

Title 8

Franchise

ARTICLE 1
GENERAL PROVISIONS

SECTION 1. TITLE. This Ordinance shall be known as and may be cited as the "Village of Alpha Cable Television Franchise Ordinance."

SECTION 2. DEFINITIONS. The words and phrases defined in this Section shall have the meanings ascribed to them as follows:

- a. "Company" means Diverse Communications, Inc.
- b. "Gross Revenue" means the revenue derived by the Company from all services generated by the charges to Subscribers for Basic Service.
- c. "Municipality" means the Village of Alpha, Henry County, Illinois.
- d. "Person" means any individual, firm, partnership, limited partnership, association, corporation, company or organization of any kind.
- e. "Premium Programming" means any special program other than Basic Service which an additional charge is made, including but not limited to movies, variety acts, sporting events or any other communication service for which an additional charge is made.
- f. "Public Right of Way" means all sidewalks, streets and alleys in the Municipality which are dedicated to the Municipality for street, highway, sidewalk, lighting, drainage all public or private utility, or cable television purposes, and all public ways and places contiguous thereto.
- g. "Subscriber" means any person receiving services from Diverse Communications, Inc. under the Grant pursuant to this Ordinance
- h. "Calendar Quarter" means the time periods from January 1 to March 31; April 1 to June 30; July 1 to September 30; or October 1 to December 31 each year.
- i. "Outage" means when all channels of the Company's Cable TV System are incapable of furnishing service to all Subscribers. Outage does not mean when one or more channels but less than all channels are out of service to all customers.
- j. "Cable TV System" means the equipment owned by the Company and located in the municipality which is used in providing cable TV or other communications service in the Municipality provided by the Company.

SECTION 3. GRANT OF FRANCHISE.

- a. The Municipality, to the full extent that it may do so, hereby grants to the Company, in accordance with the terms, conditions and provisions of this Ordinance, the right, privilege and franchise: to establish, construct, operate and maintain its Cable TV System in, upon, over and under the public right of way and Without easements or other rights to use property which are effective for the purposes of the Grant; to extend the Cable TV System to all potential Subscribers within the Municipality; to acquire by lease, license, purchase or other right to use equipment, facilities and improvements, and land constituting all or part of the Cable TV System; to connect Subscribers to the Cable TV System, and to repair, replace, enlarge and extend the Cable TV System.
- b. The term of the Grant shall be from the effective date of the Ordinance until January 13, 2029. The term shall begin January 13, 2014. During the Grant either party may opt out of the agreement by contacting the other party with a minimum one-year notice.

SECTION 4. Jurisdiction OF GRANT OF FRANCHISE. The Grant shall apply within the corporate limits of the Municipality, including all territory hereafter annexed to the Municipality.

SECTION 5. FRANCHISE FEE. The Company shall pay to the Municipality for the right, privilege and franchise in connection with the Grant, an amount equal to three percent (3) of the Gross Revenues, such payment to be payable to the Municipality on or before the last day of the month following the end of each Calendar Quarter of the year. No fee shall be made for any premium programming service. The last annual payment shall be accompanied by a statement from the Company accountant having requisite knowledge that the books and records of the Company reflect the gross revenues upon which payment is based.

SECTION 6. GENERAL CABLE TV SYSTEM STANDARDS.

- a. The Company, through the Cable TV System, shall provide effective and efficient service to the best of its ability.
- b. The Company shall not interrupt all or any part of the services of the Cable TV System in the absence of maintenance or repair needs or emergency circumstances.
- c. The Company shall not be liable for interruptions in service caused by strikes, war, civil commotion, Acts of God, and other causes beyond the control of the Company.

SECTION 7. USE OF MUNICIPAL STREETS.

- a. All facilities erected, constructed, or placed by the Company within the Municipality shall be located so as not to interfere with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places, and not to interfere with existing public utility installations

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- b. In case of any disturbance of pavement, sidewalk, driveway, or other surfacing, the Company shall, at its own expense, replace and restore all paving, sidewalk, driveway or other surface of any street or alley disturbed. In case of any disturbance on either private or public property, the land surface, including plantings and trees, shall be restored by the Company to substantially its previous condition.

SECTION 8. LOCAL OFFICE; COMPLAINT PROCEDURES.

- a. During the term of this Franchise and any renewal thereof, the Company shall maintain a telephone number and answering machine for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, and similar matters. Any complaints from Subscribers shall be investigated and acted upon as soon as possible.
- b. The Company shall include the name, address and local telephone number where complaints are to address upon Its Subscriber's bills.
- c. The Company shall maintain a complaint log in connection with all inquiries, complaints regarding service problems.

SECTION 9. LIABILITY, INSURANCE AND INDEMNITY.

- a. The Company hereby agrees to indemnify, defend and save whole and harmless the Municipality and its officers and employees from liabilities and related expenses of any kind which may arise out of or from the establishment, construction, operation and maintenance of its Cable TV System or the execution and implementation of this Ordinance. The Municipality shall notify the Company in the event any person shall in any way notify the Municipality of any claim or demand in connection with the Cable TV System from which the Company may be subject to liability under this Section or otherwise. The undertaking in connection with this subsection (a) includes liabilities or claims of liability with respect to property damage, personal injury, invasions of the right of privacy, defamation of any person, the violation or infringement of any copyright, trademark trade name, service mark or patent, or of any other right of any person, and failure of the Company to comply with the provisions of any federal, state or local statute, ordinance, rule or regulation applicable to the Company in connection with this Ordinance.
- b. The Company shall keep its Cable TV System continuously insured against such risks as are customarily insured against by businesses of like size and type, including but not limited to:
 - (i) Insurance upon the repair or replacement basis if available, and otherwise to the full insurable value of the Cable TV System (with reasonable deductible provisions) against loss or damage by fire and lightning, with uniform standard extended coverage endorsement, limited only as may be provided in the standard form of extended coverage endorsement at the time in use in the State.

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- (ii) Insurance to the extent of Three Million Dollars (\$3,000,000) per occurrence against liability for bodily injury including death and to the extent of Five Hundred Thousand Dollars (\$500,000) per occurrence against liability for damage to the property including loss of use, occurring on, arising out of or in any way related to the Cable TV System.
 - (iii) During any period of construction, adequate coverage to meet liability under the Illinois Structural Work Act.
 - (iv) Workmen's Compensation Insurance within Statutory limits and Employer's Liability Insurance of not less than One Hundred Thousand Dollars (\$100,000).
 - (v) Comprehensive Automobile Liability Insurance to the extent of One Million Dollars (\$1,000,000) per occurrence against liability for bodily injury including death and to the extent of Three Hundred Thousand Dollars (\$300,000) per occurrence against liability for damage to property including loss of use occurring on, arising out of, or in any way related to the Cable TV System.
- c. The Company shall have the Municipality included as co-insured on all insurance policies referred to in this Section. The Company shall furnish the Municipality copies of all such policies. All such policies shall provide that the issuing insurance company will not cancel them without ten (10) days' prior notice to the Company and the Municipality. All such policies shall be taken out and maintained with generally recognized responsible insurance companies qualified to do business in the State of Illinois.

SECTION 10. ASSIGNMENT OR TRANSFER. The right, privilege and franchise under this Ordinance shall not be assigned or transferred either in whole or in part or leased, sublet, pledged, or mortgaged in any manner, nor shall title thereto either legal or equitable or any right, interest, or property therein, pass to or vest in any person either by act of the Company or by operation of law without the prior express approval of the Municipality. The granting, giving or waiving of any one or more of such approvals shall not render unnecessary any subsequent approvals. The Municipality shall not unreasonably withhold such approval and may require reasonable conditions in connection with such assignment or transfer.

SECTION 11. SURETY BOND.

- a. The Company shall maintain throughout the term of this Ordinance a faithful performance bond running to the Municipality in the penal sum of Twenty Thousand Dollars (\$20,000) on the condition that the Company shall well and truly observe, fulfill and perform in connection with each provision, term and condition of this Ordinance, and that in case of any breach, the Municipality shall be entitled to recover from the principal and sureties on such bond the amount of any damages and all costs and attorney's fees insured by the Municipality, proximately resulting from the failure of the Company to well and faithfully observe and perform under any and all of the provisions, terms and conditions which this Ordinance requires it to perform.

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- b. No recovery by the Municipality of any sum by reason of the bond required by this Section shall be any limitation upon the liability of the Company to the Municipality, except that any sum received by the Municipality by reason of such bond shall be deducted from any recovery which the Municipality might have against the Company.