

CHAPTER 8

CABLE TELEVISION

8-1-1 **DEFINITIONS.** For the purposes of this Chapter, the following terms, phrases, words, and their derivations shall have the meaning given herein, unless the context clearly indicates that another meaning is intended. The word “shall” is always mandatory, and not merely directory.

(A) **“Access Channels”** shall mean those channels set aside for specific access purposes, as described in **Sections 611 and 612** of the Cable Act.

(B) **“Annual Gross Revenue”** shall mean all gross revenues received by the Franchisee from the operation of the Cable Television system pursuant to this Chapter, but shall not include any amount of:

- (1) tax; fee; assessment; or charge of any kind collected by the Franchisee on behalf of any governmental authority or
- (2) any amount assessed to satisfy any requirement imposed upon Franchisee to support public, educational, or governmental channels or the use of such channels.

(C) **“Application”** shall include all written communications, in whatever form, made by the Franchisee to the Village concerning the construction, rendition of services, maintenance, or any other matter pertaining to the Cable Television System contemplated herein.

(D) **“Basic Cable Subscriber Services; Basic Cable Service”** shall mean the lowest priced tier of service which includes the retransmission of local television broadcast signals as defined in the Cable Act.

(E) **“Board of Trustees; Board”** shall mean the present governing body of the Village or any successor to the legislative powers of the present Board of Trustees.

(F) **“Cable Act”** shall mean the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992.

(G) **“Cable Television System”** shall mean any facility which consists of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which provides other communications services.

(H) **“Channel”** shall mean a band of frequencies in the electromagnetic spectrum which is capable of carrying either **one (1)** audio-video television signal and/or a number of non-video signals.

(I) **“Chief Administrative Officer”** shall mean the existing or succeeding Village Clerk, or such other Village official as the Board of Trustees may designate as Chief Administrative Officer.

(J) **“Federal Communications Commission, FCC”** shall mean that administrative agency of the Federal government responsible for cable television regulation on a national level, or its lawful successor.

(K) **“Franchise”** shall mean the permission, license or authorization given hereunder to construct, operate and maintain a Cable Television System in the Village, including this Chapter.

(L) **“Franchisee”** shall mean any grantee under this Chapter receiving a franchise granted herein; or the successors, transferees or assignees of such grantee.

(M) **“Good Cause”** shall represent that set of facts and circumstances which, in an individual case, a reasonable person would adjudge to be beyond Franchisee’s reasonable control and which would, therefore, represent a justifiable excuse of nonperformance. Depending on the facts and circumstances, good cause may include, but shall not be limited to, delays or interruptions arising from necessary, utility changes, rearrangements, power outages, damage to the equipment of Franchisee by the Village or a third party, the fulfillment of any Federal, state and/or local governmental or regulatory restrictions or requirements, national emergency, uncontrollable material shortages, fire, earthquakes or the elements and acts of God.

(N) **“Normal Service Interval”** shall mean the period between the time that Franchisee will begin working on service problems as specified in Section 76.309(c)(2)(ii) of the Rules and Regulations of the Federal Communications Commission as it may be amended from time to time.

(O) **“Ordinance”** as used herein shall include this Ordinance and as the same from time to time may be amended.

(P) **“Person”** shall mean any person, firm, partnership, association, corporation, company or organization of any kind.

(Q) **“President”** shall mean the existing or succeeding Chief Executive Office of the Village, or his/her designee.

(R) **“State”** shall mean the State of Illinois.

(S) **“Street”** shall mean the surface of and the space above and between any public street, road, highway, freeway, lane, path, public way or place, alley, court, sidewalk, boulevard, parkway, drive or other easement now or hereafter held by Village for the purpose of public travel and shall include such other easements or rights-of-way as shall be now held or hereafter held by the Village which shall, within their proper use and meaning, entitle the Village and its Franchisee to the use thereof for the purpose of installing or transmitting Cable Television System transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a Cable Television System.

(T) **“Subscriber”** shall mean a purchaser of any service delivered over the system to an individual dwelling unit or of service to be utilized in connection with a business, trade or profession.

(U) **“Village”** shall mean the Village of Steeleville.

(V) **“Village Engineer”** shall mean the existing or succeeding Director of the Engineering Department of the Village, or his/her designee.

(W) **“Village Clerk”** shall mean the existing or succeeding Village Clerk of the Village of Steeleville, Illinois.

(X) **“Village Attorney”** shall mean the existing or succeeding retained legal counsel of the Village or his/her assistants.

8-1-2 FRANCHISE AGREEMENT. There is hereby granted by the Village of Steeleville to Cable Equities of Colorado, Ltd. (“Franchisee”), its successors and assigns, the right, privilege and Franchise to construct, operate, maintain and upgrade a Cable Television System within the franchise area as herein defined, for a period of **fifteen (15) years** from the effective date of this Chapter, subject to the conditions and restrictions as hereinafter provided. Said contract may be renewed by the Village for subsequent additional **fifteen (15) year period** if such renewal is requested in writing and is in compliance with the Cable Act.

8-1-3 AUTHORITY NOT EXCLUSIVE. The right to use and occupy said franchise territory as defined in **Section 8-1-4** herein for the purposes herein set forth shall not be exclusive, and the Village reserves the right to grant a similar use of said franchise area to any person or entity at any time during the period of this Franchise, in accordance with State and federal law. The Village shall not authorize or permit another Cable Television System to operate within the franchise territory on terms or conditions more favorable or less burdensome to such operator than those applied to Franchisee pursuant to this Franchise. If the Village authorizes or permits another Cable Television System to operate within the Franchise territory, it shall do so on condition that such Cable Television System indemnify and hold harmless the Franchisee for and against all costs and expenses incurred in strengthening poles, rearranging attachments, placing underground facilities, and all other costs including those of Franchisee, the Village, and utilities, incident to inspections, make ready, and construction of an additional Cable Television system in the Franchise territory, and Franchisee shall be designated a third party beneficiary of such conditions as are incorporated into the authorization(s) granted to another Cable Television System.

8-1-4 FRANCHISE TERRITORY. This Franchise is for the present territorial limits of the Village of Steeleville, Illinois, for any area henceforth added thereto during the term of this Franchise.

8-1-5 OPERATIONAL STANDARDS.

(A) **Technical Operations and Line Extensions.** The Cable Television System as contemplated herein shall be installed and maintained in accordance with the accepted industry standards and will meet all applicable technical standards of the Federal Communications Commission. The Cable Television System will be built in all areas of the Village having a density of **forty (40)** occupied dwelling units per cable mile. The number of miles will be calculated starting at the closest point of the activated cable system where the extension must be connected and will continue until reaching **three hundred (300) feet** of the dwelling unit.

(B) **Access for Franchised Cable Television System.** In case of new construction or property development where utilities are to be placed underground, the developer or property owner shall give Franchisee reasonable notice of not less than **thirty (30) days** prior to such construction or development, and of the particular date on which open trenches will be available for Franchisee's installation of cable, conduit, pedestals and laterals to be provided at Franchisee's expense. Franchisee shall also provide specifications as needed for trenching. Cost of trenching and easements required to bring service to the development shall be borne by the developer or property owner.

(C) **Community Outlets.** Franchisee will provide, at the written request of the Village, at **six (6)** locations in publicly owned facilities, **one (1)** outlet each of Basic Cable Service so long as such location is passed by serviceable cable lines, and the installation of such outlet will not place an undue economic hardship on Franchisee, i.e. cost more than the average service drop.

8-1-6 CONSTRUCTION STANDARDS.

(A) **Reasonable Care.** Franchisee shall, at all times, employ reasonable care and shall install and maintain devices or systems for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

(B) **Interference.** Franchisee shall install and maintain its wires, cables, fixtures and other equipment so as not to interfere with the equipment of any utility serving the residents of the Village or any other entity lawfully and rightfully using the conduit, pole or other part of the right of way.

(C) **Construction and Maintenance Standards.** The Cable Television System shall at all times conform to the construction and maintenance standards set forth below:

- (1) Methods of construction, installation and maintenance of the Cable Television System shall comply with the National Electrical Safety Code 1975 (ANSI CI-1975), and any future amendments, modifications or replacements thereof, to the extent that such Code is consistent with the local law affecting the construction, installation and maintenance of

electrical supply and communications lines. To the extent that such Code is inconsistent with the other provisions of this Franchise or with local law, the latter shall govern.

- (2) Any tower constructed or maintained in the Village for use in the Cable Television system shall comply with the standards in Structured Standards for Steel Antenna Towers and Antenna Supporting Structures, EIE Standards RS-222-A, as published by the Engineering Department of the Electronic Industries Association, and as the same may be, from time to time, modified, amended or replaced.
- (3) Installations and physical dimensions of any tower constructed in the Village for use in the Cable Television System shall comply with all appropriate Federal Aviation Agency Regulations including, but not limited to, Objectives Affecting Navigable Airspace, 14 C.F.R., Section 77.1 et seq., and as the same may be, from time to time, modified, amended or replaced.
- (4) Any antenna structure in the Cable Television system shall comply with Construction, Marking and Lighting of Antenna Structure, 47 C.F.R., Section 77.1 et seq., as the same may be, from time to time, modified, amended or replaced.
- (5) All working facilities and conditions used during construction, installation and maintenance of the Cable Television System shall comply with the standards of the Occupational Safety and Health Administration.
- (6) Franchisee shall at all times use reasonable care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

(D) **Published Standards.** As stated above, Franchisee shall be required to reasonably comply with standards as set forth in the publications recited above, this to include any modifications, replacements and/or amendments thereto. However, in the event any publications mentioned herein should become obsolete or should expire, then Franchisee shall be required to comply with the latest set of published standards available at such time of obsolescence or expiration to the extent practically and economically feasible.

- (1) Franchisee shall construct and operate the system and related facilities in accordance with generally accepted related industry codes, standards and recommendations that are applicable now or that may hereafter become applicable.

(E) **Facilities Placement.** All conductors, cables, towers, poles and other components of the system shall be located and constructed by the Franchisee in back of the street curbs, except insofar as such components cross streets and public rights of way, so as to provide minimum interference with access by adjoining property owners to the streets and public ways, and no pole or other fixture of the Franchisee shall be placed in the public way so as to interfere with the usual travel on such public way.

(F) **Waiver.** The requirements of **Sections 8-1-6(A) through (E)** above shall be waived by the Village upon showing of good cause.

8-1-7 CONDITIONS OF STREET OCCUPANCY.

(A) **Code Compliance.** All transmissions and distribution structures, lines and equipment erected by Franchisee within the franchise area shall be located so as to not cause unreasonable interference with the proper use of streets, alleys and other public ways and places and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of said streets, alleys or other public ways and places. The Cable Television System shall be constructed and operated in compliance in all material respects with all adopted local, state and national construction and electrical codes which are in effect as of the date of this Chapter.

(B) **Maps.** Prior to commencing any new construction, Franchisee shall submit to the Village upon request detailed maps showing proposed construction locations. These maps shall show the proposed placement of Franchisee's cables on the Village right of way, poles that are to be erected by Franchisee as required for construction, and locations where Franchisee proposes to attach to existing utility poles. Franchisee shall cooperate with the Village and any of its agents during any new construction period and throughout the full term of the Franchise in regards to construction procedures, practices and locations. All cable construction and installations located within Village property or Village rights-of-way shall be installed and maintained at such locations and depths so as to not interfere with any Village road or right-of-way maintenance.

(C) **Relocation of Facilities.** Whenever the Village or State of Illinois shall require the relocation or re-installation of any property of Franchisee in any of the streets of the franchise area, it shall be the obligation of the Franchisee, upon notice of such requirements, to cooperate in the timely removal and relocation or reinstallation of said property so as not to cause unreasonable delay. Such relocations, removal or reinstallations by Franchisee shall be at the cost of Franchisee unless funds are otherwise available to partially or wholly reimburse franchisee.

(D) **Facilities Placement.** Whenever in any place within the franchise area, all or any part of both the electric and telephone utilities shall be located underground, it shall be the obligation of the Franchisee to locate or to cause its property to be located underground within such places. If the electric and telephone

utilities shall be relocated underground in any place within the franchise area after Franchisee shall have previously installed its property, Franchisee shall, nevertheless, at the same time or in a timely manner thereafter, remove and relocate its property also underground in such places. Any facilities of Franchisee placed underground at the property owner's request, in an area where electric or telephone facilities are aerial, shall be installed with the additional expense being paid by the property owner.

(E) **Tree Trimming.** Franchisee shall have the authority to trim trees upon and overhanging streets of the franchise area so as to prevent the branches of such trees from coming into contact with Franchisee's wires and cables. Franchisee shall obtain from the Village, if required, a permit to conduct any such trimming and the same shall be conducted in strict obedience of all local laws and ordinances and at the expense of Franchisee.

(F) **Repair of Streets.** In the case of any disturbance of any road, ditch or other area within the Village right-of-way caused by Franchisee, Franchisee shall, at its own cost and expense and in a manner approved by the Village, replace and restore such street or sidewalk to its previous condition reasonable wear and tear excepted.

(G) **Repairs.** Franchisee shall maintain, repair and keep in good condition for a period of **one (1) year** following such disturbance all portions of a sidewalk or street disturbed by it or its agents, provided such maintenance and repair shall be made necessary because of defective workmanship or materials supplied by Franchisee.

(H) **Wire Raising.** Franchisee shall, upon the request of any person holding a building permit issued by the Village, temporarily remove, raise or lower its wires to permit the moving of such building(s). The expense of such temporary removal or raising or lowering of the wires shall be paid by the person requesting the same, and the Franchisee shall have the authority to require such payment in advance. Franchisee shall be given not less than **seventy-two (72) hours'** advance notice to arrange for such temporary wire changes.

(I) **Emergency Procedures.** If at any time, in case of fire or disaster in the franchise area, it shall become necessary in the judgment of the Chief Administrative Officer or the Head of the Department of Public Safety, Fire Department Division or like department, to cut or move any of the wire cables, amplifiers, appliances or other fixtures of Franchisee, this may be done and the repairs thereby rendered necessary shall be made by Franchisee, which expense shall be reimbursed by the Village.

(J) **Warning Devices.** Franchisee's work, while in progress, shall be properly executed at all times with suitable barricades, flags, lights, flares or other devices as are reasonably required to protect all members of the public having occasion to use the portion of the street involved or the adjacent property.

8-1-8 **FRANCHISE FEES.**

(A) **Payment to Village.** Franchisee herein shall pay to the Village for the use of the streets and other facilities of the Village in the operation of the Cable Television System and for the Village supervision thereof a sum equal to **three percent (3%)** of the Annual Gross Revenues, as defined herein from operations within the Village. Said fee shall be paid on a semi-annual basis within **sixty (60) days** after the end of June and December of each year. With such payment the Franchisee shall file with the Village a statement showing the Annual Gross Revenues received by the Franchisee during the preceding payment period.

(B) **Payment Upon Termination.** In the event this Franchise should be terminated or forfeited prior to the end of the Franchise term, as defined herein, Franchisee shall immediately submit to the Village a financial statement prepared by a certified public accountant or the chief financial officer of Franchisee showing the Annual Gross Revenues of Franchisee for the time elapsed since the last fiscal year report. Franchisee shall pay to the Village not later than **sixty (60) days** following the termination of this Franchise a like percentage of such Annual Gross Revenues and any other sums legally due and owing the Village.

(C) **Penalties.** In the event that any payment is not made on or before the applicable date fixed herein, Franchisee shall be subject to the penalty provided for hereinafter.

(D) **Right to Inspect Books.** The Village shall have the right to inspect the Franchisee's records showing the Annual Gross Revenues from which its franchise payments are computed. The right of audit and computation of any and all amounts paid under this Franchise shall always be accorded to the Village. Should the Village notify Franchisee in writing of its desire to inspect and/or audit Franchisee's records, Franchisee shall be obligated to produce such records and make them available to the Village within **twenty (20) working days** of such notification.

8-1-9 **SERVICE MAINTENANCE STANDARDS.**

(A) **Personnel.** Franchisee shall maintain sufficient repair and maintenance crews capable of responding to subscriber complaints or requests for service within the normal service interval as defined herein.

(B) **Service to Subscribers.** Service to Subscribers shall be as follows:

- (1) Any verbal, telephonic or written complaint relating to the quality or continuity of service shall be attended to within the normal service interval as defined herein.
- (2) The provisions contained in this Section shall not apply if the discontinuation of service is occasioned because of an act of God, strike, national emergency, or any other circumstance beyond the control of Franchisee. Similarly, this provision shall not apply to service requests or

complaints pertaining to television set malfunctions or other breakdowns not related to the operation of the Cable Television system.

- (3) Franchise shall have the right to prescribe reasonable service rules, regulations and rates for the conduct of its business; provided however that such service rules and regulations, as well as subsequent amendments or modifications thereof, shall be made available upon request for inspection by the Village.

8-1-10 COMPLAINT PROCEDURES.

(A) **Procedures and Logs.** Franchisee shall establish procedures for receiving, acting upon and resolving subscriber complaints. Franchisee shall furnish a notice of such procedures to each subscriber at the time of the initial subscription to the system. In addition, Franchisee shall maintain a written record, or "log", listing the date and time of each customer's complaints, identifying the subscriber, describing the nature of the complaints, and when and what action was taken by Franchisee in response thereto. Such records shall be kept for a period of **one (1) year** reflecting the operations to date and shall be available for inspection during normal business hours.

(B) **Village Complaint Officer.** The Chief Administrative Officer or his/her authorized designee is hereby designated as the "Village Complaint Officer" and shall have the primary responsibility for the continuing administration of the complaint procedures hereunder.

- (1) Any subscriber, user, programmer or other interested person who has a complaint regarding the quality of cable television service, equipment malfunctions, billings, or any other matters, which remain unsolved for **thirty (30) days** after same have been brought to Franchisee's attention, may file a complaint in writing with the Village Complaint Officer.
- (2) Upon the filing of such a complaint, such Village Complaint Officer shall notify Franchisee and make an investigation to determine whether or not there is probable cause to credit the allegations. If he determines after such investigation that there is probable cause to credit the allegations of the complaint, he shall so notify Franchisee and complainant in writing and promptly endeavor to resolve the matter.
- (3) In the event that the Village Complaint Officer is unable to obtain conciliation within a reasonable time, he shall promptly set the matter for a hearing where all parties may give evidence, and the merits of the dispute will be

decided. The Village Complaint Officer shall make public his decision, along with a statement reciting the basis therefor.

- (4) Within **thirty (30) days** thereafter, either Franchisee or the complainant may appeal in writing the decision rendered by the Village Complaint Officer to the Board. At the appeal hearing, the aggrieved party may contest the findings of fact or interpretation of controlling law, at which time the Board may affirm, reject, or modify the decision of the Village Complaint Officer.
- (5) The affirmance, rejection or modification of said decision by the Board shall be final, subject to judicial review upon request of the Franchisee.

(C) **Subscriber Notification.** Franchisee shall notify each Subscriber at the time of initial installation and all Subscribers at least once a year of the name and address of the Village Complaint Officer and of the procedures contained in this Section in accordance with Section 76.607 of the FCC Rules and Regulations.

8-1-11 PERFORMANCE BOND.

(A) **Bond Amount.** Within **thirty (30) days** after acceptance of this Franchise, Franchisee shall deposit with the Village Clerk a performance bond from surety authorized to do business in the State of Illinois, in the minimum amount of **Five Thousand Dollars (\$5,000.00)**. The form and content of such performance bond shall be acceptable to the Village. The Performance Bond shall be used to ensure the faithful performance by Franchisee of all provisions of this Chapter; compliance with all orders, permits and direction of any agency, commission, board, department, division, or office of the Village having jurisdiction over its acts or defaults under this Franchise; and the payment of the Franchisee of any claims, liens and taxes due the Village which arise by reason of the construction, operation or maintenance of the Cable Television System.

(B) **Use of Bond.** If Franchisee fails to pay the Village any compensation within the time fixed herein, and fails after **thirty (30) days'** written notice to pay to the Village any fees due and unpaid, or fails to repay the Village within such **thirty (30) days** any damages, costs or expenses which the Village is compelled to pay by reason of the acts of default of Franchisee in connection with this Franchise, and fails after receipt of **thirty (30) days'** written notice of such failure by the Village to comply with any provision of this Franchise which the Village reasonable determines can be remedied by demand on the performance bond, the Village may, subject to this Section herein, demand payment of the amount thereof, with interest and any penalties, from the performance bond. Upon such demand for payment, the Village shall notify Franchisee of the amount and date thereof.

(C) **Appeal.** Notwithstanding **Section 8-1-12(B)** hereinabove, in the case of a bona fide dispute regarding compliance, Franchisee may request a hearing

before the Village's Chief Administrative Officer within **thirty (30) days** after written notification of noncompliance and penalty by the Village. At such hearing, all parties may file evidence and the merits of the dispute will be decided. The Chief Administrative Officer shall make public his/her decision, along with a statement reciting the basis therefor. Within **thirty (30) days**, Franchisee may appeal to the Board, in writing, the decision rendered by the Chief Administrative Officer. At the appeal hearing, Franchisee may contest the findings of fact or interpretation of controlling law, at which time the Board may affirm, reject or modify the decision of the Chief Administrative Officer. The affirmance, rejection or modification of said decision by the Board shall be final, subject to judicial review upon request of Franchisee.

8-1-12 LIABILITY INSURANCE.

(A) **Maintenance of Insurance.** Franchisee shall maintain, and by its acceptance of this Franchise specifically agrees that it will maintain, throughout the term of this Franchise, liability insurance insuring the Village and Franchisee with regard to any and all damages for the following:

- (1) A general comprehensive public liability insurance policy indemnifying, defending and saving harmless the Village, its officers, boards, commissions, agents or employees from any and all claims by any person or entity whatsoever on account of injury to or death of a person or persons or derivative from any injury to or death of a person or persons (i.e., including but not limited to claims for loss of services, medical and other expenses) occasioned by the operations of Franchisee under this Franchise or alleged to have been so caused with a minimum liability of **Five Hundred Thousand Dollars (\$500,000.00)** per personal injury or death of any **one (1) person** and **One Million Dollars (\$1,000,000.00)** per personal injury or death of **two (2)** or more persons in any **one (1)** occurrence.
- (2) Property damage insurance indemnifying, defending and saving harmless the Village, its officers, boards, commissions, agents and employees from and against all claims by any person or entity whatsoever for property damage, including loss of use and all consequential damages, occasioned by the operation of Franchisee under this Franchise or alleged to have been so caused with a minimum liability of **Two Hundred Fifty Thousand Dollars (\$250,000.00)** for property damage to any **one (1) person** and **Five Hundred Thousand Dollars (\$500,000.00)** for property damage to any **two (2) persons** in any **one (1) occurrence.**

- (3) **One Million Dollars (\$1,000,000.00)** for all other types of liability.
- (4) All insurance shall be kept in full force and effect by Franchisee throughout the term of this Franchise and until after the removal of all poles, wires, cables, underground conduits, manholes and other conductors and fixtures incident to the maintenance and operation of the Cable Television System as defined in this Franchise.

(B) **Certificate of Insurance.** An insurance certificate obtained by Franchisee in compliance with this Section shall be filed and maintained with the Village Clerk during the term of this Franchise.

(C) **No Limitation.** Neither the provision of this Section nor any damages recovered by the Village hereunder shall be construed as limiting the terms, obligations or liabilities imposed under any other Section of this Franchise.

8-1-13 GENERAL INDEMNIFICATION.

(A) **Liability and Indemnification Procedures.** By its acceptance of this Franchise, the Franchisee specifically agrees that it will indemnify and hold the Village, including all its officials, employees and agents, harmless against any and all claims by third parties arising out of the Franchisee's exercise of its rights and obligations under this Franchise and the Franchisee's negligence with respect to the operation of its Cable Television System.

(B) **Cost of Defense.** Franchisee shall pay all reasonable expenses incurred by the Village in defending itself against all such claims, including all out-of-pocket expenses such as attorney fees, provided Franchisee had written notice of such claim and has declined to defend the Village.

8-1-14 ASSIGNMENT OF FRANCHISE.

(A) **Consent Necessary.** No assignment of this Franchise shall take place, whether by forced or voluntary sale, lease, or assignment, without prior written notice to and approval by the Board, which approval shall not be unreasonably withheld. The notice shall include full identifying particulars of the proposed transaction, and the Board shall act by resolution. The Board shall have **forty-five (45) days** within which to approve or disapprove an assignment. If no action is taken within such **forty-five (45) day period**, approval shall be deemed to have been given.

(B) **Hypothecation.** Franchisee shall have the right to mortgage, pledge or otherwise hypothecate the assets of its Cable Television System including the rights granted under this Franchise.

8-1-15 REVIEW AND RENEWAL.

(A) **Compliance With Cable Act.** The Board shall not make a decision involving the renewal, cancellation or expiration of Franchisee's Franchise unless the Village's Chief Administrative Officer has advised Franchisee in writing, at least **thirty (30) days** prior to such meeting, as to its time, place and purpose. Such renewal procedures will be conducted pursuant to Section 626 of the Cable Act.

(B) **New Developments.** It shall be the policy of the Village to amend this Franchise, upon application of the Franchisee, when necessary to enable Franchisee to take advantage of advancements in the state of the art which will afford it an opportunity to more effectively, efficiently or economically serve its Subscribers. No such amendment shall create any rights in Franchisee other than those specifically set out in such amendments.

8-1-16 REVOCAION OF FRANCHISE.

(A) **Revocation.** In addition to all other rights and powers reserved or pertaining to the Village, the Village reserves, as an additional and as a separate and distinct remedy, the right to revoke this Franchise and all rights and privileges of Franchisee hereunder in any of the following enumerated events or for any of the following reasons:

- (1) Franchisee violates a material or substantial term or condition of this Chapter and fails within **sixty (60) days** following written notice by the Village to effect compliance; unless effecting compliance within the **sixty (60) days** is not reasonably practicable, in which case Franchisee fails to make a good faith effort to effect compliance within that **sixty (60) day** period; or
- (2) Franchisee attempts to or does practice any fraud or deceit or pattern of material misrepresentation in its conduct or relations with the Village under this Franchise.

(B) **Board Action.** No such revocation shall be effective unless or until the Board shall have adopted an Ordinance setting forth the cause and reason for the revocation and the effective date thereof, which Ordinance shall not be adopted without **thirty (30) days'** prior written notice thereof to Franchisee and an opportunity for the Franchisee to be heard upon the proposed adoption of said Ordinance. Franchisee shall furnish to the Village a written statement at least **ten (10) days** prior to the date on which Board convenes to consider such proposed Ordinance setting out its position relative to the cause(s) of such revocation. In the event the revocation as proposed in said Ordinance depends upon finding of fact, such finding of fact as made by the Board shall be in writing, after the hearing provided for, if requested by Franchisee.

(C) **Compliance With Act.** Notwithstanding the grounds for termination herein, no termination procedure shall be held except in compliance with FCC regulations and the Cable Act.

(D) **Judicial Review.** Franchisee shall not be declared in default nor be subject to any sanction under any provision of this Section in any case in which the performance of such provision is prevented for reasons of good cause. Any final determination on revocation shall be subject to judicial review upon request of the Franchisee.

8-1-17 REMOVAL OF FACILITIES.

(A) **Requirements.** In the event of revocation of this Franchise as provided for in **Section 8-1-15** herein or in the event this Franchise is not renewed as provided for in **Section 8-1-16** herein, the Village shall have the option of either requiring Franchisee to remove from the public streets where its properties are located all or any part of its equipment and facilities so located within **ninety (90) days** of the effective date of such revocation or non-renewal, or of requiring Franchisee to leave all of its equipment and facilities in place within the Franchise area.

(B) **Enforcement.** The Chief Administrative Officer is hereby authorized to enforce the provisions of this Section as hereinafter provided.

(C) **Notification.** The Chief Administrative Officer shall immediately notify Franchisee in writing of such revocation or non-renewal. Within **ninety (90) days** following receipt of such notice, Franchisee shall, if required, remove from the streets of the Village upon, over and under which its properties are located all of said properties.

(D) **Manner of Removal.** Such removal, if required, shall be performed by Franchisee in such a manner so as to not permanently destroy, mar or damage the Franchise areas in which such removal is being conducted. The Village Engineer shall make an inspection of the areas in which the removal is being or has been conducted, and should it be found that Franchisee has unreasonably destroyed, marred or damaged such areas, Franchisee shall be held responsible for the expenses of repairing such areas to the reasonable satisfaction of the Village.

(E) **Sale of Facilities.** In the event Franchisee has not removed its facilities within **ninety (90) days** as described herein, or in the event the Village elects not to require Franchisee to remove its facilities, Franchisee shall be obligated to sell its facilities in place within the Franchise area to either the Village or to any new franchise operator. Any sale of facilities as required by this Section shall be pursuant to the valuation requirements of Section 627 of the Cable Act.

8-1-18 LIQUIDATED DAMAGES.

(A) **Procedures and Damages.** Should it be found after written notice and a reasonable opportunity to cure, and after conducting the hearing and appeal procedure provided for herein, and after written receipt by Franchisee of a finding of violation by the Chief Administrative Officer or his/her designee, that

Franchisee is in violation of the terms of this Chapter, the liquidated damages chargeable to the Performance Bond, provided for under **Section 8-1-11** herein, shall be as follows:

- (1) For failure to provide or maintain data and reports as requested by the Village or as required herein, Franchisee shall forfeit **One Hundred Dollars (\$100.00)** per day or part thereof that the violation continues, if after **twenty (20) days** written notice such data or reports are not supplied.
- (2) For failure to comply with the operation standards as specified in **Section 8-1-5** thereof, following the Board's Ordinance directing Franchisee to make improvements within a reasonable time period, Franchisee shall forfeit **Fifty Dollars (\$50.00)** per day or part thereof that the violation continues unless cause can be shown for said delay.
- (3) For failure to test, analyze and report on the performance of the system following the reasonable request of the Village, Franchisee shall forfeit **Fifty Dollars (\$50.00)** per day or part thereof that the violation continues unless cause can be shown for said delay.
- (4) For failure to pay the franchise fee when due pursuant to **Section 8-1-8** herein, Franchisee shall forfeit **One Hundred Dollars (\$100.00)** per day or part thereof that the violation continues after **twenty (20) days** written notice of such violation.

(B) **Separate Rights.** The rights in this Section are separate, distinct and in addition to those enumerated elsewhere in this Chapter.

(C) **Force Majeure.** Any liquidated damages imposed by the Village in accordance with this Franchise may be reduced by the Village if it finds that the failure of the Franchisee resulted from conditions beyond the Franchisee's control and/or acts of God.

(D) **Judicial Review.** Any damages assessed under this Section shall be subject to judicial review at the request of the Franchisee.

8-1-19 **RIGHTS RESERVED TO THE VILLAGE.** The Franchisee shall, at all times during the life of this Franchise, be subject to all lawful exercise of the police power by the Village and to such reasonable regulation as the Village shall hereafter provide, provided that such police power and reasonable regulation shall not alter the Franchisee's rights or obligations under this Franchise.

8-1-20 **COMPLIANCE WITH FEDERAL LAWS, RULES AND REGULATIONS.** Franchisee and Village agree that each shall be subject to the Cable Act, and all applicable rules and regulations which, from time to time, may be promulgated by the Federal Communications Commission.

8-1-21 **NOTICES TO FRANCHISEE.** Any time the Village's Chief Administrative Officer, President, Board members or resident of the Village brings an issue regarding this Chapter, agreements or applications thereunder, or the activities of any Franchisee to a meeting or work session of the Board, Chief Administrative Officer will notify Franchisee. Such notification shall take place at least **thirty (30) days** prior to the meeting.

8-1-22 **SEVERABILITY.** If any section, subsection, sentence, clause, phrase or portion of the Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holdings shall not affect the validity of the remaining portions thereof.

8-1-23 **ACCEPTANCE.** This Chapter shall, upon adoption of the Village Board and its execution by the proper municipal officials and further acceptance by the Franchisee, be and become a valid and binding contract between the Village of Steeleville and Cable Equities of Colorado, Ltd., its successors and assigns.

(Ord. No. 458A; 07-05-94)