

CODIFIED ORDINANCES OF CASEVILLE

PART EIGHT - BUSINESS REGULATION AND TAXATION

TITLE TWO - Business Regulation

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CHAPTER 810 Cable Television

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CROSS REFERENCES

Construction and maintenance of facilities - see M.C.L.A.

Secs. 247.183 et seq.

Cables improperly located; insurance - see M.C.L.A. Sec. 500.3123

810.01 DECLARATION OF PURPOSE.

The purpose of this chapter is to provide fair regulation of cable communications service in the Village in the interest of the public; to promote and encourage adequate, economical and efficient cable communications service to the residents; to promote and encourage harmony between cable communications companies and their subscribers and to provide for the furnishing of cable communications system service to the residents without unjust discrimination, undue preferences or advantages. (Ord. 701. Passed 10-12-81.)

810.02 DEFINITIONS.

As used in this chapter:

- (a) "Person" means and includes one or more individuals, firms, corporations, associations, partnerships or organizations of any kind, and any combination thereof.
- (b) "Cable communications service" means the business, in whole or in part, of receiving, directly or indirectly over the air, and amplifying or otherwise modifying, signals transmitting programs broadcast by one or more signals, sound signals, pictures, visual images, digital signals, telemetry or any other type of closed circuit transmission by means of electrical or light impulses, whether or not directed to originating signals or receiving signals off the air, and redistributing such signals by wire, cable or other means to residents who pay for such service.
- (c) "Cable communications system," "cable system," "cable television system," "CATV" or "system" means a system of coaxial cables or other conductors, antennae, transmitters, fixtures, converters, distribution networks, studios and other equipment used or to be used to originate or receive television or radio signals directly or indirectly off the air and to transmit them via cable to subscribers for a fixed or variable fee, including the origination, receipt, transmission and distribution of voices, sound signals, pictures, visual images, digital signals, telemetry or any other type of closed circuit transmission by means of electrical or light impulses, whether or not directed to originating signals or receiving signals off the air. However, such definition shall not include any separate system which serves only the residents of one or more apartment dwellings under common ownership, control or management, and commercial establishments located on the premises of such dwellings, upon approval of the Village Engineer.

- (d) "Cable communications company" means any person who owns, controls, operates or manages a cable communications system for the purpose of providing cable communications service to residents, except that such definition shall not include:
- (1) A telephone, telegraph or electric utility in a case where it merely leases or rents to a cable communications company utility pole contract space for the placing thereon of wire or cable facilities used in the distribution of television or other signals to the subscribers of such cable communications company; or
 - (2) A telephone or telegraph utility regulated by the Michigan Public Service Commission or Federal Communications Commission in a case where it merely provides a communications company for the distribution of television signals to the subscribers of such company.
- (e) "Board" means Council or its designee. (Ord. 701. Passed 10-12-81.)

810.03 FRANCHISE REQUIRED.

(a) No person shall construct, install, maintain or operate a cable communications system, nor shall any person provide a cable communications service or acquire ownership or control of a cable communications company, without first obtaining a franchise therefor from the Village in the form of a franchise agreement between the Village and the franchisee, which franchise agreement shall include, at a minimum, compliance with the specifications of the Village.

(b) No person shall use, occupy or traverse the streets, alleys, lanes, avenues, boulevards, sidewalks, bridges, viaducts, rights of way or any other public place or public way in the Village or any extensions thereof or additions thereto, whether on, above or under the surface of the ground, for the purposes of installing, constructing, maintaining or operating a cable communications system or facilities therefor or for the purpose of furnishing a cable communications service without such person having first obtained a franchise therefor from the Village in the form of a franchise agreement between the Village and the franchisee, which franchise agreement shall include, at a minimum, compliance with all the specifications of this Village.

(c) The specifications required by the Village are minimum requirements of a franchise agreement. Additional requirements including, but not limited to, rates, charges, deposits, specifications regarding required interconnections, studios or other signal origination facilities, number of channels to be equipped and available for immediate use upon initial construction of the system, use of channels by the Village, schools and other educational institutions, quality of community access, availability of equipment to users, required establishment and

expansion of service area, other use of channels and other specifications or requirements of a cable communications franchisee or system may be established in the franchise agreement.

(Ord. 701. Passed 10-12-81.)

810.04 FRANCHISE APPLICATION; CONTENTS; FEES; ISSUANCE; TRANSFER.

(a) The application for a franchise to install, construct, maintain or operate a cable communications system in the Village or to furnish a cable communications service therein shall be made in writing to Council in such form as may be prescribed. Upon completion, a description and map of the territory within which the cable communications system is to be installed, constructed, maintained or operated or a cable communications service is to be provided shall be accompanied by a showing of the applicant's legal, financial, technical and other qualifications to be a franchisee, hereunder. Such showing shall contain:

- (1) In establishing legal qualifications, if the applicant is other than a single individual, a certified copy of the partnership agreement, articles of association or articles of incorporation, as the case may be, and also, if the applicant is a foreign corporation, a certified copy of its authorization to do business in the State;
- (2) In establishing financial qualifications, a copy of the applicant's current balance sheet as of a date not more than sixty days prior to the date of the application. If a loan or other credit arrangement is to be consummated to finance the establishment and operation of the proposed facilities, full particulars relative thereto shall be disclosed, including the identity of the creditor;
- (3) In establishing technical qualifications, a statement of the arrangements to ensure the rendition of good service, including the type and kind of facilities to be employed, the technical standards to be followed, the maintenance and repair facilities to be used and the number and description of technical personnel, including copies of any contracts, agreements or arrangements relating to any of the above;
- (4) A statement as to the location of the antenna site or sites and the location of any places of business in the Village;
- (5) A statement as to any affiliated corporations or business organizations engaged in providing cable communications service, or interlocking directorships or ownerships held by any owners, officers or directors of the applicant with any other business engaged in providing cable communications service;
- (6) A detailed statement as to the arrangements and timetable by which the applicant proposes to construct the cable communications

facilities and systems, including detailed descriptions of portions of the Village to be served by the system within one year, eighteen months, two years, thirty months, and three years of the granting of a certificate of compliance by the Federal Communications Commission;

- (7) The following information as to the programming services and public services which the applicant proposes to provide:
 - A. The off air signals to be carried initially;
 - B. The number of channels offered and the potential for diversified services to local government, educational institutions, community groups, householders and local commercial interest; and
 - C. The projected development of customer and community services, indicating priorities in development and estimated time schedules therefor;
- (8) Cost estimates of development, installation and maintenance of the system, which items shall be deemed to include, but are not limited to, the proposed cost of acquisition of the system where approval of a transfer of the franchise has been requested;
- (9) Revenue forecasts for the next five years of service;
- (10) A proposed schedule of rates for installation charges, monthly service fees and relocation charges; and
- (11) Such other information as the Village may request.

The application shall be accompanied by a fee of one thousand dollars (\$1,000), which fee shall be refunded if the applicant is not granted a franchise. If the applicant is granted a franchise, then the fee shall be used for the purpose of dissipation of Village costs in implementing the franchise. After the application of such fee to such fees and costs, the excess thereof shall be applied to the first annual franchise fee.

(b) Upon the filing of an application and the payment of the fees as prescribed, Council shall consider the application and may request such additional information as it deems necessary to establish the legal, financial, technical and other qualifications of the applicant to provide a cable communications service in the Village.

(c) If Council determines that the applicant possesses the necessary qualifications, legal, financial, technical and otherwise, to reasonably ensure the applicant's ability to satisfactorily install, construct, maintain or operate a cable communications system or to furnish a cable communications service to the residents, Council may issue the applicant a nonexclusive franchise therefor, provided that no franchise shall be issued until the franchise application has been

on file and available for public inspection in the office of the Village Clerk for at least thirty days, and until Council has thereafter held a public hearing on such application after due notice of the time and place of such hearing has been given to the public.

(d) In determining whether or not a franchise shall be issued, Council shall take into consideration, among other things, the technical qualifications of the applicant; the financial responsibility of the applicant; the ability of the applicant to perform efficiently the service for which the franchise is requested, including the prior experience, if any, of the applicant in providing cable communications systems or furnishing cable communications service; the proposed rate schedule; the nature and scope of the applicant's proposed system; and the timetables for development of the applicant's proposed system.

(e) No franchise granted hereunder may be sold, transferred or assigned unless such transaction is first approved by Council after receipt of a written application therefor containing the same information in regard to the transferee as would be required of an original applicant. Prior approval of Council shall be required where ownership or control is more than twenty-five percent of such right of control, singularly or collectively. No franchise granted hereunder may be sold, transferred or assigned, nor may more than twenty-five percent of the right of control of the franchise be transferred to a person or group of persons acting in concert, none of whom already own or control twenty-five percent or more of such right of control, singularly or collectively, until such sale, transfer or assignment of franchise or transfer of right of control shall first have been offered to the Village or to a person approved by Council. Such offer shall be made at a price not greater than, and on terms equivalent to, that made to the offer or by a bona fide bidder for such franchise or right of control. The township or the person approved by Council shall accept or reject the offer within ninety days. This provision shall not be deemed to restrict the transfer by bequest of a descent of the stock of the franchisee.

(Ord. 701. Passed 10-12-81.)

810.05 NONEXCLUSIVE FRANCHISE; TERM; FORM.

A franchise issued pursuant to this chapter shall be a nonexclusive franchise for a term of years, not to exceed fifteen years, as Council may approve, and shall be issued in such form as shall be determined by Council.

(Ord. 701. Passed 10-12-81.)

810.06 FEES; REPORTS; RECORDS.

(a) During the term of any franchise granted pursuant to this chapter, the person granted such franchise shall pay to the Village, for the use of its streets,

public places and other facilities, for the maintenance, improvement and supervision thereof, and for the regulation activities required by virtue of the franchise, an annual franchise fee in an amount equal to three percent of the annual local gross subscriber revenues. Local gross subscriber revenues are those gross revenues of the franchisee from subscribers in the Village. Local gross subscriber revenues include installation fees, disconnect and reconnect fees and fees for regular cable benefits, including the transmission of broadcast signals and access and origination channels. Local gross subscriber revenues include local gross revenues from pay television, in excess of the fair market value royalty paid by the franchisee therefor, and local leased channel revenues. To the extent that the franchisee's books of account do not reflect the source of any gross subscriber revenue, that portion of gross subscriber revenue allocable to the Village shall be based on the ratio of the number of subscribers in the township to the number of subscribers outside of the Village. Sales tax or other taxes levied directly on a per subscription basis and collected by the franchisee shall be deducted from the local gross revenues before computations of the fee due the Village is made. The Village shall be furnished a statement with each payment, certified as correct by the franchisee, and an annual statement for the entire year, prepared by a certified public accountant. All of the statements shall reflect the total amount of local gross subscriber revenues and the charges, deductions and computations for the period covered by the statement.

(b) Such franchise fee shall be paid annually during the existence of the franchise on or before a date thirty days subsequent to each anniversary date of such franchise at the office of the Village Treasurer during his or her regular business hours. If the Village Treasurer's office is closed on the thirtieth day, then payment may be made during his or her regular business hours on the next following day on which the office is open for business.

(c) The Village may inspect, at all reasonable times, the customer records of any person granted a franchise hereunder from which its franchise fee payments are computed, and may audit and recompute any and all franchise fees paid. No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the Village may have for further or additional sums payable as a franchise fee under this chapter or for the performance of any other obligation hereunder.

(Ord. 701. Passed 10-12-81.)

810.07 CONSTRUCTION OF FACILITIES; USE OF STREETS.

(a) A franchise granted pursuant to this chapter shall confer upon the grantee named therein the nonexclusive right to erect, install, construct, reconstruct, replace, remove, repair, maintain and operate in, upon, under, above

and across the streets, avenues, highways, sidewalks, bridges, other public ways, easements and right of ways, as existing as of the date of the grant of such franchise and all subsequent extensions thereof and additions thereto, in and belonging to the Village, all necessary towers, poles, wires, cables, coaxial cables, transformers, amplifiers, underground conduits, manholes and other television and/or radio conductors, equipment and fixtures for the installation, construction, maintenance and operation of a cable communications system (including audio, video and radio signals) or for the furnishing of a cable communications service.

(b) Prior to the erection or installation of any towers, poles, guys, anchors, underground conduits, manholes or fixtures for use in connection with the installation, construction, maintenance or operation of a cable communications system under a franchise granted pursuant to this chapter, the grantee of such franchise desiring to erect or install such facilities for use in connection with its cable communications system shall first submit to the Village Engineer, for his or her review and approval, a concise description of the facilities proposed to be erected or installed, including engineering drawings, if requested or required, together with a map indicating the proposed location of such facilities. No erection or installation of any tower, pole, guy, anchor, underground conduit, manhole or fixture for use in a cable communications system shall be commenced by any person until approval therefor has been received from the Village Engineer, provided that such approval shall not be unreasonably withheld.

(c) Any person accepting a franchise pursuant to this chapter and erecting or installing towers or poles shall, upon written request by the Village, grant the Village reasonable attachment space upon such towers or poles without rental charge for the attachment of wire or cable owned and used by the Village. However, the Village shall pay any costs incurred by such person in providing attachment space to the Village, including all necessary costs of rearrangement of such person's wires, cables or equipment and tower or pole replacement costs for a larger tower or pole, if required.

(d) Upon the expiration, termination or revocation of any franchise granted pursuant to this chapter, or if any person wishes to otherwise dispose of any tower or pole erected or installed for use in connection with a cable communications system or any portion of such system, the Village retains the first right and option to purchase in place such towers or poles as it may require or such portion of the system for the fair market value thereof. The Village shall be under no obligation to purchase all or any part of the system upon the expiration, termination or revocation for cause of any franchise granted pursuant to this chapter. Further, upon the expiration, termination or revocation for cause of any such franchise, if the Village determines that it does not desire to

purchase the system or any part thereof, the franchisee shall have six months from the date of expiration, termination or revocation to remove its towers, poles, wires, cables, fixtures or other facilities from the streets, alleys, public right of ways or public places, provided, that such franchisee shall not disturb any underground conduit, manhole or other facility constructed underground. At the expiration of such six-month period, any property not removed by the franchisee shall become the property of the Village to do with as it may choose. Any cost to the Village in removing such property from the streets, alleys, public right of ways or public places shall be claimed against the franchise under the performance bond required under Section 810.11(a).

(e) In areas or portions of the Village where transmission or distribution facilities of public utilities providing telephone service and electric service are underground, or may be placed underground when installed, any person granted a franchise pursuant to this chapter shall likewise install, construct, maintain and operate its transmission and distribution facilities in like manner underground to the maximum extent feasible and permitted by existing technology and conditions, subject to the approval of the Village Engineer as provided in subsection (b) hereof.

(f) All construction, installation, maintenance and operation of any cable communications system or of any facilities employed in connection therewith shall be in compliance with the National Electrical Safety Code, as prepared by the American National Standards Institute (A.N.S.I.), the National Electrical Code of the National Fire Protection Association, the Bell Telephone System's Code of Pole Line Construction, any standards issued by the Federal Communications Commission or other Federal or State regulatory agencies in relation thereto, and applicable regulations of public utilities operating in the Village. Every cable communications system shall be installed, constructed, maintained and operated so as not to endanger or interfere with the safety of persons or property in the Village.

(g) Any opening or obstruction in, disturbance of or damage to the streets, alleys, public right of ways or public places by any person in the exercise of any right granted pursuant to this chapter shall be properly guarded by adequate barriers, lights, signals and warnings so as to prevent danger to any person or vehicle using such streets, alleys, public right of ways or public places, and shall be properly and promptly repaired, all in a manner specified and approved by the Village Engineer at such person's expense.

(h) Any person owning or maintaining a cable communications system or facilities therefor in or on the streets, alleys, public right of ways or public places in the Village shall, at his or her expense and without reimbursement from the Village, upon request of the Village, protect, support, temporarily disconnect, relocate or remove from the street, alley, public right of way or public place any property of such person when required by reason of traffic conditions, public safety, street vacation, freeway or street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines or tracks, or the construction or change of the transmission or distribution facilities of any telephone or electric public utility or other public improvement. Any such person shall also, at the request of any private party holding an appropriate permit issued by the Village, temporarily raise or lower its cable communications transmission or distribution wires or cables to permit the moving of any building or other structure, provided that the actual expense of such temporary raising and lowering shall be paid in full by the party requesting the same. Notice herein required shall be of the same duration as that notice required of other utilities.

(i) If any person fails to commence, pursue or complete any work required by law or by this chapter, to be done in any street, alley, public right of way or public place as designated by the Village Engineer, the Village Engineer may cause such work to be done and such person shall pay to the Village the cost thereof within thirty days of the receipt of an itemized statement of such cost. (Ord. 701. Passed 10-12-81.)

810.08 STANDARDS OF SERVICE.

(a) Any cable communications company granted a franchise pursuant to this chapter shall install, construct, maintain and operate its cable communications system in accordance with the accepted standards of the industry, in conformity with the state of the art and any standards of operation or maintenance for a cable communications system which may be established or issued by the Federal Communications Commission. Further, it is the intention of Council that any person granted a franchise to furnish a cable communications service to the public in the Village shall possess the financial and technical qualifications necessary to provide a cable communications system which will ensure its subscribers high quality technical and public service.

(b) Every cable communications system franchised under this chapter shall have at least 300 MHz of bandwidth (the equivalent of thirty-five television broadcast channels) available for potential use for the totality of cable services to be offered. The system shall possess the capability for the reception and distribution of world-wide radio signals.

(c) Every cable communications system franchised under this chapter shall maintain bidirectional signal capability for digital audio and video signal transmission on all elements of the system. The extent to which the reverse capability is available to subscriber use shall be specified in the franchise agreement when economically feasible.

(d) Every cable communications system franchised under this chapter, as a minimum, shall maintain and make available, without charge, such public access channels, education access channels and local government access channels as may from time to time be designated, established, required or regulated by the rules and regulations of the Federal Communications Commission, including the expansion of such access channels pursuant to the rules and regulations of the Federal Communications Commission as may from time to time be in force and effect.

(e) Every cable communications system franchised under this chapter shall maintain such capacity, capability and technical standards as will enable it to interconnect with any other cable communications system located in any adjacent community. It is the intention of Council to require that all access channels in the Village area be interconnected to the cable communications system franchised under this chapter.

(Ord. 701. Passed 10-12-81.)

810.09 RATES; DISCRIMINATION.

(a) No cable communications company shall make any unjust or unreasonable discrimination in rates, charges, classifications, promotions, practices, regulations, facilities or services for or in connection with like services, nor subject any person to any prejudice or disadvantage in any respect whatsoever. However, this shall not be deemed to prohibit the establishment of a graded scale of charges and classifications of rates to which any subscriber coming within such classification shall be entitled.

(b) No rate or charge for the installation of basic cable communications service provided in the Village shall be effective, nor shall a cable communications company advertise, collect or receive any rate or charge for its services, until it has filed a complete schedule of rates and charges with the Village Clerk and until such rates and charges have been approved by Council. The rate increase requests made for services of the franchisee hereunder shall be fair and reasonable and not higher than necessary to meet all increased costs of the service (assuming efficient and economical management), and to provide a fair return to the franchisee. The franchisee shall receive no consideration whatsoever for its service other than in accordance with this section of the

franchise agreement without the approval of Council. The applicant for a franchise shall include in its application its proposed rates, charges and deposits.

(c) No cable communications system may increase any rate or charge for cable communications service, or alter any classification, contract, rule, regulation or practice so as to result in any increase in its schedule of rates or charges for such service without the prior approval of such increased rate or charge or alteration in its classification, contract, rule, regulation or practice by Council after a public hearing thereon. Such public hearing shall be noticed at least ten days in advance in a newspaper of general circulation in the Village. At such public hearing, the cable communications company shall set forth in detail the basis for its requested increase in rates or charges for service or alteration in its classification, contract, rule, regulation or practice, including the reasonableness and lawfulness thereof. In the determination of just, reasonable and lawful rates, and charges Council shall consider and give due weight to all lawful elements properly to be considered, including expenses, a reasonable return on the cost of the property used in the service, depreciation, obsolescence, taxes, risks of the business and value of service to the customer. Council shall render its decision with respect to any request by a franchisee for a rate increase within ninety days of the date of such request, unless the franchisee stipulates, in writing, to an extension of the ninety-day period.

(Ord. 701. Passed 10-12-81.)

810.10 FREE SERVICE TO VILLAGE; USE OF SYSTEM DURING EMERGENCIES.

(a) Every cable communications company furnishing service in the Village shall, without charge for installation or service, provide one installation of its cable communications service to each department of the Village and each fire and police station in the Village, and shall, without charge, provide cable communications service to every primary school, secondary school and public library in the franchisee's current service area. However, such service provided without charge shall not be included in determining the number of subscribers in service for computation of the franchise fee as hereinbefore provided.

(b) Every cable communications company providing service in the Village shall make its cable system available, without charge, to the Village, the County, the State, the United States and/or emergency operations agencies for the prompt and simultaneous communication to subscribers and the public in the Village of any information resulting from or required by war, threat of war, natural catastrophe, riot or insurrection necessary to save or protect life or property.

(Ord. 701. Passed 10-12-81.)

810.11 BOND; INSURANCE.

(a) Every cable communications company shall, within thirty days of the grant of a franchise to it pursuant to this chapter, file with the Village Clerk, and at all times thereafter maintain in full force and effect for the term of the franchise, at its expense, a corporate surety bond or such other surety arrangement as Council may approve in the amount of ten thousand dollars (\$10,000), conditioned upon the faithful performance by such cable communications company of its obligations under its franchise as herein set forth, and upon the further condition that if such cable communications company fails to comply with any of the provisions of this chapter, there shall be recoverable jointly and severally from the principal and surety of such bond any damages or loss suffered by the Village as result thereof, including the full amount of any compensation, indemnification or cost of removal of any property of such cable communications company as provided in this chapter, plus attorney's fees and costs, up to the full amount of the bond. Such condition shall be a continuing obligation for the duration of any franchise granted under this chapter and any renewal thereof and thereafter until such cable communications company has liquidated all of its obligations with the Village which may have arisen under the franchise or from the exercise of any privilege or right granted thereby. Any bond provided under this section shall provide that at least thirty days prior notice of any intention to not renew, to cancel or to make a material change therein shall be filed with the Village Clerk. Nothing herein shall be construed to excuse faithful performance by any cable communications company or in any way limit its liability for damages or otherwise. The bond required hereunder may be reduced in face amount to five thousand dollars (\$5,000) at such time as the franchisee is actively providing cable communications service to 100 or more subscribers in the Village. Such reduction shall be deemed a material change in the bond.

(b) Any cable communications company, within ninety days of the grant of a franchise pursuant to this chapter, shall file with the Village Clerk, in addition to the bond as hereinbefore set forth:

- (1) An agreement to indemnify, defend and save the Village harmless from and against any or all claims, suits, actions or liability for damages which may arise in any way from the grant of a franchise to such cable communications company, or its operation thereunder in the Village, including all expenses incurred by the Village in defending itself against any claim, action or suit;
- (2) Proof of a general comprehensive liability insurance policy and an automobile liability insurance policy, issued by companies licensed to do business in the State, protecting the Village, its officers, boards, commissions, agents and employees against liability for loss or

damage for personal injury, death and property damage occasioned by the installation, construction, maintenance or operation of a cable communications system in the Village, with minimum liability limits of five hundred thousand dollars (\$500,000) for personal injury or death of any one person and one million dollars (\$1,000,000) for personal injury or death of two or more persons in any one occurrence, and five hundred thousand dollars (\$500,000) for damages to property resulting from any one occurrence. Such policy shall contain a provision that a written notice of cancellation or material change or reduction in coverage shall be given to the Village Clerk at least thirty days in advance of the effective date thereof.

- (3) Proof of adequate insurance required by the Michigan Worker's Compensation Law applicable to it.

(c) No franchise hereunder shall be effective until subsections (a) and (b) hereof have been fully complied with. Failure to file with the Village Clerk, within ninety days after the grant of a franchise, the bond, indemnity agreement, proof of general comprehensive liability insurance policy, proof of automobile liability insurance policy and proof of adequate worker's compensation insurance, or any of them as required by subsections (a) and (b) hereof, shall render the franchise null and void without notice of further proceedings.

(Ord. 701. Passed 10-12-81.)

810.12 TERMINATION; REVOCATION OR SURRENDER OF FRANCHISE.

(a) Any franchise granted pursuant to this chapter shall expire without further proceedings one year after its effective date if the person granted such franchise has not commenced construction of a cable communications system within such period.

(b) If any person granted a franchise pursuant to this chapter fails to provide cable communications service within and throughout the franchise area as required under the franchise agreement, such franchise shall, on the anniversary of the effective date of such franchise next following the twelve-month period during which cable communications service has not been extended as required under the franchise agreement, be deemed revoked without the necessity of Council action, unless prior to such date, such person has applied to Council and Council has, for good cause shown, granted an extension of the construction or service periods set forth in the franchise agreement.

(c) Any franchise granted pursuant to this chapter shall be terminated and cancelled without further proceedings 120 days after the appointment of a receiver or trustee to take over and conduct the business of a cable communications company, whether in receivership, reorganization, bankruptcy or other action or proceedings, unless such receivership or trusteeship has been vacated prior to the expiration of such period. However, such receiver or trustee may apply for a transfer or assignment of such franchise, as provided in Section 810.04(e), within sixty days of the appointment of such receiver or trustee, if duly approved by the court having jurisdiction in the premises. In the case of a foreclosure or other judicial sale of the plant, property or facilities of a cable communications company, with or without the appointment of a receiver or trustee, the franchise granted will be terminated and cancelled without further proceedings upon thirty days written notice of termination served upon the cable communications company and the purchaser thereof, unless within such thirty-day period the purchaser shall apply to the Village for a transfer or assignment to it of the same as provided in Section 810.04(e).

(d) Any franchise granted pursuant to this chapter is revocable at will by Council prior to its expiration. Any franchise granted pursuant to this chapter is revocable prior to its expiration where the cable communications company has failed substantially to comply with any provision or requirement of this chapter or the provisions of the franchise agreement. Council may give a written notice containing full particulars as to the provision or requirement with which compliance is claimed deficient and may allow such cable communications company sixty days to comply. At the expiration of such sixty days, such franchise shall be deemed terminated and revoked, without further Council action, unless such cable communications company requests a hearing before Council upon its alleged failure to substantially comply with any provision or requirement of this chapter or of the franchise agreement. Such hearing shall be public with the cable communications company being permitted to fully participate therein, including the right to introduce testimony and exhibits and to examine and cross examine witnesses. The hearing shall be recorded and at the conclusion thereof Council, if it finds that the cable communications company has not substantially complied with any provision or requirement of this chapter or its franchise agreement, may terminate and revoke the franchise.

(e) Any person granted a franchise pursuant to this chapter may surrender it by written notice of intent to surrender its franchise filed with the Village Clerk not less than sixty days prior to the surrender date. On the surrender date specified in such notice, all rights, privileges and authority under such franchise shall terminate. However, such person shall have twelve months thereafter to remove all towers, poles, wires, cables, fixtures or other facilities

from the streets, alleys, public right of ways or public places, subject to the right of the Village as set forth in Section 810.07(d). At the expiration of such twelve-month period, any property not removed by such person shall become the property of the Village to do with as it may choose. Any cost to the Village in removing such property from the streets, alleys, public right of ways or public places shall be claimed against such person under the performance bond required under Section 810.11(a).

(Ord. 701. Passed 10-12-81.)

810.13 COMMENCEMENT AND COMPLETION OF CONSTRUCTION.

Any person granted a franchise pursuant to this chapter shall, within such period as designated in the franchise agreement after the effective date of the issuance of a certificate of compliance, complete construction in the area designated in the franchise agreement. Any person granted a franchise pursuant to this chapter who is unable to construct according to this section for good cause shall notify Council in writing within thirty days of the occurrence of any delay or interruption of construction of more than fifteen working days duration, which interruption or delay would affect an inability to construct according to schedule.

(Ord. 701. Passed 12-12-81.)

810.14 COMPLAINT PROCEDURE; BUSINESS OFFICE.

(a) Council or any person or department designated by it may, upon its own motion or upon complaint of any person or subscriber of a cable communications company, hear and determine all complaints concerning the rates, charges, rules, regulations, practices and quality of service rendered or refused to be rendered, equipment furnished or refused to be furnished or any other matter relating to the service or operation of the cable communications system or any person franchised under this chapter.

(b) Upon the filing of any complaint against any person pursuant to subsection (a) hereof, Council shall give such person at least twenty days notice of the time and place of a hearing to be given such person upon the matter alleged in the complaint. Council may take whatever action is necessary to resolve the complaint and such action shall be binding on all parties.

(c) Every person granted a franchise pursuant to this chapter shall have a business office located in the area, suitably staffed, for purposes, among others, of receiving and investigating complaints, dealing with subscribers, receiving payment for service and otherwise conducting business, unless otherwise provided in the franchise agreement. (Ord. 701. Passed 10-12-81.)

810.15 PRIORITY OF USE; LIMITATIONS ON POWERS.

Any right or privilege granted to any person under this chapter to use or occupy any street, alley, public right of way or public place shall be subordinate to any prior lawful occupancy of such property. Nothing in this chapter shall be construed as limiting the Village in any way in the lawful exercise of police power. The grant of a franchise to any person as provided in this chapter shall confer no right, privilege or exemption not specifically presented herein. (Ord. 701. Passed 10-12-81.)

810.16 SURRENDER OF OTHER FRANCHISES.

By the application for and acceptance of a franchise pursuant to this chapter, a cable communications company agrees that upon subsequent additions of areas to the Village, whether by annexation, consolidation or otherwise, all franchises and/or licenses held by it to provide a cable communications system in such areas shall be surrendered, and any rights or privileges in streets, alleys, public right of ways or public places to install, construct, maintain or operate a cable communications system or to furnish a cable communications service in such areas as may subsequently be added to the Village by annexation, consolidation or otherwise shall thereafter be subject to and authorized by this chapter. (Ord. 701. Passed 10-12-81.)

810.17 REPORTS.

Every cable communications company shall file annually with the Village Engineer a current map showing the exact location of the transmission and distribution facilities and equipment in the Village used by it in providing cable communications service. Such company shall prepare and furnish to the Village, upon written request therefor, at such times and in such form as may be prescribed, such reports as to its operations, finances, facilities and activities as may be reasonably necessary to enable the Village to perform its obligations, functions and duties under this chapter. (Ord. 701. Passed 10-12-81.)

810.18 RIGHTS OF VILLAGE; INCORPORATION OF STATE STATUTES.

Any franchise granted under this chapter is made subject to all applicable provisions of law relating to the Village and ordinances thereof, and is specifically subject to the rights and powers of the Village on and limitations upon the cable communications company holding such franchise as are set forth in the statutes of the State pertaining to villages, which statutes are herein incorporated by reference. Such cable communications company shall abide by and be bound by such rights, powers and limitations, and any franchise granted under this chapter constitutes and shall be considered as a public utility franchise. A cable communications company shall be deemed to be a public utility, except for purposes of rate increase and programming. (Ord. 701. Passed 10-12-81.)

810.19 CABLE COMMUNICATIONS COMMISSION.

(a) Council may establish a commission to be known as the Cable Communications Commission. Council shall solicit from the public and from the franchisee names of persons interested in serving on the Commission, but is not limited to names thereby submitted.

(b) The Commission shall consist of five residents of the Village appointed by Council. Each member shall serve a term of three years. However, appointments to the initial Commission shall be two members for a term of three years; two members for a term of two years; and one member for a term of one year.

Any vacancy in office shall be filled by Council for the remainder of the term. No employee or person with ownership interest in a cable television franchise granted pursuant to this chapter shall be eligible for membership on the Commission. Members of the Commission may be compensated at a rate to be determined by Council. Such rate of compensation, if any, shall be established and may be revised from time to time by resolution of Council.

(c) The Commission, in addition to the functions and responsibilities that Council may delegate to it from time to time by resolution, shall have the following functions:

- (1) To discuss this chapter and franchises hereunder with prospective franchise applicants;
- (2) To advise Council on applications for franchises;
- (3) To advise Council on matters which might constitute grounds for revocation of a franchise under this chapter;
- (4) To recommend to Council, after a hearing, resolutions of disputes between franchisees, between franchisees and subscribers, between franchisees and access users, and between franchise users;
- (5) To advise Council on the regulation of rates under this chapter and to make recommendations on requested changes in rates, services or classifications;
- (6) To recommend to Council a general policy relating to access channels with a view to maximizing the diversity of programs and services to subscribers;
- (7) To encourage the use of access channels by institutions, groups and individuals in the Village. Council shall budget a minimum of eighty percent of the moneys to be received from cable franchise fees for use by the Commission to encourage the use of access channels. Such budget funds shall be kept by or under the control of the Village Treasurer, and the Village Treasurer shall draw checks on the account only when a majority of the members of the Commission

have authorized such an expenditure. Notwithstanding the foregoing, funds remaining in such account by the end of each calendar year shall be transferred by the Village Treasurer to the General Fund of the Village unless otherwise determined by Council;

- (8) To encourage and supervise interconnection of systems;
 - (9) To review and report to Council concerning records and reports which the franchisee is required to submit under this chapter;
 - (10) To prepare an annual budget and, prior to adopting the same, to conduct a public hearing thereon. The Commission shall also prepare an annual report to Council including an accounting of budgeted fees received and distributed by the Commission and a report of the type and amount of use of access channels.
 - (11) To conduct evaluations of the system at least every three years and to make recommendations to Council regarding amendments to this chapter or to the franchise agreement.
- (Ord. 701. Passed 10-12-81.)

810.20 NONLIABILITY OF VILLAGE.

Any person granted a franchise pursuant to this chapter will have no recourse whatsoever against the Village, its officers, councils, commissions, agents or employees for any loss, cost expense or damage arising out of any provision or requirement of this chapter or the enforcement thereof.

(Ord. 701. Passed 10-12-81.)

810.99 PENALTY.

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty if provided.)