

the hearing . The Notice of Violation shall constitute *prima facie* evidence of a violation which shall be accompanied by such proof at the hearing that the Board of Trustees shall require to constitute a full and fair record.

- I) If the Service Provider or System owner or operator fails to attend the hearing and has not requested and been granted a continuance of the hearing, then the Service Provider or System owner or operator shall be deemed to have waived its right to a further continuation of the matter, and may be declared in violation of this Law or in breach and default of the Franchise based on the evidence available at that time.
- J) After the public hearing, the Village Board or Administrator may (i) determine the Service Provider or System owner or operator to be in compliance and dismiss the matter, with or without prejudice; or may (ii) determine that the Service Provider or System owner or operator has adequately remedied and cured any violation or breach and thereby dismiss the matter; or (iii) may determine that a violation has been committed and remains unremedied and uncured.
- K) Upon a finding that the Service Provider or System owner or operator violated this Law or committed a breach of a material provision of the Franchise that resulted in a violation of this Law, and failed to remedy and adequately cure the violation of this Law or material breach of the Franchise, the Village Board or the Administrator may (i) direct the Service Provider or System owner or operator to take corrective action to eliminate, remedy or cure the violation or breach within a specified period of time; or (ii) may for sufficient cause declare the Service Provider or System owner or operator in default of the Franchise. Unless the Service Provider or System owner or operator complies with the directive or order of the Village Board or the Administrator, or presents sufficient mitigating circumstances that, at the discretion of the Village Board or the Administrator, warrant less severe or extreme measures, The Village Board, and only the Village Board, thereafter may revoke, terminate, or cancel the Franchise pursuant to this Section.
- L) If the Village Board or the Administrator directs corrective action to take place within a specified period of time, or declares the Service Provider or System owner or operator in default of the Franchise, then the directive or declaration shall be committed to writing and the notice of corrective action or default shall be mailed within twenty-one (21) days of the action of the Village Board or the Administrator to the Service Provider or System owner or operator.
- M) If, within the time set forth in the order or directive, the Service Provider or System owner or operator has not complied with the order or directive, or submitted a plan detailing how the Service Provider or System owner or operator will comply with the order or directive as given, or has not paid any amount due, including proposing an alternative time frame for compliance as may be acceptable to the Village Board at the Board's sole discretion, then the Village Board may impose civil penalties as set forth in this Law, or in the extreme may terminate and revoke the Franchise and, unless there are further mitigating circumstances, shall notify the affected Service Provider or System owner or operator of such action.
- N) In the event penalties are imposed, the compliance or performance security placed with the Village may be used to collect the penalties and the Village may take such action as is required to call on or draw against the security for such purpose.
- O) In the event of the termination and revocation of the Franchise, within seven (7) days after notification of such action, the Village Board or the Administrator shall notify the Service

Provider or System owner or operator and its surety that any security is forfeited. The Village may then take such action as is required to collect on the security.

Section 87. Notice of Violation or Failure to Comply; Hearing

- A) For the failure to comply with a time-related or performance-related requirement of this Law which the Village deems sufficient to warrant sanctions, the Village shall provide notice and an opportunity to eliminate, remedy or cure.
- B) Notwithstanding anything to the contrary in subsection (A) of this Section, or any other subsection of this Section, for situations involving violations of construction and safety-related codes and requirements where such are deemed to create an imminent threat or danger to lives or property within the Village, and for which the Service Provider or System owner or operator has previously been notified of the same or similar situations in the previous thirty-six (36) months, the Service Provider or System owner or operator shall be notified, but may not be granted an opportunity to remedy or cure prior to the imposition of fines and/or penalties. Rather penalties may be assessed and imposed after proper written notice on a per occurrence per day basis, until the violation(s) is eliminated.
- C) Notice and the opportunity to cure, as required, shall be provided to the Service Provider or System owner or operator in writing, and shall be sent by certified U.S. mail, return receipt requested, or may be personally delivered, to the Service Provider's or System owner's or operator's local place of business.
- D) A Service Provider or System owner or operator may request a hearing on the matter addressed in the notice required in subsection (A) of this Section, or the Village may call a hearing on the matter. At the discretion of the Village Board the hearing may be held before the Village Board or the Administrator.
- E) The Village Board, or the Administrator, or a designated hearing officer, shall, at the date, time and place designated for the hearing, hear and consider issues from the Village and the Service Provider or System owner or operator and make a determination regarding the alleged violation of this Law or any Franchise.
 - 1. The Village Board, or the Administrator, or a designated hearing officer, shall hear and consider the matter, including hearing any Person interested in the matter wishing to be heard, and review and consider any relevant evidence. After affording the Service Provider or System owner or operator required rights of due process to be heard, to present relevant evidence and witnesses and to question any witnesses, the Village Board shall determine, based on a preponderance of the evidence, whether or not there was committed a breach or violation of a time or performance-related requirement of this Law, or a breach of a term or condition of Franchise, or a violation of any federal, State, law, rule or regulation or local law, regulation or code not expressly prohibited from local enforcement. The Village shall have made a transcript of the hearing.
 - 2. The Service Provider or System owner or operator may, at its own expense, make a transcript of any such hearing, or it may share the costs of obtaining a transcript of such hearing equally with the Village.

3. At the hearing the Village and the Service Provider or System owner or operator may present evidence relevant to the issues being heard and, including the right to call and examine and cross examine witnesses.
4. Within thirty (30) days following the completion and close of the hearing, the Village Board, or the Administrator, or the hearing officer, shall issue a written decision as regards whether any failure to comply with any time-related or performance related requirement or act of evasion or avoidance of this Law, or breach of a term or condition of the Franchise, or violation of any federal or State, law, rule or regulation, or local law, regulation or code, occurred. Such determination shall be based upon a preponderance of the evidence presented as contained in the record of the proceeding, stating with particularity the reasons for the decision.
5. Within thirty (30) days after the issuance of a decision, Village Board shall then take formal action, either dismissing the claim of violation or breach, or finding that the Service Provider or System owner or operator did commit the alleged violation or breach and did not cure or eliminate such as required. The Village Board's formal action shall be in writing and a copy of such shall be provided to the Service Provider or System owner or operator.
6. Should the Village Board, the Administrator or the hearing officer find that no breach, violation or failure to comply or perform occurred, or, except for situations addressed in Subsection (B) of this Section, that the Service Provider or System owner or operator remedied the violation or failure prior to or by the end of the period allowed for cure, or that the Service Provider or System owner or operator instituted substantial and meaningful good faith actions to remedy the failure to comply or perform after having been provided written notice, and actively and expeditiously started and undertook substantial and meaningful efforts to complete the remedy as directed by the Village Board, all of which shall be determined at the sole discretion of the Village Board, the proceedings shall be terminated and no penalty shall be imposed.
7. The Village Board shall be required to base its decision on a preponderance of the evidence from the record established during the hearing. If the Village Board determines that a failure to comply with any time or performance related requirement of this Law, or any act of evasion or avoidance of this Law, or breach of a term or condition of the Franchise, or of any federal or State law, rule or regulation or local law, regulation or code, was the fault of the Service Provider or System owner or operator, and was within its control, subsequent to the required notice and opportunity to cure and due process requirements of this Law, the Village Board may determine whatever action it deems appropriate as may be permitted under this Law and the Franchise. The Village Board's decision shall be final and no other remedies, administrative or otherwise, nor any procedures for such, are provided under this Law.
8. Prior to the imposition of any penalty or sanction against a Service Provider or System owner or operator, but not including penalties as previously excluded in this subsection, the Village shall provide the Service Provider or System owner or operator notice and opportunity to cure in accordance with the following subparagraphs (a) and (b).

- a) The Village shall provide the Service Provider or System owner or operator with written notice specifying the nature of the failure, breach, violation or act of evasion or avoidance. The Service Provider or System owner or operator shall have a period of forty-eight (48) hours following the receipt of such notice to cure or satisfy the alleged failure, breach or violation, with the exception of safety situations.
 - b) In the event the Village Board or the Administrator concludes that the Service Provider or System owner or operator has failed to comply with its obligations under this Law or the Franchise, and that the Service Provider or System owner or operator has not remedied such failure, violation, act of avoidance or evasion or breach within the period set forth in the notice set forth in the preceding subparagraph (a) after having received written notice, the Village Board may pursue whatever additional penalties or sanctions are provided for under State law, including civil or criminal prosecution.
- F) The amount of time given the Service Provider or System owner or operator to cure any violation of this Law, or any violation of any federal or State law, rule or regulation, or other local law, regulation or code, shall be at the discretion of the Village Board to the extent not otherwise governed by this Law or State or federal law, but in no event shall a Service Provider or System owner or operator be given less than forty-eight (48) hours, unless otherwise dictated by an emergency situation posing an imminent threat to the health and safety of individuals or the safety of public or private property. Notwithstanding the preceding, or anything else in this Section or anywhere in this Law, in the event a violation of the construction or safety-related requirements of this Law endangers, or has the reasonable possibility of endangering, the health or safety of individuals or the safety of property, the forty-eight (48) hour elimination period may be lessened and the elimination of the violation may be required the same day, depending upon the seriousness of the matter as a factor of the degree of danger involved or the imminence of injury or damage to property. Notwithstanding the preceding portion of this subsection, any lessening of the forty-eight (48) hour period shall be solely for purposes of eliminating the danger or threat, and shall not enable the Village to impose penalties during such shorter period.
- G) The Village may, in its reasonable discretion, grant extensions of time to a Service Provider or System owner or operator to eliminate, cure or remedy, where extraordinary circumstances not precipitated by the Service Provider or System owner or operator warrant an extension.
- H) Notwithstanding any notice and opportunity to cure requirements of the applicable federal or State law, the issuance of two (2) or more notices to cure or eliminate or remedy a violation for the same or similar provisions or requirement of this Law, or two (2) or more breaches of a term or condition of a Franchise that constitute a violation of this Law or an act of evasion or avoidance of the requirements of this Law, or two (2) or more violations of any federal or State law, rule or regulation, or other local law, regulation or code, within any twelve (12) consecutive month period, may be deemed a pattern of behavior that demonstrates an intent to continue violating this Law and thereby relieve the Village of any obligation to provide further notice and opportunity to cure for subsequent failures to meet the requirements of this Law, or for breaches of terms or conditions of a Franchise or violations of federal or State, law, rule or regulation or other local law, regulation or code. Evidence of subsequent failures as set forth in this subsection shall be admissible as evidence in a hearing before the Village Board or the Administrator, or a designated hearing officer, regarding the assessment of fines and/or penalties, provided that the

Village has provided such evidence to the Service Provider or System owner or operator at least ten (10) days prior to the hearing and the Service Provider or System owner or operator has an opportunity to be heard at the hearing and to present evidence in contravention of the charge(s) or in defense of its actions.

- I) A Notice of Intent to Assess Penalties may be issued concurrently with a Notice to Cure. If a Notice of Intent to Assess Penalties is issued concurrently with a Notice to Cure, then penalties, if assessed, will accrue commencing with the expiration of the time allowed for an opportunity to cure as set forth in the Notice. The Notice of Intent to Assess Penalties shall state the reason for the assessment and imposition, and shall inform the Service Provider or System owner or operator that penalties will be assessed from the date of the Notice, or the end of the time allowed for an opportunity to cure, whichever is later.
- J) If the Service Provider or System owner or operator desires to appeal the Village's imposition of Penalties, it must file a written Notice of Appeal with the Mayor or the Administrator, delivered by certified U.S. mail/Return Receipt Requested, within ten (10) days of the receipt of the Notice of Intent to Assess Penalties. The Mayor or Administrator shall then place the issue before the Village Board.
- K) The Village shall then have served upon the affected Service Provider or System owner or operator, by certified U.S. mail/Return Receipt Requested, a written notice of the date, time and place of the meeting, at least fifteen (15) days prior to the date of the meeting of the Village Board at which the matter will be heard.
- L) Public notice shall be given of the meeting and of the issue that is to be considered by the Village Board. If the Franchisee or other Service Provider or System owner or operator fails to appeal the Village's assessment or imposition of fines and/or penalties within the time required by this Section, the Village's decision to assess fines and/or penalties shall be final.
- M) The Village Board shall, at the date, time and place designated for the hearing, hear and consider issues from the Village and the Service Provider or System owner or operator and make a determination regarding the alleged violation of this Law or any Franchise.
 - 1. The Village Board shall hear both parties and consider the matter, including any relevant evidence presented.
 - 2. After affording the Service Provider or System owner or operator and the Village the right to be heard and present evidence, the Village Board shall determine whether or not there was committed a violation of this Law, or a breach of a material term or condition of the Franchise, or a violation of any federal, State, or other local law, rule, regulation or code.
 - 3. The Village shall have made a transcript of the hearing. A Service Provider or System owner or operator may, at its own expense, make a transcript of the hearing, or may obtain a copy of the Village's transcript if it shares the costs equally with the Village.
 - 4. Within thirty (30) days following the completion and close of the hearing, the Village Board shall issue a written decision as regards the commission of a violation of this Law, or breach of a material term or condition of the Franchise, or a violation of any

federal, State, or local law, rule, regulation or code, and such determination shall be based upon the record of the proceeding, stating with particularity the reasons for such decision. A copy of the Village Board's written decision shall be provided to the Service Provider or System owner or operator.

5. Should the Village Board find that no breach, violation or failure to comply or perform occurred, or, except for situations addressed in Subsection (B) of this Section, that the Service Provider or System owner or operator remedied the failure prior to the end of the period allowed for cure, or that the Service Provider or System owner or operator instituted substantial good faith actions to remedy the failure to comply or perform after having been provided written notice, and actively and expeditiously started and undertook substantial efforts to complete such remedy, or that fines and/or penalties are not warranted or applicable in the instant situation, all of which shall be determined at the sole discretion of the Village Board, the proceedings shall be terminated and no penalty shall be imposed.
6. The Village Board shall be required to base its decision on a preponderance of the evidence from the record established during the Village Board's hearing. If the Village Board determines that any violation of this Law, or breach of a term or condition of the Franchise, or of any federal, State, or local law, rule, regulation or code, was the fault of the Service Provider or System owner or operator, and was within its control, subsequent to the required notice and opportunity to cure and due process requirements of this Law, the Village Board may affirm the assessment and imposition of penalties or sanctions as permitted under this Law or State law. The Village Board's decision to affirm the Village's assessment of penalties or other sanctions shall be final and no other remedies, administrative or otherwise, nor any procedures for such, are provided under this Law.

Section 88. Compliance and Performance Evaluations.

- A) The Village shall periodically monitor the compliance of Service Providers or System owners or operators who are subject to the requirements of this Law in whole or in part. Prior to the conduct of an evaluation the Village Board or the Administrator shall establish a procedure for such purpose and shall provide the procedure to the Service Provider or System owner or operator. Included in a compliance review may be an examination to determine whether a Service Provider or System owner or operator retains the financial, technical, legal, and character qualifications necessary to operate a System and/or offer Service in the Village. Such review shall also include an examination to determine if the operational, maintenance, and performance levels meet the minimum requirements of this Law. Compliance reviews may be conducted every three (3) years, or more frequently if deemed necessary and appropriate due to Subscriber or User complaints, or complaints from the public, or due to reasonable evidence of violations of this Law or material breaches of the Franchise. However, no compliance review shall occur more than once in any three hundred sixty-five (365) day period.
- B) If, as a result of any investigation, evaluation or determination permitted under this Section, the Village Board or the Administrator determines that the Service Provider or System owner or operator has not complied with one or more provisions of this Law for which relief has not been granted, irrespective of whether or not the violation can be corrected, eliminated, remedied or cured, then the Village Board or the Administrator may require the Service Provider or System owner or operator to reimburse the Village for all actual fully-allocated costs incurred by the Village that are necessitated by such violation(s) or act(s) of non-compliance, evasion or

avoidance. Any matter of non-compliance or act of evasion or avoidance shall be deemed a violation of this Law.

- C) Notwithstanding subsection (B) of this section, the Village Board or the Administrator shall give the Service Provider or System owner or operator an opportunity either to (i) correct, eliminate, remedy or cure any violation or act of non-compliance, evasion or avoidance, or (ii) submit documentation or supporting evidence that resolves any area of non-compliance or act of evasion or avoidance to the satisfaction of the Village Board or the Administrator, or (iii) explain the lack of effect of such to the satisfaction of the Village Board or the Administrator .
- D) The period of time allowed for the elimination of any violation or act of non-compliance, evasion or avoidance that can be corrected or eliminated shall be set by the Village Board or the Administrator, which period of time may not be unreasonable taking into account whether such act of non-compliance, evasion or avoidance was one of a first occurrence or is a repeat of the same or similar act, as well as the seriousness of the situation, including but not limited to the impact or potential impact on the health, safety and welfare of the Village, its residents, or both.
- E) To serve as an incentive for compliance with this Law and the intent thereof, if any violation of this Law that is identified pursuant to this section cannot be eliminated due to the nature of the violation, including but not limited to the passage of time or the inability to undo an act of omission, evasion or avoidance, unless expressly prohibited by State law the inability to eliminate or undo the violation shall not relieve or eliminate the obligation of the Service Provider or System owner or operator to cure any violation as such cure may be reasonably determined by the Village Board or the Administrator, including but not limited to a financial cure.
- F) If the Service Provider or System owner or operator fails to correct or resolve an area of non-compliance in a timely manner, as such is determined by the Village Board or the Administrator, which period of time may not be unreasonable taking into account (i) whether such act of non-compliance, evasion or avoidance was one of a first occurrence or is a repeat of the same or similar act of non-compliance, evasion or avoidance, and (ii) the seriousness of the situation, including but not limited to the impact or potential impact on the health, safety and welfare of the Village, its residents, or both, or fails in a timely manner to provide an explanation that demonstrates the lack of culpability of the Service Provider or System owner or operator, then such failure may be treated as a material violation of this Law and subject the Service Provider or System owner or operator to the appropriate sanction of the Village Board as permitted under this Law and applicable State and federal law. Such action or sanctions may, at the discretion of the Village Board or the Administrator, include the imposition of fines and penalties as set forth in this Law, and as permitted by State law.
- G) Notwithstanding anything contained in the preceding subsections of this Section, the elimination, remedy or correction of a violation shall not de facto serve to eliminate the imposition of fines and penalties under this Law. Rather, such shall serve to protect a Service Provider or System owner or operator from the further and continued accrual of fines and penalties under this Law for the same violation.

Sections 89 -- 92. Reserved.

Section 93. Penalties

- A) This local law may be enforced by the Village Attorney, the Village Board and if applicable the

Administrator. In addition to all other rights and powers vested in and possessed by the Village, if required by State law, the Village Board reserves the right to seek fines and other civil penalties in any Court of competent jurisdiction.

- B) Notwithstanding the preceding subsection (A) of this Section, and if permitted by State law, the Village reserves for itself the right to assess penalties for any violation of this Law, or any attempt to evade or avoid compliance with the requirements of this Law, or for the failure of a Service Provider or System owner or operator to comply with any applicable time-related or performance-related requirements, or for the violation of any federal, state, or local law, rule, or regulation that is not specifically pre-empted from local enforcement, and, in the event such violation, evasion, avoidance or failure has not been remedied pursuant to procedures set forth in this Law, to impose and assess penalties as set forth in this Section.
- C) Any imposition of penalties shall be preceded by written notice of the violation, and shall set forth the amount of time allowed for the elimination of the violation, if any, before the imposition of penalties. Violations of the same or of a similar type and of a substantive number, but occurring at different locations or affecting different Persons, Subscribers or Users, shall not require individual notification, but may be referenced by type of violation.
- D) Absent good and just cause, including the provision of evidence of good faith efforts to comply with the requirements of this Law, the failure by a Service Provider or System owner or operator to comply with any time-related or performance-related requirement of this Law, or an act of evasion or avoidance of the requirements of this Law, will subject the Service Provider or System owner or operator to the assessment and imposition of penalties as set forth in this section. Once imposed, penalties shall continue to accrue, including during any appeals process, until such time as the payment of the fine and/or penalty is received by the Village or is otherwise specifically waived by the Village Board.
- E) Failure to pay penalties within the time provided shall be a material violation of this Law and shall be cause to proceed against either a letter of credit, or bond or other surety as may have been required. Failure to pay any penalty under this section shall also constitute cause to revoke any Franchise or other use, occupancy or operating authority granting permission to provide Service in the Village.
- F) The Village Board adopts the following schedule of penalties for the violations listed. Unless prohibited by State law, the Village Board reserves the right to penalize any Service Provider or System owner or operator found to be in violation of this Law.
- G) Each instance or occurrence may be deemed a separate violation, and each day or part thereof following written notification by the Village and the expiration of any period of time allowed for the elimination, remedy or cure of the violation that the violation continues or is not eliminated, remedied or cured as prescribed by the Village Board, may be deemed a separate violation, punishable separately. The imposition and payment of penalties as set forth in this Section shall not serve to extinguish or eliminate any other rights of prosecution the Village may have under law, nor are they deemed to be recompense for any damages that may be suffered:
 - 1. For failure to complete any System construction, reconstruction or upgrade in any section of the Village, or in the Village as a whole, as committed to pursuant to in a Proposal or Franchise; an amount not to exceed Two Hundred dollars (\$200).

2. For failure to obtain a street cutting permit prior to the cutting or disturbance of any Street, an amount not to exceed Five Hundred dollar (\$500).
3. For failure to provide any data, documents, reports or information required by this Law, or that is needed to monitor or determine compliance with and to administer this Law, an amount not to exceed One Hundred dollars (\$100).
4. For failure to test, analyze and report on the performance of the System following a written request to do so; an amount not to exceed Two Hundred dollars (\$200).
5. For refusal to cooperate with the Village on any matter involving an inspection of the System and its components and facilities; an amount not exceed Five Hundred dollars (\$500).
6. For failure to comply with any requirements regarding Completion, cleanup and proper installation as set forth in this Law; an amount not to exceed Two Hundred dollars (\$200).
7. For failure to meet any construction or safety-related requirements of this Law, including fire and electrical codes; an amount not to exceed \$250 Hundred (\$250) per violation.

a) For reasons of impracticability and excessive, unreasonable and unnecessary cost to the Village, in the event that a substantial number of safety-related violations are found during an inspection of a System within the Village, such being defined as more than ten (10) in one (1) continuous or contiguous mile of the System within the Village, the Village shall not be required to notify a Service Provider or System owner or operator of each and every individual safety or safety-related violation. Rather, in such an instance the Village may reasonably assume the findings to be prima facie evidence that the situation is Village-wide and order the entire System to be inspected by the Service Provider or System owner or operator for either construction or safety-related violations, and order that all such violations found shall be eliminated within thirty (30) days of the date of notification by the Village.

b) In the event of a situation described in subsection (G,7,a) of this section, any penalty imposed shall be calculated using the following formula:

$$\frac{\text{Number of Violations Found}}{\text{Miles of System Inspected}} \times \text{Total Miles in the Village} = \text{Total Violations}$$

c) As these issues are of paramount concern to the Village, and as non-compliance with these requirements is normally deliberate, if the Village is forced to notify a Service Provider or System owner or operator of construction or safety-related violations, the mere elimination of such violations within the required period of time contained in the notice shall not relieve an offending Service Provider or System owner or operator from the payment of fines imposed under this section. Fines for construction and safety-related violations shall accrue starting forty-eight (48) hours after notification by the Village of the existence of the violations, and shall continue until the Service Provider or System owner or

operator certifies to the Village in writing that all construction and safety-related violations associated with its System in the Village have been eliminated.

- d) In the event a subsequent reinspection reveals that specific previously identified violations still exist, the fines may be doubled and shall accrue from the date of the first notice required pursuant to subsection (G,7,c) until the elimination of the violation is verified.
 - e) Notwithstanding the subsection (G,7,c) of this Section, penalty shall be imposed on a Service Provider or System owner or operator for any construction or safety-related violation where it is proven that the violation was caused by the actions of a third party, provided that proof is provided of a demand by the Service Provider or System owner or operator to the party having caused the violation to eliminate the situation, including a diligent pursuit of the demand if necessary.
 - f) In order to verify and assure continued compliance with all applicable construction and safety-related requirements, within a reasonable amount of time after the period of time set forth in the Village's notice for the elimination of all construction or safety-related violations as set forth in subsection (G,18,c) of this Section, but in no case sooner than thirty-five (35) days after the date of the notice of violation, the Village shall have the System within the Village reinspected by a party experienced in such inspections and that has no affiliation of any kind with any member of the industry.
 - g) As the cost of a reinspection under subsection (G,7,f) of this Section is an extraordinary expense to the Village caused by the impermissible actions of a Service Provider or System owner or operator, and is not deemed a normal cost of administering this Law or a Franchise, to prevent the taxpayers from having to bear the financial burden, the Village may require the Service Provider or System owner or operator to place on deposit with the Village an amount deemed to be reasonably sufficient to cover the cost of reinspecting twenty percent (20%) of the System within the Village on a random sample basis and generating a written report on the findings of the inspection. The amount of the deposit shall not be less than ten-thousand dollars (\$10,000), and any amount not expended shall be promptly returned to the Service Provider or System owner or operator.
- 1) For failure to pay the full and complete amount of any money owed the Village, including any interest that may be owed, an amount not to exceed one hundred (\$100).
 - 2) For failure or refusal to place or restore Performance and Completion securities as required, an amount not to exceed one hundred (\$200).
 - 3) For failure to comply with the requirements of this Law with respect to Continuity of Service, or for threatening to discontinue Service, for each day or part thereof that such non-compliance continues or such threat is not removed in writing to the Village following written notification by the Village of the violation; an amount not to exceed One Thousand (\$1,000).

- 4) For failure or refusal to comply with any of the provisions of Section 87 of this Law, Five Hundred dollars (\$500).
 - 5) For failure to comply with any other Section, subsection, or provision of this Law, or a Franchise, an amount not to exceed Fifty dollars (\$50.00).
- H) Notwithstanding anything in the preceding subsections of this Section or any other Section of this Law, unless otherwise formally granted relief or a waiver by the Village Board or the Administrator, or unless a longer period of time is permitted after the initial forty-eight (48) hours following notification by the Village to the Service Provider or System owner or operator that a violation exists, each day that a violation continues shall constitute and be deemed a separate violation and may be treated as a separate offense.
- I) A Service Provider or System owner or operator shall not be subject to penalties, 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:
- (1) 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
 - (2) 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.
- J) In the event of an appeal arising out of the enforcement of this Section, or in the event of litigation arising out of a dispute regarding the enforceability of any action taken by the Village under this Section, the Service Provider or System owner or operator shall not be excused from the prompt and timely payment of penalties as set forth in this Section during the course of such proceeding. Payment of penalties in such an instance shall be placed in an escrow account by the Village, pending the resolution and decision of the adjudicating entity.
- K) Notwithstanding anything in this Section, or any other Section of this Law, a Service Provider or System owner or operator may not use the payment of penalties to evade or avoid compliance with this Law or any Section of this Law. An attempt to do so shall subject the Service Provider or System owner or operator to a penalty not to exceed Ten-Thousand dollars (\$10,000) for the first occurrence, and for a second such occurrence termination and loss of the Franchise, and a fine of One-Hundred Thousand dollars (\$100,000).

Section 95. Complaint Procedures

- A) The Village is hereby granted the authority to implement procedures for the filing and resolution of complaints.
- B) The Village shall have the authority to adjust, settle or compromise any controversy arising from the operations of any Service Provider or System owner or operator, either on behalf of the Village or any Subscriber or User, in accordance with the best interests of the public and the

Village; provided, however, that any Person aggrieved by a decision of the Village Board may appeal the matter for a hearing and determination in accordance with this Law.

- C) The Village Board reserves the right, at all times, on behalf of the Village, or a Subscriber or User, to accept, reject or change any decision of the Village Board, and may adjust, settle or impose a compromise regarding any controversy arising from the operation of a Service Provider or System owner or operator that is subject to this Law in whole or in, part, or from any provision of this Law.

Section 96. Effective Date.

This Law shall become effective upon adoption, approval, publication and filing as required by law, and shall be codified in the laws of the Village of Washingtonville, New York.

(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. 7 of 1999 of the ~~(County)(City)(Town)~~ (Village) of Washingtonville was duly passed by the Board of Trustees on 12-21- 1999, 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 _____, above.

Melanie J. Lanc

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: 1-3-00

(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: JACOBOWITZ and RUBINS, LLP
Signature J. Benjamin Galley
Attorneys for the Village

Title _____

~~XXXXX~~
County
~~XXXXX~~ of Washingtonville
~~XXXXX~~
Village

Date: December 29, 1999