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September 20, 2016

Lisa L DeVona  
Clerk Treasurer  
240 N. Main Street  
Minoa NY 13116

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VILLAGE OF MINOA

**RE: Village of Minoa, Local Law 3 2016, filed on September 19, 2016**

Dear Sir/Madam:

The above referenced material was filed by this office as indicated. Additional local law filing forms can be obtained from our website, [www.dos.ny.gov](http://www.dos.ny.gov).

Sincerely,  
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September 13, 2016

State Records and Law Bureau  
State of New York Department of State  
One Commerce Plaza  
99 Washington Avenue  
Albany, NY 12231

**COPY**

Dear Secretary of State:

Enclosed is one (1) original copy of **Local Law #3 for 2016** for the Village of Minoa.

If there are any questions on this law, please contact this office as soon as possible.

Sincerely,

  
Lisa L. DeVona  
Clerk-Treasurer

Enclosure



# Local Law Filing

41 STATE STREET, ALBANY, NY 12231

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

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

## Village of Minoa

Local Law No. Three (3) of the year 2016.

### **A local law adopting a new Chapter 56 of the Village of Minoa Code entitled “Cable Television Franchises”.**

#### SECTION 1. ENACTMENT.

A new Chapter 56 of the Village of Minoa Code entitled “Cable Television Franchise” is enacted, as follows:

#### **§56-1. INTENT/PURPOSE.**

- A. The Village of Minoa finds that the development of cable television and communications systems has the potential of having great benefit and impact upon the people of Minoa. Because of the complex and rapidly changing technology associated with cable television, the Village further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the Village or such persons as the Village shall designate. It is the intent of this Chapter and subsequent amendments to provide for and specify the means to attain the best possible public interest and public purpose in these matters, and any franchise issued pursuant to this Chapter shall be deemed to include this finding as an integral part thereof.
- B. Further, it is recognized that cable communications systems have the capacity to provide not only entertainment and information services to the Village's residents, but can provide a variety of broadband, interactive communications services to institutions and individuals. Many of these services involve Village agencies and other public institutions by providing governmental, educational or health care communications.
- C. For these purposes, the following goals underlie the regulations contained herein:
  - (1) Communications services should be provided to the maximum number of Village residents.
  - (2) The system should be capable of accommodating both the present and reasonably foreseeable future communications needs of the Village.
  - (3) The system should be improved and upgraded during the franchise term so that the new facilities necessary for the operation of this system shall be integrated to the maximum extent possible with existing facilities as specified in the franchise.

## § 56-2. Title.

This Chapter shall be known and may be cited as the "Minoa Cable Communication Regulatory Local Law," and it shall become a part of the local laws of the Village.

## § 56-3. Definitions and Word Use.

- A. When not inconsistent with the context, words used in the present tense include the future, and words in the plural number include the singular number. The word "shall" is mandatory, and "may" is permissive.
- B. For the purpose of this Chapter, the following terms, phrases, words and their derivations shall have the meanings given herein. Words not defined shall be given their common and ordinary meanings.

**BASIC SUBSCRIBER TELEVISION SERVICES** — A separately available basic service tier to which subscription is required for access to any other tier of service. Such basic service tier shall, at a minimum, consist of the following: all signals carried in fulfillment of Cable Act §§ 614 and 615; any public, educational and governmental access programming required in this Chapter or the franchise; any signal of any television broadcast station that is provided by the cable operator to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station. Additional signals may be added to the basic tier by the grantee.

**CABLE COMMUNICATIONS SYSTEM (ALSO REFERRED TO AS "SYSTEM")** —

A facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service, which includes but is not limited to video programming and which is provided to multiple subscribers within a community, but such term does not include:

- (1) A facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (2) A facility that serves only subscribers in one or more multiple-unit dwellings under common ownership, control or management, unless such facility or facilities use any public rights-of-way;
- (3) A facility of a common carrier which is subject, in whole or in part, to the provision of Title II of the Cable Act, except that such facility shall be considered a cable system to the extent that such facility is used in the transmission of video programming directly to subscribers; or
- (4) Any facilities of any electric utility used solely for operating its electric utility systems.

**CABLE SERVICE** — The one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, which is required for the selection of such video programming or other programming service and the installation and rental of equipment necessary for the receipt thereof.

**CHANNEL** — A six-megahertz (MHz) frequency band which is capable of carrying either one

standard video signal, a number of audio, digital or other nonvideo signals, or some combination of such signals. One channel of high definition television will utilize more than six MHz.

**CLOSED CIRCUIT OR INSTITUTIONAL SERVICE** — Such video, audio, data and other services provided to institutional users on an individual application basis. These may include but are not limited to one-way video, two-way video, audio or digital signals among institutions to residential subscribers.

**COMMERCIAL SUBSCRIBER** — A subscriber who receives a service in a place of business where the service may be utilized in connection with a business, trade or profession.

**COMMUNICATIONS POLICY ACT OR CABLE ACT** — The Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992 as it may be amended or succeeded.

**CONVERTER** — An electronic device that will shift any television channel(s) from one to another within the UHF or VHF spectrum.

**DEDICATED INSTITUTIONAL ACCESS CHANNELS** — Broadband communications channels dedicated to serving city, county, state or federal governmental agencies, educational institutions, health care institutions or other nonprofit organizations that may be qualified by the Cable TV Advisory Committee.

**DISCRETE CHANNEL** — A channel which can only be received by the person and/or institution intended to receive signals on such channel.

**DROP** — A coaxial connection from a feeder cable to the subscriber/user television set, radio or other terminal.

**EDUCATIONAL ACCESS CHANNEL** — Any channel designated for educational access use.

**FAIR MARKET VALUE** — The price that a willing buyer would pay to a willing seller for a going concern based on the system valuation prevailing in the industry at the time.

**FCC** — The Federal Communications Commission and any legally appointed successor.

**FRANCHISE** — The nonexclusive rights granted pursuant to this Chapter to construct, operate and maintain a cable communications system along the public ways within all or a specified area in the Village. Any such authorization, in whatever form granted, shall not mean or include any license or permit required for the privilege of transacting and carrying on a business within the Village as required by other local laws and laws of the Village.

**FRANCHISE AREA** — The entire Village or portions thereof for which a franchise is granted under the authority of this Chapter. If not otherwise stated in the franchise, the franchise area shall be the corporate limits of the Village, including all territory thereafter annexed to the Village.

**FRANCHISEE OR GRANTEE** — The natural person(s), partnership(s), domestic and foreign corporation(s), association(s), joint venture(s) or organization(s) of any kind which has been legally granted a franchise by the Village, and its lawful successor, transferee or assignee.

**FRANCHISE FEE** — The portion, as specified by the Village, of the franchisee's gross revenues from all sources payable in exchange for the rights granted pursuant to this Chapter and the franchise

agreement; the term "franchise fee" includes any tax, fee or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such. Franchise fee does not include:

- (1) Any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services, but not including a tax, fee or assessment which is unduly discriminatory against cable operators or cable subscribers);
- (2) Capital costs which are required by the franchise to be incurred by the cable operator for public, educational or governmental access facilities;
- (3) Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or
- (4) Any fee imposed under Title 17 of the United States Code.

GOVERNMENT ACCESS — Any channel specifically designated or dedicated for government access use.

GRANTOR — The Village of Minoa as represented by the Village Board of Trustees acting within the scope of its jurisdiction.

GROSS ANNUAL REVENUES — The total of all cash, credits, property of any kind or nature or other consideration received, directly or indirectly, by the grantee, its affiliates, subsidiaries or any person, firm or corporation in which the grantee has a financial interest derived from the operation of the cable system within the Village. If another entity is responsible for selling advertising on the cable system, advertising revenues shall be deemed to be limited to the prorate portion of advertising revenue, less expenses, paid to the grantee by such entity. Furthermore, gross receipts shall not include sums paid for services other than cable service if the grantee is subjected to competition for such services within the Village by an entity not affiliated with the grantee or its parent, and such entity is not required to pay a franchise fee or similar levy to the Village on such services.

INSTALLATION — The connection of the system from the feeder cable to subscribers' terminals.

LEASED ACCESS CHANNEL OR COMMERCIAL ACCESS CHANNEL — Any channel designated or dedicated for use by persons unaffiliated with the grantee.

MONITORING — Observing a communications signal or the absence of a signal where the observer is not a party to the communication, whether the signal is observed by visual or electronic means, for any purpose whatsoever.

NARROWCASTING — The ability to distribute cable programming to a particular segment or segments of the cable subscribers.

NEW YORK STATE COMMISSION — The New York State Commission on Cable Television, the Commission created pursuant to Chapter 28 of New York State Executive Law entitled "Commission on Cable Television" or its successor.<sup>1</sup>

PERSON — An individual, partnership, association, organization, corporation or any lawful

successor transferee of said individual, partnership, association, organization or corporation.

PLANT MILE — A linear mile of cable as measured on the street or easement from pole to pole or pedestal to pedestal.

PUBLIC ACCESS CHANNEL — Any channel designated or dedicated for use by the general public or noncommercial organizations which is made available for use without charge on a nondiscriminatory basis in accordance with the rules and regulations specified in the franchise.

PUBLIC WAY OR PUBLIC RIGHTS-OF-WAY — The surface, the air space above the surface and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkways, waterways, utility easements or other public right-of-way or hereafter held by the Village which shall entitle the Village and the company to the use thereof for the purpose of installing and maintaining the company cable television system. No reference herein or in any franchise to the public way shall be deemed to be a representation or guaranty by the Village that its title to any property is sufficient to permit its use for such purpose, and the grantee shall, by its use of such terms, be deemed to gain only such rights to use property in the Village as the Village may have the undisputed right and power to give.

REASONABLE NOTICE — Written notice addressed to the grantee at its principal office within the Village or such other office as the grantee has designated to the Village as the address to which notice shall be transmitted to it, which notice shall be certified and postmarked not less than seven days prior to that day in which the party giving such notice shall commence any action which requires the giving of notice. In computing said seven days, holidays recognized by the Village shall be excluded.

RESIDENT — Any person residing in the Village as otherwise defined by applicable law.

RESIDENTIAL SUBSCRIBER — A subscriber who receives a service in an individual dwelling unit where the service is not to be utilized in connection with a business, trade or profession.

SALE — Includes any sale, exchange, barter or offer for sale.

SCHOOL — Any public or nonprofit educational institution, including primary and secondary schools, colleges and universities, both public and private.

SERVICE AREA — The entire geographic area within the franchise territory.

STANDARD SERVICE PACKAGE — A combination of service tiers consisting of the basic broadcast service and any other regulated cable satellite tier, but excluding any service sold on a per-channel basis and any package of services normally sold on a per-channel basis.

STATE — The State of New York.

SYSTEM FACILITIES OR FACILITIES — The cable communications system constructed for use within the Village, including, without limitation, the headend, antenna, cables, wires, lines, towers, amplifiers, converters, health and property security systems, equipment or facilities located within the corporate limits of the Village designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing, by coaxial cable, fiber optics, microwave or other means, audio and visual radio, television and electronic signals to and from subscribers in the Village and any other equipment or facilities located within the corporate limits of the Village intended for the

use of the system; provided, however, that such system facility excludes buildings, contracts, facilities and equipment where the primary use is for providing service to other system facilities located outside the Village limits.

TRANSFER — The disposal by the grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of 51% ownership and/or voting control or actual working control, as defined by the Federal Communications Commission, of the franchise to a person who is not controlling, controlled by or under common control with the grantee.

TRUNK LINE — The major distribution cable used in cable communications, which divides into feeder lines which are tapped for service to subscribers.

UPSTREAM SIGNAL — A signal originating from a terminal to another point in the cable television system, including video, audio or digital signals for either programs or other uses such as security alert services, etc.

USER — A person or organization utilizing channel or equipment and facilities for the purpose of producing and/or transmission of material, as contrasted with receipt thereof in a subscriber capacity.

VILLAGE BOARD OF TRUSTEES — The Village Board of Trustees of the Village of Minoa.

#### **§ 56-4. Grant of Franchise.**

- A. In the event that the Village shall grant to the grantee a nonexclusive, revocable franchise to construct, operate and maintain a cable communications system within the Village, said franchise shall constitute both a right and an obligation to provide the services of a cable communications system as regulated by the provisions of this Chapter and the franchise. The franchise shall include by reference those provisions of the grantee's application for franchise that are finally negotiated and accepted by the Village and the grantee.
- B. The franchise shall be granted under the terms and conditions contained herein, consistent with the Village's Code and/or other applicable statutory requirements. In the event of a conflict between the terms and conditions of this Chapter, the franchise or the terms and conditions on which the Village can grant a franchise, the Code and/or statutory requirements shall control.
- C. Any franchise granted by the Village is hereby made subject to the generally applicable local law provisions now in effect and hereafter made effective; provided, however, that any amendment to this Chapter that is binding on any franchisee shall be confined to changes which do not materially alter the rights of the franchisee under a franchise. Nothing in the franchise shall be deemed to waive the requirements of the various codes and local laws of the Village regarding permits, fees to be paid or manner of construction.

#### **§ 56-5. Franchise Area.**

The franchise area shall be the entire Village or portions thereof for which a franchise is granted.

#### **§ 56-6. Use of Public Rights-of-Way.**

For the purpose of operating and maintaining a cable communications system in the Village, the grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the public streets and ways within the Village such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary to the operation of the cable communications systems; provided, however, that the grantee complies with all design, construction, safety and performance provisions contained in this Chapter, the franchise agreement and other applicable local laws.

**§ 56-7. Use of Village Facilities.**

At the Village's option, the Village may require a grantee to utilize a Village-owned conduit or other facilities for any portion of its cable communications system during the initial construction of the system, provided that the cost of construction is not materially increased due to the use of Village-owned facilities. The consideration for the use of a Village conduit or other facilities shall be as stated in the franchise. A reasonable fee for the use of Village facilities shall be established in the franchise and may be adjusted at the periodic performance evaluations.

**§ 56-8. Use of Grantee Facilities.**

No poles shall be erected by the grantee without prior approval of the Village with regard to location, height, type and any other pertinent aspect. However, no location of any pole of the grantee shall be a vested right, and such poles shall be removed or modified by the grantee at its own expense whenever the Village determines that the public convenience would be enhanced thereby. The grantee shall utilize existing poles and conduits where possible. The Village shall have the right, during the life of the franchise, to install and maintain, free of charge upon the poles owned by the grantee, any wire and pole fixtures that do not unreasonably interfere with the cable system operations of the grantee.

**§ 56-9. Franchise Required.**

No cable communications system shall be allowed to occupy or use the streets of the Village or be allowed to operate without a franchise.

**§ 56-10. Term of Franchise.**

The term of any franchise granted pursuant to this Chapter shall be at least a minimum of five (5) years and a maximum of ten (10) years.

**§ 56-11. Franchise To Be Nonexclusive.**

Any franchise granted pursuant to this Chapter shall be nonexclusive. Village specifically reserves the right to grant, at any time, additional franchises for a Cable Communications System and Cable Service in accordance with state and federal law. Any grant of additional franchises by Village to any other entity to provide cable or video service generally similar in substance to that of another shall be on terms and conditions that consistent with Village's general franchise requirements and not otherwise, when considered on a whole or individual basis more for less favorable or burdensome to the franchisee of any such additional franchise, than those which are set forth herein or otherwise reasonably necessary or serving a public policy concern of the Village.

#### **§ 56-12. Performance Schedule.**

Time is of the essence to this Chapter. Whenever the agreement shall establish a separate schedule, specific acts by or on behalf of the grantee, these shall be deemed of the essence, and any failure of the grantee to perform within the time allotted shall always be sufficient ground for the Village to invoke an appropriate penalty, including possible revocation of the franchise.

#### **§ 56-13. Applicability of State Law.**

In any controversy or dispute under this Chapter, the law of the State of New York shall apply.

#### **§ 56-14. Transfer of Ownership or Control.**

- A. Transfer of franchise. Any franchise granted hereunder shall not be transferred without the prior consent of the Village, which consent shall not be unreasonably withheld.
- B. The grantee shall promptly notify the Village of any actual or proposed transfer.
- C. Every transfer shall make the franchise subject to cancellation, unless the Village shall have consented thereto. For the purpose of determining whether it shall consent to such transfer, the Village may inquire into the legal, technical and financial qualifications of the proposed controlling party, consistent with FCC rules, and the grantee shall assist the Village in any such inquiry.
- D. Assumption of control. The Village agrees that any financial institution having a pledge of the franchise or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the Village that it or its designees satisfactory to the Village will take control and operate the cable television system. Further, said financial institution shall also submit a plan for such operation that will ensure continued service and compliance with all franchise obligations during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one year, unless extended by the Village at its discretion, and during said period of time it shall have the right to petition for transfer of the franchise to another grantee. If the Village finds that such transfer, after considering the legal, financial, character, technical and other public interest qualifications of the applicant, is satisfactory, the Village will transfer and assign the rights and obligations of such franchise as in the public interest. The consent of the Village to such transfer shall not be unreasonably withheld.
- E. The consent or approval of the Village to any transfer of the grantee shall not constitute a waiver or release of the rights of the Village in and to the streets, and any transfer shall, by its terms, be expressly subject to the terms and conditions of this Chapter and the franchise.
- F. In the absence of extraordinary circumstances, the Village will not approve any transfer or assignment of the franchise prior to completion of construction of the proposed system.
- G. Time frame for Village review. The Village shall have 120 days, from the time specified under federal law, to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with FCC regulations and by the

Village. If the Village fails to render a final decision on the request within 120 days, such request shall be deemed granted unless the requesting party and the Village agree to an extension of time. In the event that the Village refuses to grant the aforementioned request, it shall set forth specific reasons for its decision, in writing, by municipal resolution.

- H. In determining whether to approve said request, the Village may consider the following:
- (1) The experience of the proposed assignee or transferee (including conducting an investigation of the proposed assignee or transferee's service record in other communities).
  - (2) The qualifications of the proposed assignee or transferee.
  - (3) The legal integrity of the proposed assignee or transferee.
  - (4) The financial ability and stability of the proposed assignee or transferee.
  - (5) The ability and express commitment of the proposed assignee or transferee to fully comply with the provisions of this agreement.
- I. A copy of the completed sales agreement or a functionally equivalent instrument between the grantee and proposed transferee or assignee shall be available to the Village for inspection at the grantee's local office, upon request of the letter.
- J. The Village may approve said petition contingent on compliance with additional standards, terms or conditions within its legal authority and consistent with findings resulting from its review of the aforementioned petition.

#### **§ 56-15. Franchise Renewal.**

Renewal discretionary. Upon completion of the term of any franchise granted under this Chapter, the Village may in its sole discretion grant or deny renewal of the franchise of the grantee in accordance with the provisions of the Cable Act. The grantee shall own the cable communication system, but shall have no property right in the public rights-of-way upon the completion of the franchise term.

#### **§ 56-16. Police Powers.**

- A. In accepting the franchise, the grantee acknowledges that its rights hereunder are subject to the police power of the Village to adopt and enforce general local laws necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and local laws enacted by the Village pursuant to such power.
- B. Any conflict between the provisions of this Chapter or the franchise and any other present or future lawful exercise of the Village's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction or applies exclusively to the grantee or cable communications systems which contains provisions inconsistent with this Chapter shall prevail only if, upon such exercise, the Village finds an emergency exists constituting a danger to health, safety, property or general welfare and such exercise is mandated by law.

**§ 56-17. Franchise Fees.**

- A. The Village finds that:
- (1) The streets of the county, state and Village to be used by the grantee in the operation of its system within the boundaries of the franchise area are valuable public properties acquired and maintained by the county, state and Village at great expense to its taxpayers.
  - (2) The grant to the grantee to said streets is a valuable property right without which the grantee would be required to invest substantial capital in right-of-way costs and acquisitions.
  - (3) The administration of this Chapter and the franchise imposes upon the Village additional regulatory responsibility and expense.
  - (4) A grantee of any franchise hereunder shall pay to the Village a franchise fee in an amount as designated in the franchise, but in no event less than 5% of the gross annual revenues, or the maximum amount permitted under applicable federal, state or local law, if such maximum is greater than 5% less the annual assessment paid by the grantee to the New York State Commission on Cable Television. The annual franchise payment shall be in addition to any other fee and shall commence as of the effective date of the franchise. The Village shall be furnished a statement of said payment, by a certified public accountant, reflecting the total amounts of annual gross revenues and the above charges and computations for the period covered by the payment.
- B. Franchise fee in addition to other tax or payment. This payment shall be in addition to any other tax or payment owed to the governments or other taxing jurisdiction by the grantee.
- C. Acceptance by the Village. 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.
- D. Failure to make required payment. In the event that any franchise payment or recomputed amount is not made on or before the dates specified herein, the grantee shall pay as additional compensation an interest charge, computed from such due date, at the annual rate equal to the commercial prime interest rate of the Village primary depository bank during the period that such unpaid amount is owed.
- E. Payments to be made quarterly. The franchise fee and any other cost or damage assessed against the grantee shall be payable quarterly to the Village of Minoa. The grantee shall file a complete and accurate verified statement of all gross revenues within the franchise area during the period for which said quarterly payment is made, and said payment shall be made to the Village no later than 45 days

following the end of each calendar quarter. Quarterly computation dates are the last day in the months of March, June, September and December.

- F. The Village's right of inspection. The Village shall have the right to inspect the grantee's income records and the right to audit at its own expense determined to be payable under this Chapter. However, in the event that the audit concludes that the grantee's payments hereunder were underpaid by an amount greater than 5% of the proper payment, then the grantee shall reimburse the Village for the costs of said audit, in addition to making any additional payments required to bring the grantee into compliance with this section. At the sole discretion of the Village, the latter may collect interest from the grantee on the underpayment or any other late payment at a rate equal to the prime rate plus 3%.

**§ 56-18. Forfeiture or Revocation.**

- A. Grounds for revocation. The Village reserves the right to revoke any franchise granted hereunder and rescind all rights and privileges associated with the franchise in the following circumstances, each of which shall represent a default and breach under the local law and the franchise grant:
- (1) If the grantee shall default in the performance of any of the material obligations under this Chapter or under such documents, contracts and other terms and provisions entered into by and between the Village and the grantee.
  - (2) If the grantee shall fail to provide or maintain in full force and effect the liability and indemnification coverage or the performance bond as required herein.
  - (3) If the grantee shall violate any lawful orders or rulings of any regulatory body having jurisdiction over the grantee relative to this Chapter or the franchise.
  - (4) If the grantee evades, as defined in state law, any of the provisions of this Chapter or the franchise or practices any fraud or deceit upon the Village or cable subscribers.
  - (5) If the grantee fails to meet the construction schedule contained in the franchise or beyond any extended date set by the Village.
  - (6) Upon failure to restore service after 96 consecutive hours of interrupted service, except when approval of such interruption is obtained from the Village.
  - (7) Upon material misrepresentation of fact in the application for or negotiation of the franchise or any extension or renewal thereof.
  - (8) If the grantee ceases to provide all services for any reason within the control of the grantee over the cable communications system.
- B. Effect of circumstances beyond control of the grantee. The grantee shall not be declared at fault or be subject to any sanction under any provision of this Chapter in any case in which performance of any such provision is prevented for reasons beyond the grantee's control. A fault shall not be deemed to be beyond

the grantee's control if committed by a corporation or other business entity in which the grantee holds a controlling interest, whether held directly or indirectly.

- C. Pending litigation or any appeal to any regulatory body or court having jurisdiction over the grantee shall not excuse the grantee from the performance of its obligations under this Chapter or the franchise. Failure of the grantee to perform such obligations because of pending litigation or petition may result in forfeiture or revocation pursuant to the provisions of this section.
- D. Procedure prior to revocation.
  - (1) The Village shall make written demand that the grantee do so comply with any such requirement, limitation, term, condition, rule or regulation or correct any action deemed cause for revocation. If the failure, refusal or neglect of the grantee continues for a period of 30 days following such written demand, the Village shall place its request for termination of the franchise upon a regular Village Board of Trustees meeting agenda. The Village shall cause to be served upon such grantee, at least seven days prior to the date of such Village Board of Trustees meeting, a written notice of this intent to request such termination and the time and place of the meeting, notice of which shall be published by the Village Clerk at least once seven days before such meeting in a newspaper of general circulation within the Village.
  - (2) The Village Board of Trustees shall hear any persons interested therein and determine in its discretion whether or not any failure, refusal or neglect by the grantee was with just cause.
  - (3) If such failure, refusal or neglect by the grantee was with just cause, as defined by the Village, the Village Board of Trustees shall direct the grantee to comply within such time and manner and upon such terms and conditions as are reasonable.
  - (4) If the Village Board of Trustees shall determine such failure, refusal or neglect by the grantee was without just cause, then the Village Board of Trustees shall, by resolution, declare that the franchise of the grantee shall be terminated and the performance bond forfeited unless there is compliance by the grantee within a specified period of time not to exceed 90 days or such longer period as reasonably necessary to comply as approved by the Village Board of Trustees, whose approval shall not be unreasonably withheld.
- E. Disposition of facilities. In the event that a franchise is not renewed and/or revoked, the Village may, in its sole discretion, do any of the following:
  - (1) Purchase the system under the procedures set forth in § 56-27 of this Chapter.
  - (2) Effect a transfer of ownership of the system to another party.
  - (3) Order the removal of the system facilities required by public necessity from the Village within a reasonable period of time as determined by the Village or require the original grantee to

maintain and operate its system for a period of six months or until such further time as is mutually agreed upon. The grantee may convey its ownership or interest in the facilities constituting the cable system to a successor grantee approved by the Village. Any such facilities that are not so conveyed shall be considered to be abandoned to the ownership and use of the Village, subject to the right of the grantee to remove any such facilities or any portion of such facilities that may be salvageable.

- F. Restoration of property. In removing its plant, structures and equipment, the grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good a condition or better as that prevailing prior to the grantee's removal of its equipment and appliances without affecting the electrical or telephone cable wires or attachments. The Village shall inspect and approve the condition of the public ways and public places and cables, wires, attachments and poles after removal. The liability, indemnity, insurance and performance bond as provided herein shall continue in full force and effect during the period of removal and until full compliance by the grantee with the terms and conditions of this subsection, this Chapter and the franchise.
- G. Restoration by Village; reimbursement of costs. In the event of a failure by the grantee to complete any work required by §§ 56-6 and 56-8 and/or Subsection F above or any other work required by Village law or local law within the time as may be established and to the satisfaction of the Village, the Village may cause such work to be done and the grantee shall reimburse the Village the cost thereof within 30 days after receipt of an itemized list of such costs or the Village may recover such costs through the performance bond provided by the grantee. The Village shall be permitted to seek legal and equitable relief to enforce the provisions of this section.
- H. Extended operation. Upon either the expiration or revocation of a franchise, the Village may require the grantee to continue to operate the system for a period of six months from the date of such expiration or revocation or until such time as is mutually agreed upon. The grantee shall, as trustee for its successor in interest, continue to operate the cable communications system under the terms and conditions of this Chapter and the franchise and to provide the regular subscriber service and any and all of the services that may be provided at the time. The Village shall be permitted to seek legal and equitable relief to enforce the provisions of this section.
- I. Recourse. The grantee may seek recourse as available by law or regulation.

#### **§ 56-19. Receivership and Foreclosure.**

- A. Termination by insolvency. To the extent permitted under federal bankruptcy law, the franchise granted hereunder shall, at the option of the Village, cease and terminate 120 days after the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of the grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days or unless:
  - (1) Such receivers or trustees shall have, within 120 days after their election or appointment, fully complied with all the terms and provisions of this Chapter and the franchise granted pursuant

hereto, and the receivers or trustees within said 120 days shall have remedied all defaults under the franchise; and

- (2) Such receivers or trustees shall, within said 120 days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the franchise herein granted.

B. Termination by judicial action. In the case of a foreclosure or other judicial sale of the plant, property and equipment of the grantee or any part thereof, including or excluding the franchise, the Village may serve notice of termination upon the grantee and the successful bidder at such sale, in which event the franchise and all rights and privileges of the grantee granted hereunder shall cease and terminate 30 days after service of such notice, unless:

- (1) The Village shall have approved the transfer of the franchise, in the manner this Chapter provides; and
- (2) Such successful bidder shall have covenanted and agreed with the Village to assume and be bound by all the terms and conditions of the franchise.

#### **§ 56-20. Equal Opportunity Policy.**

- A. Equal opportunity employment shall be afforded by all operators of cable television systems to all qualified persons, and no person shall be discriminated against in employment because of race, color, religion, age, national origin, sex or physical handicap. The grantee shall comply with all equal opportunity provisions enacted by federal, state and local authorities, as well as all such provisions contained in this Chapter and the franchise. It is agreed that Continental's compliance with FCC rules constitutes compliance with this section.
- B. Local employment and procurement practices. Whenever reasonably possible, all services, personnel, hardware and supplies for the construction, maintenance and operation of the system shall be procured locally. The grantee shall describe in detail plans and policies for each year of the term of the agreement for utilizing and contracting with local construction contractors, subcontractors, suppliers, vendors and other business enterprises and persons for services, supplies, equipment, consultation, banking, financial accounting and legal services, insurance and other necessary facilities and services that will be used in establishing, operating, marketing, programming and maintaining the cable communications system.

#### **§ 56-21. Notices.**

All notices from the grantee to the Village pursuant to this Chapter shall be to the Village Mayor or his or her designee. The grantee shall maintain with the Village, throughout the term of the franchise, an address for service of notices by mail. The grantee shall also maintain within the Village a local office and telephone number for the conduct of matters related to the franchise during normal business hours. The grantee shall be required to advise the Village of such address(es) and telephone numbers and any changes thereof.

**§ 56-22. No Waiver of Terms for Failure of Enforcement.**

The grantee shall not be excused from complying with any of the terms and conditions of this Chapter or the franchise by any failure of the Village upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

**§ 56-23. Rights Reserved to the Grantor.**

- A. **Renewal.** If a renewal of a franchise held by a cable operator is denied and the franchising authority acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be:
- (1) At fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the franchise itself; or
  - (2) In the case of any franchise existing on the effective date of this Chapter, at a price determined in accordance with the franchise if such franchise contains provisions applicable to such an acquisition or transfer.
- B. **Revocation.** If a franchise held by a cable operator is revoked for cause and the franchising authority acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be:
- (1) At an equitable price; or
  - (2) In the case of any franchise existing on the effective date of this Chapter, at a price determined in accordance with the franchise if such franchise contains provision applicable to such an acquisition or transfer.
- C. **Right of inspection of records.**
- (1) The Village shall have the right to inspect all books, records, reports, maps, plans, financial statements and other like materials of the grantee, at any time upon reasonable notice, during normal business hours necessary to the enforcement of this Chapter and the franchise. The grantee shall provide such information in such form as may be required by the Village for said records. To the extent allowed by law, the Village agrees to treat as proprietary any information identified as such by the grantee and shall not intentionally divulge any such information publicly or to actual or potential competitors of the grantee, except as may be required in a legal proceeding or ordered by a court of competent jurisdiction.
  - (2) If any such maps or records are not kept in the Village or upon notice that the grantee is unable to provide the records in the Village and if the Village shall determine that an examination of such maps or records is necessary or appropriate to the performance of the Village's

responsibilities under this franchise, then all travel and maintenance expenses necessarily incurred in making such examination shall be paid by the grantee.

- D. Right of inspection of construction. The Village shall have the right to inspect all construction or installation work performed subject to the provisions of the franchise and to make such tests as it shall find necessary to ensure compliance with the terms of this Chapter and other pertinent provisions of the law.
- E. Right of inspection of property. At all reasonable times, the grantee shall permit examination, by any duly authorized representative of the Village, of system facilities, together with any appurtenant property of the grantee situated within or without the Village.
- F. Right of intervention. The Village shall have the right of intervention in any suit or proceeding to which the grantee is a party.
- G. Right to require tests. The Village shall have the right and authority to test the performance of the cable communications system. The Village may require that any tests performed at the Village's request be supervised or conducted by a Village designee, not an employee or agent of the grantee. The grantee shall reimburse the Village for the costs of such designee if the tests performed show that the quality of service is below the standards set forth in the franchise. The grantee shall cooperate fully with the Village in performing such testing.

**§ 56-24. Franchise Regulatory Authority.**

- A. The Village shall exercise appropriate regulatory authority under the provisions of this Chapter and applicable law. This authority shall be vested in the Village Board of Trustees and administered through the Village Mayor or his or her designee in order to provide day- to-day administration and enforcement of the provisions of this Chapter and any franchise granted hereunder and to carry out the Village's responsibilities with regard to cable communications.
- B. If a material provision is held to be invalid by a court of competent jurisdiction or rendered a nullity by federal or state legislature or regulatory action, the grantee and the Village shall promptly and in good faith renegotiate provisions of this agreement affected by the loss of the aforementioned material provision to ensure that the Village is restored, insofar as is reasonably possible, to its approximate status relative to the other as existed prior to said judicial, legislative or regulatory action.
- C. The Village reserves the right to exercise the maximum plenary authority, as may at any time be lawfully permissible, to regulate the cable communications system, the franchise and the grantee. Should applicable legislative, judicial or regulatory authorities at any time permit regulation not presently permitted to the Village, the Village may without the approval of the grantee engage in any such additional regulation as may then be permissible, whether or not contemplated by this Chapter or the franchise, including, without limitation, regulation regarding franchise fees, taxes, programming, rates charged to subscribers and users, consumer protection or any other similar or

dissimilar matter.

**§ 56-25. Supervision of Franchise.**

- A. The Village shall have the following regulatory responsibility:
- (1) Administration and enforcement of the provisions of this Chapter and any franchise granted hereunder.
  - (2) Award, renewal, extension or termination of a franchise pursuant to the provisions of this Chapter, the franchise and other applicable law.
  - (3) Consent prior to the sale or transfer of any franchise granted hereunder.
  - (4) Performance evaluation.
  - (5) Rate regulation, if applicable.
- B. The Village also reserves the right to perform the following functions:
- (1) Develop objectives and coordinate activities related to the operation of government channels.
  - (2) Approve procedures and standards for public, government and educational access and operations and services, including the use of dedicated channels and sharing of public facilities.
  - (3) Coordinate plans for the expansion, interconnection and growth of cable services.
  - (4) Analyze the possibility of integrating cable communications with other Village, state or regional telecommunications networks.
  - (5) Formulate and recommend long-range telecommunications policy for the Village and determine the future cable-related needs and interests of the community.
  - (6) Provide the administrative effort necessary for the conduct of performance evaluations and any other activities required for the administration of the franchise.
  - (7) Monitor the grantee's process for handling citizen complaints and periodically inspect and analyze the records related to such complaints.
  - (8) Receive applications for rate increases if applicable and provide staff assistance in the analysis and recommendations thereto.
  - (9) Monitor the grantee's adherence to operational standards, service requirements and line extension policies.
  - (10) Assure compliance with applicable laws and local laws.
  - (11) Arrange tests and analysis of equipment and performance, as needed to ensure compliance with this Chapter and the franchise.

- (12) Assure continuity in service.
  - (13) Receive for examination all data and reports required by this Chapter.
- C. Cable TV Advisory Committee. There shall be a citizen's advisory committee entitled the "Cable TV Advisory Committee." The responsibilities of the Cable TV Advisory Committee shall include but not be limited to the following:
- (1) Monitor and advise the Village Board of Trustees and Village administration on the provisions of this Chapter and related local laws.
  - (2) Serve as advisory body for the public, educational and municipal access channels of cable television and any institutional programming that may be developed.
  - (3) Advise the Village government of objectives to be obtained in the Village's cable communications system based upon its continued evaluation of the Village's cable television franchise, cable technology and the future cable-related needs and interests of the community.
  - (4) Prepare an annual report to the Village Board of Trustees.
  - (5) Cooperate with the Village and the grantee in fulfilling its responsibilities herein.

**§ 56-26. Rates and Charges.**

- A. The grantee shall file with the Village schedules which shall describe all services offered, all rates and charges of any kind and all terms and conditions relating thereto. No rates or charges shall be effective except as they appear on a schedule so filed. The grantee shall notify subscribers, in writing, at least 30 days prior to the implementation of any change in services offered, rates charged or terms and conditions related thereto.
- B. The grantee shall establish rates that are nondiscriminatory within the same general class of subscribers which must be applied fairly and uniformly to all subscribers in the franchise area for all services. Nothing contained herein shall prohibit the grantee from offering discounts to commercial and multiple-family dwelling subscribers billed on a bulk basis; promotional discounts; or reduced installation rates for subscribers who have multiple services. The grantee's charges and rates for all services shall be itemized on a subscriber's monthly bills.
- C. To the extent that federal or state law or regulation may now or as the same may hereafter be amended to authorize the Village to regulate the rates for any particular service tiers, service packages, equipment or any other services provided by the grantee, the Village shall have the right to exercise rate regulation to the full extent authorized by law or to refrain from exercising such regulation for any period of time, at the sole discretion of the Village.

**§ 56-27. Performance Evaluation.**

- A. The Village and the grantee shall, at the written request of the Village, hold scheduled performance

evaluation sessions annually. All such evaluation sessions shall be open to the public.

- B. Special evaluation sessions may be held at any time during the term of the franchise at the request of the Village.
- C. All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with public notice, as provided in § 56-51. The grantee shall notify subscribers of all such evaluation sessions by announcement on the designated local government channel on the system between the hours of 11:00 a.m. and 9:00 p.m. for five consecutive days preceding each session.
- D. Topics which may be discussed at any scheduled or special evaluation session may include but not be limited to system performance and construction, grantee compliance with this Chapter and the franchise, customer service and complaint response, subscriber privacy, services provided, programming offered, service rate structures, franchise fees, penalties, free or discounted services, applications of new technologies, judicial and FCC filings and line extensions.
- E. During the review and evaluation by the Village, the grantee shall fully cooperate with the Village and shall provide such information and documents as the Village may need to reasonably perform its review.

**§ 56-28. Performance Bond.**

- A. Upon the effective date of the franchise, the grantee shall obtain and maintain during the entire term of the franchise and any extensions and renewals thereof, at its cost and expense, and file with the Village a corporate surety bond in an amount specified in the franchise to guarantee the faithful performance of the grantee of all its obligations provided under this Chapter and the franchise. Failure to timely obtain, file and maintain said bond shall constitute a substantial violation within the meaning of this section.
- B. Conditions. The performance bond shall provide the following conditions.
  - (1) There shall be recoverable by the Village jointly and severally from the principal and surety any and all fines and liquidated damages due to the Village and any and all damages, losses, costs and expenses suffered or incurred by the Village resulting from the failure of the grantee to faithfully comply with the provisions of this Chapter and the franchise; comply with all orders, permits and directives of any Village agency or body having jurisdiction over its acts or defaults; pay fees due to the Village; pay any claims, liens or taxes due the Village which arise by reason of the construction, operation, maintenance or repair of the cable system. Such losses, costs and expenses shall include but not be limited to attorney's fees and other associated expenses.
  - (2) The total amount of the bond shall be forfeited in favor of the Village in the event that:
    - (a) The grantee abandons the cable system at any time during the term of the franchise or any extension thereto; or

- (b) The grantee assigns the franchise without the express written consent of the Village.
- C. Reduction of bond. Upon written application by the grantee, the Village may, at its sole option, permit the amount of the bond to be reduced or waive the requirements for a performance bond subject to the conditions set forth below. Reductions granted or denied upon application by the grantee shall be without prejudice to the grantee's subsequent applications or to the Village's right to require the full bond at any time thereafter. However, no application shall be made by the grantee within one year of any prior application.
- D. Conditions. The Village may draw upon the performance bond if the grantee fails to faithfully comply with the provisions of this Chapter and the franchise; comply with all orders, permits and directives of any Village agency or body having jurisdiction over its acts or defaults; pay fees due to the Village; or pay any claims, liens or taxes due the Village which arise by reason of the construction, operation, maintenance or repair of the cable system.
- E. Use of performance bond. Prior to drawing upon the performance bond for the purposes described in this section, the Village shall notify the grantee, in writing, that payment is due, and the grantee shall have 30 days from the receipt of such written notice to make a full and complete payment. If the grantee does not make the payment within 30 days, the Village may withdraw the amount thereof, with interest and penalties, from the performance bond.
- F. Notification. Within three days of a withdrawal from the performance bond, the Village shall send to the grantee, by certified mail, return receipt requested, written notification of the amount, date and purpose of such withdrawal.
- G. Replenishment of performance bond. No later than 30 days upon the resolution of the dispute which resulted in a withdrawal from the performance bond, the grantee shall replenish the performance bond in an amount equal to the amount so withdrawn. Failure to make timely replenishment of such amount to the performance bond shall constitute a substantial violation of this Chapter.
- H. Nonrenewal, alteration or cancellation of performance bond. The performance bond required herein shall be in a form satisfactory to the Village and shall require 30 days' written notice of any nonrenewal, alteration or cancellation to both the Village and the grantee. The grantee shall, in the event of any such cancellation notice, obtain, pay all premiums for and file with the Village written evidence of the issuance of a replacement bond or policies within 30 days following receipt by the Village or the grantee of any notice of cancellation.

**§ 56-29. Liability and Insurance.**

- A. Prior to commencement of construction, but in no event later than 60 days after the effective date of the franchise and thereafter continuously throughout the duration of the franchise and any extensions or renewals thereof, the grantee shall furnish to the Village certificates of insurance, approved by the Village, for all types of insurance required under this section. Failure to furnish said certificates of insurance in a timely manner shall constitute a violation of this Chapter.
- B. Certificates of insurance for policies obtained by the grantee in compliance with this section shall be

filed and maintained with the Village Clerk during the term of the franchise and may be changed from time to time to reflect changing liability limits and/or to compensate for inflation.

- C. Neither the provisions of this section or any damages recovered by the Village hereunder shall be construed to or limit the liability of the grantee under any franchise issued hereunder or for damages.
- D. All certificates of insurance furnished pursuant to this Chapter or the franchise shall contain the following or a comparable endorsement:

"It is hereby understood and agreed that this insurance policy may not be canceled by the insurance company nor the intention not to renew be stated by the insurance company until 30 days after receipt by the Village Mayor, by certified mail, of a written notice of such intention to cancel or not to renew."
- E. All insurance policies provided under the provisions of this Chapter or the franchise shall be written by companies authorized to do business in the state and approved by the State Board of Insurance.
- F. The Village shall be an additional insured for all insurance policies written under the provisions of this Chapter or the franchise.
- G. To offset the effects of inflation and to reflect changing liability limits, all of the coverages, limits and amounts of the insurance provided for herein are subject to reasonable increases at the end of every three-year period of the franchise, applicable to the next three-year period, upon the determination of the Village.
- H. General liability insurance. The grantee shall maintain and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain throughout the term of the franchise general liability insurance insuring the grantee in the minimum of:
  - (1) One million dollars for property damage per occurrence;
  - (2) One million dollars for personal bodily injury or death to any one person; and
  - (3) Five million dollars for excess liability in umbrella form.
- I. Such general liability insurance must include coverage for all of the following: comprehensive form, premises operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage and personal injury.
- J. Automobile liability insurance. The grantee shall maintain and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain throughout the term of the franchise automobile liability insurance for owned, nonowned or rented vehicles in the minimum amount of:
  - (1) One million dollars for bodily injury and consequent death per occurrence;
  - (2) One million dollars for bodily injury and consequent death to any one person.

(3) Five hundred thousand dollars for property damage per occurrence.

K. Workers' compensation and employers' liability insurance. The grantee shall maintain and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain throughout the term of the franchise workers' compensation and employers' liability, valid in the state, in the minimum amount of:

(1) Statutory limit for workers' compensation.

(2) One hundred thousand dollars for employers' liability.

### **§ 56-30. Indemnification.**

A. To the fullest extent permitted by law, the grantee shall, at its sole cost and expense, fully indemnify, defend and hold harmless the Village, its officers, public officials, boards and commissions, agents and employees from and against any and all lawsuits, claims (including, without limitation, workers' compensation claims against the Village or others), causes of action, actions, liability and judgments for injury or damages (including but not limited to expenses for reasonable legal fees and disbursements assumed by the Village in connection therewith):

(1) To persons or property, in any way arising out of or through the acts or omissions of the grantee, its subcontractors, agents or employees to which the grantee's negligence shall in any way contribute and regardless of whether the Village's negligence or the negligence of any other party shall have contributed to such claim, cause of action, judgment, injury or damage.

(2) Arising out of any claim for invasion of the right of privacy, for defamation of any person, firm or corporation or the violation or infringement of any copyright, trademark, trade name, service mark or patent or any other right of any person, firm or corporation, but excluding claims arising out of or related to Village programming.

(3) Arising out of the grantee's failure to comply with the provisions of any federal, state or local statute, local laws or regulations applicable to the grantee in its business hereunder.

B. The foregoing indemnity is conditioned upon the following: The Village shall give the grantee prompt notice of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. At all times, the Village shall cooperate with the grantee and participate in the defense of any litigation. No recovery by the Village of any sum by reason of the liquidated damages required by the franchise shall be subject to litigation by the grantee, except that any sum so received by the Village shall be deducted from any recovery which the Village might have against the grantee under the terms of this section.

### **§ 56-31. Authority to Construct.**

A. Authorization to commence construction and application procedures. Within 30 days after

acceptance by the grantee of a franchise, the grantee shall apply for any needed contracts for pole use. Pole space and other facilities obtained from the Village, utilities and other lawful users of the public way shall be at the cost and expense of the grantee. Within 30 days after completion of the make-ready survey identifying the routes of the system facility, the grantee shall apply for all additional licenses from the state, Village or other necessary parties, such as the railroads for crossing under or over their property. In any event, all necessary applications for permits, licenses, certificates and authorizations shall be applied for in a timely fashion so that such filing and processing shall not interfere with or cause delay with the construction scheduled as outlined in the franchise. Failure to make such timely application and timely filing shall constitute a substantial violation of this Chapter.

- B. Power to contract. Upon grant of the franchise and in order to construct, operate and maintain a cable system in the Village, the grantee may enter into contracts with any public utility companies or any other owner or lessee of any poles or underground areas located within or without the Village; obtain right-of-way permits from appropriate Village, state, county and federal officials necessary to cross or otherwise use highways or roads under their respective jurisdiction; obtain permission from the Federal Aviation Administration to erect and maintain antennas; and obtain whatever other permits a Village, county, state or federal agency may require.

#### **§ 56-32. Construction and Technical Standards.**

- A. Compliance with construction and technical standards. The grantee shall construct, install, operate and maintain its system in a manner consistent with all laws, local laws, construction standards, governmental requirements, FCC technical standards and detailed technical standards submitted by the grantee as part of its application, which standards are incorporated by reference herein. The system shall be designed, constructed, operated and maintained for 24 hours a day continuous operation. The system shall produce, for reception on subscribers, receivers which are in good working order, either monochrome or color pictures (provided that the receiver is color capable) which are free from any significant interference or distortion which would cause any material degradation of video or audio quality.
- B. State of the art. The grantee shall construct, install, operate and maintain its system in accordance with the highest standards of the art of cable communications, such standards to include but not be limited to the following:
  - (1) The system will be spaced to permit a minimum of 750 MHz operation and will be capable of utilizing state-of-the-art converters and be compatible with cable-ready television sets.
  - (2) The system will utilize converters which will make the system adaptable for the development of future services.
  - (3) The grantee shall maintain its system facilities in a manner which will continue to enable it to add new services and associated equipment as they are developed, available and proved marketable to subscribers. The new services and associated equipment will be added to the system facilities when they are determined to be technically reliable and adaptable to the system

at a cost to the subscriber that is acceptable in the marketplace.

- C. Prior to the erection of any towers, poles or conduits or the upgrade or rebuild of the cable communications system under this Chapter, the grantee shall first submit to the Village and other designated parties for approval a concise description of the facilities proposed to be erected or installed, including engineering drawings, if required, together with a map and plans indicating the proposed location of all such facilities. No erection or installation of any tower, pole, underground conduit or fixture or any rebuilds or upgrading of the cable communications system shall be commenced by any person until approval therefor has been received from the Village; provided, further, that such approval shall not be unreasonably withheld.
- D. Contractor qualifications. Any contractor proposed for work of construction, installation, operation, maintenance and repair of system equipment must be properly licensed. In addition, the grantee shall submit to the Village a plan to hire persons locally for the construction, installation, operation, maintenance and repair of the system equipment consistent with federal regulations.
- E. The grantee's system and associated equipment erected by the grantee within the Village shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of said streets, alleys or other public ways and places. No pole or other fixtures placed in any public ways by the grantee shall be placed in such a manner as to interfere with normal travel on such public way.
- F. The Village does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures. In public rights-of-way, where necessary, the location shall be verified by excavation.
- G. Construction, installation, operation and maintenance of the cable communications system shall be performed in an orderly and workmanlike manner, in accordance with then-current technological standards. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged parallel and bundled with due respect for engineering considerations.
- H. The grantee shall at all times comply with:
  - (1) National Electrical Safety Code (National Bureau of Standards).
  - (2) National Electrical Code (National Bureau of Fire Underwriters).
  - (3) Bell System Code of Pole Line Construction.
  - (4) Applicable FCC or other federal, state and local regulations and standards as set forth in the franchise.

- I. In any event, the system shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the grantee may have equipment located.
- J. Any antenna structure used in the cable communications system shall comply with construction, marking and lighting of antenna structure standards as required by federal and state law or regulation.
- K. All worker facilities, conditions and procedures that are used during construction, installation, operation and maintenance of the cable system shall comply with the standards of the Occupational Safety and Health Administration.
- L. Any RF leakage shall be checked at the reception location for emergency radio services to prove measurable interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no measurable interference to airborne navigational reception in the normal flight pattern. FCC rules and regulations shall govern. The system shall cause no measurable interference in television signal reception to any operating receiver not connected to and serviced by the system.
- M. The grantee shall maintain equipment capable of providing standby power for a minimum of 24 hours for the headend and three hours for all optical fiber node locations on the distribution system.

**§ 56-33. System Construction Schedule.**

The franchise shall specify the construction schedule.

**§ 56-34. Use of Streets.**

- A. All installations shall be underground in those areas of the Village where public utilities providing telephone and electric service are underground at the time of installation. In areas where telephone or electric utility facilities are aboveground at the time of installation, the grantee may install its service above the 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 otherwise place its services underground without additional cost to the Village or to the individual subscriber so served with the Village. Where not otherwise required to be placed underground by this Chapter or the franchise, the grantee's system shall be located underground at the request of the adjacent property owner, provided that the excess cost over the aerial location shall be borne by the property owner making the request. All cable passing under the roadway shall be installed in conduit.
- B. Prior to construction or alteration, however, the grantee shall in each case file plans with the appropriate Village agencies, complete use agreements with the utility companies, obtain all construction permits and receive written approval of the Village before proceeding, which approval shall not be unreasonably withheld.
- C. Interference with persons, improvements, public and private property and utilities. The grantee's system and facilities, including poles, lines, equipment and all appurtenances, shall be located, erected and maintained so that such facilities shall:
  - (1) Not endanger or interfere with the health, safety or lives of persons;
  - (2) Not interfere with any improvements the Village, county or state may deem proper to make;

- (3) Not interfere with the free and proper use of public streets, alleys, bridges, easements or other public ways, places or property, except to the minimum extent possible during actual construction or repair;
  - (4) Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction or repair; and
  - (5) Not obstruct, hinder or interfere with any gas, electric, water or telephone facilities or other utilities located within the Village.
- D. Restoration to prior condition. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the grantee shall, at its own cost and expense and in a manner approved by the Village, replace and restore all paving, sidewalk, driveway, landscaping or surface of any street or alley disturbed, in as reasonably good a condition as or better than before said work was commenced and in a good workmanlike, timely manner in accordance with standards for such work set by the Village. Such restoration shall be undertaken within no more than 10 business days after the damage is incurred and shall be completed as soon as possible thereafter.
- E. Relocation of the facilities. In the event that at any time during the period of the franchise the Village, county or state shall lawfully elect to alter or change the grade of any street, alley or other public ways, the grantee, upon reasonable notice by the proper authority, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.
- F. Cooperation with building movers. The grantee shall, on the request of any person holding a building moving permit issued by the Village, temporarily raise or lower its wire to permit the moving of buildings. 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 15 working days' advance notice to arrange for such temporary wire changes.
- G. Tree trimming. The grantee shall have the authority, except when in conflict with existing Village local laws, to trim any trees upon and overhanging a public right-of-way so as to prevent the branches of such trees from coming in contact with system facilities, except that at the option of the Village, such trimming may be done by it or under its supervision and direction, at the expense of the grantee.
- H. Easements. All necessary easements over and under private property shall be arranged for by the grantee.
- I. Private property. The grantee shall be subject to all laws, local laws or regulations regarding private property in the course of constructing, installing, operating or maintaining the cable communications system in the Village of Minoa. The grantee shall promptly repair or replace all private property, both real and personal, damaged or destroyed as a result of the construction, installation, operating or maintenance of the cable communications system at its sole cost and expense.

#### **§ 56-35. Erection, Removal and Common Use of Poles.**

- A. No poles shall be erected by the grantee without prior approval of the Village with regard to location, height, types and any other pertinent aspect. However, no location of any pole or wire-holding structure of the grantee shall give rise to a vested interest, and such poles or structures shall be removed or modified by the grantee at its own expense whenever the Village determines that the public convenience would be enhanced thereby.
- B. Where poles already exist for use in serving the Village and are available for use by the grantee, but it does not make arrangements for such use, the Village may require the grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the grantee are just and reasonable.

**§ 56-36. Construction Reporting Requirements.**

- A. Within 30 days of the granting of a franchise pursuant to this Chapter, the grantee shall provide the Village with a written progress report detailing work completed to date. Such report shall include a description of the progress in applying for any necessary agreements, licenses or certifications and any other information the Village Mayor may deem necessary. The content and format of the report will be determined by the Village Mayor and may be modified at his or her discretion.
- B. Such written progress reports shall be submitted to the Village on a monthly basis throughout the entire construction process. The Village Mayor may require more frequent reporting if he or she determines it is necessary to better monitor the grantee's progress.
- C. Prior to the commencement of any system construction, the grantee shall produce an informational document to be distributed to all residents of the area to be under construction, which shall describe the activity that will be taking place. The informational document shall be reviewed and approved by the Village Mayor prior to its distribution.

**§ 56-37. Tests and Performance Monitoring.**

- A. Not later than 30 days after any new or substantially rebuilt portion of the system is made available for service to subscribers and thereafter on the annual anniversary of the effective date of the franchise, the grantee shall conduct technical performance tests to demonstrate full compliance with all technical standards contained in this Chapter and the franchise and the technical standards and guidelines of the FCC and the Commission.
- B. Such tests shall be performed by or under the supervision of a qualified registered professional engineer or an engineer with proper training and experience. A copy of the report shall be submitted to the Village, describing the test results, instrumentation, calibration and the test procedures and the qualification of the engineer responsible for the tests.

- C. System monitor test points shall be established at or near the output of the last amplifier in the longest feeder line, at or near trunk line extremities. Such periodic tests shall be made at the test points as shall be required by the FCC and/or the franchise.
- D. In addition to the performance test reports required herein, a copy of any performance test reports required by the FCC shall be submitted to the Village within 60 days of completion.
- E. Whenever there have been similar complaints made or when there exists other evidence which, in the judgment of the Village, casts doubt on the reliability or quality of the grantee's system, the Village shall have the right and authority to compel the grantee to test, analyze and report on the performance of its system. The Village may require additional tests, full or partial repeat tests, different test procedures or tests involving a specific subscriber's terminal. Reports on such tests shall be delivered to the Village no later than 14 days after the Village formally notifies the grantee and shall include the following information: the nature of the complaints which precipitated the special tests; what system component was tested; the equipment used and procedures employed in said testing; the results of such tests; and methods by which said complaints were resolved. Said tests and analyses shall be supervised by a professional engineer not on the permanent staff of the grantee, who shall sign all records of the special tests and forward the same to the Village with a report interpreting the results of the tests and recommending what actions should be taken by the Village. All such tests shall be at the expense of the grantee.

**§ 56-38. Services to Subscribers and Users.**

- A. Concurrently with the activation of the cable communications system in the Village, the grantee shall provide all services to subscribers as described herein and in the franchise at rates detailed in the rate schedule.
  - (1) The system shall carry the broad categories of programming and services listed in the franchise. Should the grantee desire to change the selection of programs or services offered on any of the tiers, it shall maintain the mix, quality and level of services provided over the system. Any such change in programs or services offered shall comply with the conditions and procedures contained in the franchise and shall be reported to the Village at least 30 days prior to the proposed implementation. The grantee shall notify all subscribers, in writing, at least 30 days prior to implementing any change in the selection of programs or services offered on any tiers or prior to adding or deleting any channels or changing the channel number for any station. The grantee shall use its best efforts to ensure diversity of programming.
  - (2) A basic service tier shall be offered to subscribers throughout the term of this Chapter and the franchise.
  - (3) The grantee shall provide and maintain, at a minimum, the following access channels whose purposes are outlined below:
    - (a) Government access channel, which shall be a specifically designated channel for local governmental use and shall be managed, scheduled and programmed exclusively by the Village.

- (b) Educational channel, which shall be a specifically designated channel for use by local public and private school authorities and shall be managed, scheduled and programmed exclusively by them.
  - (c) A public access channel, which will be a specifically designated channel available on a nondiscriminatory basis.
- (4) Pursuant to § 612 of the Cable Act, the grantee shall make channel capacity available as required by federal law for commercial use by any person, group, organization or entity unaffiliated with the franchise upon reaching an appropriate agreement. Rates for commercial use shall comply with applicable federal law and regulations.
  - (5) The grantee shall produce and carry on a designated channel, on a daily basis, an alphanumeric program guide describing, at a minimum, the programs offered on the access channels described above.
  - (6) The grantee shall fully provide, at a minimum, services, facilities and equipment for public, educational and government access as indicated in the franchise.
- B. Emergency override. The grantee shall, without charge, provide, service and maintain public emergency transmission facilities to the Village, as described in the franchise.

**§ 56-39. Installations, Connections and Other Services.**

- A. Standard installations. Standard installation shall consist of a service not exceeding 150 feet from a single point or pedestal attachment to the customer's residence. The one-hundred-fifty-foot drop length specified herein shall exclude the width of the street. Service in excess of 150 feet and concealed wiring shall be charged not to exceed additional installation costs before installation begins. The desire of the subscriber as to the point of entry into the residence shall be observed whenever possible. Runs in building interiors shall be as unobtrusive as possible. The grantee shall use due care in the process of installation and shall repair any damage to the subscriber's property caused by said installation. Such restoration shall be undertaken within no more than 10 days after the damage is incurred and shall be completed as soon as possible thereafter.
- B. Deposits. Any deposit required by the grantee shall bear interest at a rate of not less than 8% or such lower amount as established by state law or regulation.
- C. Antennas and antenna switches. The grantee shall not, as a condition to providing cable communications service, require any subscriber or potential subscriber to remove any existing antenna structures for the receipt of over-the-air television signals. The grantee shall install, upon the request of the subscriber, an RF or antenna switch where required for the provision of services provided by the grantee.

- D. Lockout devices. The grantee shall provide to the potential subscriber, as part of its promotional literature, information concerning the availability of a lockout device for use by a subscriber. The grantee reserves the right to require a reasonable deposit for the use of this device, as set forth in the rate schedule. The lockout device described herein shall be made available to all subscribers requesting it beginning on the first day that any cable service is provided.
- E. Reconnection. The grantee shall restore service to customers wishing restoration of service, provided that the customer shall first satisfy any previous obligations owed. The grantee may require a deposit or refuse service to any applicant for bona fide credit reasons which relate to the applicant's overdue or delinquent account with the grantee and may levy reasonable collection charges on overdue or delinquent accounts.
- F. Free disconnection. Subscribers shall have the right to have cable services disconnected without charge. Such disconnection shall be made as soon as practicable and in no case later than 15 days following notice to the grantee of the same. A refund of unused service charges shall be paid to the customer within 30 days from the date of termination of service.
- G. Delinquent accounts. The grantee shall use its best efforts to collect on delinquent subscriber accounts. Service will not be disconnected if a delinquent customer agrees at any time to be placed on a regular payment plan to clear the account. In all cases, the grantee shall provide the customer with at least 10 working days' written notice prior to disconnection.

**§ 56-40. Service Calls and Complaint Procedures.**

- A. The company shall establish, operate and maintain a business office and maintenance and repair facility for the purpose of receiving inquiries, requests and complaints concerning all aspects of the construction, installation, operation and maintenance of the system and for the payment of subscribers' service charges and providing facilities for the production of programming.
- B. The grantee shall have a listed, locally staffed telephone number for subscriber service calls, and such telephone service shall be available 24 hours a day, seven days a week. The grantee shall provide a sufficient number of telephone lines and telephone staff members to enable subscribers to reach the grantee without unreasonable delay. The grantee's number shall be published and made available to subscribers and the general public. The grantee shall, in addition, provide an unlisted, locally staffed telephone number to the Village and utility companies to enable the Village or the utility companies to reach the grantee in case of emergency on a twenty-four-hour, seven-days-a-week basis.
- C. The grantee shall respond to and resolve subscribers' complaints or requests for service in connection with repairs and maintenance and malfunctions of system facilities. The grantee shall respond as quickly as possible to such complaints and requests, but shall in any case respond within 24 hours. Complaints or requests which may pose a potential health and safety hazard will be responded to immediately. In connection with billing complaints, the grantee shall respond within seven business days.
- D. The grantee shall prepare and file with the Village copies of all of its rules and regulations in connection with the handling of inquiries, requests and complaints. The grantee shall, by appropriate

means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed and furnish information concerning the Village office responsible for the administration of the franchise, including, but not limited to, the address and telephone number of said office.

- E. The grantee shall keep full records in connection with all inquiries, complaints and requests in connection with the system which require corrective action or referral to a supervisor and any written complaint. Such records shall identify the person contacting the grantee and the person responding on behalf of the grantee, the subject matter of the contact, the date and time it was received, the resolution of the matter in question or the action taken by the grantee in connection with the contact and the date and time thereof and such other information as may be deemed pertinent by the grantee. These records shall be made available for periodic inspection by the Village.
- F. The grantee shall service or replace without charge all equipment provided by it to the subscriber; provided, however, that the grantee may charge a subscriber for service to or replacement of any equipment damaged due to negligence of such subscriber.
- G. For recurrent complaints regarding service deficiencies (other than total or partial loss of service, such as ghosting, weak audio signal, distortion and the like), the Village Mayor may require the grantee to investigate and report to him or her the causes and cures thereof, and the Village Mayor may also conduct his or her own investigation. Thereafter, the Village Mayor may order specified remedial action to be taken within reasonably feasible time limits. If such action is not taken or is ineffective or if within 30 days the grantee files with the Cable TV Advisory Committee a notice of objection to the order, the Cable TV Advisory Committee may conduct a hearing and may, if the evidence warrants a finding of fault on the part of the grantee, take appropriate action pursuant to the terms of this Chapter.

#### **§ 56-41. Continuity of Service Mandatory.**

- A. It shall be the right of all subscribers to receive continuous, uninterrupted service insofar as their financial and other obligations to the grantee are honored.
- B. In the event that the grantee elects to rebuild, modify or sell the system or the Village gives notice of intent to terminate or fails to renew its franchise, the grantee shall cooperate with the Village or new grantee or operator in maintaining continuity of service to all subscribers. During such period, the grantee shall be entitled to the revenues for any period during which it operates the system and shall be entitled to reasonable costs for the services when it no longer operates the system.
- C. Failure to provide continuity. In the event that the grantee fails to operate the system for seven consecutive days without prior approval of the Village or without just cause, the Village may, at its option, operate the system or designate an operator until such time as the grantee restores service under conditions acceptable to the Village or a permanent operator is selected. If the Village is required to fulfill this obligation for the grantee, the grantee shall reimburse the Village for all reasonable costs or damages in excess of revenues from the system received by the Village that are the result of the grantee's failure to perform.

**§ 56-42. Protection of Subscriber Privacy.**

- A. Protection of subscriber privacy mandatory. The grantee shall at all times protect the privacy of subscribers, as provided in this Chapter and other applicable federal, state and local laws.
- B. Notice of privacy provisions. At the time of entering into an agreement to provide any cable service or other service to a subscriber and at least once a year thereafter, the grantee shall provide notice in the form of a separate written statement to the subscriber which clearly and conspicuously informs the subscriber of:
  - (1) The privacy rights of the subscriber and the limitations placed upon the grantee with regard to §§ 56-42 through 56-47 hereof and all other applicable federal, state and local subscriber privacy provisions.
  - (2) The nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information.
  - (3) The nature, frequency and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made.
  - (4) The period during which such information might be maintained by the cable operator.
  - (5) The times and place at which the subscriber may have access to such information in accordance with this Chapter and other applicable federal, state and local law.
- C. Collection of personally identifiable information prohibited. The grantee shall not use or permit the use of the cable system to collect personally identifiable information concerning any subscriber, except as necessary to render a cable service or other service provided by the cable operator to the subscriber. The grantee shall not install or permit the installation of any special terminal equipment in any subscriber's premises for the two-way transmission of any aural, visual or digital signals without the prior written consent of the subscriber. The grantee shall not tabulate nor permit others to tabulate any subscriber use of the cable system which would reveal the opinions or commercial product preferences of individual subscribers, whether residential or business, or of any occupant or user of the subscriber's premises without written authorization from the subscriber for his or her participation in a shop-at-home or similar service. When providing such service, the grantee may tabulate only those responses essential to the functioning of that shopping or other service and may not use any such tabulation of individual preferences for any other purposes. Tabulations of aggregate opinion or preference are permitted, provided that the aggregations are sufficiently large to assure individual privacy.
- D. Personally identifiable information will not be disclosed without conforming to § 631 of the Cable Act.
- E. The grantee shall not predicate regular subscriber service on the subscriber's grant or denial of

permission to collect, maintain or disclose personally identifiable information. A subscriber may at any time revoke any permission previously given by delivering to the grantee a written statement of that intent.

- F. Each subscriber shall be provided access to all personally identifiable information regarding such subscriber that the grantee collects or maintains or allows to be collected or maintained, and such subscriber shall be provided the opportunity to correct any error in such information.
- G. Any information concerning individual subscriber viewing habits or responses, except for information for billing purposes, shall be destroyed when no longer required for business purposes or otherwise required to be kept by law.
- H. This section is not intended to prohibit the use or transmission of signals useful only for the control or measurement of system performance.

#### **§ 56-43. Rights of Individuals.**

- A. Nondiscrimination required. The grantee shall not deny service, deny access or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin, age, sex or physical or mental handicaps, provided that the subscriber shall pay all applicable fees for the service desired. The grantee shall comply at all times with all other applicable federal, state and local laws and regulations and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this Chapter by reference.
- B. Fairness of accessibility. The entire system of the grantee shall be operated in a manner consistent with the principles of fairness and equal accessibility of its facilities, equipment, channels, studios and other services to all citizens, businesses, public agencies and other entities having a legitimate use for the network; 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 of the grantee and any regulatory agencies affecting the same.
- C. Information accessibility.
  - (1) Each individual shall have the right to information concerning the provisions of this Chapter and the rules and regulations formulated pursuant to it by the Village Board of Trustees, the grantee, agent or entity created hereunder or pursuant to this Chapter available at the Village Hall. The location and hours of operation for the delivery of such information shall be published in the newspaper of the greatest circulation within the Village and in such other media as the Village Board of Trustees may determine.
  - (2) Such information as may herein be prescribed will be made available to the public and individual subscribers in such form required for understanding, including the deaf and blind, and in such languages as may be specified by the Village Board of Trustees.
  - (3) Each individual shall have the right to representation on such boards, commissions, agencies or other entities created hereunder or hereafter by the Village Board of Trustees pursuant to the provisions of this Chapter. Such representation by citizens of the Village shall be in the manner and form as the Village Board of Trustees may determine, ensuring equal participation of all

protected groups. The grantee shall strictly adhere to the equal employment opportunity requirements of federal, state and local regulations, as may be applicable, and as amended from time to time.

**§ 56-44. Books and Records Available to Grantor.**

- A. The Village shall have the right to inspect all books, records, reports, maps, plans, financial statements and other like materials of the grantee at any time upon reasonable notice during normal business hours necessary to the enforcement of this Chapter and the franchise. The grantee shall provide such information in such form as may be required by the Village for said records. The Village agrees to treat as proprietary any information identified as such by the grantee and shall not intentionally divulge any such information publicly or to actual or potential competitors of the grantee, except as may be required in a legal proceeding or ordered by a court of competent jurisdiction.
- B. The grantee shall permit any duly authorized representative of the Village to examine and copy or transcribe any and all maps and other records kept or maintained by the grantee or under its control concerning the operations, affairs, transactions or property of the grantee. If any of such maps or records are not kept in the Village or upon reasonable request made available in the Village and if the Village shall determine that an examination of such maps or records is necessary or appropriate to the performance of any of its duties, then all travel and maintenance expenses necessarily incurred in making such examination shall be paid by the grantee.

**§ 56-45. Reports Required.**

Upon request of the Village, the grantee shall file with the Village a copy of any technical, operational or financial report the grantee submits to the Commission, the FCC or other governmental entities that concern, directly or indirectly, the grantee's operation of the cable communications system in the Village.

- A. The grantee shall prepare and submit to the Village an annual report setting forth the physical miles of plant construction and plant in operation within the Village during the grantee's previous fiscal year.
- B. The grantee shall file with the Village, simultaneously with its delivery to subscribers in the Village, copies of all printed materials prepared for general distribution to subscribers or a particular classification of subscribers.
- C. Unless the Village provides written notice to the contrary, the following system and operational reports shall be submitted annually, by March 1, to the Village:
  - (1) An annual summary of the previous year's activities, including but not limited to subscriber totals for each category of service offered, including number of pay units sold, new services offered and the character and extent of the service rendered to other users of the system.
  - (2) An annual summary of service requests and complaints received and handled.
  - (3) An annual summary of the number of area outages, the reasons therefor and the action and time

taken to restore service.

- (4) The required performance bond or a certified copy thereof and written evidence of payment of required premium and all policies of insurance required by this Chapter or certified copies thereof and written notice of payment of required premium.
- D. The grantee shall make available to the Village such additional information and records with respect to the operation, affairs, transactions or property of the cable communications system and the service provided to the Village under this franchise, as may be reasonably necessary and appropriate to the performance of any of the rights, functions or duties of the Village in connection with this franchise as determined by the Village.
- E. Additional reports. The grantee shall prepare and furnish to the Village at the times and in the form prescribed such additional reports with respect to its operation, affairs, transactions or property as may be reasonably necessary and appropriate to the performance of any of the rights, functions or duties of the Village in connection with this Chapter or the franchise.

#### **§ 56-46. Records Required.**

- A. Mandatory records. The grantee shall at all times maintain:
  - (1) A record of all complaints received under the provisions of § 56-44E above and interruptions or degradation of service experience for the preceding period prior to a performance review.
  - (2) A full and complete set of plans, records and as-built maps showing the exact location of all cable communication system equipment installed or in use in the Village, exclusive of subscriber service drops.
  - (3) Employment records as required by FCC rules.
- B. Other records. The Village may impose reasonable requests for additional information, records and documents from time to time.

#### **§ 56-47. Public Notice.**

Minimum public notice of any public meeting relating to this Chapter or the franchise shall be by publication at least in a newspaper of general circulation in the area at least seven days prior to the meeting, posting at the Village Hall, by announcement on at least one local origination channel of the grantee's cable communications system between the hours of 11:00 a.m. and 9:00 p.m. for five consecutive days prior to the meeting.

#### **§ 56-48. Franchise Applications.**

- A. Invitation of any applications for a franchise; public notice of request for proposals. The Village may invite applications for a cable television franchise by means of a public notice advertising the availability of its request for proposals. The public notice shall contain, but need not be limited to:

- (1) A description of the franchise area which is sought.
- (2) A statement that a formal request for proposals is available to prospective applicants from a Village official whose name, address and telephone number are specified.
- (3) A statement that applications for the franchise must be submitted, in writing, in the form and manner specified in the request for proposals no later than a day certain.
- (4) A statement that all applications will be made available for public inspection during normal business hours at a specified location.

B. Request for proposals. Prior to inviting any applications for any television franchise, the Village shall prepare a request for proposals that shall contain, but need not be limited to, the following:

- (1) A description of the cable television system and services desired by the Village, including any system specifications established by the Village.
- (2) A statement specifying the form that all applications shall follow.
- (3) A statement indicating the amount of the application fee (if any) to be submitted with the application and the manner in which such fee is to be submitted.
- (4) A statement that all applications must contain the information required by the request for proposal.
- (5) The closing date for the submission of applications.
- (6) The name, address and telephone number of the Village official(s) who may be contacted for further information.

C. Requirement for public hearing on reasonable notice. The Village shall conduct a public hearing prior to awarding any cable television franchise. The hearing shall be preceded by reasonable notice to each of the franchise applicants and to the public and shall be conducted by the Village Board of Trustees in accordance with the following procedures:

- (1) There shall be an agenda for the hearing which shall specify the proposal(s) to be considered at the hearing.
- (2) Every person who has applied for a cable television franchise shall appear at the hearing either in person or by authorized representative. The application of any applicant not so appearing shall not be further considered, except for good cause shown.

(3) All persons shall be given opportunity to participate in the hearing, but nothing contained herein shall limit the power of the presiding officer to establish reasonable time limits and otherwise limit repetitive statements or questions.

(4) The notice of hearing shall:

(a) Conform to all relevant state and local laws.

(b) Describe the agenda to be considered at the public hearing.

(c) Indicate that copies of all franchise applications are available for public inspection during normal business hours at a place to be specified in the notice.

D. Village discretion. The Village, at its discretion, may reject any application for a franchise. In awarding a franchise, the Village shall allow the applicant's cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area; may require adequate assurance that the cable operator will provide adequate public, educational and governmental access channel capacity, facilities or financial support; and may require adequate assurance that the cable operator has the financial, technical or legal qualifications to provide cable service.

#### **§56-49. Changes in Applicable Law.**

With respect to the terms of Gross Annual Revenue (or Gross Revenue) and Cable Service as defined herein at Section 56-3, in the event of any determination or ruling expanding the scope of, inclusion in or similarly interpreting Gross Annual Revenue (or Gross Revenue) and Cable Service by any administrative, legislative, judicial or quasi judicial Person(s), agency(ies) or body(ies) having jurisdiction over the foregoing so as to increase or potentially increase or expand the Gross Receipts or Persons to which the tax hereunder may apply, and thus a tax due the Village as a result thereof, then from the effective date of such determination or ruling, the definitions of Gross Annual Revenue (or Gross Revenue) and Cable Service shall be deemed amended to include same. If such determination or ruling is following an appeal, review or similar proceeding, the effective date shall be the date which such appellate or review decision establishes explicitly or otherwise by operation of law, as the effective date upon and from which such provision or provisions shall apply.

#### **§56-50. Severability.**

If any clause, sentence, paragraph, subdivision, section or part of this local law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstances is adjudged invalid, illegal or unconstitutional by any court of competent jurisdiction, such order or judgment shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this local law or the application thereof to other persons or circumstances. Further, in adjudging such invalid provision, the court or other person(s) or body having jurisdiction over the parties or subject matter shall attempt to modify same to a provision which is not invalid, illegal or unconstitutional and which best achieves the intent of the invalid provision.

**Section Two (2). EFFECTIVE DATE.**

This Local Law shall take effect upon its filing in the office of the Secretary of State and shall apply to the assessment rolls prepared on the basis of taxable status dates occurring on or after such date.

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

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

I hereby certify that the local law annexed hereto, designated as Local Law No. 3 of 2016 of the ~~(County)~~(City)(Town)(Village) of Minoa was duly passed by the Village Board of Trustees of the Village of Minoa on September 7, 2016 in accordance with the applicable provisions of law.

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

~~I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_, 19\_\_, and was (approved)(not approved)(repassed~~

~~\_\_\_\_\_ (Name of legislative Body) disapproval) by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_, 199\_\_~~  
~~(Elective Chief Executive Officer\*)~~

~~in accordance with the applicable provisions of law.~~

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 199\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_, 19\_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_, 19\_\_. Such local law was \_\_\_\_\_

*(Elective Chief Executive Officer\*)*

to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_, 19\_\_, in accordance with the applicable provisions of law.

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

~~I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_, 19\_\_, and was (approved)(not approved)(repassed after~~

~~\_\_\_\_\_ (Name of Legislative Body)~~

~~disapproval) by the \_\_\_\_\_ on \_\_\_\_\_, 19\_\_ Such local law was subject to~~  
~~(Elective Chief Executive Officer\*)~~

~~permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_, 19\_\_, in accordance with the applicable provisions of law.~~

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

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

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

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

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

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

  
\_\_\_\_\_  
Lisa DeVona, Village Clerk-Treasurer  
Date: September 13, 2016

(Seal)

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

STATE OF NEW YORK  
COUNTY OF ONONDAGA

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

  
\_\_\_\_\_  
Signature  
Courtney M. Hills

Attorney for the Village  
Title  
County  
City of Minoa  
Town Village

Date: September 12, 2016

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

