

**TOWN OF GRANT MASTER CABLE TELEVISION  
REGULATORY ORDINANCE**

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## **SECTION 101. Intent.**

- (a) The Town of Grant pursuant to applicable federal and State law, is authorized to grant one or more nonexclusive Franchises to construct, operate, maintain and reconstruct Cable Television Systems within the Town limits.
- (b) The Town Board finds that the development of Cable Television Systems has the potential of having great benefit and impact upon the residents of the Town of Grant. Because of the complex and rapidly changing technology associated with cable television, the Town Board further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the Town or such Persons as the Town shall designate. It is the intent of this Ordinance and subsequent amendments to provide for and specify the means to attain the best possible cable television service to the public and any Franchises issued pursuant to this Ordinance shall be deemed to include this finding as an integral part thereof.

## **SECTION 102. Definitions.**

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. 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. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in this Section 7-102. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- (a) *Basic Cable Service* means any service tier which includes the retransmission of local television signals.
- (b) *Cable Act* means the Cable Communications Policy Act of 1984, 47 U.S.C. §§521-611 (1982 & Supp. V 1987), as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and as may, from time to time, be amended.
- (c) *Cable Television System, System or Cable System* means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designated to provide Cable Service

which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include:

- (1) A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
  - (2) A facility that serves Subscribers without using any public right-of-way;
  - (3) A facility of a common carrier that is subject, in whole or in part, to the provisions of 47 U.S.C. §§201-226, except that such facility shall be considered a Cable System to the extent that such facility whether on a common carrier basis or otherwise is used in the transmission of video programming directly to Subscribers; or
  - (4) Any facilities of any electric utility used solely for operating its electric utility System.
- (d) *Cable Service* means:
- (1) The one-way transmission to Subscribers of video programming or other programming service; and
  - (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- (e) *Channel* or *Cable Channel* means a portion of the electromagnetic frequency spectrum that is used in a Cable System and which is capable of delivering a television Channel as defined by the Federal Communications Commission.
- (f) *Board* means the Town Board of the Town of Grant.
- (g) *Franchise* means an initial authorization, or renewal thereof, issued by the Town, whether such authorization is designated as a Franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System.
- (h) *Franchise Agreement* means a Franchise granted pursuant to this Ordinance, containing the specific provisions of the Franchise granted, including references, specifications, requirements and other related matters.

- (i) *Franchise Fee* means any tax, fee or assessment of any kind imposed by the Town or other governmental entity on a Grantee or cable Subscriber, or both, solely because of their status as such. The term “Franchise Fee” does not include:
- (1) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers);
  - (2) capital costs that are required by the Franchise Agreement to be incurred by the cable operator for public, educational, or Governmental Access Facilities;
  - (3) requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages;  
or
  - (4) any fee imposed under Title 17 of the United States Code.
- (j) *Grantee* means any Person receiving a Franchise pursuant to this Ordinance and its agents, employees, officers, designees, or any lawful successor, transferee or assignee.
- (k) *Grantor* or *Town* means the Town of Grant, as represented by the Board or any delegate acting within the scope of its jurisdiction.
- (l) *Gross Annual Revenues* means all revenues derived directly or indirectly by the Grantee or any Person in which the Grantee has a financial interest from or in connection with the operation of the System pursuant to a Franchise granted hereunder, except it shall not include bad debt, sales tax or other taxes or charges imposed on Grantee in addition to its Franchise obligations and collected for direct passthrough to State or federal government.
- (m) *Initial Service Area* means the area of the Town that will receive Cable Service initially, as set forth in any Franchise Agreement.
- (n) *Installation* means the connection of the System to Subscribers’ terminals, and the provision of Cable Service.

- (o) *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 (1) night per week and/or some weekend hours.
- (p) *Normal Operating Conditions* means those service conditions that are within the control of the Grantee. Those conditions that 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, and significant legislative or regulatory requirements. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, regular peak or seasonal demand periods, and maintenance or upgrade of the System.
- (q) *Person* means any natural Person or any association, firm, individual, partnership, joint stock company, joint venture, trust, corporation, limited liability company or other legally recognized entity, private or public, whether for-profit or not-for-profit.
- (r) *Public, Educational or Government Access Facilities or PEG Access Facilities* means:
  - (1) Channel capacity designated for public, educational, or governmental use; and
  - (2) Facilities and equipment for the use of such Channel capacity.
- (s) *Section* means any Section, subsection, or provision of this Ordinance.
- (t) *Service Area* or *Franchise Area* means the entire geographic area within the Town as it is now constituted or may in the future be constituted, unless otherwise specified in the Franchise Agreement.
- (u) *Service Interruption* means the loss of picture or sound on one or more Cable Channels affecting at least ten (10%) of the subscribers on the System.
- (v) *State* means the State of Wisconsin.
- (w) *Street* means each of the following that have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or

by others and located within the Town limits: Streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas that the Grantor shall permit to be included within the definition of Street from time to time.

- (x) *Subscriber* means any Person who or which lawfully elects to subscribe to, for any purpose, Cable Service provided by the Grantee by means of or in connection with the Cable System and who pays the charges therefore, except such Persons or entities authorized to receive Cable Service without charge as described in the Franchise Agreement.

**SECTION 103. Franchise to Install.**

A. Franchise granted by the Town under the provisions of this Ordinance shall encompass the following purposes:

- (a) To engage in the business of providing Cable Service, and such other services as may be permitted by the Franchise Agreement.
- (b) To erect, install, construct, repair, rebuild, reconstruct, replace, maintain, and retain, cable lines, related electronic equipment, supporting structures, appurtenances, and other property in connection with the operation of a Cable System in, on, over, under, upon, along and across Streets or other public places within the designated Service Area.
- (c) To maintain and operate said Franchise properties for the origination, reception, transmission, amplification, and distribution of television and radio signals for the delivery of Cable Services and any other services permitted by the Franchise Agreement.
- (d) To set forth the obligations of a Grantee under the Franchise Agreement.

**SECTION 104. Franchise Required.**

It shall be unlawful for any Person to construct, install or operate a Cable Television System in the Town within any Street without a properly granted Franchise awarded pursuant to the provisions of this Ordinance.

**SECTION 105. Term of the Franchise.**

- (a) A Franchise granted hereunder shall be for a term established in the Franchise Agreement, commencing with the Grantor's adoption of an ordinance or resolution authorizing the Franchise.
- (b) A Franchise granted hereunder may be renewed upon application by the Grantee pursuant to the provisions of applicable State and federal law and of this Ordinance.

**SECTION 106. Franchise Territory.**

Any Franchise shall be valid within all the territorial limits of the Town, and within any area added to the Town during the term of the Franchise Agreement.

**SECTION 107. Federal, State and Town Jurisdiction.**

- (a) This Ordinance shall be construed in a manner consistent with all applicable federal and State laws.
- (b) In the event that the State or federal government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, Grantor may, if it so elects, adopt rules and regulations in these areas to the extent permitted by law.
- (c) This Ordinance shall apply to all Franchises granted or renewed after the effective date of this Ordinance. It shall further apply to the extent permitted by applicable federal or State law to all existing Franchises granted prior to the effective date of this Ordinance.
- (d) Grantee's rights are subject to the police powers of the Town to adopt and enforce ordinances necessary to the health, safety and welfare of the public. Grantee shall comply with all applicable general laws and ordinances enacted by the Town pursuant to that power.
- (e) Grantee shall not be relieved of its obligation to comply with any of the provisions of this Ordinance or any Franchise granted pursuant to this Ordinance by reason of any failure of the Town to enforce prompt compliance.

- (f) This Ordinance and any Franchise granted pursuant to this Ordinance shall be construed and enforced in accordance with the substantive laws of the State of Wisconsin.

**SECTION 108. Franchise Non-Transferable.**

- (a) Grantee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, the Franchise and/or Cable System or any of the rights or privileges granted by the Franchise, without the prior consent of the Board which consent shall not be unreasonably denied or delayed and shall be denied only upon a good faith finding by the Town that the proposed transferee lacks the legal, technical or financial qualifications to perform its obligations under the Franchise Agreement. Any attempt to sell, transfer, lease, assign or otherwise dispose of the Franchise and/or Cable System without the consent of the Board shall be null and void. This provision shall not apply to sales of property or equipment in the normal course of business. No consent from the Town shall be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation, partnership or other entity controlling, controlled by or under common control with Grantee.
- (b) the following events shall be deemed to be a sale, assignment or other transfer of the Franchise and/or Cable System requiring compliance with this Section:
  - (1) the sale, assignment or other transfer of all or a majority of Grantee's assets;
  - (2) the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in Grantee by one or more of its existing shareholders, partners, members or other equity owners so as to create a new controlling interest in Grantee;
  - (3) the issuance of additional capital stock or partnership, membership or other equity interest by Grantee so as to create a new controlling interest in Grantee; and
  - (4) the entry by the Grantee into an agreement with respect to the management or operation of the Grantee and/or the System.

The term "Controlling Interest" as used herein means majority equity ownership of the Grantee.

- (c) Except as provided below, no Grantee may sell or otherwise transfer ownership in a Franchise and/or Cable System within a thirty-six (36) month period following either the acquisition or initial construction of said System by Grantee. In the case of a sale of multiple Systems, if the terms of the sale require the buyer to subsequently transfer ownership of one or more such Systems to one or more third parties, such transfer shall be considered a part of the initial transaction. The above-described thirty-six (36) month holding period shall not apply to:
  - (1) any transfer of ownership interest in any Franchise and/or Cable System which is not subject to federal income tax liability;
  - (2) any sale required by operation of any law or any act of any agency, any State or political subdivision or the Town; or
  - (3) any sale, assignment, or transfer, to one or more purchasers, assignees, or transferees controlled by, controlling, or under common control with, the seller, assignor, or transferor.
- (d) In the case of any sale or transfer of ownership of any Franchise and/or Cable System after the thirty-six (36) month period following acquisition of such System, the Town shall have one hundred twenty (120) days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with Federal Communications Commission Regulations, the requirements of this Ordinance and such other reasonable information as the Town, in its sole discretion, may request. If the Town fails to render a final decision on the request within one hundred twenty (120) days from receipt by the Town of all required information, such request shall be deemed granted unless the requesting party and the Town agree to an extension of time.
- (e) Grantee shall notify Grantor in writing of any foreclosure or any other judicial sale of all or a substantial part of the Franchise property of the Grantee or upon the termination of any lease or interest covering all or a substantial part of said Franchise property. Such notification shall be considered by Grantor as notice that a change in control of ownership of the Franchise has taken place and the provisions under this Section governing the consent of Grantor to such change in control of ownership shall apply.

- (f) For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, Grantor may inquire into the qualifications of the prospective transferee or controlling party, and Grantee shall assist Grantor in any such inquiry. In seeking Grantor's consent to any change of ownership or control, Grantee shall have the responsibility of insuring that the transferee completes an application in form and substance reasonably satisfactory to Grantor, which application shall include the information required under State and federal law as well as under Subsections (a) through (h) of Section 113 of this Ordinance. An application, acceptable to the Town, shall be submitted to Grantor not less than ninety (90) days prior to the date of transfer. The transferee shall be required to establish that it possesses the legal, technical and financial qualifications to operate and maintain the System and comply with all Franchise requirements for the remainder of the term of the Franchise. If, after considering the legal, financial, character and technical qualities of the applicant and determining that they are satisfactory, the Grantor finds that such transfer is acceptable, the Grantor shall transfer and assign the rights and obligations of such Franchise. The consent of the Grantor to such transfer shall not be unreasonably denied.
- (g) Any financial institution having a pledge of the Grantee or its assets for the advancement of money for the construction and/or operation of the Franchise shall have the right to notify the Grantor that it or its designee satisfactory to the Grantor shall take control of and operate the Cable Television System, in the event of a Grantee default in its financial obligations. Further, said financial institution shall also submit a plan for such operation within thirty (30) days of assuming such control that will insure continued service and compliance with all Franchise requirements during the term the financial institution exercises control over the System. The financial institution shall not exercise control over the System for a period exceeding one (1) year unless extended by the Grantor in its discretion and during said period of time it shall have the right to petition the Grantor to transfer the Franchise to another Grantee.

#### **SECTION 109. Purchase by Town Upon Expiration or Revocation.**

- (a) If, subject to the provisions of the Cable Act, a renewal of a Franchise is denied, the Town may purchase to the extent permitted by local law and upon payment to the Grantee of the Cable Systems' fair market value as a going concern, exclusive of any value allocated to the Franchise itself, that portion of Grantee's Cable System serving the Town of Grant.

- (b) Subject to the Cable Act, if a Franchise is revoked for cause, the Town may, to the extent permitted by local law, acquire that portion of the Cable System serving the Town of Grant upon payment of an equitable price.

**SECTION 110. Geographical Coverage.**

- (a) Grantee shall design, construct and maintain the Cable Television System to have the capability to pass every dwelling unit in the Service Area, subject to any line extension requirements of the Franchise Agreement.
- (b) After service has been established by activating trunk and/or distribution cables for any part of the Service Area, Grantee shall provide Cable Service to any requesting Subscriber within that Service Area within thirty (30) days from the date of request, provided that the Grantee is able to secure all rights-of-way necessary to extend service to such Subscriber within such thirty (30) day period on reasonable terms and conditions.

**SECTION 111. Nonexclusive Franchise.**

Any Franchise granted shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional Franchises for a Cable Television System or any component thereof, as it deems appropriate, subject to applicable State and federal law, provided, however, that no Franchise shall be granted on terms materially less burdensome or more favorable than any other Franchise granted hereunder.

**SECTION 112. Multiple Franchises.**

- (a) Grantor may grant one or more Franchises for a Service Area. Grantor may, in its sole discretion, limit the number of Franchises granted, based upon, but not necessarily limited to, the requirements of applicable law and specific local considerations; such as:
  - (1) The capacity of the public rights-of-way to accommodate multiple coaxial cables in addition to the cables, conduits and pipes of the utility Systems, such as electrical power, telephone, gas and sewage.
  - (2) The impact on the community of having multiple Franchises.

- (3) The disadvantages that may result from Cable System competition, such as the requirement for multiple pedestals on residents' property, and the disruption arising from numerous excavations of the rights-of-way.
  - (4) The financial capabilities of the applicant and its guaranteed commitment to make necessary investment to erect, maintain and operate the proposed System for the duration of the Franchise term.
- (b) Each Grantee awarded a Franchise to serve the entire Town shall offer service to all residences in the Town, in accordance with construction and service schedules mutually agreed upon between Grantor and Grantee, and consistent with applicable law.
  - (c) Developers of new residential housing with underground utilities shall provide conduit to accommodate cables for at least two (2) Cable Systems in accordance with the provisions of Section 119(d).
  - (d) Grantor may require that any new Grantee be responsible for its own underground trenching and the costs associated therewith, if, in Grantor's opinion, the rights-of-way in any particular area cannot feasibly and reasonably accommodate additional cables.
  - (e) Any additional Franchise granted by the Town to provide Cable Service in a part of the Town in which a Franchise has already been granted and where an existing Grantee is providing service shall require the new Grantee to provide service throughout its Service Area within a reasonable time and in a sequence which does not discriminate against lower income residents.

### **SECTION 113. Initial Franchise Applications.**

Any person desiring an initial Franchise for a Cable Television System shall file an application with the Town. A reasonable nonrefundable application fee established by the Town shall accompany the application or renewal application. Such application fee shall not be deemed to be "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. §542), and such payments shall not be deemed to be (i) "payments in kind" or any involuntary payments chargeable against the compensation to be paid to the Town by Grantee pursuant to Section 118 hereof and applicable provisions of a Franchise agreement, or (ii) part of the compensation to be paid to the Town by Grantee pursuant to Section 118 hereon and applicable provisions of a Franchise Agreement.

An application for an initial Franchise for a Cable Television System shall contain, where applicable:

- (a) A Statement as to the proposed Franchise and Service Area.
- (b) Resume of prior history of applicant, including legal, technical and financial expertise of applicant in the cable television field.
- (c) List of the partners, general and limited of the applicant, if a partnership, or the percentage of stock owned or controlled by each shareholder, if a corporation.
- (d) List of officers, directors and managing employees of applicant, together with a description of the background of each such Person.
- (e) The names and addresses of any parent or subsidiary of applicant or any other business entity owning or controlling applicant in whole or in part, or owned or controlled in whole or in part by applicant.
- (f) A current financial statement of applicant verified by a CPA audit or otherwise certified to be true, complete and correct to the reasonable satisfaction of the Town.
- (g) Proposed construction and service schedule.
- (h) Any additional information that the Town deems applicable.

**SECTION 114. Consideration of Initial Applications.**

- (a) Upon receipt of any application for an initial franchise, the Town Chairman shall prepare a report and make his recommendations respecting such application to the Town Board.
- (b) A public hearing shall be set prior to any initial Franchise grant, at a time and date approved by the Town Board. Within thirty (30) days after the close of the hearing, the Board shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise(s) should be granted, and, if granted subject to what conditions. The Board may grant one (1) or more initial Franchises, or may decline to grant any Franchise.

## **SECTION 115. Franchise Renewal.**

Franchise renewals shall be in accordance with applicable law including, but not necessarily limited to, the Cable Communications Policy Act of 1984 as amended. Grantor and Grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the Franchise.

## **SECTION 116. Consumer Protection and Service Standards.**

- (a) Except as otherwise provided in the Franchise Agreement, Grantee shall maintain an office or offices within the City of Wisconsin Rapids and/or within the Town of Grant to provide the necessary facilities, equipment and personnel to comply with the following consumer protection standards under Normal Operating Conditions:
  - (1) Cable System office hours and telephone availability:
    - (i) Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.
      - (A) Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.
      - (B) 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 on the next business day.
    - (ii) Under Normal Operating Conditions, telephone answer time by a customer 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 percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

- (iii) The Grantee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
  - (iv) Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.
  - (v) Customer service center and bill payment locations will be open at least during Normal Business Hours and will be conveniently located.
- (2) Installations, outages and service calls. Under Normal Operating Conditions, each of the following four standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:
- (i) 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 one hundred twenty-five (125) feet from the existing distribution System.
  - (ii) Excluding conditions beyond the control of Grantee, Grantee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (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.
  - (iii) At the subscriber's request, the "appointment window" alternatives for Installations, service calls, and other Installation activities will be within a two to four hour time block during Normal Business Hours. (The Grantee may schedule service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)
  - (iv) Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

days in advance of any significant changes in the other information required by the preceding paragraph.

- (ii) Billing:
  - (A) 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, the Grantee must respond to a written complaint from a Subscriber within thirty (30) days.
- (iii) Refunds: Refund checks will be issued promptly, but no later than either:
  - (A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
  - (B) The return of the equipment supplied by the Grantee if service is terminated.
- (iv) Credits: Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

#### **SECTION 117. Rate Regulation.**

The Town reserves the right to regulate rates for Basic Cable Service and any other services offered over the Cable System, to the extent permitted by federal or State law. The Grantee shall be subject to the rate regulation provisions provided for herein, and those of the Federal Communications Commission (FCC) at 47 C.F.R., Part 76.900, Subpart N. The Town shall follow the rules relating to cable rate regulation promulgated by the FCC at 47 C.F.R., Part 76.900, Subpart N.

- (v) If Grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time that is convenient for the customer.
- (3) Communications between Grantee and cable Subscribers:
- (i) 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 programming carried on the System; and
      6. Billing and complaint procedures, including the address and telephone number of the Town's cable office.
    - (B) Customers 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, the Grantee shall notify Subscribers thirty (30)

## **SECTION 118. Franchise Fee.**

- (a) Following the issuance and acceptance of a Franchise, the Grantee shall pay to the Grantor a Franchise Fee in the amount set forth in the Franchise Agreement.
- (b) The Grantor, on an annual basis, shall be furnished a Statement within sixty (60) days of the close of the calendar year, certified by an officer of the Grantee or audited by a Certified Public Accountant, reflecting the total amounts of gross annual revenues and all payments, and computations for the previous calendar year. Upon ten (10) days prior written notice, Grantor shall have the right to conduct an independent audit of Grantee's records, in accordance with generally accepted accounting principles and if such audit indicates a Franchise Fee underpayment of five percent (5%) or more, the Grantee shall assume all reasonable costs of such an audit.
- (c) Except as otherwise provided by law, no acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for further or additional sums payable as a Franchise Fee under this Ordinance or any Franchise Agreement or for the performance of any other obligation of the Grantee.
- (d) In the event that any Franchise Fee payment or recomputed amount is not made on or before the dates specified in the Franchise Agreement, Grantee shall pay as additional compensation an interest charge, computed from such due date, at an annual rate equal to the prime lending rate plus one and one-half percent (1-1/2%) during the period for which payment was due.
- (e) Franchise Fee payments shall be made in accordance with the schedule indicated in the Franchise Agreement.

## **SECTION 119. Design and Construction Requirements.**

- (a) Grantee shall not construct any Cable System facilities until Grantee has secured the necessary permits from Grantor, or other cognizant public agencies.
- (b) In those areas of the Town where transmission or distribution facilities of all the public utilities providing telephone and electric power service are underground, the Grantee likewise shall construct, operate and maintain its transmission and distribution facilities therein underground.

- (c) In those areas of the Town where Grantee's cables are located on the above-ground transmission or distribution facilities of the public utility providing telephone or electric power service, and in the event that the facilities of both such public utilities subsequently are placed underground, then the Grantee likewise shall construct, operate and maintain its transmission and distribution facilities underground, at Grantee's cost. Certain of Grantee's equipment, such as pedestals, amplifiers and power supplies, which normally are placed above ground, may continue to remain in the above-ground enclosures.
- (d) In new residential developments in which all the electric power and telephone utilities are underground, the following procedure shall apply with respect to access to and utilization of underground easements:
- (1) The developer shall be responsible for contacting and surveying all Franchised cable operators to ascertain which operators desire (or, pursuant to the terms and provisions of this Ordinance and any Franchise Agreement, may be required) to provide Cable Service to that development. The developer may establish a reasonable deadline to receive cable operator responses. The final development shall indicate the cable operators that have agreed to serve the development.
  - (2) If one (1) or two (2) cable operators wish to provide service, they shall be accommodated in the joint utilities trench on a nondiscriminatory shared basis. If fewer than two (2) operators indicate interest, the developer shall provide conduit to accommodate two (2) sets of cable television cables and dedicate to the Town any initially unoccupied conduit. The developer shall be entitled to recover the cost of such initially unoccupied conduit in the event that Grantor subsequently leases or sells occupancy or use rights to any Grantee.
  - (3) The developer shall provide at least ten (10) working days notice of the date that utility trenches will be open to the cable operators that have agreed to serve the development. When the trenches are open, cable operators shall have two (2) working days to begin the Installation of their cables, and five (5) working days after beginning Installation to complete the Installation.
  - (4) The final development map shall not be approved until the developer submits evidence that:

- (i) It has notified each Grantee that underground utility trenches are to open as of an estimated date, and that each Grantee will be allowed access to such trenches, including trenches from proposed streets to individual homes or home sites, on specified nondiscriminatory terms and conditions; and
  - (ii) It has received a written notification from each Grantee that the Grantee intends to install its facilities during the open trench period on the specified terms and conditions, or such other terms and conditions as are mutually agreeable to the developer and Grantee, or has received no reply from a Grantee within ten (10) days after its notification to such Grantee, in which case the Grantee will be deemed to have waived its opportunity to install its facilities during the open trench period.
- (5) Sharing the joint utilities trench shall be subject to compliance with State regulatory agency and utility standards. If such compliance is not possible, the developer shall provide a separate trench for the cable television cables, with the entire costs shared among the participating cable operators. With the concurrence of the developer, the affected utilities and the cable operators, alternative Installation procedures, such as the use of deeper trenches, may be utilized, subject to applicable law.
- (6) Any cable operator wishing to serve an area where the trenches have been closed shall be responsible for its own trenching and associated costs and shall repair all property to the condition which existed prior to such trenching.
- (7) In the event that more than one Franchise is awarded, the Town reserves the right to limit the number of drop cables and/or pedestals per residence, or to require that the drop cable(s) and/or pedestal(s) be utilized only by the cable operator selected by the resident to provide service.

## **SECTION 120. Technical Standards.**

- (a) The Grantee shall construct, install, operate and maintain its System in a manner consistent with all applicable laws, ordinances, construction standards, governmental requirements, Federal Communications Commission technical standards, and any standards set forth in its Franchise

Agreement. In addition, the Grantee shall provide to the Grantor, upon request, a written report of the results of the Grantee's periodic proof of performance tests conducted pursuant to Federal Communications Commission standards and guidelines.

- (b) Repeated and verified failure to maintain specified technical standards shall constitute a material Franchise violation.
- (c) All construction practices shall be in accordance with all applicable Sections of the Occupational Safety and Health Act of 1970, as amended, as well as all other applicable local, State and federal laws and regulations.
- (d) All Installation of electronic equipment shall be installed in accordance with the provisions of the National Electrical and Safety Code and National Electrical Code, as amended, and as may from time to time be amended.
- (e) Antennae and their supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable local, State and federal laws and regulations.
- (f) All of Grantee's plant and equipment, including, but not limited to, the antenna site, headend and distribution system, towers, house connections, structures, poles, wire, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with improvements that the Town may deem appropriate to make or to interfere in any manner with the rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.
- (g) Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failure and accidents which are likely to cause damage, injury or nuisance to the public.

#### **SECTION 121. Trimming of Trees.**

Grantee shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over Streets, alleys, sidewalks, and public places of the Town so as to prevent the branches of such trees

from coming in contact with the wires and cables of Grantee. Town board shall have authority to supervise and approve of all trimming of trees conducted by Grantee.

**SECTION 122. Use of Grantee Facilities.**

The Town shall have the right to install and maintain, free of charge, upon the poles and within the underground pipes and conduits of Grantee, any wires and fixtures desired by the Town to the extent that such Installation and maintenance does not interfere with existing operations of Grantee.

**SECTION 123. Hold Harmless.**

- (a) Grantee, under any Franchise operated pursuant to this Ordinance, shall agree to indemnify, hold harmless, release and defend the Town, its officers, boards, commissions, agents and employees from and against any and all lawsuits, claims, causes of action, actions, liability, demands, damages, disability, losses, expenses, including reasonable attorneys' fees and costs or liabilities of any nature that may be asserted by any Person resulting or in any manner arising from the action or inaction of the Grantee in constructing, operating, maintaining, repairing or removing the System, in carrying on Grantee's business or operations in the Town or in exercising or failing to exercise any right or privilege granted by the Franchise. This indemnity shall apply, without limitation, to any action or cause of action for invasion of privacy, defamation, antitrust, errors of any copyright, trademark, trade names, service mark or patent, or any other right of any Person, firm or corporation, whether or not any act or omission complained of is authorized, allowed or prohibited by this Ordinance or any Franchise Agreement, but shall not include any claim or action arising out of the actions or omissions of Town officers, employees or agents or related to any Town programming or other access programming for which the Grantee is not legally responsible.
  
- (b) The Town shall promptly notify Grantee of any claims subject to indemnification by Grantee and shall cooperate with all reasonable requests by Grantee for information, documents, testimony or other assistance appropriate to a resolution of such claims. Grantee shall have full responsibility for and control of any action or undertaking directed at the resolution of such claims.

## **SECTION 124. Insurance.**

Grantee shall provide insurance as specified in the Franchise Agreement.

## **SECTION 125. Records Required and Grantor's Right to Inspect.**

- (a) Grantee shall at all times maintain:
  - (1) A full and complete set of plans, records and "as-built" maps showing the location of the Cable Television System installed or in use in the Town, exclusive of Subscriber service drops and equipment provided in Subscribers' homes.
  - (2) If required by Grantor, a summary of service calls, identifying the number, general nature and disposition of such calls, on a monthly basis. A summary of such service calls shall be submitted to the Grantor within thirty (30) days following is request in a form reasonably acceptable to the Grantor.
- (b) Upon forty-eight (48) hours written notice, and during Normal Business Hours, Grantee shall permit examination by any duly authorized representative of the Grantor, of all Franchise property and facilities, together with any appurtenant property and facilities of Grantee situated within or without the Town, and all records relating to the Franchise, provided they are necessary to enable the Grantor to carry out its regulatory responsibilities under local, State and federal law, this Ordinance and the Franchise Agreement. Such records include, all books, records, maps, plans, financial Statements, service complaint logs, performance test results, records of request for service, and other like materials of Grantee. Grantee shall have the right to be present at any such examination.
- (c) If any of the records described in the previous subsection are proprietary in nature or must be kept confidential by State, federal or local law, upon proper request by Grantee, such information obtained during such an inspection shall be treated as confidential, making it available only to those Persons who must have access to perform their duties on behalf of the Town, including but not limited to Town legal representatives and Board Members. To the extent that any federal requirement for privacy applied to the information to be submitted, said law shall control.
- (d) Copies of all petitions, applications, communications and reports submitted by Grantee, or on behalf of or relating to Grantee, to the Federal

Communications Commission, Securities and Exchange Commission, or any other federal or State regulatory commission or agency having jurisdiction with respect to any matters affecting the Cable System authorized pursuant to this Ordinance and any Franchise shall be made available to the Town upon request. Copies of responses from the regulatory agencies to Grantee shall likewise be furnished to the Town upon request.

#### **SECTION 126. Annual Reports.**

- (a) Grantee shall submit a written end of the year report to Grantor with respect to the preceding calendar year containing the following information:
  - (1) A Summary of the previous year's (or in the case of the initial reporting year, the initial year's) activities in development of the Cable System, including but not limited to, services begun or discontinued during the reporting year.
  - (2) A list of Grantee's officers, members of its board of directors, and other principals of Grantee.
  - (3) A list of stockholders or other equity investors holding five percent (5%) or more of the voting interest in Grantee.
  - (4) Information as to the number of Subscribers and the number of basic and pay service Subscribers.
  - (5) The Town, including its agents and representatives, shall have the authority, during Normal Business Hours, to arrange for and conduct an inspection of Annual Reports required pursuant to this Ordinance or a Franchise Agreement. The Town shall give the Grantee twenty-four (24) hours written notice of the inspection request.

If the requested information is proprietary in nature or must be kept confidential by State, federal or local law, upon proper request by Grantee, such information obtained during such an inspection shall be treated as confidential, making it available only to those Persons who must have access to perform their duties on behalf of the Town, including but not limited to the Town legal representatives and Board members. To the extent any federal requirements for privacy applies to the information to be submitted, said law shall control.

- (b) All reports and records required under this Ordinance shall be furnished at the sole expense of Grantee, except as otherwise provided in this Ordinance or the Franchise Agreement.

**SECTION 127. Franchise Violation.**

If Grantee fails to perform in a timely manner any material obligation required by this Ordinance or a Franchise granted hereunder, following notice from the Grantor and an opportunity to cure such nonperformance, Grantor may act to remedy such violation in accordance with the following procedures:

Grantor shall notify Grantee of any alleged material violation in writing by Personal delivery or registered or certified mail, and demand correction within a reasonable time, which shall not be less than ten (10) days in the case of the failure of the Grantee to pay any sum or other amount due the Grantor under this Ordinance or the Grantee's Franchise and thirty (30) days in all other cases. If Grantee fails either to correct the violation within the time prescribed or to commence correction of the violation within the time prescribed and thereafter diligently pursue correction of such violation, the Grantor shall then give written notice of not less than twenty (20) days of a public hearing to be held before the Board. Said notice shall specify the violations alleged to have occurred. At the public hearing, the Board shall hear and consider relevant evidence and thereafter render findings and its decision. In the event that the Board finds that a material violation exists and that Grantee has not corrected the same in a satisfactory manner or has not diligently commenced correction of such violation after notice thereof from Grantor and is not diligently proceeding to fully remedy such violation, the Board may revoke the Franchise or impose any other penalty permitted by the Franchise Agreement.

**SECTION 128. Force Majeure: Grantee's Inability to Perform.**

In the event Grantee's performance of any of the terms, conditions or obligations required by this Ordinance or a Franchise granted hereunder is prevented by a cause or event not within Grantee's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this Section, causes or events not within the control of Grantee shall include without limitation acts of God, strikes, sabotage, riots or civil disturbances, restraints imposed by order of a governmental agency or court, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.

**SECTION 129. Abandonment or Removal of Franchise Property.**

- (a) In the event that the use of any property of Grantee within the Franchise Area or a portion thereof is discontinued for a continuous period of twelve

(12) months, Grantee shall be deemed to have abandoned that Franchise property.

- (b) Grantor, upon such terms as Grantor may impose, may give Grantee permission to abandon, without removing, any System facility or equipment laid, directly constructed, operated or maintained under the Franchise. Unless such permission is granted or unless otherwise provided in this Ordinance, the Grantee shall remove all abandoned above-ground facilities and equipment upon receipt of written notice from Grantor and shall restore any affected Street to its former state at the time such facilities and equipment were installed, so as not to impair its usefulness. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. Grantor shall have the right to inspect and approve the condition of the public ways, public places, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this Ordinance and any security fund provided in the Franchise shall continue in full force and effect during the period of removal and until full compliance by Grantee with the terms and conditions of this Section.
- (c) Upon abandonment of any Franchise property in place, the Grantee, if required by the Grantor, shall submit to Grantor an instrument, satisfactory in form to the Grantor, transferring to the Grantor the ownership of the Franchise property abandoned.
- (d) At the expiration of the term for which the Franchise is granted, or upon its revocation or earlier expiration, as provided for herein, in any such case without renewal, extension or transfer, the Grantor shall have the right to require Grantee to remove, at its own expense, all above-ground portions of the Cable Television System from all Streets and public ways within the Town within a reasonable period of time, which shall not be less than one hundred eighty (180) days.
- (e) Notwithstanding anything to the contrary set forth in this Ordinance, the Grantee may abandon any underground Franchise property in place so long as it does not materially interfere with the use of the Street or public rights-of-way in which such property is located or with the use thereof by any public utility or other cable Grantee.

### **SECTION 130. Extended Operation and Continuity of Services.**

Upon either expiration or revocation of the Franchise, the Grantor shall have discretion to permit and/or require Grantee to continue to operate the Cable Television System for an extended period of time not to exceed six (6) months from the date of such expiration or revocation. Grantee shall continue to operate the System under the terms and conditions of this Ordinance and the Franchise and to provide the regular Subscriber service and any and all of the services that may be provided at that time.

### **SECTION 131. Receivership and Foreclosure.**

- (a) A Franchise granted hereunder shall, at the option of Grantor, cease and terminate one hundred twenty (120) days after appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of Grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:
  - (1) Such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Ordinance and the Franchise granted pursuant hereto, and the receivership or trustees within said one hundred twenty (120) days shall have remedied all the faults under the Franchise or provided a plan for the remedy of such faults which is satisfactory to the Grantor; and
  - (2) Such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the Franchise granted.
- (b) In the case of a foreclosure or other judicial sale of the Franchise property, or any material part thereof, Grantor may serve notice of termination upon Grantee and the successful bidder at such sale, in which event the Franchise granted and all rights and privileges of the Grantee hereunder shall cease and terminate thirty (30) days after service of such notice, unless (1) Grantor shall have approved the transfer of the Franchise, as and in the manner that this Ordinance provides; and (2) such successful bidder shall have covenanted and agreed with Grantor to assume and be bound by all terms and conditions of the Franchise.

### **SECTION 132. Rights Reserved to Grantor.**

- (a) In addition to any rights specifically reserved to the Grantor by this Ordinance, the Grantor reserves to itself every right and power which is required to be reserved by a provision of any ordinance or under the Franchise.
- (b) The Grantor shall have the right to waive any provision of the Franchise, except those required by federal or State regulation, if the Grantor determines (1) that it is in the public interest to do so, and (2) that the enforcement of such provision will impose an undue hardship on the Grantee or the Subscribers. To be effective, such waiver shall be evidenced by a Statement in writing signed by a duly authorized representative of the Grantor. Waiver of any provision in one instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of the Franchise unless the Statement so recites.

### **SECTION 133. Rights of Individuals.**

- (a) Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, Channel users, or general citizens on the basis of race, color, religion, national origin, age, disability, gender or sexual preference. Grantee shall comply at all times with all other applicable federal, State and local laws and regulations, relating to nondiscrimination.
- (b) Grantee shall adhere to the applicable equal employment opportunity requirements of federal, State and local regulations.
- (c) Neither Grantee, nor any Person, agency, or entity shall, without the Subscriber's consent, tap or arrange for the tapping, of any cable, line, signal input device, or Subscriber outlet or receiver for any purpose except routine maintenance of the System, detection of unauthorized service, polling with audience participating, or audience viewing surveys to support advertising research regarding viewers where individual viewing behavior cannot be identified.
- (d) In the conduct of providing its services or in pursuit of any collateral commercial enterprise resulting therefrom, Grantee shall take reasonable steps to prevent the invasion of a Subscriber's or general citizen's right of privacy or other personal rights through the use of the System as such rights are delineated or defined by applicable law. Grantee shall not, without lawful court order or other applicable valid legal authority, utilize the

System's interactive two-way equipment or capability for unauthorized personal surveillance of any Subscriber or general citizen.

- (e) No cable line, wire amplifier, converter, or other piece of equipment owned by Grantee shall be installed by Grantee in the Subscriber's premises, other than in appropriate easements, without first securing any required consent. If a Subscriber requests service, permission to install upon Subscriber's property shall be presumed. Where a property owner or his predecessor has granted an easement including a public utility easement or a servitude to another and the servitude by its terms contemplates a use such as Grantee's intended use, Grantee shall not be required to obtain the written permission of the owner for the Installation of cable television equipment.

#### **SECTION 134. Conflicts.**

In the event of a conflict between any provision of this Ordinance and a Franchise Agreement entered pursuant to it, the provisions of this Ordinance shall control, except as may be specifically otherwise provided in the Franchise Agreement.

#### **SECTION 135. Severability.**

If any provision of this Ordinance is held by any 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, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule or regulation, such provision shall be considered a separate, distinct, and independent part of this Ordinance, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed, so that the provision hereof which had been held invalid or modified is no longer in conflict with such law, rule or regulation, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantor and Grantee, provided that Grantor shall give Grantee thirty (30) days written notice of such change before requiring compliance with said provision or such longer period of time as may be reasonably required for Grantee to comply with such provision.

**SECTION 136. Effective Date.**

This ordinance shall take effect and be in force upon its passage and publication as provided by law.

PASSED AND ADOPTED this 5 day of July, 2001, by the Town Board, Town of Grant, Portage County, Wisconsin.

ATTEST:

WITNESS:

Alden Pedersen  
Alden Pedersen, Chairman

Kitty Gross  
Kitty Gross, Clerk

Betty Petrusky  
Betty Petrusky, Supervisor

David Cook  
David Cook, Supervisor

Posted this 15 day of July, 2001.