

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

~~County~~  
 City of Washingtonville  
~~Town~~  
Village

Local Law No. 6 of the year 19 99

A local law entitled "Days and Hours of Halloween Curfew"  
(Insert Title)

STATE OF NEW YORK  
DEPARTMENT OF STATE  
**FILED**  
OCT 13 1999  
*Alexander F. Cicchini*  
Secretary of State

Be it enacted by the Board of Trustees of the  
(Name of Legislative Body)

~~County~~  
 City of Washingtonville as follows:  
~~Town~~  
Village

BE IT ENACTED by the Board of Trustees of the Village of Washingtonville, County of Orange, State of New York, as follows:

Section 1. Chapter 114, titled "Minors: Curfew and Supervision," is amended as follows:

I. Section 114-2, titled "Definitions," is amended by amending the definition of Curfew Hours to read as follows:

CURFEW HOURS means:

- A. The continuous period commencing October 30 at 7:00 PM and ending October 31 at 6:00 AM.
- B. The continuous period commencing October 31 at 7:00 PM and ending November 1 at 6:00 AM.
- C. The continuous period commencing October 29 at 7:00 PM and ending October 30 at 6:00 AM, if so determined on an annual basis by resolution of the Board of Trustees.

- D. The continuous period commencing November 1 at 7:00 PM and ending November 2 at 6:00 AM, if so determined on an annual basis by resolution of the Board of Trustees.
- E. The continuous period commencing November 2 at 7:00 PM and ending November 3 at 6:00 AM, if so determined on an annual basis by resolution of the Board of Trustees.
- F. Any other hours or days during the Halloween period as determined by resolution of the Board of Trustees.

II. Section 114-7, titled "Amendment of curfew hours," is amended to read as follows:

The curfew hours and curfew days during the Halloween period, including, but not limited to, October 29, October 30, October 31, November 1 and November 2, may be amended from time to time by resolution of the Board of Trustees after public hearing.

Section 2. This local law shall take effect upon filing with the Secretary of State.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 6 of 1999 of the ~~(County)~~(City)(Town)(Village) of Washingtonville was duly passed by the Board of Trustees on 10-4- 19 99, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 19 \_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_ 19\_\_\_\_, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*  
*(Elective Chief Executive Officer\*)*

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 19\_\_\_\_, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*  
*(Elective Chief Executive Officer\*)*

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 19\_\_\_\_, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*  
*(Elective Chief Executive Officer\*)*

\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 19\_\_\_\_, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 19\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph \_\_\_\_\_<sup>1</sup>\_\_\_\_\_, above.



Clerk of the County legislative body, City, Town or Village Clerk  
or officer designated by local legislative body  
Melanie J. Lanc, Village Clerk

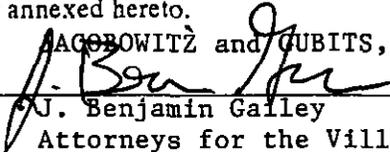
(Seal)

Date: 10-4-99

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK  
COUNTY OF ORANGE

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

By:   
Signature J. Benjamin Galley  
Attorneys for the Village

Title \_\_\_\_\_

~~XXXX~~  
~~County~~  
~~City~~ of Washingtonville  
~~Town~~  
Village

Date: October 5, 1999

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

STATE OF NEW YORK  
DEPARTMENT OF STATE  
**FILED**  
JAN 06 2000

~~County~~  
~~City~~ of Washingtonville  
~~Town~~  
Village

Local Law No. 7 of the year 19.99.

A local law entitled "Wireline Telecommunication System Law"  
(Insert Title)

*Allyn F. Escobedo*  
Secretary of State

Be it enacted by the Board of Trustees of the  
(Name of Legislative Body)

~~County~~  
~~City~~ of Washingtonville as follows:  
~~Town~~  
Village

**Section 1. Title and Purpose.**

This Law may be known and cited as the Wireline Telecommunications System Law (WTS Law) for the Village of Washingtonville, New York.

The Board of Trustees of the Village of Washingtonville, New York, finds that the health, safety, and welfare of the citizens of the Village of Washingtonville, New York, requires that a comprehensive Law be enacted which establishes a regulatory framework applicable to Providers of Broadband Service and owners or operators of Wireline Telecommunications Systems that utilize the Village's property or rights-of-way within its territorial jurisdiction as permitted by federal and State law. Among other purposes, this law enacts regulations pursuant to Section 253 (c) of the Telecommunications Act of 1996 governing the use and occupancy of the Village's rights-of-way and Village-owned property by wireline telecommunications systems and service providers, including those service providers known as cable operators and open video system operators, and including provisions for insurance, reports and records, consumer protection measures, construction and construction-related requirements, safety requirements, municipal compensation including franchise fees and/or rent, operational procedures, termination and revocation of a franchise or other use and occupancy or operating authority, fines and/or penalties, and health and welfare measures; and providing an effective date.

**Section 2. Construction.**

This Law shall be construed in accordance with applicable federal and State laws and rules governing Wireline Telecommunications Systems and Broadband Services, including but not limited to those known as Cable Systems and Cable Operators who provide Cable Service and Open Video Systems. With respect to the operation of Cable Systems, the provision of Cable Service and Open Video Systems, this Law shall be construed in accordance with any applicable rules and regulations of the Federal Communications Commission and the Public Service Commission, or any successor agency or authority.

**Section 3. Scope.**

This Law shall apply within the geographical limits of the Village, including any areas subsequently annexed by the Village, unless State law prescribes otherwise, or unless State law in some fashion restricts or alters the effect of this Law to a subsequently annexed area of the Village.

## **Section 4. Severability.**

If any word phrase, sentence, part, section, subsection, or other portion of this Law, or any application thereof to any Person, entity or circumstance is declared void, unconstitutional or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this Law and all applications thereof not having expressly been declared void, unconstitutional or invalid, shall remain in full force and effect.

## **Section 5. Definitions.**

For purposes of this Law, and where not otherwise inconsistent with the context of a particular Section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this Section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number, and words in the singular number include the plural number. The words "shall" and "will" are always mandatory and not merely directive.

**"Abandonment"** means the cessation of use of a System and the provision of any Service by or using the System, or any portion of the System, or any component, facility or equipment of the System or Service in the Village for a period of time greater than sixty (60) consecutive days.

**"Activated"** means the ability to deliver of any type of Service using the System, or otherwise using the System to transmit and provide Service.

**"Affiliate"** means, when used in relation to any Person, another Person or entity who owns or controls, is owned or controlled by, or is under common ownership or control of such Person.

**"Administrator"** means the individual or organization designated by the Village Board to act as the technical and administrative liaison or representative of the Village, the Subscriber or Users, and the public in the Village, in matters related to the provision of this Law, and any Franchise as defined in this Section.

The Administrator may be designated as the point of contact for all matters under this Law and that relate to a Franchise or a System owner or operator or Service Provider. If designated, unless specifically directed otherwise by the Village Board, it shall at all times be presumed that the Administrator is acting as the Village Board's designee and under the Board's direction.

**"Applicant"** means a Person or legal entity submitting an Application or Proposal to the Village for a Franchise to operate a System or to provide Service under the terms and conditions set forth in this Law and in any Franchise and in compliance with any State rules or regulations.

**"Application"** or **"Proposal"** for the purposes of this Law are synonymous and mean the documents submitted, and on which the Village is intended in good faith rely on, for the purpose of being granted a Franchise by the Village. An Application or Proposal shall be deemed to include all written representations and supporting documentation submitted by an Applicant to the Village for the purpose of being granted the privilege to occupy or use the Village's property or rights-of-way for commercial purposes as intended under this Law.

**"Assignment"** or **"Transfer"** means the act of changing the Person or entity who has ultimate Control of the Franchisee, the System or the Franchise, whether such control is direct or indirect. Transfer or Assignment is deemed to be any Change in Control, in whole or in part, whether by sale, assignment,

merger, consolidation, lease or other form of alienation, or any change in the ultimate legal or financial control of the Person or entity granted a Franchise.

**"Board"** or **"Village Board"** means the Village Board for the Village of Washingtonville, New York, which is the legislative body for the Village of Washingtonville, New York. For purposes of clarification, the Village Board is the Franchising Authority for the Village of Washingtonville, New York.

**"Broadband"** means a technology having a capacity of more than 28.8 Kilobits per second of bandwidth.

**"Cable Act"** or **"CCPA"** means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection Act of 1992 and the Telecommunications Act of 1996.

**"Cable Service"** or **"Video Programming Service"** or **"Multichannel Video Programming"** means:  
    (a) the one-way transmission to Subscriber or Users of subscription video programming or other programming Service; and  
    (b) Subscriber or User interaction, if any, or any other function which is required for the selection or use of such video programming or other programming Service.

**"Cable Operator"** means any Person or group of persons who:  
a) provides Cable Service or Video Programming Service over a System and, whether directly or through one (1) or more affiliates, owns a significant or attributable interest in such System; or  
b) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a System.

**"Change in Control"** or **"Change of Control"** are synonymous terms for the purpose of this Law and mean any change in the Control of the System, System owner or operator or Service Provider, as Control is defined in this Section.

**"Commercial Impracticability"** or **"Commercially Impracticable"** shall have the same meaning in this Law and any Franchise or other use, occupancy or operating authority as is defined and applied under the United States Uniform Commercial Code (UCC).

**"Complete"** or **"Completion"** means with respect to any construction, reconstruction, rebuilding, upgrading or repair of the System that in each instance:

- a) attachment strand, if necessary, has been put in place for aerially serviced areas, and all needed cable or fiber has been securely and properly lashed to such strand; or,
- b) all cable or fiber has been placed correctly in trenches in areas Serviced underground as required by applicable code and this Law, the trenches have been refilled, all disturbed road surfaces have been restored as required, and all landscaping restoration has been completed as required;
- c) all amplifier housings and modules, all fiber nodes, and all other active and passive devices necessary for the operation of the System and the provision of Service, have been installed, including modules for return path signals if bi-directional activation has been proposed or committed to;
- d) primary and backup/standby power supplies, as required, have been installed and operate properly;

- e) all bonding and grounding as required has been completed;
- f) construction, reconstruction or upgrading of all headends, hubs, and nodes, as applicable, has been completed, and all necessary processing equipment has been installed therein and is functioning as required; and
- g) any and all other construction, reconstruction or upgrading necessary for the System to deliver Service to Subscribers or Users has been completed, including in the case of a rebuild or upgrade of the System, the replacement of drops to each and every Subscriber or User unit passed if such is either needed or proposed, pursuant to the plans, specifications, representations and commitments submitted to and approved or accepted by the Village.
- h) All required testing has been completed successfully on each new or technologically upgraded portion of the System, and shall demonstrate compliance with all applicable FCC and PSC Technical Rules to the Village's satisfaction, including but not limited to 'Proof-of-Performance' tests as may appropriate or required, unless the Village is expressly prohibited by law or rule from requiring such demonstration. Services provided to any segments of the System in the Village will be Activated only when the required testing is has been done and the System operates as required, and never before.
- i) No significant construction, reconstruction, upgrade or rebuild of any portion of a System providing Video Programming Service will be considered complete until 'Proof-of-Performance' tests have been conducted on such portion or segment (or in the case of the entire System, on all segments of the System), and service is in compliance with the Signal quality requirements of the FCC's Technical Rules. Any performance characteristics of any segment which are found not to comply with said technical standards must have been corrected before construction is deemed complete.
- j) Any construction, reconstruction, upgrade or rebuild shall not be deemed complete unless and until the System is capable of delivering all services to all addresses in any area being constructed, reconstructed, upgraded or rebuilt. If applicable, any construction, reconstruction, upgrade, or rebuild shall not be deemed complete until the wreck-out or removal of the old segments of the System has been completed to the reasonable satisfaction of the Village.

**"Control"** means any Person or entity holding legal or financial Control of or over the holder of the Franchise or the Service Provider, regardless of whether such control is direct or indirect, or is exercised or is permitted to be exercised directly or indirectly through other persons, holdings or entities. Control shall always be deemed to rest in the hands of any Person or entity that has the right or authority to establish or change any policy or practice of the holder of the Franchise or the Service Provider, whether such Control may be exercised directly, or indirectly through other persons, holdings or entities.

**"Consumer"**: See definition for "Subscriber or User".

**"Customer"** means a Subscriber or User of any Service and/or facility of the System or Service Provider.

**"Disaster Emergency"** means an imminent, impending, or actual natural or humanly-induced situation wherein the health, safety or welfare of the residents of the Village is threatened. By way of illustration, a Disaster Emergency may include a severe climatic or meteorological storm, dam failure, flood, tornado, hazardous waste infiltration, fire, petroleum or chemical spill, explosion, vehicle accident of significant effect, or aircraft crash.

**"Easement"** means and shall include any compatible use easement, whether created by dedication to the Village or by other means, for public utility purposes or any other purpose primarily benefitting the general public, Easement shall also include a private easement granted by a private property owner for the same or similar purposes.

**"Equipment"** means equipment supplied by the System owner or operator or Service Provider, which is used to provide, enhance or assist in the reception or provision of Service.

**"FCC"** means the Federal Communications Commission and/or such other federal regulatory agency as in the future may have jurisdiction to oversee the operation of Service Providers and their systems.

**"FCC Technical Rules"** means the technical rules and standards of the Federal Communications Commission as set forth in Part 76, Subpart K [Technical Standards] of the FCC's Rules, 76 C.F.R. §§ 76.601 et seq., as amended from time to time.

**"Fiber"** or **"Fiber cable"** or **"Fiber optic cable"** or means thin pliable cylinders or strands of glass or plastic, or any future functional equivalent, that is used to carry wide bands of multiple frequencies.

**"Franchise"** means the document of authorization granted by the Village, regardless of the type of authorization, whether such authorization is a use, occupancy or operating authority, that permits a Person to occupy and use the Village's property and rights-of-way for commercial purposes as intended under this Law, including to construct, operate, rebuild, replace, upgrade, maintain and repair the System, and to provide Service in the Village. A Franchise shall also include as an inseparable part any Application or Proposal for a Franchise, and any information contained therein on which the Village was intended to rely. The particular type and scope of Franchise, and any distinction between any type of Franchises, may be dependent upon the scope of authority the Village has over a given type of System owner or operator or Provider of Service.

**"Franchise Agreement"** means the Agreement or contract which the Village and a System owner or operator or a Service Provider enter into, and that specifies the contractual agreements or commitments between the parties, and which may also serve as a Franchise granting the authority to own and operate a System or provide Service within all or a part of the Village by using or occupying the Village's property or rights-of-way in accordance with the Village's franchising authority and any other authority, including its police powers. Subject to applicable law, rule and regulation, a Franchise Agreement may be different in scope and content from other permissible types of grants of authority by the Village.

**"Franchisee"** means any System owner or operator or Service Provider that has been granted a valid Franchise by the Village, and that is subject to the Village's regulatory authority as set forth in this Law and applicable State law, rules or regulation.

**"Franchise Expiration"** or **"Franchise Agreement Expiration"** or **"Expiration"** means the date of the end of the term of the document that granted authority to use and/or occupy the Village's property or rights-of-way for commercial purposes, including the operation of a System or the provision of Service.

**"Franchise Fee"** means a Fee charged a Service Provider or System owner or operator by the Village for the cost of administering the Franchise.

**"Franchising Authority"** means the Village Board of the Village of Washingtonville, New York.

**"Functional equivalent" or "Functionally equivalent"** means something that

- 1) is used or is intended to accomplish the same purpose; or
- 2) has the same or substantially similar characteristics, qualities and capabilities; or
- 3) operates or functions in substantially the same form and fashion; or
- 4) operates or functions in a superior manner.

With respect to matters not involving equipment, the term also means something that equates to or is intended to effect the same, or a substantially similar outcome or function in effectively the same manner or for the same purpose.

**"Grandfather" or "Grandfathered"** means to retain or preserve a right, privilege or authority held, so long as the retention or preservation is expressly stated.

**"Gross Revenue"** means, for any period of time, any and all revenues or other valuable consideration of any kind which are derived from the operation of the System and/or the provision of Service within the Village, and that are attributable to or occasioned by the grant of the Franchise, regardless of the corporate or organizational relationship of the recipient of the revenue with the owner or operator of System or the Service Provider Gross Revenue shall include the value of any exchange for trade or barter or other items of value.

The following, but only the following, shall not be deemed a part of Gross Revenue:

- a) Bad debts attributable to the provision of Service within the Village in the normal course of its business that, if booked, are actually written off; provided that subsequent recovery of bad debts previously deducted shall be included in Gross Revenue in the next reporting/payment period; and
- b) Refunds actually paid to Subscribers or Users.
  1. c) With respect to Service Providers classified as Cable Operators, Gross Revenues shall also not include any revenue expressly exempted by the Cable Act of 1984 or by State law. For any revenue that an owner or operator of a System or a Service Provider seeks to have exempted from this definition of Gross Revenue, such Person shall have the burden of proving to the Village that any such excluded revenue is expressly exempted by the federal law, State law, a final or unappealed federal or State judicial ruling by a court of competent jurisdiction, or by specific FCC ruling.
- d) In computing Gross Revenues from sources other than Subscriber or User or Service revenue where it is not practicable to isolate the amount specifically derived from within the Village, and that is attributable to the grant of a Franchise, or the operation of a System or the provision of Service both inside the Village and outside the Village, the total or aggregate revenue received from such sources shall be computed as follows:

Said revenues shall be multiplied by a fraction, the numerator of which shall be the number of Subscribers or Users in the Village as of the last day of the required payment period and the denominator of which shall be the number of Subscribers or Users within all areas served by the Franchisee or other Service Provider or the owner or operator of a System as of the last day of the required payment period. The result shall then be multiplied by the percentage used to compute the required Fee that is assessed as a percentage of revenue. For purposes of example only, the following are types and sources of revenue intended to be included in Gross Revenues in such situations, regardless of the familial or organizational relationship of the recipient of the revenue with the System owner or operator or Service Provider.

1. The sale or rental of Subscriber or User lists;
2. the sale of advertising;
3. payments from programmers and shopping services;
4. commissions or bonuses of any kind from vendors or programmers that are attributable to the grant of authority under this Law;
5. rebates from programmers and vendors of any kind for Services that are attributable to the grant of authority under this Law;
6. viewing guide sales, including electronic guides;
7. the lease or sale of capacity;
8. payments or commissions from '900' phone numbers advertised on the Service or System; and
9. Interconnection charges or income

**"Impracticable"**, when used in a non-economic or non-financial or non-commercial context, shall have the meaning ascribed in the most current edition of Webster's Encyclopedic Unabridged Dictionary of the English Language.

**"Initial activation"**, or **"Initially providing Service"** or the **"Initial provision of Service"** mean with respect to a particular portion, part or segment of the System, or group of segments, or the entire System, that all Services and System capabilities, as stated in a Franchise, or in any Application or Proposal for Franchise, are available and useable, and that the construction, reconstruction, rebuild or upgrade has been Completed and the Completed segment(s) of the System involved, or the entire System, is capable of actually delivering the Services intended to each and every Subscriber or User and residence or business in each segment, pursuant to the plans and specifications as may have been approved, accepted or relied upon in good faith by the Village.

**"Initial Applicant"** means a Person submitting an application for a Franchise in the Village for the first time.

**"Internet"** or **"internet"** means that interconnected combination of networks that evolved from the original ARPANET experiment and the National Science Foundation subsidized Internet and the interconnection of networks that provides User-to-User, or address-to-address, communications Services, Broadband Service, other programming Services, or data Services.

**"Internet access"** means the availability of access of the Internet to a Subscriber or User and the service that enables a Subscriber or User to use the Internet.

**"Law"** means the 'Wireline Telecommunications Law' for the Village of Washingtonville, New York.

**"Leased Access"** means the capacity that a System owner or operator or Service Provider, including a Cable Operator or Open Video System Operator, has designated for use by commercial Users, pursuant to but not limited by Section 612 (at 47 U.S.C. 532) of the Communications Act of 1934, as amended.

**"Line Extension"** means an extension of the System requiring additional trunk or feeder cable, or both, fiber optic cable, active electronic equipment to amplify the Signal, or an additional fiber node, but does not include individual Service drops beyond two hundred (200) feet that may require additional feeder cable or the functional equivalent of such.

**"Loss of Service" or "Service Outage"** means the inability to receive the Service subscribed to that is caused by, attributable to, or occasioned by problems with the operation of the System or the provision of Service, and which is not caused by the failure or malfunction of a Subscriber's or User's equipment, or by the misfeasance or malfeasance of the Subscriber or User.

More than one (1) instance of a Loss of Service from the same portion of the System or that affects the same address or addresses within the Village that occurs within a 24 consecutive hour period shall be deemed a single, continuous Loss of Service

**"Mayor"** means the Mayor of the Village of Washingtonville, New York.

**"Node" or "Fiber Node"** means that facility at which signals are received and transmitted, retransmitted, relayed or otherwise provided to other portions of the system in light-wave form or are converted to RF signals or a functional equivalent type of Signal and are transmitted, retransmitted, relayed or otherwise provided to other portions of the System in the Village, or elsewhere outside the Village.

**"Non-renewal,"** means not granting a new Franchise to an incumbent System owner or operator or Service Provider to operate a System or provide Service within the Village.

**"Normal operating conditions"** means those conditions which are reasonably within the control of the System owner or operator or Service Provider with respect to the operation, maintenance and repair of the System and the provision of Service within the Village. Those conditions which are not within the control of the System owner or operator or Service Provider include labor strikes, sabotage, riots or civil disturbances of a disastrous nature and effect, explosions, acts of public enemies, unusually severe or catastrophic weather conditions, natural disasters as declared by appropriate government officials, fires, and wide-spread commercial power failures that exceed the capabilities of the backup or standby power supplies and capability of the System.

Those conditions which are expressly deemed to be within the control of the System owner or operator or Service Provider include, but are not limited to, financial situations other than the declaration of bankruptcy or insolvency, marketing promotions, loss of standby power up to the period of time for which the manufacturer has rated the standby power unit to operate, Rate increases, regular or periodic periods of high demand with respect to labor intensive functions, the regular inspection and maintenance of the System, required testing of the System, the timely remedy of safety and other code violations, and the timeliness and technological design with respect to any upgrade of the System.

**"Other programming or communications services"** means information or Service that a System owner or operator or Service Provider makes available to all Subscribers or Users generally, including, but not be limited to video, telephony and other voice Services and the transmission of data.

**"Person"** means any individual, corporation, entity, estate, trust, partnership, or any association of two (2) or more persons or entities having a joint common interest or a joint stock company.

**"Primary Service Area"** means that portion of the Village required or committed to be built and operated under a Franchise.

**"Property"** means all the property owned, installed, rented, leased or used by a System owner or operator or Service Provider holding a Franchise granted under or otherwise subject to this Law that is utilized in the operation of the System or the provision of Service in the Village.

**"Proposal" or "Application"** means a written request to use or occupy the Village's property and rights-of-way for the purpose of constructing, operating, maintaining or repairing a System or to provide Service in the Village using the public property and rights-of-way of the Village.

**"PSC "** means the Public Service Commission of the State of New York, or any successor agency or Commission.

**"Revocation" or "Termination," or "Involuntary Termination"** means an official act by the Village Board that removes, repeals, or rescinds any Franchise and authority to operate a System or provide Service in the Village that is granted under or is subject to this Law.

**"Rent"** means the compensation paid to the Village by a System owner or operator or Service Provider for the occupation and use of the public property and rights-of-way of the Village for commercial purposes..

**"Scheduled outage"** means any planned Service interruption or diminution of signals for which the Village and Subscribers or Users are required to be, and have been, notified in advance, and that does not exceed four (4) hours duration for any given address.

**"Service"** means any Service that is provided by means of a System in the Village, and shall include any Service, use or other activity provided for commercial purposes that uses or is provided by means of the use of the System, regardless of the technology employed.

**"Service interruption"** means the loss of any Service or incremental level of Service, or separately priced Service that are delivered or provided by means of or that use a System or any components or the System.

**"Service Provider"** means any Person who provides Service using a System that occupies or uses the Village's property or rights-of-way using Broadband technology or otherwise providing Service using a System as defined in this Section and who owns a significant or Attributable Interest in the Provider of such Service or in the System; or who, through any arrangement, otherwise controls or is responsible for the management and operation of a Service or System in the Village, or who has the authority to establish or change policy, or order the establishment or change of policy with respect to the provision of Service or the System within the Village.

**"Significant Interest" or "Attributable Interest"** means any Person or entity who directly or indirectly holds or owns a five percent (5%) interest or ownership position in a System or the holder of a Franchise permitting the construction and operation of a System or the provision of Service in the Village.

**"State"** means the State of New York.

**"Street"** means the surface of, and the space above and below a public street, path or thoroughfare designated for vehicular and/or pedestrian traffic, and any easements associated therewith, or other easement now or hereafter held by the Village, and includes any sidewalks or other paved pedestrian ways and any public or Village-owned rights-of-way.

**"Subscriber"** means a Person lawfully receiving Service delivered by a System owner or operator or a Service Provider.

**"System" or "Telecommunications System"** means a facility consisting of a set of closed transmission paths and associated facilities and equipment that is designed to provide Service of a commercial nature, which includes the transmission of video, voice and data, or any combination of such services or transmissions, and voice-activated or electronic ordering capability or other uses or Services which are provided to Subscribers or Users within the Village, including the provision or use of data used to maintain and operate the System. However, Telecommunications System or System does not include the following:

- (a) a facility that serves only to retransmit the television signals of one (1) or more broadcast stations; or
- (b) a facility that serves only Subscribers or Users in one (1) or more multiple unit dwellings under common ownership, control or management, unless such facility occupies or uses any Village-owned property or Village rights-of-way for the provision of or to distribute Service or to generate revenue for commercial purposes, in which case it shall be deemed a System; or
- (c) a facility of a common carrier which is subject to the provisions of Title II of the Communications Act of 1934 as amended, but only to the extent that such exemption relates to the Services provided at the time the operating authority was originally granted, or that State or federal law, rule or regulation expressly exempts from compliance with this Law; or
- (d) any facilities of any electric utility used solely for operating its electric utility; or
- (e) any system not using and occupying the Village's property or rights-of-way.

**"Technical Violation"** means a violation of this Law or any Franchise that is of de minimus negative effect on the Village or the public and that is not repeated after notice by the Village. Notwithstanding the preceding, a history or repeated pattern of the same or similar Technical Violations shall not be deemed a Technical Violation.

**"Transfer"** means any change in the ownership or legal or financial Control of the entity granted a Franchise or the Person or other legal entity that directly, or indirectly through another Person or legal entity, has financial or legal Control over the holder of the Franchise granted by the Village, and who may order the establishment or change of policy as regards the operation of the System or the provision of Service within the Village. For purposes of this Law, a merger or consolidation of any kind shall be deemed a Transfer. Any instance where the approval of the FCC or other federal agency or a State agency is required shall also be deemed a transfer and require the consent and approval of the Village Board.

**"Transferee"** means the new holder of a Franchise or other use or operating authority, or the new possessor of legal or financial Control of the entity granted a Franchise, as approved by formal action of the Village Board.

**"U.S.C."** means United States Code.

**"User"** means a Person utilizing a System and/or its equipment, facilities or capabilities for commercial purposes, as opposed to the receipt of service as a Subscriber to Service.

**"Video Service"** means the provision of Cable television Service or Video Programming Service or other functionally equivalent video subscription Service.

**"Video Programming"** means programming generally considered comparable to programming historically provided by a television broadcast station or satellite distributed video programmer that is

intended for mass reception. Further, Video Programming means a Service whose use and value is largely determined by being able to be viewed.

" **Village** " means the Village of Washingtonville, New York.

"**Wireless**" or "**Wireless Service**" means any Service that is transmitted through the air, whether employing microwave, radio frequency or a functionally equivalent technology. Programming from AM or FM radio broadcast stations received directly by the public off-air shall not be deemed Wireless Service.

"**Wireline**" or "**Wireline Service**" means a System or Service that is provided through a wire, line, cable, fiber or any functionally equivalent closed system.

"**Work Day**" or "**Working Day**" means those days when the majority of retail businesses in the Village are customarily open for business.

"**Wreck out**" means, in the context of and with respect to, any construction, rebuild, upgrade, modification or maintenance activity of a System, the removal of the old cable, wires, parts and components of any portion of the System not currently and actively used in the provision of Service in the Village.

## **Section 6. Administration; Delegation of Powers and Authority.**

- A) The Mayor is hereby designated the individual responsible for the continuing administration of this Law and matters related to the operation of Wireline Systems or providers of Service utilizing a System in the Village that use or occupy the property of the Village or the Village's rights-of-way for such purpose.
- B) Unless expressly prohibited by Federal, State or local law, the Village Board or the Mayor may delegate authority to assist in the administration of this Law or a Franchise granted pursuant to this Law.
- C) Unless expressly prohibited by federal, State or local law, the Village Board is hereby authorized, at its sole discretion, to create an appointed advisory Board, commission, or committee.
- D) Notwithstanding anything in this Section, the Village Board may never delegate its initial or renewal franchising, licensing or permitting power, or power of revocation or termination of such, or any right or authority it may have to impose or assess fines and/or penalties under this law, to another Person or representative, advisory Board, commission, or committee.

## **Section 7. Applicability of this Law to a Service Provider or System Owner or Operator.**

- A) System owners or operators and Service Providers who use or occupy the Village's streets, property or rights-of-way and who are not expressly exempted from compliance with this Law by prior State law are subject to and shall be governed by the requirements and provisions of this Law and any amendments thereto. Also subject to certain requirements and provisions of this Law and any amendments thereto are Service Providers and owners or operators of Systems not otherwise subject to local franchising authority, but who are not expressly exempted by law, rule or regulation from compliance with applicable local regulatory laws or ordinances, including but

not limited to those that govern the use and occupancy of the Village's property and rights-of-way.

- B) The authority of the Village to regulate any precluded or pre-empted Service Provider or System under certain portions of this Law shall not exempt such Persons from the requirements of other provisions of this Law involving the construction, operation and maintenance of the System or its facilities as relate to the protection of the health, safety and welfare of the public.
- C) Any Service Provider or any System owner whose original grant of authority to use and occupy the Village's property or rights-of-way for commercial purposes that did not expressly grant the right to provide Service as defined in Section 5 of this Law shall be deemed subject to the provisions of this Law, except to the extent that the provision of a type of service provided under the original grant of authority to use and occupy the Village's property rights-of-way for commercial purposes, as expressly set forth therein, may be exempted or Grandfathered with respect to being used to determine payments or Fees to the Village as required and permitted under this Law.
- D) In the event of any conflict or ambiguity between the requirements of this Law and any Franchise subject to this Law, this Law shall control, unless the requirement or provision is expressly pre-empted by federal or State law, rule or regulation, or unless the issue is expressly addressed in the Franchise in the context of relief from this Law. Any relief or variance from the provisions of this Law shall be granted in accordance with Section 8 of this Law, and such relief or variance shall be expressly set forth in any Franchise Agreement .
- E) This Law shall not be deemed to, nor shall it, change, impair or repeal the terms or conditions of any Franchise, agreement or contract granted prior to the effective date of this Law to the extent that such expressly contains a lesser or less stringent obligation, requirement or commitment that are expressly enumerated in the existing Franchise, agreement or contract, as regards the expressly stated and intended purpose and use of the Village's property or rights-of-way with respect to the service provided
- F) When a Franchise agreement, contract or use and occupancy authority granted prior to the effective date of this Law is silent on a matter addressed in this Law, and absent express language to the contrary or limiting the Village's right to adopt additional regulatory requirements regarding the regulation of the commercial use and occupancy of the Village's property, streets and rights-of-way in the Franchise, agreement or contract, the applicable provisions of this Law shall apply.
- G) With respect to a Service Provider or System owner or operator holding a Franchise, agreement, contract or use and occupancy authority granted prior to the effective date of this Law, this Law shall be of effect upon the Expiration of the existing Franchise Agreement, contract , or use and occupancy authority, or when one of the following occurs:
  - 1. prior to the Expiration date of a Franchise, and at the request of the holder of such, the document is amended; or
  - 2. both parties agree to a specific date for the Expiration date which is prior to the Expiration date in existence on the date of adoption of this Law; or
  - 3. a court of competent jurisdiction orders that an existing Service Provider or System owner or operator become subject to all, or any part or provision, of this Law, or finds that a Service Provider or System owner or operator is not exempt from all, or any part or provision, of this Law.

- H) Any Service Provider or System owner or operator shall be required to comply with the safety requirements and provisions of this Law, unless the Agreement, contract or other operating authority granted prior to the effective date of this Law states otherwise.
- I) Unless a Franchise, agreement or contract granted prior to the effective date of this Law states otherwise, all System owners or operators or Service Providers shall abide by the construction and construction-related requirements and provisions of this Law when performing any construction, rebuild, upgrade, repair, change or replacement of equipment or facilities.
- J) All provisions contained within this Law shall be of full force and effect upon the adoption of this Law, unless the ability to enforce a particular provision is pre-empted by the force of superseding federal or State law, rule or regulation, in which case the preemption extends only to the express extent of the federal or State pre-emption. In the event the federal or State law, rule or regulation Grandfathers the authority of the Village to enforce such provisions, the particular provision shall be enforceable under this law.
- K) Notwithstanding anything to the contrary in this Section, unless otherwise expressly Grandfathered in an existing Franchise granted prior to the effective date of this Law, in order to assure the protection of the health and safety of the public, any and all Service Providers or System owners or operators shall be subject to and shall be required to comply with all safety regulations, requirements and provisions of this Law at all times, including:
  1. the latest edition of the National Electrical Code, including any amendments;
  2. the latest edition of National Electrical Safety Code, including any amendments; and
  3. any other applicable safety and safety-related codes or regulations of the Village, County or State as such exist as of the effective date of this Law or as may be adopted from time to time.

## **Section 8. Relief.**

- A) Any Service Provider or System owner or operator subject to the provisions of this Law may file a written petition at any time with the Village Board seeking relief from one or more provisions of this Law. A Service Provider or System owner or operator may specifically request exemption or relief from, or delay in the implementation of one or more provisions of this Law, but only as to the petitioning Provider, owner or operator and not to any successors in interest or assignees.
- B) In concert with the stated intent of the Telecommunications Act of 1996 to promote and facilitate competition, and so as not to hinder the development of competition, the Village Board may determine that the relief granted be applicable for a specified or limited length of time or duration, pending a determination of the effect of the relief on the petitioner's ability to compete effectively at the Expiration of the period of time for which relief is granted. In the event that it is determined by the Village Board that the System owner's or operator's, or Service Provider's, ability to compete effectively is substantially hindered by compliance, relief shall then be granted for the remaining term of the Franchise or until the ability to compete effectively is no longer hindered.
- C) Any petition submitted pursuant to this Section shall set forth the relief requested and the reason and basis thereof, with such supporting information and material as may be applicable and as may be deemed necessary by the Village Board to make an informed decision.

- D) All requests for relief shall contain a clearly articulated explanation or rationale for each item or matter being requested. Any request submitted pursuant to this Section that does not contain such information shall be deemed incomplete and returned to the petitioner without action.
- E) In order to be granted relief from one (1) or more of the provisions of this Law, a Service Provider or System owner or operator must demonstrate to the Village Board with reasonable certainty that at least one (1) of the following facts exist:
- 1) the provision or requirement is expressly prohibited by federal law, rule or regulation, or by State law, rule or regulation; or
  - 2) where applicable, that the provision in question negatively and materially affects the petitioner to the extent that the provision or requirement creates an insurmountable competitive disadvantage not permitted or contemplated under federal or state law, or is in *substantial conflict with a right that is expressly stated in an existing Franchise. However, such relief shall only be for the remaining term of the existing Franchise. This provision specifically includes, but is not limited to situations where a Service Provider or System owner or operator classified as a Cable Operator or Open Video System operator seeks, and is granted, modification of an existing Franchise under Section 625 of the Cable Act (codified at 47 USC 545); or*
  - 3) that compliance with a particular provision and/or requirement will be **Commercially Impracticable** for the System owner or operator or Service Provider; or
  - 4) that one (1) or more time requirements listed in this Law are either impracticable or impossible to meet; or
  - 5) that the Service Provider or System owner or operator has its own policy which the Village Board deems comparable to, or better than, the provision or requirement from which the Service Provider or System owner or operator seeks relief; or
  - 6) that the health, safety, and welfare and the legitimate and reasonable interests of the Village and the public otherwise warrant the granting of such relief and will not be *adversely affected to a significant extent.*
- F) The Village Board shall be the determiner of whether a request for relief has met one (1) or more of the requirements of this subsection.
- G) A Service Provider or System owner or operator may petition the Village Board at any time for clarification concerning the precise intent and effect that any provision or requirement of this Law has on the petitioning Service Provider or System owner or operator.
- H) In those instances where the Village Board grants an exemption or relief or deems a Service Provider's or System owner's or operator's operational policy to be comparable to, or better than, a provision of this Law, then within sixty (60) days of the grant of relief the Franchise shall be formally amended to reflect the exact extent of such exemption and/or relief.
- I) It shall be the responsibility of the Service Provider or System owner or operator to include with its request a proposed resolution of amendment setting forth the intended effect in a clear and *unambiguous manner, and any changes to the language shall be submitted to the Village Board thirty (30) days prior to the meeting at which the amendment is intended to be made.*

- J) The benefit of any exemption or relief shall extend only to the Service Provider or System owner or operator granted such exemption or relief. In the case of a subsequent Transfer, Assignment, Change of Control or sale of the System to a Person without a record of performance in the Village, the proposed Transferee, assignee, controlling entity or buyer, if required by the Village Board, shall be required to petition separately for any relief or exemption. Unlike certain other amendments to a Franchise, there shall be no automatic transfer of any exemption or relief to a Transferee. However, any grant of comparable policy shall continue without the need for any additional approval or grant by the Village Board.
- K) Any Service Provider or System owner or operator who petitions for or requests relief or exemption from any portion of this Law whereby the primary beneficiary of the requested relief or exemption will be the Petitioner and not the public or the Subscribers may, at the discretion of the Village Board, be required to reimburse the Village for the verifiable fully-allocated cost of processing and analyzing such request, since such cost is deemed an extraordinary cost to the Village that would not normally be incurred in the course of administering a Franchise. Such cost is thus not deemed a normal part of administering a Franchise.
- L) A requirement to reimburse the Village pursuant to subsection (K) of this Section, shall not apply to any request for relief or amendment of a Franchise where the public or the Subscribers will be the primary beneficiary, or where the granting of the request will eliminate an impermissible competitive disadvantage pursuant to subsection (B) of this Section.

### **Section 9. Failure of the Village Board to Enforce this Law.**

It being a reasonable assumption that responsible persons of good intent will comply with laws, and to prevent the Village from having to constantly monitor compliance with each and every aspect of a Service Provider's or System owner's or operator's every action, a Service Provider or System owner or operator shall not be excused from complying with any of the requirements of this Law, or any subsequently adopted amendments to this Law, by any failure of the Village on any one (1) or more occasions to seek or insist upon prompt compliance with such requirements or provisions.

### **Section 10. Subject to Present and Future Laws and Regulations.**

- A) Any Service Provider or System owner or operator, and any assignee or Transferee, shall be subject to and required to abide by all applicable laws and/or regulations now or hereafter adopted by and in effect within the Village, including this Law, to the extent that the Service Provider or System owner or operator has not been granted an exemption or relief from said Law(s) and/or resolution(s).
- B) Subject to the provisions of Section 7 of this Law, in the event the Village Board amends this Law and the amendment of the Law would have the effect of either requiring the investment of substantial additional capital by the Service Provider or System owner or operator, or of unilaterally changing the process for default and/or revocation of a Service Provider's or System owner's or operator's Franchise, or impairing the Service Provider's or System owner's or operator's Franchise, then such amendment shall have no effect on the Service Provider or System owner or operator until the Expiration of the Franchise.
- C) Unless otherwise stated in a Franchise, all Service Providers or System owners or operators shall be required to comply with any amendments of this Law that regulate matters of safety or

construction or construction-related matters, within one-hundred-eighty (180) days of the effective date of the amendment, unless otherwise stated in the amendment or the Franchise.

### **Section 11. Repeal of Prior Inconsistent Regulations, Resolutions and Local Laws and the affect on Agreements.**

Any prior resolution, code or Village law which, in part or in whole, is directly inconsistent with this Law, is hereby deemed unenforceable to the extent of the inconsistency as regards Service Providers or System owners or operators subject to this Law.

### **Section 12. Resolution of Inconsistencies with Federal or State Rules, Regulations or Laws.**

In any case of an actual inconsistency between any provision or section of this Law and any provision or section of a federal or State law, rule or regulation which expressly supercedes or pre-empts local authority on the matter, but only to the extent that it expressly does so, then the federal or State law, rule or regulation shall supersede the effect of the applicable provision of this Law, and shall control in any local application.

### **Section 13. Resolution of Conflicts Between this Law and a Subsequently granted Franchise.**

Where there is a conflict, whether actual or perceived, between this Law and a Franchise granted subsequent to the effective date of this Law, this Law shall control, unless judicially determined to be invalid or unenforceable by a court of competent jurisdiction.

### **Section 14. Penalties and Sanctions for Violation of this Law.**

- A) *Violations of this Law shall be handled in the manner prescribed by applicable State law.*
- B) To the extent permitted by State and local law, the Village Board shall have the authority to change the schedule of fines and/or penalties for violations of this Law as may from time to time be deemed necessary, appropriate and permissible.
- C) In instances where fines and/or penalties as set forth herein are applicable for a violation of this Law, or for a breach of a Franchise, then such fines and/or penalties shall operate as a separate and independent remedy for the Village.
- D) A Service Provider or System owner or operator shall not be subject to such fines and/or penalties in instances of Force Majeure, or for a Technical Violation, or as determined by the Village Board for a breach of a Franchise where such breach is of no or of de minimus effect on the Village or the public.
- E) A Franchisee shall be subject to default and/or revocation of its Franchise for cause as set forth in this Law.

### **Section 15. Effect of "Technical" Violation of Law or Franchise Agreement.**

A Service Provider or System owner or operator shall not be subject to penalties, fines, forfeitures, revocation or involuntary termination of a Franchise for a Technical Violation of this Law or a

Technical breach of a Franchise. For purposes of this Law, Technical Violations or breaches include the following:

- A) Instances or matters where a violation of this Law or, where applicable a Franchise, was a good faith error that resulted in no negative impact on the residents, Subscriber or Users within the Village, or on the Village itself, or where such violation resulted in de minimus effect on any of the preceding Persons or the Village; or
- B) Instances or circumstances that are reasonably beyond the control of a Service Provider or System owner or operator, including Force Majeure situations, and that prevent a Service Provider or System owner or operator from complying with this Law or the Franchise.

### **Section 16. Force Majeure.**

A Service Provider or System owner or operator shall not be held in violation, material breach, default or non-compliance of this Law or a Franchise, nor suffer any penalty related thereto, including, where applicable, involuntary termination, cancellation or revocation of a Franchise, where such violation, breach, default or non-compliance was caused by a natural disaster such as an earthquake, flood, tidal wave, hurricane, or similar devastating act of nature, or any other event that is reasonably beyond a Service Provider's or System owner's or operator's ability to anticipate and control, or that is of a devastating nature or effect on the System. Force majeure situations shall also include strikes, riots, wars, and armed insurrections, as well as work delays caused by having to wait for utility Providers to service or monitor their own utility poles on which a Service Provider or System owner or operator's cable, wires' facilities and/or equipment is attached, as such may be necessary for the Service Provider or System owner or operator to comply with this Law.

### **Section 17. Notices.**

- A) The Village, and each Service Provider or System owner or operator, shall provide the other party with the name and address of the individual or entity designated to receive notices, filings, reports, records, documents, orders and other correspondence. All of the preceding shall be delivered to each party by U.S. certified mail, return receipt requested, or by personal service with a signed receipt of delivery, or by overnight delivery with receipt verification. By mutual agreement, filings, reports, records, documents, and other correspondence may be delivered by any permissible means including, but not limited to, facsimile transmission, personal service, or overnight mail or package delivery, so long as proof of receipt or delivery is obtained. The delivery of all notices, reports, records, and other correspondence shall be deemed to have occurred at the time of receipt, unless otherwise mutually agreed to or as may be designated by State law.
- B) If the Service Provider or System owner or operator is required to obtain a Franchise, then the designation of such contact Person for notice and notification purposes shall also be contained within the Franchise.

### **Sections 18 -- 24. Reserved.**

### **Section 25. Indemnity.**

- A) To the extent permitted by federal and/or State law, a Service Provider or System owner or operator shall at all times be required to defend, indemnify, protect, save harmless and exempt

the Village, the Village Board, the Mayor, their officers, agents, servants, consultants and employees, from any and all penalties, damages, or charges arising out of claims, suits, demands, causes of action, or award of damages whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might be claimed now or in the future, which may arise out of, or be caused by, the construction, erection, location, upgrade, System or Service performance, operation, maintenance, repair, installation, replacement, removal or restoration of the System or Service within the Village by an act or omission of a Service Provider or System owner or operator, its agents or employees, contractors, subcontractors, independent contractors, or implied or authorized representatives. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' Fees, consultants' Fees, and expert witness Fees are included as those costs which may be recovered by the Village from the Service Provider or System owner or operator.

- B) The Village, the Village Board and the Mayor shall have the right to retain counsel of their own choice, at their own expense.
- C) If a Service Provider or System owner or operator obtains counsel for the Village, the Village Board, or the Mayor, then any one of them shall have the right to approve such counsel. However, neither the Village, the Village Board, nor the Mayor shall unreasonably withhold its approval of counsel, provided such counsel is qualified and reasonably experienced in defending against such claims or actions.

## **Section 26. Liability Insurance.**

- A) A Service Provider or System owner or operator shall secure and maintain, for as long as it operates the System or provides Service within the Village, public liability insurance, property damage insurance, and umbrella insurance coverage in at least the following amounts:
  - 1) Public liability: \$3,000,000.00 per Person/per occurrence;
  - 2) Property damage: \$3,000,000.00 for any one (1) claim;
  - 3) Umbrella liability \$5,000,000.00
- B) A Service Provider's or Systems owner's or operator's public and personal liability and property damage insurance policy shall expressly include the Village, the Village Board, the Mayor and employees of the Village as additional named insureds.
- C) The public and personal liability and property damage insurance policy shall be issued by an agent or representative of an insurance company licensed to do business in the State, and which has one (1) of the three highest or best ratings from the Alfred M. Best Company, or an equally reputable rating Service.
- D) The liability and property damage insurance policy shall contain an endorsement obligating the insurance company to furnish the Village Board with at least thirty (30) days written notice in advance of the cancellation of the insurance.
- E) Renewal or replacement policies or certificates shall be delivered to the Village Board at least thirty (30) days prior to the Expiration of the insurance which such policies are to renew or replace.
- F) Before a Service Provider provides Service to Subscribers or Users, and before a System owner or operator permits the System to be used to provide Service, the Service Provider or System owner

or operator shall deliver to the Village copies of the policies or certificates of insurance representing the required insurance, and each policy or certificate delivered shall be accompanied by evidence of payment of the full premium thereof for the period covered by the policy.

- G) If the State permits a Service Provider or System owner or operator to be self-insured, then the Village Board may, at its sole discretion, permit the Service Provider or System owner or operator to be self-insured, so as long as the minimum amounts of insurance coverage outlined in this Section are met and maintained for the entire period that the Service Provider or System owner or operator is self-insured, and the Service Provider or System owner or operator can demonstrate to the satisfaction of the Village Board that it has the financial ability to pay in a timely manner up to the maximum amount per category as set forth in subsection (A) of this Section.

## **Section 27. Performance and Completion Security.**

- A) A Service Provider or System owner or operator shall provide to the Village a performance bond or other security executed by a surety licensed to do business in the State, or if deemed necessary by the Village Board a cash deposit or irrevocable letter of credit in the name of the Village, in an amount totaling at least twenty-five thousand dollars (\$25,000.00) and not exceeding one-hundred thousand dollars (\$100,000.00). The purpose of the security is to ensure performance and compliance with the requirements and provisions of this Law and may be called or drawn upon, as appropriate, to recompense the Village for fully-allocated costs, losses or damages incurred by the Village as a result of the failure to comply with this Law, up to the monetary limits of the security. If the Village draws on a performance bond, cash deposit or irrevocable letter of credit as a result of a Service Provider's or System owner's or operator's failure to fully and timely discharge its obligations under this Law, then the Service Provider or System owner or operator shall be required to replenish the security to the previous level within thirty (30) days of the call or draw down.
- B) The specific amount of the performance security shall be determined based upon, but shall not be limited to, such matters as the history of performance in the Village or in other municipalities.
- C) At the sole discretion of the Board, upon request by the Service Provider or System owner or operator, the performance security may be reduced for good cause shown, such as for a record of full compliance with this Law and a Franchise over three (3) years. However, the burden of proving the appropriateness of a reduction shall rest solely with the petitioner.
- D) The performance bond or other security shall be in force at all times, unless relief is granted or a schedule of reduction is detailed in a separate agreement executed between the Service Provider or System owner or operator and the Village Board.
- E) In addition to the performance security required in subsection (A) of this Section, a Service Provider or System owner or operator shall furnish to the Village a construction/completion bond or other approved security prior to the time it commences any construction, upgrade, rebuild, or repair/maintenance project that has a capital construction cost or outlay exceeding one hundred thousand dollars (\$100,000.00). In determining the cost, the cost of the entire project shall be used, and a Service Provider or System owner or operator shall not avoid the requirements of this section by separating or segregating the project into smaller component parts or portions, such as listing geographical sections of the Village as separate projects, whether or not they are to be done simultaneously or consecutively. The amount of the bond or other security shall equal at least seventy-five percent (75%) of the projected capital cost. Any component parts or portions of

a project subject to the requirements of this subsection that are undertaken within a twelve (12) month period shall be deemed the same project.

- F) To minimize and control the disruption of the normal and usual use of the streets and rights-of-way in the Village, any construction/completion bond or other permitted form of security shall expressly guarantee that a Service Provider or System owner or operator will in a timely manner abide by the schedule for the project as approved by the Village Board or Administrator and that the Service Provider or System owner or operator will Complete the project in a timely manner.
- G) If the Village Board draws on a completion bond or other permitted form of security as a result of a Service Provider's or System owner's or operator's failure to timely and fully discharge its obligations and Complete any project subject to this subsection, then the affected Service Provider or System owner or operator shall be required to replenish the completion and performance bond or security to the previous level within thirty (30) days of the date of the draw down.
- H) In lieu of a performance bond and/or a construction/completion bond, at its sole discretion the Village Board may accept alternative forms of security, including a written guarantee of a Service Provider or System owner or operator pledging the full faith and credit of the affected Service Provider's or System owner's or operator's ultimate parent.

## **Section 28. Other Types of Insurance and Bonds.**

Notwithstanding other insurance and bond requirements, a Service Provider or System owner or operator shall obtain and maintain any other required types of insurance and bonds, including, but not limited to workers compensation insurance and automobile liability insurance, that are mandated by *either federal or State law, rule or regulation in at least the required minimum amounts, and according to the minimum terms and provisions mandated by either the federal or State law, rule or regulation.*

## **Section 29. Public Inspection File.**

- A) To the extent required by Federal and/or State law, rule or regulation, a Service Provider or System owner or operator shall maintain records and reports and assure that they are available upon request for inspection by the following:
  - 1) The general public;
  - 2) Subscribers and Users of the Service or System, and
  - 3) the Village Board, the Administrator or other Village officials, or the designee of such.
- B) A Service Provider or System owner or operator shall maintain a public inspection file which shall include at least the following:
  - 1) ownership records;
  - 4) Equal Employment Opportunity (EEO) data;
  - 5) Testing data and records pursuant to the FCC's rules, if applicable;
  - 6) Records of system maintenance and repair activities; and
  - 7) any other records or information required to be contained in a public inspection file by federal or State law, rule or regulation.

## **Section 30. Retention and Submission of Reports and Records.**

- A) A Service Provider or System owner or operator shall maintain, and upon request by the Village Board or its designee, provide records which, in the opinion of the Village, are reasonably necessary for the Village to determine compliance with the provisions of this Law, and to determine the Service Provider's or System owner's or operator's legal, technical, financial and character qualifications as may be needed from time-to-time to administer this Law and the Franchise.
- B) On or before January 1<sup>st</sup> of each year after the effective date of this Law, a Service Provider or System owner or operator shall submit to a designated Village official a list of files, reports, records, data or other information that the Service Provider or System owner or operator periodically and/or regularly and customarily files with the FCC or the PSC or any other federal or State agency because of its status as a Service Provider or System owner or operator that are applicable to or have affect on the System or the provision of Service in the Village. For any other report that a Service Provider or System owner or operator files with any other federal or State agency, and that has or will have a direct impact on the operation of the System or the provision of in the Village within one-hundred and eighty (180) days of the filing, then the Service Provider or System owner or operator shall notify the Village Board or Administrator of the filing within fifteen (15) days of the date of the filing. The notice shall inform the Village Board or Administrator of the nature and scope of the filing and the effect or intended effect, and the agency with whom the filing was made, including the name, address, department, division, and phone number of the recipient.
- C) As part of any compliance review or evaluation, or for any legitimate matter related to the administration and enforcement of this Law or a Service Provider's or System owner's or operator's Franchise, or any permitted operation under this Law, pursuant to subsection (B) of this Section the Village Board or the Administrator may require the provision of any reports, records, data or other information that filed with the FCC, the Securities and Exchange Commission (SEC) or any other federal or State agency that affects the ownership or operation of the System or the provision of Service in the Village. However, unless the Village is expressly authorized to require such by State or federal law, a Service Provider or System owner or operator shall not be required to provide any State or Federal tax returns, or any documents that are expressly exempted under State or federal privacy laws, including any applicable provision of the PSC and Section 631 of the Cable Act (codified at 47 USC 551).
- D) For the purposes intended under this subsection (C) of this Section, if requested, an address shall be required to be provided, but without giving the name of the Subscriber or User located at that address unless the consent of the Subscriber or User is obtained.
- E) The Village shall have the right and authority to require the delivery to the Village of any information related to determining the adequacy of any payments due the Village, including, but not limited to Franchise Fee payments, Rent, User Fees, licenses or taxes. The Village may not require the delivery of original documents, but may require the delivery of photostatic copies of such.
- F) The Village shall have the right to require, as deemed necessary for the administration and enforcement of this Law or a Franchise, that a Franchisee or other Service Provider or System owner or operator deliver to the Village copies of all applications, reports, documents, correspondence, pleadings and petitions of any kind that relate to or have an effect on the System, the System owner's or operator's or the Service Provider's ownership or operation of the Service or System, or on the franchising or regulatory authority of the Village, that are submitted

by or on behalf of the Franchisee or other Service Provider or System owner or operator, without regard to the federal or State regulatory agencies or courts where such affect, or have the intent of affecting, the operation of the Service Provider's or System owner's or operator's Service or System within the Village, or the Village's regulatory authority. The information shall be provided in a timely and expeditious manner, and as may further be required by this Law or a Franchise agreement .

- G) No Service Provider or System owner or operator shall use the delay of the provision of the information required under this Law to prevent the Village Board from exercising its rights or performing its duties and obligations under this Law or any applicable federal or State law, rule or regulation.
- H) Copies of responses, decisions, orders, rulemakings or any other communications from the regulatory agencies or courts to a Service Provider or System owner or operator or its agent, including the Service Provider's or System owner's or operator's ultimate parent, its attorney or its consultants, that are relative to the Service Provider or System owner or operator, or to the operation of the System or the provision of Service in the Village, that would have an effect on the operation of System or the provision of Service within the Village, or ownership, shall likewise be filed with the Village no later than fifteen (15) days after the filing or receipt thereof.
- I) In addition to the requirements noted in the preceding subsections of this Section, a Service Provider or System owner or operator shall in a timely manner submit those reports, statements and logs required by this Law that are necessary for the proper and diligent administration and enforcement of this Law or any Franchise granted by the Village, including, but not limited to, the following:
  - 1. a periodic Gross Revenue statement and report in the manner set forth in this Law;
  - 2. a copy of the Loss of Service or Outage log applicable to the System or Service in the Village, showing all Service outages of any kind and duration, in accordance with the requirements in this Law and any Franchise;
  - 3. system maintenance reports as set forth in this Law;
  - 4. any form, including all attachments and exhibits thereto, relating to an Assignment or Transfer of the Franchise or any Change of Control of a System, operator or Service Provider;
  - 5. a copy of any equal employment opportunity (EEO) and fair contracting policies; and
  - 6. a copy of any required State authorization to operate a System or provide Service using a System.

### **Section 31. Inspection and Review of Books, Records, and Other Data.**

- A) A Service Provider or System owner or operator shall keep complete and accurate books of accounts and records of the business and operations in connection with the operation of System and/or the provision of Service in the Village, including records of inspection and maintenance activity in sufficient detail to ascertain the diligence and adequacy of the inspection and maintenance program.
- B) The Village Board, the Administrator, or a duly authorized designee of either, shall always have the right to require the provision of and delivery of information or records, including true and complete photostatic copies of any records, to the Village offices, or the offices of the Village's designee, as may be necessary and required to administer this Law or any Franchise. At the discretion of the Village Board or the Administrator, and in lieu of the preceding, the Company

may be permitted to provide attested and certified summaries of information in the form and format determined by the Village Board or the Administrator.

- C) Requests for information and records shall be provided within five (5) days of the receipt of a written request, unless the retention of such records is expressly exempted by one or more provisions of a Franchise, or unless the time for the provision of such records is extended by the Village Board or the Administrator. In an emergency situation the information may be required to be provided sooner.
- D) It shall be the responsibility of the Service Provider or System owner or operator to retain and maintain records and information so as to enable their provision to the Village or its designee in a timely manner as required by this Law. The period of time for the required retention of such records shall be for the period of time represented by the State's statute of limitations given the facts and circumstances involved.
- E) The Village shall have the right, at its own expense, to hire, an independent certified public accountant or other business professional to review the books and records of a Service Provider or System owner or operator, or at the discretion of the Village Board or the Administrator, attested and certified summaries of information in the form and format determined by the Board or the Administrator. If, after a financial audit or analysis, it is determined that the Service Provider or System owner or operator has underpaid amounts owed to the Village by one percent (1%) or more of the amount owed or \$2,000, whichever is less, then the Service Provider or System owner or operator may be required to reimburse the Village for the actual fully-allocated cost of the audit or review. Absent fraud, any audit by an independent certified public accountant or other qualified professional retained by the Village shall be binding.
- F) A false entry into the books and/or records of a Service Provider or System owner or operator of a material fact or amount made by a Service Provider or System owner or operator or any employee or contractor of the Service Provider or System owner or operator, shall constitute a material violation of this Law and, at the discretion of Village Board, subject the Service Provider or System owner or operator to termination and revocation of its Franchise, and any and all fines and penalties, both civil and criminal, as permitted under law. An unintentional erroneous entry made in good faith and of de minimus negative affect, shall be deemed a Technical violation or breach and shall not constitute a material violation of this Law, nor subject a Service Provider or System owner or operator to any damages or penalties.
- G) The Service Provider or System owner or operator shall also keep, make available and provide upon request by the Village, any other records and information that may be required by any other federal or State agency, including the PSC, that has jurisdiction over one or more classes of Service Provider or System owner or operators as relate to the operation of the System or the provision of Service, including financial matters.
- H) No Service Provider or System owner or operator shall be required to provide information that is by law expressly deemed confidential or proprietary.
- I) Failure to comply with the provisions of this Section shall subject the Service Provider or System owner or operator to fines or penalties as set forth in this Law.
- J) To the extent required by applicable State and federal law, the Village shall not disclose or use any information provided by a Service Provider or System owner or operator in a manner that

would reasonably be deemed to provide a competitive advantage to another Service Provider or System owner or operator, or that would reasonably be deemed place the Service Provider or System owner or operator at a competitive disadvantage.

## **Sections 32 -- 37. Reserved.**

### **Section 38. Restoration of a Subscriber or User's Property.**

- A) If at any time a Service Provider or System owner or operator shall disturb the yard, residence, or other real or personal property of a Subscriber or User, such Service Provider or System owner or operator shall ensure that the Subscriber's or User's yard, residence, place of business or other real or personal property is returned or restored to a condition comparable to that which existed prior to the commencement of the work or to the creation of the damage.
- B) The costs associated with both the disturbance and the return, replacement, and/or restoration shall be borne solely by the Service Provider or System owner or operator. The Service Provider or System owner or operator shall reimburse a Subscriber or User or private property owner, for any actual physical damage caused by the Service Provider or System owner or operator, its subcontractor, or its independent contractor, in connection with the disturbance of or damage to a Subscriber or User or property owner's property that cannot be returned to its condition prior to the damage.

### **Section 39. Non-prohibitive Access Policy and Voluntary Subscription.**

As a matter of Consumer Protection the Village establishes the following regulations related to access to or the refusal of any service.

- A) Except for normal sales and sales retention efforts, no Service Provider or System owner or operator shall engage in any activity or practice which is designed to prohibit or inhibit, or has the effect of inhibiting or prohibiting, a Subscriber or User from switching from one Service Provider or System owner or operator to another Service Provider or System owner or operator or disconnecting from one Service Provider or System owner or operator in order to connect and receive Service from another Service Provider or System owner or operator or simultaneously receiving Service from more than one Service Provider or System owner or operator.
- B) No Service Provider or System owner or operator shall engage in any activity or practice which has the effect of acting as a penalty or negative disincentive for a Subscriber or User switching from one Service Provider or System owner or operator to another Service Provider or System owner or operator, or disconnecting from one Service Provider or System owner or operator in order to connect and receive Service from another Service Provider or System owner or operator, or simultaneously receiving Service from more than one Service Provider or System owner or operator.
- C) No Person or member of the public shall be penalized or fined by a Service Provider or System owner or operator, whether through a home sales contract, a deed containing restrictive covenants, or any other type or instrument of agreement or restriction, for failing or refusing to subscribe to or receive Service of any kind, or for failing or refusing to physically connect to a Service Provider's or System owners' or operator's System; nor shall any Person incur penalties,

finer or costs of any kind for failing or refusing to connect to a Service Provider's facilities or a System owner's or operator's System, or for failing or refusing to subscribe to or receive Service

## **Sections 40 -- 45. Reserved.**

### **Section 46. Protection of Subscriber or User Privacy.**

As a matter of Consumer Protection the Village adopts the following regulations regarding Subscriber or User Privacy:

- A) A Service Provider or System owner or operator shall abide by any and all Subscriber or User privacy rules or regulations of the federal or State government or any federal or State agency.
- B) Any Service Provider or System owner or operator, including but not limited to any that functions as an Internet Service Provider, shall be prohibited from using or providing to a third party any information sent or received by a Subscriber or User, including but not limited to e-mail or any attachments thereto, for any purpose whatsoever, unless ordered to do so by a court of competent jurisdiction or unless the authority to enforce this provision is preempted or superceded by applicable law.

### **Section 47. Resolution of Complaints and Response to Inquiries.**

The Village is hereby granted the authority to do all things necessary and permissible to supervise, inspect and regulate the construction, operation and maintenance of Systems or Services that are subject to this Law in whole or in part, and to implement procedures for the filing and resolution of complaints, unless otherwise expressly prohibited by federal or State law.

### **Section 48. Policy With Respect to the Continuity of Service.**

- A) No Service Provider or System owner or operator may abandon, withdraw, or cease to operate the System or provide Service to any portion of the Service area within the Village without the prior express written consent of the Village Board.
- B) A Service Provider or System owner or operator shall be prohibited from using the threat to abandon, withdraw, or cease to provide Service to any Subscriber or Users or Service or operate the System area within the required service area in Village to avoid compliance with this Law or the terms and conditions of a Franchise.
- C) A violation of this Section shall be deemed grounds to terminate and revoke a Franchise in accordance with the provisions of this Law and applicable State law.

## **Sections 49 -- 54. Reserved.**

### **Section 55. Construction and Construction-Related Requirements.**

- A) In order to establish minimum and uniform standards related to the safe use and occupancy of public property, the Village's property and rights-of-way and private property, and as the System may be relied upon to communicate with the subscribing public in the event of an emergency or disaster, to assure the reliable provision of Service in the Village, and to the extent reasonably

possible assure the ability of Subscribers, Users and property owners to enjoy their property with the least inconvenience and diminishment of the value of the property, any Service Provider or System owner or operator shall abide by and adhere to the following minimum construction and construction-related requirements.

- 1) Construct, install, maintain, and repair the System or facilities used to provide Service in accordance with this Law, and any other requirements of the State, County and/or Village; use and occupy streets and private rights-of-ways as set forth in this Law, and any other applicable requirements of the State, County, and/or Village;
  - 2) where applicable, and when ordered in accordance with this Law or a Franchise, remove the Service Provider's or System owner's or operator's equipment, facilities and property from the Village's property, streets or rights-of-way in accordance with this Law and applicable State law;
  - 3) when ordered by a private property owner, Subscriber or User, remove the Service Provider's or System owner's or operator's equipment, facilities and property from the premises;
  - 4) abide by the safety requirements as set forth in this Law;
  - 5) abide by and act in strict accordance with all codes that are standard and customary to the applicable industry, including construction, fire, safety, health, and zoning codes that are adopted by the Village, the County, the State or the United States;
  - 6) cooperate with the Village in the conduct of any inspection of the System or facilities used to provide Service, and make repairs or eliminate construction or safety violations as directed or ordered by the Administrator or the Village Board; and
  - 7) maintain all permits, licenses and other authorities as required by this Law and any other Village rules or regulations, and as may be required by any other governmental regulatory authority.
- B) The construction, rebuild, upgrade, installation, maintenance and repair of any System or facilities of any System owner or operator or Service Provider shall at all times and without exception abide by and comply with the requirements of subsections (C) through (P) of this Section, unless expressly relieved from compliance in a Franchise, which relief shall include any Grandfathered status in a Franchise in existence as of the Effective Date of this Law, unless engaged in any construction, rebuild or upgrade of the System or facilities after the effective date of this Law and prior to the Expiration date of the Franchise.
- C) For newly served areas of the Village, the provisions of subsection (C) of this Section shall apply at the time of initial construction and/or installation of the new System or facilities, or at the time of a rebuild or upgrade of a System or any of its facilities.
- D) The Village expressly adopts a policy of zero ("0") tolerance of situations or practices not in compliance with the requirements of this section, unless relief is granted pursuant to Section 8 of this Law.
- E) Any Service Provider or System owner or operator, when engaged in any construction, installation, rebuild, upgrade, maintenance or repair activities, shall treat the aesthetics of property as a priority, shall not substantially change or affect the appearance or the integrity of the structure and the property on which it is situated in a negative manner. This shall include prohibiting the installation of a service drop and associated components on the bias or diagonally across the front, rear or side of a residence or other structure without the property owner's express permission. Unless impracticable, all drop material attached to a dwelling or business must

follow the perimeter lines or roof lines of the dwelling or business and shall result in the minimum visual effect reasonably possible, taking into account the reasonable desires of the Subscriber or User.

- F) To minimize the accidental cutting of lines resulting in a Loss of Service, to the extent not physically or commercially impracticable, all underground service drops shall follow property lines and shall cross property only at right angles, unless otherwise expressly permitted by the property owner, whose permission shall be in writing and the work order signed by the Subscriber or User shall contain a diagram of the permitted routing of the service drop, or unless required due to the physical characteristics of the surface or subsurface obstructions, in which case there shall be a signed and dated acknowledgment by the Subscriber or User of the need to route the installation differently than as required in this subsection. For Systems or Service Providers in existence prior to the effective date of this Law, the Service Provider or System owner or operator shall not be required to bring its facilities into compliance with the provisions of this subsection (F) until the sooner of an upgrade or rebuild of the System or System facilities or the grant of a new or renewed Franchise. A Service Provider or System owner or operator shall always be required to comply with the provisions of this subsection (F) when requested by a Subscriber or User, and shall do so in a timely manner.
- G) Underground service drops shall be buried at a minimum required depth of twelve (12) inches, so as to prevent being cut in the course of performing normal yard maintenance, planting and landscaping.
- H) In instances where previously existing utilities have constructed or installed wire or cable aerially, the Service Provider or System owner or operator may construct its System or facilities aerially, unless otherwise required by State or local law. However it shall be the responsibility of the System owner or operator or Service Provider to assure that at all times and without exception all required minimum separations are maintained between its facilities and those of other occupants of the poles as required by applicable code, rule or regulation, including as set forth in this Law, and that there shall at no time be less than the minimum required clearance between such facilities and those of the System or Service Provider, nor shall there ever be any contact between the Service Provider's or System owner's or operator's wires, cable or other equipment and facilities and those of any other utility or other System or Service Provider's facilities or any other occupant of the poles.
- I) In situations involving underground construction, the System owner or operator or Service Provider shall at all times and without exception be required to comply with all applicable requirements of the National Electrical Safety Code and the National Electrical Code.
- J) As a matter of economic development and preserving property values the Village Board may order any portion of a System to be placed underground.
- K) In the event a violation of subsection (H) is caused by another occupant of the poles, upon discovery of the violation the System owner or operator or Service Provider shall, the same day if possible, but in no case later than the next Work Day, formally and in writing, notify the party that created the violation and diligently pursue the elimination of the violation. The System owner or operator or Service Provider shall be required to be able to provide evidence of the notice to eliminate the violation and of its efforts to have the violation eliminated.

- L) All occupants of utility poles and shared trenches shall at all times cooperate with all other occupants to assure compliance with the requirements of this Section.
- M) In order to provide the maximum assurance of the protection of the public and of the employees of any occupants of the Village's property and rights-of-way the Village specifically adopts the following construction, maintenance and repair requirements set forth in this subsection. The requirements in this subsection shall serve as minimum standards and requirements and shall be in addition to any other requirements of the Village, the County or the State. In the event of a conflict between the requirements set forth in this subsection and those contained in any other applicable County or State code, rule or regulation, that which provides the greatest assurance of achieving the intent set forth in Subsection (A) of this Section shall apply.
1. All aerial system components shall at all times be securely and properly attached and supported.
  2. All guy wires associated with a System shall at all times be maintained with the integrity originally intended, including, but not limited to proper attachment to an anchor and adequate tension to perform the purpose intended.
  3. Any guy wire associated with a System that is reasonably accessible to or may be reasonably be expected to be encountered by pedestrians or users of recreational vehicles, including but not limited to bicycles, skate boards, snowmobiles, off-road vehicles and all-terrain vehicles, shall at all times be marked and protected by the use of a suitable brightly colored, plainly visible guard no less than eight (8) feet in length and made of a non-conductive material that is resistant to deterioration caused by the effects of the weather.
  4. The ends of all guy wires at the point of attachment to the anchor shall be trimmed and capped or otherwise protected so as not to allow exposed sharp ends to protrude.
  5. All wires or cables of any kind associated with the System that are placed vertically on any pole and that are within eight (8) feet of the surface of the ground shall at all times be protected from direct contact by unauthorized individuals and vandalism by means of a suitable guard made of a non-conductive material that is durable and resistant to degradation or deterioration caused by the effects of the weather.
  6. At no time shall any cable, or functional equivalent, intended for underground installation be left or remain unburied at the end of a Work Day. The only exceptions to this requirement shall be for extreme weather conditions or in a force majeure situation, or if the ground is frozen to a depth of more than six (6) inches. In any case involving the exceptions under this paragraph, the unburied cable shall be buried pursuant to the requirements in the National Electrical Safety Code, or for situations involving service drops the requirement in subsection (G) of this Section, on the first Work Day following the cessation or elimination of the condition permitting the exception.
  7. All pedestals and vaults housing System or Service facilities or components shall at all times be reasonably secured. It is required that every Service call at a location at which a pedestal or vault exists shall include a check of the structural integrity and the security of the vault or pedestal, and any repairs necessary to bring the pedestal or vault into

compliance with this subparagraph shall be done at the time of the Service call, or the next Work Day at the latest.

8. At no time shall any pedestal or vault be located closer than six (6) feet from an electric power pedestal, unless bonded to the ground of the electrical power pedestal.
9. In no instance shall any pedestal or vault be situated so as to block, prevent, hinder or interfere with the free access to any other utility or Service pedestal.
10. In no instance shall any System or Service component or facility be fewer than twenty (20) inches, measured vertically, from any street light, including any attachment brackets or fixtures of any street light, unless individually bonded to the street light or its ground, in which case the minimum permitted clearance shall be twelve (12) inches.
11. All System or Service facilities or components which are aerially constructed shall maintain a minimum of sixty (60) inches of vertical clearance at a pole and fifty (50) inches of clearance at mid-span from any electrical primary lines, wires or facilities, and forty (40) inches of vertical clearance at a pole and thirty (30) inches of vertical clearance at mid-span from any electrical secondary power lines, wires or facilities.
12. At all times in all aerially constructed areas of the Village, all communications Systems or Service facilities or components shall maintain a minimum of twelve (12) inches vertical clearance from any other communications lines, wires and facilities.
13. At no time shall any System or Service facilities or components be attached to, or in contact with, any electrical power mast or any other electrical power-related facility on any residence or business, except for the sole purpose of establishing a common ground, otherwise known as a bond, which bond shall not be at the electrical power mast and shall not block or otherwise interfere with the free and unhindered access to any component of the electrical service; nor shall such facilities or components ever be in contact with or closer than twelve (12) inches from any component of electrical service to any residence or building, except for purposes of bonding to the electrical service ground.
14. All service drops shall be bonded to the electrical system ground serving that home or building. At no time shall a separate ground rod be the only means of providing a ground, unless the home or building has no electrical service ground, in which case the electric company must be notified in writing of the lack of a ground.
15. All System or Service lines, wires and cable, including Service drops, shall have a minimum vertical clearance of eight (8) feet when passing above or over any point of any roof of any home or building of any kind.
16. No wire, line or cable of a System owner or operator or Service Provider, whether aerial or underground, shall cross the property of a Person, Subscriber or User to provide service other than to serve the address of the property being crossed without the express written permission of the owner of the property being crossed, which written permission shall be permanently retained by the Service Provider or System owner or operator and produced upon request or demand by the owner of the property or the Administrator, the Village Board or its designee.

17. All System or Service lines, wires and cable serving residences or other buildings shall be securely attached to the structure in a neat manner and in the least visually offensive manner reasonably possible given the facts and circumstances.
18. No Service drop shall at any time cross in front of or block any door, window or any means of emergency egress or ingress of any home, business or building. If any wire, line, cable or Service drop of the System or Service Provider is found to be blocking a means of emergency ingress or egress, a Service Provider or System owner or operator shall immediately reroute and attach the wire, line, cable or Service drop so as to eliminate the situation.
19. At all times, on an individual basis, all service drops shall be bonded to the common ground of the electrical service in the residence or other building, except with the express permission of the Village, and then only for the reason stated in subparagraph (12) of this Section. No service drop may at any time be grounded to or in contact with any facility providing gas service, nor be closer than twelve inches (12") to any facility providing gas service.
20. All work on the System or Service plant, facilities or equipment performed by a System owner or operator or Service Provider shall, without exception, be left in a permanent, finished condition at the end of each working day, unless individually approved by the Subscriber or property owner and either the Village Board or the Administrator on a individual location-by-location basis. At no time may materials or System components be left in the rights-of-way in reach of an individual, unless appropriate personnel are present to prevent injury.
21. All Subscriber or User Service drops are to be inspected by the System owner or operator or Service Provider, whichever is applicable, as an integral part of every Service call, installation or reconnection, and any work necessary to bring the Service drop into compliance with this section shall be completed prior to leaving the address, or at the latest, by the end of that Work Day.
22. All communications Systems and facilities of a communications System owner or operator or Service Provider attached to utility poles shall at all times be attached on the same side of the pole as the lowest occupant of the pole, unless sufficient climbing space is provided by use of a stand-off arm. At no time shall any facilities of a System owner or operator or Service Provider create what is known in the industry a 'frame out' of a pole, thereby blocking the necessary climbing space of the pole.
23. All System or Service lines, wires, cable and facilities shall be constructed so as to leave sufficient room between its System and facilities and those of the electric system to place or move a service bucket between the systems and facilities without coming into contact with the other system or facilities, or in simultaneous contact with both systems or facilities.
24. All cable, lines, wires and fiber shall at all times be securely lashed to the supporting strand so that the structural integrity of the cable or System is not compromised.

- N) Every Service Provider or System owner or operator shall be required to conduct a diligent program of regular inspection of its System and facilities to assure compliance with the requirements of this Section, which shall include adequate training of all field personnel to enable them to be capable of identifying and reporting situations not in compliance with the requirements of this Section.
- O) At all times and without exception all applicable portions of the Occupational Safety and Health Act (OSHA) shall be complied with.
- P) Any violations of this Section that are found shall be eliminated immediately, or the next Work Day at the latest.
- Q) Any System owner or operator or Service Provider who violates the requirements of this section may, at the discretion of the Village Board, be subject to the imposition of fines and penalties as set forth in this Law.

### **Section 56. Construction of Good Quality.**

Any construction, rebuild, upgrade, installation or maintenance of any System or facilities shall be done using only materials of good and durable quality, and all work shall be performed in a safe, thorough, reliable and workmanlike manner.

### **Section 57. Conditions on Use of Streets and Public Ways.**

- A) At all times and without exception, all wires, conduits, cable (whether coaxial, fiber or a functional equivalent), and other property and facilities of a Service Provider or System owner or operator shall be located, constructed, installed, and maintained so as not to endanger or unnecessarily interfere with the usual and customary use, traffic and travel upon the streets, rights-of-way, easements, and public ways of the Village, or any private property adjacent to, crossed or used by a System owner or operator or Service Provider.
- B) In the event a Service Provider or System owner or operator's System or facilities creates a hazardous or unsafe condition, or is part of or a party to a hazardous or unsafe condition, including, but not limited to those standards and requirements set forth in this Law that are intended to protect the safety of persons and property, or that creates an avoidable or unreasonable interference with the use of public or private property, the Service Provider or System owner or operator shall upon discovery, voluntarily or upon notice by the Village, remove or modify that part of the System or facilities so as to eliminate the condition in a prompt and expeditious manner.
- C) At no time and under no circumstances shall a Service Provider or System owner or operator place equipment where it will unduly, unreasonably or impermissibly interfere with the rights of property owners, or with any utility or service intended to benefit the general public, or any other service or facility that benefits or protects the health, safety, or welfare of the Village or its residents.
- D) A Service Provider or System owner or operator, either at its own expense or that of a private contractor, shall at all times and without exception protect all property, including public property and the Village's rights-of-ways and easements, and shall support or temporarily disconnect or relocate any property of the Service Provider or System owner or operator when necessitated by reason of:

- 1) traffic conditions;
- 2) public safety;
- 3) temporary or permanent street closing;
- 4) street construction or re-surfacing;
- 5) a change in, or establishment of, a street grade;
- 6) installation, repair or modification of sewers, drains, water pipes, storm drains, lift stations, force mains, power or Signal lines, and any traffic control system; or
- 7) any improvement, construction, repair or public works project related to the Village's or its residents' health safety or welfare.

- E) Upon request by any Person or individual desiring to work or have work performed near or around a System's or a Service Provider's facilities that are placed underground, it shall at all times be the responsibility of a Service Provider or System owner or operator to locate or have located all components of the System or facilities, and mark or otherwise visibly indicate and alert others to the location of the underground wires, cable, fiber or a functional equivalent and any associated equipment of facilities, prior to the start date of such work. It shall be the responsibility of the entity intending to or actually performing underground work to notify the Service Provider or System owner or operator at least ten (10) days prior to the intended start date of the need to locate the Service Provider or System owner or operator's underground lines and equipment and to inform the Service Provider or System owner or operator of the intended start date. All digging work shall be coordinated for markings with other underground utility companies.
- F) No Service Provider or System owner or operator may engage in any underground work or disturb the subsurface of any ground without first having had located and marked all utilities and facilities placed underground at the same location.
- G) On the request of any Person holding a building moving permit, a Service Provider or System owner or operator shall temporarily remove, raise or lower its wires and facilities to allow the moving or relocation of the building. The expense of temporary removal, raising or lowering of the wires and facilities shall be paid by the Person requesting such, and the Service Provider or System owner or operator may require payment in advance. The affected Service Provider or System owner or operator shall be given not less than fourteen (14) days notice of a contemplated move to arrange for temporary wire changes.

## **Section 58. Street Cutting**

- A) The Village reserves the right to establish an application and permitting process requiring a Street Cutting Permit from the Village, including a fee for such permit, prior to cutting, penetrating, opening or in any way compromising or affecting the surface or integrity of the surface of any public Street or sidewalk.

## **Section 59. Duty to Remove Properties from the Public Streets and Rights-of-Way.**

- A) In the event of the Non-renewal of a Service Provider's or System owner's or operator's Franchise, or the involuntary termination or revocation the Franchise, subject to the Continuity of Service provisions outlined in this Law, and unless the Village or another Person indicates its lawful intent to acquire and use the System or the facilities, the affected Service Provider or System owner or operator shall promptly remove its System from the streets, public ways and

private property located within the Village, including all facilities, equipment and other property. The removal shall be at the sole expense of the affected Service Provider or System owner or operator and shall be completely removed within ninety (90) days of the date of Expiration, or the date of revocation and involuntary termination, of its Franchise, or within ninety (90) days of a lawful order or directive from the Village, whenever any of the following occurs:

- 1) the Service Provider or System owner or operator ceases to operate all or any part of the System or provide Service for more than twenty-four (24) consecutive hours without the express written permission of the Village Board or the Administrator, other for reasons of Force Majeure;
  - 2) the Service Provider or System owner or operator fails, without the express written permission of the Village Board, to construct, rebuild or upgrade the System or provide Service as contained in an Application or Proposal for renewal, or in a Franchise or an amended Franchise;
  - 3) the Village Board elects not to, and affirmatively acts not to, renew the Franchise, pursuant to the provisions set forth in this Law and, if such action is appealed, pending a final ruling or determination by a court of competent jurisdiction; or
  - 4) the Service Provider's or System owner's or operator's Franchise is revoked pursuant to the provisions set forth in this Law and, if appealed, pending a final ruling or determination by a court of competent jurisdiction.
- A) The Service Provider or System owner or operator shall remove all of its cable, lines, wires property, facilities and equipment located in the Village's streets and rights-of-way in the manner and time frame prescribed in subsections (C) through (F) of this Section.
- B) If not removed voluntarily by the Service Provider or System owner or operator pursuant to subsections (A) and (B) of this Section, then the Village may notify the Service Provider or System owner or operator that if removal of the property is not accomplished within ninety (90) days, or substantial progress towards removal is not made within seventy-five (75) days, then the Village may direct its officials or representatives to remove the Service Provider or System owner or operator's property, facilities, equipment, cable and wires at the expense of the Service Provider or System owner or operator.
- C) If officials or representatives of the Village remove, or cause to have removed, a Service Provider's or System owner's or operator's cable, lines, wires property, facilities and equipment, and the Service Provider or System owner or operator does not claim the property within ninety (90) days of its removal, then the Village may take whatever steps are permissible under State law to declare the property surplus, and sell it and, if permitted by State law, the proceeds of the sale shall go to the Village.
- D) When the Service Provider or System owner or operator removes its System and any other property, facilities, equipment, cable or wires from the streets and public property and rights-of-way within the Village, the Service Provider or System owner or operator shall, at its own expense, and in a manner approved by the Village, replace and restore the public or private property to a condition comparable to that which existed before the work causing the disturbance or any damage, was done.

## **Section 60. Permits and Licenses.**

A Service Provider or System owner or operator shall obtain, at its own expense, all permits and licenses required by local law or County or State Law, or State, County or local rule or regulation,

and shall maintain the same, in full force and effect, for as long as required by the Village or the agency granting the permit or license.

## **Section 61. Technical Operating Regulations**

It shall at all times be the responsibility of any Service Provider or System owner or operator to comply with the most current FCC technical rules and standards, if such are applicable to the Service Provider or System owner or operator, and the Village reserves the right and authority to enforce such rules and standards, including the authority to require demonstration of compliance.

## **Section 62. Right to Inspect a System or Facilities and to Review Documents**

- A) In order to verify that a Service Provider or System owner or operator constructs, rebuilds, upgrades, maintains and repairs the System and facilities in the manner required by this Law, the Village shall have the right to inspect all portions and facets of a Service Provider's or System owner's or operator's facilities, including the construction, placement, operation, repair and maintenance of the System or facilities in the Village.
- B) The Village shall have the right to require the delivery to the Village or its designee, true, accurate and unexpurgated copies of any and all records and documents related to any tests and inspections conducted by the System owner or operator or the Service Provider for purposes of review and analysis as may deemed necessary to administer and enforce this Law and any Franchise.
- C) The Village shall pay for its costs associated with any physical inspections of the system or its components, or for document reviews. Notwithstanding the preceding, the Village may require reimbursement of its fully-allocated costs for those circumstances occasioned by a Service Provider or System owner or operator refusing to provide the information requested under subsection (B) of this Section, or the refusal to cooperate with the Village in an inspection, or that is occasioned by the identified failure in a significant portion of the Village to construct, install, maintain, repair, rebuild or upgrade any part or portion of the Service Provider's or System owner's or operator's System or facilities in the manner specified and required by this Law.
- D) If a failure to construct, install, maintain, repair, rebuild or upgrade the System or facilities as required by this Law is identified, except for that which would reasonably be deemed of a de minimus number of situations and of de minimus effect, and after ordering the remedy or elimination of the failures and providing a period of time to comply with the order, the Village may order a reinspection in order to verify the resolution or elimination of any failure or problem by a Service Provider or System owner or operator.
- E) In instances involving reimbursement under subsection (C) of this Section, at the discretion of the Village Board or the Administrator, the Service Provider or System owner or operator may be required to reimburse the Village for all of the actual fully-allocated costs that are incurred by the Village to obtain the necessary information, or that are incurred to conduct or have conducted any needed reinspection. If, upon reinspection, all failures to construct, install, maintain, repair, rebuild or upgrade any portion of the Service Provider's or System owner's or operator's System or facilities have been eliminated, the Village Board or the Administrator may, at their discretion, waive the reimbursement requirement.

- F) The reimbursable costs as described in this Section are deemed reimbursable because either the costs were precipitated by the unreasonable or non-compliant behavior of the System owner or operator or the Service Provider, or because the costs are related to actions of enforcement for violations or breaches committed, neither of which is a part of the normal administrative function of this Law or of Franchise, and are extraordinary costs that would not have been incurred were it not for the impermissible action or violation by the System owner or operator or the Service Provider.

## **Sections 63 -- 67. Reserved.**

## **Section 68. Safety Requirements.**

- A) All System owners or operators or Service Providers shall at all times and without exception comply with the most current editions of the National Electrical Safety Code (NESC) , the National Electrical Code (NEC) and the Occupational Safety and Health Act (OSHA). Any changes in or amendments to these codes and law shall be deemed to have been automatically adopted by the Village with respect to this Law, unless expressly rejected by the Village Board.
- B) In cases involving safety issues related to utility poles, including the requirement to regularly inspect the System and facilities for violations of the NESC, including but not limited to issues of minimum clearances or impermissible contact of the facilities of two occupants of the poles, and where there is a question as to which party caused the violation, the System owner or operator or the Service Provider may be required to provide the following, as applicable under the circumstance:
1. a copy of the request for makeready for the situation at that location showing the date of the request; or
  2. a copy of the signed and dated work order showing the date of installation for the particular subscriber or address; or
  3. a copy of the signed and dated work order for the latest service call for the particular subscriber or address.
- C) In cases involving subsection (B)(2) or (3) of this Section, where individually identifiable subscriber information may be revealed, it shall nevertheless be the responsibility of the System owner or operator or Service Provider to provide proof of the date in question, but without identifying the name of the subscriber, unless the subscriber's permission has been obtained.
- D) *To provide for the protection of the health and safety of persons and property in the Village to the maximum extent reasonably possible, the Village deems it necessary to adopt a policy of "zero" (0) tolerance of safety-related violations associated with any System or the provision of any Service in the Village, excepting those caused by Subscribers, Users or the public and which the Service Provider was not aware of or could not reasonably have been aware existed. However,, it shall always be the responsibility of the Service Provider or System owner or operator to remedy and eliminate any safety-related violations associated with its System or Service as such may be found or reported, or if caused by a third party, to diligently pursue the remedy and elimination of the violation.*
- E) To enable the Village to take any needed action or precaution to alert or otherwise protect persons and property in the Village, it shall be the responsibility and obligation of any Service Provider or System owner or operator to report to the Village any violation of safety codes,

regulations or requirements or the construction or construction-related requirements of this Law that is identified and is not able to be remedied within twenty-four (24) hours of the time of its identification, or if caused by a Subscriber or User, and due to the location on private property is not able to be remedied within the required twenty-four (24) hours. For purposes of this subsection, unless impracticable, the notice to the Village shall be required to be done the same day by phone, and the next day in writing.

- F) It shall be the immediate and primary responsibility of the Service Provider or System owner or operator to place appropriate and effective warning signs and protective devices or barriers at the site of any situations that could reasonably be expected to cause personal injury or property damage.
- G) There shall be no Fine or Penalty assessed or imposed for construction or construction-related or safety or safety-related violations that are of the System owner's or operator's or Service Provider's own accord and volition reported to the Village in accordance with the subsection (D) of this Section prior to any injury or harm having been caused, and provided that the report of a situation occurs prior to or on the same day as a third party report that the Village receives that is relevant to this Section, and if the violation is eliminated within twenty-four (24) hours, or in such time-frame as may otherwise be approved by the Village Board or the Administrator.

## **Sections 69 -- 74. Reserved.**

### **Section 75. Franchise Required.**

- A) No Person, Service Provider or System owner or operator, shall be permitted to construct, build, rebuild, upgrade or operate a System or provide Service in, along, over, under or across Village property or streets or rights-of-way of the Village, without having first obtained a Franchise, unless such Person, Service Provider or System owner or operator is exempted from this requirement under State or Federal law.
- B) No Franchise shall be required for either the Village, or for any authority affiliated with the Village, to own a System or provide Service in the Village, or to operate as a Service Provider or System owner or operator in the Village, unless required to do so by State law.

### **Section 76. Applications for Franchises; Authority to Grant Non-Exclusive Franchises; Required Permitting.**

- A) The Village Board may award one (1) or more non-exclusive Wireline Franchises or Cable Television Franchises within its corporate limits and no Franchise may be exclusive.
- B) A Service Provider's or System owner's or operator's Application or Proposal shall be evaluated and approved or disapproved as part of a public proceeding and hearing which affords the Applicant and the public an opportunity to be heard, and which is in accordance with applicable federal and State laws, rules and regulations.
- C) A Service Provider's or System owner's or operator's Application or Proposal for renewal of a Franchise for Cable Service only shall be received, processed, evaluated and awarded or not awarded pursuant to applicable federal and State law relating to the renewal of Cable Television Franchises. An Application or Proposal for renewal of a Cable Television Franchise shall not

automatically confer the right to provide services other than Cable Service as defined in Section 5 of this Law.

- D) A Service Provider or System owner or operator desiring to provide Service(s) in addition to Cable Service shall be required to obtain a Wireline Franchise.
- E) A Franchise for Wireline Service or Cable Service shall not automatically or inherently include the authority to receive, transmit, carry or transport signals or service using Wireless Technology. In order for a Wireline Telecommunications Franchise to carry, transport or transmit Wireless Service, the Franchise must expressly grant permission to do so.
- F) Any Service Provider or System owner or operator shall proceed with due diligence and its best efforts to obtain, at its own costs, all necessary permits, licenses, and authorizations which are required for the conduct of its business in the Village within thirty (30) days after the effective date of an initial Franchise, including, but not limited to, any private easement agreements, business licenses, utility joint use or attachment agreements, microwave carrier licenses, and any other permits, licenses and authorizations needed to lawfully provide Service or operate a System within the Village.
- G) A Service Provider or System owner or operator shall have in its possession all necessary and required permits, easements, agreements and licenses prior to the commencement of any construction, rebuild or upgrade of the System, and, if applicable, the provision of service.

## **Section 77. Franchise Agreement; Minimum Requirements.**

- A) A Service Provider or System owner or operator subject to this Law is prohibited from laying, installing, constructing or using any cable, lines or wires, whether coaxial, fiber, or a functional equivalent, or any other equipment or facilities, on Village-owned property or in the Village's rights-of-way until a Franchise is fully executed and is in effect, including approval by the PSC if such is required.
- B) A Franchise shall be sufficiently detailed so as to clearly delineate the rights, privileges, duties, obligations and limitations of the parties concerned and the duration of the franchise.
- C) As permitted, and as may be applicable to a particular class or type of Service Provider or System owner or operator, a Franchise shall, at a minimum, contain and address the following matters, as well as any requirements in accordance with any applicable rules of the PSC:
  - 1. the term or duration of the Franchise;
  - 2. an indemnity and hold harmless provision;
  - 3. an insurance commitment, as required;
  - 4. performance bonds or other security, as required;
  - 5. completion bonds or other security, as required;
  - 6. the clearly designated Service area;
  - 7. a schedule of service to any unserved areas of the Village;
  - 8. the construction, upgrade or rebuild schedule, if applicable;
  - 9. compensation, including, but not necessarily limited to a Franchise Fee for administering the Franchise;
  - 10. a Fee or Rent for the commercial use and occupancy of the Village's property and rights-of-way
  - 11. a statement of repeal of any previously granted or inconsistent Franchise;

12. a severability clause;
13. a commitment to abide by any and all laws, rules and regulations that govern the Franchise or its use and occupancy of the Village's property and rights-of-way and the provision of Service;
14. any exemptions or relief from this Law, or any comparable policy, as may be granted.; and
15. an effective date.

D) Without limitation other than as may be established by superseding law, the Village shall always have the right to require additional matters, issues and subjects to be contained in a Franchise, as may be reasonably deemed necessary in the interest of and to protect the Village and its residents.

## **Section 78. Extent of Grant of a Franchise; Wireline System and Service**

- A) A Service Provider or System owner or operator required to obtain a Franchise may construct, erect, install, maintain, rebuild, upgrade, operate, repair, replace, remove, and restore Service or a System within the geographical limits set forth in the Franchise, but only to the extent permitted by this Law and the terms and conditions of the Franchise.
- B) Any Franchise granted under this Law shall be solely and exclusively for Wireline Service, unless express written authority and permission to use the System for the receipt or provision of Wireless Service(s) is obtained from the Village, and no Wireless reception or transmission equipment or facilities shall be attached to or use the Wireline System located on or using Village-owned property or rights-of-way without the express written permission of the Village, which authority must be expressly contained in any Franchise.
- C) The System may be located in, upon, along, across, over, and under the streets, rights-of-way, easements, and public ways of the Village as more specifically set forth in the Franchise, but only to the extent set forth in this Law and the Franchise.
- D) A Service Provider or System owner or operator shall be solely and separately responsible for obtaining any required easements for the use of private property, including privately-owned utility or street light poles, solely at its own cost.
- E) A Service Provider or System owner or operator, through a separate pole or conduit agreement with a utility, or the Village, may locate the System on or within the easement or property of such utility in the Village, so long as the System and Service is deemed a compatible use of the easement and such use is expressly permitted by the holder or owner of the easement.

## **Section 79. Term of a Franchise.**

- A) The term of an initial Franchise shall be no more than ten (10) years from the date that a Franchise is approved by the Village Board and is executed by an authorized official of the Village and the affected Service Provider or System owner or operator. Ten (10) years shall be the maximum term permitted absent the demonstration of the need for a longer term for financial reasons, such as, for purposes of example, the time needed to recoup the initial investment plus a reasonable return on the investment as set forth in subsection (C) of this Section.
- B) No Franchise may contain an option to extend the term of the Franchise where such option is automatic or able to be unilaterally exercised.

- C) The Village shall not be obligated to grant a Franchise for a period of time that is greater than is necessary to recoup the amount of any capital expended that was required by the Village or as may be agreed to during negotiations for the Franchise, plus a return-on-investment attributable to that capital investment.
- D) The permitted return-on-investment shall be as may be agreed to in the Franchise, or as may be established by the FCC or the PSC for telecommunications utilities or Cable Television systems.
- E) A System owner or operator or Service Provider shall be required to demonstrate to the Board the financial need of the requested term of the Franchise in the form of an analysis as deemed appropriate and necessary and in reasonable detail as may be required by the Village Board.
- F) Unless ordered or otherwise required by a court of competent jurisdiction, or unless required by State law, the Village shall not disclose the details of financial information provided under this Section, other than to make public the length or term of the Franchise and the rate of return on capital investment used to determine or verify the need and justification for the term granted.
- G) The term of a renewal of a Franchise or the grant of a Franchise subsequent to an initial Franchise to an incumbent Service Provider or System owner or operator, shall be for a period of not less than three and one-half (3 ½) years, measured from the date that a Franchise is approved by the Village Board, and if required is approved by the PSC. The maximum term of renewal shall be no more than ten (10) years, absent demonstration of the financial need for a longer term as set forth in this Section.
- H) In the event of the Expiration of a Franchise prior to the renewal or issuance of a subsequent or different Franchise than that originally granted, unless prohibited by State law or rule, at the discretion of the Village Board continued authority may be granted in ninety (90) day increments.

## **Section 80. Service Area.**

An Application or Proposal for a Franchise, or for the grant of a Franchise subsequent to the Expiration of a previously granted Franchise, may, at the discretion of the Village Board, be required to include a plan to make Service available to any or all residences, dwellings, businesses and establishments located on any or all public streets and roads throughout the Village.

## **Section 81. System or Service Expansion.**

- A) Any Franchise Agreement that does not contain a plan for service to all occupied homes and buildings in the Village, shall contain a System expansion or Line Extension plan and schedule for areas not served as of the effective date of the Franchise.
- B) The cost of any Line Extension may either be apportioned among the Subscribers and Users of that Line Extension in the Village or, at the discretion of the Village Board, among all Subscribers and Users of the System or Service.
- C) If the Village adds or incorporates additional land through annexation or any other lawful means, pursuant to subsection (A) of this Section the Service Provider or System owner or operator serving that area may, at the discretion of the Village Board, be required to extend Service to the new locations within the reasonable time frame established by the Village Board.

- D) A plan submitted or required to be submitted pursuant to subsection (A) of this Section that requires more than one (1) year for Completion as measured from the date of the directive of the Village Board shall be accompanied by a detailed explanation justifying the need for the additional time, which justification shall include detailed supporting evidence of the reasons for the needed additional time, as well as a date specific by which Service shall be available to all residences, dwellings, businesses and establishments on any or all public streets and roads in the subject area.
- E) Village Board may grant relief from this requirement for one or more unserved areas within the Village if the Applicant provides an explanation acceptable to the Village as to why a particular area can not be served.

## **Section 82. Application for Franchise.**

- A) As may be applicable, but only to the extent expressly required by State or federal law, rule or regulation, the Village Board shall follow all applicable federal and State laws and rules of the FCC and the PSC with respect to the submission and processing of initial and renewal Applications or Proposals for a Franchise.
- B) As regards Cable Operators, and notwithstanding the preceding subsection (A), in the event the Applicant is an incumbent and proposes or requests to be permitted to allow the System to be used for the provision of service other than for Cable Service as defined under Section 631 (a)(2) of the Communications Act of 1934 (at 47 USC 551(a)(2)), such Application or Proposal shall not be deemed a renewal Application or a renewal Proposal. Any Proposal or Application by a current holder of a Cable Franchise Agreement with the Village, and which Proposal is for the provision of Service or the ownership or operation of a System as defined in Section 5 of this Law shall be deemed an initial Application, except as regards the provision of Cable Service or the use of the System to provide Cable Service, in which case that portion of the Application related to the provision of Cable Service, but only that portion, shall be deemed a renewal Application subject to Section 626 of the Cable Act of 1984, as amended (at 47 U.S.C 546).
- C) For Service Providers or System owners or operators not subject to federal law and the rules of the FCC and the PSC with respect to the grant or renewal of Franchises or as set forth, the Village Board may develop rules with respect to the submission and processing of initial and renewal Applications or Proposals for a Franchise. Such rules and regulations shall primarily be aimed at determining the legal, financial, technical, and character qualifications of the Applicant, though the Village may also consider other matters deemed of importance that are not prohibited from consideration by applicable law, including but not limited to the Applicant's or Proposer's history of performance and compliance, both in the Village and elsewhere.
- D) With respect to an initial Application or Proposal for a Franchise, an Applicant shall pay an initial non-refundable Application Fee as established by Resolution of the Village Board, which fee shall be for the purpose of covering the Village's fully allocated costs of processing and analyzing the Application. An Application for a Franchise that permits uses of a System not expressly set forth in a previous Franchise shall be deemed an initial Application for an initial Franchise.
- E) An initial Application for a Franchise to use and occupy the Village's Property and Village-owned and managed rights-of-way to provide Service or own or operate a System for commercial

purposes shall place a deposit with the Village in the amount of \$20,000 to cover actual costs associated with, attributable to and necessitated by the process.

- F) As the Village would otherwise be required to deal with experts in the industry without the aid of equal expertise and knowledge, which situation creates an insurmountable disadvantage for the Village and would prevent the Village Board from making truly informed decisions, the cost of outside expert assistance, including legal assistance as may be necessary, is deemed a cost associated with, attributable to and necessitated by the process for the purposes intended by this Section. At any time during the processing of an Application or Proposal and the negotiation of a Franchise that the balance of the deposit required under subsection (D) of this Section is less than \$5,000, then upon notice by the Village the Applicant shall be required to restore the deposit to \$7,500 before further processing of the Application or Proposal. At the conclusion of the process any remaining balance shall promptly be returned to the Applicant.
- G) As consideration of a request for renewal of a Franchise is deemed an extraordinary cost to the Village that is not part of the normal administration of the existing Franchise, then unless expressly prohibited by federal law or rule, an Applicant requesting a renewal of it's a Franchise or the grant of a new Franchise subsequent to the grant of a previous one, may be required by the Village to place on deposit with the Village an amount not to exceed \$20,000 to cover the fully allocated costs of processing and analyzing the Application or Proposal. At the conclusion of the process any remaining balance shall be promptly returned to the Applicant.
- H) An Applicant with an existing Franchise shall not be required to pay both an Application Fee under subsection (D) of this Section and place a deposit under subsection (E) of this Section, *regardless of the nature of the Application.*
- I) Any Application or Proposal shall be accompanied by a check in the amount required at the time of the filing of the Application or Proposal. In the event the Application or Proposal is not accompanied by the required payment or deposit, the Application or Proposal shall be deemed incomplete and no action shall be taken on the Application or Proposal until the required deposit is received.

### **Section 83. Franchise Fees.**

- A) Any Service Provider or System owner or operator that is granted a Franchise or renewal of a Franchise after the date this Law becomes effective, shall pay to the Village an amount that is equal to the fully allocated cost of administering the Franchise for the year, which cost shall be based on the budgeted amount in the budget adopted by the Village for that year.
- B) Notwithstanding the requirement of subsection (A) of this Section, the Village may at its discretion elect to assess a Franchise Fee in any amount up to the maximum amount permitted under law.
- C) The requirements of this Section shall not change the terms of payment or increase the computational formula for the payment of a Franchise Fee contained in a Franchise Agreement in existence and of effect as of the effective date of this Law.
- D) The Franchise Fee shall be paid on a calendar quarter basis, unless otherwise stated in the Franchise, and shall be deemed late if received later than forty-five (45) days after the due date of any payment.

- E) Notwithstanding anything to the contrary in subsections (A) or (B) of this Section, upon the Expiration of a Franchise Agreement in existence as of the effective date of this Law that contained a smaller Franchise Fee than is permitted by law, the Village may increase the previously required Franchise Fee to the maximum permitted under law, including for or during any period of continued or temporary operating authority pending the grant of a new or renewed Franchise.
- F) If the Village assesses the Franchise Fee as a percentage of revenue, notwithstanding the fact that certain types of Service Providers or System owners or operators may be required to remit an annual Fee to the PSC, to the extent that the payment of such annual Fee, when added to the Franchise Fee payable to the Village, is greater than the maximum permitted by law, and to the extent required by law, but only if expressly required, the amount of the PSC's annual Fee shall be permitted to be deducted from the amount that would otherwise have been permitted to be paid to the Village. In the event that the Service Provider or System owner or operator does not pay the annual Fee to the PSC out of Gross Revenue, but merely collects the Fee from Subscribers separately and apart from the Rate for Service and other Charges, and remit the amount so collected to the PSC, then the amount remitted to the PSC shall not be permitted to be deducted from the amount that would otherwise have been permitted to have been paid to the Village.
- G) If the Village assesses the Franchise Fee as a percentage of revenue, then if the FCC, Congress or any other governmental agency with authority to establish the maximum allowable Franchise Fee increases the maximum permissible Franchise Fee beyond five percent (5%) of Gross Revenue, to protect against the derogation of its rights the Village shall have the right and authority to increase the Franchise Fee to the maximum percentage or amount permissible upon ninety (90) days notice by the Village to the Franchisee.
- H) Subject to federal law, and notwithstanding anything preceding in this Section, and without limitation other than as established by State or federal law, nothing shall limit the authority of the Village to assess and impose a Franchise Fee, or its functional equivalent, on any source, portion, category or type of revenue, or to exempt any source, portion, category or type of revenue from inclusion in the computational base used to calculate the Franchise Fee or its functional equivalent, so long as such is done in a non-discriminatory and competitively neutral manner with respect to competitive Service Providers or System owners or operators in the Village, and so long as the Fee does not exceed the maximum allowable under law.
- I) If the Village assesses the Franchise Fee as a percentage of Revenue, then in the event the Village eliminates Subscriber revenue from the revenue base used to calculate the Franchise Fee, or decreases the percentage attributable to Subscriber revenue, upon notice from the Village of such elimination or reduction, a Service Provider or System owner or operator paying a Franchise Fee that is calculated on Subscriber revenue shall reduce the amount of Subscribers' or Users' monthly bills to reflect the decrease, starting in the Subscriber's or User's next bill.
- J) If the Village assesses the Franchise Fee as a percentage of Revenue, then unless expressly set forth to the contrary in a Franchise, a Service Provider or System owner or operator that is required to pay a Franchise Fee or its functional equivalent shall file with the Village, within forty-five (45) days after the Expiration of each calendar quarter, a complete and unexpurgated Income Statement, together with the basis of the calculations used to determine the Franchise Fee, showing all computations used in the determination.

- K) The Income Statement required in subsection (J) of this Section shall be in the form and format used in Generally Accepted Accounting Principals (GAAP) and showing all incremental and individual types, categories and sources of revenue needed to ascertain the accuracy and completeness of the total payment, and shall reflect the following requirements.
1. The Income Statement shall never be a synopsis of revenue whereby different revenue sources are grouped together showing only a single number for multiple types or sources of revenue.
  2. The Income Statement shall show all revenue and other valuable consideration from whatever source that is derived from, or caused to be derived from, or that is attributable to the operation of System and/or the provision of any Service or Use in the Village, including revenue earned from Subscribers and from those who are not Subscribers but are Users of the Service or System.
  3. The Income Statement shall be certified by an officer of the Service Provider or System owner or operator attesting to the accuracy, completeness, and veracity of the revenue figures and other information contained therein.
- L) As an alternative to the Income Statement requirements of subsections (J) and (K) of this Section, the System owner or operator or Service Provider may provide a photostatic copy of the unexpurgated Revenue Chart of Accounts applicable to the calculation of the Franchise Fee taken from the ledger of any Person or entity who derived revenue as the term Gross Revenue is defined in Section 5 of this Law, along with a Statement of Certification by an officer of the System owner or operator or the Service Provider attesting to the accuracy and completeness of the reported revenue as relates to the payment of the Franchise Fee.
- M) The provision of the information required under subsections (J) and (K) or subsection (L) of this Section shall be made simultaneously with the payment of the Franchise Fee.
- N) If the payment of the Franchise Fee is made after the deadline set forth in subsection (D) of this Section, the System owner or operator or Service Provider may be required to pay the Village interest for the entire amount owed for any period of time beyond the deadline set forth in subsection (C) of this Section. The interest shall be the Prime Rate as listed in the Wall Street Journal as of the end of the calendar quarter for which the payment is due, plus two percent (2%), unless State law establishes a maximum permissible interest Rate, in which case the interest rate shall be the maximum interest allowable under State law, given the facts and circumstances.
- O) In the event that the Franchise Fee payment is not made in full by the due date set forth in subsection (D) of this Section, and payment in full is not made within thirty (30) days after notice thereof by the Village, including all interest due, then in addition to the provisions of subsection (N) of this Section the Service Provider or System owner or operator may also be declared in default of the Franchise and subject to all fines, penalties and sanctions permitted under law.
- P) Should the total amount owed remain unpaid for sixty (60) days after the date of the notification of non-payment or late payment, then the Franchise may be revoked, terminated, or canceled as noted elsewhere in this Law and in accordance with rights of due process.
- Q) The Village Board shall have the right from time to time to examine, audit and analyze the financial records of a Service Provider or System owner or operator, including any subsidiary, affiliate or parent that derives revenue as Gross Revenue is defined in Section 5 of this Law or to require delivery to the Village true and complete copies of such records. In the alternative, the Village Board may require the delivery to the Village of photostatic copies of the Revenue Chart

of Accounts of any subsidiary, affiliate or parent that derives revenue as Gross Revenue is defined in Section 5 of this for the period being reviewed. If such audit, examination or analysis discovers an underpayment of the Franchise Fee or its functional equivalent of greater than one percent (1%) of the actual amount owed, then the Service Provider or System owner or operator shall reimburse the Village for the cost of the audit, examination or analysis. It is specifically understood that the right of audit, examination and analysis, and the re-computation of any and all amounts paid, shall always be accorded the Village.

- R) If an audit or other investigation discovers that the full amount of the Franchise Fee has not been paid for a period exceeding six (6) months from the original due date, notwithstanding Subsection (N) of this Section, then the Village Board may demand recovery of all of the fully allocated costs incurred that are associated with and necessitated by the act of underpayment or non-payment, including all reasonable attorney's fees and expert's fees.
- S) If the Village assesses the Franchise Fee as a percentage of Revenue, all reports due and pertaining to the remittance of the Franchise Fee shall be certified by an officer of the Service Provider or System owner or operator, or its parent, and will be provided in the form, format and detail applicable to reports pursuant to subsections (J) and (K) or subsection (L) of this Section. A Service Provider or System owner or operator shall maintain records used in the preparation of said reports for the duration of the Franchise, to be produced and delivered in their totality upon request by the Village Board.
- T) No acceptance of any payment shall be construed as a release, accord, or satisfaction of any claim that the Village may have for further or additional sums payable under the provisions this Law or any Franchise, or for any other performance or obligations of a Service Provider or System owner or operator hereunder.
- U) Pursuant to the provisions of this Law, payments of Franchise Fees made to the Village by a Service Provider or System owner or operator, or remittances of amounts collected, shall be considered in addition to, and exclusive of, any and all taxes, business licenses or Fees, or other Fees levies or assessments.
- V) A Franchise Fee required of a Cable Operator shall not include any items excluded by Section 622 (g) (2) (D) of the Cable Act (codified at 47 USC 542 (g) (2) (D)).
- W) Nothing in this Section shall limit the authority of the Village to require the payment of a Fee or other assessment of any kind, by any third party Person or entity who provides Service over or using a System in the Village for which charges are assessed to Subscribers or Users, but which charges are not received by a Service Provider or System owner or operator who has been granted a Franchise. For purposes of illustration this shall include situations where a Provider of a particular Service using an OVS System, as defined in Federal Regulations, directly bills a Subscriber or User, or when the Service Provider or System owner or operator acts as collection agent for a third party Provider of a particular Service when the third party Service Provider directly bills Subscribers or Users, or where a third party Person leases capacity for commercial purposes and receives Revenue directly or through a third party.
- X) For any twelve (12) month period, the Franchise Fees paid by any third party Person who provides Service as described in Subsection (W) of this Section, shall not exceed five percent (5%) of such Person's Gross Revenue derived in such period from the provision of Service in the Village, or the maximum permitted by law or rule at any time.

- Y) Notwithstanding anything in this Section, in the event a Service Provider or System owner or operator does not pay the Franchise Fee out of Gross Revenue, but instead chooses to pass the Franchise Fee through to Subscriber or Users, incrementally and in addition to the amount owed for Service, so that the effect is that the Franchise Fee is not paid out of Gross Revenue, and is merely collected and remitted by the Service Provider or System owner or operator, then in such an instance the Service Provider or System owner or operator shall not be permitted to deduct the Franchise Fee from what is owed for property taxes, or any other taxes or money due the Village if otherwise permitted.

#### **Section 84. Rent or Right-of-Way Use and Occupancy Fee**

- A) Pursuant to Section 253 (c) of the Telecommunications Act of 1996, the Village reserves and preserves the right to assess, impose and collect Rent or a Right-of-Way Use and Occupancy Fee from any Service Provider or System owner or operator occupying and using the Village's property and the Village's rights-of-way for commercial purposes.
- B) If assessed, and to the extent permitted by law, the Village shall impose Rent or a Right-of-Way Use and Occupancy Fee on a non-discriminatory and on a competitively neutral basis.
- C) The amount of Rent or the Right-of-Way Use and Occupancy Fee shall not exceed the fair market value of the Village's property and rights-of-way that are used and occupied for commercial purposes, as determined by the Village Board; nor shall the amount of Rent or the Right-of-Way Use and Occupancy Fee exceed the fair market value of the Village's property and rights-of-way that are used and occupied by a Service Provider or System owner or operator for commercial purposes, as determined by the Board.
- D) An assessment pursuant to this Section shall be based upon either (i) the fair market value of like or similar property adjacent to the Village's property or rights-of-way that are used and occupied by the specialty Service Provider or System owner or operator serving that portion of the Village, or (ii) the average fair market value of commercially zoned property within the Village that is used and occupied for commercial purposes as determined by ascertaining the average or mean value for the preceding three (3) years, or (iii) up to five percent (5%) of the Gross Revenue of the Service Provider or System owner or operator as Gross Revenue is defined in Section 5 of this Law, whichever is greater. The Village Board shall make the determination which of the alternatives set forth in this subsection it chooses to use, but the Village may use only one (1) of the alternatives and never a combination.
- E) Notwithstanding anything to the contrary in this Section, the Village may negotiate with a Service Provider or System owner or operator for the in-kind provision of Services or other valuable consideration in lieu of all or a portion of the amount that would otherwise be required to be paid. However, the Village shall not be obligated to grant this option to any Service Provider or System owner or operator, so long as it applies this authority in a manner among like or similar Service Providers that is non-discriminatory and competitively neutral in effect with respect to the value received by the Village.
- F) In the event the Village elects to determine Rent or a Right-of-Way Use and Occupancy Fee using a percentage of Gross Revenue, the requirements of subsections (J) through (Y) of the previous Section shall apply.

- G) All payments of Rent or a Right-of-Way Use and Occupancy Fee shall be quarterly on a calendar year basis, unless otherwise expressly set forth in the Franchise.

### **Section 85. Assignment, Transfer or Sale.**

- A) There shall be no sale or change in the ownership of the System, the Franchisee or any Parent of the Franchisee, nor any assignment of a Service Provider's or System owner's or operator's Franchise, in whole or in part, nor shall there be any change in the legal or financial Control of the Service Provider or System owner or operator, or of any parent or controlling entity, or where any change results in a Change in Control of the System or the Franchisee or the facilities used to provide Service, whether such Change in Control is direct or indirect, de juri or de facto, without the prior express written approval and consent of the Village Board. Nor shall there be any Change in Control or ownership of the System's facilities without the prior express written approval and consent of the Village Board. A merger at any level shall be deemed a Change of Control and the Village Board's written approval must be obtained. Control and Change in Control shall have the meanings set forth in Section 5 of this Law.
- B) A Service Provider or System owner or operator classified as a Cable Operator shall have its Franchise assigned, transferred or sold only in accordance with the Cable Act of 1984 as amended, and applicable FCC rules and State law, rules and regulations.
- C) Any Transfer, Assignment or Change in Control shall be approved only if the proposed Transferee or controlling entity can and will meet all obligations contained in the existing Franchise, unless separate and deliberate relief is granted as part of the request and approval process.
- D) No Franchise approval of request for Transfer or Change in Control shall occur with outstanding, uncured violations of this Law or breaches of the Franchise, and until all money that may be owed the Village has been paid in full. In the event the Village Board, at its sole discretion, elects to approve a request for Change in ownership or Control contingent upon the Transferee or Assignee accepting responsibility for outstanding or uncured violations of this Law or breaches of the Franchise, the Board may require the Assignee or Transferee to post sufficient security to assure that the violations and/or breaches are remedied and cured as required.
- E) Mergers or consolidations at any level that affect Control of the Franchisee or the System, whether such Control is direct or indirect, shall require the consent of the Village Board pursuant to subsection (A) of this Section.
- F) Any Assignment, Change in Control or sale as set forth in this Section that occurs without the prior written consent of the Village Board shall constitute a violation of this Law and a default of the Franchise, and may, at the discretion and in the judgment of the Village Board, subject the Franchise to revocation and other sanctions or penalties as permitted under law.

### **Section 86. Default of Franchise; and Revocation, Termination or Cancellation of Franchise.**

- A) In the case of any procedure concerning or involving the default, involuntary termination, revocation, unilateral alteration, or suspension of a Franchise granted or enforceable under this Law, the Village Board shall follow the rules and procedures set forth in this Section, unless expressly prohibited or pre-empted by State law or rule. Such action may be in addition to all other remedies available to the Village under applicable law.

- B) When an act of evasion, avoidance or omission, or the failure to comply with a time-related or performance-related requirement of this Law or the Franchise is committed by a Service Provider or System owner or operator which represents a material violation of a provision of this Law or the Franchise, or compromises the corporate character, or legal, financial or technical ability, integrity and/or stability of the Service Provider or System owner or operator to such a degree that the interests of the Subscribers and Users, or the Village, are substantively affected in a negative manner, then such violation, breach, act of evasion, act of avoidance or omission shall be considered a material violation of this Law and breach of any Franchise granted or enforceable hereunder. Under such circumstances, the Village shall notify the affected Service Provider or System owner or operator, in writing, of the specific violation or breach, and direct the Service Provider or System owner or operator to remedy the breach or violation in accordance with the provisions of this Law.

For illustrative purposes only, violations, breaches, acts of evasions or avoidance and omissions include, but are not limited to: failure to pay taxes or pay Franchise Fees or the functional equivalent including a Rent or Right-of-Way Use and Occupancy Fee, or repeated failure to comply with the provisions of this Law or a Franchise after proper notice and showing a pattern of failure or refusal to abide by the terms and conditions of the Franchise or the provisions of this Law.

- C) Where a Service Provider or System owner or operator corrects any violation or breach to the satisfaction of the Village Board or as required in this Law or a Franchise within thirty (30) days after notification by the Village, and where the situation does not involve the repeat of a type of violation for which the Service Provider or System owner or operator has previously received notice within the past twenty-four (24) months, then the procedure provided for under this Section shall cease, and the enumerated condition shall not be considered in any subsequent compliance or performance review, so long as it has not been repeated.
- D) Notwithstanding anything to the contrary in subsection (C) of this Section with respect to the thirty (30) day cure period, to protect the health and safety of the public, at the discretion of Village Board, violations of construction-related or safety-related requirements may be required to be corrected, eliminated or otherwise cured in less than thirty (30) days.
- E) A copy of the notice of violation or breach may also be mailed to the surety of the System owner or operator or Service Provider.
- F) Within sixty (60) days, but in no case sooner than thirty (30) days, after the written notice is mailed, the Village Board or the Administrator may conduct a hearing on the matter.
- G) The Village Board shall provide written notice of the date, time and place of the hearing to the affected Service Provider or System owner or operator at least thirty (30) days prior to the hearing.
- H) At the time of the hearing, the Service Provider or System owner or operator may (i) present information on the current status of the alleged violation of this Law or breach of the Franchise; and (ii) present arguments as to why the situation is not a violation or breach, including evidence in support of such an argument, and (iii) why the Service Provider or System owner or operator should not be subjected to sanctions as permitted under this Law and applicable State law. If the situation has been resolved, or meaningful and substantive steps are being taken to resolve the situation, then the Service Provider or System owner or operator shall present such information at