

CHAPTER 8

CABLE TELEVISION

ARTICLE I – CABLE AGREEMENT

8-1-1 **TERMS.** For the purpose of this Article, 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) **“Affiliate”** means an entity which owns or controls, is owned or controlled by, or is under common ownership with Grantee.

(B) **“Basic Cable”** is the tier of service regularly provided to all subscribers that includes the retransmission of local broadcast television signals.

(C) **“Cable Act”** means the Cable Communications Policy Act of 1984, as amended.

(D) **“Cable Service”** means:

- (1) the one-way transmission to subscribers of video programming or other programming service, and
- (2) subscriber interaction, if any, which is required for the selection of such Video Programming or any other lawful communication service.

(E) **“Cable System”** means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment or other communications equipment that is designed to provide Cable Service and other service to subscribers.

(F) **“FCC”** means Federal Communications Commission, or successor governmental entity thereto.

(G) **“Franchise”** shall mean the initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, or otherwise, which authorized construction and operation of the Cable System for the purpose of offering Cable Service or other service to Subscribers.

(H) **“Franchising Authority”** means the City of Murphysboro or the lawful successor, transferee, or assignee thereof.

(I) **“Grantee”** means TCI of Illinois, Inc., or the lawful successor, transferee, or assignee thereof.

(J) **“Gross Revenues”** mean the monthly Cable Service revenues received by Grantee from Subscribers of the Cable System; provided, however, that such phrase shall not include:

- (1) revenues received from any national advertising carried on the Cable System;

- (2) any taxes on Cable Service thereof by any governmental unit or agency, and which are collected by the Grantee on behalf of such governmental unit or agency.

(K) **“Person”** means an individual, partnership, association, joint stock company, trust corporation, or governmental entity.

(L) **“Public Way”** shall mean 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 and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing or transmitting Grantee’s Cable Service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

(M) **“Service Area”** means the present municipal boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means.

(N) **“Service Tier”** means a category of Cable Service or other services, provided by Grantee and for which a separate charge is made by Grantee.

(O) **“Subscriber”** means a person or user of the Cable System who lawfully receives Cable Services or other service therefrom with Grantee’s express permission.

(P) **“Video Programming”** means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

ARTICLE II – GRANT OF FRANCHISE

8-2-1 **GRANT.** The City hereby grants to Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System and offer Cable Service and other services 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, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System.

8-2-2 **TERM.** The Franchise granted pursuant to this Ordinance shall be for an initial term of **twelve (12) years** from the effective date of the Franchise as set forth in **Section 8-2-3**, unless otherwise lawfully terminated in accordance with the terms of this Ordinance.

8-2-3 **ACCEPTANCE; EFFECTIVE DATE.** Grantee shall accept the Franchise granted pursuant hereto by signing this Ordinance and filing same with the City Clerk or other appropriate official or agency of the Franchising Authority within **sixty (60) days** after the passage and final adoption of this Ordinance. Subject to the acceptance by Grantee, the effective date of this Ordinance shall be the **sixtieth (60th) day** after its passage and final adoption.

8-2-4 **FAVORED NATIONS.** In the event the Franchising Authority enters into a franchise, permit, license, authorization, or other agreement of any kind with any other person or entity other than Grantee to enter into the Franchising Authority's streets and public ways for the purpose of constructing or operating a cable system or providing cable service to any part of the service area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

ARTICLE III – STANDARDS OF SERVICE

8-3-1 **CONDITIONS OF STREET OCCUPANCY.** All transmission and distribution structures, poles, other lines, and equipment installed or erected 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 said Public Ways.

8-3-2 **RESTORATION OF PUBLIC WAYS.** If during the course of Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by Grantee, it shall, at its expense, replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance. Restoration of City streets must be approved by the City Street Superintendent.

8-3-3 **RELOCATION AT REQUEST OF FRANCHISING AUTHORITY.** Upon its receipt of reasonable advance notice, not to be less than **five (5) business days**, the Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of the Grantee when lawfully required by 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 structures or improvements by the Franchising Authority; but, the Grantee shall in all cases have the right of abandonment of its property. If public funds are available to any company using such street, easement, or right-of-way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the Grantee. Such funds shall be made available to the Grantee on the pro-rata basis in an amount equal to the amount afforded the other utilities for such work.

8-3-4 **RELOCATION AT REQUEST OF THIRD PARTY.** The Grantee shall, on the request of any person holding a building moving permit issued by the Franchising Authority, temporarily raise or lower its wires to permit the moving of such building, provided:

- (A) the expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Grantee, making such payment in advance; and
- (B) the Grantee is given not less than **ten (10) business days** advance written notice to arrange for such temporary wire changes.

8-3-5 **TRIMMING OF TREES AND SHRUBBERY.** The Grantee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Service Area so as to prevent branches from coming in contact with the Grantee's wires, cables, or other equipment. Grantee shall be permitted to charge persons who own, or are responsible for, such trees or natural growth for the cost of such trimming, provided that similar charges are assessed by and paid to the public utilities or the Franchising Authority for tree trimming. The Grantee shall reasonably compensate the Franchising Authority or property owner for any damages caused by such trimming, or shall, in its sole discretion and at its own cost and expense, reasonably replace all trees and shrubs damaged as a result of any construction of the System undertaken by Grantee.

8-3-6 **USE OF GRANTEE'S EQUIPMENT BY FRANCHISING AUTHORITY.** Subject to any applicable state or federal regulations or tariffs, the Franchising Authority shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the Grantee in any Public Way; provided that:

(A) such use by the Franchising Authority does not interfere with a current or future use by the Grantee;

(B) the Franchising Authority holds the Grantee harmless against and from all claims, demands, costs, or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits, including, but not limited to, reasonable attorneys' fees and costs; and

(C) at Grantee's sole discretion, the Franchising Authority may be required either to pay a reasonable rental fee or otherwise reasonably compensate Grantee for the use of such poles, conduits, or equipment; provided, however, that Grantee agrees that such compensation or charge shall not exceed those paid by it to public utilities pursuant to the applicable pole attachment agreement, or other authorization, relating to the Service Area.

8-3-7 **SAFETY REQUIREMENTS.** Construction, installation, and maintenance of the Cable System shall be performed in an orderly or workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state, and local regulations. The Cable System shall not endanger or interfere with the safety of persons or property in the Service Area.

8-3-8 **AERIAL AND 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 all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities providing telephone communications, and electric services are both aerial and underground, Grantee shall have the sole discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing contained in this **Section 8-3-8** shall require Grantee to construct, operate, and maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, or other related equipment. Notwithstanding anything to the contrary contained in this **Section 8-3-8**, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of this Ordinance, Grantee shall only be required to construct, operate, and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground. The Grantee will build underground unless the Franchising Authority given the Grantee a waiver for aerial construction.

8-3-9 **REQUIRED EXTENSIONS OF SERVICE.** Grantee is hereby authorized to extend the Cable System as necessary, as desirable, or as required pursuant to the terms hereof within the Service Area. Whenever Grantee shall receive a request for service from at least **six and one-quarter (6.25) Subscribers** within 1320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for system extension, other than the usual connection fees for all Subscribers; provided that such extension is technically feasible, and if it will not adversely affect the operation, financial condition, or market development of the Cable System, or as provided for under **Section 8-3-10** of this Ordinance.

8-3-10 **SUBSCRIBER CHARGES FOR EXTENSIONS OF SERVICE.** No Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a Subscriber's request to locate his cable drop underground, existence of more than **one hundred fifty (150) feet** of distance from distribution cable to connection of service to Subscribers, or a density of less than **six and one-quarter (6.25) Subscribers** per 1320 cable-bearing strand feet of trunk or distribution cable, Cable Service or other service shall

be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by Grantee and Subscribers in the area in which Cable Service may be expanded, Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of potential Subscribers per 1320 cable-bearing strand feet of its trunks or distribution cable, and whose denominator equals **six and one-quarter (6.25) Subscribers**. Potential Subscribers will bear the remainder of the construction and other costs on a pro-rata basis. Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance.

8-3-11 **SERVICE TO PUBLIC BUILDINGS.** The Grantee shall provide without charge **one (1) outlet** of Basic Service to the Franchising Authority's office building(s), fire station(s), police station(s), and public school building(s) that are passed by its Cable System. The outlets of Basic Service shall not be used to distribute or sell Cable Services in or throughout such buildings; nor shall such outlets be located in common or public areas open to the public. Users of such outlets shall hold Grantee harmless from any and all liability or claims arising out of their use of such outlets, including but not limited to, those arising from copyright liability. Notwithstanding anything to the contrary set forth in this **Section 8-3-11**, the Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said buildings or premises exceeds **one hundred fifty (150) cable feet**, unless it is technically feasible and so long as it will not adversely affect the operation, financial condition, or market development of the Cable System to do so, or unless the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of **one hundred fifty (150) cable feet**. In the event that additional outlets of Basic Service are provided to such buildings, the building owner shall pay the usual installation fees associated therewith, including, but not limited to, labor and materials. Upon request of Grantee, the building owner may also be required to pay the service fees associated with the provision of Basic Service and the additional outlets relating thereto.

8-3-12 **EMERGENCY OVERRIDE.** Within **six (6) months** of the signing of the franchise the Grantee agrees to provide to the Franchising Authority or their designee equipment to override the audio portion of the Grantee's system. Such equipment shall be used by the Franchisee or their designee to override the audio portion of the Grantee's system to provide emergency or disaster

information and instructions. The Franchising Authority shall hold the Grantee, its agents, employees, officers and assigns hereunder, harmless for any claims arising out of emergency use of its facilities by the Franchising Authority, including but not limited to reasonable attorneys fees.

8-3-13 **REBUILD.** Within the first **three (3) years** of this Franchise, Grantee agrees to undertake and complete an upgrade of the Cable TV system which shall include fiber optic technology. Upon completion the Cable TV system shall have a capacity of **seventy-two (72) channels.**

8-3-14 **CUSTOMER SERVICE OBLIGATIONS.** The Grantee agrees to comply with the Customer Service Obligations set forth in Part 76.309 of the FCC Rules and Regulations. In the event the Grantee fails to comply with the Customer Service Obligations set forth in Part 76.309, the Franchisee shall provide the Grantee notice and opportunity to cure pursuant to **Section 8-7-1** and **8-7-2** of this Agreement.

Upon a final determination following notice and opportunity to cure referenced in **Sections 8-7-1** and **8-7-2** of this Agreement, the Grantee fails to resolve the violation, the Franchisee may fine the Grantee **One Hundred Dollars (\$100.00)** per day for each day the violation continues.

ARTICLE IV – REGULATION BY FRANCHISING AUTHORITY

8-4-1 FRANCHISE FEE.

(A) Grantee shall pay to the Franchising Authority a franchise fee equal to **five percent (5%)** of Gross Revenues (as defined in **Section 8-1-1** of this Franchise) received by Grantee from the operation of the Cable System on an annual basis; provided, however, that Grantee may credit against any such payments:

- (1) any tax, fee, or assessment of any kind imposed by Franchising Authority or other governmental entity controlled by the Franchising Authority on a cable operator, or subscriber, or both, solely because of their status as such;
- (2) any tax, fee or assessment of general applicability which is unduly discriminatory against cable operators or subscribers (including any such tax, fee, or assessment imposed, both on utilities and cable operators and their services), and
- (3) any other special tax, assessment, or fee such as a business, occupation, and entertainment tax.

For the purpose of this Section, the **twelve (12) month period** applicable under the Franchise for the computation of the franchise fee shall be a calendar year, unless otherwise agreed to in writing by the Franchising Authority and Grantee. The franchise fee payment shall be due quarterly and payable **sixty (60) days** after the close of the preceding quarter year. The Grantee agrees to provide a statement annually certified by an officer of the Grantee showing the basis for the computation. In no event, shall the franchise fee payments required to be paid by Grantee exceed **five percent (5%)** of Gross Revenues received by Grantee in any **twelve (12) month period**. The City may raise the franchise fee, if so permitted by federal law to **seven percent (7%)** upon **ninety (90) days** advanced written notice to the Grantee and the subscribers. Increases beyond this amount shall be the subject of negotiations with the Grantee.

(B) **Limitation on Franchise Fee Actions.** The period of limitation for recovery of any franchise fee payable hereunder shall be **ten (10) years** from the date on which payment by the Grantee is due. Unless within **ten (10) years** from and after said payment due date the Franchising Authority initiates a lawsuit for recovery of such franchise fees in a court of competent jurisdiction, such recovery shall be barred and the Franchising Authority shall be stopped from asserting any claims whatsoever against the Grantee relating to any such alleged deficiencies.

8-4-2 **RATES AND CHARGES.** The Franchising Authority may regulate rates in the manner and to the extent permitted by Federal law and FCC regulations.

8-4-3 **RENEWAL OF FRANCHISE.** 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 provisions of Section 626 of the Cable Act (as such existed as of the effective date of the Cable Act), unless the procedures and substantive protection set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

In addition to the procedures set forth in said section 626(a), the Franchising Authority agrees to notify Grantee of its preliminary assessments regarding the identity of future cable-related community needs and interests, as well as, the past performance of Grantee under the then current Franchise term. The Franchising Authority further agrees that such a preliminary assessment shall be provided to the Grantee prior to the time that the **four (4) month** period referred to in Subsection (C) of Section 626 is considered to begin. Notwithstanding anything to the contrary set forth in this **Section 8-4-3**, the Grantee and Franchising Authority agree that at any time during the term of the ten current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the Franchising Authority consider the terms set forth in this Section to be consistent with the express provisions of Section 626 of the Cable Act. A reproduction of Section 626 of the Cable Act as such existed as of the effective date of the Cable Act is attached hereto as Schedule 1 and incorporated herein by this reference.

8-4-4 **CONDITIONS OF SALE.** Except to the extent expressly required by federal or state law, if a renewal or extension of 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 a fair market value, determined on the basis of the Cable System valued as a going concern.

Grantee and Franchising Authority agree that in the case of a lawful revocation of the franchise, at Grantee's request, which shall be made in its sole discretion, Grantee shall be given a reasonable opportunity to effectuate a transfer of its Cable System to a qualified third party. The Franchising Authority further agrees that during such period of time, it shall authorize

the Grantee to continue to operate pursuant to the terms of its prior Franchise; however, in no event shall such authorization exceed a period of time greater than **six (6) months** from the effective date of such revocation. If, at the end of that time, Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, Grantee and Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that Grantee's continued operation of its Cable System during the **six (6) month period** shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee. Notwithstanding anything to the contrary set forth in **Section 8-4-4**, neither Franchising Authority nor Grantee shall be required to violate federal or state law.

8-4-5 **TRANSFER OF FRANCHISE.** Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an Affiliate, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of Grantee in the Franchise or Cable System in order to secure indebtedness.

ARTICLE V – COMPLIANCE AND MONITORING

8-5-1 **TESTING FOR COMPLIANCE.** The Franchising Authority may perform technical tests of the Cable System during reasonable times and in a manner which does not unreasonably interfere with the normal business operations of the Grantee or the Cable System in order to determine whether or not the Grantee is in compliance with the terms hereof and applicable state or federal laws. Except in emergency circumstances, such tests may be undertaken only after giving Grantee reasonable notice thereof, not to be less than **two (2) business days**, and providing a representative of Grantee an opportunity to be present during such tests. In the event that such testing demonstrates that the Grantee has substantially failed to comply with a material requirement hereof, the reasonable costs of such tests shall be borne by the Grantee. In the event that such testing demonstrates that Grantee has substantially complied with such material provisions hereof, the cost of such testing shall be borne by the Franchising Authority. Except in emergency circumstances, the Franchising Authority agrees that such testing aggregate, and that the results thereof shall be made available to the Grantee upon Grantees' request.

8-5-2 **BOOKS AND RECORDS.** The Grantee agrees that the Franchising Authority may review such of its books and records, during normal business hours and on a non-disruptive basis, as is reasonably necessary to monitor compliance with the terms hereof. Such records shall include, but shall not be limited to, any public records required to be kept by the Grantee pursuant to the rules and regulations of the FCC. Notwithstanding anything to the contrary set forth herein, Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by the Grantee to it 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.

8-5-3 **REPORTS.** The Grantee agrees to provide at the request of the Franchising Authority a report detailing the total number of service calls for the previous quarter. The report will detail the total number of calls by type. The format of the report shall be one which is compatible with the Grantee's computer billing system and may change from time to time.

ARTICLE VI

INSURANCE, INDEMNIFICATION, AND BONDS OR
OTHER SURETY

8-6-1 **INSURANCE REQUIREMENTS.** Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Comprehensive General Liability Insurance in the amount of **Five Thousand Dollars (\$5,000.00)** combined single limit for bodily injury, and property damage. Said insurance shall designate the Franchising Authority as an additional insured. Such insurance shall be noncancellable except upon **thirty (30) days** prior written notice to the Franchising Authority.

8-6-2 **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, including, but not limited to, reasonable attorney's fees and costs.

8-6-3 **BONDS AND OTHER SURETY.** Except as expressly provided herein, Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence. The Franchising Authority acknowledges that the legal, financial, and technical qualifications of Grantee are sufficient to afford compliance with the terms of the Franchise and the enforcement thereof. Grantee and Franchising Authority recognize that the costs associated with bonds and other surety may ultimately be borne by the Subscribers in the form of increased rates for Cable Services. In order to minimize such costs, the Franchising Authority agrees to require bonds and other surety only in such amounts and during such times as there is a reasonably demonstrated need therefor. The Franchising Authority agrees that in no event, however, shall it require a bond or other related surety in an aggregate amount greater than **Ten Thousand Dollars (\$10,000.00)**, conditioned upon the substantial performance of the material terms, covenants, and conditions of the Franchise. Initially, no bond or other surety will be required. In the event that one is required in the future, the Franchising Authority agrees to give Grantee at least **sixty (60) days** prior written notice thereof stating the exact reason for the requirement. Such reason must demonstrate a change in the Grantee's legal, financial, or technical qualifications which would materially prohibit or impair its ability to comply with the terms of the Franchise or afford compliance therewith.

ARTICLE VII

ENFORCEMENT AND TERMINATION OF FRANCHISE

8-7-1 **NOTICE OF VIOLATION.** In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, it shall notify Grantee in writing of the exact nature of the alleged noncompliance.

8-7-2 **GRANTEE'S RIGHT TO CURE OR RESPOND.** Grantee shall have **thirty (30) days** from receipt of the notice described in **Section 8-7-1**:

- (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.

8-7-3 **PUBLIC HEARING.** In the event that Grantee fails to respond to the notice described in **Section 8-7-1** pursuant to the procedures set forth in **Section 8-7-2**, or in the event that the alleged default is not remedied within **sixty (60) days** after the Grantee is notified of the alleged default pursuant to **Section 8-7-1**, the Franchising Authority shall schedule a public meeting to investigate the default. Such public meeting shall be held at the next regularly scheduled meeting of the Franchising Authority which is scheduled at a time which is no less than **five (5) business days** therefrom. The Franchising Authority shall notify the Grantee of the time and place of such meeting and provide the Grantee with an opportunity to be heard.

8-7-4 **ENFORCEMENT.** Subject to applicable federal and state law, in the event the Franchising Authority, after such meeting, determines that Grantee is in default of any provision of the Franchise, the Franchising Authority may:

- (A) Foreclose on all or any part of any security provided under this Franchise, if any, including without limitation, any bonds or other surety; provided, however, the foreclosure shall only be in such a manner and in such amount as the Franchising Authority reasonably determines is necessary to remedy the default;
- (B) Commence an action at law for monetary damages or seek other equitable relief;

(C) In the case of a substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked; or

(D) Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages.

The Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of the Franchising Authority to enforce prompt compliance.

8-7-5 **ACTS OF GOD.** The Grantee shall not be held in default or noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control.

ARTICLE VIII – UNAUTHORIZED RECEPTION

8-8-1 **MISDEMEANOR.** In addition to those criminal and civil remedies provided by state and federal law, it shall be a misdemeanor for any person, firm, or corporation to create or make use of any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of the Cable System without the express consent of the Grantee. Further, without the express consent of Grantee, it shall be a misdemeanor for any person to tamper with, remove, or injure any property, equipment, or part of the Cable System or any means of receiving Cable Service or other services provided thereto. Subject to applicable federal and state law, the Franchising Authority shall incorporate into its criminal code, if not presently a part thereof, criminal misdemeanor law which will enforce the intent of this **Section 8-8-1.**

ARTICLE IX – MISCELLANEOUS PROVISIONS

8-9-1 DOCUMENTS INCORPORATED AND MADE A PART HEREOF.

The following documents shall be incorporated herein by this reference, and in the case of a conflict or ambiguity between or among them, the document of latest date shall govern:

- (A) Any enabling ordinance in existence as of the date hereof; and
- (B) Any franchise agreement between Grantee and Franchising Authority reflecting the renewal of the Franchise, if any.

8-9-2 PREEMPTION. If the FCC, or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of the Franchise, then to the extent such jurisdiction shall preempt and supersede or preclude the exercise of the like jurisdiction by the Franchising Authority, the jurisdiction of the Franchising Authority shall cease and no longer exist.

8-9-3 ACTIONS OF FRANCHISING AUTHORITY. In any action by the Franchising Authority or representative thereof 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.

8-9-4 NOTICE. Unless expressly otherwise agreed between the parties, every notice or response to be served upon the Franchising Authority or Grantee shall be in writing, and shall be deemed to have been duly given to the required party **five (5) business days** after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a Post Office or branch thereof regularly maintained by the U.S. Postal Service.

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

City of Murphysboro
110 South 14th Street
Murphysboro, IL 62966

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

TCI of Illinois, Inc.
P.O. Box 940
Marion, IL 62959
Attn: General Manager

with a copy to:

TCI of Illinois, Inc.
Attn: Franchising
111 Pfingsten
Suite 400
Deerfield, IL 60015

and:

TCI of Illinois, Inc.
3030 Salt Creek Suite 304
Arlington Heights, IL 60005
Attn: State Vice President

Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other.

8-9-5 **DESCRIPTIVE HEADINGS.** The captions to sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

8-9-6 **SEVERABILITY.** If any section, 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 or by any such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise, or any renewal or renewals thereof.

(Ord. No. 93-13; 12-14-93)

ARTICLE X – CABLE RATES

8-10-1 **DEFINITIONS.** In this Article:

“Basic Cable Rates” means the monthly charges for a subscription to the basic service tier and the associated equipment.

“Basic Service Tier” means a separately available service tier to which subscription is required for access to any other tier of service, including as a minimum, but not limited to, all must-carry signals, all PEG channels, and all domestic television signals other than superstations.

“Benchmark” means a per channel rate of charge for cable service and associated equipment which the FCC has determined is reasonable.

“Cable Act of 1992” means the Cable Television Consumer Protection and Competition Act of 1992.

“Cable Operator” means any person or group of persons:

(A) who provide service over a cable system and directly or through one or more affiliates owns a significant interest in such a cable system; or

(B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

“Channel” means a unit of cable service identified and selected by a channel number or similar designation.

“Cost of Service Showing” means a filing in which the cable operator attempts to show that the benchmark rate or the price cap is not sufficient to allow the cable operator to fully recover the costs of providing the basic service tier and to continue to attract capital.

“FCC” means the Federal Communications Commission.

“Initial Basic Cable Rates” means the rates that the cable operator is charging for the basic service tier, including charges for associated equipment, at the time the City notifies the cable operator of the City’s qualification and intent to regulate basic cable rates.

“Must-Carry Signal” means the signal of any local broadcast station (except superstations) which is required to be carried on the basic service tier.

“PEG Channel” means the channel capacity designated for public, educational, or governmental use, and facilities and equipment for the use of that channel capacity.

“Price Cap” means the ceiling set by the FCC on future increases in basic cable rates regulated by the City, based on a formula using the GNP fixed weight price index, reflecting general increases in the cost of doing business and changes in overall inflation.

“Reasonable Rate Standard” means a per channel rate that is at, or below, the benchmark or price cap level.

“Superstation” means any non-local broadcast signal secondarily transmitted by satellite.

8-10-2 **INITIAL REVIEW OF BASIC CABLE RATES.**

(A) **Notice.** Upon the adoption of this Ordinance and the certification of the City by the FCC, the City shall immediately notify all cable operators in the City, by certified mail, return receipt requested, that the City intends to regulate subscriber rates charged for the basic service tier and associated equipment as authorized by the Cable Act of 1992.

(B) **Cable Operator Response.** Within **thirty (30) days** of receiving notice from the City, a cable operator shall file with the City, its current rates for the basic service tier and associated equipment and any supporting material concerning the reasonableness of its rates.

(C) **Expedited Determination and Public Hearing.**

(1) If the City Council is able to expeditiously determine that the cable operator's rates for the basic service tier and associated equipment are within the FCC's reasonable rate standard, as determined by the applicable benchmark, the City Council shall:

- (a) hold a public hearing at which interested persons may express their views; and
- (b) act to approve the rates within **thirty (30) days** from the date the cable operator filed its basic cable rates with the City.

(2) If the City Council takes no action within **thirty (30) days** from the date the cable operator filed its basic cable rates with the City, the proposed rates will continue in effect.

(D) **Extended Review Period.**

(1) If the City Council is unable to determine whether the rates in issue are within the FCC's reasonable rate standard based on the material before it, or if the cable operator submits a cost-of-service showing, the City Council shall, within **thirty (30) days** from the date the cable operator filed its basic cable rates with the City and by adoption of a formal resolution, invoke the following additional periods of time, as applicable, to make a final determination:

- (a) **ninety (90) days** if the City Council needs more time to ensure that a rate is within the FCC's reasonable rate standard; or
- (b) **one hundred fifty (150) days** if the cable operator has submitted a cost-of-service showing seeking to justify a rate above the applicable benchmark.

- (2) If the City Council has not made a decision within **ninety (90)** or **one hundred fifty (150) day** period, the City Council shall issue a brief written order at the end of the period requesting the cable operator to keep accurate account of all amounts received by reason of the proposed rate and on whose behalf the amounts are paid.

(E) **Public Hearing.** During the extended review period and before taking action on the proposed rate, the City Council shall hold at least one public hearing at which interested persons may express their views and record objections.

(F) **Objections.** An interested person who wishes to make an objection to the proposed initial basic rate may request the City Secretary to record the objection during the public hearing or may submit the objection in writing anytime before the decision resolution is adopted. In order for an objection to be made part of the record, the objector must provide the City Secretary with the objector's name and address.

(G) **Benchmark Analysis.** If a cable operator submits its current basic cable rate schedule as being in compliance with the FCC's reasonable rate standard, the City Council shall review the rates using the benchmark analysis in accordance with the standard form authorized by the FCC. Based on the City Council's findings, the initial basic cable rates shall be established as follows:

- (1) If the current basic cable rates are below the benchmark, those rates shall become the initial basic cable rates and the cable operator's rates will be capped at that level.
- (2) If the current basic cable rates exceed the benchmark, the rates shall be the greater of the cable operator's per channel rate on **September 30, 1992**, reduced by **ten percent (10%)**, or the applicable benchmark, adjusted for inflation and any change in the number of channels occurring between **September 30, 1992** and the initial date of regulation.
- (3) If the current basic cable rates exceed the benchmark, but the cable operator's per channel rate was below the benchmark on **September 30, 1992**, the initial basic cable rate shall be the benchmark, adjusted for inflation.

(H) **Cost-of-Service Showings.** If a cable operator does not wish to reduce the rates to the permitted level, the cable operator shall have the opportunity to submit a cost-of-service showing in an attempt to justify an initial basic cable rates above the FCC's reasonable rate standard. The City Council will review a cost-of-service submission pursuant to FCC standards for cost-of-review. The City Council may approve initial basic cable rates above the benchmark if the cable operator makes

the necessary showing; however, a cost-of-service determination resulting in rates below the benchmark or below the cable operator's **September 30, 1992** rates minus **ten percent (10%)**, will prescribe the cable operator's new rates.

(I) **Decision.**

- (1) **By Formal Resolution.** After completion of its review of the cable operator's proposed rates, the City Council shall adopt its decision by formal resolution. The decision shall include one of the following:
 - (a) If the proposal is within the FCC's reasonable rate standard or is justified by a cost-of-service analysis, the City Council shall approve the initial basic cable rates proposed by the cable operator; or
 - (b) If the proposal is not within the FCC's reasonable rate standard and the cost-of-service analysis, if any, does not justify the proposed rates, the City Council shall establish initial basic cable rates that are within the FCC's reasonable rate standard or that are justified by a cost-of-service analysis.
- (2) **Rollbacks and Refunds.** If the City Council determines that the initial basic cable rates as submitted exceed the reasonable rate standard or that the cable operator's cost-of-service showing justifies lower rates, the City Council may order the rates reduced in accordance with Paragraph (G) or (H) above, as applicable. In addition, the City Council may order the cable operator to pay to subscribers, refunds of the excessive portion of the rates with interest (computed at applicable rates published by the Internal Revenue Service for tax refunds and additional tax payments), retroactive to **September 1, 1993**. The method for paying any refund and the interest rate will be in accordance with FCC regulations as directed in the City Council's decision resolution.
- (3) **Statement of Reasons for Decision and Public Notice.** If rates proposed by a cable operator are disapproved in whole or in part, or if there were objections made by other parties to the proposed rates, the resolution must state the reasons for the decision and the City Council must give public notice of its decision. Public notice will be given by advertisement once in the official newspaper of the City.

(J) **Appeal.** The City Council's decision concerning rates for the basic service tier or associated equipment, may be appealed to the FCC in accordance with applicable federal regulations.

8-10-3 REVIEW OF REQUEST FOR INCREASE IN BASIC CABLE RATES.

(A) **Notice.** A cable operator in the City who wishes to increase the rates for the basic service tier or associated equipment shall file a request with the City and notify all subscribers at least **thirty (30) days** before the cable operator desires the increase to take effect. This notice may not be given more often than annually and not until at least **one (1) year** after the determination of the initial basic cable rates.

(B) **Expedited Determination and Public Hearing.**

- (1) If the City Council is able to expeditiously determine that the cable operator's rate increase request for basic cable service is within the FCC's reasonable rate standard, as determined by the applicable price cap, the City Council shall:
 - (a) hold a public hearing at which interested persons may express their views;
 - (b) act to approve the rate increase within **thirty (30) days** from the date the cable operator filed its request with the City.
- (2) If the City Council takes no action within **thirty (30) days** from the date the cable operator filed its request with the City, the proposed rates will go into effect.

(C) **Extended Review Period.**

- (1) If the City Council is unable to determine whether the rate increase is within the FCC's reasonable rate standard based on the material before it, or if the cable operator submits a cost-of-service showing, the City Council shall, by adoption of a formal resolution, invoke the following additional periods of time, as applicable, to make a final determination:
 - (a) **ninety (90) days** if the City Council needs more time to ensure that the requested increase is within the FCC's reasonable rate standard as determined by the applicable price cap; and
 - (b) **one hundred fifty (150) days** if the cable operator has submitted a cost-of-service showing seeking to justify a rate increase above the applicable price cap.

- (2) The proposed rate increase is tolled during the extended review period.
- (3) If the City Council has not made a decision within the **ninety (90) or one hundred fifty (150) day period**, the City Council shall issue a brief written order at the end of the period requesting the cable operator to keep accurate account of all amounts received by reason of the proposed rate increase and on whose behalf the amounts are paid.

(D) **Public Hearing.** During the extended review period and before taking action on the requested rate increase, the City Council shall hold at least one public hearing at which interested persons may express their views and record objections.

(E) **Objections.** An interested person who wishes to make an objection to the proposed rate increase may request the City Secretary to record the objection during the public hearing or may submit the objection in writing anytime before the decision resolution is adopted. In order for an objection to be made part of the record, the objector must provide the City Secretary with the objector's name and address.

(F) **Delayed Determination.** If the City Council is unable to make a final determination concerning a requested rate increase within the extended time period, the cable operator may put the increase into effect, subject to subsequent refund if the City Council later issues a decision disapproving any portion of the increase.

(G) **Price Cap Analysis.** If a cable operator presents its request for a rate increase as being in compliance with the FCC's price cap, the City Council shall review the rate using the price cap analysis in accordance with the standard form authorized by the FCC. Based on the City Council's findings, the basic cable rates shall be established as follows:

- (1) If the proposed basic cable rate increase is within the price cap established by the FCC, the proposed rates shall become the new basic cable rates.
- (2) If the proposed basic cable rate increase exceeds the price cap established by the FCC, the City Council shall disapprove the proposed rate increase and order an increase that is in compliance with the price cap.

(H) **Cost-of-Service Showings.** If a cable operator submits a cost-of-service showing in an attempt to justify a rate increase above the price cap, the City Council will review the submission pursuant the FCC standards for cost-of-service review. The City Council may approve a rate increase above the price cap if the cable operator makes the necessary showing; however, a cost-of-service determination resulting in a rate below the price cap or below the cable operator's then current rate will prescribe the cable operator's new rate.

(I) **Decision.** The City Council's decision concerning the requested rate increase, shall be adopted by formal resolution. If a rate increase proposed by a cable operator is disapproved in whole or in part, or if objections were made by other parties to the proposed rate increase, the resolution must state the reasons for the decision. Objections may be made at the public hearing by a person requesting the City Secretary to record the objection or may be submitted in writing at anytime before the decision resolution is adopted.

(J) **Refunds.**

(1) The City Council may order refunds of subscribers' rate payments with interest if:

- (a) the City Council was unable to make a decision within the extended time period as described in Paragraph (C) above; and
- (b) the cable operator implemented the rate increase at the end of the extended review period; and
- (c) the City Council determines that the rate increase as submitted exceeds the applicable price cap or that the cable operator failed to justify the rate increase by a cost-of-service showing, and the City Council disapproves any portion of the rate resolution.

(2) The method for paying any refund and the interest rate will be in accordance with FCC regulations as directed in the City Council's decision resolution.

(K) **Appeal.** The City Council's decision concerning rates for the basic service tier or associated equipment, may be appealed to the FCC in accordance with applicable federal regulations.

8-10-4 CABLE OPERATOR INFORMATION.

(A) **City May Require.**

(1) In those cases when the cable operator has submitted initial rates or proposed an increase that exceeds the reasonable rate standard, the City Council may require the cable operator to produce information in addition to that submitted, including proprietary information, if needed to make a rate determination. In these cases, a cable operator may request the information be kept confidential in accordance with this Section.

- (2) In cases where initial or proposed rates comply with the reasonable rate standard, the City Council may request additional information only in order to document that the cable operator's rates are in accord with the standard.

(B) **Request for Confidentiality.**

- (1) A cable operator submitting information to the City Council may request in writing that the information not be made routinely available for public inspection. A copy of the request shall be attached to and cover all of the information and all copies of the information to which it applies.
- (2) If feasible, the information to which the request applies shall be physically separated from any information to which the request does not apply. If this is not feasible, the portion of the information to which the request applies shall be identified.
- (3) Each request shall contain a statement of the reasons for withholding inspection and a statement of the facts upon which those reasons are based.
- (4) Casual requests which do not comply with the requirements of this subsection, shall not be considered.

(C) **City Council Action.** Requests which comply with the requirements of subsection (B), will be acted upon by the City Council. The City Council will grant the request if the cable operator presents by a preponderance of the evidence, a case for nondisclosure consistent with applicable federal regulations. If the request is granted, the ruling will be placed in a public file in lieu of the information withheld from public inspection. If the request does not present a case for nondisclosure and the City Council denies the request, the City Council shall take one of the following actions:

- (1) If the information has been submitted voluntarily without any direction from the City, the cable operator may request that the City return the information without considering it. Ordinarily, the City will comply with this request. Only in the unusual instance that the public interest so requires, will the information be made available for public inspection.
- (2) If the information was required to be submitted by the City Council, the information will be made available for public inspection.

(D) **Appeal.** If the City Council denies the request for confidentiality, the cable operator may seek review of that decision from the FCC within **five (5) working days** of the City Council's decision, and the release of the information will be stayed pending review.

8-10-5 AUTOMATIC RATE ADJUSTMENTS.

(A) **Annual Inflation Adjustment.** In accordance with FCC regulations, the cable operator may adjust its capped base per channel rate for the basic service tier annually by the final GNP-PI index.

(B) **Other External Costs.**

(1) The FCC regulations also allow the cable operator to increase its rate for the basic service tier automatically to reflect certain external cost factors to the extent that the increase in cost of those factors exceeds the GNP-PI. These factors include retransmission consent fees, programming costs, state and local taxes applicable to the provision of cable television service, and costs of franchise requirements. The total cost of an increase in a franchise fee may be automatically added to the base per channel rate, without regard to its relation to the GNP-PI.

(2) For all categories of external costs other than retransmission consent and franchise fees, the starting date for measuring changes in external costs for which the basic service per channel rate may be adjusted will be the date on which the basic service tier becomes subject to regulation or **February 28, 1994**, whichever occurs first. The permitted per channel charge may not be adjusted for costs of retransmission consent fees or changes in those fees incurred before **October 6, 1994**.

(C) **Notification and Review.** The cable operator shall notify the City at least **thirty (30) days** in advance of a rate increase based on automatic adjustment items. The City shall review the increase to determine whether the item or items qualify as automatic adjustments. If the City makes no objection within **thirty (30) days** of receiving notice of the increase, the increase may go into effect.

8-10-6 ENFORCEMENT.

(A) **Refunds.** The City may order the cable operator to refund to subscribers a portion of previously paid rates under the following circumstances:

- (1) A portion of the previously paid rates have been determined to be in excess of the permitted tier charge or above the actual cost of equipment; or
- (2) The cable operator has failed to comply with a valid rate order issued by the City.

(B) **Fines.** If the cable operator fails to comply with a rate decision or refund order, the cable operator shall be subject to a fine of **Five Hundred Dollars (\$500.00)** for each day the cable operator fails to comply.

(Ord. No. 94-4; 02-08-94)