

**CHAPTER 8**

**CABLE TELEVISION**

**ARTICLE I – CASS CABLE TV, INC.**

**8-1-1      FRANCHISE AGREEMENT.** The franchise agreement found in Exhibit "A" between Cass Cable TV, Inc. and the City shall be as follows.

**(Ord. No. 09-04; 06-03-09)**

**EXHIBIT "A"**

**CABLE TELEVISION  
FRANCHISE AGREEMENT**

The City of Griggsville, Illinois, an Illinois municipal corporation ("Grantor"), and Cass Cable TV, Inc., an Illinois corporation, ("Grantee") enter into this Cable Television Franchise Agreement ("Franchise Agreement") as of June 3, 2009.

**UNDERSTANDING**

- A. Acceptance of the Franchise Agreement by Grantor and Grantee will not obligate Grantee to construct a Cable System if within 180 days of such acceptance, Grantee notifies Grantor of such intent and terminates this Agreement.
- B. Grantee's intentions are to build and operate a Cable System serving Griggsville, IL under the terms of this franchise.
- C. Grantee desires to operate the Cable System and to upgrade the Cable System and the services offered over the Cable System.
- D. Grantor, after considering the comments of interested parties at a duly noticed public hearing, finds that the acceptance of Grantee's franchise on the terms and conditions of this Franchise Agreement will serve the community's cable-related needs and interests taking into account the costs.

Based on the above understanding, the Grantor and Grantee agree as follows:

**AGREEMENT**

**Section 1. Definitions.**

- A. "Basic Cable Service" means the basic and/or expanded basic cable packages.
- B. "Cable Modem Service" means access to the Internet and related interactive services, including communications, information, entertainment, and other services, transmitted over the Cable System using a cable modem and Internet protocols.
- C. "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 or use of such video programming or other programming service.
- D. "Cable 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 that includes video programming, and is provided to multiple subscribers within the Franchise Area.
- E. "Facilities" means any distribution or transmission component of a Cable System, including cables, conduits, converters, cabinets, vaults, and related equipment, owned or controlled by Grantee.
- F. "Franchise Area" means corporate City limits.
- G. "Franchise Authority" means the duly elected Board and Mayor of Griggsville.
- H. "Grantee" means the grantee of rights under this Agreement.
- I. "Gross Revenues" means all gross revenues received by Grantee from subscribers for the provision of Basic Cable Service within the Franchise Area. Gross Revenues shall include subscription fees and fees or charges for Basic Cable Service, premium services, pay-per-view services and equipment fees. Gross Revenues shall not include any installation fees, reconnect fees, transfer charges, refunds to subscribers, bad debt actually incurred, revenues from Cable

Modem Services, franchise fees, advertising revenues, copyright fees, late fees, fees itemized and

passed through as franchise compliance fees, or any taxes or other governmental fees imposed directly on subscribers.

- J. "Person" means any person, firm, partnership, association, corporation, company or organization of any kind.
- K. "Right-of-way" means the surface of and the space above and below any public street, right-of-way, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, drive, communication, or utility easement, within the Franchise Area.

**Section 2. Grant of Authority.** Grantor grants to Grantee the right and privilege to engage in the business of building and operating a Cable System and providing Cable Service within the Franchise Area and to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any Right-of-way, the necessary or desirable Facilities related to the Cable System. Nothing in this Franchise Agreement shall restrict Grantee's use of the Cable System to provide Cable Modem Service or other communications services within the Franchise Area, subject to applicable laws.

**Section 3. Non-Exclusive Grant.** The franchise and other rights granted under this Agreement shall not be exclusive, and Franchise Authority reserves the right to grant the same authorization to any other Person as set forth in Section 11-42-11 of the Illinois Municipal Code.

**Section 4. Term of Franchise.** The term of this Franchise Agreement shall be **twenty (20) years**, beginning **thirty (30) days** after the final passage and upon delivery of acceptance by Grantee.

**Section 5. Conditions of Right-of-way Occupancy.**

- A. Grantee shall locate Facilities within the Franchise Area to minimize interference with: (i) the proper use of Rights-of-way; (ii) rights of the existing cable franchisee and other utilities and (iii) the rights and reasonable convenience of adjacent property owners. The Cable System shall be constructed and operated in compliance with all local, State and national construction and electrical codes in effect at the time of the construction. Grantee shall install and maintain the Facilities so that they will not interfere with any installations of Franchise Authority. Whenever commercially reasonable, the Cable System shall utilize existing utility poles and easements.
- B. In case of disturbance caused by Grantee in any Right-of-way, Grantee shall, at its cost, replace and restore such Right-of-way to as good a condition as before.
- C. If Franchise Authority shall lawfully elect to alter or change the grade of any Right-of-way, Grantee, upon reasonable notice by Franchise Authority, shall remove, and relocate its Facilities at its cost.
- D. Grantee shall, on the request of any person holding the necessary permits, temporarily raise or lower its wires to permit the moving of buildings or other permitted property. The person requesting temporary removal or raising or lowering of wires shall pay Grantee's reasonable charge for the work. Grantee may require payment in advance. Grantee shall be given not less than **fifteen (15) days** advance notice to arrange for such temporary wire changes.
- E. Grantee shall have the authority, to trim trees upon and overhanging Rights-of-way to prevent interference with the Facilities.
- F. In all sections of the Franchise Area where all cables, wires, or other like facilities or public utilities are placed underground, to the extent commercially reasonable, Grantee shall place its Facilities underground.
- G. Grantee, at its cost shall, protect, support, temporarily disconnect, relocate in the same street or other public place, any Facilities when reasonably required by Franchise Authority by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other type of structures or improvements by public agencies.

**Section 6. Franchise Fees.**

- A. **Franchise Fees.** The Grantee shall pay to the City a franchise fee in an amount equal to **three percent (3%)** of annual gross revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that (i) Grantor may change the percentage set forth in this paragraph upon **ninety (90) days** written notice, not to exceed **five percent (5%)**; and (ii) Grantee shall not be compelled to pay any higher percentage of fees than any other video service provider, under state authorization or otherwise, providing service in the Franchise Area. The payment of franchise fees shall be made on an annual basis and shall be due **forty-five (45) days** after the close of each calendar year. Each franchise fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the Franchise Fees paid during that period.
1. **Franchise Fees Subject to Audit.**
    - a. Upon reasonable prior written notice, during normal business hours at Grantee's principal business office, the City shall have the right to inspect the Grantee's financial records used to calculate the City's franchise fees; provided, however, that any such inspection shall take place within **three (3) years** from the date the City receives such payment, after which period any such payment shall be considered final.
    - b. Upon the completion of an independent audit by the City, the City shall provide to the Grantee a final report setting forth the City's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Grantee shall have **thirty (30) days** from the receipt of the report to provide the city with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a "Finally Settled Amount." For purposes of this Section, the term "Finally Settled Amount(s)" shall mean the agreed upon underpayment, if any, to the City by the Grantee, or overpayment to the City by the Grantee as the case may be, as a result of any such audit. If the parties cannot agree on a "Final Settlement Amount," the parties shall submit the dispute to a mutually agreed upon mediator within **sixty (60) days** of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.
    - c. Any "Finally Settled Amount(s)" due to the City as a result of such audit shall be paid to the City by the Grantee within **thirty (30) days** from the date the parties agree upon the "Finally Settled Amount." Any overpayment by the Grantee to the City shall be credited against subsequent franchise fee payments by the Grantee to the City until such time as the overpayment is fully credited; or shall be paid by the City to the Grantee within **thirty (30) days** from the date the parties agree upon the "Finally Settled Amount" in the event no subsequent franchise fee payments are due to the City. In the event Grantee does not pay the "Finally Settled Amount" within **thirty (30) days**, Grantee shall be charged and shall pay, in addition to the amount due, interest on the amount due equal to the prevailing prime rate plus two hundred base points of interest compounded daily from the due date for payment of the "Finally Settled Amount."
    - d. Once the parties agree upon a "Finally Settled Amount" and such amount is paid by or credited to the Grantee, the City shall have no further rights to audit or challenge the payment for that period. The City shall bear the expense of its audit of the Grantee's books and records.

**Section 7. Safety Requirements.**

- A. Grantee shall maintain commonly accepted methods for the maintenance and use of its property and operation of the Cable System, and for preventing failures and accidents.
- B. All Facilities in, over, under and upon the Rights-of-way, shall at all times be kept and maintained in a safe condition, and in good order and repair by Grantee.

**Section 8. System Extension.** Grantee may elect, but has no obligation, to build or extend its Facilities to any locations within the Franchise Area except as follows:

- A. Whenever Grantee shall receive a request for service from at least **fifteen (15) subscribers** within the Franchise Area within **one thousand three hundred twenty (1320) cable-bearing strand feet (one quarter (1/4) cable mile)** of its trunk or distribution cable, it shall extend its Cable System to such subscribers at no cost to such 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 in subsection B.
- B. No subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a Subscribers 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 fewer than **fifteen (15) Subscribers** per **one thousand three hundred twenty (1320) cable-bearing strand feet** of trunk or distribution cable. Cable Service or other service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. Potential subscribers shall bear the costs of the construction and other costs on a pro rata basis. Grantee may require payment in advance of the capital contribution in aid of construction borne by such potential subscribers.

**Section 9. Service to Public Buildings.** Grantee shall provide, without charge, one cable outlet and Basic Cable Service to each educational facility, local governmental office building, library building, fire station and police station within the Franchise Area and located within **one hundred fifty (150) feet** of a feeder cable. The outlet shall not be used to distribute or sell Cable Service, nor, except in a public library, which may offer internet access to the public free of charge, shall such outlet be located in a common area open to the public. The installation of such outlets shall not require special equipment or extraordinary materials. If more than one outlet is requested at any of the facilities, Grantee may charge standard installation fees for those outlets.

**Section 10. Operational Standards.** Grantee shall operate and maintain the Cable System in compliance with Federal Communications Commission regulations and applicable laws, including the customer service and privacy protection standards set forth in State law, namely, **220 ILCS 5/70-501**.

**Section 11. Cable Office; Complaints.** Grantee shall maintain a business office that subscribers may telephone toll-free during regular business hours. Should a subscriber have an unresolved complaint regarding Grantee's Cable Service, the subscriber may file a complaint with Franchise Authority Clerk (with a copy to Grantee). If within **thirty (30) days** of Grantee's receipt of such complaint the matter has not been resolved, such subscriber may meet jointly with a representative of the Franchise Authority and a representative of Grantee to fully discuss and resolve the matter.

**Section 12 - Indemnification and Insurance.**

- A. During the term of this Franchise Agreement, Grantee shall indemnify and hold harmless Franchise Authority from all claims, actions, suits, liability, loss, expense or damages, including actual and reasonable attorney's fees, arising from Grantee's ownership, construction, repair, replacement, maintenance or operation of the Cable System. Franchise Authority shall give

Company prompt written notice of any action commenced or threatened that Franchise Authority believes would require indemnification under this Section.

- B. Grantee shall maintain in full force and effect during the life of this Agreement, public liability insurance with an insurance company authorized to do business in Illinois, at no less than in the following amounts:

Comprehensive General Liability:

Bodily injury including death One Million (\$1,000,000) each occurrence;

Property Damage One Million (\$1,000,000) each occurrence

Personal Injury One Million (\$1,000,000) aggregate

Comprehensive Automobile Liability:

Bodily injury including death One Million (\$1,000,000) each occurrence;

Property Damage One Million (\$1,000,000) each occurrence

Umbrella Liability:

One Million (\$1,000,000) per occurrence;

One Million (\$1,000,000) aggregate

**Section 13. Transfer and Assignment.** Grantee shall not assign or transfer this Agreement without written notice to Franchise Authority. In considering a proposed transfer or assignment, Franchise Authority may inquire into the legal, technical and financial qualifications of the proposed transferee or assignee.

**Section 14. New Developments.** Franchise Authority shall not unreasonably deny or delay an application to amend this Agreement upon application of Grantee, when necessary to enable Grantee to take advantage of any technological, legal, or economic developments, or due to financial hardship or commercial impracticability.

**Section 15. Compliance with Laws and Ordinances.** Grantee shall at all times during the life of this Agreement be subject to all applicable laws. Franchise Authority reserves the right to adopt ordinances of general applicability as may be deemed necessary to the health, safety and welfare of the public. Such ordinances shall not conflict with state or federal law, or materially impair Grantee's rights under this Franchise Agreement.

**Section 16. Violation and Termination.**

- A. **Notice of Violation.** If Franchise Authority has reason to believe that Grantee has committed a material violation of any provision of this Franchise Agreement, Franchise Authority may issue to Grantee a written Notice of Violation. The Notice of Violation shall state with specificity the basis for Franchise Authority's belief that a violation has occurred. Grantee shall respond to the Notice of Violation within **thirty (30) days** after receipt, and may either dispute the Notice or advise Franchise Authority of its plan for curing the violation including the amount of time reasonably needed to complete the cure. If Grantee disputes the Notice, has not responded to the Notice within the **thirty (30) day** period, or has not cured the violation within the time identified by Grantee in its response, Franchise Authority may call a public hearing to consider the matter.
- B. **Public Hearing.** Grantee shall receive at least **thirty (30) days** written notice of the public hearing and shall be given an opportunity to be heard. Grantee shall have the opportunity to submit written or oral comments and evidence, examine and cross-examine witnesses, and to receive other appropriate due process. Franchise Authority shall also hear the comments of other interested parties. Following the public hearing, Franchise Authority shall vote and issue a decision either (i) rescinding the Notice of Violation and closing the matter; (ii) tabling the matter

for further consideration; (iii) ordering Grantee to take specific action in accordance with this Franchise Agreement; or (iv) terminating this Franchise Agreement.

- C. Exceptions to Termination. Franchise Authority may not terminate this Franchise Agreement when:
1. Grantee's failure to comply is due to inadvertence or to acts of God, fires, strikes, riots, floods, war and other causes beyond Grantee's reasonable control.
  2. Notwithstanding Grantee's good faith efforts to remedy the violation, the violation cannot be reasonably remedied satisfactorily within the time first identified in Grantee's response to the Notice. So long as Grantee has undertaken to comply with and is diligently pursuing a cure and has notified Franchise Authority in writing, Franchise Authority shall grant an extension of time sufficient to allow Grantee use its best efforts to complete its correction of the violation.
- D. Grantee's Election Not to Proceed. Within **one hundred eighty (180) days** of execution of this Agreement, Grantee may elect not to proceed with the construction of the Cable System, and in such event, may terminate this Agreement upon notice to Grantor. In such event, neither party shall have any further obligations to the other.

**Section 17. Procedure Upon Termination.** Upon expiration of this Franchise Agreement, and any renewal, Grantee has the right to enter upon the Rights-of-way for the purposes of removing any or all of the Facilities. Grantee shall refill, at its own expense, any excavation it makes, and shall leave the Rights-of-way in as good condition as that prevailing before Grantee's removal of the Facilities.

**Section 18. Franchise Renewal.** This Franchise Agreement shall be renewed in accordance with 47 U.S.C. Section 546.

**Section 19. Rights of Existing Franchisee.** The parties acknowledge that the existing franchisee has certain rights pursuant to Section 11-42-11 of the Illinois Municipal Code, that this Agreement is subject to those rights, and that in the event of a conflict between this Agreement at Section 11-42-11 of the Illinois Municipal Code, Section 11-42-11 shall control.

**Section 20. Severability.** If any provision of this Franchise Agreement is held illegal, invalid or unconstitutional by the decision of any court or regulatory body of competent jurisdiction, that decision shall be severed from this Franchise Agreement.

**Section 21. Notices.** Notices under this Franchise Agreement shall be in writing and shall be deemed given upon receipt by hand delivery, certified mail return receipt requested, or overnight courier to the following addresses:

To the Grantor: City of Griggsville  
108 S. Corey St.  
P.O. Box 272  
Griggsville, IL 62340  
Attn: Mayor

To the Grantee: Cass Cable TV, Inc.  
P.O. Box 200  
100 Redbud Road  
Virginia, IL 62691  
Attn: General Manager

A party may designate other addresses for providing notice through a notice under this Section.



**Section 22. Publication.** Grantee shall assume the cost of publication of this Agreement if required by law. A bill for publication costs shall be presented to Grantee by Franchise Authority Clerk upon Grantee's filing of acceptance and shall be paid at that time.

**Section 23. Effective Date.** This Agreement shall take effect **thirty (30) days** after passage, subject to acceptance by Grantee within that **thirty (30) day** period.

Passed by Franchise Authority Board this 3<sup>rd</sup> day of June, 2009.

|                        |                 |
|------------------------|-----------------|
| <u>/s/ Kent Goewey</u> | <u>06-03-09</u> |
| Mayor                  | Date            |

|                          |                 |
|--------------------------|-----------------|
| <u>/s/ Judy Bradshaw</u> | <u>06-03-09</u> |
| City Clerk               | Date            |

Accepted by Cass Cable TV, Inc.

|                               |                 |
|-------------------------------|-----------------|
| By: <u>/s/ Gerald S. Gill</u> | <u>05-20-09</u> |
| Name: Gerald S. Hill          | Date            |
| Title: Vice President         |                 |