

## CHAPTER 24

### COMMUNITY ANTENNA TELEVISION SYSTEM

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#### 24.01 **FRANCHISE GRANT**

- (a) **FRANCHISE GRANT.** The franchise to be granted by the Village of Pulaski pursuant to this Chapter shall grant to the Grantee the right, privilege and franchise to construct, operate and maintain a community antenna television network in the streets and roads of Pulaski for a period of fifteen (15) years from and after the grant and acceptance date of the franchise.
- (b) **NON-EXCLUSIVE ACCESS.** The right to use and occupy said streets and roads for the purpose herein set forth shall not be exclusive and Pulaski reserves the right to grant a similar use of said streets and roads to any persons, company, corporation or any other entity, at any time during the period of the franchise issued pursuant to this Chapter.

#### 24.02 **SHORT TITLE**

This Chapter shall be known as the Pulaski Ordinance for Regulations of Cable Television Communication Systems.

## 24.03 DEFINITIONS

- (a) **DEFINITIONS.** The following definitions shall apply to this Chapter:
- (1) **"Agency"** shall mean the person, department, or agency designated by the Board of Trustees of the Village of Pulaski to act in matters related to CATV.
  - (2) **"Cablecasting, Origination and Access"** shall mean programming (exclusive of broadcast signals) carried on a Cable Television over one or more channels, and subject to the exclusive control of the Cable Operator.
  - (3) **"CATV: Community Antenna Television System (or CATV System)"** shall mean any facility that, in whole or in part, receives directly or indirectly over the air, and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television or radio stations and distributes such signals by wire or cable to subscribing members of the public who pay for such service, but such term shall not include:
    - a. Any such facility that serves fewer than fifty (50) subscribers, or
    - b. Any such facility that 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 an apartment house.
  - (4) **"FCC"** shall mean the Federal Communications Commission and any legally appointed or elected successor.
  - (5) **"Grantee or Operator"** Any person, partnership, firm, company, corporation or association operating a community antenna system holding a permit granted by an ordinance of the Board of Trustees to operate it within the corporate limits of the Village.
  - (6) **"National Electrical Code"** That code as sponsored by the National Fire Protection Association under the auspices of the American National Standards Institute, with the purpose of the Code being detailed in Section 90-1, and the scope of the Code as outlined in Section 90-2, of the National Electrical Code, and any subsequent amendments thereto.
  - (7) **"Person"** Any person, firm, partnership, association, corporation, company, or organization of any kind.
  - (8) **"Transmission and Distribution"** Carriage and/or utilization and "origination" refer to methods, techniques and procedures used in the operation of a community antenna system as authorized by the Federal Communications Commission, either by virtue of enabling rules and regulations or in the absence of prohibiting rules and regulations.
  - (9) **"Service Area"** Any area served within the corporate boundaries

of the Village of Pulaski by the Grantee.

#### **24.04 FRANCHISE REQUIRED**

It shall be unlawful for any person to construct, install, or maintain within any public street in the Village or within any other public property of the Village or within any privately-owned property within the Village which has not yet become a public street but is designated or delineated as a proposed public street on the Village official map or on any tentative subdivision map approved by the Village any equipment or facilities for distributing any television signals or radio signals through a cable television system unless a franchise authorizing the use of such street or property or area has first been obtained pursuant to the provisions of this Chapter, and unless such franchise is in full force and effect.

#### **24.05 PROCEDURE FOR GRANTING OF FRANCHISE**

- (a) **REVIEW OF QUALIFICATIONS.** The Village Board may grant a franchise for the operation of a community antenna television system and audio communication system under the provisions of this Chapter to any grantee after a review of the legal, character, financial, technical, and other qualifications as determined by said Village Board, and the adequacy and feasibility of the grantee's construction arrangements. Determinations by the Village Board regarding such qualifications shall be made and determined as part of a regular meeting of the Village Board prior to the grant of any franchise.
- (b) **SUBMISSION OF PROPOSAL REQUIRED.** Any person seeking a franchise hereunder shall first submit to the Village Board, or a committee appointed thereby, a proposal which provides full, complete and detailed information as to qualifications required in subsection (a) above, and full, complete and detailed information as to proposed services to be offered to Village and rates therefore. Proposal may be amended from time to time to provide for more adequate and complete disclosure of information necessary for action of the Village Board hereunder.
- (c) **GRANT OF AUTHORITY.** Any franchise granted hereunder by the Village Board pursuant to this Chapter shall give the grantee the right and privilege to construct, erect, operate and maintain, in, upon, along, across, 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, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the Village of a CATV system for the interception, sale and distribution of television and radio signals. Such rights and privileges, however, shall be limited by all rules, regulations and prohibitions contained in this Chapter.

- (d) **ACCEPTANCE OF FRANCHISE.** The grantee of any franchise hereunder shall within thirty (30) days of the granting of said franchise acknowledge in writing that:
- (1) Grantee accepts the award of the franchise.
  - (2) Grantee 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.
  - (3) Grantee acknowledges by the acceptance of this Chapter and the franchise awarded hereunder that it has carefully read its terms and conditions and that it is willing and does accept all 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 as originally adopted, and any franchise granted hereunder is unreasonable, arbitrary, invalid or void.
  - (4) That grantee has secured the necessary policies of insurance required by this Chapter and files therewith a copy of said policy together with a construction performance bond in the amount of \$25,000.00. Said bond requirement shall terminate upon completion of construction.

#### **24.06 TERM OF FRANCHISE**

- (a) **INITIAL TERM.** Upon the grant and acceptance of a franchise in accordance with the provisions of this Chapter, such franchise shall take effect and shall continue in full force and effect, subject to termination for cause, for a term of fifteen (15) years.
- (b) **RENEWAL.** The Village Board may renew any franchise granted hereunder for additional terms of fifteen (15) years. At least eighteen (18) months prior to the expiration of the franchise term, grantee shall notify the Village Board, in writing, of its intent to seek renewal. Grantee shall be advised in writing by the Village Board no less than ninety (90) days prior to the end of the franchise period whether said franchise is to be renewed. While it is not the intention of this chapter to provide for automatic renewals, no existing operation will be terminated without due and just cause.
- (c) **PERIODIC FRANCHISE REVIEW.** In addition to any other regulations contained herein, the Village Board may at any time require the grantee to make available specified records, documents and information for the Village Board's review, 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.
- (d) **MODIFICATIONS TO FRANCHISE.** Pursuant to franchise review as in sub-

section (c) above, Village Board or its designated CATV agency may require modifications in the franchise. The agency shall then confer with the grantee regarding modifications which might impose additional obligations on the grantee, and the grantee may in turn seek to negotiate relaxations in any requirements previously imposed on it that are subsequently shown to be impractical. Within thirty (30) days of the conclusion of such negotiations, the Village may require the grantee to show cause why specified terms and conditions should not be incorporated into the franchise, and the grantee may similarly file with the Village Board or Agency thereof that specified obligations of its franchise be removed or relaxed. The Village Board may order changes in the franchised rights and obligations of the grantee if it finds from all available evidence that such changes will not impair the economic viability of the system or degrade the attractiveness of the system's service to present and potential subscribers. In addition to the reviews provided herein, the review procedure may be initiated at any time during the term of the franchise by mutual agreement of the Village Board and the grantee.

(e) **SALE, ASSIGNMENT OR LEASE OF FRANCHISE.** No sale or transfer of any franchise granted under this Ordinance shall be effective until the grantee has filed with the Village Board or Agency thereof an instrument duly executed reciting the fact of such sale, assignment or lease accepting the terms of the franchise and agreeing to perform all the conditions of the franchise. The Village Board reserves the right to approve such sale, assignment or lease by notification to the grantee within thirty (30) days of receipt of the duly executed instrument. Any such transfer or assignment shall be made only by an instrument in writing, such as a bill of sale or similar document. Consent of the Village Board may not be unreasonably refused, provided, however, the proposed assignee must show financial responsibility as determined by the Village Board. No consent shall be required for a transfer in trust, mortgage, or other hypothecation, in whole or in part, to secure an indebtedness.

(f) **COMPLIANCE TO TIMETABLE.** Any franchise granted under the terms of this Chapter shall be declared void one year from the date it is granted, and such permit shall be revoked, unless the grantee satisfactorily demonstrates compliance with the timetable set forth below:

- (1) Grantee, not later than six (6) months from the effective date of the franchise, shall furnish to the Village Board or its designated CATV Agency a report of complete plans and specifications for the construction of its system.
- (2) If within twenty (20) days of submitting the report, the Grantee receives no written objection from the Village, grantee must begin all procedures to obtain written objection from the Village, grantee must begin all procedures to obtain whatever agreements, if any, are required from utility companies and approvals from various Village

departments required by law. After so receiving said necessary agreements and approvals, grantee shall begin construction within ninety (90) days thereafter and shall continue at such a rate as to make the service contemplated by this Chapter available to subscribers in conformity with the proposal submitted by any franchise pursuant to Sec. 24.05(b) of this Chapter.

- (g) **EFFECTIVE DATE.** Franchise shall take effect and will be in force from and after the earliest period allowed by law, and upon filing by the operator with the Village Board and/or Agency thereof its acceptance in writing of each and all of the terms and provisions of this Chapter. However, if the grantee fails to file such written acceptance within thirty (30) days after passage of the resolution granting said franchise, said resolution granting the franchise shall be void.

#### **24.07 TERMINATION FOR CAUSE**

- (a) **POWER TO TERMINATE.** The Village Board may terminate any franchise granted pursuant to the provisions of this Chapter in the event of the willful failure, refusal or neglect by grantee to do or comply with any material requirement or limitation contained in this Chapter, applicable state regulation, or FCC rules and regulations. In addition, the Village Board may terminate this franchise whenever any grantee fails, refuses or neglects to comply with any representation made in its proposal for a franchise upon which the Village Board has acted in granting the same.
- (b) **PROCEDURE FOR TERMINATION.**
- (1) Whenever any of the above mentioned circumstances occur or exist, the Village Board may direct the CATV Agency to make written demand upon the grantee that said grantee do or comply with any aforementioned requirement, limitation, term, condition, rule or regulation. The written notice shall direct that such action or compliance occur within sixty (60) days of the date of the written demand and, if the same does not occur, that the Village Board will act to terminate the franchise.
  - (2) After such sixty (60) days period, and upon the refusal, failure or neglect of grantee to comply with the requirements set forth in the written demand, the Village Board may summon the grantee to appear before it at a regular or special meeting of such Board for the purpose of determining whether such franchise shall be terminated. Such summons shall be served upon the grantee at least ten (10) days prior to the date for such regular or special meeting. The hearing before the Village Board shall be recorded and all witnesses called to testify thereat shall be sworn under oath. The rules of evidence shall not be applied to testimony taken. Any witness at

such hearing may be cross-examined. Upon the completion of testimony at such hearing the Village Board shall determine whether any act, failure, refusal or neglect by the grantee occurred with or without just cause. If just cause exists for such act, failure or refusal, or neglect, the Board may order a reasonable time within which compliance may occur. If no just cause exists, the Board may find and determine that the franchise shall be terminated and adopt an ordinance providing for such termination.

- (3) As an alternative to termination of the franchise, the Board may, upon finding that the act, failure, refusal or neglect of the grantee was without just cause, may direct compliance with the provisions set forth herein and impose upon the grantee a monetary penalty. However, any action by the Board to impose such penalty shall be made on the basis of first determining that cause for termination exists and that said franchise shall be terminated except that as an alternative the grantee shall pay such penalty. Failure of the grantee to pay the penalty within ten (10) days of the Board's determination shall result in termination of the franchise. Any penalty imposed hereunder shall be in an amount of not less than \$50.00 nor more than \$5,000.00 per occurrence.
- (b) **OBLIGATION TO REMOVE TERMINATED EQUIPMENT.** Upon termination or revocation of its permit or upon cessation of operations by the grantee, the grantee is under obligation to remove all of its equipment and installations over and under private property at the request of the property owners; and from the homes or business establishments of subscribers at their request.
- (c) **DELAYS FOR JUST CAUSE NOT GROUNDS FOR TERMINATION.** Provisions of this Chapter notwithstanding, delays in the performance of the grantee's obligations under this Chapter which are caused by equipment shortages, a state of war or national emergency, acts of God or any circumstances beyond the control of the operator, as determined by the Village Board, shall not be construed to be in violation of the requirements set forth in this resolution and reasonable extensions of time shall be granted therefore.

#### **24.08 DOCUMENTS INCORPORATED BY REFERENCE**

All state and national health and safety codes, including the National Electrical Code, all applicable rules and regulations of the Federal Communications Commission regarding cable television service and cable television relay service, and the proposal of any person granted a franchise hereunder are hereby incorporated herein by reference and made a part hereof as if fully set forth herein. Any violation of such regulations or any failure, refusal or neglect by the grantee to comply with any representation made in said proposal shall be in violation of this Chapter. If any valid law, rule or regulation promulgated by any governing authority or agency having jurisdiction (including but not limited

to the FCC) contravenes the provisions of this Chapter, the provisions hereof shall be superseded. In cases where the provisions of any proposal submitted hereunder are more strict than the provisions of this Chapter, or provide for a greater amount of service, then the provisions of that proposal shall supersede this Chapter and the grantees shall be required to comply with the proposal. Any issues raised with respect to which document supersedes the other shall be received by the Village Board, whose determination shall be final.

#### **24.09 INDEMNIFICATION, DEFENSE, INSURANCE AND BOND REQUIREMENTS**

- (a) **INDEMNIFICATION.** A grantee shall indemnify, hold and save harmless, and defend the Village, and all of its officers, boards, commissions, agents and representatives from any and all claims, demands, causes of action, copyright action liability, judgments, costs, expenses, damages, including but not limited to damages to Village property and consents from the owners, authorized distributors of licensees of programs to be delivered by grantee's cable television system, and 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 the Village's negligence, and against all liability to others and against any loss, cost, and expense resulting or arising out of any of the same, except when caused by the Village's 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 attorneys fees, court costs, reasonable per diem expense, traveling and transportation expense, or other approvable and reasonable cost or expense arising out of or pertaining to the exercise or enjoyment of any franchise hereunder by grantee or the granting thereof by the Village.
- (b) **DEFENSE OF LITIGATION.** Grantee shall, at its own risk and expense, 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, employees or representatives, and arising out of its operation of the franchise. Grantee shall pay and satisfy and shall cause to be paid and satisfied any judgment, decree, order, directive or demand rendered, made or issued against grantee, the Village, its officers, boards, commissions, agents, employees or representatives in any of these premises; and such indemnity shall exist and continue without reference to or limitation by the amount of any bond, policy of insurance, deposit, undertaking or other assurance required hereunder, or otherwise, provided

that neither the grantee nor Village shall make or enter into any compromise or settlement of any claim, demand, cause of action, suit, or other proceeding with regard to Village liability 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 of the damages and penalties mentioned in subsections (a) and (b) above.

(d) **PUBLIC LIABILITY INSURANCE.**

(1) The grantee shall carry good and sufficient public liability and property damage insurance to fulfill the terms of subsections (a), (b) and (c) above, which insurance shall be in the amounts of not less than \$500,000.00 for property damage in any one accident, and not less than \$500,000.00 for bodily injury or death of any person, with a minimum of \$1,000,000.00 as to any one accident. Such policy shall be subject to the approval of the Village Attorney, as to its form and extent of coverage (as distinguished from dollar amount of coverage). Such policy shall, in addition to the coverage above mentioned, specifically insure against claims arising as a result of underground excavation.

(2) The policy shall provide for endorsement that it may only be cancelled or amended by the insurance company after sixty (60) days notice, in writing, to the Village Attorney.

(3) Said policy (or policies) must be in force before grantee commences any construction or installation and grantee shall notify the Village Attorney, in writing, that such policy (or policies) are enforced prior to the commencement of any construction or installation.

(4) Either the original policy (or policies) or certified copies must be on file with the Village Clerk and/or the CATV Agency designated by the Village Board.

(5) The policy shall provide that the Village is named as an additional insured and shall further provide that so naming the Village as an additional insured shall not exempt the insurer from liability to the Village for damages to property owned by it or in which it has an interest.

(6) The foregoing insurance requirements are minimum requirements only and the fact that any grantee carried in force and effect such policies shall not in any way waive, limit or reduce the grantee's obligation to indemnify, hold harmless or defend the Village as set forth above.

(7) Neither the provisions of this Chapter nor any insurance accepted by the Village pursuant hereto, nor any damages recovered by the Village thereunder, shall be construed as a waiver of a bond required hereunder nor excused performance by the grantee or limit the

liability of the grantee under any franchise issued hereunder or for damages, either to the full amount of such bond or otherwise.

- (8) Village Right of Intervention. Any grantee hereunder shall not oppose intervention by the Village in any suit or proceeding relating to the franchise where the grantee is a party.

#### **24.10 USE OF STREETS AND OTHER PUBLIC PROPERTY**

The authority granted by a franchise under this Chapter is expressly conditioned upon compliance with the provisions of the Chapter including, but not limited to, the following regulations:

- (a) **REPORT OF PLANS AND SPECIFICATIONS.** Grantee, prior to the commencement of any construction or installation of any facilities within the public street, easements, or other public property shall submit to the Village Board and its CATV Agency a report of plans and specifications, in a form to be approved by said Board and Agency, detailing the proposed construction and installation. Construction and installation may commence within twenty (20) days of submissions of the report unless the Village files written objections thereto.
- (b) **RIGHT TO INSPECT.** The Village shall have the right to inspect and supervise all construction or installation work performed in, under, upon, over, or through any street, easement or other public property. If, in the opinion of the Village Agency, such inspection requires such additional time of the Agency staff, the Agency may petition the Village Board to hire such additional employees as may be necessary to provide adequate inspection.
- (c) **USE OF EXISTING POLES OR CONDUITS.**
  - (1) Nothing in this Chapter or any franchise granted hereunder shall authorize the grantee to erect and maintain in the Village any new poles where existing poles of other companies or utilities are servicing a geographic area. The grantee shall apply to the Village Board for permission to erect any new poles, underground conduit or appurtenances where none exist at the time the grantee seeks to install its network.
  - (2) Any franchise granted hereunder shall not relieve the grantee of any obligation involved in obtaining pole or conduit use agreements from the utility companies or other persons maintaining poles or conduits within any street or other public property, whenever the grantee finds it necessary to make use of said poles or conduits.
  - (3) In the event that the grantee has its facilities located upon poles or in conduits owned by other persons and the pole or conduit is removed, relocated or abandoned, grantee may be required to remove their facilities and provide services in another approved method.
- (d) **UNDERGROUND FACILITIES.** The grantee shall be required to install its

facilities underground in any location where all other utilities are underground and in other locations where deemed necessary and directed by the Village CATV Agency. In determining where grantee's facilities shall be installed underground, the CATV Agency shall not unreasonably require such installations and shall limit such installation only to those situations where it is likely that other utilities will be transferring their facilities underground and in cases where the public health, safety and general welfare so require. Any determination of the CATV Agency hereunder which adversely affects the rights of the grantee may be appealed to the Village Board. The determination of the Board regarding the necessity for underground installation shall be final.

- (e) **EXCAVATION PERMITS AND STREET OBSTRUCTION PERMIT.** The grantee shall not open or disturb the surface of any street in the Village for any reason without first having obtained the permits required by the Code of Ordinances of the Village of Pulaski.
- (f) **FACILITIES NOT TO BE HAZARDOUS OR INTERFERE.** All installations of equipment shall be of a permanent nature, durable, and installed in accordance with good engineering practice, sufficient to comply with all existing Village of Pulaski regulations, and state laws so as not to interfere in any manner with the right of the public or individual property owner, and shall not interfere with the travel and use of public places by the public, and during the construction, repair or removal thereof, shall not obstruct or impede traffic unnecessarily or unreasonably interfere with the use or enjoyment of private property adjacent thereto. The Village CATV Agency shall make inspections to enforce the provisions of this section. Failure to comply with reasonable orders of the CATV Agency shall be cause for revocation.
- (g) **RESTORATION.** In the event of disturbance of any street by the grantee, it shall, at its own expense and in a manner approved by the CATV Agency, replace and restore such street in as good a condition as before the work causing such disturbance was done.
- (h) **NOTICE OF VILLAGE IMPROVEMENTS.** The Village reserves the right upon reasonable notice to require the grantee at his expense to protect, support, temporarily disconnect, relocate or remove from the Village streets any property of the grantee by reason of traffic conditions, public safety, street construction or vacation, change or establishment of street grade, installation of sewers, drains, water pipes, power or communication lines, tracks or other types of structure or improvements by governmental agencies or any other structures of public improvements. Reasonable notice for this provision of the Ordinance shall be construed to mean that at least thirty (30) days prior to such improvements, the Village will notify any grantee that some time after said thirty (30) day period, the grantee will be required to act hereunder within at least three (3) days of further notice. At any time after the expiration of the thirty (30) days period, the Village may

- require action hereunder upon three (3) days notice.
- (i) **TEMPORARY REMOVAL OF WIRE OR CABLE FOR BUILDING MOVING.** The grantee shall, on the request of any person holding a building moving permit, temporarily raise or lower its wires to permit the 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 ninety-six (96) hours of four (4) working days' written notice to arrange for temporary wire changes.
  - (j) **REIMBURSEMENT.** In the event the grantee fails to perform any such work detailed in Subsection (f), (g) and (h) within the time provided for notice as contained therein, the Village shall have the right to perform said work, or enter into appropriate contracts to have said work done, at the sole expense of the grantee. Payment for such work shall be made from the cash bond detailed in Sec. 24.09(d)(7).
  - (k) **AUTHORITY TO TRIM TREES.** The grantee shall have authority to trim trees upon and overhanging streets so as to prevent branches of such trees from coming into contact with wires and cables of the company. All trimming is to be done under the supervision and direction of the Village Park and Recreation Director after prior written notification and approval of the Village and notification of the property owners effected by such action. All such work is to be done at the expense of the grantee. The grantee may contract for such services. Any firm or individual so retained by grantee must receive Village approval prior to commencing such activity.
  - (l) **VILLAGE'S RIGHT OF NETWORK INSTALLATION.** The Village reserves the right during the life of the franchise granted hereunder, to install and maintain free of charge upon or in the poles and conduits of the grantee any wire and pole fixtures necessary for municipal networks or the condition that such installation and maintenance therefore does not interfere with the operation of the grantee.
  - (m) **ALTERNATE ROUTING OF PLANT.** In the event continued use of a 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.
  - (n) **PLANT RECORDS.** The grantee shall furnish the CATV Agency upon completion of construction, maps, specifications, and staking sheets, showing all locations of the grantee's facilities. Upon any change as to construction and removals the grantee shall provide the Agency new and revised construction sheets for the Village's records, except for individual subscriber connecting wires or cable.

#### **24.11 CONSTRUCTION AND INSTALLATION**

- (a) **OBTAINING NECESSARY PERMITS.** Within thirty (30) days after accept-

ance of any franchise, the grantee shall proceed with due diligence and obtain all necessary permits and authorizations which are required in the conduct of its business, including but not limited to authorization to commence operation upon the filing of a registration statement with the FCC, or other federal authorization, microwave carrier licenses, and any other permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of the CATV systems, or associated agreements shall be obtained within ninety (90) days after acceptance of any franchise. In the event that any necessary utility joint use attachment agreement has not been obtained within ninety (90) days after acceptance of any franchise, the grantee may apply to the Village for an extension of time under this subsection and must provide the Village in writing with an explanation of such delay and an estimation of when such joint use attachment agreements shall be obtained. The Village shall not unreasonably deny the granting of a reasonable extension of time hereunder.

- (b) **CONSTRUCTION AND INSTALLATION.** Within ninety (90) days after obtaining all necessary permits, licenses and authorizations, including rights of access to poles and conduits, grantee shall commence construction and installation of the cable television system. Within 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 and in conformity with the proposal submitted by any franchise pursuant to Sec. 24.05(b).
- (c) **EASEMENTS NOT IMPLIED.** The right of construction, including easements, is not implied, except on location where the Village has the authority to grant such rights and easements, and then only in conformity with the provisions of this Chapter. All other rights of construction, including easements, shall be the responsibility of the operator.
- (d) **AREA TO BE SERVICED.** The grantee shall extend its cable system to provide full service to all residents within the Village, and to all residents of newly annexed area within a reasonable period of time after such annexation, where a density of fifty (50) subscribers per cable mile can be obtained.

#### **24.12 OPERATION, MAINTENANCE AND SERVICE STANDARDS**

- (a) **OPERATIONS TO BE IN ACCORDANCE WITH RULES.** The grantee shall maintain and operate its distribution system in accordance with the National Electrical Safety Code, the FCC, and such applicable ordinances and regulations of the State and the Village as may be presently in effect or may become effective in the future.
- (b) **LOCATION OF FACILITIES.**

- (1) Grantee shall maintain within the service area a listed telephone number so operated that complaints and requests for repairs and adjustments may be received at any time.
  - (2) Grantee shall also maintain an authorized agent within the service area, for the purpose of receiving subscriber bill payments.
- (c) **SERVICE.** The grantee shall provide service seven (7) days a week for all complaints and requests for repairs or adjustments. All repairs and adjustments shall be responded to in such a manner as to provide as nearly as practicable "same-day service" and in no event shall a response time exceed twenty-four (24) hours. The grantee shall at all times keep and maintain at its office a log of all complaints and interruptions or a degradation of service received or experienced for a period of two (2) years. Such records shall also include complaint response time and service restoral period and shall be continuously open to inspection, examination or audit by the Village or its authorized representative.
- (d) **INTERRUPTION OF SERVICE.** The grantee, whenever it is necessary to interrupt service over the community antenna television and audio communication 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.
- (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 performance obligations under this Chapter and Franchise. None of such rules, regulations, terms or conditions so established shall be in conflict with the provisions hereof of 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 its regular authority granted hereunder. Copies of all such rules, regulations, terms and conditions shall be filed with the Village CATV Agency and maintained at the Agency's office for public inspection during normal business hours. Any amendments, additions or deletions thereto must be immediately filed with the Village CATV Agency.
- (f) **SYSTEM NOT TO INTERFERE.** The Community Antenna Television and Audio Communication System shall be so designed, engineered and maintained by grantee so as to not interfere with the television and radio reception of non-subscribers to the grantee's services, including adequate shielding, filtering and grounding.
- (g) **CHANNEL CAPACITY AND ACCESS.**
- (1) Capacity. The grantee shall provide a network having a minimum of thirty-five (35) channels, sixteen (16) of which will be available as part of the initial services offered by grantee.

- (2) Grantee shall provide at least one (1) dedicated non-commercial access channel for use by governmental and educational agencies within the service area and by the public within the service area.
- (3) The grantee shall carry to the extent permitted by the FCC and as it can economically afford, the maximum number of broadcast signals, and shall exercise its best effort to obtain permission from the FCC or any other regulatory agency having jurisdiction over the number of signals permitted for carriage of such signals.
- (4) In case of any emergency or disaster, the grantee shall, upon request of the Village President, the Village Board, the Fire Chief or Police Chief, make available its facilities to the Village for emergency use during the emergency or disaster.
- (5) Any grantee shall carry those television and radio signals proposed in its application. Any changes shall be referred to the Village Board or its CATV Agency for review and approval.
- (6) The grantee will strive, insofar as is practical, for the betterment of its system, taking advantage of all reasonable improvements as they become available to it.

#### **24.13 RECORDS REQUIRED TO BE FILED WITH VILLAGE CATV AGENCY**

- (a) **NOT INCLUSIVE.** The records required to be provided in subsection (b) below are not an inclusive list of all such required records and such list does not relieve any grantee from the obligation of filing or submitting any other records set forth in this Ordinance.
- (b) **RECORDS TO BE FILED WITH VILLAGE CATV AGENCY.** The grantee shall file annually with the Village CATV Agency not later than three (3) months after the end of any fiscal year during the term of a franchise or renewal thereof copies of the following documents:
  - (1) An income statement applicable to grantee's operation under said franchise during the fiscal year or fraction thereof, such report to be certified by a public accountant.
  - (2) A list of all trouble complaints and network "down time" received or experienced during the fiscal year. All such submitted data shall also include complaint response time and service restoral period. For the purpose of this provision a certified copy of a "complaint" lot book reflecting all such incidents will suffice.
  - (3) A current list of all the following:
    - a. The names, addresses and both business and residential phone numbers of the managers and engineer.
    - b. One copy of all types of subscriber agreements.
    - c. A listing of current rates for all services offered by grantee.
- (c) **OTHER REQUIRED RECORDS.** In addition to the foregoing, any grantee

hereunder shall provide on an annual basis a statement of the total number of subscribers including which services are subscribed to, and said grantee shall immediately file a copy of each petition transmitted by the grantee to, or received by the grantee from, any federal, state or other regulatory commission or agency having competent jurisdiction to regulate or by third persons, and pertaining to the operations of any system authorized under this Chapter.

#### **24.14 RATES**

- (a) **REQUIREMENTS.** The rates and charges for television, radio and any other signals distributed hereunder shall be fair and reasonable and no higher than necessary to meet all costs of services (assuming sufficient and economical management), including a fair return on original cost, less depreciation, on the properties devoted to such service (without regard to any subsequent sale or transfer price or cost of such properties). The initial rates established by the franchise hereunder shall be in accordance with the following, and such rates shall remain fixed and unchanged during the first two (2) years of the franchise herein. Any rate changes after two (2) years from the date of the grant of the initial franchise to the Grantee will be reported in writing to the Village prior to enactment by the Grantee.
- (b) **BASIC SUBSCRIBER RATES.** Basic Subscriber Rates shall as approved by the Village Board from time to time.
- (c) **DISCOUNTS.** There shall be no discounted rate to owners of apartment buildings. Individual tenants will be served at the same rate as any other residential subscriber.
- (d) **SCHOOLS AND LIBRARIES.** All schools and libraries within the service area shall receive one cable outlet per facility at no charge. Additional outlets shall be installed on a time and material basis with no monthly charges after original installation.

#### **24.15 FRANCHISE FEES**

- (a) **AMOUNT.** The grantee shall pay to the Village a franchise fee based on three (3%) percent of the basic subscriber revenues for all cable television services in the Village. No other fee, charge or consideration shall be imposed. Sales tax or other taxes, if any, levied directly on a per subscription basis and collected by the grantee shall be deducted from the gross annual receipts before computation of sums due the Village is made. Payment shall be made on an annual basis.
- (b) **ANNUAL REPORT.** The grantee shall, on or before March 31 of each year, provide the Village CATV Agency with an annual summary report showing gross annual subscriber receipts for all CATV services received during the preceding year, attesting to the accuracy of this report.

- (c) **VILLAGE'S RIGHT TO INSPECT RECORDS.** The Board of Trustees and the CATV Agency reserve the right to reasonable inspection of the books, records, maps, plans and other like material of the grantee's office during normal business hours.

#### **24.16 PROHIBITIONS**

- (a) **GRANTEES PROHIBITED.** The grantee of any franchise issued hereunder shall be prohibited, during the term of the franchise or any renewal thereof, as follows:
- (1) Grantee shall not offer, nor make, any payment in any form to any property owner for purposes of permitting cable service on his or her property or premises, except the purchase of easement rights where necessary, nor discriminate in rental charges or otherwise between persons falling within the same classifications of cable customer. No grantee shall take any action which would diminish or interfere with the privilege of any tenant or other occupant of any apartment building, condominium, nursing home, hospital, mobile home park, or other multiple dwelling housing facility in which other persons may reside to use or avail the use of master or individual antenna equipment.
  - (2) The grantee shall not, 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. This section shall not apply to any special discounts given to senior citizens by grantee.
  - (3) No grantee hereunder shall, either directly or indirectly engage in the wholesale or retail sale, servicing or repair of television receivers or antennas, nor directly or indirectly require any subscriber the servicing by any designated television/radio service business. The grantee shall neither directly nor indirectly, engage in installation or repair of distribution systems, other than its own, within apartments, motels, hotels, or other commercial complexes. This section is not to be construed to eliminate or restrict the availability of alarm or warning systems from subscribers to such systems.
  - (4) The franchise shall be a privilege to be held in personal trust by the grantee. It cannot be sold, assigned, or leased except under the provisions of Sec. 24.06 of this Chapter.
  - (5) No grantee, nor any other person, shall 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 authorization from each subscriber so affected. Valid authorization

shall mean approval from the subscriber for a period of time not to exceed one year and shall not have been obtained from the subscriber as a condition of a service. Nor shall any grantee, without prior written valid authorization from the CATV Agency of the Village, provide any data identifying designated subscribers. Any agreement or contract necessary for the implementation of this provision shall not be a condition of subscribing to the system.

(b) **OTHER PERSONS PROHIBITED.**

- (1) No person shall request or accept payment in any form for permitting cable service on his or her property or premises, nor discriminate in rental charges or otherwise between tenants or occupants who receive cable service and those who do not.
- (2) No person shall, without the express consent of the grantee possess or make any connection, extension or division whether physically, acoustically, inductively, electronically or otherwise with or to any segment of a grantee's system.
- (3) No person shall willfully interfere, tamper, remove, obstruct or damage any part, segment or content of a grantee's system. This prohibition shall not apply to the Village or to any Utility exercising any legitimate rights under any contract or local, state or federal regulation.

#### **24.17 EMPLOYMENT REQUIREMENTS**

The grantee must include in the CATV proposal considered by the Village an Equal Employment Opportunity Practices clause, pursuant to Federal Communications Commission Rule Section 76.13(a)(8).

#### **24.18 SEPARABILITY; PENALTY**

- (a) **SEVERABILITY.** If any section, subsection, sentence, clause, phrase, provision, or portion of this Chapter is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, or by any Federal or State agency with jurisdiction herein, such portion shall be deemed as separate, distinct, and independent provision and such holding will not affect the validity of the remaining portions hereto.
- (b) **PENALTY.** Any person violating or failing to comply with any of the provisions of this Chapter shall forfeit not less than \$20.00 nor more than \$200.00 plus costs of this prosecution, and default of payment of the fine and costs of prosecution shall be imprisonment in the county jail until said fine and costs of the prosecution are paid, but not to exceed twenty (20) days. A separate offense shall be deemed committed on each day on which a violation of this Chapter occurs or continues.

#### **24.19 AWARD OF INITIAL FRANCHISE**

This Chapter having been adopted subsequent to the submission of proposals by several applicants pursuant to the provisions of Sec. 24.05 above, and the Village Board of the Village of Pulaski having completely reviewed said proposals, the Village Board shall by separate resolution designate an initial franchise subject to compliance with all of the provisions hereof.