

Chapter 3.16

**CABLE TELEVISION FRANCHISE**

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**3.16.010 Short title.**

This chapter shall be known and may be cited as the "Burlington Cable Television Franchise Ordinance," hereinafter "franchise," or "ordinance." (Ord. dated 3/27/03 (part))

**3.16.020 Definitions.**

For the purpose of this chapter the following terms, phrases, words and their derivations shall have the meaning given herein:

"Basic service" means any subscriber tier provided by the grantee which includes the delivery of local broadcast stations, and public, educational and governmental access channels. The basic service does not include optional program and satellite service tiers, a la carte services, per channel, per program,

or auxiliary services for which a separate charge is made. However, grantee may include other satellite signals on the basic tier.

“Cable system” or “system” or “cable television system” means a system of antennas, cables, wires, lines, towers, wave guides, or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing, audio, video, and other forms of electronic, electrical or optical signals, which includes cable television service and which is located in the town. The definition shall not include any such facility that serves or will serve only subscribers in one or more multiple unit dwellings under common ownership, control or management, and which does not use town rights-of-way.

“Class IV channel” means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system.

“Control” and/or “controlling interest” means actual working control or ownership of a system in whatever manner exercised. A rebuttable presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or indirectly, by any person or entity (except underwriters during the period in which they are offering securities to the public) of ten (10) percent or more of a cable system or the franchise under which the system is operated. A change in the control or controlling interest of an entity which has control or a controlling interest in a grantee shall constitute a change in the control or controlling interest of the system under the same criteria. Control or controlling interest as used herein may be held simultaneously by more than one person or entity.

“Converter” means an electronic device which converts signals to a frequency not

susceptible to interference within the television receiver of a subscriber, and by an appropriate channel selector also permits a subscriber to view more than twelve (12) channels delivered by the system at designated converter dial locations.

“FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

“Grantee” means a person or entity to whom or which a franchise under this chapter is granted by the town, along with the lawful successors or assigns of such person or entity.

“Gross revenues” means all compensation received directly or indirectly by the grantee herein from subscribers or users in payment for television of FM radio signals or services received within the town but excluding any taxes on services, furnished by grantee, imposed directly on any subscriber or user by any state, city or other governmental unit and also excluding any compensation received by grantee for installation of the service connections.

“Initial service” area means all areas in the town having at least twenty (20) dwelling units per street mile.

“Installation” means the connection of the system from feeder cable to subscribers’ terminals.

“May” is permissive.

“Monitoring” means observing a communications signal, or the absence of a signal, where the observer is neither the subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever; provided monitoring shall not include system wide, non individually addressed sweeps of the system for purposes of verifying system integrity, controlling return paths transmissions, or billing for pay services.

“Normal business hours” as applied to the grantee, shall mean those hours during which similar businesses in the town are open to serve customers. In all cases, normal business hours shall include some evening hours at least one night per week, and/or some weekend hours.

“Normal operating conditions” means those service conditions which are within the control of the grantee. Those conditions which 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. Those conditions which are ordinarily within the control of the grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

“Shall” is mandatory.

“Service interruption” and/or “outages” means the loss of either picture or sound or both for a single or multiple subscriber(s).

“Street” means the surface of and all rights-of-way and the space above and below any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive or easement now or hereafter held by the town for the purpose of public travel and shall include other easements or rights-of-way as shall now be held or hereafter held by the town which shall, within their proper use and meaning entitle the grantee to the use thereof for the purposes of installing poles, wires, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a telecommunications system.

“Subscriber” means any person, firm, grantee, corporation, or association lawfully receiving basic and/or any additional service from grantee.

“User” means a party utilizing a cable television system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt thereof in a subscriber capacity.

“Town” means the town of Burlington, Wisconsin. (Ord. dated 3/27/03 (part))

### **3.16.030 Rights and privileges of grantee.**

Any franchise granted by the town pursuant to Wisconsin Statutes Section 66.082 shall grant to the grantee the right and privilege to erect, construct, operate and maintain in, upon, and along, across, above, over and under the streets, now in existence and as may be created or established during its terms; any poles, wires, cable, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation of a cable system. (Ord. dated 3/27/03 (part))

### **3.16.040 Agreement and incorporation of application by reference.**

A. Upon adoption of any franchise agreement and execution thereof by the grantee, the grantee agrees to be bound by all the terms and conditions contained in this chapter.

B. Any grantee also agrees to provide all services specifically set forth in its application if any and to provide cable television service within the confines of the town; and by its acceptance of the franchise, the grantee specifically grants and agrees that its application is incorporated by reference and made a part of the franchise. In the event of a conflict between such proposals and the provisions of this chapter, that provision which provides the greatest benefit to the town, in the opinion of the town, shall prevail. (Ord. dated 3/27/03 (part))

### **3.16.050 Franchise territory.**

Any franchise is for the present territorial limits of the town and for any area added during the term of the franchise. (Ord. dated 3/27/03 (part))

**3.16.060 Duration and acceptance of franchise.**

The franchise and the rights, privileges and authority granted shall take effect and be in force as set forth in the franchise agreement and shall continue in force and effect for a term of no longer than fifteen (15) years, provided that within fifteen (15) days after the date of final passage of the franchise the grantee shall file with the town its unconditional acceptance of the franchise and promise to comply with and abide by all its provisions, terms and conditions. Such acceptance and promise shall be in writing duly executed and sworn to, by, or on behalf of the grantee before a notary public or other officer authorized by law to administer oaths. Such franchise shall be non-exclusive and revocable. (Ord. dated 3/27/03 (part))

**3.16.070 Franchise renewal.**

A. Current Federal Statutory Process.

1. The town may, on its own initiative, during the six-month period which begins with the thirty-six (36) month before the franchise expiration, commence a proceeding which affords the public in the town appropriate notice and participation for the purpose of: (1) identifying the future cable-related community needs and interests; and (2) reviewing the performance of the grantee under the franchise. If the grantee submits, during such six-month period, a written renewal notice requesting the commencement of such proceeding, the town shall commence such proceeding not later than six months after the date such notice is submitted.

2. Upon completion of the proceeding under subsection 1 above, the grantee may, on its own initiative or at the request of the

town, submit a proposal for renewal. The town may establish a date by which such proposal shall be submitted.

3. Upon submittal by the grantee of a proposal to the town for the renewal of the franchise, the town shall provide prompt, public notice of such proposal and renew the franchise or issue a preliminary assessment that the franchise should not be renewed, and at the request of the grantee or on its own initiative, commence an administrative proceeding, after providing prompt, public notice of such proceeding.

4. The town shall consider in any administrative proceeding whether: (1) the grantee has substantially complied with material terms of the existing franchise and with applicable law; (2) the quality of the grantee's service, including signal quality, response to consumer complaints and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in the light of community needs; (3) the grantee has the financial, legal and technical ability to provide the services, facilities and equipment as set forth in the grantee's proposal; and (4) the grantee's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the costs of meeting such needs and interests.

5. In any administrative proceeding described in subsection 4, the grantee shall be afforded adequate notice and the grantee and the town, or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to issues raised in the proceedings under subsection 4 above), to require the production of evidence and to question witnesses. A transcript shall be made of any such proceeding.

6. At the completion of a proceeding under subsection 4, the town shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding and transmit a copy of such decision to the grantee. Such decision shall state the reasons therefor.

7. Any denial of a proposal for renewal that has been submitted in compliance with the procedures set forth above, shall be based on one or more adverse findings made with respect to the factors described at (1) through (4) of subsection 4 pursuant to the record of the proceeding under said subsection. The town may not base a denial of renewal on a failure to substantially comply with the material terms of the franchise or on events considered under subsection 4 item 2 unless the town has provided the grantee with notice and the opportunity to cure or in any case in which it is documented that the town has waived its right to object.

8. The grantee may appeal any final decision or failure of the town to act in accordance with the procedural requirements of this section. The court shall grant appropriate relief if the court finds that: (1) any action of the town is not in compliance with the procedural requirements of this section; or (2) in the event of a final decision of the town denying the renewal proposal, the grantee has demonstrated that the adverse finding of the town with respect to each of the factors described in subsection 4 items 1 through 4 on which the denial is based is not supported by a preponderance of the evidence, based on the record of the administrative proceeding.

B. Franchise Renewal in the Event of Change in Federal Law. A franchise may be renewed by the town upon application of the grantee pursuant to the procedure established in this section, and in accordance with the then applicable law.

1. At least twenty-four (24) months prior to the expiration of the franchise, the grantee shall inform the town in writing of its intent to seek renewal of the franchise.

2. The grantee shall submit a proposal for renewal, which demonstrates:

a. That it has been and continues to be in substantial compliance with the terms, conditions, and limitations of this chapter and its franchise;

b. That its system has been installed, constructed, maintained and operated in accordance with the accepted standards of the industry, and this chapter and its franchise;

c. That it has the legal, technical, financial, and other qualifications to continue to maintain and operate its system, and to extend the same as the state of the art progresses so as to assure its subscribers high quality service; and

d. That it has made a good faith effort to provide services and facilities which accommodate the demonstrated needs of the community as may be reasonably ascertained by the town.

3. After giving public notice, the town shall proceed to determine whether the grantee has satisfactorily performed its obligations under the franchise. To determine satisfactory performance, the town shall consider technical developments and performance of the system, programming other services offered, cost of services, and any other particular requirements set in this chapter; also, the town shall consider the grantee's reports made to the town and the Federal Communication Commission; may require the grantee to make available specified records, documents, and information for this purpose, and may inquire specifically whether the grantee will supply services sufficient to meet community needs and interests; industry performance on a national

basis shall also be considered. Provision shall be made for public comment.

4. The town shall then prepare any amendments to this chapter that it believes necessary.

5. If the town finds the grantee's performance satisfactory, and finds the grantee's technical, legal, and financial abilities acceptable, and finds the grantee's renewal proposal meets the future cable-related needs of the town, a new franchise shall be granted pursuant to this chapter as amended for a period to be determined.

6. If the grantee is determined by the town to have performed unsatisfactorily, new applicants may be sought and evaluated and a franchise award shall be made by the town according to franchising procedures adopted by the town. (Ord. dated 3/27/03 (part))

#### **3.16.080 Police powers.**

A. In accepting this franchise, the grantee shall acknowledge that its rights hereunder are subject to the police power of the town to adopt and enforce general ordinances necessary to the safety and welfare of the public; and shall agree to comply with all applicable general laws and ordinances enacted by the town pursuant to such power.

B. Any conflict between the provisions of this ordinance and any other present or future lawful exercise of the town's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction, or applies exclusively to the grantee or cable television systems which contains provisions inconsistent with this franchise, shall prevail only if upon such exercise the town finds an emergency exists constituting a danger to health, safety, property or general welfare or such exercise is mandated by law. (Ord. dated 3/27/03 (part))

#### **3.16.090 Cable television franchise required.**

No cable television system shall be allowed to occupy or use the streets, i.e. rights-of-way, for system installation and maintenance purposes, of the town or be allowed to operate without a franchise. (Ord. dated 3/27/03 (part))

#### **3.16.100 Use of grantee facilities.**

The town shall have the right, during the life of this franchise, to install and maintain free of charge upon the poles of the grantee any wire or pole fixtures that do not unreasonably interfere with the cable television system operations of the grantee. The town shall indemnify and hold harmless the grantee from any claim that might arise due to or as a result of the town's use. (Ord. dated 3/27/03 (part))

#### **3.16.110 Initial franchise costs.**

Costs to be borne by the grantee shall include any requirements or charges incidental to the awarding or enforcing of the initial franchise, but shall not be limited to, all costs of publications of notices prior to any public meeting provided for pursuant to this franchise, and any costs not covered by application fees, incurred by the town in its study, preparation of proposal documents, evaluation of all applications, and examinations of the applicants' qualifications. (Ord. dated 3/27/03 (part))

#### **3.16.120 Notices.**

All notices from the grantee to the town pursuant to this chapter shall be to the town administrator's office. The grantee shall maintain with the town, throughout the term of this franchise, an address for service of notices by mail. The grantee shall maintain a central office to address any issues relating to operating under this cable television chapter. (Ord. dated 3/27/03 (part))

**3.16.130 Letter of credit/security deposit.**

A. Within fifteen (15) days after the award of the initial franchise, the grantee shall deposit with the town either an irrevocable letter of credit from a financial institution or a security deposit in the amount of fifty thousand dollars (\$50,000.00) with the form to be established by the town. The form and content of such letter of credit or security deposit shall be approved by the town attorney. These instruments shall be used to insure the faithful performance of the grantee of all provisions of this franchise; and compliance with all orders, permits and directions of any agency, commission, board, department, division, or office of the town having jurisdiction over its acts or defaults under this franchise, and the payment by the grantee of any claims, liens, and taxes due the town which arise by reason of the construction, operation or maintenance of the system.

B. The letter of credit or security deposit shall be maintained at the amount established by the town for the entire term of this franchise, even if amounts have to be withdrawn pursuant to subsections A or B of this section.

C. If the grantee fails to pay to the town any compensation within the time fixed in this chapter; or fails after fifteen (15) days notice to pay to the town any taxes due and unpaid; or fails to repay the town within fifteen (15) days, any damages, costs or expenses which the town is compelled to pay by reason of any act or default of the grantee in connection with this franchise, or fails, after three days notice of such failure by the town to comply with any provision of this franchise which the town reasonably determines can be remedied by demand on the letter of credit or security deposit, the town may immediately request payment of the amount thereof, with interest and any

penalties, from the letter of credit or security deposit. Upon such request for payment, the town shall notify the grantee of the amount and date thereof.

D. The rights reserved to the town with respect to the letter of credit are in addition to all other rights of the town, whether reserved by this franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the town may have.

E. The letter of credit shall contain the following endorsement:

It is hereby understood and agreed that this letter of credit or security deposit may not be canceled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the Town, by registered mail, of a written notice of such intention to cancel or not to renew.

F. Upon receipt of the above-referenced notice, this shall be construed as a default granting the town the right to call on the bank for either the security deposit or letter of credit.

G. The town, at any time during the term of this chapter, may waive grantee's requirement to maintain a letter of credit or security deposit. The invitation to waive the requirement can be initiated by the town or grantee. (Ord. dated 3/27/03 (part))

**3.16.140 Performance bond.**

A. Within thirty (30) days after the award of this franchise, the initial grantee shall file with the town a performance bond in the amount of not less than fifty (50) percent of costs to install the system contained in the new application in favor of the town. This bond shall be maintained throughout the construction period and until such time as determined by the town, unless

otherwise specified in a franchise agreement.

B. If the grantee fails to comply with any law, ordinance or resolution governing the franchise, or fails to well and truly observe, fulfill and perform each term and condition of the franchise, as it relates to the conditions relative to the construction of the system, including the franchise agreement which is incorporated herein by reference, there shall be recoverable jointly and severally, from the principal and surety of the bond, any damages or loss suffered by the town as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the grantee, plus a reasonable allowance for attorney's fees, including the town's legal staff, and costs, up to the full amount of the bond. This section shall be an additional remedy for any and all violations outlined in Section 3.16.130.

C. The town may, upon completion of construction of the service area, waive or reduce the requirement of the grantee to maintain the bond. However, the town may require a performance bond to be posted by the grantee for any construction subsequent to the completion of the initial service areas, in a reasonable amount and upon such terms as determined by the town.

D. The bond shall contain the following endorsement:

It is hereby understood and agreed that this bond may not be canceled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the Town, by registered mail, a written notice of such intent to cancel and not to renew.

Upon receipt of a thirty (30) day notice, this shall be construed as default granting the town the right to call in the bond.

E. The town, at any time during the term of this chapter, may waive grantee's requirement to maintain a performance bond. The invitation to waive the requirement can be initiated by the town or grantee. (Ord. dated 3/27/03 (part))

### **3.16.150 Liability and insurance.**

A. The grantee shall maintain and by its acceptance of the franchise specifically agrees that it will maintain throughout the term of the franchise, liability insurance insuring the town and the grantee in the minimum amount of:

1. One million dollars (\$1,000,000.00) for property damage to any one person;
2. One million dollars (\$1,000,000.00) for property damage to any one accident;
3. One million dollars (\$1,000,000.00) for personal injury to any one person; and
4. One million dollars (\$1,000,000.00) for personal injury in any one accident.

B. The certificate of insurance obtained by the grantee in compliance with this section is subject to the approval of the town attorney and such certificate of insurance, along with written evidence of payment of required premiums, shall be filed and maintained with the town during the term of the franchise, and may be changed from time to time to reflect changing liability limits. The grantee shall immediately advise the town attorney of any litigation that may develop that would affect this insurance.

C. Neither the provisions of this section nor any damages recovered by the town thereunder, shall be construed to or limit the liability of the grantee under any franchise issued hereunder or for damages.

D. All insurance policies maintained pursuant to this franchise shall contain the following endorsement:

It is hereby understood and agreed that this insurance policy may not be canceled by the surety nor the intention not to renew be

stated by the surety until thirty (30) days after receipt by the Town, by registered mail, a written notice of such intention to cancel or not to renew.

(Ord. dated 3/27/03 (part))

**3.16.160 Indemnification.**

A. Disclaimer of Liability. The town shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of the construction, maintenance, repair, use, operation, condition or dismantling of the grantee's telecommunication system and due to the act or omission of any person or entity other than the town or those persons or entities for which the town is legally liable as a matter of law.

B. Indemnification. The grantee shall, at its sole cost and expense, indemnify and hold harmless the town, the commission, all associated, affiliated, allied and subsidiary entities of the town, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors (referred to as "indemnities"), from and against:

1. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the indemnities by reason of any act or omission of the grantee, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, tradename, copyright, patent, service mark or any other right of any person, firm or corporation, which may arise

out of or be in any way connected with the construction, installation, operation, maintenance or condition of the telecommunications system caused by grantee, its subcontractors or agents or the grantee's failure to comply with any federal, state or local statute, ordinance or regulation.

2. Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and other consultants), which is imposed upon, incurred by or asserted against the indemnities by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to the grantee, its contractors or subcontractors, for the installation, construction, operation or maintenance of the telecommunications system caused by grantee, its subcontractors or agents and, upon the written request of the commission shall cause such claim or lien to be discharged or bonded within fifteen (15) days following such request.

3. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the indemnities by reason of any financing or securities offering by grantee or its affiliates for violations of the common law or any laws, statutes, or regulations of the state of Wisconsin or United States, including those of the Federal Securities and Exchange Commission, whether by the grantee or otherwise; excluding therefrom, however, claims which are solely based upon and shall arise solely out of information supplied by the town to the grantee in writing and included in the offering materials with the

express written approval of the town prior to the offering.

C. Assumption of Risk. The grantee undertakes and assumes for its officers, agents, contractors and subcontractors and employees, all risk of dangerous conditions, if any, on or about any city owned or controlled property, including public rights-of-way, and the grantee agrees to indemnify and hold harmless the indemnities against and from any claim asserted or liability imposed upon the indemnities for personal injury or property damage to any person arising out of the installation, operation, maintenance or condition of the telecommunications system or the grantee's failure to comply with any federal, state or local statute, ordinance or regulation.

D. Defense of Indemnities. In the event any action or proceeding shall be brought against the indemnities by reason of any matter for which the indemnities are indemnified hereunder, the grantee shall, upon notice from any of the indemnities, at the grantee's sole cost and expense, resist and defend the same with legal counsel mutually acceptable to the town attorney of the town of Burlington and grantee provided further, however, that the grantee shall not admit liability in any such matter on behalf of the indemnities without the written consent of the town attorney of the town of Burlington or town attorney's designee.

E. Notice Cooperation and Expenses. 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. Nothing herein shall be deemed to prevent the town from cooperating with grantee and participating in the defense of any litigation by the town's own counsel. The grantee shall pay all reasonable expenses incurred by the town in defending itself with regard to any such actions, suits or proceedings. These expenses shall include

all out-of-pocket expenses such as attorney fees and shall also include the reasonable value of any services rendered by or on behalf of the town attorney if such service is determined necessary and appropriate by the town attorney and the actual expenses of the town's agents, employees or expert witnesses, and disbursements and liabilities assumed by the town in connection with such suits, actions or proceedings. No recovery by the town of any sum under the letter of credit shall be any limitation upon the liability of the grantee to the town under the terms of this section, except that any sum so received by the town shall be deducted from any recovery which the town might have against the grantee under the terms of this section.

F. Nonwaiver of Statutory Limits. Nothing in this agreement is intended to express or imply a waiver of the statutory provisions, of any kind or nature, as set forth in Wisconsin Statutes Section 893.80 et seq., including the limits of liability of the town as exist presently or may be increased from time to time by the legislature. (Ord. dated 3/27/03 (part))

### **3.16.170 Rights of individuals.**

A. The 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, income or sex. The grantee shall comply at all times with all other applicable federal, state and local laws and regulations and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this chapter by reference.

B. The grantee shall strictly adhere to the equal employment opportunity requirements of the Federal Communications Commission, state and

local regulations, and as amended from time to time.

C. The grantee shall, at all times, comply with the privacy requirements of state and federal law.

D. Grantee is required to make all services available to all residential dwellings throughout the service area. (Ord. dated 3/27/03 (part))

### **3.16.180 Public notice.**

Minimum public notice of any public meeting relating to this franchise shall be by publication at least once in a local newspaper of general circulation at least ten (10) days prior to the meeting, and by posting at the town hall. (Ord. dated 3/27/03 (part))

### **3.16.190 Service availability and record request.**

The grantee shall provide cable communications service throughout the entire franchise area pursuant to the provisions of this franchise and shall keep a record for at least three years of all requests for service received by the grantee. This record shall be available for public inspection at the local office of the grantee during regular office hours. (Ord. dated 3/27/03 (part))

### **3.16.200 System construction.**

#### **A. New Construction Timetable.**

1. Within two years from the date of the award of the initial franchise, the grantee must make cable television service available to every dwelling unit within the initial service area.

a. The grantee must make cable television service available to at least twenty (20) percent of the dwelling units within the initial service area within six months from the date of the award of the franchise.

b. The grantee must make cable television service available to at least fifty

(50) percent of the dwelling units within the initial service area within one year from the date of the award of the franchise.

2. The grantee, in its application if any, may propose a timetable of construction which will make cable television service available in the initial service area sooner than the above minimum requirements, in which case the said schedule will be made part of the franchise agreement, and will be binding upon the grantee.

3. Any delay beyond the terms of this timetable, unless specifically approved by the town, will be considered a violation of this chapter for which the provisions of either Sections 3.16.350 or 3.16.440 shall apply, as determined by the town.

4. In special circumstances the town can waive one hundred (100) percent completion within the two year time frame provided substantial completion is accomplished within allotted time frame, substantial completion construed to be not less than ninety-five (95) percent and justification for less than one hundred (100) percent must be submitted subject to the satisfaction of the town.

#### **B. Line Extensions.**

1. In areas of the franchise territory not included in the initial service areas, the grantee shall be required to extend its system pursuant to the following requirements:

a. No customer shall be refused service arbitrarily. Grantee is authorized to extend the cable system as necessary within the town. To expedite the process of extending the cable system into a new subdivision, the town will forward to the grantee an approved engineering plan of each project. Subject to the density requirements, the grantee shall commence the design and construction process upon receipt of the final engineering plan. Upon notification from the town that the first home in the project has been approved for building permit, the grantee shall have a maximum of

three months to complete the construction/activation process within the project phase.

b. The grantee must extend and make cable television service available to every dwelling unit in all unserved, developing areas having at least twenty (20) dwelling units planned per street mile, as measured from the existing system, and shall extend its system simultaneously with the installation of utility lines.

c. The grantee must extend and make cable television service available to any isolated resident outside the initial service area requesting connection at the standard connection charge, if the connection to the isolated resident would require no more than a standard one hundred seventy-five (175) foot drop line.

2. Early Extension. In areas not meeting the requirements for mandatory extension of service, the grantee shall provide, upon the request of a potential subscriber desiring service, an estimate of the costs required to extend service to the subscriber. The grantee shall then extend service upon request of the potential subscriber. The grantee may require advance payment or assurance of payment satisfactory to the grantee. The amount paid by subscribers for early extensions shall be nonrefundable, and in the event the area subsequently reaches the density required for mandatory extension, such payments shall be treated as consideration for early extension.

3. New Development Underground. In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give the grantee reasonable notice of such construction or development, and of the particular date on which open trenching will be available for the grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at the grantee's expense. The grantee shall also

provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if the grantee fails to install its conduit, pedestals and/or vaults, and laterals within five working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five day period, the cost of new trenching is to be borne by the grantee. Except for the notice of the particular date on which trenching will be available to the grantee, any notice provided to the grantee by the town of a preliminary plat request shall satisfy the requirement of reasonable notice if sent to the local general manager or system engineer of the grantee prior to approval of the preliminary plat request.

C. Special Agreements. Nothing in this chapter shall be construed to prevent the grantee from serving areas not covered under this section upon agreement with developers, property owners, or residents provided that five percent of those gross revenues are paid to the town as franchise fees under Section 3.16.270.

1. The grantee, in its application, may propose a line extension policy which will result in serving more residents of the town than as required above, in which case the grantee's policy will be incorporated into the franchise agreement, and will be binding on the grantee.

2. The violation of this section shall be considered a breach of the terms of this chapter for which the provisions of either Sections 3.16.350 or 3.16.440 shall apply, as determined by the town. (Ord. dated 3/27/03 (part))

### **3.16.210 Construction and technical standards.**

A. Compliance with Construction and Technical Standards. The grantee shall

construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements, and FCC technical standards. In addition, the grantee shall provide the town, upon request, with a written report of the results of the grantee's annual proof of performance tests conducted pursuant to Federal Communications Commission standards and requirements.

B. Additional Specifications.

1. Construction, installation and maintenance of the cable television system shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

2. The grantee shall at all times comply with:

a. National Electrical Safety Code (National Bureau of Standards);

b. National Electrical Code (National Bureau of Fire Underwriters);

c. Bell System Code of Pole Line Construction; and

d. Applicable FCC or other federal, state and local regulations.

3. In any event, the system shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the grantee may have equipment located.

4. Any antenna structure used in the system shall comply with construction, marking, and lighting of antenna structure, required by the United States Department of Transportation.

5. All working facilities and conditions used during construction, installation and maintenance of the cable television system shall comply with the standards of the occupational safety and health administration.

6. Radio frequency leakage shall be checked at reception locations for emergency radio services to prove no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception in the normal flight patterns. FCC rules and regulations shall govern.

7. The grantee shall maintain equipment capable of providing standby power for headend and transport system for a minimum of two hours.

8. In all areas of the town where the cables, wires, and other like facilities of public utilities are placed underground, the grantee shall place its cables, wires, or other like facilities underground. When public utilities relocate their facilities from pole to underground, the cable operator must concurrently do so. (Ord. dated 3/27/03 (part))

**3.16.220 Use of streets.**

A. Interference with Persons and Improvements. The grantee's system, poles, wires and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons or interfere with the rights or reasonable convenience of property owners who adjoin any of the streets and public ways, or interfere with any improvements the town may deem proper to make, or unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, easements or public property.

B. Restoration to Prior Condition. In case of any disturbance of pavement, sidewalk, landscaping, driveway or other surfacing, the grantee shall, at its own cost and expense and in a manner approved by the town, replace and restore all paving, sidewalk, driveway, landscaping, or surface of any street or alley disturbed, in as good

condition as before the work was commenced and in accordance with standards for such work set by the town.

C. Erection, Removal and Common Uses of Poles.

1. No poles or other wire-holding structures shall be erected by the grantee without prior approval of the town with regard to location, height, types, and any other pertinent aspect. However, no location of any pole or wire-holding structure of the grantee shall be a vested interest and such poles or structures shall be removed or modified by the grantee at its own expense whenever the town determines that the public convenience would be enhanced thereby.

2. Where poles or other wire-holding structures already existing for use in serving the town are available for use by the grantee, but it does not make arrangements for such use, the town may require the grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the grantee are just and reasonable.

3. In the absence of any governing federal or state statute, where the town or a public utility serving the town desires to make use of the poles or other wire-holding structures of the grantee, but agreement thereof with the grantee cannot be reached, the town may require the grantee to permit such use for such consideration and upon such terms as the town shall determine to be just and reasonable, if the town determines that the use would enhance the public convenience and would not unduly interfere with the grantee's operations.

D. Relocation of the Facilities. If at any time during the period of this franchise the town shall lawfully elect to alter, or change the grade of any street, alley or other public ways, the grantee, upon reasonable notice by the town, shall remove or relocate as

necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense unless the utilities are compensated, in which case the grantee shall be similarly compensated.

E. Cooperation with Building Movers. The grantee shall, on the request of any person holding a building moving permit issued by the town, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the grantee shall have the authority to require such payment in advance. The grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

F. Tree Trimming. The grantee shall not remove any tree or trim any portion, either above, at or below ground level, of any tree within any public place without the prior consent of the town. The town shall have the right to do the trimming requested by the grantee at the cost of the grantee. Regardless of who performs the work requested by the grantee, the grantee shall be responsible, shall defend and hold town harmless for any and all damages to any tree as a result of trimming, or to the land surrounding any tree, whether such tree is trimmed or removed. (Ord. dated 3/27/03 (part))

**3.16.230 Operational standards.**

A. The grantee shall put, keep and maintain all parts of the system in good condition throughout the entire franchise period.

B. Upon the reasonable request for service by any person located within the franchise territory, the grantee shall, within thirty (30) days, furnish the requested service to such person within terms of the line extension policy. A request for service shall be unreasonable for the purpose of this subsection if no trunk line installation

capable of servicing that person's block has as yet been installed.

C. The grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use.

D. The grantee shall not allow its cable or other operations to interfere with television reception of subscribers or persons not served by the grantee, nor shall the system interfere with, obstruct or hinder in any manner the operation of the various utilities serving the residents within the confines of the town nor shall other utilities interfere with the grantee's system.

E. The grantee shall have knowledgeable, qualified grantee representatives available to respond to customer telephone inquiries twenty-four (24) hours per day and seven days per week.

F. Under normal operating conditions, telephone answer time, including wait time and the time required to transfer the call, shall not exceed thirty (30) seconds. This standard shall be met no less than ninety (90) percent of the time as measured on an annual basis.

G. Under normal operating conditions, the customer will receive a busy signal less than three percent of the total time that the office is open for business.

H. Standard installations will be performed within seven business days after an order has been placed. A standard installation is one that is within one hundred seventy-five (175) feet of the existing system.

I. Excluding those situations which are beyond its control, the grantee will respond to any service interruption promptly and in no event later than twenty-four (24) hours from the time of initial notification. All other regular service requests will be

responded to within thirty-six (36) hours during the normal work week for that system. The appointment window alternatives for installations, service calls and other installation activities will be: "morning;" or "afternoon;" not to exceed a four-hour "window" during normal business hours for the system, or at a time that is mutually acceptable. The grantee will schedule supplemental hours during which appointments can be scheduled based on the needs of the community. If at any time an installer or technician is running late, an attempt to contact the customer will be made and the appointment rescheduled as necessary at a time that is convenient to the customer.

J. Customer service centers and bill payment locations will be open for walk-in customer transactions a minimum of eight hours a day Monday through Friday, unless there is a need to modify those hours because of the location or customers served. The grantee and town by mutual consent will establish supplemental hours on weekdays and weekends if it would fit the needs of the community.

K. Subscriber Credit for Outages. Upon service interruption and/or outages of subscriber's cable service, the following shall apply:

1. For service interruptions and/or outages of over four hours and up to seven days, the grantee shall provide, at the subscriber's request, a credit of one-thirtieth of one month's fees for affected services for each twenty-four (24) hour period service is interrupted for four or more hours for any single subscriber, with the exception of subscribers disconnected because of non-payment or excessive signal leakage.

2. For service interruptions and/or outages of seven days or more in one month, the grantee shall provide, at the subscriber's request, a full month's credit for affected services for all affected subscribers.

L. The grantee will provide written information in each of the following areas at the time of installation and at any future time upon the request of the customer:

1. Product and services offered;
2. Prices and service options;
3. Installation and service policies; and
4. How to use the telecommunications services.

M. Bills will be clear, concise and understandable, with all cable services itemized.

N. Credits will be issued promptly, but no later than the customer's next billing cycle following the resolution of the request and the return of the equipment by the grantee if service has been terminated.

O. Customers will be notified a minimum of thirty (30) days in advance of any rate or channel change, provided that the change is within the control of the grantee.

P. The grantee shall maintain and operate its network in accordance with the rules and regulations as are incorporated herein or may be promulgated by the Federal Communication Commissions, the United States Congress, or the state of Wisconsin.

Q. The grantee shall continue, through the term of the franchise, to maintain the technical standards and quality of service set forth in this chapter. Should the town find, by resolution, that the grantee has failed to maintain these technical standards and quality of service, grantee shall be required to implement a plan for resolution. Failure to make such improvements within three months of such resolution will constitute a breach of a condition for which penalties contained in Section 3.16.440 are applicable.

R. The grantee shall keep a monthly service log which will indicate the nature of each service complaint received in the last twenty-four (24) months, the date and time it was received, the disposition of said complaint, and the time and date thereof. This log shall be made available for periodic

inspection by the town. (Ord. dated 3/27/03 (part))

### **3.16.240 Continuity of service mandatory.**

A. It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the grantee are honored. If the grantee elects to over build, rebuild, modify or sell the system, or the town gives notice of intent to terminate or fails to renew this franchise, the grantee shall act so as to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances.

B. If there is a change of franchise, or if a new operator acquires the system, the grantee shall cooperate with the town, new franchisee or operator in maintaining continuity of service to all subscribers. During such period, the grantee shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for its services until it no longer operates the system.

C. If the grantee fails to operate the system for seven consecutive days without prior approval of the town or without just cause, the town may, at its option, operate the system or designate an operator until such time as the grantee restores service under conditions acceptable to the town or a permanent operator is selected. If the town is required to fulfill this obligation for the grantee, the grantee shall reimburse the town for all reasonable costs or damages in excess of revenues from the system received by the town that are the result of the grantee's failure to perform. (Ord. dated 3/27/03 (part))

### **3.16.250 Complaint procedure.**

A. The town administrator is designated as having primary responsibility for the continuing administration of the franchise

and implementation of complaint procedures.

B. During the terms of this franchise, and any renewal thereof, the grantee shall maintain a central office for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, and similar matters. The office must be reachable by a local, toll-free telephone call to receive complaints regarding quality of service, equipmental functions and similar matters. The grantee will use its good faith efforts to arrange for one or more payment locations in a central location where customers can pay bills or conduct other business activities.

C. As subscribers are connected or reconnected to the system, the grantee shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed.

D. When there have been similar complaints made, or where there exists other evidence, which, in the judgment of the town, casts doubt on the reliability or quality of cable service, the town shall have the right and authority to require the grantee to test, analyze and report on the performance of the system. The grantee shall fully cooperate with the town in performing such testing and shall prepare results and a report, if requested, within thirty (30) days after notice. Such report shall include the following information:

1. The nature of the complaint or problem which precipitated the special tests;
2. What system component was tested;
3. The equipment used and procedures employed in testing;
4. The method, if any, in which such complaint or problem was resolved; and

5. Any other information pertinent to the tests and analysis which may be required.

The town may require that tests be supervised, by an independent professional engineer or equivalent of the town's choice. The engineer should sign all records of special tests and forward to the town such records with a report interpreting the results of the tests and recommending actions to be taken. Should such a test prove that the grantee failed to meet the technical standard, the grantee shall bear the cost of the test. If the test should prove that the grantee met the technical standards, the town shall bear the cost of the test.

The town's right under this section shall be limited to requiring tests, analysis and reports covering specific subjects and characteristics based on complaints or other evidence when and under such circumstances as the town has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard cable service. (Ord. dated 3/27/03 (part))

**3.16.260 Grantee rules and regulations.**

The grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the grantee to exercise its rights and perform its obligations under this franchise, and to assure an uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions in this chapter or applicable state and federal laws, rules and regulations. (Ord. dated 3/27/03 (part))

**3.16.270 Franchise fee.**

A. For the reason that the streets of the town to be used by the grantee in the operation of its system within the boundaries of the town are valuable public properties acquired and maintained by the town at great expense to its taxpayers, and that the grant to the grantee to the streets is a valuable property right without which the grantee would be required to invest substantial capital in right-of-way costs and acquisitions, the grantee shall pay to the town an amount equal to five percent of the grantee's gross annual revenue from the operations of the grantee within the confines of the town or contract area. If the statutory five percent limitation on franchise fees is raised or the federal statute deletes the franchise fee limitation entirely, then the franchise fee may be subject to renegotiation.

B. This payment shall be in addition to any other tax or payment owed to the town by the grantee.

C. The franchise fee and any other costs or penalties assessed shall be payable annually on a calendar year basis to the town and the grantee shall file a complete and accurate verified statement of all gross receipts as previously defined within forty-five (45) days after the year end as established between the town and the grantee.

D. The town shall have the right to inspect the grantee's income records and the right to audit and to recompute any amounts determined to be payable under this chapter; provided, however, that such audit shall take place within twenty-four (24) months following the close of each of the grantee's fiscal years. Any additional amount due to the town as a result of the audit shall be paid within thirty (30) days following written notice to the grantee by the town which notice shall include a copy of the audit report.

E. If any franchise payment or recomputed amount, cost or penalty, is not made on or before the applicable dates heretofore specified, interest shall be charged daily from such date at the legal maximum rate charged by the U.S. Internal Revenue Service for late tax payments and the grantee shall reimburse the town for any additional expenses and costs incurred by the town by reason of the delinquent payment(s). (Ord. dated 3/27/03 (part))

### **3.16.280 Transfer of ownership or control.**

A. Except as may be provided in a franchise agreement, this franchise shall not be assigned or transferred, either in whole or in part, or leased, sublet or mortgaged 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 without the prior written consent of the town. The grantee may, however, transfer or assign the franchise to a wholly owned subsidiary of the grantee and such subsidiary may transfer or assign the franchise back to the grantee without such consent, providing that such assignment is without any release of liability of the grantee. The proposed assignee must show financial responsibility as determined by the town and must agree to comply with all provisions of the franchise. The town shall have one hundred twenty (120) days to act upon any request for approval of such a sale or transfer submitted in writing that contains or is accompanied by such information as is required in accordance with FCC regulations and by the town. The town shall be deemed to have consented to a proposed transfer or assignment if its refusal to consent is not communicated in writing to the grantee within one hundred twenty (120) days following receipt of written notice and the necessary information as to the effect of the proposed transfer or assignment upon the public unless the requesting party and the

town agree to an extension of time. The town shall not unreasonably withhold such consent to the proposed transfer.

B. Except as may be provided in a franchise agreement, the grantee shall promptly notify the town of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the grantee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of ten (10) percent of the voting shares of the grantee. Every change, transfer or acquisition of control of the grantee shall make the franchise subject to cancellation unless and until the town shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the town may inquire into the qualification of the prospective controlling party, and the grantee shall assist the town in such inquiry.

C. The consent or approval of the town to any transfer of the grantee shall not constitute a waiver or release of the rights of the town in and to the streets, and any transfer shall by its terms, be expressly subordinate to the terms and conditions of this franchise.

D. In the absence of extraordinary circumstances, the town will not approve any transfer or assignment of an initial franchise prior to substantial completion of construction of the proposed system.

E. In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory to this franchise agreement. (Ord. dated 3/27/03 (part))

### **3.16.290 Availability of books and records.**

A. The grantee shall fully cooperate in making available at reasonable times, and the town shall have the right to inspect, where reasonably necessary to the enforcement of the franchise, books, records, maps, plans and other like materials of the grantee applicable to the cable television system, at any time during normal business hours; provided where volume and convenience necessitate, the grantee may require inspection to take place on the grantee's premises.

B. The following records and/or reports are to be made available to the town upon request, but no more frequently than on an annual basis unless mutually agreed upon by the grantee and the town:

1. A quarterly review and resolution or progress report submitted by the grantee to the town;

2. Periodic preventive maintenance reports;

3. Any copies of FCC Form 395-A (or successor form) or any supplemental forms related to equal opportunity or fair contracting policies;

4. Subscriber inquiry/complaint resolution data and the right to review documentation concerning these inquiries and/or complaints periodically; and

5. Periodic construction update reports, including where appropriate the submission of as-built maps. (Ord. dated 3/27/03 (part))

### **3.16.300 Other petitions and applications.**

Copies of all petitions, applications, communications and reports either submitted by the grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations

authorized pursuant to the franchise or received from such agencies shall be provided to the town upon request. (Ord. dated 3/27/03 (part))

**3.16.310 Removal of cable television system.**

At the expiration of the terms for which this franchise is granted and any renewal denied, or upon its termination as provided herein, the grantee shall forthwith, upon notice by the town, remove at its own expense all designated portions of the cable television system from all streets and public property within the town. If the grantee fails to do so, the town may perform the work at the grantee's expense. Upon such notice of removal, a bond shall be furnished by the grantee in an amount sufficient to cover this expense. (Ord. dated 3/27/03 (part))

**3.16.320 Required services and facilities.**

A. The cable television system shall have a minimum channel capacity of seventy-seven (77) channels and at least seven hundred fifty (750) MHz of bandwidth available for future use.

B. Such system shall maintain a plant having the technical capacity for "two-way" communications.

C. The grantee shall maintain the following:

1. At least one specially-designated, noncommercial public access channel available on a first-come, nondiscriminatory basis;
2. At least one specially-designated channel for use by local educational authorities;
3. At least one specially-designated channel for local governmental uses;
4. At least one specially-designated channel for leased access uses; or
5. Provided, however, these uses may be combined on one or more channels until

such time as additional channels become necessary in the opinion of the town. Financial and technical support, replacement and maintenance of equipment of this facility shall be separately incorporated into a franchise agreement.

D. The grantee shall provide emergency broadcast capacity pursuant to FCC rules. (Ord. dated 3/27/03 (part))

**3.16.330 Rules and regulations.**

A. In addition to the inherent powers of the town to regulate and control this cable television franchise, and those powers expressly reserved by the town, or agreed to and provided for in this chapter, the right and power is hereby reserved by the town to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers and furtherance of the terms and conditions of this franchise; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations.

B. The town may also adopt such regulations at the request of grantee upon application. (Ord. dated 3/27/03 (part))

**3.16.340 Performance evaluation sessions.**

A. The town and the grantee may hold scheduled performance evaluation sessions within thirty (30) days of the third, sixth, and twelfth anniversary dates of the grantee's award or renewal of the franchise and as may be required by federal and state law. All such evaluation sessions shall be open to the public.

B. Special evaluation sessions may be held at any time during the term of the franchise at the request of the town or the grantee.

C. All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with

legal notice. The grantee shall notify its subscribers of all evaluation sessions by announcements on at least one channel of its system between the hours of seven p.m. and nine p.m., for five consecutive days preceding each session.

D. Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, service rate structures; franchise fee, penalties, free or discounted services; application of new technologies; system performance; services provided; programming offered; customer complaints; privacy; amendments to this ordinance; judicial and FCC rulings; line extension policies; and grantee or town rules.

E. Members of the general public may add topics either by working through the negotiating parties or by presenting a petition. If such a petition bears the valid signatures of fifty (50) or more residents of the town, the proposed topic or topics shall be added to the list of topics to be discussed at the evaluation session. (Ord. dated 3/27/03 (part))

### **3.16.350 Forfeiture and termination.**

A. In addition to all other rights and powers retained by the town under this franchise or otherwise, the town reserves the right to forfeit and terminate the franchise and all rights and privileges of the grantee hereunder in the event of a substantial breach of its terms and conditions. A substantial breach by the grantee shall include, but shall not be limited to the following:

1. Violation of any material provision of the franchise or any material rule, order, regulation or determination of the town made pursuant to the franchise;

2. Attempt to evade any material provision of the franchise or practice any fraud or deceit upon the town or its subscribers or customers;

3. Failure to begin or complete system construction or system extension as provided under Section 3.16.200;

4. Failure to provide the services promised in the grantee's application if any as incorporated herein by Section 3.16.040;

5. Failure to restore service after ninety-six (96) consecutive hours of interrupted service, except when approval of such interruption is obtained from the town; or

6. Material misrepresentation of fact in the application for or negotiation of the franchise.

B. The foregoing shall not constitute a major breach if the violation occurs but is without fault of the grantee or occurs as a result of circumstances beyond its control. The grantee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

C. The town may make a written demand that the grantee comply with any such provision, rule, order or determination under or pursuant to this franchise. If the violation by the grantee continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the town may place the issue of termination of the franchise before the town council. The town shall cause to be served upon the grantee, at least twenty (20) days prior to the date of such meeting, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and the issue(s) which the council is to consider.

D. The town council shall hear and consider the issue(s) and shall hear any person interested therein and shall determine in its discretion whether or not any violation by the grantee has occurred.

E. If the town council shall determine the violation by the grantee was the fault of

the grantee and within its control, the council may, by resolution declare that the franchise of the grantee shall be forfeited and terminated unless there is compliance within such period as the council may fix, such period shall not be less than sixty (60) days, provided no opportunity for compliance need be granted for fraud or misrepresentation.

F. The issue of forfeiture and termination shall automatically be placed upon the council agenda at the expiration of the time set by it for compliance. The council then may terminate the franchise forthwith upon finding that the grantee has failed to achieve compliance or may further extend the period, in its discretion. (Ord. dated 3/27/03 (part))

### **3.16.360 Foreclosure.**

Upon the foreclosure or other judicial sale of all or a substantial part of the system, or upon the termination of any lease covering all or a substantial part of the system, the grantee shall notify the town of such fact, and such notification shall be treated as a notification that a change in control of the grantee has taken place, and the provisions of this franchise governing the consent of the town to such change in control of the grantee shall apply. (Ord. dated 3/27/03 (part))

### **3.16.370 Right of acquisition by the town.**

A. Federal regulations as per U.S.C. 537 shall apply to the right of acquisition by the town. In the event that the relevant federal regulations are repealed, the guidelines specified in subsection B below shall apply.

B. Upon the expiration of the term of the franchise and denial of any renewal or upon any other termination thereof as provided in this chapter the town at its election and upon the payment to the grantee of a price equal

to the fair market value shall have the right to purchase and take over the system upon resolution by the town council. If the town has denied the grantee's petition for renewal of its franchise as provided by Section 3.16.070, the town must exercise its option to purchase the system within sixty (60) days of the denial of renewal and at least six months prior to the end of the franchise. Nothing shall prohibit the grantee in the event of the election of the town to purchase the system from requesting the court to set a reasonable bond of the town to secure the purchase price. The grantee shall execute such warranty deeds and other instruments as may be necessary. (Ord. dated 3/27/03 (part))

### **3.16.380 Receivership.**

The town shall have the right to cancel this franchise one hundred twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of the grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of one hundred twenty (120) days, or unless:

A. Within one hundred twenty (120) days after his/her election or appointment, such receiver or trustee shall have fully complied with all the provisions of this chapter and remedied all defaults thereunder; and

B. Such receiver or trustee, within the one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this chapter and the franchise granted to the grantee. (Ord. dated 3/27/03 (part))

**3.16.390 Compliance with state and federal laws.**

A. Notwithstanding any other provisions of this franchise to the contrary, the grantee shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies 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, or shall prohibit the grantee from performing any service, in conflict with the terms of this franchise or of any law or regulation of the town, then as soon as possible following knowledge thereof, the grantee shall notify the town of the point of conflict believed to exist between such regulation or law and the laws or regulations of the town or this franchise.

B. If the town determines that a material provision of this chapter is affected by any subsequent action of the state or federal government, the town and the grantee shall negotiate 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 agreement. (Ord. dated 3/27/03 (part))

**3.16.400 Landlord/tenant.**

A. Interference with Cable Service Prohibited. Neither the owner of any multiple unit residential dwelling nor his agent or representative shall interfere with the right of any tenant or lawful resident thereof to receive cable communication service, cable installation or maintenance from a cable communication grantee regulated by and lawfully operating under a valid and existing franchise issued by the town.

B. Gratuities and Payments to Permit Service Prohibited. Neither the owner of any multiple unit residential dwelling nor his agent or representative shall ask, demand or

receive any payment, service or gratuity in any form as a condition for permitting or cooperating with the installation of a cable communication service to the dwelling unit occupied by a tenant or resident requesting service.

C. Penalties and Charges to Tenants for Service Prohibited. Neither the owner or any multiple unit residential dwelling nor his agent or representative shall penalize, charge or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or receives cable communication service from a grantee operating under a valid and existing cable communication franchise issued by the town.

D. Reselling Service Prohibited. No person shall resell, without the expressed, written consent of both the grantee and the town, any cable service, program or signal transmitted by a cable communication grantee under a franchise issued by the town.

E. Protection of Property Permitted. Nothing in this chapter shall prohibit a person from requiring that cable communication system facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning, appearance and value of premises or the convenience and safety of persons or property.

F. Risks Assumed by Grantee. Nothing in this chapter shall prohibit a person from requiring a grantee from agreeing to indemnify the owner, or his agents or representatives for damages or from liability for damages caused by the installation, operation, maintenance or removal of cable communication facilities. (Ord. dated 3/27/03 (part))

**3.16.410 Applicant’s bids for initial franchise.**

A. All bids received by the town from the applicants for an initial franchise will become the sole property of the town.

B. The town reserves the right to reject any and all bids and waive informalities and/or technicalities where the best interest of the town may be served.

C. All questions regarding the meaning or intent of this chapter or application documents shall be submitted to the town in writing. Replies will be issued by addenda mailed or delivered to all parties recorded by the town as having received the application documents. The town reserves the right to make extensions of time for receiving bids as it deems necessary. Questions received less than fourteen (14) days prior to the date for the opening of bids will not be answered. Only replies to questions by written addenda will be binding. All bids must contain an acknowledgment of receipt of all addenda.

D. Bids must be sealed, and submitted at the time and place indicated in the application documents for the public opening. Bids may be modified at any time prior to the opening of the bids, provided that any modifications must be duly executed in the manner that the applicant's bid must be executed. No bid shall be opened or inspected before the public opening.

E. Before submitting a bid, each applicant must:

1. Examine this chapter and the application documents thoroughly;
2. Familiarize himself/herself with local conditions that may in any manner affect performance under the franchise;
3. Familiarize himself/herself with federal, state and local laws, ordinances, rules and regulations affecting performance under the franchise; and
4. Carefully correlate the bid with the requirements of this chapter and the application documents.

F. The town may make such investigations as it deems necessary to determine the ability of the applicant to perform under the franchise, and the applicant shall furnish to the town all such information and data for this purpose as the town may request. The town reserves the right to reject any bid if the evidence submitted by, or investigation of, such applicant fails to satisfy the town that such applicant is properly qualified to carry out the obligations of the franchise and to complete the work contemplated therein. Conditional bids will not be accepted.

G. All bids received shall be placed in a secure depository approved by the town and not opened nor inspected prior to the public opening. (Ord. dated 3/27/03 (part))

**3.16.420 Financial, contractual, shareholder and system disclosure for initial franchises.**

A. No initial franchise will be granted to any applicant unless all requirements and demands of the town regarding financial, contractual, shareholder and system disclosure have been met.

B. Applicants, including all shareholders and parties with any interest in the applicant, shall fully disclose all agreements and undertakings, whether written or oral, or implied with any person, firm, group, association or corporation with respect to this franchise and the proposed cable television system. The grantee of this franchise shall disclose all other contracts to the town as the contracts are made. This section shall include, but not be limited to, any agreements between local applicants and national companies.

C. Applicants, including all shareholders and parties with any interest in the applicant, shall submit all requested information as provided by the terms of this chapter or the application documents, which are incorporated herein by reference. The

requested information must be complete and verified as true by the applicant.

D. Applicants, including all shareholders and parties with any interest in the applicant, shall disclose the numbers of shares of stock, and the holders thereof, and shall include the amount of consideration for each share of stock and the nature of the consideration.

E. Applicants, including all shareholders and parties with any interest in the applicant, shall disclose any information required by the application documents regarding other cable systems in which they hold an interest of any nature, including, but not limited to, the following:

1. Locations of all other franchises and the dates of award for each location;
2. Estimated construction costs and estimated completion dates for each system;
3. Estimated number of miles of construction and number of miles completed in each system as of the date of this application; and
4. Date for completion of construction as promised in the application for each system.

F. Applicants, including all shareholders and parties with any interest in the applicant, shall disclose any information required by the application documents regarding pending applications for other cable systems, including but not limited to, the following:

1. Location of other franchise applications and date of application for each system;
2. Estimated dates of franchise awards;
3. Estimated number of miles of construction; and
4. Estimated construction costs.

(Ord. dated 3/27/03 (part))

### **3.16.430 Theft of services and tampering.**

A. No person may intentionally do any of the following:

1. Obtain or attempt to obtain cable television service from a company by trick, artifice, deception, use of an illegal device or illegal decoder or other fraudulent means with the intent to deprive that company of any or all lawful compensation for rendering each type of service obtained. The intent required for a violation of this subsection may be inferred from the presence on the property and in the actual possession of the defendant of a device not authorized by the cable television company, the major purpose of which is to permit reception of cable television services without payment. This inference is rebutted if the defendant demonstrates that he or she purchased that device for a legitimate use.

2. Give technical assistance or instruction to any person in obtaining or attempting to obtain any cable television service without payment of all lawful compensation to the company providing that service. This subsection does not apply if the defendant demonstrates that the technical assistance or instruction was given or the installation of the connection, descrambler or receiving device was for a legitimate use.

3. Make or maintain a connection, whether physical, electrical, mechanical, acoustical or by other means, with any cables, wires, components or other devices used for the distribution of cable television services for the purpose of distributing cable television service to any other dwelling unit without authority from a cable television company.

4. Make or maintain a connection, whether physical, electrical, mechanical, acoustical or by other means, with any cables, wires, components or other devices used for the distribution of cable television services for the purpose of obtaining cable television service without payment of all lawful compensation to the company

providing the service. The intent required for a violation of this subsection may be inferred from proof that the cable service to the defendant's residence or business was connected under a service agreement with the defendant and has been disconnected by the cable television company and that thereafter there exists in fact a connection to the cable system at the defendant's residence or business.

5. Make or maintain any modification or alteration to any device installed with the authorization of a cable television company for the purpose of intercepting or receiving any program or other service carried by that company which that person is not authorized by that company to receive. The intent required for a violation of this subsection may be inferred from proof that, as a matter of standard procedure, the cable television company places written warning labels on its converters or decoders explaining the tampering with the device is a violation of law and the converter or decoder is found to have been tampered with, altered or modified so as to allow the reception or interception of programming carried by the cable television company without authority to do so. The trier of fact may also infer that a converter or decoder has been altered or modified from proof that the cable television company, as a matter of standard procedure, seals the converters or decoders with a label or mechanical device, that the seal was shown to the customer upon delivery of the decoder and that the seal has been removed or broken. The inferences under this subsection are rebutted if the cable television company cannot demonstrate that the intact seal was shown to the customer.

6. Possess without authority any device or printed circuit board designed to receive from a cable television system any cable television programming or services offered for sale over that cable television system, whether or not the programming or services

are encoded, filtered, scrambled or otherwise made unintelligible, or perform or facilitate the performance of any of the acts under subsection 1 through 5 in this section with the intent that device or printed circuit be used to receive that cable television company's services without payment. Intent to violate this subsection for direct or indirect commercial advantage or private financial gain may be inferred from proof of the existence on the property and in the actual possession of the defendant of a device if the totality of circumstances, including quantities or volumes, indicates possession for resale.

7. Manufacture, import into this state, distribute, publish, advertise, sell, lease or offer for sale or lease any device, printed circuit board or any plan or kit for a device or for a printed circuit designed to receive the cable television programming or services offered for sale over a cable television system from a cable television system, whether or not the programming or services are encoded, filtered, scrambled or otherwise made unintelligible, with the intent that the device, printed circuit, plan or kit be used for the reception of that company's services without payment. The intent required for a violation of this subsection may be inferred from proof that the defendant has sold, leased or offered for sale or lease any device, printed circuit board, plan or kit for a device or for a printed circuit board in violation of this subsection and during the course of the transaction for sale or lease the defendant expressly states or implies to the buyer that the product will enable the buyer to obtain cable television service without charge.

B. Civil Liability for Theft of Telecommunications Service (including Cable Television Service.)

1. Any person who incurs injury as a result of a violation of Section 3.16.430 may

bring a civil action against the person who committed the violation.

a. Except as provided in subsection (B)(2), if the person who incurs the loss prevails, the court shall grant the prevailing party actual damages, costs and disbursement.

2. If the person who incurs the loss prevails against a person who committed the violation willfully and for the purpose of commercial advantage or prevails against a person who has committed more than one violation of Section 3.16.430, the court shall grant the prevailing party all the following:

a. Except as provided in subsections (B)(2)(e) and (f), not more than ten thousand dollars (\$10,000.00).

b. Actual damages.

c. Any profits of the violators that are attributable to the violation and that are not taken into account in determining the amount of actual damages under subsection (B)(2)(b).

d. Notwithstanding the limitations under Sections 799.25 or 814.04, costs, disbursement and reasonable attorney fees.

e. If the court finds that the violation was committed willfully and for the purpose of commercial advantage, the court may increase the amount granted under subsection (B)(2)(a) not to exceed fifty thousand dollars (\$50,000.00).

f. If the court finds that the violator had no reason to believe that the violator's action constituted a violation of this section, the courts may reduce the amount granted under subsection (B)(2)(a).

3. If damages under subsection (B)(2)(c) are requested, the party who incurred the injury shall have the burden of proving the violator's gross revenue and the violator's deductible expenses and the elements of profit attributable to factors other than the violation.

4. In addition to other remedies available under this section, the courts may

grant the injured party a temporary or permanent injunction. (Ord. dated 3/27/03 (part))

### **3.16.440 Penalties.**

For the violation of any of the following provisions of this franchise, penalties shall be chargeable to the letter of credit or performance bond as applicable as follows and the town may determine the amount of the fine for other violations which are not specified in a sum not to exceed five hundred dollars (\$500.00) for each violation, with each day constituting as separate violation.

A. Failure to furnish, maintain, or offer all cable services to any potential subscriber within the town upon order of the town: Two hundred dollars (\$200.00) per day, per violation, for each day that such failure occurs or continues;

B. Failure to obtain or file evidence of required insurance, construction bond, performance bond, or other required financial security: Two hundred dollars (\$200.00) per day, per violation, for each day such failure occurs or continues;

C. Failure to provide access to data, documents, records, or reports to the town as required by Sections 3.16.190, 3.16.290, 3.16.300 and 3.16.350: Two hundred dollars (\$200.00) per day, per violation, for each day such failure occurs or continues;

D. Failure to comply with applicable construction, operation, or maintenance standards: Three hundred dollars (\$300.00) per day, per violation.

E. Failure to comply with a rate decision or refund order: Five hundred dollars (\$500.00) per day, per violation, for each day such a violation occurs or continues. Grantor may impose any or all of the above enumerated measures against grantee, which shall be in addition to any and all other legal or equitable remedies it has under the franchise or under any applicable law.

F. Any violations for non-compliance with the customer service standards of Sections 3.16.230 through 3.16.250 the grantee shall pay two hundred dollars (\$200.00) per day for each day, or part thereof, that such noncompliance continues.

G. Any other violations of this franchise agreement to be determined by the grantor in a public hearing but not specifically noted in this section shall not exceed five hundred dollars (\$500.00) per day, per violation. (Ord. dated 3/27/03 (part))

### **3.16.450 Procedures.**

A. Whenever the town believes that the grantee has violated one or more terms, conditions or provisions of this franchise, and wishes to impose penalties, a written notice shall be given to the grantee informing it of such alleged violation or liability. The written notice shall describe in reasonable detail the specific violation so as to afford the grantee an opportunity to remedy the violation. The grantee shall have thirty (30) days subsequent to receipt of the notice in which to correct the violation before the town may impose penalties unless the violation is of such a nature so as to require more than thirty (30) days and the grantee proceeds diligently within the thirty (30) days to correct the violation, or as promptly as possible thereafter to correct the violation. In any case where the violation is not cured within sixty (60) days of notice from the town, or such other time as the grantee and the town may mutually agree to, the town may proceed to impose liquidated damages.

B. The grantee may, within ten (10) days of receipt of notice, notify the town that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by the grantee to the town shall specify with particularity the matters disputed by the grantee and shall stay the running of the thirty (30) day cure period pending council

decision as required below. The council shall hear the grantee's dispute. Grantee must be given at least five days notice of the hearing. At the hearing, the grantee shall be entitled to the right to present evidence and the right to be represented by counsel. After the hearing, the town shall provide grantee a copy of its action, along with supporting documents. In the event the town upholds the finding of a violation, the grantee shall have thirty (30) days subsequent, or such other time period as the grantee and the town mutually agree, to such determination to correct the alleged violation before penalties may be imposed.

C. The rights reserved to the town under this section are in addition to all other rights of the town whether reserved by this franchise or authorized by law or equity, and no action, proceeding or exercise of a right with respect to penalties shall affect any other right the town may have.

D. The town shall stay or waive the imposition of any penalty set forth above upon a finding that any failure or delay is a result of an acts of nature or due to circumstances beyond the reasonable control of the grantee. (Ord. dated 3/27/03 (part))