

CHAPTER 19
CABLE COMMUNICATIONS

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ORDINANCE NO. _____
AN ORDINANCE PROVIDING FOR
A CABLE COMMUNICATIONS SYSTEM FRANCHISE
AND THE REGULATION OF
CABLE COMMUNICATION SYSTEMS

The Town Board of the Town of Somers, Kenosha County, Wisconsin do ordain as follows:

1. A new Chapter 19 of the Municipal Code for the Town of Somers be and the same is hereby created to read as follows:

CHAPTER 19: Cable Communication System Franchise

19.01 DEFINITIONS

(1) "ADDITIONAL AND AUXILIARY SERVICE" shall mean service other than service provided by the Grantee to the subscriber on a monthly basis and for which the subscriber pays a set fee.

(2) "BASIC SERVICE" shall mean subscriber services provided by the Grantee, including the delivery of broadcast signals and programming originated over the cable system, covered by the regular monthly charge paid by all subscribers.

(3) "BROADBAND TELECOMMUNICATIONS NETWORK (BTN)", hereinafter referred to as "System" shall mean any network of cables, optical, electrical, or electronic equipment, including cable television systems, used for the purpose of transmission of electrical impulses of television, radio and other intelligences, either analog or digital for sale or use by the inhabitants of the Town.

(4) "CABLE TELEVISION CHANNEL" a frequency band 6MHz in width within which a standard television broadcast signal is delivered by cable to a subscriber terminal.

(5) "TOWN" shall mean the Town of Somers.

(6) "COMMENCE OPERATION" shall mean that the operation will be considered to have commenced when sufficient distribution facilities have been installed so as to permit the offering of cable service to at least twenty-five percent (25%) of the dwelling units located within the designated "service areas".

(7) "TOWN BOARD" (Board) shall mean the Town Board of the Town of Somers

(8) "DISCRETE CABLE TELEVISION CHANNEL" a signaling path provided by a cable television system to transmit signals of any type to specified subscriber terminals with the cable television system.

(9) "FCC" shall mean the Federal Communications Commission and any legally appointed or elected successor.

(10) "FRANCHISE AREA" shall mean the Town or the areas within the limits of the Town as they now exist or as they may change in the future as the result of annexation.

(11) "GRANTEE" shall mean any person, firm, company, corporation or association to whom a franchise is granted by the Town Board of the Town hereunder and the lawful successor or assigns of such persons, firm, company, corporation or association.

(12) "HEADEND" shall mean the land, electronic processing equipment, antennas, tower, building and other appurtenances normally associated with and located at the starting point of a Broadband Telecommunications Network, excluding the studio.

(13) "REASONABLE NOTICE" shall mean the provision of notice of contemplated action delivered at least seventy-two (72) hours prior to such action.

(14) "STREET" shall include all streets, roadways, highways, antennas, lanes, alleys, courts, places, squares, curbs, sidewalks, easements, right-of-way or other public ways in the Town which have been or may hereafter be dedicated and open to the public use, or such other public property as designated by law.

(15) "SUBSCRIBER" shall mean a purchaser of any service delivered by Grantee pursuant to this franchise, and "subscriber" shall also include all persons who are not required to pay any fee, but receive any service delivered by Grantee pursuant to this franchise.

(16) "SUBSTANTIALLY COMPLETED". Operation will be considered substantially completed when sufficient distribution facilities have been installed so as to permit the offering of "full network service" to at least ninety (90%) of the dwelling units in the area proposed to be served.

19.02 GRANT OF AUTHORITY:

(1) The franchise granted hereunder shall give to the Grantee the right and privilege to construct, erect, operate, modify and maintain, in, upon, along, across, over and under streets, (as defined in Section 1.01 (14) herein) which have been or may hereafter be dedicated and open to public use in the Town; towers, antennas, poles, cables, electronic equipment and other network appurtenances necessary for the operation of a Broadband Telecommunications Network in the Town utilizing wherever possible existing facilities with the right upon application to the designated Town Official, to set poles or other equipment on facilities constructed by applicant. And said designated Town Official will not unreasonably refuse permission for said construction. However, a non-proliferation of poles policy for aesthetic purposes shall be considered. Where existing utility service for telephone and electrical service is underground, cable lines shall also be underground in that area.

(2) The Town shall require all developers of future subdivisions, when making provisions for or restrictions of utilities in the subdivision plat to include cable television services. It is intended by this paragraph to include cable television services in the same class as public utilities.

19.03 CONDITIONS OF FRANCHISE:

The Grantee shall be subject to the following restrictions and conditions with regard to the operation of the System, which conditions and restrictions shall be in addition to any other subsections of this Section or other Sections of the Municipal Code.

(1) Cables, wires and other equipment in connection with such System shall only be installed and operated on or under the public rights of way upon the poles, or in underground conduit and equipment of the existing utilities within the Town and their successors, or assigns, where conduits exist and where space in installed conduits is available. Installation of any additional poles, conduit or other equipment for the installation of cables, wires, or other overhead equipment and underground equipment in public rights-of-way in connection with the said System shall be subject to the authorization of the Town Board or its designated representative. In reaching a decision as to such additional poles or equipment, the suggestions, if any, of the utility companies servicing or planning to serve such area may be considered. Underground installation shall always be preferred, provided however the Grantee may construct its plant aerial so long as there is one utility aerial.

(2) Such wires, cables and other underground or overhead equipment shall be located as may be required of telephone companies or power lines by the Public Service Commission of Wisconsin. All equipment shall be grounded in the same manner as required by the State of Wisconsin Electrical Code for electrical services existing on the date of installation of any equipment.

(3) The Grantee shall pay all costs incurred by the Town in the event of the necessity of restoration of the public rights-of-way as a result of the Grantee's construction of its System or its operation. The grantee and the Town shall coordinate the restoration of the public rights-of-way if it becomes necessary for the Grantee to open or otherwise disturb said public rights-of-way. The grantee will also pay all costs incurred by the Town in regards to the regulation of the cable television system, if any.

(4) The Grantee shall, at its own expense, protect, support, temporarily or permanently disconnect, relocate in the same public right-of-way, or remove from a public right-of-way, any property owned or used by the Grantee if required by the Town for reasons of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines and tracts or any other type of structures or improvements by governmental agencies when acting in a governmental capacity. The Town shall provide the Grantee notice of its intention to make changes which might otherwise cause Grantee expense pursuant to this paragraph and the Grantee shall have an opportunity to comment.

(5) The Grantee shall, upon the request of any person holding a building moving permit issued by the Town, temporarily raise or lower its lines or disconnect or take them down to permit the moving of buildings. The expense of such removal, raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall be given not less than three (3) working days advance notice to arrange for such temporary wire changes.

(6) All installations by the Grantee of cables and incidental equipment shall comply in all respects with all laws, ordinances, rules and regulations of the Federal Communications Commission, the State of Wisconsin or any agency or department thereof, and of the Town or any agency or department thereof, now or hereafter in effect.

(7) The Grantee shall provide and maintain its equipment in such condition and of such quality so that none of its service will adversely affect radio and television reception.

(8) Installation and maintenance of equipment shall be such that standard color signals shall be transmitted with reasonable and acceptable fidelity to all subscribers.

(9) The Grantee shall not directly or indirectly require or solicit of any subscriber the patronage of any designated person or company engaged in the servicing, sale or repair of television receivers. The foregoing shall not apply to the repair or adjustment of equipment which is part of the System of the Grantee. Nothing in this paragraph shall preclude Grantee from advertising or selling any merchandise or services.

(10) The Grantee shall submit to inspections by duly authorized personnel of the Town and shall make available to such inspectors or duly authorized personnel its facilities and equipment wherever situated. The Town reserves the right to enact reasonable regulations regarding the installation and maintenance of the facilities of the Grantee.

(11) The Grantee shall have the authority to trim trees upon and overhanging public rights-of-way of the Town so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, except that at the option of the Town, such trimming may be done by it or under its supervision and direction.

19.04 TRANSFER OR SALE OF FRANCHISE:

This franchise may be transferred, assigned or sold only with the written consent of the Town Board and approved only if the transferee, assignee or purchaser agrees in writing to be subject to all the terms and conditions of this Ordinance. The franchisee shall notify the Town Board at least thirty (30) days before a proposed transfer, assignment or sale is to take effect. Such a notice must be in the form of a written request to the Town Clerk, stating the reasons why such an assignment is necessary and/or advisable and detailing the expected changes in the operation of the System. Information as to the legal, character, financial capability, technical and other qualifications of the party or parties to whom the franchise is to be transferred, assigned or sold, or by whom the same is to be operated, shall also be provided. This section shall apply to any transfer, assignment, or sale of greater than twenty-five percent (25%) of the ownership, operation or management of the franchise. The Town Board shall not withhold approval or consent regarding the transfer, assignment or sale, without cause and unless it is shown that the operation or management of the System will be affected to the detriment of the public by approving said transfer, assignment or sale. The provision shall not apply to either the mortgage or hypothecation of the System in respect to any mortgages or the remedies therein.

19.05 FRANCHISE TERM, REVIEW AND RENEWAL:

(1) The term of this franchise shall be for a period of fifteen (15) years and shall be in full force and effect for said term subject to the provisions of this Ordinance.

(2) Every two (2) years, during the term of this franchise, during the month of January, at a regular or special Town board Meeting, the Town and the Grantee, at either party's option, may meet to discuss application of new technologies, system performances, services provided, programming offered, customer complaints, and judicial and FCC ruling affecting the operation of the System. The parties shall compare the services offered by Grantee to those of other stand-alone systems in similar market situations, and if then appropriate, the parties may re-negotiate any of the above provisions, provided that such changes do not adversely affect economic viability of the franchise or adversely affect programming and maintenance services to the subscribers.

(3) At the twelfth year of the franchise, or if mutually agreed by the Town and the Grantee during one of the review and renegotiations described in Paragraph (2) above, the Town and the Grantee shall consider extension of this franchise for fifteen (15) additional years. The purpose of this provision is to allow for maximum flexibility in the financial planning on the part of the Grantee, and for the Town in anticipating future services. It is further the purpose of this provision to encourage the Town to examine the Grantee's performance and to plan for the future in providing cable television service as well as to reward the future in providing cable television service as well as to reward the satisfactory performance of the Grantee. The Town may at any time reward the Grantee for satisfactory performance by the extension of the franchise for five year increments. This authority is granted so as to provide incentive to the Grantee for satisfactory performance and maximum service.

19.06 RESPONSIBILITIES UPON TERMINATION OR EXPIRATION

Should the Grantee's franchise be terminated or expire and there is no judicial or administrative review of the termination or expiration taking place, the Grantee shall begin removal within ninety (90) days of termination or expiration all property owned by him and placed on a public right-of-way unless permitted by the Town to abandon said property in place or transfer said property to a purchaser.

19.07 COMPLETION OF CONSTRUCTION AND EXTENSION OF SYSTEM

(1) The Grantee shall initiate construction and installation of the broadband telecommunications network within six (6) months of receiving necessary authority from the Federal Communications Commission including microwave licenses and a Certificate of

Compliance and within twelve (12) months the Grantee shall commence operations. The Grantee shall have substantially completed construction within the time periods set forth in any franchise grant hereunder.

(2) The Town may in its discretion extend the time for Grantee, acting in good faith, to perform any act required hereunder. The time for performance shall be extended or excused, as the cause may be, for any period during which grantee demonstrates to the satisfaction of the Town Board that Grantee is being subjected to delay or interruption due to any of the following circumstances if reasonably beyond his control:

- (a) Necessary utilities rearrangements or pole changeouts.
- (b) Governmental or regulatory restrictions or economic conditions.
- (c) Labor strikes
- (d) Lock outs
- (e) War
- (f) National emergencies
- (g) Fire or extreme weather conditions
- (h) Other acts of God

(3) Line extensions or installations beyond 150 feet will be paid for by the subscriber at the Grantee's cost. It is intended by this paragraph to protect the Grantee and the subscribers from subsidizing unreasonable extensions.

(4) The Grantee shall be allowed to furnish service from the head end to other areas than the Town, provided however that the construction or provision of services to areas other than the Town does not prohibit, impede or delay the substantial completion date of the System in the Town. If any such program service provided to said areas shall be in any manner superior to the program service provided within the Town, then such program service shall be provided to the Town.

19.08 RATES

The maximum initial rates which may be charged by the Grantee to subscribers shall be those rates as set forth in the Grantee's application. In the event of a rate increase of the basic service, the Grantee shall provide the subscribers a thirty (30) day notice of such increase. Said notice shall be forwarded to the Town Clerk of the Town with supporting data for said increase.

19.09 TERMINATION OF FRANCHISE

(1) The Town reserves the right to revoke any franchise granted hereunder for just cause and with proper notice and rescind all rights and privileges associated therewith in the event of noncompliance by the Grantee with any material provisions of the Ordinance.

(2) In the event that the Town shall decide to terminate for cause a franchise granted hereunder, it shall give the Grantee ninety (90) days written notice of its intention to terminate and state the cause. If during the ninety (90) day period the cause shall be cured to the satisfaction of the Town, the Town shall declare the notice to be null and void. In any event before a franchise may be terminated, the Grantee must be provided with an opportunity to be heard before the Town Board.

19.10 BROADBAND CABLE COMMUNICATIONS SERVICE

(1) The Cable Communications System permitted to be installed and operated hereunder shall be operated in conformance with the FCC's Technical Standards 47 C.F.R.ss76.601 et.seq.

(2) The Grantee shall continue, throughout the term of the franchise, to maintain the technical standards and quality of service set forth in this Section. Should the Town Board pass a resolution finding that the Grantee has failed to maintain these technical standards and quality of service, it shall enumerate the improvements to be made and the Grantee shall make such improvements.

(3) The Cable System shall carry and deliver to all subscribers all of the signals as provided in the Grantee's application.

19.11 COMPLAINT PROCEDURE

Grantee shall investigate all complaints within twenty-four (24) hours of their receipt and shall in good faith attempt to resolve them within forty-eight (48) hours after notice. Grantee shall maintain a record of each complaint and shall maintain said record for a period of two (2) years. After said two (2) year period, said records shall be made available to the Town which may thereafter retain said records.

19.12 LIABILITY AND INDEMNIFICATION

(1) The Grantee shall maintain and by his acceptance of any franchise granted hereunder agrees that he will maintain throughout the term of the franchise, a general comprehensive liability insurance policy against liability for loss or damage

for personal injury, death or property damage, occasioned by the operations of Grantee under any franchise granted hereunder, in the amounts of (a) \$1,000,000 for bodily injury or death to any one person, within the limit, and (b) \$1,000,000 for property damage resulting from any one accident.

(2) Indemnification of Town in Franchise Operation. It shall be expressly understood and agreed by and between the Town and any Grantee hereunder that the Grantee shall save the Town and its agents and employees harmless from and against all claims, damages, losses and expenses, including attorney's fees sustained by the Town on account of any suit, judgment, execution, claim or demand whatsoever arising out of but not limited to copyright infringements and all other damages arising out of the installation, operation or maintenance of the Broadband Telecommunications Network authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this Ordinance and any franchise granted hereunder. This provision shall not apply to acts of the Town, its agents or employees.

(3) The insurance policies mentioned in Subsection (1) above shall be obtained from the same company and shall contain an endorsement stating that the policies are extended to cover the liability assumed by the grantee under the terms of this Ordinance and shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be cancelled nor the amount of coverage thereof reduced until thirty (30) days after receipt by the Town Clerk by registered mail of a written notice of such intent to cancel or reduce the coverage."

(4) The Grantee shall maintain, and by its acceptance of any franchise granted hereunder agrees, that it will maintain throughout the period of initial construction a faithful performance bond running to be the Town in the penal sum of \$25,000 conditioned that the Grantee shall well and truly observe, fulfill and perform each term and condition of this Ordinance and any franchise granted hereunder and that in case of any breach of condition of the bond, the amount thereof shall be forfeited to the Town as liquidated damages.

Upon completion of the initial construction phase of the physical plant the Grantee will so inform the Town Board, advising them therein that the bond of faithful performance is being eliminated.

19.13 CONSTRUCTION AND NETWORK TECHNICAL STANDARDS AND MEASUREMENTS.

The technical standards including measurements of the construction and Systems to be operated by the Town shall meet or exceed the minimum standards established by the Federal Communications Commission so as to provide all subscribers with a signal free of audible or visible noise and distortion.

19.14 ADDITIONAL REQUIREMENTS

The Grantee shall comply with all conditions imposed by the Federal Communications Commission and by the State of Wisconsin. Failure to obtain any required licenses or to comply with all such conditions shall be grounds to revoke the franchise under the procedure of Section 19.00 without liability assigned to the Town.

19.15 SUBSCRIBER PRIVACY

(1) Use of Data from Subscriber. The Grantee, its successor or assigns, Town or any person shall not initiate or use any form, procedure or device for procuring information or data from cable subscribers' terminals by use of the cable system, without prior authorization from each subscriber so affected. Valid authorization shall mean approval from the subscriber for a period of time not to exceed one (1) year and shall not have been obtained from the subscriber as a condition of service.

(2) Subscriber Data. The Town or a Grantee or any person shall not without prior written valid authorization from the Town Board, provide any data identifying designated subscribers.

19.16 PENALTIES

In addition to the procedures specified in Section 19.20, the following shall be in effect:

(1) After notice and hearing the Town may fine the Grantee if Grantee fails to provide the service specified in this Chapter, or any applicable government regulation. Grantee is not responsible for failure to provide adequate service which is caused by acts of God, strikes, governmental or military action, or other conditions beyond its control.

(2) Upon interruption of service, except for acts of God, strikes, governmental or military action, or with express prior permission of the Town, any subscriber whose service is interrupted for more than 48 consecutive hours shall be entitled to a rebate of the subscriber's monthly bill prorated on a daily basis for each 24 hour period of continuously interrupted service.

(3) If Grantee violates any provision of this Chapter, it shall forfeit, together with the costs of prosecution, a sum of not less than \$50.00 nor more than \$500.00 for each violation.

19.17 GOVERNMENT CONNECTIONS

The Grantee shall provide free one-time connection to any governmental building or facilities passed by the cable.

19.18 EDUCATIONAL CONNECTIONS

Grantee shall provide free one-time connection to any public, private or parochial school or university passed by the cable. Grantee shall provide connection to one central point, and the school at its expense may distribute the signal within said facility. The distribution network must be approved by Grantee to assure signal quality and prevent signal radiation.

19.19 UNAUTHORIZED CONNECTIONS OR MODIFICATIONS

(1) Unauthorized Connections Prohibited. It shall be unlawful for any firm, person, group, company, corporation or governmental body or agency without the express consent of the Grantee, to make any connection, extension or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the Grantee's cable system. It shall further be illegal for any firm, person, group, company, corporation or governmental body or agency without the express consent of the Grantee to possess or receive any signals or transmissions including specifically the transmission of messages or programming over the cable system on a pay channel or pay per program basis.

(2) Unauthorized sale. It shall be unlawful for any firm, person, group, company, corporation or governmental body or agency to sell or solicit for sale any facilities, devices or appurtenances used for the purpose of any or all acts unlawful as prohibited by Paragraph (1) above.

(3) Removal Or Destruction Prohibited. It shall be unlawful for any firm, person, group, company, corporation or governmental body or agency to willfully interfere, tamper, remove, obstruct or damage any part, segment or content of a franchise Broadband Telecommunications Network for any purpose whatsoever.

(4) Violation. Any firm, person, group, company, corporation or governmental body or agency convicted of violation of this section shall, for each offense, forfeit a sum of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) together with costs of such

prosecution. Violation of this section shall be considered a separate offense for each twenty-four (24) hour period the violation continues following notification or discovery.

19.20 TOWN'S RIGHT OF INTERVENTION

The Town shall have the right to intervene and the Grantee specifically agrees by his acceptance of a franchise hereunder not to oppose such intervention by the Town in any suit or proceeding to which the Grantee is a party.

19.21 PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED

Grantee shall not, as to rates, charges, service, service facilities, rules, regulations, employment, or in any other respect, make or grant any undue preference or advantage to any party, nor subject any party to any unlawful prejudice or disadvantage.

19.22 SEVERABILITY

If any subsection, sentence, clause or phrase of this Ordinance is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of this Ordinance as a whole, and any portions in conflict are hereby repealed, provided however, that in the event the Federal Communications Commission declares any subsection invalid, then such subsection or subsections shall be renegotiated by the Town and the Grantee.

19.23 FRANCHISE GRANT

(1) Any cable television franchise granted to the Town Board shall be pursuant to this Ordinance.

(2) This Ordinance shall be effective the day following its publication subsequent to its adoption.

ADOPTED THIS 26th day of September, 1985

/s/ David Holtze
David Holtze, Town Chairman

/s/ Kenneth Bohn
Kenneth Bohm, Supervisor

ATTEST:

/s/ Betty Edquist
Betty Edquist
Town Clerk

/s/ James M. Smith
James M. Smith, Supervisor