cancel or not to renew.”

(E) Receipt of the 45-day notice by the municipality shall be construed as default granting

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the municipality the right to immediate payment from the issuer of the bond of the entire amount of the bond.

(F) The municipality, at any time during the term of this chapter, may, in writing, waive or reduce the grantee's requirement to maintain a performance bond.
(Ord. 2000-06, § 15)

§ 113.033 LIABILITY AND INSURANCE.

(A) The grantee shall maintain and by its acceptance of a franchise specifically agrees that it will maintain, throughout the term of the franchise, liability insurance insuring the grantee and the municipality and the municipality's officers, boards, commissions, elected and appointed officials, agents and employees, in the minimum amounts of:

- (1) Two million dollars for bodily injury or death to each person;
- (2) Three million dollars for bodily injury or death from any 1 accident;
- (3) Three million dollars for property damage from any 1 accident;
- (4) Five million dollars for general liability coverage, along with umbrella policy coverage; and
- (5) Two million dollars for all other types of liability.

(B) The grantee shall carry and maintain in its own name automobile liability insurance with a limit of \$2,000,000 for each person and \$2,000,000 for each accident for property damage with respect to owned and non-owned automobiles for the operation of which the grantee is responsible.

(C) The certificate of insurance obtained by the grantee in compliance with this section must be approved by the municipality's Attorney and the insurance policy certificate of insurance shall be filed and maintained with the municipality during the term of the franchise. The grantee shall immediately advise the municipality's Attorney of any litigation that may develop that would affect this insurance.

(D) Neither the provisions of this section, nor any damages recovered by the municipality thereunder, shall be construed to or limit the liability of the grantee under any franchise issued hereunder, or for damages.

(E) The insurance policies provided for herein shall name the municipality, its officers, boards, commissions, agents and employees as an additional insured, and shall be primary to any insurance carried by the municipality. The insurance policies required by this section shall be carried and maintained by the grantee throughout the term of the franchise and such other period of time during which the grantee operates or is engaged in the removal of its cable system. Each policy shall contain a provision providing that the insurance policy may not be canceled by the surety nor the intention not to renew be stated by the surety until 30 days after receipt by the municipality, by registered mail, of written notice of the intention to cancel or not to renew.
(Ord. 2000-06, § 16)

§ 113.034 INDEMNIFICATION.

(A) The municipality 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 system or due to the act or omission of any person or entity other than the municipality or those persons or entities for which the municipality is legally liable as a matter of law.

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

(1) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, 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 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, 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 system. Upon the written request of the municipality, the claim or lien shall be discharged or bonded within 15 days following the request; and

(3) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or asserted against the indemnitees by reason of any financing or securities offering by grantee or its affiliates for violations of the common law or any laws, statutes or regulations of the State of Illinois, State of Indiana or of the United States, including those of the Federal Securities and Exchange Commission, whether by the grantee or otherwise.

(C) 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 municipality-owned or controlled property, including public rights-of-way and easements, and the grantee hereby agrees to indemnify and hold harmless the indemnitees against and from any claim asserted or liability imposed upon the indemnitees for personal injury or property damage to any person arising out of the installation, operation, maintenance or condition of the cable system or the grantee's failure to comply with any federal, state or local statute, ordinance or regulation, except for any claim asserted or liability imposed upon the indemnitees that arises or is related to wanton or willful negligence by the indemnitees.

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(D) 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; provided further, however, that, the grantee shall not admit liability in any such matter on behalf of the indemnitees without the written consent of the municipality.

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

(F) Nothing in this chapter or in any franchise is intended to, or shall be construed or applied to, express or imply a waiver by the municipality of statutory provisions, privileges or immunities of any kind or nature as set forth in Illinois or Indiana Statutes, including the limits of liability of the municipality as exists presently or as may be increased from time to time by the legislative authorities of each state.

(Ord. 2000-06, § 17)

§ 113.035 RIGHTS OF INDIVIDUALS.

(A) The grantee shall not deny service, deny access or otherwise discriminate against subscribers, access channel users or general citizens on the basis of race, color, religion, national origin, income, gender, marital status, (sexual preference [Cook County only]) 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 non-discrimination which are hereby incorporated and made part of this chapter by reference.

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

(C) The grantee shall, at all times, comply with the privacy requirements of § 631 of the Cable Act and of state and federal law.

(D) The grantee shall make cable service available to all residential areas within the service area, provided that all the permission is obtained as may be required from the owner or owners of any affected property is reasonably available, and that service can be provided in accordance with the line extension requirements of [§ 113.038](#). The grantee will only be required to provide service to multi-dwelling units so long as the owner of the facility consents to the following:

- (1) To the grantee's providing of the service to units of the facility;
- (2) To reasonable conditions and times for installation, maintenance and inspection of the system on the facility premises;
- (3) To reasonable conditions promulgated by grantee to protect the grantee's equipment and to encourage widespread use of the system; and
- (4) To not demand payment from grantee for permitting grantee to provide service to

the facility and to not discriminate in rental charges, or otherwise, between tenants who receive cable service and those who do not.
(Ord. 2000-06, § 18)

§ 113.036 PUBLIC NOTICE.

Minimum public notice of any public meeting or public hearing relating to the franchise shall follow applicable state statutory requirements and shall be on the government access channel and at least 1 channel of local programming operated by the grantee on the grantee's system between the hours of 7:00 p.m. and 9:00 p.m., for 5 consecutive days prior to the meeting.
(Ord. 2000-06, § 19)

§ 113.037 SERVICE AVAILABILITY AND RECORD REQUEST.

The grantee shall provide cable television service throughout the entire service area pursuant to the provisions of this chapter and the franchise and shall keep a record for at least 3 years of all requests for service received by the grantee. This record shall be available for public inspection at the local office of the grantee during regular office hours.
(Ord. 2000-06, § 20)

§ 113.038 SYSTEM CONSTRUCTION.

(A) New construction timetable.

(1) Within 2 years from the date of the award of an initial franchise, the grantee must make cable television service available to every dwelling unit within the service area.

(a) The grantee must make cable service available to at least 20% of the dwelling units within the service area within 6 months from the date of the award of the franchise.

(b) The grantee must make cable service available to at least 50% of the dwelling units within the service area within 1 year from the date of the award of the franchise.

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

(3) Any delay beyond the terms of this timetable, unless specifically approved by the municipality, will be considered a violation of this chapter for which the provisions of either [§§ 113.056](#) and [113.999](#) of this chapter shall apply, as determined by the municipality.

(4) In special circumstances and for good cause shown by the grantee, the municipality, in the exercise of its sole discretion, may waive 100% completion within the 2-year time frame; provided that, substantial completion is accomplished within the allotted time frame, substantial completion to be not less than 95%. Justification for less than 100% must be submitted subject to the approval of the municipality.

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(5) Where the grantee is rebuilding, reconstructing or upgrading its cable system, the rebuilding, reconstruction or upgrade of the cable system must be completed within 18 months from the issuance of the initial permit for construction. The grantee and the municipality may agree to a lesser or greater period of time for reconstruction, rebuilding or upgrading in a franchise agreement.

(B) *Line extensions.*

(1) In areas of the franchise territory not initially served, a grantee shall be required to extend its system pursuant to the following requirements.

(a) No customer shall be refused service arbitrarily. To expedite the process of extending the cable system into a new subdivision, the municipality will forward to the grantee an approved engineering plan of each project. Subject to the density requirements, the grantee shall commence the design and construction process upon receipt of the final engineering plan. Upon notification from the municipality that the first home in the project has been approved for a building permit, the grantee shall have a maximum of 3 months to complete the construction/activation process within the applicable project phase, barring any unforeseen adverse weather or ground conditions.

(b) Unless a franchise agreement provides otherwise, a grantee must make cable service available to every unserved structure within the franchise area. The grantee shall extend service to any annexed areas according to the following schedule:

1. For areas of territory annexed to the city of 5 acres or more, the grantee shall extend service to such areas within 3 months of the date of annexation; or

2. For those areas of less than 5 acres, the grantee shall extend service to the annexed areas within 1 month of the date of annexation. Where unserved structures located within the franchise area have been previously annexed into the municipality prior to the effective date of a franchise agreement, the grantee shall extend service to the areas within 12 months for areas of less than 5 acres and within 18 months for areas of 5 acres or more.

(c) The grantee shall extend and make cable 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 125-foot drop line.

(2) The franchising authority may contract with owners of real property for the installation of cable service and the construction of cable system lines within the municipality or within 1-1/2 miles in order to provide service for the area in which the real property of the owners is located. The contract must provide, for a term not to exceed that agreed upon between the grantee and the franchising authority in a franchise agreement, for the payment to the owners and their assigns by any owner of real property who:

(a) Did not contribute to the original cost of the wiring of cable service to the area in which the real property of the owners is located; and

(b) Subsequently obtains a subscription for cable service and is served by the wiring of cable service to the area in which the real property of the owners is located; of a pro-rata share of the cost of the construction of the cable system subject to the conditions of this chapter, the franchise agreement, and applicable law and notwithstanding any other law relating

to the functions of local government entities. However, the contract does not apply to any owner of real property who is not a party to it unless it has been recorded in the office of the recorder of Lake County before the owner has received installation of the cable system. The franchising authority may provide that the pro-rata share of the cost of construction include interest at a rate not exceeding the amount of interest allowed on judgments, and the interest shall be computed from the date that the extension of the cable system was approved by the franchising authority to the date payment is made to the municipality.

1. The contract must include, as part of the consideration running to the municipality, the release of the right of the parties to the contract and their successors in title to remonstrate against pending or future annexations of the municipality of the area served by the cable system. Any person who is connected to the cable system and receives cable service contracted for is considered to waive his or her rights to remonstrate against the annexation of the area served by the cable system. The aforementioned does not apply if the costs of extension of or connection to the cable system are paid by a person other than the landowner or the municipality. This section shall apply when:

- a. Any part of the cost of a cable system is to be assessed against the owners of real property;
- b. The proposed cable system is to be connected into the cable system referenced under this chapter or a franchise agreement; and
- c. The owners did not contribute to the cost of the extension of the cable system.

2. There shall be included in the grantee's estimate submitted to the franchising authority and the assessments, a sum equal to the amount provided in or computed from the contract as the fair pro-rata share due from the owners upon and for the contracted extension of the cable system, including any interest owed. The sum included in the grantee's estimate must be separately itemized.

(3) In cases of new construction or property development where utilities are to be placed underground, all cable system facilities also shall be placed underground, except as otherwise specifically approved in advance by the municipality. In the event that the grantee receives notice of such new construction or property development, including the date on which open trenching is available for the grantee's work (the "notice"), then the grantee shall provide, to the developer or property owner and to the municipality, the specifications for its trenching and the grantee shall install its conduit, pedestals and vaults, and laterals within 5 working days after the trenches first become available to the grantee for the work. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; provided, however, that, if the grantee fails to install its conduit, pedestals and vaults, and laterals within the 5 working days, then the cost of any new trenching, and easements if necessary, shall be borne by the grantee. The notice may be given to the grantee at the address stated in the franchise agreement or to the local general manager or system engineer of the grantee. Written or oral notice from the developer, property owner or municipality shall be sufficient to qualify as the notice.

(C) *Prevention of grantee from serving areas of service.* Nothing herein shall be construed to prevent the grantee from serving areas of the service area not covered under this section upon agreement with developers, property owners, residents or businesses; provided that, all applicable

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fees are paid by the grantee to the municipality therefor, including without limitation the franchise fee provided in this chapter, as may be amended from time to time.

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

(E) *Violation.* Any violation of this section shall be considered a violation of this chapter for which the provisions of either [§§ 113.056](#) or [113.999](#) shall apply, as determined by the municipality.

(Ord. 2000-06, § 21)

§ 113.039 CONSTRUCTION AND TECHNICAL STANDARDS.

(A) *Generally.* The grantee shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements and FCC technical standards. In addition, the grantee shall provide the municipality, 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.* The following additional specifications shall apply:

(1) Construction, installation and maintenance of the cable 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 the most recent version adopted by the municipality of:

- (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) All other 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 service 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 as required by the United States Department of Transportation.

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

(6) The grantee shall regularly check radio frequency leakage at reception locations

for emergency radio services to prove and verify that no interference signal combinations are possible which may disrupt municipal public works, police, fire or administrative communications, or township, county or state communications. 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. All applicable FCC rules and regulations shall govern.

(7) The grantee shall maintain equipment capable of providing standby power for head-end, transportation and trunk amplifiers for a minimum of 4 hours.

(8) All towers, antennas, satellite receive stations, cable wiring, service connections and other exposed equipment located within the service area shall be properly grounded in accordance with the National Electrical Safety Code and the National Electrical Code, as now or hereafter amended. The grantee shall also comply with any local ordinance pertaining to the establishment of electrical grounding standards, and with any additional grounding standards established by electric and telephone companies if the grantee has arranged to lease pole space from the companies. In the event that the grantee has erected wiring and related appurtenances upon poles owned by private parties other than electric or telephone companies, the grantee shall comply with provisions of the National Electrical Code. The grantee, at its discretion may properly ground the equipment in such a manner that exceeds normal engineering requirements; provided, however, that, the grounding is in compliance with the National Electrical Code.

(9) In all areas of the municipality where the cables, wires and other like facilities of public utilities are placed underground, all cables, wires and other like facilities of the grantee installed after the effective date of the grantee's franchise shall be placed underground. When public utilities relocate their facilities from pole to underground, the grantee shall concurrently do so at no expense to the municipality.

(10) Where the grantee places cabling underground as part of a relocation of cabling, or as an element of new construction or reconstruction of the cable system, the grantee shall utilize directional boring wherever possible.

(C) *Plans and permits.*

(1) *Right to review; briefings.*

(a) The municipality shall have the right to review the grantee's construction plans and specifications prior to the commencement of any new construction to assure compliance with the standards specified in this chapter and to inspect all aspects of cable system construction. The municipality shall not, however, be required to review or approve the plans and specifications or to make the inspections and the municipality specifically disclaims the obligation. The grantee shall be solely responsible for taking all steps necessary to assure compliance with the standards and to ensure that the cable system is installed in a safe manner and pursuant to the terms and conditions of this chapter and the franchise agreement.

(b) Before beginning new construction of, or on any part of, the cable system, the grantee's chief engineer or designated individual shall meet with the municipal administrator, manager or designated individual to provide and explain the grantee's construction plans and work program in detail. Similar briefings shall be held from time to time as deemed necessary by either the municipality or the grantee until the work is completed.

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(2) *“As-built” plans.* The grantee shall, within 90 days after the effective date of its franchise, furnish to the municipality complete “as-built” plans of the cable system and shall, thereafter, furnish to the municipality amendments to the plans within 45 days after completion of any extension or modification of the cable system. If so requested by the grantee, the municipality shall keep such as-built plans confidential to the extent allowable by law and shall show the plans only to those employees, contractors or municipality officials who need to see them as a part of their responsibilities to the municipality, or pursuant to their responsibilities for locating utilities. Upon implementation of a municipal geographic information system (GIS), the grantee shall provide the “as-built” plans in a digital format which is compatible to the computer systems of the grantee and the municipality.

(3) *Permits.*

(a) The grantee shall obtain permits from the municipality before commencing any new construction of or within the cable system, with specific permission being required for the opening or disturbance of any public street or public way within the municipality. The permit application shall include a plan drawn in sufficient detail to demonstrate to the municipality that the cable system will be constructed in accordance with all applicable codes and ordinances. Where cable is to be installed on existing poles, the permit application shall include a drawing showing the existing poles and additional poles, if requested.

(b) Without characterizing the violation of other provisions of this chapter, the failure to obtain the permits shall constitute a material violation of this chapter. The grantee also, before the commencement of new construction of, or on any part of, the cable system, shall become and remain a member of the J.U.L.I.E. system or the utility locating system serving Lake County, Indiana (“Holey Moley”). The grantee may redact any information which it deems proprietary.

(D) *Workmanlike manner.* All work involved in the construction, operation, maintenance, repair and removal of the cable system, or any part thereof, shall be performed in a workmanlike manner using materials of good and durable quality. If, at any time, it is determined by the municipality or any other agency or authority of competent jurisdiction that any part of the cable system, including without limitation any means used to distribute signals over or within the cable system, is harmful to the health or safety of any person, then the grantee, at its sole cost and expense, shall promptly correct all such conditions. Any contractor, subcontractor or other person proposed to be employed for the installation, maintenance, relocation or repair of cable system equipment or facilities shall be licensed in accordance with applicable laws and shall be thoroughly experienced in the work for which he or she is retained.

(E) *Compliance.* The grantee shall, at all times, comply with the rules and regulations for infrastructure specifications as found in Appendix A of Ord. 2000-06, the Model Cable Television Franchise Ordinance and any and all rules and regulations enacted or to be enacted by the municipality with reference to construction activity in public streets or public ways. All poles, wires, conduits, cables, equipment, pipes, appurtenances, structures and other facilities of the cable system shall be installed and located in compliance with all applicable municipal codes and ordinances and the applicable provisions of the franchise so as to cause minimum interference with the rights and reasonable convenience of the general public, all as determined by the municipality in its sole and absolute discretion. Unless the municipality shall, in writing, waive its right to review plans, no construction or other work relating to the facilities within the public streets and public ways of the municipality shall be commenced until the municipality shall have approved and issued a permit on the plans, specifications and methods for the work. Any such

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permit may be so conditioned or restricted as deemed necessary by the municipality to protect the public health, safety and welfare. All such facilities shall at all times be kept and maintained in a safe condition and in good order and repair.

(F) *Location of pedestals and vaults.*

(1) *Pedestals and similar above ground appurtenances.*

(a) The municipality has determined that pedestals and similar aboveground appurtenances located on a public street or public way (other than in an alley or as provided in division (F)(1)(c) below) or on public property will adversely affect the appearance of the municipality and of the property therein and, accordingly, pursuant to § 541(a)(2) of the Cable Act, the grantee shall not under any circumstances install or locate a pedestal or any similar above ground appurtenance on any public street or public way (other than in an alley or as provided in division (F)(1)(c) below) or on any public property as a part of any new construction or any relocation or reinstallation.

(b) Pedestals or similar above ground appurtenances may be installed on private property only with the express, prior written consent and permission of the affected property owner or his or her authorized agent, or the duly elected or appointed representative of the affected property; provided, however, that, the pedestals or above ground appurtenances shall comply with all applicable provisions of the municipal code.

(c) Notwithstanding division (F)(1)(b) above, pedestals or similar above ground appurtenances may be installed within certain utility easements on private property without the consent or permission of the affected property owner; provided that:

1. The grantee is lawfully authorized to use such utility easement pursuant to applicable state or federal law;
2. No such pedestal or similar above ground appurtenance may be installed unless, at the time of the desired installation, there exists within the utility easement, a similar above ground appurtenance of another utility company or entity;
3. The grantee's pedestal or similar above ground appurtenance shall be located as close as is practicable to the existing above ground appurtenance; and
4. In the event of an emergency, the grantee shall attempt to contact the property owner or legal tenant in person and shall leave a door hanger notice in the event personal contact is not made.

(2) *Vaults.*

(a) The grantee shall not install underground vaults on any public street or public way after the effective date of this franchise, except in accordance with and pursuant to the provisions of division (F)(2)(d) below. All underground vaults shall be flush mounted with the surface of the land area.

(b) The grantee shall inform the owner of any private property in the municipality where the grantee contemplates placing a vault on the parkway immediately adjacent to the private property, that the owner has the right to elect between the construction and installation of

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an underground vault on the owner's private property or on the public street or public way (including, without limitation, the parkway) immediately adjacent to the owner's property. The notice shall be in writing, in form and substance acceptable to the municipal administrator or manager and delivered by certified mail or personal delivery to the owner at least 30 days immediately before the commencement of construction on or around the owner's property.

(c) In the event that the owner elects to allow construction and installation of an underground vault on the owner's property, then the owner shall be required to grant the grantee an easement, in form reviewed and approved by the municipality's Attorney, allowing for the construction and installation.

(d) In the event that the owner:

1. Elects not to allow construction and installation of an underground vault on the owner's property;

2. Fails to respond to the election notice delivered by the grantee pursuant to division (F)(2)(b) above within 45 days after the owner receives the notice; or

3. Refuses to grant the grantee the easement pursuant to division (F)(2)(c) above within 30 days after the owner's receipt of an easement document, then the grantee shall be entitled to construct and install an underground vault on the public way (including, without limitation, the parkway) that is immediately adjacent to the owner's property.

(G) *Trenching requirements.* The grantee shall excavate all trenches at a depth no less than that required by the National Electrical Code for the installation of drop cable, feeder cable and trunk cable. All open trenches in which work is being performed shall be covered at the end of each working day, and when the trench is not occupied by a work crew, with a wooden covering in a public way, or with a metal covering where work is being performed in a public street. Coverings shall be adequately secured in order to prevent movement of the trench cover which would expose the trench opening.

(Ord. 2000-06, § 22)

§ 113.040 USE OF STREETS.

(A) 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 public streets and public ways, or interfere with any improvements the municipality may make, or hinder or obstruct the free use of the streets, alleys, bridges, easements or public property.

(B) (1) No poles or other wire-holding structures shall be erected by the grantee without prior approval of the municipality 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 the poles or structures shall be removed or modified by the grantee at its own expense whenever the municipality determines that the public convenience would be enhanced thereby.

(2) Where poles or other wire-holding structures already existing for use in serving the municipality are available for use by the grantee, but it does not make arrangements for the use, the municipality may require the grantee to use the 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.

(3) Where the municipality or a public utility serving the municipality desires to make use of the poles or other wire-holding structures of the grantee, but agreement thereof with the grantee cannot be reached, the municipality may require the grantee to permit such use for such consideration and upon such terms as the municipality shall determine to be just and reasonable, if the municipality determines that the use would enhance the public convenience and would not unduly interfere with the grantee's operations.

(C) If, at any time during the period of the franchise, the municipality shall elect to alter, or change the grade of any public street or other public ways or utilities, the grantee, upon reasonable notice by the municipality, shall promptly remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

(D) The grantee shall, on the request of any person holding a building moving permit issued by the municipality, temporarily raise or lower its wires to permit the moving of buildings. The expense of the 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 the payment in advance. The grantee shall be given not less than 48 hours advance notice to arrange for the temporary wire changes.

(E) The grantee shall not use road cuts for the laying of cable or wires without the prior approval of the municipality. Any cabling placed beneath a public street shall be buried in conduit.

(F) The right of the grantee to use and occupy the public streets and public ways shall not be exclusive. The municipality reserves the right to grant any right or use of such public streets or public ways to any person at any time during the term of the franchise or any other franchise subsequently granted to any other person.

(G) If any public street or public way or portion thereof used by the grantee shall be vacated by the municipality, or the use thereof is discontinued by the municipality or the grantee, during the term of the franchise, then the grantee shall forthwith at its sole cost and expense remove its facilities therefrom unless specifically permitted to continue to use the same and, on the removal thereof, the grantee shall restore, repair, or reconstruct the public street or public way in accordance with the specifications and requirements found in Appendix A of Ord. 2000-06, the Model Cable Television Franchise Ordinance. In the event of any failure, neglect or refusal by the grantee, after 30 days written notice from the municipality to repair, improve or maintain such public street or public way, the municipality may, but shall be under no obligation to, conduct the work, or cause it to be conducted, and the actual cost thereof shall be paid by the grantee in the time and manner as directed by the municipality. Collection may be made by resort to the letter of credit or cash security deposit established pursuant to [§ 113.031](#) of this chapter, or by court action, or otherwise.

(Ord. 2000-06, § 23)

§ 113.041 OPERATIONAL STANDARDS.

(A) The grantee shall maintain all parts of the cable system in good condition throughout the entire franchise period.

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(B) Upon the reasonable request for service by any person located within the service area, the grantee shall, within 30 days, furnish the requested service to the person within terms of the line extension policy. A request for service shall be unreasonable for the purpose of this division if no trunk line installation capable of servicing that person's block has been installed.

(C) (1) Unless otherwise agreed to in a franchise agreement, the grantee shall put forth every effort to bury temporary drops within 10 working days after placement. Any delays for any other reason than listed shall be communicated to the municipality.

(2) Upon request of the municipality, the grantee shall provide a monthly report to the municipality on the number of drops pending.

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

(E) Where an installation or a service call has taken place at the residence of a subscriber, the cable operator's personnel shall clean all areas surrounding any work site and ensure that all cable materials have been disposed of properly.

(F) 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 municipality nor shall other utilities interfere with the grantee's system.
(Ord. 2000-06, § 24)

§ 113.042 CUSTOMER SERVICE STANDARDS.

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

(B) The grantee shall maintain a local or toll-free telephone access line which is available to its subscribers and shall have courteous, knowledgeable and qualified representatives available to respond to customer telephone inquiries regarding billing, service and repair, 24 hours per day, 7 days per week, including legal holidays. Under normal operating conditions, telephone answer time, including wait time and the time required to transfer the call, shall not exceed 30 seconds. This standard shall be met no less than 90% of the time as measured on a quarterly basis. Under normal operating conditions, the customer will receive a busy signal less than 3% of the time, measured quarterly.

(C) Customer service centers and bill payment locations shall be open for walk-in customer transactions a minimum of 8 hours per day Monday through Friday, unless there is a need to modify those hours because of the location or customers served. Where the grantee has located a bill payment or customer service center within the service area, the grantee and municipality by mutual consent shall establish supplemental hours on weekdays and weekends as fits the needs of the community.

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(D) Under normal operating conditions, each of the following standards will be met no less than 95% of the time as measured on an annual basis.

(1) Standard installations will be performed within 7 business days after an order has been placed. A standard installation is one that is within 125 feet of the existing system.

(2) (a) Excluding those situations that are beyond its control, the grantee will respond to any service interruption promptly and in no event later than 24 hours from the time of initial notification. All other regular service requests will be responded to within 36 hours during the normal work week for that system. The appointment window alternatives for installations, service calls and other installation activities shall be: “morning” or “afternoon”; not to exceed a 4-hour “window” during normal business hours for the system, or at a time that is mutually acceptable.

(b) The grantee shall schedule supplemental hours during which appointments can be scheduled based on the needs of the community. If, at any time, an installer or technician is running late, an attempt to contact the customer will be made and the appointment rescheduled as necessary at a time that is convenient to the customer.

(3) In those instances where a technician has conducted a service call in the absence of the subscriber, the technician shall leave a door hanger on the front door of the subscriber’s residence or notify the subscriber by phone message of the service call.

(E) In the event of a service interruption, the following standards for subscriber credits shall be applied by the grantee:

(1) If a subscriber experiences a service interruption totaling 4 hours or more on 1, 2 or 3 days in any calendar month, then the grantee shall provide a credit to that subscriber equal to 1/30 of 1 month’s total fees paid by that subscriber for each day on which such a service interruption occurs; provided, however, that, the credit shall not apply to a subscriber disconnected because of non-payment or excessive signal leakage. The credit shall be provided by the grantee automatically upon notice from that subscriber of such service interruption, regardless of whether that subscriber requests a credit.

(2) If a subscriber experiences a service interruption totaling 4 hours or more on 4 or more days in any calendar month, then the grantee shall provide a credit to that subscriber equal to 1 month’s total fees paid by that subscriber; provided, however, that, the credit shall not apply to a subscriber disconnected because of non-payment or excessive signal leakage. The credit shall be provided by the grantee automatically upon notice from that subscriber of the fourth service interruption, regardless of whether that subscriber requests a credit.

(F) (1) The grantee shall provide written information for each of the following areas at the time of installation and at any future time upon the request of the customer:

- (a) Product and services offered, including its channel lineup;
- (b) Prices and service options;
- (c) Installation and service policies;
- (d) How to use the cable services;

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- (e) Customer privacy requirements;
- (f) The cable operator's billing, collection and disconnection policies;
- (g) Use and availability of A/B switches;
- (h) Use and availability of parental lockout devices;
- (i) Special services for customers with disabilities; and
- (j) Days, times of operation and locations of customer service centers.

(2) Copies of all notices provided to the subscriber shall be filed either by U.S. mail or fax, with the municipality and the Consortium.

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

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

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

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

(K) The grantee shall maintain and operate its network in accordance with the rules and regulations incorporated herein and as may be promulgated by state or federal regulators.

(L) The grantee shall continue, through the term of the franchise, to maintain the technical standards and quality of service set forth in this chapter and the franchise. In the event that the municipality finds, by resolution, that the grantee has failed to maintain these technical standards and quality of service, and should it, by resolution, specifically enumerate improvements to be made, the grantee shall make the improvements. Failure to make such improvements within 3 months of the resolution will constitute a breach of a condition for which penalties contained in [§ 113.999](#) are applicable.

(M) The grantee shall keep a monthly service log which indicates the nature of each service complaint received in the last 24 months, the date and time each complaint was received, the disposition of each complaint, and the time and date thereof. This log shall be sent to the municipality monthly upon request.

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

(O) Services for subscribers with disabilities.

(1) For any subscriber with a disability, a grantee shall, at no charge, deliver and pick up converters at subscribers' homes. In the case of a malfunctioning converter, the technician shall provide another converter, install it, and ensure that it is working properly, and shall return the defective converter to the grantee.

(2) The grantee shall provide TDD service with trained operators who can provide every type of assistance rendered by the grantee's customer service requirements for any hearing-impaired customer.

(3) The grantee shall provide free use of a remote control unit to mobility impaired (if disabled, in accordance with division (O)(4) below) subscribers.

(4) Any subscriber with a disability may request the special services described above by providing the grantee with a letter from the subscriber's physician stating the need, or by making the request to the grantee's installer or service technician, where the need for special services can be visually confirmed.

(P) All officers, agents and employees of the grantee or its contractors or subcontractors who are in contact with cable subscribers shall wear on their outer clothing identification cards bearing their name and photograph. The grantee shall account for all identification cards at all times. Every vehicle of the grantee shall be clearly visually identified to the public as working for the grantee. Vehicles belonging to contractors or subcontractors of the grantee shall be clearly identified with the name of the contractor or subcontractor and the grantee. The identification need not be of a permanent nature. All customer service representatives shall identify themselves orally to callers.

(Ord. 2000-06, § 25)

§ 113.043 CONTINUITY OF SERVICE MANDATORY.

(A) It shall be the right of all subscribers to continue receiving service as long as their financial and other obligations to the grantee are honored. If the grantee elects to over build, rebuild, modify or sell the system, or the municipality gives notice of intent to terminate or fails to renew the franchise, the grantee shall act so as to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances for a period not to exceed 6 months after the franchise has terminated.

(B) In the event that there is a change of franchise, or if a new operator acquires the system, the grantee shall cooperate with the municipality, new franchisee and 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.

(C) In the event that the grantee fails to operate the system for 3 consecutive days without prior approval of the municipality or without just cause, the municipality may, at its option, operate the system or designate an operator until such time as the grantee restores service under conditions acceptable to the municipality or a permanent operator is selected. In the event that the municipality is required to fulfill this obligation for the grantee, the municipality shall be entitled to all revenues for any period during which it operates the system and shall be entitled to draw on the letter of credit and cash security deposit established pursuant to [§ 113.031](#) of this chapter to recover all of its costs and damages in excess of the revenues, and, in any event, the grantee shall

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be obligated to reimburse the municipality for all costs or damages incurred by the municipality resulting from the grantee's failure to perform that the municipality does not recover from the revenues or the letter of credit or cash security deposit.

(Ord. 2000-06, § 26)

§ 113.044 COMPLAINT PROCEDURE.

(A) During the term of the franchise and any renewal thereof, the grantee shall maintain a central office for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, billing, and similar matters. The office must be reachable by a local and/or toll-free telephone call to receive complaints regarding quality of service, equipment functions and similar matters. The grantee will make good faith efforts to arrange for 1 or more payment locations in a central location where customers can pay bills or conduct other business activities.

(B) As subscribers are connected or reconnected to the system, the grantee shall, by appropriate means such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local or toll free telephone number of the employee or employees or agent to whom the inquiries or complaints are to be addressed.

(C) When there have been similar complaints made, or where there exists other evidence, which, in the judgment of the municipality, in consultation with the grantee, casts doubt on the reliability or quality of cable service, the municipality 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 municipality in performing the testing and shall prepare results and a report, if requested, within 30 days after notice. The 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; and
- (5) Any other information pertinent to the tests and analysis which may be required.

(D) If, after receiving grantee's report, and after the grantee has completed any corrective action identified in the report, the municipality determines that reasonable evidence still exists of inadequate cable system performance, then the municipality may enlist an independent engineer at the grantee's expense to perform tests and analysis directed toward the suspected failures to meet the requirements of this chapter. The grantee shall cooperate and permit the testing.

(E) The municipality shall require tests, analysis and reports covering specific subjects and characteristics based on complaints or other evidence only when the municipality has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard cable service.

(Ord. 2000-06, § 27)

§ 113.045 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, the rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations.

(Ord. 2000-06, § 28)

§ 113.046 FRANCHISE FEE.

(A) A grantee shall pay to the municipality a franchise fee of not less than 5% of the grantee's gross revenues or such other maximum amount as allowed by law.

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

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

(D) (1) The municipality shall have the right to inspect and copy the grantee's income records and the right to audit and to recompute any amounts determined to be payable under this chapter. Any additional amount due the municipality as a result of an audit shall be paid within 30 days following written notice to the grantee by the municipality, which notice shall include a copy of the audit report. If any audit discloses an underpayment of a franchise fee by an amount in excess of 4% of the applicable fee, then the grantee shall pay the full cost of the audit.

(2) The grantee shall maintain books and records of its operations within and related to the municipality and the grantee's cable system in sufficient detail to show gross revenue, by service category, consistent with generally accepted accounting principles. The books and records shall be retained in accordance with the grantee's document retention policies, but in no event less than 5 years.

(E) If any franchise payment or re-computed amount, cost or penalty, is not made on or before the applicable dates heretofore specified, interest shall be charged daily from such date at an annual rate of 12%.

(F) The acceptance by the municipality of any franchise fee payment shall not in any way be construed as an accord that the amount paid is in fact the correct amount, nor shall the acceptance of any payment be construed as a release of any claim the municipality may have for further or additional sums payable under the provisions of the franchise. All franchise fee payments shall be subject to audit and re-computation by the municipality in accordance with this section.

(G) The grantee shall acknowledge as follows:

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(1) The franchise fee is not a tax;

(2) The franchise fee shall be in addition to any and all taxes, other applicable fees or charges that the grantee or any affiliate shall be required to pay to the municipality or to any state or federal agency or authority, all of which shall be separate and distinct obligations of the grantee and its affiliates;

(3) Neither the grantee nor any affiliate shall have or make any claim for any deduction or other credit of all or any part of the franchise fee from or against any of the municipality taxes or other fees or charges that the grantee or any affiliate is required to pay to the municipality except as may be identified and authorized by federal or state law;

(4) Neither the grantee nor any affiliate shall apply or seek to apply all or any part of the franchise fee as a deduction or other credit from or against any of the municipality taxes or other fees or charges, each of which shall be deemed to be separate and distinct obligations of the grantee and its affiliates; and

(5) Except as authorized by applicable law, if the grantee or any affiliate applies or seeks to apply all or any part of the amount of the franchise fee as a deduction or other credit from or against any municipality tax or other fee or charge, or if the grantee or any affiliate applies or seeks to apply all or any part of any such tax or other fee or charge as a deduction or other credit from or against the franchise fee, then, in any such event, the action will be deemed a violation of this chapter subject to the provisions of [§ 113.056](#) herein.

(H) The municipality may increase the franchise fee if and to the extent that the maximum allowable franchise fee is increased by the FCC. If the municipality desires to increase the franchise fee in that event, then the municipality shall provide at least 30 days written notice to the grantee. If, within 30 days after the municipality's notice, the grantee so requests, the municipality shall conduct a public hearing on the franchise fee increase. The effective date of the proposed franchise fee increase shall be delayed until the expiration of the 30-day notice period, if within that period, the grantee does not request a hearing or, if a hearing is requested, until the conclusion of the public hearing conducted pursuant to this division.
(Ord. 2000-06, § 29)

§ 113.047 TRANSFER OF OWNERSHIP OR CONTROL.

(A) Except as provided in division (F) of this section below, a franchise shall not be assigned, transferred, pledged, leased, sublet, hypothecated or mortgaged, either in whole or in part, in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person without the prior written approval of the municipality. The grantee may, however, transfer or assign the franchise to a parent or wholly owned subsidiary of the grantee and the parent or subsidiary may transfer or assign the franchise back to the grantee without the consent; providing that, the assignment is without any release of liability of the grantee. Any proposed assignee must show legal, technical and financial responsibility as determined by the municipality, and must agree, in writing, to comply with all provisions of the franchise. The grantee shall submit a petition to the municipality requesting the municipality's approval at least 90 days before the grantee takes any action in furtherance of accomplishing any such assignment, transfer, pledge, lease, sublet, hypothecation or mortgage, containing or accompanied by such information as is required in accordance with FCC

regulations and by the municipality. The municipality shall have 120 days to act upon any request for approval of any such assignment, transfer, pledge, lease, sublet, hypothecation or mortgage. The municipality shall be deemed to have consented to a proposed assignment, transfer, pledge, lease, sublet, hypothecation or mortgage if it fails to render a final decision within 120 days following receipt of the petition and receipt of all necessary information as to the effect of the proposed assignment, transfer, pledge, lease, sublet, hypothecation or mortgage upon the public, unless the requesting party and the municipality agree to an extension of time. The municipality shall not unreasonably withhold consent to a proposed transfer and shall promptly notify grantee of any action taken on such a request. Where the municipality deems to have found the petition to be incomplete or requiring further information, the municipality shall request further information from the grantee within 30 calendar days from the receipt of the petition.

(B) (1) The grantee shall promptly notify the municipality of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the grantee. The word “control”, as used herein, is not limited to major stockholders but also includes actual working control in whatever manner exercised.

(2) A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons (excluding any parent or subsidiary thereof) of 5% or more of the grantee or the franchise under which the cable system is operated. Change, transfer or acquisition of control of the grantee without the municipality’s consent shall make the franchise subject to cancellation unless and until the municipality shall have consented thereto, which consent shall not be unreasonably withheld. For the purpose of determining whether it shall consent to the change, transfer or acquisition of control, the municipality may inquire into the qualifications of the prospective controlling party, and the grantee shall assist the municipality in the inquiry.

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

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

(E) In no event shall a transfer of ownership or control be approved without the successor(s) in interest to the franchise agreement becoming a signatory to the franchise agreement.

(F) Nothing in this section shall be deemed to prohibit any assignment, pledge, lease, sublease, mortgage or other transfer of all or any part of the grantee’s cable system, or any right or interest therein, solely for financing purposes; provided that, each such assignment, pledge, lease, sublease, mortgage or other transfer shall be subject and subordinate to the rights of the municipality pursuant to this chapter, the franchise agreement and applicable law.

(Ord. 2000-06, § 30)

§ 113.048 AVAILABILITY OF BOOKS AND RECORDS.

(A) The grantee shall fully cooperate in making available at reasonable times and the

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municipality shall have the right to inspect, where reasonably necessary for the enforcement of the franchise, books, records, maps, plans and other like materials of the grantee applicable to the cable system, at any time during normal business hours; provided, where volume and convenience necessitate, the grantee may require inspection to take place on the grantee premises.

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

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

(2) Periodic preventive maintenance reports;

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

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

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

(Ord. 2000-06, § 31)

§ 113.049 OTHER PETITIONS AND APPLICATIONS.

Upon request, copies of all petitions, applications, communications and reports submitted by the grantee to the Federal Communications Commission, to the Securities and Exchange Commission or to any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to the franchise or received from such agencies shall be provided to the municipality within 10 working days of the municipality's request.

(Ord. 2000-06, § 32)

§ 113.050 FISCAL REPORTS.

The grantee shall, annually, within 90 days after the close of the grantee's fiscal year, prepare in accordance with generally accepted accounting principles and submit to the municipality, a statement of gross revenues audited by a certified public accountant and covering the grantee's operations in and relating to the municipality and the grantee's cable system.

(Ord. 2000-06, § 33)

§ 113.051 REMOVAL OF CABLE SYSTEM.

At the expiration of the term for which the franchise is granted or when any renewal is denied, or upon its termination, as provided herein, the grantee shall forthwith, upon notice by the municipality, remove, at its own expense, all portions of the cable system designated by the municipality from all streets and public property within the municipality. In the event that the

grantee fails to do so, the municipality may perform the work at the grantee's expense. Upon the notice of removal, a bond shall be furnished by the grantee in an amount sufficient to cover this expense as determined by the municipality. In the event that the grantee is utilizing the plant of the cable system for telecommunications services as defined by the Telecommunications Act of 1996, and the grantee's franchise has been terminated, denied renewal or nullified due to expiration, then the grantee shall not be required to remove its cable system plant. However, the grantee shall be prohibited from offering or providing cable services, as defined herein.

(Ord. 2000-06, § 34)

§ 113.052 REQUIRED SERVICES AND FACILITIES.

(A) The grantee shall make available to all subscribers the option to receive a specific number of channels as shall be stated in a franchise agreement.

(B) (1) The grantee shall maintain at least 1 specially designated channel for the exclusive use of the municipality and other public authorities in the municipality, 1 specially designated channel for the use of educational institutions serving the community and 1 public access channel available to the community.

(2) Unless otherwise stated in a franchise agreement, the grantee shall not make use of any channel reserved for use pursuant to this division (B).

(C) Studios and associated production equipment will be located in a mutually agreed upon site to meet the public's need for public access, and to accommodate the specially designated channels described herein. Financial and technical support and replacement and maintenance of equipment for the facilities shall be separately incorporated into the franchise by agreement.

(D) The grantee shall incorporate into its cable system the capacity to permit the municipality, in times of emergency, to override by remote control the audio, video and/or text of all channels, simultaneously, which the grantee may lawfully override. Emergency override capacity shall be activated by touch-tone telephone, including cellular telephones or personal communications system (PCS) telephones. The grantee shall provide emergency broadcast capacity pursuant to FCC rules. The grantee shall cooperate with the municipality in the use and operation of the emergency alert system.

(E) Interconnection.

(1) The grantee shall, on request by the municipality, connect its cable system within the municipality to any cable system that is owned or operated by the grantee or any affiliate or subsidiary of the grantee in any contiguous municipality.

(2) The municipality also may request that the grantee interconnect its system with other communication facilities within or contiguous to the municipality. The interconnection shall be negotiated by the municipality and the grantee. Upon receiving a request from the municipality to so interconnect, the grantee shall immediately initiate negotiations with the other affected system or systems in order that all costs may be shared equally among cable companies for both construction and operation of the interconnection link. The grantee may be granted reasonable extensions of time to interconnect, or the municipality shall rescind its request to interconnect, upon petition by the grantee to the municipality, if the grantee has negotiated in good faith and has arrived at impasse with the operator or franchising authority of the system to be

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interconnected, or that the cost of the interconnection would cause an unreasonable or unacceptable increase in subscriber rates, or that the interconnection is technically infeasible.

(3) The grantee shall cooperate with any interconnection corporation, regional interconnection authority, municipality or state or federal regulatory agency that may be hereafter established for the purpose of regulating, financing or otherwise providing for the interconnection of cable systems beyond the boundaries of the municipality.

(F) The grantee shall provide such additional services and facilities as are agreed upon within a franchise agreement.

(Ord. 2000-06, § 35)

§ 113.053 RULES AND REGULATIONS.

(A) In addition to the inherent powers of the municipality to regulate and control any cable television franchise, and those powers expressly reserved by the municipality, or agreed to and provided for herein, the right and power is hereby reserved by the municipality to promulgate such additional regulations as it shall find necessary in the exercise of its lawful police powers as referenced in [§ 113.026](#) herein, in furtherance of the terms and conditions of the franchise; provided, however, that, the rules, regulations, terms and conditions shall not be in conflict with the provisions hereof, any franchise agreement, or applicable state and federal laws, rules and regulations.

(B) The municipality may also adopt such regulations at the request of grantee upon application.

(Ord. 2000-06, § 36)

§ 113.054 PERFORMANCE EVALUATION SESSIONS.

(A) Unless otherwise agreed to in a franchise agreement, the municipality and the grantee may hold scheduled yearly performance evaluation sessions within 30 days of each anniversary date of the grantee's award or renewal of the franchise and as may be required by federal and state law.

(B) Special evaluation sessions may be held at any time during the term of the franchise at the request of the municipality or the grantee.

(C) All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with legal notice. The grantee shall notify its subscribers of all evaluation sessions by announcements on the government access channel and at least 1 channel provided by the grantee which cable casts local news between the hours of 7:00 p.m. and 9:00 p.m. for 5 consecutive days preceding each session.

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

(E) Members of the general public may add topics either by working through the grantee, the municipality, or by presenting a petition. If such a petition bears the valid signatures of 25 or more residents of the municipality, the proposed topic or topics shall be added to the list of topics to be discussed at the evaluation session.

(Ord. 2000-06, § 37)

§ 113.055 RATE CHANGE PROCEDURES.

Pursuant to the Cable Television Consumer Protection and Competition Act of 1992, the Consortium, on behalf of the municipality, is currently certified to regulate the Basic Service rates charged by grantee, and the rates for equipment and services needed to deliver basic service. Under these rules, the grantee is required to obtain approval from the Consortium for a rate increase for any change to the rates for basic service. Should federal or state law permit further rate regulation beyond basic service, the Consortium, on behalf of the municipality, may assume such rate regulation and recommend the adoption of appropriate procedures for such regulation by the municipality and its other members.

(Ord. 2000-06, § 38)

§ 113.056 FORFEITURE AND TERMINATION.

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

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

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

(3) Failure to begin or complete system construction or system extension as provided under [§ 113.038](#);

(4) Failure to provide the services promised in the grantee's initial application;

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

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

(7) Failure to pay any fees or other consideration when due pursuant to the franchise or this chapter.

(B) The municipality shall make a written demand that the grantee comply with any such provision, rule, order or determination under or pursuant to the franchise. In the event that the violation by the grantee continues for a period of 30 days following the written demand without written proof satisfactory to the municipality that the corrective action was initiated immediately

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and thereafter has been completed or has been continuously, actively, and expeditiously pursued, the municipality may place the issue of termination of the franchise before the Board. The municipality shall cause to be served upon the grantee, at least 20 days prior to the date of the meeting, a written notice of intent to request the termination and the time and place of the meeting.

(C) The Board shall hear and consider the issues and shall hear any person interested therein and shall determine in its discretion whether any violation by the grantee has occurred. The grantee shall be afforded an opportunity to be heard at the hearing, including an opportunity to present all relevant evidence and witnesses and to question witnesses presented against the grantee. The grantee may, at its own expense, make a transcript of any such hearing.

(D) In the event that the Board determines that the violation by the grantee was the fault of the grantee and within its control, and the grantee is not taking actions to correct the violation if the violation could not be corrected within the 30 day time frame mentioned above, then the Board may, by resolution stating the violation or violations on which the decision is based, declare that the franchise of the grantee shall be forfeited and terminated immediately or within such period as the Board in its sole discretion may fix, unless there is compliance.
(Ord. 2000-06, § 39)

§ 113.057 FORCE MAJEURE.

(A) Whenever a period of time is provided in the franchise for either the municipality or the grantee to do or perform any act or obligation, neither party shall be liable for any delays or inability to perform due to causes beyond the control of the party such as war, riot, insurrection, rebellion, sabotage, unavoidable casualty or damage to personnel, materials or equipment, fire, flood, storm, earthquake, tornado or any act of God; provided, however, that, the time period shall be extended for only the actual amount of time the party is so delayed.

(B) An act or omission shall not be deemed to be “beyond the grantee’s control” if committed, omitted, or caused by the grantee, the grantee’s employees, officers or agents or a subsidiary, affiliate or parent of the grantee, or by any corporation or other business entity that holds a controlling interest in the grantee, whether held directly or indirectly.

(C) Further, the failure of the grantee to obtain financing or to pay any money due from it to any person, including the municipality, for whatever reason, shall not be an act or omission “beyond the grantee’s control”.

(D) The failure of the grantee to obtain necessary permits from applicable governmental or utility agencies shall be deemed “beyond the grantee’s control” only if the grantee has made a timely and complete request and application for the permit and is diligently pursuing the issuance of the permit.
(Ord. 2000-06, § 40)

§ 113.058 FORECLOSURE.

Upon the foreclosure or other judicial sale of all or a substantial part of the cable system, or upon the termination of any lease covering all or a substantial part of the cable system, the grantee shall notify the municipality of the fact, and the 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 municipality to the change in control of the grantee shall apply.

(Ord. 2000-06, § 41)

§ 113.059 RECEIVERSHIP.

The municipality shall have the right to cancel a franchise 120 days after the appointment of a receiver, or trustee, to take over and conduct the business of the grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless the receivership or trusteeship shall have been vacated prior to the expiration of 120 days, or unless:

(A) Within 120 days after his or her election or appointment, the receiver or trustee shall have fully complied with all the provisions of this chapter and remedied all defaults thereunder; and

(B) The receiver or trustee, within the 120 days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby the receiver or trustee assumes and agrees to be bound by each and every provision of this chapter and the franchise granted to the grantee.

(Ord. 2000-06, § 42)

§ 113.060 COMPLIANCE WITH STATE AND FEDERAL LAWS.

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

(B) In the event that the municipality determines that a material provision of this chapter is affected by any subsequent action of the state or federal government, the municipality shall modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this chapter in accordance with then applicable law.

(Ord. 2000-06, § 43)

§ 113.061 LANDLORD AND TENANT.

(A) Neither the owner of any multiple unit residential dwelling nor his or her agent or representative shall interfere with the right of any tenant or lawful resident thereof to receive cable service, cable installation or maintenance from a cable television grantee regulated by and lawfully operating under a valid and existing franchise issued by the municipality.

(B) Neither the owner or any multiple unit residential dwelling, nor his or her agent or

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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 the tenant or resident who requests or receives cable service from a grantee operating under a valid and existing cable television franchise issued by the municipality.

(C) No person shall resell, without the expressed, written consent of the grantee and, in the case of government or educational access programming, the written consent of the municipality, any cable service, program or signal transmitted by a cable television grantee under a franchise issued by the municipality.

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

(Ord. 2000-06, § 44)

§ 113.062 APPLICANTS' BIDS FOR INITIAL FRANCHISE.

(A) All bids received by the municipality from the applicants for an initial franchise will become the sole property of the municipality.

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

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

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

(E) Before submitting a bid, each applicant shall be expected to do the following:

- (1) Examine this chapter and the application documents thoroughly;
- (2) Familiarize itself with local conditions that may in any manner affect performance under the franchise;
- (3) Familiarize itself with federal, state and local laws, ordinances, rules and

regulations affecting performance under the franchise; and

(4) Carefully correlate the bid with the requirements of this chapter and the application documents.

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

(G) All bids received shall be placed in a secure depository approved by the municipality and shall not be opened nor inspected prior to the public opening.
(Ord. 2000-06, § 45)

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

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

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

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

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

(E) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose any information required by the application documents regarding other cable systems within the States of Indiana and Illinois 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

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system as of the date of this application; and

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

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

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

(2) Estimated dates of franchise awards;

(3) Estimated number of miles of construction; and

(4) Estimated construction costs.

(Ord. 2000-06, § 46)

§ 113.064 PROCEDURES.

(A) Whenever the municipality determines that the grantee has violated any term, condition or provision of this chapter or the franchise agreement, and determines it appropriate to impose monetary penalties, a written notice shall be given to the grantee informing it of the alleged violation or liability. The written notice shall describe in reasonable detail the specific violation so as to afford the grantee an opportunity to remedy the violation. The grantee shall have 30 days notice subsequent to the date of the notice in which the grantee shall have the opportunity to cure the violation before the municipality may impose penalties unless the violation is, in the opinion of the municipality, of such a nature so as to require more than 30 days and the grantee proceeds, immediately upon receipt of the notice, and continuously, and diligently, to cure the violation. In any case where the violation is not cured within 30 days of notice from the municipality, or such other time to which the grantee and the municipality may mutually agree, the municipality may proceed to impose penalties and to exercise any other remedy provided in this chapter or the franchise agreement.

(B) (1) The grantee may, within 10 days of receipt of notice, notify the municipality that there is a dispute as to whether a violation or failure has, in fact, occurred.

(2) The notice by the grantee to the municipality shall specify with particularity the matters disputed by the grantee and shall stay the running of the 30-day cure period pending decision by the governing body as required below.

(3) The governing body shall hear the grantee's dispute. The grantee must be given at least 5 days notice of the hearing. At the hearing, the grantee shall be entitled to the right to present evidence and the right to be represented by counsel. In the event the municipality upholds the finding of a violation, the grantee shall have 15 days thereafter or the remaining time period set in division (A) above, whichever is longer, or such other time period as the grantee and the municipality mutually agree, to correct the violation.

(4) In any case where the violation is not cured within 30 days of notice from the municipality, or such other time to which the grantee and the municipality may mutually agree, the municipality may proceed to impose penalties retroactive to the date of notice to cure the

violation(s) and to exercise any other remedy provided in this chapter or the franchise agreement.

(C) The rights reserved to the municipality under this section are in addition to all other rights of the municipality whether reserved by this chapter or authorized by law or equity, and no action, proceeding or exercise of a right shall affect any other right the municipality may have. (Ord. 2000-06, § 48)

§ 113.065 LIMITS ON GRANTEE RECOURSE.

(A) The grantee may seek enforcement of the terms of its franchise at law or in equity, but shall have no recourse against the municipality for money damages or for any loss, expense or damage resulting from the terms and conditions of the franchise nor because of the municipality's enforcement thereof. The grantee shall be deemed to expressly agree that it accepts the franchise relying solely on its own investigation and understanding of the power and authority of the municipality to grant the franchise.

(B) The grantee shall acknowledge that it has not been induced to accept the franchise by any promise, verbal or written, by or on behalf of the municipality or by any third person regarding any term or condition of the franchise not otherwise expressed herein. The grantee shall further be deemed to warrant that no promise or inducement, oral or written, has been made to any municipality employee or official regarding receipt of the franchise, other than as contained in the franchise. (Ord. 2000-06, § 49)

§ 113.066 NON-ENFORCEMENT BY MUNICIPALITY.

The grantee shall not be excused from complying with any of the terms and conditions of the franchise by any failure of the municipality, on any 1 or more occasions, to insist on the grantee's performance of, or to seek the grantee's compliance with, any 1 or more of the terms or conditions. (Ord. 2000-06, § 50)

§ 113.067 RIGHTS AND REMEDIES.

In the event of a violation or an alleged violation of the franchise by the grantee, the municipality, by suit, action, mandamus or other proceeding, in law or in equity, may enforce or compel the performance of the terms of the franchise to the full allowable extent. In the event of a judicial proceeding, the prevailing party shall be entitled to reimbursement of all costs and expenses, including reasonable attorneys fees, incurred in connection with the judicial proceeding. (Ord. 2000-06, § 51)

§ 113.068 THEFT OF SERVICE.

It shall be unlawful for any person to install, attach, wire, program or connect, or cause to be installed, attached, wired, programmed, or connected any equipment, device or computer hardware or software which enables the use of cable television signals transmitted by the grantee

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without compensation for the cable television signals. No person receiving within the municipality any cable service, program, or signal transmitted by any grantee operating under a franchise issued by the municipality shall resell such service, program or signal without the expressed written consent of the grantee. Violations of the provisions of this section shall be punishable by a fine of no less than \$500 per day per occurrence, and where applicable, incarceration as so prescribed by statutory provisions concerning theft of services.

(Ord. 2000-06, § 52)

§ 113.069 WAIVER.

(A) A grantee or other person may not be excused from complying with any of the terms and conditions of this chapter or a franchise agreement by any failure of the municipality, upon 1 or more occasions, to require performance or compliance.

(B) The municipality may, on its own motion or at the request of an applicant for a franchise or a grantee for good cause shown, waive any requirement of this chapter.

(Ord. 2000-06, § 53)

§ 113.070 TIME IS OF THE ESSENCE.

Whenever any provision of this chapter or the franchise agreement shall set forth any time for any act to be performed by a grantee, such time shall be deemed to be of the essence. The grantee's failure to perform within the time allotted shall, in all cases, be sufficient grounds for the municipality to invoke an appropriate remedy or penalty, which may include the revocation of the franchise.

(Ord. 2000-06, § 54)

§ 113.071 DELEGATION OF POWERS.

Any right, power or duty of the municipality, the agency or any official of the municipality under this chapter may be transferred or delegated by ordinance, resolution or other appropriate action of the municipality to an appropriate officer, employee or department of the municipality, the Consortium or any legal authority created for the purpose of regulating the operation and development of the cable system.

(Ord. 2000-06, § 56)

§ 113.072 GOVERNING LAW.

In any controversy or dispute under this chapter, the laws of the State of Indiana shall apply.

(Ord. 2000-06, § 58)

§ 113.073 EFFECTIVE DATE.

This chapter shall become effective 10 days following its passage, approval and publication in accordance with the requirements of applicable law.

(Ord. 2000-06, § 59)

§ 113.999 PENALTY.

For the violation of any of the following provisions of this chapter, as amended from time to time, or the franchise agreement, penalties may be levied against the grantee and shall be paid by the grantee and, if not so paid, shall be chargeable to the letter of credit or cash security deposit, as follows:

(A) Failure to furnish, maintain or offer all cable services to any potential subscriber within the municipality upon order of the municipality: \$250 per day, per violation, for each day the failure occurs or continues;

(B) Failure to obtain or file evidence of required insurance, construction bond, performance bond or other required financial security: \$200 per day, per violation, for each day the failure occurs or continues;

(C) Failure to provide access to data, documents, records or reports to the municipality as required by this chapter, including without limitation [§§ 113.037, 113.047 through 113.049](#): \$150 per day, per violation, for each day the failure occurs or continues;

(D) Failure to comply with applicable construction, operation or maintenance standards: \$200 per day, per violation, for each day the failure occurs or continues;

(E) Failure to comply with a rate decision or refund order: \$300 per day not stayed, per violation not stayed, for each day such a violation occurs or continues;

(F) Any violations for non-compliance with the customer service standards of [§§ 113.041 through 113.044](#): \$250 per day, per violation, for each day that the non-compliance continues; and

(G) Any other violations of this chapter: not less than \$50 per day to a maximum of \$750 per day, per violation, for each day such violation occurs or continues and the governing body of the municipality may determine the amount of the penalty for other violations which are not specified in a sum not to exceed \$750 for each violation, with each day constituting a separate violation.

(Ord. 2000-06, § 47)