

TITLE 5 - PUBLIC UTILITIES

Chapter 2 - Cable Television

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5.2.1 Purpose.

It is the purpose of this Chapter to delineate the rules, regulations and requirements for a franchise to construct, maintain and operate a Cable Television System in the Town of Grafton, Ozaukee County, Wisconsin, and to set forth the obligations and rights of the Town and Grantee accompanying said grant.

5.2.2 Definitions.

For the purpose of this Chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, 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. The word "shall" is always mandatory and not merely directory.

5.2.2.01 Act

"Act" means Title VI of the Communications Act of 1984, as amended, of the United States of America and cited as the "Cable Communications Policy Act of 1984."

5.2.2.02 Additional Service

"Additional service" shall mean a subscriber service provided by the Grantee for which a special charge is made based on program or service content, time or spectrum space usage, in addition to the regular monthly charge paid by all subscribers.

5.2.2.03 Basic Service

"Basic service" shall mean all subscriber services provided by the Grantee, including the delivery of broadcast signals and programming originated over the Cable TV System, covered by the regular monthly charge paid by all subscribers.

5.2.2.04 Cable Television System

"Cable Television System (cable TV system or CATV System)" is any facility that, in whole or in part, receives directly or indirectly over the air and amplifies or otherwise modifies the signals transmitting programs broadcast by one (1) or more television or radio stations and distributes such signals by wire or cable to subscribing members of the public who pay for such service, but such terms shall not include any such facility that serves fewer than fifty (50) subscribers or any such facility that serves only the residents of one (1) or more apartment dwellings under common ownership, control or management and Commercial establishments located on the premises of such an apartment house.

5.2.2.05 FCC

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

- 5.2.2.06 Franchise**
"Franchise" means the right, privilege and authority granted by this Chapter to construct, maintain and operate a cable TV system through use of public streets and facilities of the Town.
- 5.2.2.07 Grantee**
"Grantee" shall mean all persons including, but not limited to, subsidiaries, parent or affiliate companies, associations or organizations having any rights, powers, privileges, duties, liabilities or obligations under this Chapter and under any agreement with the Town, and also includes all persons having or claiming any title to or interest in the Cable Television System, whether by reason of the franchise itself directly or by interest in a subsidiary, parent or affiliate company, association or organization or by any subcontract, transfer, assignment, mortgage security agreement, management agreement or operating agreement or whether otherwise arising or created.
- 5.2.2.08 Grantee Agreement**
"Grantee's Agreement" means any contract or agreement between the Town and a Grantee providing a franchise to such Grantee and authorizing the Grantee to operate and construct a Cable Television System pursuant to the terms of this Chapter.
- 5.2.2.09 Person**
"Person" means any person, firm, partnership, association, corporation, company or organization of any kind.
- 5.2.2.10 Reasonable Notice**
"Reasonable Notice" shall mean the provision of notice of contemplated action delivered at least forty-eight (48) hours prior to such action, except in cases of emergency and for routine maintenance of short duration.
- 5.2.2.11 Service Area**
"Service Area" shall mean the geographical area within the legal limits of the Town.
- 5.2.2.12 Street**
"Street" shall include all streets, roadways, highways, avenues, lands, alleys, courts., places, squares, curbs, sidewalks, easements, rights-of-way or other public ways in the Town which have been or may hereafter be dedicated and open to public use or such other public property so designated by law.
- 5.2.2.13 Subscriber**
"Subscriber" shall mean any person, firm, company, corporation or association receiving "basic service" from the Grantee.

5.2.2.14 Town
"Town" means the Town of Grafton, Wisconsin, or any duly appointed designate thereof including, but not limited to, the Town Board, Town committees and authorized agents of the Town.

5.2.2.15 Town Board
"Town Board" or "Board" means the present governing body of the Town or any successors to the legislative power of said body or any duly appointed designate thereof.

5.2.2.16 Other Word, Term or Phrase
Any other word, term or phrase not specifically defined in this Chapter shall take such meaning as provided in any FCC rule or regulation.

5.2.3 Intended Scope of This Chapter.

5.2.3.01 Operation
The Grantee shall construct, operate and maintain the Cable Television System subject to the supervision of all authorities of the Town who have jurisdiction in such matters and in strict compliance with all laws and ordinances.

5.2.3.02 Compliance
Notwithstanding any other provision of this Chapter or the Grantee's agreement, the Grantee shall at all times comply with all laws and regulations of the State of Wisconsin and the federal government or any administrative agency thereof; provided, however, if any such state or federal law or regulation shall require the Grantee to perform any service or shall permit the Grantee to perform any service in conflict with the terms of this Chapter or of any law or regulation of the Town, then as soon as possible following knowledge thereof, the Grantee shall notify the Town Board of any conflict believed to exist between such regulation or law and the laws or ordinances of the Town or this Chapter. If the Town Board determines that a material provision of this Chapter is affected by such subsequent action, the Town Board shall have the right to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this Chapter.

5.2.3.03 Not a Waiver
The Grantee shall not be excused from complying with any of the terms and conditions of this Chapter or Grantee's Agreement by any failure of the Town upon any one (1) or more occasions to insist upon or seek compliance with any such terms or conditions.

5.2.3.04 Captions
The captions to Sections throughout this Chapter are intended solely to facilitate reading and reference to the Sections and provisions of this Chapter. Such captions shall not affect the meaning or interpretation of this Chapter.

5.2.3.05 Severability

If any provision of this Chapter or the application of such provision to any circumstances is held invalid for any reason whatsoever, the remainder of this Chapter or the application of the provision to other circumstances shall not be affected thereby.

5.2.4 Applications For Franchise.

5.2.4.01 Application

Applications for a franchise to construct or operate and any renewal application to operate a Cable Television System hereunder shall be filed with the Town Clerk in accordance with the filing instructions promulgated by the Town and shall contain the following written information and provisions:

- (A) Each application and renewal submitted after the effective date of this Chapter shall be accompanied by a nonrefundable filing fee to the Town in a sum as set by the Town Board.
- (B) The name and business address of the applicant, date of application and signature of applicant or appropriate corporate officers.
- (C) A general description of the applicant's proposed operation, including, but not limited to, business hours, operating staff, maintenance procedures, management and marketing staff complement and procedures, and place of local business office.
- (D) A statement of the television and radio services to be provided, including both off-the-air and locally originated signals.
- (E) A statement setting forth a description of the automated services proposed as well as a description of the production facilities to be made available by the Grantee for the public, municipal and educational channels required to be made available by any FCC rule or regulations.
- (F) A statement of the applicant's proposed schedule of charges to subscribers.
- (G) A statement detailing the corporate organization of the applicant, if any, including the names and addresses of its officers and directors (or names and addresses of all general partners of a partnership) and the number of shares of stock held by each officer and director (or percentage interest of each partner of a partnership).
- (H) A current copy of the corporation's annual report filed with the Wisconsin Secretary of State and a certificate of good standing from the Secretary of State certified to within thirty (30) days of the franchise application.
- (I) A statement describing all intra-company relationships of the applicant, including parent, subsidiary or affiliated companies.
- (J) Suitable written evidence from a recognized financial institution addressed to the applicant and to the Town advising that the applicant's financial ability and planned operation have been analyzed by the institution and that the financial institution is prepared to make the required funds available to applicant if it is awarded a franchise under the terms of this Chapter. If the planned operation is to be internally financed, a certified copy of a Corporate Board Resolution or written statement of all partners shall be supplied authorizing procurement and expenditure of such funds

as are required to construct, install and operate the Cable Television system contemplated hereunder.

- (K) A statement of existing franchises held by the applicant indicating when the franchises were issued and when the systems were constructed, and the present state of the systems in each respective governmental unit, together with the name and address and phone number of a responsible governmental official knowledgeable of the applicant.
- (L) A statement as to whether the applicant or any of its officers or directors or holders of five percent (5%) or more of its voting stock or partnership interest, as the case may be, has in the past ten (10) years been convicted of any felony.
- (M) A statement detailing the prior Cable Television experience of the applicant including that of the applicant's officers, management and staff to be associated with the proposed operation.

5.2.4.02 Format

The application for franchise shall respond specifically, and in sequence to the Subsections of this Section and shall be bound separately from any additional information filed by the applicant. Eight (8) copies of the application shall be supplied to the Town; supplementary, additional or other information that the applicant deems reasonable for consideration may be submitted at the same time as its application but must be separately bound and submitted in the above number of copies. The Town may, at its discretion, consider such additional information as part of the application.

5.2.4.03 Other Information

The Town reserves the right to require such supplementary, additional or other information that the Town deems reasonably necessary for its consideration of the application. Such modifications, deletions, additions or amendments to the application shall be considered only if specifically requested by the Town.

5.2.4.04 Renewal

Any existing Grantee, at the time this Chapter becomes effective, must supply all information set forth in this Section upon any renewal application.

5.2.5 Acceptance And The Effective Date Of Franchise.

5.2.5.01 Effective Date

Any franchise awarded hereunder and the rights, privileges and authority granted thereby shall take effect and be in force from and after the thirtieth (30th) day following the award thereof, provided that within thirty (30) days from the day of such award the Grantee shall file with the Town the following:

- (A) A certified statement by the Grantee of unconditional acceptance of the franchise;
- (B) Certificates of insurance as required in Section 5.2.10 herein; and
- (C) Written notification of the Grantee's location and address for mail and official notification from the Town.

5.2.5.02 No Recourse

The Grantee shall have no recourse whatsoever against the Town for any loss, cost, expense or damage arising out of the provision or requirement of this Chapter or its regulation or from the Town's exercise of its authority to grant additional franchises hereunder, except as may be specifically provided the Grantee by the Act.

5.2.5.03 Grantee Due Diligence

The Grantee expressly acknowledges that, in accepting any franchise awarded hereunder, it has relied upon its own investigation and understanding of the power and authority to grant this franchise.

5.2.5.04 Grantee's Waiver

Grantee acknowledges by the acceptance of this Chapter and any franchise agreement with the Town that it has carefully read the terms and conditions of this Chapter and it is willing to and does accept all the obligations of such terms and conditions. Grantee further agrees that it will not, prior to substantial completion of the Cable Television System, set up as against the Town any claim that any provision of this Chapter as adopted, or any franchise granted hereunder, is unreasonable, arbitrary, invalid or void.

5.2.6 Termination or Revocation of Franchise.

5.2.6.01 Grantee Renewal Notice

After the expiration of the term for which a franchise is granted, the Town, in its sole discretion, may determine whether the Grantee shall continue to operate a Cable Television System pursuant to the terms and conditions of this Chapter. If Grantee intends to apply for a renewal term, the Grantee shall submit an application to the Town not later than thirty-six (36) months prior to the expiration of the term stated in Grantee's agreement with the Town.

5.2.6.02 Termination by Town

In addition to all other rights and powers pertaining to the Town by virtue of this Chapter, Grantee's agreement or otherwise, the Town reserves the right to revoke, terminate and cancel the franchise and all rights and privileges of the Grantee hereunder in the event that:

- (A) The Grantee violates any provision of this Chapter, any provision of the Grantee's agreement or any rules, orders or determinations of the Town made pursuant to this Chapter, except where such violation is without fault or through excusable neglect; or
- (B) The Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt; or
- (C) There has been a change in the control of the Grantee requiring the consent of the Town Board, pursuant to Section 5.2.13 of this Chapter, and such consent has been denied or not given; or
- (D) The Grantee practices any fraud or deceit upon the Town; or

- (E) The Grantee fails to have service available to all the residential structures in all areas of the Town within a period of two (2) years from the date of the execution of an agreement between the Grantee and the Town of Grafton, at no cost to the subscriber for the system, other than customary and usual connection fees (provided connection is technically and physically feasible).

5.2.6.03 Performance Bond

To guarantee compliance with the above provisions, Grantee shall file with the Town a performance bond, written by a company licensed to do business in the State of Wisconsin in the sum of Twenty Thousand Dollars (\$20,000.00).

5.2.6.04 Default Notice

Upon the occurrence of any of the events enumerated in Subsection (b) of this Section, the Town Board may, after hearing upon thirty (30) days' written notice to the Grantee citing the reasons alleged to constitute cause for revocation, set a reasonable time in which the Grantee must remedy the cause. If during the thirty (30) day period the cause shall be cured to the satisfaction of the Town, the Town may declare the notice to be null and void. If the Grantee fails to remedy the cause within the time specified, the Town may revoke the franchise. In any event, before a franchise may be terminated, the Grantee must be provided with an opportunity to be heard before the Town Board. The decision of the Town Board may be subject to judicial review.

5.2.6.05 Equipment Upon Termination

- (A) If the Town determines not to renew the franchise for reasons other than a material breach of their franchise or reasons unrelated to the performance of the Grantee or upon receipt of an application for assignment of the franchise or upon a change of de facto control, the Grantee shall first offer all of the Grantee's equipment and property situated within the Town and used in conjunction with the operation of the Cable Television System to the Town at fair market value, which value shall include the fair market value of the system as a going concern, including the franchise itself and the rights and privileges granted by the Town.
- (B) When a franchise is revoked pursuant to this Section or expires and is not renewed because of a material breach of the franchise, Grantee's said equipment and property within the Town shall first be offered to the Town at a fair market value, which value shall not include any value for the franchise itself or for any of the rights or privileges granted by the Town.
- (C) If the determination of fair market value cannot be negotiated or determined, said value shall be determined by an impartial arbitration procedure pursuant to Chapter 788, Wis. Stats., as amended, wherein the Grantee and the Town shall each choose an arbitrator and the arbitrators shall choose a third arbitrator; the valuation determined by a majority of said arbitrators shall be considered the fair market value at which the system will be offered to the Town. The cost of the arbitration procedure shall be shared equally by the Grantee and the Town.

(D) The Town shall have ninety (90) days to exercise the right of first refusal to purchase Grantee's aforementioned property within the Town, said ninety (90) days commencing on the day the fair market value of the equipment is determined either through negotiation or the arbitration procedure.

5.2.6.06 Interim Operation

If the Town does not exercise its option to purchase and Grantee's said property is not sold to a person who has obtained a franchise from the Town in a reasonable period of time, the Grantee, upon request by the Town, shall, not later than six (6) months from the date of such Town request, remove all of its equipment from Town streets. If the Town determines not to exercise its right of first refusal, it shall not unreasonably refuse to renew or grant the Cable Television franchise during a reasonable interim period. While transfer of the system and franchise is being negotiated, arranged or ordered, the Grantee may be required to continue service to the public and its subscribers unless, for reasons beyond the control of the Grantee, said operation will be economically unfeasible to the Grantee.

5.2.6.07 Removal Damage Repair

If, for any reason stated in this Chapter, the Grantee is required to remove its plant, structures and equipment from Town streets, the Grantee shall fill at its own expense any excavation that shall be made by it and shall leave all public streets and places in such condition acceptable to and approved by the Town. During any period of removal, Grantee shall be required to maintain the liability insurance required herein and the indemnity to the Town required herein.

5.2.6.08 Town's Option to Repair

If the Grantee fails to complete any work required by Section 5.2.6.06 above or any work required by any other Town law or ordinances within the time established and to the satisfaction of the Town, the Town may cause such work to be done and the Grantee shall reimburse the costs thereof within thirty (30) days after receipt of an itemized list of such costs.

5.2.6.09 Town's Option for Extention

Upon the expiration of the Grantee's agreement, the Town may, by resolution, on its own motion or request of the Grantee, require the Grantee to operate the franchise for an extended period of time not to exceed six (6) months from the date of the expiration of the original term of the franchise or any renewal term. All provisions of this Chapter and Grantee's agreement shall continue to apply to operations during any extension period. The Town shall serve written notice to Grantee of its intent to extend under this Subsection at least ninety (90) days prior to expiration of the original franchise or any renewal term.

5.2.6.10 Grantee's Abandonment

If, for a period of three (3) continuous years following the termination of Grantee's franchise, for any reason, Grantee has failed to remove its equipment form Town streets or the Grantee has not sold said equipment to a subsequent

franchise holder or the Town has not exercised its rights to purchase such equipment, then any such equipment in any Town street shall be deemed abandoned and title to the same shall revert to the Town upon affirmative resolution of the Town Board.

5.2.7 Inspection.

The Town Board shall have the right to inspect all construction, maintenance and installation work performed pursuant to the provisions of this Chapter.

5.2.8 Services to be Provided.

5.2.8.01 Maintenance

The Grantee shall maintain its facilities, equipment and service so that the CATV system is as advanced as the current state of technology with field-proven equipment allow, consistent with good economic judgment of the Grantee and service requirements of the franchise area. The Grantee shall render efficient service in accordance with such rules and regulations as have been promulgated and may be promulgated by the FCC and other federal and state regulatory agencies.

5.2.8.02 Residents’ Right to Service

It shall be the right of all residential subscribers unless prohibited by law, rule or regulation to receive all available services insofar as their financial and other obligations to the Grantee are honored.

5.2.8.03 Grantee’s Office

The Grantee shall maintain an office within a ten (10) mile radius of the Town in a location convenient to the public which shall be open during usual business hours, have a listed telephone number and be so operated that complaints and requests for repairs or adjustments may be received at any time.

5.2.8.04 Service Request Response

The Grantee shall respond to all service calls and complaints and shall correct malfunctions in its equipment as promptly as possible. The Grantee shall respond to request for service within forty-eight (48) hours after its reception of said request. If the Grantee does not respond to a request within said forty-eight (48) hours, the Grantee shall refund one-thirtieth (1/30th) of its monthly charge to a subscriber for each twenty-four (24) hours or fraction thereof following a request for service except to the extent that the Grantee is prevented from responding to said request for service by strike, injunction or other causes beyond the control of the Grantee.

5.2.8.05 Town Outlets

The Grantee shall provide, without charge, three (3) outlets to the primary Town municipal building. If more than three (3) outlets are required in said building or if outlets are requested in any other municipal building within the Town, the

Grantee shall install the same at the cost of time and materials only. In no event will there be a monthly service charge at any of said locations.

5.2.9 Financial Considerations.

The Grantee shall pay the Town a franchise fee of three percent (3%) of the Grantee's gross subscriber revenues from the operation of the cable communications system within the Town limits. Said annual sum shall be paid within forty-five (45) days of the end of the calendar year. Annually, an independent certified public accountant, to be paid by the Grantee, shall audit and certify to the Town the amount of the Grantee's revenue from all cable services for the purpose of certifying the franchise fee to be paid. A copy of all work products of the said accountant shall be furnished to the Town.

5.2.10 Insurance and Indemnity.

5.2.10.01 Insurance Required

At all times during the term of the franchise, the Grantee shall obtain, pay all premiums for and file with the Town Board certificates of insurance for the following:

- (A) A general comprehensive public liability insurance policy indemnifying, defending and saving harmless the Town, its officers, Boards, committees, commissions, agents and employees from any and all claims by any person whatsoever on account of injury to or death of a person or persons occasioned by the operations of the Grantee under the franchise herein granted or alleged to have been so caused or occurred within a minimum liability of Five Hundred Thousand Dollars (\$500,000.00) for bodily injury or death of any one (1) person and One Million Dollars (\$1,000,000.00) for any one (1) occurrence.
- (B) Property damage insurance with the same indemnifications as previously stated in this Subsection from and against all claims by any person whatsoever for property damage occasioned by the construction or operation of the Grantee under the franchise herein granted or alleged to have been so caused or occurred with a minimum liability of One Hundred Thousand Dollars (\$100,000.00) for property damage in any one (1) occurrence.
- (C) All of the foregoing insurance policies shall be in form satisfactory to the Town attorney, shall be approved by the Board and shall be maintained by companies authorized to do business in the State of Wisconsin. Said insurance contracts shall require thirty (30) days' written notice of any cancellation to the Town. The amounts of insurance coverage required of Grantee herein may be reasonably increased not more than once each year during the term of the franchise on thirty (30) days' written notice from the Town to the Grantee and by amendment of this Chapter.

5.2.10.02 Hold Harmless

The Grantee shall also, at its sole cost and expense, fully indemnify, defend and hold harmless the Town, its officers, Boards, committees, commissions, employees and agents against any and all claims, suits, actions, liability and

judgments for damages (including but not limited to expenses for reasonable attorneys' fees and disbursements arising out of any claim for invasion of the right of privacy, for defamation of any person, firm or corporation or for the violation or infringement of any copyright, trademark, trade name, service mark or patent or of any other right of any person, firm or corporation and arising out of the Grantee's failure to comply with the provisions of any federal, state or local statute, ordinance or regulation applicable to the Grantee in this business herein. The foregoing indemnity is conditioned upon the following: The Town shall give the Grantee prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section.

5.2.11 Subscriber Rates.

The rates charged to subscribers shall be fair and reasonable.

5.2.12 Protection Afforded The Grantee.

5.2.12.01 Damage to Equipment

A person who willfully or maliciously damages or causes to be damaged any wire, cable, conduit, apparatus or equipment of the Grantee or who commits any act with intent to cause damage to any wire, cable, conduit, apparatus or equipment of the Grantee or who taps, tampers with or connects any wire or device to a wire, cable, conduit or equipment of the Grantee with intent to obtain a signal or impulse therefrom without authorization of the Grantee shall be subject to a forfeiture of not less than Fifty Dollars (\$50.00) or more than Three Hundred Dollars (\$300.00) as determined by the court and shall be liable in a civil action for three (3) times the actual amount of damages sustained thereby. However, this Subsection shall not prevent the Town (or the designated employee and agents thereof) from removing, disconnecting or otherwise rendering inoperable any of Grantee's apparatus or equipment attached or in any way connected to the Town's facilities, if done for reasonable cause.

5.2.12.02 Theft of Service

Whoever, with intent to defraud, obtains or attempts to obtain a signal or impulse from any wire, cable, conduit, apparatus or equipment of the Grantee by any of the following means shall be subject to a forfeiture or not less than Fifty Dollars (\$50.00) or more than Three Hundred Dollars (\$300.00) as determined by the court and shall be liable in a civil action for three (3) times the actual amount of damages sustained thereby:

- (A) Rearranging, tampering with or making connection with any facilities or equipment of the Grantee;
- (B) Using any other contrivance, device or means to avoid payment of the lawful charges, in whole or in part, for the services provided by the Grantee's CATV system, except via a disc antenna or other device owned by a property owner for his or her sole use and not for the purpose of distribution.

This Subsection shall apply when the said CATV system service either originates or terminates or both in this state or when the charges for said service would have been billable in normal course by a person providing CATV service in this state, but for the fact that said service was obtained, or attempted to be obtained, by one (1) or more of the means set forth above and in Subsection (a) above.

5.2.12.03 Each Day a Separate Offense

For purposes of determining the forfeiture set forth in Subsections 5.2.12.02(A) and 5.2.12.02(B) above, each day of violation of the provisions of said Subsection shall constitute a separate offense.

5.2.13 Restrictions Against Assignment.

5.2.13.01 Town Must Consent

Any franchise granted pursuant to this Chapter shall not be assigned or transferred, either in whole or in part, or leased or sublet in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person either by the act of the Grantee or by operation of law without the express written consent of the Town Board. The granting, giving or waiving of any one (1) or more of such consent shall not render unnecessary any subsequent consent or consents.

5.2.13.02 Grantee Change of Control

The Grantee shall promptly notify the Town Board of any proposed change in, or transfer of, or acquisition by, any other party of control of or the business assets of the Grantee. Within sixty (60) days after receiving said notice, the Town Board shall hold a public hearing on this matter and within ninety (90) days shall make its recommendations upon the matter. For the purpose of determining whether it will consent to such change, transfer or acquisition of control, the Town Board may inquire into the qualifications of the prospective controlling party and shall require the prospective controlling party to submit all information and documentation as set forth in Section 5.2.4.

5.2.13.03 Town’s Consent Withheld

Every change, transfer or acquisition of control of the Grantee with respect to which the consent of the Town Board is required, pursuant to Section 5.2.13.01 above, shall make this franchise subject to revocation unless and until the Town Board shall have consented thereto. If the Town Board denies consent, and any such change, transfer or acquisition of control has been effected, the Town may revoke any franchise or permit given pursuant to this Chapter unless control of the Grantee is restored to its status prior to the change or to a status acceptable to the Town Board.

5.2.13.04 Change of Control Defined

For purposes of this Chapter and the preceding Subsections, a change, transfer or acquisition of control shall not be affected where less than thirty percent (30%) of the shares of stock in the Grantee is made within any calendar year. Changes or

transfers of control resulting from the death of a stockholder shall be exempt from the requirements of the previous Subsections.

5.2.13.05 Financing

Nothing in this Section shall be deemed to prohibit a mortgage or pledge of the Cable System equipment or any part thereof or a leasing by the Grantee from another part thereof for financing purposes or otherwise. Any such mortgage, pledge or lease shall be subject and subordinate to the rights of the Town under the Grantee's Agreement or this Chapter and applicable law.

5.2.14 Use of Town Streets.

5.2.14.01 Easement

There is hereby granted by the Town the right, privilege and franchise to construct, operate and maintain a Cable Television System on the streets of the Town for a period of years as specified in any agreement between the Town and the Grantee, subject to the rights, obligations, conditions and restrictions as hereinafter provided. The right to use and occupy said streets for the purposes herein set forth shall not be exclusive, and the Town reserves the right to grant a similar use of said streets to any person at any time during the period of the Grantee's franchise.

5.2.14.02 Construction Plan Review

Prior to the construction, operation and maintenance of the system, the Grantee shall file with the Town Engineer a copy of the construction and/or installation plan. The Town Engineer shall review same using the standard of the best interest of the Town and either approve said plan, disapprove same or recommend changes in connection therewith. The Grantee shall accordingly make the changes as recommended, which changes shall become a part of the final plan. Only upon final approval by the Town Engineer shall the Grantee commence construction and/or installation. All construction and maintenance shall be in accordance with the Plan as approved or modified and changed from time to time with the approval of the Town Engineer.

5.2.14.03 Underground Distribution

All transmission and distributions, structures, lines and equipment erected by the Grantee within the Town shall be located so as not to interfere with the proper use of streets, alleys and other public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of said streets, alleys or other public ways and places, and not to interfere with existing utility installations. All installations shall be underground at the time of installation. In areas where both telephone and electric utility distribution facilities are above ground at the time of installation, the Grantee may install its facilities above ground; but in such case, the Grantee, to the maximum extent possible, subject to the approval by the affected public utility, shall place its facilities on the poles of said public utilities. If, subsequently, said telephone or electric utility facilities go underground, the facilities of the Grantee shall go

underground simultaneously. The use by the Grantee of any facilities or installations of a telephone or electric utility and the conditions of said uses shall be determined by negotiations between the Grantee and said utility.

5.2.14.04 Paving Repair

In case of any disturbance of pavement, sidewalk, driveway or other surfacing (including paved private drives connecting private property to traveled parts of public roads), the Grantee shall, at its own expense and in the manner provided by the Town, replace and restore all paving, sidewalk, driveway or other surface of any street or alley disturbed within thirty (30) days following any such disturbance.

5.2.14.05 Grantee to Accommodate Town Public Ways

If, at any time during the period of Grantee's agreement, the Town shall alter or change the grade or location of any street, alley or other public way or repair the same, the Grantee shall, upon twenty (20) days' notice by the Town, remove, relay and relocate its poles, wires, cables and underground fixtures at its own expense and, in each instance, comply with the requirements of the Town.

5.2.14.06 Prohibited Areas

From time to time, the Town Board may prohibit placement of Grantee's equipment, wires or facilities from specified areas where the Town Board has determined the location of such equipment, wires and facilities lit or would interfere with or endanger any public or private utility or would violate any applicable safety statute, ordinance or administrative regulation.

5.2.14.07 Assist Building Moving

The Grantee shall, on request of any person holding a moving permit issued by the Town, temporarily move its wires or fixtures to permit the moving of buildings, the expense of such temporary removal to be paid by the person requesting the same, and the Grantee shall be given not less than Ninety-Six (96) hours' advance notice to arrange for such temporary changes.

5.2.15 Protection of Individual Rights.

5.2.15.01 Discrimination

The Grantee shall not deny service, deny access or otherwise discriminate against any subscribers, programmers or general citizens on the basis of race, color, religion, national origin, creed, age or sex. Nothing in this Subsection shall be construed to prohibit the reduction of waiving or charges in conjunction with promotional campaigns for the purpose of attracting subscribers nor shall this provision be interpreted to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any subscriber or programmer included in a particular classification shall be entitled.

5.2.15.02 Monitoring Prohibited

Except with written subscriber consent, neither the Grantee, nor any governmental bureau, department, unit agency or entity, at the federal, state, county or town level, nor any other person or entity shall monitor or arrange for the monitoring of any subscriber cable, subscriber outlet or subscriber receiver for any purpose whatsoever.

5.2.15.03 Subscriber List

Without the express written consent of a subscriber, the Grantee shall not sell or otherwise make available lists of the names and addresses of the subscribers, or any lists which identify, by name, subscribers' viewing habits, to any person, agency or entity, for any purpose whatsoever.

5.2.16 Rights Reserved by the Town.

5.2.16.01 Adopt Other Ordinances

The right is hereby reserved to the Town to adopt, in addition to the provisions contained herein and any existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police powers; provided, that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted.

5.2.16.02 Town May Acquire

Nothing in this Chapter shall limit the right of the Town to acquire the Cable System or any portion thereof of the Grantee through the exercise of eminent domain, condemnation proceedings or otherwise.

5.2.16.03 Town May Require Relocation

For the purpose of vacating streets, installing utilities and rerouting utilities, the Town may terminate Grantee's rights to use the streets and the facilities of the Town upon resolution of the Town Board and two (2) months' notice to the Grantee. Notwithstanding the foregoing, in case of emergency or as a measure to safeguard the health, safety and welfare of the Town or any of its inhabitants, the Town may, by resolution, prescribe a shorter notice. Any removal of equipment, wires or facilities of the Grantee required by this Subsection shall be done at the sole cost and expense of the Grantee. If removal is not made by the Grantee in the time required or in case of emergency, the Town or its lawful representatives may cause the same to be removed at the Grantee's expense without notice.

5.2.16.04 Other Limitations

Nothing contained in this Chapter shall be construed to limit or in any other way impair the powers and authorities of the Town, except as expressly stated in this Chapter.

5.2.17 Limitations of the Grantee's Recourse.

5.2.17.01 Restricted to Provisions of This Chapter

Except as expressly provided in this Chapter and Grantee's agreement, Grantee herein shall have no recourse whatsoever against the Town for any loss, cost or expense or damage arising out of the provisions or requirements of this Chapter or because of the enforcement of provisions set forth herein.

5.2.17.02 Due Diligence

Any Grantee receiving a franchise from the Town pursuant to this Chapter acknowledges by acceptance of a franchise that it has carefully read the terms and conditions hereof and is willing to and does accept all reasonable risks of the meaning of such terms and conditions and agrees that, in the event of any ambiguity thereon or in the event of any other dispute over the meaning thereof, the same shall be construed strictly against the Grantee in the favor of the Town.

5.2.18 Amendments

The Town reserves the right to amend or modify this Chapter from time to time.

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