

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

