

CHAPTER 8

CABLE TELEVISION

ARTICLE I – GENERALLY

8-1-1 TERMS. For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

(A) **"Basic Cable"** is the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals.

(B) **"Cable Act"** means Title VI of the Communications Act of 1984, as amended.

(C) **"Cable Services"** shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(D) **"Cable System"** shall mean the Grantee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Video Service which includes video programming and which is provided to multiple Subscribers within the Service Area.

(E) **"FCC"** means Federal Communications Commission, or successor governmental entity thereto.

(F) **"Franchising Authority"** means the City of Nokomis, Illinois.

(G) **"Grantee"** means Consolidated Communications Network Services, Inc., a corporation, or the lawful successor, transferee, or assignee thereof.

(H) **"Gross Revenue"** means subscriber and non-subscriber revenues received by the Grantee from the operation of the Cable System. Subscriber revenues include revenues from basic cable service and optional premium, pay per-channel or pay-per-program service; customer equipment and installation charges, disconnection and reconnection charges. Non-subscriber revenues include advertising sales less agency fees, home shopping receipts, revenues from equipment rental and associated personnel fees. Gross revenues shall NOT include revenues from internet service, deposits, refunds, credits, bad debt, the FCC User Fee, Franchise Fees and any tax, fee or assessment of general applicability collected by the Grantee from Subscribers for pass-through to a government agency.

(I) **"Person"** means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

(J) **"Public Way"** shall mean grounds owned by the Franchising Authority, the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System.

(K) **"Service Area"** means the present boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in **Section 8-1-14**.

(L) **"Standard Installation"** is defined as **125 feet** from the nearest telephone serving terminal to the Subscriber's terminal.

(M) **"Subscriber"** means a Person who lawfully receives Cable Service of the Cable System with the Grantee's express permission.

8-1-2 GRANT. The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, over,

under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System for the transmission and distribution of Cable Services, data services, information and other communications services or for any other lawful purposes.

8-1-3 OTHER ORDINANCES. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Neither party may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control.

8-1-4 FAVORED NATIONS. The Franchising Authority shall not authorize or permit any Person providing video programming services and/or Cable Services to enter into the Franchising Authority's Public Ways in any part of the Service Area on terms or conditions more favorable or less burdensome to such Person than those applied to the Grantee pursuant to this Franchise. A Franchising Authority may require insurance or surety in excess of that required under this Franchise in recognition of such operator being either a new entrant or because of the construction requirements specified in that operator's agreement with the Franchising Authority.

8-1-5 TERM. The Franchise granted hereunder shall commence on the effective date of the Franchise as set forth in **Section 8-1-50**. It shall terminate **December 31, 2015**, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

8-1-6 CONDITIONS OF OCCUPANCY. The Cable System installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

8-1-7 RESTORATION OF PUBLIC WAYS. If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

8-1-8 RELOCATION FOR THE FRANCHISING AUTHORITY. Upon its receipt of reasonable advance written notice, to be not less than **ten (10) business days**, the Grantee shall protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of public structures or improvements which are not used to compete with the Grantee's services. The Grantee shall in all cases have the right of abandonment of its property.

8-1-9 RELOCATION FOR A THIRD PARTY. The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided:

- (A) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and
- (B) the Grantee is given reasonable advance written notice to prepare for such changes.

For purposes of this Section, "reasonable advance written notice" shall be no less than **thirty (30) business days** in the event of a temporary relocation, and no less than **ninety (90) days** for a permanent relocation.

8-1-10 **TRIMMING OF TREES AND SHRUBBERY.** The Grantee shall have the authority to trim trees or other nature growth in order to access and maintain the Cable System, provided same be done in a workman like manner without unnecessary damage to the growth.

8-1-11 **SAFETY REQUIREMENTS.** Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations and the National Electric Safety Code.

8-1-12 **UNDERGROUND CONSTRUCTION.** In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain its Cable System underground. Nothing contained in this Section shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances.

8-1-13 **ACCESS TO OPEN TRENCHES.** The Franchising Authority agrees to include the Grantee in the platting process for any new subdivision. At a minimum, the Franchising Authority agrees to require as a condition of issuing a permit for open trenching to any utility or developer that (a) the utility or developer give the Grantee at least **ten (10) days** advance written notice of the availability of the open trench, and (b) that the utility or developer provide the Grantee with reasonable access to the open trench. Notwithstanding the foregoing, the Grantee shall not be required to utilize any open trench.

8-1-14 **REQUIRED EXTENSIONS OF THE CABLE SYSTEM.** Grantee agrees to provide Cable Service to all residences in the Service Area that meet the following criteria. If a Grantee receives a request for Cable service from a potential Subscriber in an area unserved by Grantee which is directly adjacent to Grantee's existing distribution facilities and there are at least **five (5) residences** within **one-quarter (1/4) mile** from the Grantee's Cable System within such unserved area, Grantee shall extend its Cable System to such Subscribers at no cost other than the normal Installation fees. The Grantee shall have the right, but will not be obligated, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service, into any annexed area which is not adjacent to the present Service Area as described above, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.

8-1-15 **SUBSCRIBER CHARGES FOR EXTENSIONS OF THE CABLE SYSTEM.**
(A) No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of **Section 8-1-14** above, the Grantee shall only be required to extend the Cable System to Subscriber(s) in that area if the Subscriber(s) are willing to share the capital costs of extending the Cable System. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of

residences per 1320 cable-bearing strand feet from the Grantee's trunk or distribution cable, and whose denominator equals **five (5)**. Subscribers who request service hereunder shall bear the remaining cost to extend such Cable System on a *pro rate* basis. For purposes of this Section, such Subscriber(s) shall be referred to as "Original Subscriber(s)". The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard/non-Standard Installation charges to extend the Cable System from the tap to the residence.

(B) In the event that within the first **sixty (60) months** subsequent to the cost contributions made by the Original Subscriber(s) described above, such area reaches the density requirements for service specified in **Section 8-1-14**, then the Original Subscriber(s) shall receive reimbursement from Grantee of such cost contribution as follows:

- 90% if within 12 months
- 80% if within 24 months
- 70% if within 36 months
- 60% if within 48 months
- 50% if within 60 months

(C) **Commercial and Industrial Areas.** The Grantee will extend the Cable System and make service available to commercial and industrial areas within the Service Area at Grantee's discretion based upon the technical and economic feasibility of any such extension.

8-1-16 CABLE SERVICE TO PUBLIC BUILDINGS. The Grantee, shall continue to provide without charge, a Standard Installation and one outlet of Basic Cable to those administrative buildings owned and occupied by the Franchising Authority, fire station(s), police station(s), and K-12 public school(s) that are passed by its Cable System. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from the Grantee. The Cable Service provided shall not be used for commercial purposes, and such outlets shall not be located in areas open to the public. The Franchising Authority shall take reasonable precautions to prevent any inappropriate use of the Grantee's Cable System or any loss or damage to Grantee's Cable System. The Franchising Authority shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this Section. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the Franchising Authority or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation. If additional outlets of Basic Cable are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.

8-1-17 EMERGENCY USE. The Emergency Alert System ("EAS") EAS shall be operated in accordance with FCC regulations. The Franchising Authority shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the Franchising Authority shall hold the Grantee, its employees, officers and assigns harmless from any claims arising out of use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.

8-1-18 SYSTEM BUILD. The Grantee agrees that in consideration of the Franchising Authority, no later than **thirty-six (36) months** from the Effective Date of this Agreement, Grantee will build-out its Cable System to requirements in **Section 8-1-14** and **8-1-15** above. The Cable System will have capabilities to provide a minimum of **one hundred (100) channels** providing a diverse selection of programming options and will insure that the system will be flexible and adaptable to future technological development. The Grantee may modify the design of the system and its use of transmission technology as the build progresses. In the event of any delay in obtaining permits, approvals or licenses to perform required make ready work ("Permits") resulting from the failure or delay

by the Franchising Authority or, any other regulatory authority, railroad, common carrier, electric utility, telecommunications carrier or local exchange carrier, to issue such permits upon a timely basis, Grantee's performance of the build will be modified as necessary.

8-1-19 **TECHNICAL STANDARDS.** The Cable System will be operated throughout the Term of the Franchise in accordance with the technical standards established by the Federal Communications Commission.

8-1-20 **STAND-BY POWER.** Subsequent to completion of the upgrade, Grantee shall provide stand-by power at the headend facility. Such stand-by power shall become activated automatically upon the failure of normal power supply.

8-1-21 **PARENTAL LOCK OUT.** In order to restrict the viewing of programming in accordance with Section 6.24 of the Cable Act, upon the request of a subscriber, a cable operator shall provide (by sale or lease) a device by which the subscriber can prohibit viewing of a particular cable service during periods selected by that subscriber.

8-1-22 **CUSTOMER SERVICE STANDARDS.** Grantee will comply with the customer service standards promulgated by the FCC in accordance with Section 632 of the Cable Act throughout the Term of this Franchise for as long as such standards are in effect. Such standards are attached hereto as Exhibit "A".

8-1-23 **GOVERNMENT ACCESS CHANNEL.** Upon completion of the system build described herein, the Grantee will provide the Franchising Authority with a channel or media area dedicated through the Term of this Agreement for government Access use. Grantee will further provide any necessary headend equipment to activate the Government Access Channel or Media Area for on-screen provision of public information.

8-1-24 **BROAD CATEGORIES OF SERVICE TO BE PROVIDED.** The Franchise Authority acknowledges that programming on Community Cable Systems has generally been deregulated by federal law. However, Grantee shall provide on the Cable System all Over-the-Air broadcast stations required to be carried by federal law or FCC regulations. Grantee shall provide a wide range and diversity of programming for Subscribers residing within the Service Area. Categories of programming comparable in quality, mix, and level to be provided by Grantee to Subscribers shall include, but not limited to the following:

- (A) Local, regional, national and international news programs.
- (B) Local, regional, national sports and sporting events.
- (C) Local, regional, and national weather.
- (D) Local origination channel when, and if, requested by the Franchise Authority for the exclusive use of and programming by the Federal Authority.
- (E) Religious programming.
- (F) Music programming.
- (G) Educational programming.
- (H) Public affairs and public service programming.
- (I) Movies.
- (J) General entertainment programming.
- (K) Cultural and literary-related programming.
- (L) Children's programming.

- (M) Business-related programming.
- (N) To the extent not preempted by federal law, Over the Air Broadcast stations.

8-1-25 **OBSCENE PROGRAMMING.** Grantee shall comply with all federal laws and regulations concerning the cablecasting of obscene programming.

8-1-26 **FRANCHISE FEE.**

(A) As rent for use of Public Ways within the municipality, the Grantee shall pay to the Franchising Authority a franchise fee of **three percent (3%)** of annual Gross Revenues (as defined in **Section 8-1-1** of this Chapter). In accordance with the Cable Act, the **twelve (12) month** period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. The franchise fee payment shall be due annually and payable within **ninety (90) days** after the close of the preceding calendar year. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation.

(B) Limitation on Franchise Fee Actions. The period of limitation for recovery by the Franchising Authority of any franchise fee payable hereunder shall be **three (3) years** from the date on which payment by the Grantee is due to the Franchising Authority.

8-1-27 **RATES AND CHARGES.** The Franchising Authority acknowledges that it may NOT regulate rates and charges that have been deregulated by federal law.

8-1-28 **RENEWAL OF FRANCHISE.**

(A) The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the renewal provisions of federal law.

(B) In addition to the procedure set forth in the Cable Act, the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the then current Franchise term. The Franchising Authority further agrees that such assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal pursuant to the Cable Act and complete renewal of the Franchise prior to expiration of its term.

(C) Notwithstanding anything to the contrary set forth in the Section, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise while affording the public appropriate notice and opportunity to comment in accordance with the provisions of federal law, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.

(D) The grantee and the Franchising Authority consider the terms set forth in this Section to be consistent with the express renewal provisions of the Cable Act.

8-1-29 **CONDITIONS OF SALE.** If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given at least **twelve (12) months** to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during this period. If, at

the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the **twelve (12) month** period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee.

8-1-30 **TRANSFER OF FRANCHISE.** The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without prior written notice to the Franchising Authority. No such notice shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness.

8-1-31 **BOOKS AND RECORDS.** The Grantee agrees that the Franchising Authority, upon **thirty (30) days** written notice to the Grantee and no more than once annually may review such of its books and records at the Grantee's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the subsection of the Franchise which is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, the Grantee may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's representative to view the books and records at the appropriate location. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than **three (3) years**. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate which is not providing Cable Service in the Service Area. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

8-1-32 **INSURANCE REQUIREMENTS.** The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance in the amount of **One Million Dollars (\$1,000,000.00)** combined single limit for bodily injury and property damage. The Franchising Authority shall be designated as an additional insured. Such insurance shall be noncancellable except upon **thirty (30) days** prior written notice to the Franchising Authority. Upon written request, the Grantee shall provide a Certificate of Insurance showing evidence of the coverage required by this Section.

8-1-33 **INDEMNIFICATION.** The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its Cable System in the Service Area provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify the Franchising Authority with **ten (10) days** of receipt of a claim or action pursuant to this Section. Notwithstanding the foregoing, the Grantee shall not indemnify the Franchising Authority for any damages, liability or claims resulting from the willful misconduct or negligence of the Franchising Authority.

8-1-34 **SCHEDULE FOR EVALUATION.** The Franchising Authority shall evaluate performance of the Grantee for purposes of determining compliance with the Franchise. At the request of the Franchising Authority, the Franchising Authority and the Grantee shall hold performance evaluation sessions within **ninety (90) days** of the third, fifth and seventh anniversary dates of the Grantee's award of the Franchise. Evaluation meetings shall be open to the public. The Franchising Authority shall be responsible for notifying the Grantee, in writing, at least **sixty (60) days** in advance, of specified performance evaluation sessions. The Franchising Authority may hold special evaluation sessions at any time during the term of the Franchise at the request of the Franchising Authority or the Grantee.

8-1-35 **INFORMATION REQUIRED OF GRANTEE FOR EVALUATION.** Upon request by the Franchising Authority during the evaluation of Grantee's performance, Grantee shall cooperate fully with the Franchising Authority and provide such documents, records, schedules, logs, reports, memoranda, ledgers, and other information which the Franchising Authority may request in order that a reasonable review of the Grantee's compliance with the Franchise can be performed.

8-1-36 **TOPICS FOR DISCUSSION DURING THE EVALUATION PROCESS.** Topics which may be discussed during the evaluation process or at evaluation sessions shall include any aspect of Grantee's compliance with the Franchise Agreement including but not limited to: Franchise Fees, penalties, customer service, system performance, extensions of Cable system, the Cable System upgrade and insurance requirements. The Franchising Authority shall provide Grantee with a listing of topics for discussion **sixty (60) days** prior to the date of a scheduled evaluation session.

8-1-37 **PUBLIC NOTICE.** Franchise evaluation sessions and meetings shall be conducted in accordance with the Illinois Open Meeting Act.

8-1-38 **FRANCHISE EVALUATION – CABLE SYSTEM TESTING.** In the event that the evaluation of the Grantee's performance under the Franchise reveals evidence indicating noncompliance with the Franchise, the Franchising Authority may invoke the enforcement provisions set forth in this Franchise.

8-1-39 **COSTS RELATED TO FRANCHISE PERFORMANCE EVALUATION.** The costs of conducting Franchise Performance Evaluation sessions shall be the responsibility of the party that incurs the costs. Such costs may include, but are not limited to, staff time and resources, reasonable fees for professional cable television consultants, engineering personnel, accountants, and legal assistance.

8-1-40 **NOTICE OF VIOLATION.** In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, the Franchising Authority shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

8-1-41 **THE GRANTEE'S RIGHT TO CURE OR RESPOND.** The Grantee shall have **thirty (30) days** from receipt of the notice described in **Section 8-1-40**:

- (A) to respond to the Franchising Authority, contesting the assertion of noncompliance, or
- (B) to cure such default, or

(C) in the event that, by the nature of default, such default cannot be cured within the **thirty (30) day** period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

8-1-42 PUBLIC HEARING. In the event that the Grantee fails to respond to the notice described in **Section 8-1-40** pursuant to the procedures set forth in **Section 8-1-40**, or in the event that the alleged default is not remedied within **thirty (30) days** or the date projected pursuant to **Section 8-1-41** above, if it intends to continue its investigation into the default, then the Franchising Authority shall schedule a public hearing. The Franchising Authority shall provide the Grantee at least **ten (10) days** prior written notice of such hearing, which specified the time, place and purpose of such hearing, and provide the Grantee the opportunity to be heard.

8-1-43 ENFORCEMENT. Subject to applicable federal and state law, in the event the Franchising Authority, after the hearing set forth in **Section 8-1-42**, determines that the Grantee is in default of any provision of the Franchise, the Franchising Authority may:

(A) See specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

(B) Commence an action at law for monetary damages or seek other equitable relief;
or

(C) In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise in accordance with **Section 8-1-44**.

8-1-44 REVOCATION. Should the Franchising Authority seek to revoke the Franchise after following the procedures set forth in **Sections 8-1-40 – 8-1-43** above, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have **ninety (90) days** from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least **thirty (30) days** prior to such public hearing, written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees, or consultants of the Franchising Authority, to compel the testimony of other persons as permitted by law, and to question witnesses. A complete verbatim record and transcript shall be made of such hearing at the expense of Grantee.

Following the hearing, the Franchising Authority shall determine whether or not the Franchise shall be revoked. If the Franchising Authority determines that the Franchise shall be revoked, the Franchising Authority shall promptly provide Grantee with its decision in writing. The Grantee may appeal such determination of the Franchising Authority to an appropriate court, which shall have the power to review the decision of the Franchising Authority. Grantee shall be entitled to such relief, as the court finds appropriate. Such appeal must be taken within **sixty (60) days** of Grantee's receipt of the determination of the Franchising Authority.

The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

8-1-45 **FORCE MAJEURE.** The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

Furthermore, the parties hereby agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Franchising Authority and/or Subscribers.

8-1-46 **ACTIONS OF PARTIES.** In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

8-1-47 **ENTIRE AGREEMENT.** This Franchise constitutes the entire agreement between the Grantee and the Franchising Authority and supersedes all other prior understandings and agreements oral or written. Any amendments to this Franchise shall be mutually agreed to in writing by the parties.

8-1-48 **NOTICE.** Unless expressly or otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: (a) upon receipt when hand delivered with receipt/acknowledgement, (b) upon receipt when sent certified, registered mail, (c) within **five (5)** business days after having been posted in the regular mail or (d) the next business day if sent by express mail or overnight air courier.

The notices or responses to the Franchising Authority shall be addressed as follows:

City of Nokomis
22 S. Cedar
Nokomis, IL 62075
Attn: City Clerk

The notices or responses to the Grantee shall be addressed as follows:

Michael Shultz
Vice President, Regulatory & Public Policy
Illinois Consolidated Telephone Company
350 S. Loop 336W
Conroe, TX 77304
Office: (936) 788-7414
Fax: (936) 788-1229

With a copy to: Consolidated Communications Network Service, Inc.
121 South 17th Street
Mattoon, IL 61938
Attn: Video Product Manager

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this Section.

8-1-49 **DESCRIPTIVE HEADINGS.** The captions to Sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

8-1-50 **SEVERABILITY.** If any Section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

8-1-51 **EFFECTIVE DATE.** The effective date of this Franchise is **October 10, 2005**, pursuant to the provisions of applicable law. This Franchise shall expire on **December 31, 2015**, unless extended by the mutual agreement of the parties.

(Ord. No. 2005-927; 10-10-05)

ARTICLE II – SERVICE PROVIDER FEE

8-2-1 ANNUAL SERVICE PROVIDER. Any holder providing cable service or video service in the City shall pay to the City an amount equal to **five percent (5%)** of annual gross revenues derived from the provision of cable or video service to households located within the City. The **twelve (12) month** period for the computation of the service provider fee shall be a calendar year.

8-2-2 PAYMENT DUE QUARTERLY. The service provider fee payment shall be due quarterly and payable within **forty-five (45) days** after the close of the preceding calendar quarter. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation. If mailed, the fee shall be considered paid on the date it is postmarked.

8-2-3 GROSS REVENUE DEFINED. For purposes of the calculation of the service provider fee, “gross revenues” shall mean consideration of any kind or nature, including, without limitation, cash, credits, property, and in-kind contributions received by the cable service provider or video service provider for the operation of its cable system to provide cable or video service within the City, including the following:

- (A) recurring charges for cable service or video service;
- (B) event-based charges for cable service or video service, including, but not limited to, pay-per-view and video-on-demand charges;
- (C) rental of set-top boxes and other cable service or video service equipment;
- (D) service charges related to the provision of cable service or video service, including, but not limited to, activation, installation, and repair charges;
- (E) administrative charges related to the provision of cable service or video service, including but not limited to service order and service termination charges;
- (F) late payment fees or charges, insufficient funds check charges, and other charges assessed to recover the costs of collecting delinquent payments;
- (G) a pro rata portion of all revenue derived by the cable system from advertising or for promotion or exhibition of any products or services; and
- (H) a pro rata portion of compensation derived by the cable system from the promotion or exhibition of any products or services sold by “home shopping” channels or similar services carried by the cable system.

8-2-4 GROSS REVENUES NOT INCLUDED. For purposes of the calculation of the service provider fee, “gross revenues” shall not include:

- (A) revenues not actually received, even if billed, such as bad debt;
- (B) the service provider fee or any tax, fee or assessment of general applicability;
- (C) any revenues received from services not classified as cable service or video service, including, without limitation, revenue received from telecommunications services, voice over internet protocol (VoIP) services, information services, the provision of directory or Internet advertising, or any other revenues attributed by the holder to noncable service or non-video service in accordance with the holder’s books and records and records kept in the regular course of business and any applicable laws, rules, regulations, standards, or orders;
- (D) security deposits collected from subscribers, or
- (E) any amounts paid by subscribers to “home shopping” or similar vendors for merchandise sold through any home shopping channel offered as part of the cable service or video service.

8-2-5 **SEVERABILITY.** If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder thereof, which remainder shall remain and continue in full force and effect.

8-2-6 **CONFLICT.** All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

(Ord. No. 2052; 08-13-18)

EXHIBIT "A"

FCC CUSTOMER SERVICE OBLIGATIONS

Effective **July 1, 1993**, a cable operator shall be subject to the following customer service standards:

- A. Cable system office hours and telephone availability.
1. The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.
 - a. Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.
 - b. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.
 2. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed **thirty (30) seconds** when the connection is made. If call needs to be transferred, transfer time shall not exceed **thirty (30) seconds**. These standards shall be met no less than **ninety percent (90%)** of the time under normal operating conditions, measured on a quarterly basis.
 3. The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
 4. Under normal operating conditions, the customer will receive a busy signal less than **three percent (3%)** of the time.
 5. Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.
- B. Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than **ninety-five percent (95%)** of the time measured on a quarterly basis:
1. Standard installations will be performed within **seven (7) business days** after an order has been placed. "Standard" installations are those that are located up to **one hundred twenty-five (125) feet** from the existing distribution system.
 2. Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than **twenty-four (24) hours** after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.
 3. The "appointment window" alternative for installations, service calls, and other installation activities will be either a specific time or, at maximum, a **four (4) hour** time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)
 4. An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
 5. If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.
- C. Communications Between Cable Operators and Cable Subscribers.
1. Notifications to Subscribers.

- a. The cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:
 - i. Products and services offered
 - ii. Prices and options for programming services and conditions of subscription to programming and other services
 - iii. Installation and service maintenance policies
 - iv. Instructions on how to use the cable service
 - v. Channel positions of programming carried on the system; and,
 - vi. Billing and complaint procedures, including the address and telephone number of the local Franchise Authority's cable office.
 - b. Customers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers a minimum of **thirty (30) days** in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers **thirty (30) days** in advance of any significant changes in the other information required by the preceding paragraph.
2. Billing.
- a. Bills will be clear, concise and understandable. Bills must be fully itemized with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
 - b. In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within **thirty (30) days**.
3. Refunds. Refund checks will be issued promptly, no later than either;
- a. the customer's next billing cycle following resolution of the request or **thirty (30) days**, whenever is earlier, or
 - b. the return of equipment supplied by the cable operator if service is terminated.
4. Credits. Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.
- D. Definitions.
1. Normal Business Hours. The term "normal business hours" means those hours during which most similar businesses in the community are open to service customers. In all cases, "normal business hours" must include some evening hours at least **one (1) night** per week and/or some weekend hours.
 2. Normal Operating Conditions. The term "normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.
 3. Service Interruption. The term "service interruption" means the loss of picture or sound on one or more cable channels.