

69-O-96

AN ORDINANCE

Granting a Cable Franchise to Continental Cablevision
Acquisition of Northern Illinois, Inc.

WHEREAS, pursuant to Ordinance 85-O-81, the City of Evanston granted to Cablevision of Chicago a non-exclusive Franchise to own, operate and maintain a Cable Communications system within the City of Evanston (the Franchise); and

WHEREAS, pursuant to Ordinance 121-O-85, said Franchise was amended; and

WHEREAS, the Franchise granted under Ordinance 85-O-81 as amended, terminated on April 19, 1996; and

WHEREAS, pursuant to Ordinance 23-O-96, the City granted a Franchise extension of not to exceed six (6) months; and

WHEREAS, pursuant to Resolution 55-R-95, the City consented to an asset purchase agreement dated January 6, 1995, providing for the assignment of the Franchise to Continental Cablevision acquisition of Northern Illinois, Inc.; and

WHEREAS, the City and Continental Cablevision Acquisition of Northern Illinois, Inc. have been in extensive negotiations concerning a new Franchise; and

WHEREAS, concurrent with the adoption of Ordinance 69-O-96, the City Council pursuant to Resolution 37-R-96 authorizes the City Manager to enter into a rate settlement agreement with Continental Cablevision of Northern Illinois, Inc.; and

WHEREAS, the proposed rate settlement agreement concerns among other matters the allocation of external costs for Access Studio Costs, PEG Access Capital payments, and the disposition of the existing Cable Escrow Fund; and

WHEREAS, the proposed cable franchise is in the best interests and needs of the citizens of Evanston.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON:

SECTION 1: That the City Manager is hereby authorized to sign the Franchise Agreement marked as Exhibit A attached hereto and incorporated herein by reference.

SECTION 2: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3: That this ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Introduced June 10, 1996

Adopted: June 24, 1996

Approved: June 27, 1996

Lorraine A. Morton
Mayor

ATTEST:

Christina Davis
City Clerk

Approved as to form:

[Signature]
Corporation Counsel

06/04/96

EXHIBIT A

**ORDINANCE OF THE EVANSTON, ILLINOIS, CITY COUNCIL GRANTING CABLE
COMMUNICATIONS SYSTEM FRANCHISE TO CONTINENTAL CABLEVISION
ACQUISITIONS OF NORTHERN ILLINOIS, INC.**



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ORDINANCE OF THE EVANSTON, ILLINOIS CITY COUNCIL GRANTING A CABLE COMMUNICATIONS SYSTEM FRANCHISE TO CONTINENTAL CABLEVISION ACQUISITIONS OF NORTHERN ILLINOIS, INC.

NOW THEREFORE, be it ordained by the City Council of the City of Evanston, Illinois, as follows:

SECTION 1. GRANT OF FRANCHISE

1.1 Grant. The City of Evanston, Illinois (hereinafter called the "City") enters into this agreement with Continental Cablevision Acquisitions of Northern Illinois (hereinafter "Grantee") for the provision of cable communication service within its boundaries for the benefit of its residents and to promote the public interest. The City hereby grants to Grantee a non-exclusive Franchise to engage in the business of operating and providing a cable system in the City of Evanston, and for that purpose to use the streets and public ways to install, construct, repair, reconstruct, maintain and retain in, on, over, under, upon, across and along any street or highway, such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to said cable communication system.

1.2 Term. The Franchise granted hereby shall expire four (4) years after its effective date.

1.3 Effective Date. This Franchise shall take effect and be in force from and after the passage of said ordinance granting the franchise as provided by law and the written acceptance by the Grantee.

1.4 Franchise Area. The Franchise area for which this Franchise is granted consists of all areas located within the City limits as they exist on the effective date of the Franchise.

1.5 Effect of Acceptance. By accepting the Franchise, the Grantee:

A. acknowledges and accepts the City's legal right to issue and enforce the Franchise;

B. agrees that it will not oppose intervention by the City in any proceeding affecting the enforcement of its rights under this franchise;

C. accepts and agrees to each and every provision contained herein;

D. agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and agrees that it will not raise any claim or defense to the contrary;

E. acknowledges that it has not been induced to enter into the Grant by any understanding, or promise or other statement not expressed herein, whether oral or written, concerning any term or condition of the Grant regardless of whether such statement was made by or on behalf of the City;

F. expressly acknowledges that upon accepting the Grant, it did so relying upon its own investigation and understanding of the power and authority of the City in connection with this Agreement;

G. agrees that it will not at any time allege in any claim or proceeding by the Grantee against the City that at the time of acceptance of the Agreement by the Grantee, any provision, condition or term of this Agreement was unreasonable or arbitrary or void or that the City had no power or authority to make or enforce any such provision, condition or term;

H. hereby agrees to indemnify and hold harmless the City, its officers, boards and commissions, agents and employees from all damages, claims, awards or judgments against said City arising out of the granting of this franchise except to the extent those damages, claims, awards and judgments arise from the negligence of the City, its officers, boards and commissions, agents and employees.; and

I. further acknowledges by acceptance of the Grant, that it has carefully read the terms and conditions of this Agreement.

1.6 Rights Reserved. The City reserves its rights under its lawful police powers, and nothing in this Franchise shall be read to limit those rights. The City, among other things, does not waive requirements of various codes, ordinances, and resolutions, including zoning codes and codes regarding building permits and fees, or time or manner of construction. Any fees or charges paid, so long as generally applicable to entities, including but not limited to, like users of the public right-of-way and not discriminatory, shall be paid in addition to the Franchise fee required under this Franchise.

1.7 Grantee Compliance. The Grantee agrees to be bound by all the terms, conditions, and provisions of this Evanston Cable Franchise Ordinance as well as all applicable Federal, State and Local laws and regulations.

1.8 Legal Qualifications. The Grantee affirms that it meets all the legal qualifications set forth in 47 U.S.C. § 533.

SECTION 2. SHORT TITLE AND DEFINITIONS

2.1 This Franchise Agreement shall be known and be cited as the "Evanston & Continental Cablevision franchise agreement." The following terms, phrases, words and their derivations have the meaning given herein.

"Access" means the availability of the cable system for use by various agencies, institutions, organizations, groups and individuals in the community, including the City and its designees of the cable system to acquire, create and distribute non-commercial programming not under the Grantee's editorial control, including:

A. "Public Access" means access where organizations, groups, or individual members of the general public, on a non-discriminatory basis, are the primary or designated programmers or users having editorial control over their programming;

B. "Educational Access" means access where schools are the primary or designated programmers or users having editorial control over their programming;

C. "Governmental Access" means access where governmental institutions or their designees are the primary or designated programmers or users having editorial control over their programming; and

D. "PEG Access" means public access, educational access, and governmental access, collectively.

"Affiliate" when used in relation to any entity shall mean another person, firm, corporation, partnership, or other entity that owns or controls, is owned or controlled by, or is under common ownership or control with such entity.

“Basic Service” means any service Tier regularly provided to all subscribers which includes the retransmission of local television broadcast signals and PEG access channels, or such other definition as may be adopted by federal law.

“Cable Act” shall refer to the Cable Communications Policy Act of 1984, 47 U.S.C. § 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as amended by The Telecommunications Act of 1996, as it may be further amended during the term of the Franchise.

“Cable Service” means(1) the one-way transmission to Subscribers of video programming or other programming services; and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

“Cable System” or “Cable Communication System” or “Cable Telecommunications System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that such facility shall be considered a Cable System if such facility is used in the transmission of video programming, whether on a common carrier or non-common carrier basis, directly to customers unless the extent of such use is solely to provide interactive on-demand services, (D) an open video system that complies with section 653 of this title; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

“Channel” is a band of frequencies, currently six megahertz wide in electro-magnetic spectrum capable of carrying either one audio-visual television signal and a few non-video signals, or a large number of non-video signals.

“City” or “Evanston” means the City of Evanston, a municipal corporation of the State of Illinois, in its present incorporated form or in any later recognized, consolidated, enlarged, or reincorporated form and, any Board or Commission that may be designated by the

Corporate Authorities to administer or enforce parts of this Agreement.

“Construction” means any new construction, reconstruction, rebuild, or upgrade of the system pursuant to this agreement.

“Corporate Authorities” means the City Council of the City of Evanston, Cook County, Illinois.

“Document” or “Record” means those materials normally generated, used and retained in the operation and management of a cable system, in whatever form stored, including but not limited to computerized records and programs, paper records, and video or audio-taped records.

“FCC” means the Federal Communications Commission, established by the Communications Act of 1934, as amended, and shall include any successor agency or other agency with respect to the federal regulation and licensing in connection with the subject matter of this Agreement.

“Feeder Line” means the intermediate cable distribution lines that connect the main trunk line to the smaller drop lines that lead into residences, businesses or other institutions receiving Cable services.

“Franchise” means the non-exclusive authorization granted pursuant to this Evanston Cable Franchising Ordinance by the City to the Grantee to construct, rebuild, maintain, and operate a cable system under, on, and over streets within all or specified areas of the City. The terms and conditions of this franchise agreement between the Grantee and the City, including attachments, collectively constitute the Franchise. The term Franchise does not include any other license, permit, or agreement that may be required for the privilege of transacting and carrying on a business within the City or for disturbing the surface of any street.

“Franchise Agreement” shall refer to this contract between the City and the Grantee.

“Franchise Area” means the geographic area for which a Franchise is issued. The franchise area may be specified to authorize provision of service not only in areas within the existing City limits, but also in other areas, as those areas are annexed in the future.

“Grantee” means Continental Cablevision Acquisitions of Northern Illinois, Inc., an Illinois corporation, and its lawful and permitted successors, assigns and transferees.

“Gross Revenues” shall mean all cash, credits, property, or other consideration of any kind or nature received by the Grantee or its affiliates in any way derived from the operation of Grantee’s cable system within the City. Gross revenues include, but are not limited to, fees charged subscribers for basic service; fees charged subscribers for any optional, premium, per-channel, or per-program service; monthly fees charged subscribers for any Tier of service other than basic service; installation, disconnection, re-connection, and change-in-service fees; commercial leased channel fees or other leased channel fees; converter rentals; advertising revenues, including a per capita share of advertising revenues for advertising carried on more than one cable system; revenues from home shopping channels; sales of programming guides; and such other revenue sources as may now exist or hereafter develop. Gross revenues, however, shall not include any refunds to subscribers, bad debt (defined as unpaid Evanston subscriber or advertiser accounts), nor any taxes on services furnished to the Grantee and imposed directly upon any subscriber or user by the state, City, or other governmental unit and collected by the Grantee on behalf of said governmental unit.

“Institutional Network” means a communications system, whether physically integrated with a cable system or not, that is constructed, operated or maintained by the franchisee, whose transmissions are principally available to persons other than cable subscribers (i.e. government agencies and educational institution).

“Interconnect” or “Interconnection” means the provision by a Grantee of the technical and engineering components to maintain a linking of Grantee’s cable system with any other designated cable system or entity outside the City.

“Person” means any individual, sole proprietorship, partnership, association, corporation, or other form of organization authorized to do business in the State of Illinois, and includes any natural person or any other legally recognized entity.

“Programmer” means any person responsible for programming on the cable system, including, without limitation, any person who

produces or otherwise provides programming material for transmission on the cable system.

“Programming” means the process of causing television programs or other patterns of signals in video, voice, or data formats to be transmitted on the cable system, and includes all programs or patterns of signals transmitted or capable of being transmitted on the cable system.

“Public Property” is any real property owned by the City that is not otherwise defined herein as a street.

“Public Way” means the surface, the air space above the surface, and the area below the surface of any public street, highway, land, path, alley, sidewalk, boulevard, drive, bridge, tunnel, parkways, waterways, utility easements or other public right-of-way or hereafter held by the City which shall entitle the City and the Grantee to the use thereof for the purpose of installing and maintaining the Grantee cable television system. No reference herein, or in any franchise, to the “public way” shall be deemed to be a representation or guarantee by the City that its title to any property is sufficient to permit its use for such purpose, and the Grantee shall, by its use of such terms, be deemed to gain only such rights to use property in the City as the City may have the right and power to give.

“School” means any accredited grade K through grade 12 school, college, or university.

“Service Tier” means a category of cable service provided by Grantee and for which a separate charge is made by Grantee.

“Street” shall mean the surface of and the space above and below any street, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, drive, right of way, easement, or other public way, now or hereafter existing within the City.

“Subscriber” means any person who is lawfully receiving, for any purpose or reason, any cable service or services provided by the Grantee by means of or in connection with the cable system, whether or not a fee is paid for such service.

“Transfer” means that the ownership or control of forty percent (40%) or more of the right of control of the grantee is acquired during the term of the franchise in any transaction or series of transactions

by a person or group of persons acting in concert, none of whom owned or controlled forty percent (40%) or more of such right to control, singularly or collectively on the effective date of the franchise whether by sale, lease, assignment, consolidation, merger, or any other disposition of the Franchise, or any change in the ownership or control of any person which owns, controls, or manages the Grantee directly or through one or more intervening partnerships or corporations except that any such transaction to one or more purchasers, assignees, or transferees controlled by, controlling, or under common control with the seller, assignor or transferor shall not constitute a transfer.

“Trunk Line” means the major distribution cable used in cable communications which divides into feeder lines which are tapped for service to subscribers.

“User” means a person or organization utilizing a system channel or system equipment and facilities for purpose of production and/or transmission of material, as contrasted with receipt thereof in a subscriber capacity.

2.2 When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined herein shall be given the meaning set forth in the Cable Communications Policy Act of 1984, 47 U.S.C. § 521 et seq. as amended, and, if not defined therein, shall be given their common and ordinary meaning.

SECTION 3. FRANCHISE—LIMITATIONS

3.1 The Franchise does not confer any right, privilege or exemption other than as provided by this franchise agreement, or as provided by federal or state law.

3.2 The Franchise does not authorize the use of private property without owner consent except as provided by applicable federal, state or local law.

3.3 There is hereby reserved to the City every right and power which is reserved or provided by any ordinance of the City.

3.4 Any right or power in, or duly impressed upon, any officer, employee, department, or board of the City shall be subject to transfer by the City to any other officer, employee, department, or board of the City. The City Council may delegate its authority as permitted by state law.

3.5 The Grantee shall have no recourse against the City for any loss, cost, expense, or damage arising out of any provision or requirement of this Franchise or because of its lawful enforcement or non-enforcement

3.6 The Grantee shall at all times be subject to the exercise of the police power of the City, and its other lawful authority.

SECTION 4. NON-EXCLUSIVE FRANCHISE

4.1 The Franchise and the right it grants to use and occupy the public right of way shall not be exclusive and does not explicitly or implicitly preclude the issuance of other franchises to operate cable systems or other communications systems within the City.

4.2 In the event that, after the effective date of this Franchise, the City grants a franchise to another person or persons to use and occupy the public right of way for the purpose of operating a cable system or other communications system, said grantee shall be required without exception to provide all the payments, facilities, equipment and services required herein.

SECTION 5. NO WAIVER

5.1 The failure of the City, upon one or more occasions, to exercise a right or to require compliance or performance under this franchise agreement or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing.

5.2 Waiver of a breach of this franchise agreement is not a waiver of any similar or different breach.

SECTION 6. AMENDMENTS TO FRANCHISE AGREEMENT

The City and the Grantee may amend any provision of this franchise agreement by executing a written amendment mutually agreeable to the parties.

SECTION 7. CUSTOMER PROTECTION

7.1 Customer Protection. Exhibit A is incorporated into this franchise agreement by reference, and the Grantee agrees that it shall abide by the terms and conditions therein, or be subject to the remedies set forth in Section 19 of this Agreement. The Grantee shall adhere to all applicable FCC regulations relating to customer service obligations, and agrees not to contest any decision by the City to enforce the FCC standards. Nothing in this Section shall be interpreted to limit the City's right to adopt other consumer/ customer protection laws.

7.2 Privacy. The Grantee shall construct, install, maintain and operate its cable television system so as to protect the privacy rights of each subscriber and user in accordance with Section 551 of the 1984 Cable Act as amended and the FCC rules and regulations promulgated thereunder.

7.3 Maintenance and Complaints.

A. The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible.

B. Written complaints concerning billing, employee courtesy, programming, safety, or the Grantee's operational policies, as well as all other written complaints, including complaints about outages, signal quality, and service disruptions, shall be maintained. The Grantee will maintain records of complaints for a period of two years. Copies of any complaint and associated records shall be provided to the City on request provided that the subscriber has authorized in writing the release of said records to the City.

C. The Grantee shall maintain a repair force of technicians sufficient to respond promptly, under normal operating conditions, to subscriber complaints, loss of service, or requests for service. The

Grantee shall have in place at all times the equipment necessary to locate and correct cable system malfunctions.

D. All subscribers and members of the general public in the City may direct complaints and inquiries regarding the Grantee's service or performance to the City. Upon the request of a complaining party or the Grantee, the City may facilitate a resolution of the complaint or dispute.

E. In the event a complaint or dispute directed to it is determined by the City to be a potential violation of this franchise agreement, and after written notification to the Grantee of that determination, the City may exercise any of its other rights and remedies under the Franchise.

7.5 Non-discrimination and Equal Employment Opportunity.

A. Throughout the term of this Franchise, the Grantee shall fully comply with the equal employment opportunity requirements of the applicable federal, state, and local law (Title 1, Chapter 12 of the City Code) and, in particular, FCC rules and regulations relating thereto. Upon request by the City, the Grantee shall furnish the City a copy of the Grantee's annual statistical report filed with the FCC, along with proof of the Grantee's annual certification of compliance. The Grantee shall immediately notify the City in the event the Grantee is at any time determined by the FCC not to be in compliance with said FCC rules or regulations. In order to implement its equal employment opportunity policy, the Grantee shall establish, maintain and execute a positive, continuing program of specific practices designed to assure equal opportunity in every aspect of cable system employment policy and practice. In addition, the Grantee shall evidence a commitment to the participation of minority and female enterprises in the award of contracts in connection with the construction and operation of its cable systems. The grantee shall actively seek out minority and female enterprises to provide services to the cable system including, but not limited to marketing, sales, program production, and materials and supplies used in the construction and operation of its cable systems.

B. The Grantee shall not, in its rates or charges, or in the availability of the services or facilities of its cable system, or in any other respect, make or grant undue preferences or advantages to any subscriber, potential subscriber, or group of subscribers or potential subscribers, nor shall the Grantee subject any such persons or group of persons to any undue prejudice or any disadvantage; provided, however, the

Grantee may offer promotional discounts in order to attract or maintain subscribers provided that such discounts are offered on a non-discriminatory basis to similar classes or types of subscribers throughout the City. The Grantee shall not deny, delay, or otherwise burden service or discriminate against subscribers within its franchise area on the basis of age, race, creed, religion, color, sex, national origin, marital status, sexual orientation, physical or mental disability, or political affiliation. This section shall not prohibit the Grantee from publishing different rates for different classes of subscribers, so long as the rates are identical for every subscriber in each class.

C. The Grantee shall ensure that its services are accessible, as far as reasonably practical, to people with disabilities. All programming received by the Grantee with closed-captioning shall be retransmitted by the cable system including the closed-caption signal.

7.6 Parental Control Device/Capability.

Upon request, the Grantee shall provide a converter with parental control capability to any subscriber.

SECTION 8. SYSTEM FACILITIES, EQUIPMENT, SERVICES AND CONSTRUCTION SCHEDULES

8.1 Subscriber Network.

A. The Grantee shall construct its cable system so that the forward bandwidth of the cable system is at least 750-MHz using equipment of high quality and reliability to serve all subscribers.

B. The Grantee shall install and activate the return portion of the cable system between 5 MHz and 40 MHz.

C. The Grantee shall install equipment so that the headend is capable of providing at least 78 NTSC video signals.

D. The System shall have the capacity for audio services.

E. The Grantee shall use equipment generally used in high-quality, reliable, modern cable systems of similar design, including but not limited to back-up power supplies capable of providing eight (8)

hours of power to the headend and four (4) hours of power to the cable system plant in the event of an electrical outage.

8.2 Institutional Network.

A. The Grantee shall provide an Institutional Network. The I-Net shall have bi-directional bandwidth capacity of at least 450 MHz. The Grantee shall install, operate and maintain its cable system, headend, and network components outside the public buildings necessary to provide the activated path between the transmitting and receiving locations. The users of the I-Net shall be responsible for the installation, operation and maintenance of terminal and interface equipment within the users buildings, except as otherwise provided in this Section 8.2.

B. The Grantee shall install, retain, replace as necessary, and maintain, a bi-directional link between the access center and the feed point to the subscriber network by means of the I-Net.

C. The Grantee shall provide up to fifty thousand dollars (\$50,000) of additional funds for the acquisition of I-Net switching equipment to be located at the I-Net headend. The City shall approve the allocation of these I-Net funds

D. The use of bandwidth on the I-Net between upstream and downstream transmissions shall be determined by the Grantee with input from the City and is subject to the approval of the City.

E. Any capacity on the I-Net not assigned to institutional network users may be utilized by the Grantee until such time that its use is required by the City or its designee, or an educational institution.

F. The Grantee shall provide a matching fund of up to fifty thousand dollars (\$50,000) to be used to assist I-Net users in acquiring end user equipment. This fund shall provide a match for dollars spent by I-Net users for the acquisition of such equipment. The Grantee shall coordinate with the City and the City shall approve the distribution of these funds. The frequencies used for any upstream transmission on the I-Net system must be approved in advance by the Grantee. The Grantee shall be responsible for installing, testing, and activating the aforementioned equipment at all designated locations.

G. The Grantee shall provide, maintain and service the I-Net to enable two-way communications among, all municipal buildings designated by

the City; to all library facilities; and to all public and private elementary, secondary buildings, and college level (one connection to each college level educational institution) schools located within the City upon request based upon a specific use. The City may direct the Grantee to do such additional installations and the Grantee shall provide such connections and shall make such connection at the location designated by the specific institution or City upon request based upon a specific use.

8.3 Emergency Override. The Grantee shall provide, service and maintain public emergency transmission facilities to the City without charge. Such facilities shall include, without limitation, a character generator and keyboard to be placed in a location designated by the City, for use in preparing alphanumeric announcements for immediate transmission over designated cable channels, including capacity for audio interruptions on all channels. The audio portion shall be operable from remote locations The City agrees to indemnify and hold the Grantee harmless from any damages or penalties arising out of the negligence of the City, its employees or agents in using such service.

8.4 Interconnection. The Grantee shall take all necessary technical and construction steps to maintain and operate any existing interconnection that is operational on the effective date of this Franchise Such interconnection shall take place between the City and the following communities which are adjacent to the City including Skokie, Lincolnwood, and Wilmette. This interconnection shall be made by the technical means most efficient for the cable companies involved. The Grantee shall cooperate with the City in utilizing available interconnect capacity to assist with potential video and data communication applications by local and state public and non-profit organizations. including forward and reverse applications.

8.5 Construction Schedules

A. The construction required under Sections 8.1 & 8.2 shall commence and be completed between 4-20-98 and 4-20-99. The City shall grant reasonable extensions of time to complete construction in particular areas of the City if, prior to the scheduled time for completion, the Grantee shows that, notwithstanding its due diligence, it has been unable to extend service to a specified area because the acts or omissions of a third party (not including the Grantee's subcontractors or agents) have caused a delay in construction beyond delays reasonably expected during the course

of an upgrade or rebuild, and the Grantee proposes a reasonable alternative deadline for extension of service to that area.

B. Nothing in this section shall prevent the Grantee from commencing and completing the system rebuild & I-Net System earlier than planned. However, any delay in the system construction beyond the times specified in this Franchise, shall require application to and consent by the City. The City may not withhold consent when Grantee has shown good cause for the delay as set forth in this section but City may attach reasonable conditions to ensure performance. Any delay beyond the terms of this Franchise, unless specifically approved by the City, shall constitute a violation of this Agreement for which the provisions of Sections 17- 19, shall apply, as determined by the City.

C. Commercial impracticability, expense or other economic reasons shall not excuse or justify Grantee's failure to comply with the construction schedule set forth in Section 8.5 A. Grantee further agrees that any litigation instituted by a third party shall not suspend Grantee's obligation to construct and install the cable communications system in accordance with the construction time schedule unless otherwise ordered by a court of competent jurisdiction.

8.6 System Design Review Process

A. At least forty-five (45) days prior to the date construction of any required upgrade or rebuild is scheduled to commence, the Grantee shall provide a detailed cable system design and construction plan, at a location designated by the City, which shall include at least the following elements:

1. trunk and feeder design; including location of hubs or nodes and power supplies
2. Plans for standby power at headend, hubs/nodes, and satellite terminals
3. Map providing a clear representation of the geographic areas within the City which are included in the construction plan described in Section 8.5 A.
4. Design maps and trunk tree maps for the cable system. The cable system design will be shown on maps of industry

standard scale using standard symbols, and shall depict all electronic and physical features of the cable plant.

B. The City may review the design and construction plans to be submitted to the City by the Grantee to assure that such comply with Section 8.1. of this Franchise and with the construction standards delineated in Section 9 of this agreement. The City shall have thirty (30) days from the date the Grantee submits to the City the design and construction plans and 15 working days from the submission of design maps and trunk tree maps to review and submit comments on the plans. The Grantee must submit a written response to the comments including an amended plan, if appropriate, within ten (10) days of the date it receives the City's comments

8.7 Initial and Continuing Tests. The Grantee shall perform all tests necessary to demonstrate compliance with the requirements of the franchise and other performance standards established by law or regulation. All tests shall be conducted in accordance with federal rules and in accordance with the most recent edition of NCTA "Recommended Practices for Measurements on Cable Television Systems." The Grantee shall perform at least the following tests:

A. **Preconstruction quality control on cable and equipment.** The Grantee shall employ accepted industry procedures to assure the selection of quality system components. No components shall be used that fail to meet manufacturer's specifications. The Grantee shall perform quality tests on the existing system components that will be reused in the system rebuild, including trunk, distribution, and drop cable, and any passive devices, such as taps and directional couplers, to ensure that each is fully functional and capable of meeting required standards.

B. **Continuing Tests.** If there are recurring problems or complaints the City may require reasonable tests, including partial repeat tests, different test procedures, or tests involving a specific subscriber's terminal, at the Grantee's expense to the extent such tests may be performed by the Grantee's employees utilizing its existing facilities and equipment. The City may require the Grantee to prepare a report to the City on the results of those tests, including a report identifying any problem found and steps taken to correct the problem. The City will endeavor to arrange its request for such special tests so as to minimize hardship or inconvenience to Grantee or to the subscriber.

8.8 Inspections during Construction. The City may at its own expense conduct inspections of construction areas and subscriber installations, to assure compliance with applicable laws, codes and requirements of this Franchise. Any testing of the system necessary to accomplish such inspections shall only be performed in the presence of an authorized employee of the Grantee and only after reasonable advance notice to the Grantee. The Grantee shall be notified in writing of any violations found during the course of inspections. The Grantee must bring violations into compliance on or before the date reasonably determined by the City to be appropriate for the violation in question, and submit a report to the City describing the steps taken to bring itself into compliance. Inspection does not relieve the Grantee of its obligation to build in compliance with all provisions of the Franchise.

8.9 Other Construction Procedures. The Grantee:

- A. shall follow a cable system design and construction plan consistent with its obligations under this Franchise, except for such minor modifications as are typical in the industry**
- B. shall use equipment of good and durable quality;**
- C. shall provide a monthly construction report to the City in a form reasonably acceptable to the City;**
- D. shall maintain a file showing its plan and timetable for construction of the cable system (the Grantee shall notify residents in any construction area at least one day in advance before first entering onto property to perform any work in conjunction with cable system construction, and shall additionally notify affected residents in advance of any work which will involve excavation, replacement of poles, or tree trimming of branches of over two (2) inches in diameter);**
- E. shall make available as-built and design maps for the City's review after the completion of system construction in any geographic area at the Grantee's office in the metropolitan Chicago area and shall update said maps quarterly;**
- F. shall make all new installations underground in those areas of the City where public utilities providing both telephone and electric service are underground at the time of installation. In areas where either telephone or electric utility facilities are above ground at the time of installation, the Grantee may install its service aboveground,**

provided that at such time as those facilities are required to be placed underground by the City or are placed underground, the Grantee shall likewise place its services underground without additional cost to the City or to the individual subscriber so served with the City, except that to the extent other parties relocating their lines are reimbursed by the City or a third party the Grantee shall be reimbursed for its relocation expenses. Where not otherwise required to be placed underground by this Agreement, the Grantee's system shall be located underground at the request of the property owner, provided that the excess cost over aerial location shall be borne by the property owner making the request. All new cable passing under the roadway shall be installed in conduit; and,

G. shall, in case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Grantee at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway, landscaping, or surface of any street or alley disturbed, in as good condition as before said work was commenced and in a good workmanlike, timely manner in accordance with standards and policies for such work set by the City.

8.10 System Maintenance & System Performance

A. Interruptions to be Minimized. The Grantee shall schedule planned maintenance whenever possible so that activities likely to result in an interruption of service are performed during periods of low subscriber use of the cable system. The Grantee shall make best efforts to give notice prior to such interruptions to the subscribers via the system except for emergency repairs, which shall be done as soon as possible. The Grantee shall make best efforts to minimize interruptions of service consistent with reasonable and customary construction practices. Grantee shall not allow its cable or other operations to interfere with the broadcast television reception of persons not served by the Grantee.

B. Maintenance Practices. In addition to its other obligations, the Grantee shall (a) use replacement components of good and durable quality, with characteristics better or equal to replaced equipment; and (b) follow its corporate maintenance standards.

C. The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible.

8.11 System Extension.

A. The Grantee shall build its cable system so that it is able to provide service to all areas located within the City limits as they existed on January 1, 1995. Grantee shall, with all due diligence, construct its cable communications system to pass all residential dwelling unit buildings within the City including those residential multi-dwelling unit buildings that are unserved on the effective date of this franchise. Construction of the cable communication system to pass and to install service (after acquiring an easement, if necessary) to previously unserved residential multi-dwelling unit buildings shall be completed no later than September 30, 1996.

B. Line Extension Requirements. Within the City boundaries as they existed on January 1, 1995, the Grantee must extend service upon request to any residential dwelling unit for no charge other than the then-prevailing normal installation charge and/or the long drop charge as described in Section 8.11 C, unless the Grantee demonstrates to the City's satisfaction that extraordinary circumstances justify a waiver of this requirement. .

C. Subscriber Drops. The Grantee shall not assess any additional cost for residential dwelling unit service drops of one hundred twenty-five (125) feet or less unless the Grantee demonstrates to the City's satisfaction that extraordinary circumstances justify a higher charge. Where a drop exceeds one hundred twenty-five (125) feet in length, the Grantee may charge the subscriber for the difference between the Grantee's actual costs associated with installing a one hundred twenty-five (125) foot drop and the Grantee's actual cost of installing the longer drop.

D. In any area where the Grantee would be entitled to install a drop above-ground, the Grantee, if requested will provide the subscriber the option to have the drop installed underground, but may charge the subscriber the difference between the actual cost of the above-ground installation and the actual cost of the underground installation.

E. Time for Extension. After acquiring an easement, if necessary the Grantee must install service to any residential dwelling unit located

within 125 feet of existing plant within seven (7) days of the request (weather and ground conditions permitting).

F. Notwithstanding the foregoing, the Grantee shall, upon request of the City, install one drop at no charge to any grade K through grade 12 school building, City building or each college level educational institution. Only one drop will be provided, free of charge, to each college level educational institution. The City or a grade K through grade 12 school may for no additional charge by the Grantee install their own facilities and equipment to transmit the signal to additional non-residential rooms within a building if they assume responsibility for the signal quality to said additional rooms.

8.12 Public, Educational and Governmental Use.

A. **PEG Access Channel Capacity.** The Grantee shall provide five (5) downstream channels for non-commercial PEG access programming.

B. Requirements Regarding Rules and Procedures for Use of PEG Access Channels.

1. The City may designate a non-profit access management corporation (hereafter "Access Corporation"), to manage the use of the PEG access channels under the Franchise. The City shall be responsible for establishing and enforcing rules for use of the PEG access channels during any period such Access Corporation does not exist.

2. The Access Corporation shall establish and enforce rules for the non-commercial use of the PEG access channels (a) to assure non-discriminatory access to the channels to similarly situated users; and (b) to promote use and viewership of the channels, consistent with the obligation to provide non-discriminatory access to similarly situated users.

3. The Grantee may not exercise any editorial control over the content of programming on the designated PEG access channels except as provided in Federal law.

4. The five (5) PEG access channels shall be available on a non-discriminatory basis for non-commercial programming at no charge to the Access Corporation.

C. PEG Capital Payments For Equipment and Facilities. The Grantee shall pay to the City, for PEG access Capital pursuant to 47 U. S. C. 542(g)(2)(C) of the Cable Act, the following amounts:

- 1. \$100,000.00 on the effective date of the Franchise**
- 2. \$100,000.00 on the first anniversary of the effective date of the Franchise.**
- 3. \$100,000.00 on the second anniversary of the effective date of the Franchise.**
- 4. \$250,000.00 on the third anniversary of the effective date of the Franchise contingent upon a documented City commitment to provide sufficient operating funds to the Access Corporation for the practical utilization of the contemplated capital investment.**

8.13 Leased Use. The Grantee shall provide Leased access Channels as required under the Cable Act.

Figure 1

8.14 Subscriber Services.

A. For the period beginning on the effective date of the Franchise through the completion of the cable system construction required by Section 8, a minimum of 52 activated channels;

B. For the period beginning on completion of the cable system construction required by this Section 8, through the end of the Franchise: a minimum of seventy-eight (78) channels;

C. In addition to such other service requirements as may be contained in this Franchise, the Grantee agrees to provide the following broad categories of service:

- 1. Educational programming;**
- 2. News & information;**
- 3. Sports;**
- 4. General entertainment (including movies);**
- 5. Children/family-oriented;**
- 6. Arts; culture, and performing arts;**
- 7. Foreign language;**
- 8. Science/documentary;**

9. Weather information;
10. Ethnic/ Minority programming
11. National, state and local government affairs;
12. PEG Access;

SECTION 9. CONSTRUCTION STANDARDS

9.1 The construction, installation, operation, and maintenance of the cable system and all parts thereof shall be performed in an orderly and workmanlike manner. At a minimum all such work shall be performed in accordance with the following safety, construction, and technical specifications, codes and standards, as they may now exist or be amended or adopted hereafter, which include but are not limited to:

A. Occupational Safety and Health Administration (OSHA) Safety and Health Standards

B. Obstruction Marking and Lighting, AC 70/7460 i.e., Federal Aviation Administration;

C. all applicable federal, state and municipal construction requirements,; and

D. all building and zoning codes, applicable City of Evanston Engineering Department Administrative Policies promulgated pursuant to Title 7, Chapter 4, Section 3 of the City Code and all land use restrictions and local safety codes.

9.2 Construction Coordination At least thirty (30) days prior to the date construction of the required upgrade or rebuild is scheduled to commence, the Grantee shall notify the City of its intention to commence construction. The City shall convene a meeting between the Grantee and appropriate City officials in order to facilitate a coordinated construction effort. The City shall also use its best efforts to assist the Grantee in obtaining all local licenses, permits and authorizations in an expeditious and timely manner.

9.3 Written Permits. No construction, reconstruction or relocation of the cable communications system, or any part thereof, within the streets shall be commenced unless the required written permits have been obtained from the proper official.

9.4 All contractors of the Grantee who perform construction, installation, maintenance, and repair of system equipment must be properly licensed under laws of the State of Illinois, and all local ordinances.

SECTION 10. RATE REGULATION

10.1 All charges to subscribers and users shall be uniform throughout the franchise area with a written schedule of fees for all services offered available upon request. The Grantee shall be required to provide each new subscriber with prices and options for programming services and conditions of subscription to programming and other services.

10.2 The Grantee shall not, with regard to fees, discriminate or grant any preference or advantage to any person; provided, however, that the Grantee may establish different rates for different classes of subscribers, provided that the Grantee shall not discriminate among subscribers of the same class.

10.3 Any determination of the reasonableness of initial rates or any proposed rate increase will be made pursuant to the Cable Act and other applicable Federal or State laws.

10.4 The Grantee will notify subscribers and the City of any proposed increase at least thirty (30) days before said increase is to become effective. The notice will list the FCC community identifier for the cable system and the name, address, and phone number of a contact person or department at the City so that information regarding procedures for public participation is readily available to subscribers.

10.5 The City reserves the right to prescribe reasonable rates for cable services or associated equipment, pursuant to the Cable Act and other applicable Federal or State law, if the City determines, pursuant to the Cable Act that a proposed rate is unreasonable.

SECTION 11. FRANCHISE FEES

11.2 The Grantee shall pay to the City an amount equal to five (5) percent of the gross revenues derived from the operation of its cable system in the City, provided however that the City Council may increase the franchise fee up to the maximum fee permitted by federal law, if larger.

11.2 Payments due the City under this provision shall be computed at the end of each calendar quarter and shall be due and payable for the preceding quarter on or before May 31 (for the first quarter), August 31 (for the second quarter), November 30 (for the third quarter), and February 28 (for the fourth quarter) of each year. Each payment shall be accompanied by a statement of revenue received for the quarter in connection with the operation of the Grantee's cable system in the City and a report showing the basis for computation of fees. In the event the Grantee provides a more detailed report to any municipality on a regular basis such more detailed report format shall be submitted to the City

11.3 No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the Franchise by the Grantee.

11.4 The Grantee shall submit to the City a late fee on franchise fee payments which are submitted after the due dates as described in Section 11.2, except that the Grantee shall be granted a five day "grace" period. Any franchise fee payment submitted after the five day grace period shall be subject to a late fee. The late fee shall be compounded daily and based upon an interest rate which shall be calculated by taking the then current interest rate on one-year Treasury Bills, and adding two percent (2%).

11.5 The Franchise fee shall be paid in addition to fees, charges, or assessments required by the City for like users of the public right-of-way, unless such fee, charge, or assessment falls within the definition of a Franchise fee under the Cable Act.

11.6 The City shall have authority to arrange for and conduct an audit of the financial records of the Grantee or affiliates for the purpose of verifying Franchise fee payments. The City will notify the Grantee in writing at least sixty (60) days prior to the date of the audit. The records shall be made available by the Grantee at the Grantee's office in the Chicago metropolitan area.

11.7 When the Franchise terminates for any reason (other than through the issuance of a renewal or superseding Franchise), the Grantee shall file with the City within ninety (90) calendar days of the date its operations in the City cease a financial statement, certified by a certified public accountant or the Grantee's chief financial officer, showing the gross revenues received by the Grantee since the end of the previous fiscal year. Adjustments will be made at that time for Franchise fees due to the date that the Grantee's operations under the terminated Franchise ceased.

SECTION 12. INSURANCE

12.1 An insurance certificate from a Best A+ rated insurance company for any insurance policy obtained by the Grantee in compliance with this Section 12 shall be filed and maintained with the City Clerk during the term of the franchise.

12.2 Grantee shall, during the continuance of this Agreement and at no expense to the City, maintain public liability and property damage insurance, including cable system operators insurance, in the amount of \$1,000,000 per occurrence \$5,000,000 aggregate on account of bodily or personal injuries, including death, or on account of property damage, arising from, or caused, directly or indirectly, by the performance of this Agreement. This insurance shall be a per occurrence policy.

12.3 Grantee shall, during the continuance of this Agreement and at no expense to the City, maintain business automobile insurance in the amount of \$1,000,000 per occurrence on account of bodily or personal injuries, including death, or on account of property damage arising from or cause, directly or indirectly, by the performance of this Agreement. This insurance shall be a per occurrence policy.

12.4 Under the public liability, property damage and automobile liability insurance required in Sections 12.2 and 12.3 above, the City, its officers, agents and employees shall be named as an additional insured by endorsement.

12.5 Grantee shall, during the continuance of this Agreement and at no expense to the City, maintain workers' compensation insurance, as required by law, for all Grantee's officers and employees.

12.6 The insurance required by Sections 12.2, 12.3, and 12.5 above shall be evidenced by certificate or certificates submitted to the City before or at the time the Grantee executes this Agreement. All certificate(s) shall contain the following endorsement:

"Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 day written notice holder named (on the certificate)."

SECTION 13. PERFORMANCE BOND

13.1 Within ninety (90) days of the effective date of this Franchise, the Grantee shall establish in the City's favor a performance bond in the amount of \$150,000.

13.2 In the event the Grantee fails to complete the cable system construction, upgrade, or rebuild in a safe, timely, and competent manner in accord with the provisions of this Franchise, applicable law, and permits, or otherwise fails to comply with its obligations under this Franchise, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Grantee.

13.3 The City shall reduce the bond requirement to \$50,000 upon the documentation of satisfactory completion of the cable system construction, upgrade, or rebuild pursuant to Section 8.5.

13.4 The performance bond shall contain the following endorsement or a similar endorsement acceptable to the City:

"This bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

SECTION 14. LETTER OF CREDIT

14.1 On the effective date of the Franchise, the Grantee shall post with the City an irrevocable letter of credit in the amount of \$50,000. The City may draw on the letter of credit pursuant to Section 17.4 to ensure the faithful performance of all provisions of the Franchise, applicable law, and permits, and the payment by the Grantee of any penalties, liquidated damages, claims, liens, fees, or taxes due the City which arise by reason of the construction, operation, or maintenance of the cable system.

14.2 The irrevocable letter of credit shall be subject to approval as to content and form by the City Attorney. The letter of credit shall in no event

require the consent of the Grantee prior to the collection by the City of any amounts covered by the letter of credit.

14.3 Within three (3) business days of the date it draws on the Grantee's letter of credit, the City shall send written notice to the Grantee notifying it that the City has drawn on the letter of credit, the amount withdrawn, and the specific reasons for the withdrawal.

14.4 Within thirty (30) calendar days after notice to the Grantee that an amount has been withdrawn by the City from the letter of credit, the Grantee shall restore the letter of credit to the total amount in the letter of credit immediately prior to the withdrawal.

14.5 If the Franchise terminates for any reason, and the Grantee has ceased to provide service in the City, the Grantee shall maintain the letter of credit until the City has certified that the Grantee has satisfied all its obligations under this agreement.

SECTION 15. QUALIFICATIONS OF INSURANCE COMPANIES. BOND COMPANIES AND ENTITIES ISSUING THE LETTER OF CREDIT

The insurance, bonds, and letter of credit required by Sections 12-14 shall be issued either by a company rated Best A+ or by a company acceptable (such acceptance shall not be unreasonably withheld) to the City.

SECTION 16. INDEMNIFICATION

16.1 Grantee agrees to defend, indemnify, hold harmless and release the City, its officers, and employees, from actions, claims, damages, disability or the cost of litigation, including all attorneys fees, that are asserted by any person or entity to the extent arising out of the negligent acts or omissions or willful misconduct in the performance by the Grantee hereunder., whether or not there is concurrent negligence or willful misconduct of the City but excluding liability due to the sole active negligence or misconduct of the City. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Grantee or its agents, under workers' compensation acts, disability benefits acts or other employees' benefits acts.

16.2 Grantee shall be liable to the City for any loss of or damage to City property arising from Grantee's negligence or willful misconduct.

SECTION 17. FRANCHISE VIOLATION NOTICE AND PROCEDURES

17.1 If the Grantee fails to observe any obligation under the Franchise, the City may assess the Grantee, and the Grantee agrees to pay to the City, liquidated damages in accordance with Section 19 below. Such assessment shall not constitute a waiver by the City of any other right or remedy it may have under this Franchise, or under applicable law.

17.2 If the City has reason to believe that the Grantee has violated any obligation under the Franchise, the City shall notify the Grantee in writing of the violation setting forth the nature of such violations. Within thirty (30) days of its receipt of such notice, the Grantee either shall respond in writing to the City contesting the City's notice of violation with supporting documentation that such violation did not occur or was beyond the Grantee's control and requesting an opportunity to be heard or shall remedy the violation within such thirty (30) day period. The City may determine that the violation is of such a serious nature that a lesser period for remedying the violation is warranted. If the Grantee cannot reasonably remedy the violation within the time period specified and so informs the City, the City may extend the time permitted for remedying the violation, provided that the Grantee informs the City on a regular basis of the steps being taken to remedy the violation.

17.3 If within thirty (30) days of its receipt of notice of the violation pursuant to Section 17.2, the Grantee fails to submit a written response contesting the City's notice of violation or if after requesting an opportunity to be heard the Grantee fails to prove in said hearing that such violation did not occur or was beyond its control or if the Grantee fails to remedy the violation within the time period specified or any extensions thereto pursuant to Section 17.2, the City after considering all relevant factors may assess the Grantee liquidated damages in accordance with Section 19 and shall provide the Grantee with written notice of such assessment. Such notice of assessment shall state the amount to be assessed, the finding of fact and provide a date of at least fifteen (15) days after receipt of such notice upon which said assessment payment is due.

17.4 If the Grantee fails to pay to the City any assessment pursuant to Section 17.3 within three (3) days after the date set forth in the notice of assessment, said assessment shall be payable from the letter of credit provided herein upon written demand by the City Manager.

SECTION 18. REVOCATION

18.1 In addition to all other rights, powers, and remedies reserved by the City, the City shall have the additional, separate, and distinct right to revoke the Franchise in the event of a substantial breach of a material provision of the franchise, said substantial breach shall occur if:

- A. the Grantee becomes fiscally unable to pay its debts, or is judged to be bankrupt;**
- B. the Grantee practices any material fraud in its conduct in obtaining the Franchise;**
- C. the Grantee repeatedly fails to pay the franchise fee in accordance with the terms of this agreement;**
- D. the Grantee continues to violate a material provision of the Franchise after written notice by the City of said substantial violation of a material provision and refused to cure it within a reasonable period of time; or**
- E. the Grantee abandons its Franchise (the Grantee shall be deemed to have abandoned its Franchise if it willfully refuses to operate the cable system as required by its Franchise, when there is no event beyond the Grantee's control that prevents the operation of the cable system, and where operation would not endanger the health or safety of the public or property).**

18.2 The foregoing shall not constitute a substantial breach if the violation occurs but it is without fault of the Grantee or occurs as a result of circumstances beyond its direct control such as war, civil disturbance, natural catastrophe and other acts of God. Grantee shall not be excused by mere economic hardship nor misfeasance or malfeasance of its directors, officers or employees

- A. The City shall make a written demand that the Grantee cure the substantial breach. If the substantial breach by the Grantee continues for a period of twenty (20) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the City may**

consider the issue of terminating the franchise provided that the City shall cause to be served upon the Grantee, at least fifteen (15) days prior to the date the City is to consider the issue of termination, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and the issue that the City is to consider.

B. The City Council or its duly designated representative shall hear and consider the issue and shall hear any person interested therein, and the City Council shall determine whether any substantial breach of a material provision of the franchise by the Grantee has occurred.

C. If the City Council determines said substantial breach by the Grantee was the fault of the Grantee and within its control, the Council may, by resolution, declare that the franchise shall be terminated unless there is compliance within such period as the Council may fix, such period shall not be less than ten (10) days, provided that no opportunity for compliance need be granted for fraud.

18.4..Upon revocation of the Franchise, or upon any other termination of the Franchise by passage of time or otherwise, the City shall have the right to require the Grantee to remove, at the Grantee's expense, its cable system from streets, public property, pursuant to the revoked, canceled, or terminated Franchise The City shall notify the Grantee in writing that the cable system should be removed. In removing its cable system, the Grantee shall refill and compact, at its expense, any excavation that shall be made and shall leave all streets, public property, and private property in as good a condition as that prevailing prior to the Grantee's removal of the cable system. The provisions of Sections 12 through 16 of this franchise agreement shall remain in full force and effect until the cable system is removed.

18.5 Upon revocation of the Franchise, or upon any other termination of this Franchise by passage of time or otherwise, the City shall have the alternative right to buy the Grantee's cable system. If the Franchise is revoked for cause, the City may purchase the cable system at an equitable price, within the meaning of the Cable Act; otherwise, the cable system may be purchased at fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the franchise itself within the meaning of the Cable Act. Grantee may, if the City declines to acquire ownership of the cable system pursuant to this Section, transfer the ownership of the cable system.

18.6 If the City does not purchase the Grantee's cable system as provided in Section 18.5, or the Grantee has not commenced a transfer of ownership of the system pursuant to Section 27 within one hundred twenty (120) days of the date of termination or revocation, and-if the Grantee has failed to commence removal of its cable system as specified by the City under Section 18.4, or if the Grantee has failed to complete such removal within six months after removal is required to have begun, the City may declare the cable system abandoned and cause the cable system, or such part thereof as the City shall designate, to be removed at no cost to the City (the cost of said removal shall be recoverable pursuant to Sections 12 through 16 herein, or from the Grantee directly).

SECTION 19. REMEDIES—LIQUIDATED DAMAGES

19.1 Because the Grantee's failure to comply with provisions of this Franchise will result in injury to the City, and because it will be difficult to estimate the extent of such injury, the City and the Grantee hereby agree to the following liquidated damages which represent both parties' best estimate of the damages resulting from the specified injury.

19.2 The following liquidated damages shall apply, and liability therefore shall accrue from the date established by the City to remedy after notice pursuant to Section 17.2.

19.3 For failure to complete construction or extend service in accordance with the Franchise: \$350.00 per violation/per day for each day the violation continues;

19.4 For failure to comply with material requirements for PEG Access: \$300.00/day for each day the violation continues;

19.5 For repeated, willful, or continuing failure to submit reports, maintain records, provide documents or information: \$50.00/day for each day the violation continues;

19.6 For violation of customer service standards: \$100.00 per violation per day;

19.7 For failure to operate the system: \$1,000.00/day for each day the violation continues; and

19.8 or all other material violations of this agreement \$200.00/day for each day the violation continues.

SECTION 20. REMEDIES—CUMULATIVE

All remedies provided under this franchise agreement shall be cumulative, unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall it relieve the Grantee of its obligations to comply with the Franchise. Remedies may be used singly or in combination; in addition, the City may exercise any rights it has under law or at equity.

SECTION 21. REMEDIES—CONTINUITY OF SERVICE

21.1 It is the right of all residential subscribers in the franchise area to receive all available cable services from the Grantee as long as their financial and other obligations to the Grantee are satisfied and Grantee is receiving all compensation due it from subscribers.

21.2 In the event of the termination or transfer of the Franchise, the Grantee shall ensure that all subscribers receive continuous, uninterrupted service regardless of circumstances in accordance with this Section 21. At the City's request, the Grantee shall cooperate with the City to operate its cable system for a temporary period (the "Transition Period") following termination or transfer of the Franchise as necessary to maintain continuity of service to all subscribers, and shall cooperate in the development of plans required to ensure an orderly transition from one operator to another. During such Transition Period, the cable system shall be operated consistent with the terms and conditions of this franchise agreement and the financial benefits of operation shall accrue to the Grantee.

21.3 In the event the Grantee fails to operate the cable system where operation would not endanger the health or safety of the public or property for ninety-six (96) hours during any seven (7) day period without prior approval of the City, the City may, at its option, operate the cable system or designate an operator until such time as the Grantee restores service. If the City is required to fulfill this obligation for the Grantee, the Grantee shall reimburse the City for all costs or damages resulting from the Grantee's failure to perform. Additionally, the Grantee will cooperate with the City to allow City employees and/or City agents free access to the

Grantee's facilities and premises for purposes of continuing cable system operation

SECTION 22. BOOKS AND RECORDS—INSPECTION

22.1 The City may inspect the books, records and maps, in the control or possession of the Grantee, affiliates, only to the extent necessary: (1) to enforce the City's rights or assess compliance with the Franchise; (2) in the exercise of any lawful regulatory power; or (3) as may be necessary in connection with any proceeding the City may or must conduct under applicable law with respect to the Grantee's cable system. The books, records and maps in the control or possession of the Grantee shall be produced at the Grantee's office in the Chicago metropolitan area. Material that the City requires the Grantee to produce under this section shall be produced upon reasonable notice, no later than 30 days after the request for production. Requests for extensions of time to respond shall not be unreasonably denied.

22.2 The Grantee may request that the City treat records containing trade secrets or proprietary information as confidential under the Illinois Public Records law. The Public Records law shall govern the City's treatment of any such request and other applicable state and federal law.

SECTION 23. REPORTS AND RESPONSES TO QUESTIONS

23.1 Upon request the Grantee shall provide the following reports not more than monthly, in a form acceptable to the City:

- A. a report showing the number of service calls completed by type during the prior period;**
- B. a report showing the number of outages for the prior period**
- C. a report stating the subscriber totals for the City including current subscribers, new subscribers, reconnects, disconnects, secondary connects and pay units**

23.2 Upon request, within one hundred and twenty (120) days after the close of the Grantee's fiscal year, the Grantee shall submit a written annual report regarding its operation in Evanston, in a form acceptable to the

Grantee and the City, including, but not limited to, the following information:

A. a summary of the previous year's activities in the development of its cable system in the City, including, but not limited to, programming additions and deletions, improvements begun or discontinued during the reporting year, services initiated or discontinued, minority/ female enterprises participation efforts, number of subscribers (including gains or losses), homes passed, and miles of cable distribution plant in service;

B. a statement of certification under oath of annual gross revenues from an official or representative of the Grantee having the requisite knowledge to make said statement.

23.3 Upon request, the Grantee shall mail the following documents to the City:

A. within thirty (30) days of the request, the current annual report, if any, of the Grantee, or each affiliate which controls, owns, or manages the Grantee and issues an annual report;

B FCC Forms 325 and 395 (or their successor forms) for the Grantee's cable system; and

C. FCC proof of performance and RF signal leakage tests (or their equivalent) filed with the FCC.

23.4 The Grantee shall file with the City any notice or other document issued by any state or federal agency which has instituted a civil or criminal proceeding naming the cable system or the Grantee, to the extent the same may affect or bear on the operations of the Grantee's cable system.

23.5 The Grantee shall file with the City any request for protection under Bankruptcy laws, or any judgment related to a declaration of bankruptcy by the Grantee, any affiliate which controls or manages the Grantee, or any operator of the cable system.

SECTION 24. BOOKS AND RECORDS—MAINTENANCE

In addition to reports required by this Franchise, the Grantee shall maintain records. The records shall be kept at the Grantee's office in the Chicago metropolitan area and said records other than personally identifiable information shall be available for City review upon reasonable notice during normal business hours. Records shall be kept for the time frame indicated below:

- A. records of outages, indicating date, duration, area and the estimated number of subscribers affected, type of outage, and cause (to be maintained for two (2) years);
- B. records of service calls for repair and maintenance, (to be maintained two (2) years, subject to the limitations of the Grantee's data base);
- C. records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and date and time service was extended (to be maintained two (2) years, subject to the limitations of the Grantee's data base); and
- D. maps showing the current location of the cable system.

SECTION 25. INSPECTION OF PLANT

The City may inspect the Grantee's cable system during construction and upon completion shall have the right to inspect the cable system and the Grantee's equipment used in the maintenance of that cable system at any time upon reasonable prior notice.

SECTION 26. PERFORMANCE MONITORING**26.1 Performance Review.**

- A. During the year which commences on the third anniversary of the effective date of the Franchise, the City may commence a review of the Grantee's performance under the Franchise. As part of this review, the City may consider: (1) whether the Grantee has complied with its obligations under the Franchise and applicable law; (2) whether

customer service standards are adequate or excessive; and (3) other issues as may be raised by the Grantee, the City, or the public.

B. The City may conduct public hearings to provide the Grantee and the public the opportunity to comment on the Grantee's performance and other issues considered as part of any review.

26.2 Grantee Cooperation. The Grantee shall cooperate in the performance reviews.

SECTION 27. TRANSFERS

Prior approval of the City shall be required for any transfer of the franchise. The Grantee shall commence the transfer process by submitting the information required in FCC form 394 (or successor FCC form) or reasonable information requested by the City, if there is no FCC form. The City shall follow the transfer provisions of the Cable Act. Any transfer made without the authorization required herein renders the Franchise null and void from the time of the transfer.

SECTION 28. RENEWAL

28.1 In the case of an application for a renewal of this Franchise that is not governed by the formal renewal provisions of the Cable Act, the following shall apply:

A. The City may issue a request for proposals (hereinafter "RFP").

B. The City may give public notice when it receives a properly completed Franchise renewal submittal. After receiving a proposal that contains the required information, the City may schedule a meeting or meetings to determine whether a renewal Franchise should be granted. In making this determination, the City shall consider:

1. the extent to which an applicant for renewal has substantially complied with the applicable law and the material terms of any existing cable Franchise for Evanston;
2. whether the applicant for renewal's quality of service under its existing Franchise, including signal quality, response to

customer complaints, and billing practices, but without regard to the mix or quality of cable or other services provided over the system has been reasonable in light of the needs of the community;

3 whether the applicant has the financial, legal, and technical ability to provide the services, facilities, and equipment set forth in a renewal submittal;

4. whether the applicant's renewal submittal is reasonable to meet the future cable-related needs and interests of Evanston as identified by the City including any minimum requirements, taking into account the cost of meeting those interests and needs

C. The City need not review any renewal submittal that does not include information required by this Ordinance.

28.2 Formal renewal applications for renewal will be governed by the formal renewal provisions of the Cable Act. A Grantee which intends to exercise rights under 47 U.S.C. § 546(a)-(g) shall submit a notice in writing to the City in a timely manner clearly stating that it is activating the formal renewal procedures of the Cable Act. A Grantee which has applied for renewal under the formal renewal provision of the Cable Act shall submit all information requested by the City within the time frame delineated by the City.

SECTION 29. MISCELLANEOUS

29.1 Map Accuracy not Guaranteed. The City does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructure.

29.2 City Action. In any action by the City mandated or permitted by this Agreement, the City shall act in a reasonable and timely manner. Additionally, in any instance where the City approval or consent is required, the City shall not unreasonably withhold its approval or consent.

29.3 Time of Essence The City and the Grantee agree that with regards to the terms and conditions of this agreement, time is of essence.

29.4 Effect of Preemption; Federal and State Law. The Grantee must comply with all applicable provisions of federal and state law, except to the

extent those provisions are lawfully superseded by a provision of this Franchise Agreement. If the City's ability to enforce any Franchise provision is preempted, then the provision shall be deemed preempted but only to the extent and for the period the preemption is required by law. If, as a result of a change in law, the provision would again be enforceable, it shall be enforceable and the Grantee will comply with all obligations thereunder after receipt of notice from the City

29.5 Exercise of Authority. The City may exercise appropriate regulatory authority under the provisions of this Franchise and applicable law, as amended from time to time.

29.6 Force Majeure. The Grantee shall not be deemed in default or non-compliance with provisions of its Franchise where performance was rendered impossible by war, riots, civil disturbance, hurricanes, floods, other natural catastrophes, or other events beyond the Grantee's control, and the Franchise shall not be revoked or the Grantee penalized for such non-compliance, provided the Grantee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its Franchise without unduly endangering the health, safety, and integrity of the Grantee's employees or property, or the health, safety, and integrity of the public, streets, public property, or private property.

29.7 Severability. If any provision of this franchise agreement is held by a court or by any federal or state agency of competent jurisdiction to be invalid as conflicting with any federal or state law, rule, or regulation now or hereafter in effect, the validity of the remaining sections hereof shall not be affected.

29.8 Written Notice. All notices between the parties shall be given as follows:

To the City:

City Manager
City of Evanston
2100 Ridge Avenue
Evanston, Illinois 60201

With copies to:

First Assistant Corporation Counsel and
Cable Coordinator
City of Evanston
2100 Ridge Avenue
Evanston, Illinois 60201

To the Grantee:

General Manager

Continental Cablevision--Northern District
688 Industrial Drive
Elmhurst, IL 60126

With copy to:

Government Relations Manager
Continental Cablevision--Northern District
688 Industrial Drive
Elmhurst, IL. 60126

Notice shall be deemed given three business (3) days after posting with pre-paid postage, return receipt requested, first class mail or upon actual receipt of said notice, if earlier. By notice complying with this Section 29 either party shall have the right to change the address to which notice to such party may be sent.

29.9 Applicable Law. This Agreement shall be construed pursuant to the laws of the State of Illinois.

PASSED & APPROVED by the City Council of the City of Evanston, Illinois and approved on this 24 day of JUNE, 1996, pursuant to Ordinance 69-0-96.

THE CITY OF Evanston, Illinois

BY: 
(City Manager)

ATTEST: 
(City Clerk)

APPROVED this 16th day of July, 1996

BY: 
(City Attorney)

ATTEST: 
(City Clerk)

ACCEPTED THIS 16 DAY OF July, 1996

Continental Cablevision Acquisitions of Northern Illinois, Inc.

BY: 

Robert E. Ryan, Vice President—Governmental Affairs

EXHIBIT A

Evanston Customer Service Standards

Section 1. DEFINITIONS

A. The term "normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

B. The term "normal operating conditions" means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee 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 Grantee 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.

C. The term "service interruption" means the loss of picture or sound on one or more cable channels.

Section 2. NOTIFICATIONS TO SUBSCRIBERS

A. The Grantee 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:

- 1) Products and services offered;**
- 2) Prices and options for programming services and conditions of subscription to programming and other services;**
- 3) Installation and service maintenance policies;**
- 4) Instructions on how to use the cable service;**
- 5) Channel positions of programming carried on the system;**
- 6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office;**

B. Subscribers 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 Grantee. In addition, Grantee shall notify subscribers a minimum of thirty (30) days in advance of any significant changes in the other information required by Section 1 A above.

SECTION 3. SUBSCRIBER BILLING

A. Subscriber 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, Grantee must respond to a written complaint from a subscriber within 30 days.

C. Credits for service will be issued no later than the subscriber's next billing cycle following the determination that a credit is warranted.

D. Refund checks will be issued promptly, but no later than either:

1) The subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

2) The return of the equipment supplied by the Grantee if service is terminated.

SECTION 4. TELEPHONE SERVICE

A. The Grantee 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.

1) Trained representatives will be available to respond to subscriber telephone inquiries during normal business hours.

2) 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 Grantee representative no later than the next business day.

B. Under normal operating conditions, the telephone answer time by a customer service representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

C. Under normal operating conditions, the subscriber will receive a busy signal less than three (3) percent of the time.

SECTION 5. INSTALLATIONS, OUTAGES AND SERVICE CALLS

A. Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent 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 125 feet from the existing distribution system.

2)Excluding conditions beyond its control, the Grantee will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The Grantee must begin actions to correct other service problems the next business day after notification of the service problem.

3)The "appointment window" alternatives for installations, service calls and other installation activities will be either a specific time or, at maximum, a four hour time block during normal business hours. The Grantee may schedule service calls and other installation activities outside normal business hours for the express convenience of the subscriber.

4)Grantee may not cancel an appointment with a subscriber after the close of business on the business day prior to the scheduled appointment.

B. If Grantee's representative is running late for an appointment with a subscriber and will not be able to keep the appointment as scheduled, the subscriber will be contacted. The appointment will be rescheduled, as necessary at a time which is convenient for the subscriber.