

- (a) VILLAGE shall mean the Village of Pender.
- (b) BOARD shall mean the governing body of the Village of Pender.
- (c) COMPANY shall mean HuntTel CableVision, Inc., or its assigns.
- (d) PERSON shall mean any person, firm, partnership, association, corporation, company, or organization of any kind.
- (e) FRANCHISE AREA shall mean that area within the corporate limits of the Village.
- (f) STREET shall mean 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, communications or utility easement, now or hereafter existing as

number.

plural number include the singular number, and words in the singular number include the plural inconsistent with the context, words used in the present tense include the future tense, words in the phrases, words, abbreviations, and their derivations shall have the meaning herein given. When not

SECTION 1. DEFINITIONS. For the purpose of this ordinance, the following terms,

NEBRASKA:

BE IT ORDAINED BY THE GOVERNING BODY OF THE VILLAGE OF PENDER,

EFFECT.

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO HUNTEL CABLEVISION, INC., A CORPORATION, ITS SUCCESSORS AND ASSIGNS TO OPERATE, AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE VILLAGE OF PENDER, NEBRASKA, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE PROVIDING FOR CITY REGULATION AND USE OF THE CABLE TELEVISION SYSTEM, REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH, AND PROVIDING WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND

ORDINANCE NO. 477

PROPERTY OF COMPANY shall mean all property owned, installed or used by the Company in the conduct of a CATV business in the Village.

CATV shall mean a cable television system as hereinafter defined.

CABLE TELEVISION SYSTEM shall mean a system composed of, without limitations, antenna, cable, wires, lines, towers, wave guides, or any other conductors, converters, equipment or facilities, designed, constructed, or wired for the purpose of producing, receiving, amplifying, and distributing by coaxial cable audio and/or visual radio, television, electronics or electrical signals to and from persons, subscribers, and locations in the franchise area.

BASIC CATV SERVICE shall mean the simultaneous delivery by the Company to televisions receivers (or any other suitable types of audio-video communication receivers) of all subscribers in the Franchise Area of all signals of over the air television broadcasters and public, educational, or governmental access facilities required by the FCC to be carried by a cable television system as defined hereinabove. Basic service charge shall also include additional channels including original cablecast programming at the option of the Company.

ADDITIONAL SERVICE shall mean any communications service other than basic service provided over its cable television system by the Company directly or as a carrier for its subsidiaries, affiliates, or any other person engaged in communications services including but not limited to satellite distributed programming, burglar alarm, data, or any other electronic intelligence transmission, facsimile reproduction, meter reading, and home shopping.

PAY TELEVISION SERVICE shall mean the delivery over the cable television system of video signals in intelligible form to subscribers for a fee or charge (over and above the charge for basic CATV service) on a per program, per channel, or other subscription basis.

SUBSCRIBER shall mean any person or entity receiving basic CATV service.

GROSS ANNUAL SUBSCRIBER REVENUES shall mean all compensation and other consideration received directly by the Company from subscribers in payment for regularly furnished basic CATV service and Pay Television Service. Gross Annual Subscriber Revenue shall not include any taxes on services furnished by the Company imposed directly on any subscriber or user by any City, state, or other governmental unit and collected by the Company for such governmental unit, nor shall it include revenue from additional service nor from auxiliary services which

- (g)
- (h)
- (i)
- (j)
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- (n)

include but are not limited to leased channels, advertising on leased channels, pay television service, satellite distributed programming, burglar alarm, internet, home shopping, data or any other electronic intelligence transmission, facsimile reproduction and meter reading .

SECTION 2. GRANT OF AUTHORITY. Whereas, the Village has approved the legal,

character, financial, technical, and other qualifications of the Company and the adequacy and feasibility of the Company's construction arrangements as part of a full public proceeding affording due process, there is hereby granted by the Village to the Company the nonexclusive right and privilege to engage in the business of operating and providing a cable television system in the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any public way and public place, now laid out or dedicated and all extensions thereof and additions thereto in the franchise area such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the cable television system.

SECTION 3. TERM OF FRANCHISE. The franchise and rights herein granted shall

continue in force and effect for a term of 5 years after the effective date of this franchise. The franchise may be renewed for an additional 5 year period following a public proceeding affording due process. The franchise shall be renewed at the request of Company, if the Company's performance has been satisfactory. Such approval shall not be unreasonably withheld.

SECTION 4. CONDITIONS OF STREET OCCUPANCY.

(a) All transmission and distribution structures, lines, and equipment erected by the Company within the franchise area shall be so located as to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said street or other public ways and places. The cable television system shall be constructed, repaired, and operated in compliance with

all current Village, State, and National construction and electrical codes. The Company shall install and maintain its wires, cables, fixtures, and other equipment in such manner that they will minimize any interference with any installations of the Village or of a public utility serving the Village.

(b) The Company shall not open or disturb the surface of any alley, street, sidewalk, driveway, or public place for any purpose without first having obtained a permit to do so in a manner provided by Village ordinance. Company shall not unnecessarily interfere with the use of any alley, street, sidewalk, driveway or public place and, where the paving or surface of any alley, street, sidewalk, driveway or public place is disturbed, Company, at its own expense and in a manner satisfactory to the authorized representatives of the Village, shall replace such paving or surface in as good condition as before such work was commenced.

(c) The Company shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of the Company when required by the Village by reason of traffic conditions, public safety, street vacation, street construction, change of establishment of street grade, installation of sewer, drains, water pipes, Village owned power or signal lights, and tracks or any other type of structure or improvement by public agency.

(d) The Company may nonexclusively use existing poles or conduits belonging to the Village for the erection or construction of said CATV system. The Company may use the Village water tower and the premises owned by the Village immediately surrounding said tower for the placement of its equipment and construction of a small building thereon, provided the specifications for said use and construction are submitted to and approved by the Village engineer prior to commencement of construction. Use of this Village property by Company shall be governed by a separate Water

(g) The Village shall give the Company reasonable notice of plans for street improvement where paving or resurfacing of a permanent nature is involved. The notice shall give the Company sufficient time to make any additions, alterations, or repairs to its facilities as it deems necessary in advance of the actual commencement of the work, so as to permit the Company to maintain

(f) All wires, cables, amplifiers and other property shall be constructed and installed in an orderly and workmanlike manner. All cables and wires shall be installed parallel with existing telephone and electric wires whenever possible. Multiple cable configurations shall be arranged in parallel and bundled, with due respect for engineering and safety consideration. All installations shall be underground in those areas of the Village where public utilities providing telephone or electric service are underground. In areas where either telephone or electric utility facilities are above ground at the time of installation, the Company may install its service above ground with the understanding that, at such time as those facilities are required to be placed underground by the Village, the Company shall likewise place its services underground without additional cost to the residents of the Village other than as may be granted under the provisions of this ordinance.

(e) All wires, conduits, cables and other property and facilities of the Company shall be so located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic and travel upon the alleys, streets or public places of the Village. The Company shall keep accurate maps and records of all its facilities and furnish copies of such maps and records as requested by the Village. The Company shall not place poles or other equipment where they will interfere with the rights or reasonable convenience of adjoining property owners, or with any gas, electric, or telephone fixtures, or with any water hydrants or mains.

use commonly accepted methods and devices for preventing failures and accidents which are likely
(a) The Company shall at all times employ ordinary care and shall install and maintain in

SECTION 5. SAFETY REQUIREMENTS.

improvements by the Village.

sewers, drains, water pipes, power lines, signal lines, and tracks or any other type of structures or
vacation, freeway and street construction, change of establishment of street grade, installation of
of the Company when required by the Village by reason of traffic conditions, public safety, street
the same street or other public place, or remove from the street or other public place, any property

(k) The Company shall, at its expense, protect, support, temporarily disconnect, relocate in
such manner as not to interfere with the usual travel on such public way.

(j) Any poles or other fixtures placed in any public way by the Company shall be placed in
done.

public way or paved area in as good a condition as before the work involving such disturbance was
own cost and expense and in a manner approved by the Village, replace and restore such street,
(i) In case of disturbance of any street, public way, or paved area, the Company shall, at its

approval prior to commencing such activity.

may contract for such services, however, any firm or individual so retained shall receive Village
make every effort to preserve the esthetic beauty and viability of any trees trimmed. The Company
supervision and direction of the Village and at the expense of the Company. The Company shall
coming in contact with the wires and cables of the Company. All trimming is to be done under the
sidewalks, and other public places of the Village so as to prevent the branches of such trees from
(h) The Company shall have the authority to trim trees overhanging upon streets, alleys,

continuity of service.

SECTION 7. SYSTEM CONSTRUCTION AND EXTENSION.

The free drop provided under this franchise shall be used for one television set, it being understood that the CATV signal shall not be split or re-transmitted to more than one television set. If more than one drop is required per facility, the charge for such drop shall be based on the Company's cost of time and materials or the regular residential-commercial installation charge, whichever is lower. No monthly charges shall be made for providing basic subscriber services to one television set at the buildings above listed. Regular monthly charges shall apply to additional television sets receiving service at the buildings listed above.

- (1) Pender Public Schools;
- (2) Town Center (Senior Housing Project);
- (3) Pender Care Centre (nursing home)
- (4) House Memorial Library (Pender Library);
- (5) Thurston County Jail;
- (6) Pender Legion Hall;
- (7) Pender Fire Hall;
- (8) Senior Citizens Center.

drop at the following buildings:

SECTION 6. PUBLIC BUILDING CONNECTION. The Company shall provide one free

at all times be kept and maintained in a safe, suitable condition, and in good order and repair. streets, sidewalks, alleys, and public ways of the franchise area, wherever situated or located shall (b) All structures and all lines, equipment and connection in, over, under, and upon the to cause damage, injuries, or nuisances to the public.

which shall include all fees, charges, and rates to be charged to subscribers. If any of said fees,

SECTION 10. RATES. The Company has on file with the Village a schedule of tariffs

and maintained for three (3) years.

action was taken by Company. This information shall be shared with the Village on a monthly basis

complaints, identifying the subscriber, and describing the nature of the complaint and when and what

Company shall maintain written logs or electronic data listing the day and time of customer

days to fully discuss and resolve such matters.

appropriate representative of the Village and a representative of the Company within twenty (20)

equipment malfunctions, or similar matters, the subscriber shall be entitled to meet jointly with an

a subscriber have an unresolved complaint regarding the quality of cable television service,

Company shall respond within twenty-four (24) hours after receipt of a complaint. Should

week, without incurring added message or toll charges.

office or agent which subscribers may telephone twenty-four (24) hours per day, seven days per

SECTION 9. LOCAL OFFICE; COMPLAINTS. The Company shall maintain a business

Communications Commission.

its cable television system in full compliance with the standards set forth by the Federal

SECTION 8. OPERATIONAL STANDARDS. The Company shall operate and maintain

thirty (30) channels. Company shall not reduce the number of channels currently provided.

(b) Company shall maintain a minimum capability of this CATV system of not less than

include such additional territory.

annexation or otherwise, Company's rights and duties under this Ordinance shall be deemed to

(a) In the event additional adjacent territory is incorporated within the Village's limits by

before computation of sums due the Village is made. The Company shall provide an annual subscription basis and collected by the Company shall be deducted from the gross service revenues fee, charge, or consideration shall be imposed. Sales tax or other taxes levied directly on a per Revenue received for cable television system in the Franchise Area for the preceding year. No other before May 1 of each year a five percent (5%) franchise fee based on the Gross Annual Subscriber SECTION 12. FRANCHISE PAYMENTS. The Company shall pay to the Village on or

charges may be waived or modified during promotional campaigns of Company. coming within such classification would be entitled and provided further that connection and service establishment of a graduated scale of charges and classified rate schedules to which any customer prejudice or disadvantage, provided that nothing in this franchise shall be deemed to prohibit the respect, make or grant any preference or advantage to any person nor subject any person to any The Company shall not, as to rates, charges, service facilities, rules, regulations, or in any other SECTION 11. PREFERENTIAL OR DISCRIMINATION PRACTICES PROHIBITED.

regulations. to approve or disapprove proposed rates subject to Federal Communications Commission rules and the Village reserves the right at some future date to become involved in the rate making process and the rate making process, believing that supply and demand will be effective rate control. However, At the time of the adoption of this ordinance, the Village chooses not to become involved in Village.

an annual basis. Company agrees to provide Village its evaluation in the annual report to the thirty (30) days before said changes take effect. Company evaluates its cable rates and services on charges, or rates are changed, the Company shall notify the Village of said changes in writing at least

summary report showing gross service revenues received during the preceding year.

SECTION 13. INDEMNIFICATION OF VILLAGE.

(a) The Company shall at all times protect and hold harmless the Village from all claims, actions, suits, liability, loss, expense, or damages of every kind and description, including investigation costs, court costs, and attorney's fees, which may accrue to or be suffered or claims by any person or persons arising out of the negligence of the Company in the ownership, construction, repair, replacement, maintenance, and operation of said cable television system and by reason of any license, copyright, property right or patent of any article or system used in the construction or use of said system.

The company shall, at all times while this franchise is in effect, carry public liability insurance naming the Village as an added insured for property damage liability to the extent of \$500,000.00 per occurrence and \$500,000.00 per person injured and \$1,000,000.00 total per occurrence/accident.

SECTION 14. TERMINATION. The Village may cancel the franchise conferred by this

ordinance at any time prior to its expiration date upon a finding, made after thirty (30) days notice of the proposed cancellation and public hearing, that the Company has failed to cure one or more of the following defects during a sixty (60) day period following written notice by the Village Board to the Company of such a defect:

- (1) Material breach, whether by act or omission, of any terms or conditions of this franchise ordinance;
- (2) Material misrepresentation of fact in the application for or negotiation of the franchise; or,
- (3) Failure to provide subscribers or users with reasonably satisfactory service.

SECTION 15. TRANSFER AND ASSIGNMENT. Company shall not be permitted to sell,

lease, sublease, transfer or otherwise change either ownership or working control of the franchise herein without the prior written consent of Village, which consent will not be unreasonably withheld or withheld contrary to federal or state law.

SECTION 16. SUBSCRIBER PRIVACY. Any and all subscriber information will not be sold or given to any person or company without the express or written permission of the subscriber; provided, however, if, in the normal course of Company's business operation, it is reasonably necessary to disclose all or a part of the subscriber information to Company's agents, representatives or affiliates, or Village, then Company may disclose such information.

SECTION 17. SEPARABILITY. If any section, subsection, sentence, clause, phrase, or portion of this franchise shall for any reason be held invalid or unconstitutional by any court of competent jurisdiction or by any regulating authority with competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof; provided, however, that the rates as set forth herein are dependent upon each other and, in the event that any of such rates are determined by a court of competent jurisdiction to be invalid, then all rates established hereunder shall be subject to renegotiations.

SECTION 18. All ordinances or portions of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 19. That this Ordinance shall be published in pamphlet form as provided by the Statutes of the State of Nebraska and shall be in full force and effect from and after its passage, approval and publication as provided by law.

PASSED AND APPROVED THIS 9 day of April, 2000

VILLAGE OF PENDER

By: Julie G. [Signature] Chairman

