

CATV Franchises*

Sections:

- 5.08.010 Definitions.**
- 5.08.020 The community antenna. Television system**
- 5.08.030 Significance of franchise.**
- 5.08.040 Operation of franchise.**
- 5.08.050 Rights reserved to the village.**
- 5.08.060 Applications for franchise.**
- 5.08.070 Acceptance and effective date of franchise.**
- 5.08.080 Termination of franchise.**
- 5.08.090 Hold harmless agreement And defense of litigation.**
- 5.08.100 Rates and charges to be filed with the village clerk and published by the grantee at grantee's expense.**
- 5.08.110 Permits and construction.**
- 5.08.120 Network technical requirements.**
- 5.08.130 Channels to be provided.**
- 5.08.140 Service standards.**
- 5.08.150 Construction standards.**
- 5.08.160 Conditions of street occupancy.**
- 5.08.170 Interconnection.**
- 5.08.180 Unauthorized connections or modifications.**
- 5.08.190 Preferential or discriminatory practices prohibited.**
- 5.08.200 Subscriber privacy.**
- 5.08.210 Severability.**

*Prior code history: prior code Ch. 17.

5.08.010 Definitions.

For the purpose of this chapter, the following terms, phrases and words and their derivations shall have the meaning specified herein. When not inconsistent with the context,

words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

"Board" means the board of trustees of the village of Oakfield.

"Community antenna television system," hereinafter referred to as "CATV System" or "System," means a system or network of coaxial cables or other electrical conductors and equipment used or to be used primarily for the purpose of transmission of electrical impulses of television, radio and other signals, directly or indirectly off-the-air and transmit them to subscribers for a fee.

"Grantee" means persons including, but not limited to, subsidiaries, parents, or affiliate companies, organizations or associations having any rights, powers, privileges, duties, liabilities or obligations under this chapter, and under the franchise ordinance, collectively called the "franchise," and also includes all persons having or claiming any title or interest in the system, whether by reason of the franchise itself directly or by interest in a subsidiary, parent or affiliate company, association or organization, or by any subcontract, transfer, assignment, management agreement operating agreement, or an approved assignment or transfer resulting from a foreclosure of a mortgage security agreement, or whether otherwise arising or created.

"Subscriber" means any person, firm, company, corporation or association receiving cable television service from the grantee under the scheduled charges filed with and approved by the board of trustees of the village of Oakfield.

"Village" means the village of Oakfield in its present boundaries or as said boundaries may be changed by annexation. (Ord. dated 12/10/80 § 1)

5.08.020 The community antenna television system franchise.

A. Franchise Required. No person, firm, company, corporation or association shall construct, install, maintain or operate within any public street in the village or within any other public property in the village, any equipment or facilities for the distribution of television signals or radio signals or other signals over a community antenna television system to any subscriber unless a franchise authorizing the use of the streets or property or areas has first been obtained pursuant to the provisions of this chapter, and unless such franchise is in full force and effect.

B. Review of Qualifications. Specific permission to operate a community antenna system under the provision of this chapter may be granted by the board of trustees of the village of Oakfield to any grantee after a review of the legal, character, financial, technical qualifications and the adequacy and feasibility of the grantee's construction agreements and after the board of trustees has approved the grantee's qualifications as part of a public proceeding affording due process.

C. Duration of Franchise. Upon filing by the grantee of the proper acceptance, the bond and the required insurance, the franchise shall take effect as provided herein and shall continue in full force and effect for a term of fifteen (15) years.

D. Review of Franchise Prior to Expiration

1. Public Meeting to be Scheduled. At least six months prior to the expiration of the franchise, the village shall schedule a public meeting or meetings with the grantee to review the performance of the grantee. The village may require the grantee to make available specified records, documents and information for this purpose, and may inquire in particular whether the grantee is supplying a level and variety of services equivalent to those being generally offered at that time in the industry in comparable market situations.

2. Determination on Reissue. The village

shall, within thirty (30) days of the conclusion of such meetings, provide a determination as to whether a community antenna television system franchise or franchises will be reissued. In making said decision, the village shall consider the technical, financial and programming performance of the franchise holder and specifically with relation to any and all applications, promises or agreements made or entered into by the franchise holder and its performance of said applications, promises or agreements. In the event the village determines not to reissue the franchise or franchises for reasons other than material breach of the franchise or for causes unrelated to the performance thereunder, it shall be so stated for purposes of Section 5.08.080. The village shall establish public proceedings leading to a final decision and such public proceedings shall include but not be limited to a public hearing providing opportunity for the public and applicants for the reissued franchise to appear. (Ord. dated 12/10/80 § 2)

5.08.030 Significance of franchise.

A. Franchise Nonexclusive. Any franchise granted hereunder by the village of Oakfield shall not be exclusive and the village reserves the right to grant a similar franchise to any person, firm, company, corporation or associations at any time.

B. Franchise Amendable. The scope of any franchise granted hereunder shall be deemed amendable from time to time to allow the grantee to innovate and implement new services and developments, provided, however, that no such services or developments shall be implemented without the express prior approval of the board of trustees of the village of Oakfield.

C. Privileges Must be Specified. No privilege of exemption shall be inferred from the granting of any franchise unless it is specifically prescribed. Nothing in this chapter shall be deemed to require the granting of a franchise when in the opinion of the board of trustees it would not be in the public interest to do so.

D. Authority Granted. Any franchise granted hereunder shall give to the grantee the right and privilege to construct, erect, operate, modify and maintain, in, upon, along, above, over and under the streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof, and additions thereto, in the village, poles, towers, antennas, wires, cables, underground conduits, electronic equipment, and other television conductors and fixtures necessary for the maintenance and operation in the village of community antenna television system or the interception, sale and distribution of television and radio signals.

E. Consent Prior to Transfer of Franchise. Any franchise granted hereunder shall be a privilege to be held for the benefit of the public by the grantee. Said franchise cannot in any event, be sold, transferred, leased, assigned or disposed of in whole or in part, either by forced or voluntary sale, merger, consolidation, mortgage, trust, receivership, or any other means without the prior consent of the village expressed by board of trustees' resolution and then only under such conditions as the board of trustees may establish. Such consent shall not be withheld by the village without showing of cause.

F. Consent Prior to Change of Control. Prior approval of the board of trustees shall be required where ownership or control of more than five percent of the voting stock of grantee is acquired by a person or group of persons acting in concert, none of whom already owns or controls five percent or more of such right of control, singly or collective. Transfer from a subsidiary to a parent corporation or vice-versa shall not be considered as change of control. Prior approval of the board of trustees shall also be required for all changes in ownership or control by a person or group of persons acting in concert, who already own or control five percent or more of such right of control, singly or collectively.

G. Mortgage or Pledge of Network. Nothing in this chapter shall be deemed to prohibit the mortgage or pledge of the network or any part thereof. However, any such mortgage or pledge

shall be subject to and subordinate to the right of the village under this franchise or applicable laws.

H. Previous Rights Abandoned. A franchise granted hereunder shall be in lieu of any and all other rights, privileges, powers, immunities and authorities owned, possessed, controlled or exercisable by a grantee or any successor pertaining to the construction, operation or maintenance of a cable communication system in the village. The acceptance of a franchise shall operate, as between grantee and the village, as an abandonment of any and all of such rights, privileges, powers, immunities and authorities within the village. All construction, operation and maintenance by the grantee of any cable system in the village shall be under the franchise and not under any other right, privilege, power, immunity or authority.

I. Subject to Other Regulatory Agencies, Rules and Regulations. The grantee shall at all times during the life of any franchise granted hereunder be subject to all lawful exercise of the police power by the village and other duly authorized regulatory state and federal bodies and shall comply with any and all ordinances which the village has adopted or shall adopt applying to the public generally and to other grantees.

J. Compliance to Laws, Rules and Regulations. In the event any valid law, rule or regulation of the governing authority or agency having jurisdiction, including but not limited to, the FCC, contravenes the provisions of this chapter subsequent to its adoption, then the provisions hereof shall be superseded by any valid law, rule or regulation to the extent that the provisions hereof are in conflict and contrary to any such law, rule or regulation.

K. Pole Use Agreements Required. Any franchise granted hereunder shall not relieve the grantee of any obligation involved in obtaining pole-or-conduit-use agreements from the gas, electric and the telephone companies or others maintaining poles or conduits in the streets of the village whenever the grantee finds it necessary to make use of the poles or conduits.

L. No Right of Property. Anything contained herein to the contrary notwithstanding,

the award of any franchise hereunder shall not impart to the grantee any right of property in or on village-owned property.

M. Franchise Binding. Anything contained herein to the contrary notwithstanding, all provisions of this chapter and any franchise granted hereto shall be binding upon the grantee, its successors, lessees or assignees. (Ord. dated 12/10/80 § 3)

5.08.040 Operation of franchise.

A. Operations to be in Accordance with Rules. The grantee shall maintain and operate its community antenna television system in accordance with the rules and regulations of the FCC, State of Wisconsin, and/or the village as are incorporated herein or may be promulgated.

B. Interruption of Service—Notification. The grantee, whenever it is necessary to interrupt service over the community antenna television system for the purpose of network maintenance, alteration or repair, shall do so at such time as will cause the least amount of inconvenience to the subscribers, and unless such interruption is unforeseen and immediately necessary, the grantee shall give reasonable notice thereof to the affected subscribers.

C. Customer Service Center. Grantee shall maintain a customer service center within the village limit and shall be open at normal business hours, having a listed telephone number, and be so operated that complaints and requests for repairs or adjustments may be received.

D. Service Records. Grantee shall at all times make and keep a log of all complaints and interruptions or degradation of service received or experienced for a period of five years or the number of years required by the FCC. The records maintained above shall all include complaint response time, service restoral period and shall be continuously open to inspection, examination or audit by a duly authorized representative of the village.

E. Grantee Rules and Regulations. The grantee

shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonable and necessary to enable the grantee to exercise its rights, and perform its obligations under this chapter and any franchise granted hereunder.

1. Rules to be in Conformance with Other Regulations. None of such rules, regulations, terms and conditions promulgated under this section shall be in conflict with the provisions hereof or the laws of the state, or the rules and regulations of the FCC, or any rules and regulations promulgated by the village in the exercise of the regulatory authority granted hereunder.

2. All Rules to be Filed with Village. Two copies of all rules and regulations, terms and conditions promulgated hereunder, together with any amendments, additions or deletions thereto, shall be kept currently on file with the village clerk and another copy thereof shall be maintained for public inspection during normal business hours at grantee's office in the village; no such rules, regulations, terms, conditions or amendments, additions or deletions thereto shall take effect unless and until so filed and maintained.

F. Subscribers' Antennas. The community antenna television system will be so designed, engineered and maintained by grantee so as not to interfere with the television reception of residents of the village who do not subscribe to its services. Neither the village nor the grantee shall require the removal, or offer to

remove, or provide any inducement for the removal, of any potential or existing subscriber's antenna condition of provision of services.

G. Sale or Service of Television Receivers. Neither the grantee during the period of the franchise, nor any of its affiliates, subsidiaries, parent organizations, officers, or directors or stockholders holding five percent or more of outstanding stock in the grantee, shall within the village limits or within ten miles in any direction, directly or indirectly, engage in the retail sales, renting, leasing, or repairing of radio or television receivers or their appurtenances, nor shall they require any subscriber to utilize the services of any specific television/radio business for the repair or maintenance of the subscribers' receivers, either radio or television.

H. Apartment Dweller Access. An owner or operator of an apartment building, condominium, nursing home, hospital, mobile-home park, or other multiple-dwelling housing facility in which other persons reside, may require:

1. Installation to conform to reasonable conditions necessary to protect the safety, appearance and functioning of the premises;

2. The cable operator shall notify the owner or operator of intent to install cable television service and said cable operator shall thereafter coordinate such installation during reasonable business hours;

3. The cable operator, occupant or tenant to agree to indemnify the owner or operator for any damages caused by the installation, operation or removal of such facilities.

A person may not request or accept payment in any form for permitting cable services on his or her property or premises, nor discriminate in rental charges or otherwise between tenants or occupants who receive cable services and those who do not.

A cable operator may not take any actions which would diminish or interfere with the privilege of any tenant or other occupant of such building to use or avail himself or herself of master or individual antenna equipment. (Ord. dated

12/10/80 § 4)

5.08.050 Rights reserved to the village.

A. Right of Amendment Reserved to Village. The village may from time to time, add to, modify or delete provisions of this chapter as it shall deem necessary in the exercise of its regulatory powers provided that such additions or deletions are reasonable and do not place an undue financial burden on the grantee. Such additions or revisions shall be made only after a public hearing for which the grantee shall have received written notice at least thirty (30) days prior to such hearing.

B. No Impairment of Village's Rights. Nothing in this chapter shall in any way or to any extent be construed to waive, modify or abridge the village's right of eminent domain.

C. Grantee Agrees to Village's Rights. The village reserves every right and power which is required to be reserved or provided by an ordinance of the village, and the grantee by its acceptance of a franchise, agrees to be bound thereby and comply with any action or requirements of the village in its exercise of such rights or power which have been or will be enacted or established.

D. Village's Right of Intervention. The village shall have the right to intervene and the grantee specifically agrees by its acceptance of the franchise not to oppose such

intervention by the village in any suit or proceeding to which the grantee is a party.

E. Powers of the Village. Neither the granting of any franchise nor any provision governing the franchise shall constitute a waiver or bar to the exercise of any governmental right or power of the village.

F. Village's Transfer of Functions. Any right or power in, or duty imposed upon any elected official, officer, employee, department or board of the village shall be subject to transfer by the village.

G. Village's Right of Inspection. The village reserves the right during the life of any franchise granted hereunder, to inspect and supervise all construction or installation work performed subject to the provisions of this chapter and to insure compliance with the terms of this chapter. (Ord. dated 12/10/80 § 5)

5.08.060 Applications for franchise.

Applications for a franchise hereunder shall be filed with the village clerk or his appointee, and in accordance with the filing instructions promulgated by the village and shall contain the following written information and provisions:

A. Filing Fee. The sum of twenty-five dollars (\$25.00) shall be paid at the time of an applicant's request for application information; thereafter costs related to the application investigation to a maximum of two hundred dollars (\$200.00) shall be due and payable upon receipt of a statement rendered by the village;

B. Name and Address of Applicant. The name and business address of the applicant, date of application and signature of applicant or appropriate corporate officer(s);

C. Description of Proposed Operation. A general description of the applicant's proposed operation, including but not limited to, business house, operating staff, maintenance procedures beyond those required in this chapter, management and marketing staff complement and procedures, and if available, the rules of operation for public access;

D. Signals Carried. A statement of the

television and radio services to be provided, including both off-the-air and locally originated signals;

E. Special Services. A statement setting forth the description of the automated services proposed as well as a description of the production facilities to be made available by the grantee for the public, municipal and educational channels required to be made available by the provisions of this chapter and the FCC;

F. Schedule of Charges. A statement of the applicant's proposed rates and charges;

G. Corporate Organization. A statement detailing the corporate organization of the applicant, if any, including the name and addresses of its officers and directors and the number of shares held by each officer and director;

H. Stockholders. A statement identifying the number of authorized and outstanding shares of applicant's stock, including a current list of the names and current addresses of its shareholders holding five percent or more of applicant's outstanding stock;

I. Intra-Company Relationships. A statement describing all intra-company relationships of the applicant, including parent, subsidiary or affiliated companies;

J. Agreements and Understanding. A statement setting forth all agreements and understandings, whether written or oral, existing between the applicant and any other person,

firm, group or corporation with respect to any franchise awarded hereunder, and the conduct of the operation thereof existing at the time of proposal submittal;

K. Financial Statement. If applicant is a going business concern, audited financial statements for the two previous fiscal years shall be submitted. If applicant is a new business entity, it shall submit a Dun & Bradstreet report;

L. Financial Projection. A ten-year operations proforma which shall include the initial and continuing plant investment, annual profit and loss statements detailing income and expenses, annual balance sheets, and annual levels of subscriber penetration;

M. Financial Support. Suitable written evidence of a recognized financial institution, addressed to both the applicant and to the village, advising that the applicant's financial ability and planned operation have been analyzed by the institution and that the financing institution is prepared to make the required funds available to applicant if it is awarded a franchise. If the planned operation is to be internally financed, a board resolution shall be supplied authorizing the obtainment and expenditure of such funds as are required to construct, install and operate the community antenna television system contemplated hereunder;

N. Technical Description. A technical description of the type of system proposed by the applicant;

O. Existing Franchises. A statement of existing franchises held by the applicant indicating when the franchises were issued and when the systems were constructed and the present state(s) of the system(s) in each respective government unit, together with the name and address and phone number of a responsible governmental official knowledgeable of the applicant;

P. Convictions. A statement as to whether or not the applicant or any of its officers or directors or holders of five percent or more of its voting stock has in the past ten years been convicted of or has charges pending for any crime other than a routine traffic offense and the disposition of each such

case;

Q. Operating Experience. A statement detailing the prior cable television experience of the applicant, including that of the applicant's officers, management staff to be associated with the proposed operation;

R. Additional Requirements. The application for franchise shall respond specifically in sequence to subsections A through Q of this section and shall be bound separately from any additional information proffered by the applicant. Ten copies of the application shall be supplied to the village. Supplementary, additional, or other information that the applicant deems reasonable for consideration may be submitted at the same time as application, but must be separately bound and submitted in the above number of copies. The village may, at its discretion, consider such additional information as part of the application;

S. Supplementation to Application. The village reserves the right to require such supplementary, additional or other information that the village deems reasonably necessary for its determination. Such modifications, deletions, additions or amendments to the application shall be considered only if specifically requested by the village. (Ord. dated 12/10/80 § 6)

5.08.070 Acceptance and effective date of franchise.

A. Franchise Acceptance Procedures. Any franchise awarded hereunder and the rights, privileges and authority granted thereby shall take effect and be in force from and after the thirtieth day following the award thereof, provided that within thirty (30) days from the date of such award, the grantee shall file with the village the following:

1. A notarized statement by the grantee of unconditional acceptance of the franchise;
2. A certificate of insurance as set forth hereinafter;
3. Reimbursement to the village for the cost of publication of the ordinance and other expenses incurred in drafting and enacting the ordinance, including but not limited to, attorney fees and miscellaneous costs with respect to enacting said ordinance to comply with the laws of the state of Wisconsin;
4. Written notification of the grantee's location and address for mail and official notifications from the village.

B. Effect for Failure to Comply with Franchise Procedures. Should the grantee fail to comply with subsection A of this section, it shall acquire no rights, privileges or authority under this chapter whatever.

C. Grantee to Have No Recourse. The grantee shall have no recourse whatsoever against the village for any loss, cost, expense or damage arising out of any provision or requirement of this chapter or its regulation or from the village's exercise of its authority to grant additional franchises hereunder. This shall not include negligent acts of the village, its agents or employees which are performed outside the regulatory or franchise awarding authority hereunder.

D. Acceptance of Power and Authority of Village. Grantee expressly acknowledges that in accepting any franchise awarded hereunder, it has relied upon its own investigation and understanding of the power and authority of the village to grant this franchise.

E. Inducements Not Offered. The grantee, by acceptance of any franchise awarded hereunder, acknowledges that it has not been induced to enter into this franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of the village concerning any term or condition of this franchise that is not included in this chapter.

F. Grantee Accepts Terms of Franchise. The grantee acknowledges by acceptance of this chapter and the franchise ordinance that it has carefully read its terms and conditions and is willing to and does accept all of the obligations of such terms and conditions and further agrees that it will not set up as against the village, the claim that any provision of this chapter is adopted and any franchise granted hereunder is unreasonable, arbitrary, invalid or void.

G. Incorporation of Proposals. The grantee, by the acceptance of any franchise awarded hereunder, agrees that the matters contained in the grantee's application for franchise, and as stated in an oral presentation, except as inconsistent with the FCC rules and regulations, law or ordinance, shall be incorporated into the franchise as though set forth verbatim. (Ord. dated 12/10/80 § 7)

5.08.080 Termination of franchise.

A. Sanctions Against Grantee. Nothing shall prohibit the village from imposing lesser sanctions than revocations or censures including

either monetary penalties for violation of this chapter or the shortening of the franchise period for substantial and repeated violations or a combination of either.

1. If grantee shall default in the performance of any of its obligations under the franchise, and fails to cure the defaults within thirty (30) days of receipt of written notice of default from the village;

2. If the grantee shall fail to provide or maintain in full force and effect liability and indemnification coverage as set forth hereinafter in this chapter;

3. If a petition is filed by or against the grantee under the Bankruptcy Act, or any other insolvency or creditors' rights law, state or federal, and the grantee shall fail to have it dismissed;

4. If a receiver, trustee or liquidator of the grantee is applied for or appointed for all or part of its assets;

5. The grantee makes an assignment for the benefit of its creditors;

6. If any court of competent jurisdiction, the FCC, or any state regulatory body by rules, decision or other action, determines that any material provision of the franchise documents, including the ordinance codified in this chapter, is invalid or unenforceable;

7. If the grantee should violate any rules or order of any regulatory body having any jurisdiction over the grantee unless the grantee has lawfully contested the legality or applicability of such order or ruling;

8. The grantee fails to receive the necessary FCC or state certification unless such cause is directly attributable to an action or condition imposed by the village.

Upon the occurrence of any of the events enumerated in this subsection or other provision of this chapter the board of trustees may, after hearing, upon thirty (30) days' written notice to the grantee setting the reasons alleged to constitute cause for revocation or lesser sanctions, set a reasonable time in which the grantee must remedy the event giving rise to invoking the sanction or revocation procedure. If, during the thirty (30) day period, the event

shall be cured to the satisfaction of the village, the village may declare the notice to be null and void. If the grantee fails to remedy the event within the time specified, the board of trustees may revoke the franchise or impose lesser sanctions. In any event, before a franchise may be terminated, the grantee must be provided with an opportunity to be heard before the board of trustees. No franchise granted under this chapter shall ever be given any value by any court or other authority, public or private, in any proceeding of any nature or character wherein or whereby the village shall be a party or affected therein or thereby.

B. Procedure Upon Expiration or Revocation of Franchise. In the event that the village decides to terminate for cause a franchise granted hereunder, it shall give the grantee ninety (90) days' written notice of its intent to terminate and shall stipulate the cause. If during the ninety (90) day period, the cause shall be cured to the satisfaction of the village, the village may at its discretion declare the

C. Method of Computation—Interest.

1. Sales taxes or other taxes levied directly on a prescription basis and collected by the grantee shall be deducted from the local annual gross subscriber revenues before computation of sums due the village is made. Payments due the village under the provisions of 2 above shall be computed annually and shall be paid within ninety (90) days of the end of the grantee's fiscal year or calendar year. The

payment period shall commence as of the effective date of the franchise. The village shall be furnished a statement with each payment, by a certified public accountant, reflecting total amounts of annual gross subscriber revenues, and the above charges, deductions, computations, for the annual payment period covered by payment.

2. In the event that any payment is not made as required, interest on the amount due, as determined from the annual gross subscriber revenues as computed by a certified public accountant, shall accrue from the date of the required submittal at an annual rate of twelve (12) percent. The percentage as designated in this section may be amended no more than once each year by the board of trustees, consistent with increased costs for municipal facilities and supervision and applicable rules of other regulatory agencies.

D. Rights of Recomputation. No acceptance of any payment by the village 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 of the grantee. (Ord. dated 12/10/80 § 8)

5.08.090 Hold harmless agreement and defense of litigation.

A. Hold Harmless Agreement. Grantee shall indemnify and hold harmless the village, its officers, boards, commissions, agents and employees against and from any and all claims, demands, causes of action, actions, suits, proceedings, damages, (including but not limited to damages to the village property and damages arising out of copyright infringements, and damages arising out of any failure by grantee to secure consents from the owners, authorized distributors, or licensees of programs to be delivered by grantee's cable television system), costs or liabilities (including costs or liabilities of the village with respect to its employees) of every kind and nature whatsoever, including but not limited to damages for injury or death or damage to person or property, regardless of the merit of any of the same, except when caused by

village's sole negligence and against all liability to others and against any loss, cost and expense resulting or arising out of any of the same, including reasonable attorney fees, reasonable accountant fees, reasonable expert witness or consultant fees, court costs, reasonable per diem expense, traveling and transportation expense or other provable and reasonable costs or expenses arising out of or pertaining to the exercise of the enjoyment of the franchise hereunder by grantee or the granting thereof by the village.

B. Defense of Litigation. Grantee shall at the sole risk and expense of grantee, upon demand of the village, made by and through the village attorney, appear in and defend any and all suits, actions or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative or otherwise, brought or instituted or had by third persons or duly constituted authorities, against or affecting the village, its officers, boards, commissions, agents or employees in any of these premises; and such indemnity shall exist and continue without reference to or limitation by the amount of any policy of insurance, deposit, undertaking or other assurance required hereunder, or otherwise; provided, that neither grantee nor the village shall make or enter into any compromise or settlement of any claim, demand, cause of action,

suit or other proceedings without first obtaining the written consent of the other.

C. Reimbursement of Costs. The grantee shall pay and by its acceptance of any franchise granted hereunder, agrees that it will pay all expenses incurred by the village in defending itself with regard to all damages and penalties mentioned in subsections A and B of this section.

D. Public Liability Insurance. The grantee shall maintain and by its acceptance of any franchise granted hereunder, agrees that it will maintain throughout the term of the franchise, and any extensions thereof, a general comprehensive liability insurance policy naming as the additional insured the village of Oakfield, its officers, boards, commissions, agents and employees, in a company approved by the village president, and in a form satisfactory to the board of trustees, protecting the village, and all persons against liability for loss or damage for personal injury, death or property damage, occasioned by the operations of the grantee under any franchise granted hereunder, in the amounts of:

1. One million dollars (\$1,000,000.00) for personal injury or death resulting from any one occurrence; and

2. Five hundred thousand dollars (\$500,000.00) for property damage resulting from any one occurrence.

E. Notice of Cancellation or Reduction of Coverage. The insurance policies mentioned above shall contain an endorsement stating that the policies are extended to cover the liability assumed by the grantee under the terms of this chapter and shall contain the following endorsement:

It is hereby understood and agreed that this policy may not be cancelled or the amount of coverage thereof reduced until thirty (30) days after receipt by the Village President by registered mail of two (2) copies of a written notice of such intent to cancel or reduce the coverage.

F. Evidence of Insurance Filed with Village Clerk. All policies of insurance or certified copies thereof and written evidence of payment of required premiums shall be filed and maintained with the village clerk during the term of any franchise granted hereunder, or any renewal thereof. (Ord. dated 12/10/80 § 10)

5.08.100 Rates and charges to be filed with the village clerk and published by the grantee at grantee's expense.

A. Grantee May Establish Initial Rates and Charges for Basic Service. With the granting of any franchise hereunder, the grantee may fix all rates and charges for the basic service herein defined, such as:

1. Charges for installation;
2. Subscriber rates; and
3. Service charges for separate classification of service (e.g., additional connections, etc.).

Once established such rates and charges shall not be changed for a period of two years. Thereafter, rates or charges may be re-established after due notice.

B. Other Service Charges. Rates and charges for any services, other than the basic service, shall also be filed with the village clerk at least thirty (30) days prior to their effective date.

C. Preference and Prejudice Prohibited. Neither the board of trustees nor the grantee

shall, as to rates, charges, service, service facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any person, or subject any person to prejudice or disadvantage. (Ord. dated 12/10/80 § 11)

5.08.110 Permits and construction.

A. Grantee to Obtain Necessary Permits. Within thirty (30) days after acceptance of any franchise, the grantee shall proceed with due diligence to obtain all necessary permits and authorizations which are required in the conduct of its business, including but not limited to, certificates of compliance or other federal authorization, any utility joint use attachment agreements, microwave carrier licenses and other permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of cable television systems or associated microwave transmission facilities.

B. Construction and Installation. Within ninety (90) days after obtaining all necessary permits, licenses and authorizations, including right of access to poles and conduits, grantee shall commence construction and installation of the cable television system. Within one hundred eighty (180) days after the commencement of construction and installation of the system, grantee shall proceed to render service to subscribers, and the completion of the installation and construction shall be pursued with reasonable diligence thereafter, so that service to all of the areas designated and scheduled on the map and plan of construction made part of the franchise shall be provided as set forth therein.

C. Failure to Conform with Requirements. Failure on the part of grantee to commence and diligently pursue each of the foregoing requirements and to complete each of the matters set forth herein, shall be grounds for termination of such franchise. By resolution the board of trustees in its discretion may extend the time for the commencement and completion of installation and construction for additional periods in the event the grantee, acting in good faith, experiences delays by reason of circumstances beyond its control.

By acceptance of the franchise granted hereunder, grantee agrees that failure to comply with any time requirements referred to in this section will result in damage to the village, and that it is and will be impractical to determine the actual amount of such damage in the event of delays and grantee therefore agrees that, in addition to any other damage suffered by the village of Oakfield, it will pay to the village of Oakfield the sum of one hundred dollars (\$100.00) per day for each and every day of delay beyond the time prescribed plus authorized extensions thereof, for completion of any of the acts required to be done by this section. (Ord. dated 12/10/80 § 12)

5.08.120 Network technical requirements.

A. General Requirements. Each community antenna television system must be so designed, installed and operated to meet the following general requirements:

1. Capable of continuous twenty-four (24) hour daily operation;
2. Capable of operating over an outdoor temperature range of minus forty (-40) degrees Fahrenheit to one hundred forty (140) degrees Fahrenheit without catastrophic failure or irreversible performance changes over varia-

tions in supply voltages from one hundred five (105) to one hundred thirty (130) volts AC;

3. Capable of meeting all specifications set forth herein over an outdoor temperature range of minus ten degrees Fahrenheit to one hundred (100) degrees Fahrenheit over variations in supply voltage from one hundred five (105) to one hundred thirty (130) volts AC;

4. Operated in such a manner as to avoid causing interference with reception of off-the-air signals by nonsubscribers to the cable system;

5. Designed, installed and operated so as to comply with all applicable rules and regulations promulgated by the FCC;

6. Designed, installed and operated so as to produce a picture, whether in black and white or in color, that is undistorted, free from ghost images, and accomplish with proper sound on typical standard production television sets in good repair, and as good as the state of the art allows;

7. Transmit signals of adequate strength to produce good pictures with good sound at all outlets without causing cross-modulation in the cables or interfering with other electrical or electronic systems;

8. Demonstrate by instruments and otherwise to subscribers that a signal of adequate strength and quality is being delivered. (Ord. dated 12/10/80 § 13)

5.08.130 Channels to be provided.

A. Minimum Number of Channels Required. The cable television system to be installed and operated hereunder shall have a minimum of twenty (20) channels. (Ord. dated 12/10/80 § 14)

5.08.140 Service standards.

A. Service Response. Grantee shall maintain a repair and maintenance crew capable of responding to subscriber complaints and requests for service within twenty-four (24) hours after receipt of the complaint or request. No charge shall be made to the subscriber for this service.

B. Service Interruptions and Notifications. The grantee, whenever it is necessary to interrupt service over the community antenna television system for

the purpose of network maintenance, alteration or repair, shall do so at such time as will cause the least amount of inconvenience to its subscribers, and unless such interruption is unforeseen and immediately necessary, it shall give reasonable notice therefore to the affected subscribers.

C. Upgrading of Facilities, Equipment and Service. The grantee shall upgrade its facilities and equipment and service as subscribers' demands dictate so that its network is as advanced as the current state of technology with field-proven equipment will allow and as economically feasible. (Ord. dated 12/10/80 § 15)

5.08.150 Construction standards.

A. Compliance with Safety Codes. All construction practices shall be in accordance with all applicable sections of the Occupation Safety and Health Act of 1970 and any amendments thereto as well as all state and local codes where applicable.

B. Compliance with Electrical Codes. All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the applicable sections of the current edition of the National Electric Safety

Code and all state and local codes where applicable.

C. Antennas and Towers. Antenna supporting structures (towers) shall be designed for the proper loading zone as specified in Electronics Industry Association R.S. -22A specifications.

D. Compliance with Aviation Requirements. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aeronautical Agency, the State Aeronautics Board governing the erection and operating of supporting structures or television towers, and all other applicable local or state codes and regulations. (Ord. dated 12/10/80 § 16)

5.08.160 Conditions of street occupancy.

A. Excavation Permits. The grantee shall not open or disturb the surface of any street, sidewalk, driveway or other public place for any purpose without first having obtained a permit to do so in the manner provided by ordinance.

B. Changes Required by Public Improvements. Grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of the grantee when required by the village by reason of traffic conditions, public safety, street vacation, street construction, change or establishment of street grade, installation of sewers, drains, water pipes, village-poured power or signal lights, and tracks or other type of structure or improvement by public agency.

C. Use of Existing Poles or Conduits. Nothing in this chapter or franchise granted hereunder, shall authorize the grantee to erect and maintain in the village, new poles where existing poles are servicing the area. The grantee shall require permission from the village before erecting any new pole, underground conduits, or appurtenances where none exist at the time the grantee seeks to install said network.

D. Facilities Not to be Hazardous or Interfere.

All wires, conduits, cables and other property and facilities of the grantee shall be so located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic and travel upon the streets and public places of the village. The grantee shall keep and maintain all its property in good condition, order and repair. The village reserves the right hereunder to inspect and examine at any reasonable time and upon reasonable notice the property owned or used, in whole or in part, by the grantee. The grantee shall keep accurate maps and records of all facilities and furnish copies of such maps and records as requested by the village. The grantee shall not place poles or other equipment where they will interfere with the rights or reasonable convenience of adjoining property owners, or with any gas, electric or telephone fixtures or with any water hydrants or mains. All poles or other fixtures placed in the street shall be placed in the right-of-way between the roadway and the property, as specified by the village.

E. Method of Installation. All wires, cables, amplifiers and other property shall be constructed and installed in an orderly and workmanlike manner. All cables and wires shall be installed parallel with existing tele-

phone and electric wires whenever possible. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering and safety consideration. All installations shall be underground in those areas of the village where public utilities providing both telephone and electrical service are underground at the time of installation. In areas where either telephone or electric utility facilities are above ground at the time of installation, the grantee may install its service above ground provided that at such time as those facilities are required to be placed underground by the village or are placed underground, the grantee shall likewise place its service underground without additional cost to the village or the residents of the village other than as may be granted under the provisions of this section.

F. Protection of Facilities. Nothing contained in this section shall relieve any person, company or corporation for liability arising out of the failure to exercise reasonable care to avoid injuring the grantee's facilities while performing any work connected with grading, regrading or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

G. Notice of Village Improvements. The village shall give the grantee reasonable notice of plans for street improvements where paving or resurfacing of permanent nature are involved. The notice shall contain the nature or character of the improvements, the streets upon which the improvements are to be made, the extent of the improvements, and the work schedule for the project. The notice shall give the grantee sufficient time to make any additions, alterations or repairs to its facility as it deems necessary in advance of the actual commencement of the work so as to permit the grantee to maintain continuity of service.

H. Requests for Removal or Change. The grantee shall, on the request of any person holding a building moving permit, temporarily raise or lower its wires to permit moving of said building. The expense of such temporary removal, raising or lowering of wires shall be paid by the person

requesting the same, and the grantee shall have the authority to require such payment in advance. The grantee shall be given not less than ten working days' notice of any move contemplated to arrange for temporary wire changes.

I. Authority to Trim Trees. The grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and other public places of the village so as to prevent the branches of such trees from coming in contact with the wires and cables of the company. All trimming is to be done under the suspension and direction of the village after the explicit, prior written notification and approval of the village and at the expense of the grantee. The grantee may contract for such services, however any firm or individual so retained must receive village approval prior to commencing such activity.

J. Restoration and Reimbursement. In the event of disturbance of any street or private property by the grantee, it shall, at its own expense and in a manner approved by the village and the owner, replace and restore such street or private property in as good a condition as before the work causing such disturbance was done. In the event the grantee fails to perform such replacement or restoration, the village or the owner shall have the right to do so at the sole expense of the grantee. Payment to the village or owner for such replacement or restoration shall be immediate, upon de-

mand, by the grantee. All requests for replacement or restoring of such streets or private property as may have been disturbed must be in writing to the grantee.

K. Office and Records in Village. The grantee shall at all times make and keep in an office maintained by the grantee in the village, full and complete plans and records showing the exact location of all community antenna television system equipment installed or in use in the streets and other public places in the village. The grantee shall furnish the village a current map or set of maps, drawn to scale, showing all community antenna television system equipment installed and in place in streets and other public places of the village.

L. Emergency Removal of Plant. If, at any time, in case of fire or disaster in the village, it shall become necessary in the reasonable judgment of the village to cut or move any of the wires, cables, amplifiers, appliances or appurtenances thereto of the grantee, such cutting or moving may be done and any repairs rendered necessary thereby shall be made by the grantee, at its sole expense provided that such repairs are not necessitated by negligent act of the village, in which case, costs for repairs shall be borne by the village.

M. Alternate Routing of Plant. In the event continued use of the street is denied to the grantee by the village for any reason, the grantee will make every reasonable effort to provide service over alternate routes. (Ord. dated 12/10/80 § 17)

5.08.170 Interconnection.

A. No Prohibition of Interconnection. Nothing in this chapter shall be construed as to prohibit the grantee from interconnecting its network with other similar contiguous networks either in the state or in other municipalities, counties or states. However, any revenues derived therefrom shall be equitably allocated in the calculation of "annual gross subscriber revenues" as set forth and defined in this chapter.

B. Study Required for Interconnection. The grantee shall, if requested by the village, conduct a

technical and economic feasibility study of an interconnection requested by the village. The study shall be presented to the village, and in the event that the study shows such interconnection to be feasible, the grantee shall, if so instructed by the village, accomplish said interconnection. In the event that the study indicates technical feasibility only, the village may elect, but at its sole discretion, to arrange for compensation to be paid to the grantee, in amounts sufficient to assure an economic "break even" by the grantee and so order the interconnection. In the event that the study fails to show technical feasibility the grantee shall have no further responsibility for accomplishing said interconnection until such time as improvements in technology permit such interconnection. (Ord. dated 12/10/80 § 18)

5.08.180 Unauthorized connections or modifications.

A. Unauthorized Connections Prohibited. It is unlawful for any firm, person, group, company, corporation or governmental body or agency, without the express consent of the grantee, to make or possess any connection, extension or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of a franchised community antenna system for any purposes whatsoever.

B. Removal or Destruction Prohibited. It is unlawful for any firm, person, group, company, corporation or governmental body or agency to willfully interfere, tamper, remove, obstruct or damage any part, segment or content of a franchised community antenna system for any purpose whatsoever.

C. Penalty. Any firm, person, group, company, corporation, or governmental body or agency convicted of a violation of this section shall for each offense, forfeit a sum of not less than one dollar (\$1.00) nor more than two hundred dollars (\$200.00), together with costs of such prosecution. (Ord. dated 12/10/80 § 19)

5.08.190 Preferential or discriminatory practices prohibited.

A. Services to be Equally Available. The grantee shall not refuse cable television service to any person or organization who requests such service for lawful purpose nor shall the company refuse any person or organization the right to cablecast pursuant to the provisions of this chapter. The company shall not, as to rates, charges, service facilities, rules, regulations or in any other respect, make or grant any unreasonable preferences or advantages, nor subject any person to any prejudice or disadvantage. This provision shall not be deemed to prohibit promotional campaigns to stimulate subscription to the system or other legitimate uses thereof; nor shall it be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification shall be entitled, provided such schedules have been filed with and approved by the village as provided in this chapter.

B. Fairness of Accessibility. The entire system of the grantee shall be operated in a manner consistent with the principle of fairness and equal accessibility of its facilities, equipment, channels, studios, and other services to all citizens, businesses, public agencies, or other entities having legitimate use for the system, and no one shall be arbitrarily

excluded from its use, allocation of use of said facilities shall be made according to the rules or decisions or regulatory agencies affecting the same, and where such rules or decisions are not effective to resolve a dispute between conflicting users or potential users, the matter shall be submitted for resolution to the board of trustees of the village. (Ord. dated 12/10/80 § 20)

5.08.200 Subscriber privacy.

A. Use of Data from Subscriber. The grantee, village or any person shall not initiate or use any form, procedure or device for procuring information or data from cable subscribers' terminals by use of the cable system, without prior written valid authorization from each subscriber so affected. Valid authorization shall mean written approval from the subscriber and shall not have been obtained from the subscriber as a condition of service.

B. Subscriber Data. The village or a grantee or any person shall not, without prior written valid authorization from each subscriber so affected, provide any data identifying or designating subscribers. Any data so authorized will be made available to the authorizing subscriber in understandable fashion.

C. Subscriber Agreements. Any agreement or contract such as is necessary for subsections A and B of this section shall not be part of any other agreement or contract and shall not

be a condition of subscribing to the system.
(Ord. dated 12/10/80 § 21)

5.08.210 Severability.

If any section, subsection, sentence, clause or phrase of this chapter is for any reason held illegal, invalid or unconstitutional or not to comply with the standards and requirements of the FCC, or violates its restrictions, as determined by the decision of any court of competent jurisdiction, or the FCC, such decision shall not affect the validity of the remaining portions of this chapter. The board of trustees of the village hereby declares that it would have passed the ordinance codified in this chapter and each section, subsection, sentence, clause, and phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional or not to comply with requirements of the FCC nor to be in violation of its restrictions. The invalidity for violation of FCC restrictions or failure to comply with its requirements of any portion of this chapter shall not abate, reduce or otherwise affect any consideration or other obligation required of the grantee of any franchise granted hereunder and any such portion shall be subject to renegotiation by grantee and the village. (Ord. dated 12/10/08 § 23)