

CHAPTER 22

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22.01 TITLE. This chapter shall be known and may be cited as the "Cable Television Franchise Ordinance."

22.02 GRANT OF FRANCHISE. This chapter grants to a franchise Grantee, its successors and assigns a non-exclusive license to install, maintain and operate a cable television system for the distribution of television signals, frequency modulated radio signals and closed circuit television programs for a term of fifteen (15) years, provided the franchise Grantee conforms to the conditions, limitations and requirements of this chapter. This chapter may be amended from time to time by the Town through the enactment of amendments thereto.

22.03 DEFINITIONS. For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number and words in the singular number indicate the plural number:

Board: The present governing body of the Town or any future board constituting the legislative body of the Town.

Cable: Coaxial cables, wave guides or other conductors and equipment for providing television service by cable or through its facilities as herein contemplated and shall include closed circuit special event programs and educational television.

Grantee: The person or corporation to whom or which a franchise under this chapter is granted by the Town Board and the lawful successors or assignees of such person or corporation.

Gross Revenues: Any revenue derived directly or indirectly by Grantee, its affiliates, subsidiaries, parent and any person in which Grantee has a financial interest in 3% or more, from or in connection with the operation of the Town system including, but not limited to, basic subscriber service monthly fees, pay cable fees, installation and reconnection fees, leased channel fees, converter rentals, enhanced telecommunications services, studio rental, production equipment and advertising revenues. The term does not include any taxes on services furnished by Grantee and imposed directly upon any subscriber or user by the State, Town or other governmental unit and collected by Grantee on behalf of such governmental unit. Nor does this term include monies paid by the Grantee to affiliates, subsidiaries, or a parent for such things as programming, licenses, etc., but rather "Gross Revenues" is intended to represent revenues collected by the Grantee due to its operations in the Town.

Street: The surface of and space above and below any public street, road, highway, freeway, lane, alley, court, sidewalk, parkway or drive nor or hereafter existing as such within the Town.

Subscriber: Any person or entity receiving for any purpose the services of the Grantee herein.

Town: The Town of Ottawa, in its present unincorporated form or in any later recognized, consolidated, enlarged or unincorporated form.

22.04 RENEWAL.

1. The Grantee shall have the right to apply to the Town for renewal or extension of the franchise. The Town shall grant such renewal or extension applications unless it finds that:
 - a. The Grantee has not substantially complied with the material terms of this chapter and with applicable law or any of its officers have been convicted of a felony.
 - b. The legal, technical or financial qualifications of the Grantee are inadequate to provide the services proposed by it.
 - c. The services and facilities to be provided by the Grantee are unreasonable in light of the community need for and cost of such services and facilities.
 - d. The service quality of the cable system has not been reasonable in light of community needs.
 - e. The proposals contained in the renewal application are otherwise unreasonable.
2. The Grantee must file for renewal at least thirty (30) months before the expiration of the franchise. The Town must consider the renewal application within one hundred twenty (120) days of submission of the application and conduct any proceedings necessary to adequately consider the application and may not request, accept or consider any other franchise application until the Grantee's application is denied or approved.
3. The Town shall:
 - a. Negotiate in good faith with the Grantee regarding franchise renewal within sixty (60) days after the completion of proceedings pursuant to sub. (2).
 - b. Make a preliminary decision on granting or denying renewal within four (4) months after receipt of an application.
 - c. In the case of denial of an application, notify the Grantee by written statement within seven (7) days after the final decision of the reasons for the denial.
4. The Grantee, if adversely affected or aggrieved by a final decision of the Town made pursuant to sub. (3), may appeal such final decision in any court of competent jurisdiction. The franchise shall remain in effect pending the completion of such appeal.
5. Both the Town and Grantee shall comply with all the provisions of Section 626 of the Cable Communications Policy Act of 1984 regarding renewal procedures.

22.05 TERMINATION OR EXPIRATION.

1. Should the Grantee's franchise be terminated or expire and there is no judicial or administrative review of the termination or expiration taking place, the Grantee shall begin removal within ninety (90) days of termination or expiration of all property owned by the Grantee and placed on a public right-of-way unless permitted by the Town to abandon such property to a purchaser.
2. If the franchise has been terminated, the Town shall have an option to purchase the system at an equitable price consistent with existing Federal law.

22.06 TRANSFER PROCEDURE. All of the rights, privileges, obligations, duties and liabilities created by this chapter shall pass to and be binding upon the successors of the Town and the successors and assigns of the Grantee and the same shall not be assigned or transferred without the written approval of the Town hereunder, which approval shall not be unreasonably withheld without a showing of good cause; provided, however, that this section shall not prevent the assignment or pledge of the franchise or the system by the Grantee as security for debt without such approval; and provided further, that transfers or assignments of this franchise between any parent and subsidiary corporation or between entities of which at least 51% of the beneficial ownership is held by the Grantee or any parent corporation shall be permitted without the prior approval of the Town. The sale, transfer or assignment of a material portion of the tangible assets of the Grantee to an unrelated third party shall be considered an assignment subject to the provisions of the section.

1. The parties to the sale or transfer of this franchise shall make a written request to the Town for approval of a sale or transfer of this franchise.
2. The Town shall reply in writing within thirty (30) days of the request and shall indicate approval of the request or its determination that a public hearing is necessary due to potential adverse effect on the company's subscribers.
3. If a public hearing is deemed necessary pursuant to sub. (2) above, such hearing shall be conducted within thirty (30) days of such determination and notice of any such hearing shall be given fourteen (14) days prior to the hearing by publishing notice thereof once in a newspaper of general circulation in the area being served by the franchise. Such notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by the Town.
4. Within thirty (30) days after the public hearing, the Town shall approve or deny in writing the sale or transfer request.
5. The parties to the sale or transfer of a franchise only without the inclusion of a cable communications system in which at least substantial construction has commenced shall establish that the sale or transfer of a franchise only will be in the public interest.

6. Grantee, upon transfer, shall within sixty (60) days thereafter file with the Town a copy of the deed, agreement or other written instrument evidencing such sale, transfer of ownership or control or lease, certified and sworn to as correct by the Grantee.

22.07 FRANCHISE TERRITORY. The franchise is for the present territorial limits of the Town and for any area henceforth added thereto during the term of this franchise.

22.08 SUBSCRIBER PRIVACY.

1. No monitoring or any terminal connected to the system shall take place without specific written authorization by the user of the terminal in question on each occasion and without written notice to the Town.
2. Grantee shall not, except as required by governmental action, provide any data concerning specific subscribers or users or their use of its services without first securing written authorization for the provision of such data.
3. The subscriber or user shall retain the right to deactivate his terminal, but shall continue to be responsible for charges until the Grantee is notified to terminate service.

22.09 TECHNICAL PERFORMANCE. The cable system shall be operated to comply with all guidelines and standards set by the FCC for signal quality and leakage. The Town reserves the right to test the system and independently measure the signal quality. The system shall comply at all times with the National Electrical Code of the National Fire Protection Association.

22.10 OPEN BOOKS AND RECORDS. The Grantee shall manage all of its operations in accordance with the policy of totally open books and records vis-a-vis the Town. The authorized officers of the Town shall have the right to inspect, upon notice, at any time during normal business hours all books, records, maps, plans, income tax returns, financial statements, service complaint logs, performance test results, record of request for service and other like materials of Grantee which relate to the operation of this franchise.

22.11 SUBSCRIBER SERVICE. The Grantee shall not be required to maintain a local office, but shall provide access to a local telephone number for programming questions and service requests.

1. The Grantee shall provide a local line, either staffed or with answering capabilities, available twenty-four (24) hours a day. The operation must be open fifty-four (54) hours a week, with a minimum eight (8) hours per day during the week and at least four (4) hours per day on weekends.

2. During working hours, the Grantee must be open and able to accept payments, exchange or accept return of converters, schedule and conduct service or technician calls and answer subscriber inquiries. On weekends, these activities may occur in the field.
3. The Grantee shall answer service requests within twenty-four (24) hours, excluding weekends and holidays. Problems should be rectified in forty-eight (48) hours or in case of a dispute, less than thirty (30) days. Customers shall be able to request from the Grantee that a service visit occur during a four (4) hour block of time in either the morning or the afternoon.

22.12 DESCRIPTION OF SYSTEM.

Grantee shall, as part of the acceptance of this franchise, provide a complete written description of the cable system in the Town. Such written description shall be updated as additions or changes are made.

22.13 RATES.

1. Rates charged by the Grantee for service hereunder shall be fair and reasonable. The Grantee shall not engage, directly or indirectly, in any sales or service of individual television sets. Before any service is sold to any customer, the Grantee shall file with the Town Clerk its schedule of rates for installation and monthly service charges, together with a statement of the rights and obligations of subscribers.
2. Subsequent additions or amendments to rates and service charges shall likewise be filed with the Town Clerk before the same becomes effective.

22.14 CONDITIONS ON STREET OCCUPANCY.

1. Use. All transmission and distribution structures, lines and equipment erected by the Grantee within the Town shall be so located as not to cause interference with the proper use of streets, alleys and other public ways and places and not to cause interference with the rights of reasonable convenience of property owners who adjoin any of the streets, alleys or other public ways and places.
2. Restoration. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Grantee shall first given notice to the Town Engineer of any contemplated disturbances of pavement, sidewalk, driveway or other surfacing and shall, at its own cost and expense and in a manner approved by the Town Engineer replace and restore all pavement, sidewalk, driveway or other surface of any street or alley disturbed in as good condition as before such work was commenced. The Grantee shall otherwise comply with the Town ordinances relating to street openings.

3. Relocation. If at any time during the period of this franchise the Town shall elect to alter or change the location or grade of any street, alley or other public way, the Grantee, upon reasonable notice by the Town, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense. If any construction by the Grantee is in violation of the provisions of sub. (1) of this section, the Grantee shall likewise, upon reasonable notice by the Town, remove, relay and relocate its property in such a manner as to remedy such violation at its own expense.
4. Placement of Fixtures. The Grantee shall not place poles or other fixtures where the same will interfere with any gas, electric, telephone or other fixture, water hydrant or main; all such poles or other fixtures placed in any street shall be placed between the outer edge of sidewalk and curb line; and those placed in alleys shall be placed close to the line of the lot abutting on such alley in such a manner as not to interfere with the usual travel on the streets, alleys and public ways. However, nothing in this chapter shall prohibit the use by the Grantee of existing public utility poles, where practicable, providing mutually satisfactory rental agreements can be entered into with the Grantee.
5. Temporary Removal of Wire for Building Moving. 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 expenses of such temporary removal, raising or lowering of the wires shall be paid by the person requesting the same, and the Grantee may 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.
6. Tree Trimming. The Grantee, to the same extent that the Town has such authority, may trim trees upon any overhanging streets, alleys, sidewalks and public places of the Town so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee.

22.15 INDEMNITY.

1. Indemnification. The Grantee shall defend and save the Town and its agents and employees harmless from all claims, damages, losses and expenses, including attorney's fees sustained by the Town on account of any suit, judgment, execution, claim or demand whatsoever arising out of:
 - a. The enactment of this chapter and granting of a franchise thereunder, except such claims as may arise from the Town's selection of a Grantee to be awarded a franchise pursuant to this chapter.
 - b. The installation, operation or maintenance of the Cable TV Network, except for acts of the Town, its agents or employees, unless such acts are the request of and under the direction or supervision of Grantee.

2. Notification. The Town shall notify the Grantee within ten (10) days after the presentation of any claim or demand, either by suit or otherwise, made against the Town on the part of the Grantee. The Grantee shall furnish to the Town before this franchise becomes effective satisfactory evidence in writing that the Grantee has in force and will maintain in force during the term of this franchise public liability insurance.

3. Liability Insurance. The Grantee shall maintain throughout the term of the permit a general comprehensive liability insurance policy naming as the additional insured the Town, its officers, boards, commissions, agents and employees in a company approved by the Town Board and in a form satisfactory to the Town Attorney, protecting the Town and its agencies and employees from liability for loss or damage for personal injury, death or property damage, occasioned by the operations of Grantee under any franchise granted hereunder, in the amounts of One Hundred Thousand Dollars (\$100,000) for bodily injury or death to any one person, Five Hundred Thousand Dollars (\$500,000) for bodily injury or death or two (2) or more persons in any one occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from any one accident. The Town shall be named as an additional insured under such insurance and a copy of certificates of insurance shall be deposited with the Town Board.

22.16 BOND, SECURITY FUND AND REMEDIES.

1. Bond. Prior to commencement of the construction of the cable system, Grantee shall file with the Town a performance bond in the amount of Ten Thousand Dollars (\$10,000). Upon completion of construction, the performance bond shall be reduced to Two Thousand Dollars (\$2,000).

2. Failure to Comply.
 - a. Any violation by the company, or its agents, of this franchise or any material portion(s) thereof or the failure promptly to perform any of the provisions thereof shall, after prior written notice and reasonable opportunity to correct is given to the company, be subject to a forfeiture up to One Hundred Dollars (\$100) a day from the security bond until proper correction is made. The Town also reserves the right to forfeit this franchise and cancel all rights hereunder.

 - b. The Grantee is not responsible for failure to provide adequate service which is caused by acts of God, strikes, government, military action or other conditions beyond its control, including the lack of material or parts. Upon permission of the Town, the following shall apply:
 1. Over forty-eight (48) hours and up to seven (7) days a 50% rebate or one month's fees for all affected subscribers.

2. A full month's rebate for any month in which one week or more of the service is interrupted.

22.17 FRANCHISE FEE AND FINANCIAL REPORTING.

1. As compensation for permission to use the streets and public ways of the Town for the construction, operation, maintenance, modification and reconstruction of a cable system and for the Town's costs in establishing a regulatory program for the Grantee, the Grantee shall pay to the Town an annual amount equal to 3% of the Grantee's gross revenues during the period of its operation under the franchise until disapproved by the FCC.
2. No acceptance of any payment by the Town shall be construed as a release or as an accord and satisfaction of any claim the Town may have for further or additional sums payable as a franchise fee or for the performance of any other obligation of Grantee.
3. No later than April 15 of each year, grantee shall present to the Town a statement of Gross Revenue signed by an officer of the company. The franchise fee payment shall be derived from this report.

22.18 TOWN RIGHTS.

1. Town Rules. The right is hereby reserved by the Town to adopt, in addition to the provisions contained in this chapter and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of its police powers. Such regulations, by ordinance or otherwise, shall be reasonable and not be in conflict with the rights granted in this chapter and shall not be in conflict with the laws of the State.
2. Use of System by Town. The Town may during the term of this franchise, free of charge where aerial construction exists, maintain upon the poles of the Grantee within the Town limits wire and pole fixtures necessary for a police and fire alarm system, which wires and fixtures to be constructed and maintained to the satisfaction of the Grantee and in accordance with its specifications.
3. Inspection. The Town may inspect all construction or installation work during such construction or installation or at any time after completion thereof, in order to insure compliance with the provisions of this chapter and all other governing ordinances.
4. Service to Public Buildings. One (1) free basic cable outlet shall be provided to each public building passed by the cable system.

22.19 WAIVER OF CHARGES.

1. During the term of this franchise, Grantee shall provide free service to any and all schools, whether private, public or parochial, and to fire stations within the area of this franchise. Grantee may charge for usual installation costs.

2. Upon request, the Grantee will also provide an equipment grant to the Town for the equipment needed to operate an access channel. The grant shall consist of the following:

1. Modulator, Scientific Atlanta Model No. 6330, or equivalent.
2. Camera, JVC Model GFS550SUHS, or equivalent.
3. Playback, Sony VP 7020 with TBC, or equivalent.

The Grantee shall have no responsibility of maintenance of such equipment or training on the use of such equipment; the rules for use of the channel and equipment shall be the responsibility of the Board.

3. The Grantee shall not be responsible for the production costs of the dedicated, non-commercial public access channel.

22.20 THEFT OF SERVICE AND TAMPERING.

1. No person, whether or not a subscriber to the cable system, may intentionally or knowingly damage or cause to be damaged any wire, cable, conduit, equipment or apparatus of Grantee; commit any act with intent to cause such damage; tap, tamper with or otherwise connect any wire or device to a wire, cable, conduit, equipment and apparatus or appurtenances of Grantee with the intent to obtain a signal or impulse from the cable system without authorization from the Grantee; or to obtain cable television or other communications service with intent to cheat or defraud Grantee of any lawful charge to which it is entitled.
2. No person shall without the consent of the owner, willfully tamper with, remove or injure any cable, wires or other equipment used for the distribution of television signals, radio signals, pictures, programs, sounds or any other information or intelligence transmitted over the Town's cable system.

22.21 ACCEPTANCE BY GRANTEE. The franchise granted under this chapter shall be effective upon written acceptance of the franchise being filed with the Town Clerk within thirty (30) days from the adoption hereof and the franchise shall continue in force for a period of fifteen (15) years.

22.22 ARBITRATION.

1. Controversies arising from the Grantee's performance under the terms of this chapter may be submitted to arbitration. Arbitration shall not be demanded by any party until such time as that party has served written notice upon the opposing party, setting forth its proposed determinations or actions which are to be the subject matter of the arbitration. Such notice shall be in writing and mailed to the other party by certified mail, return receipt requested.

2. In the event of arbitration, the parties shall select the arbitrator or if they fail to do so, a circuit Judge from Waukesha County shall select the arbitrator. The expenses of the arbitration and compensation of the arbitrator shall be borne by the Town and the Grantee as the award shall provide, but in no event shall the Town be obligated to pay more than one-half (1/2) such expenses and compensation. The arbitration award shall be binding upon the parties.

22.23 INCORPORATION OF AMENDMENTS. This franchise shall be amended to incorporate all amendments to the statutes, rules and regulations of the Federal government as they are promulgated by the Federal government. Any provision herein in conflict with or pre-empted by such rules and regulations or statues shall be superseded.

22.24 PROTECTION OF NON-SUBSCRIBERS. Grantee shall at all times keep its cables and other appurtenances used for transmitting signals shielded in such a manner that there will be no interference with signals received by private receiver's sets owned by persons not subscribing to Grantee's service.

22.25 CONDITIONS OF REQUIRED LINE EXTENSIONS.

1. Grantee shall, within sixty (60) days of the acceptance of this franchise, file a plan with the Town for the initial installation of cable. Following such initial installation, the Grantee shall not be obligated to extend its cable network to additional subscribers, unless the proposed subscribers shall be located within thirty (30) feet of the existing network or at least nineteen (19) additional subscribers will be serviced per mile of cable extension required.
2. In instances where the Grantee is not required to provide service pursuant to this section, the Grantee and subscriber may nevertheless contract to have service provided on terms and conditions agreeable to both the subscriber and Grantee.

22.26 GRANTEE RULES. The Grantee may 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 uninterrupted service to all its subscribers. However, such rules, regulations, terms and conditions shall not be in conflict with the provisions of this chapter or the laws of the State.

22.27 WAIVER OF OBJECTIONS. By the adoption of this chapter, the Town expressly waives all objections it has or may have to the legal rights of the Grantee to attach its cables, equipment and transmission lines to the poles of the Town, pursuant to an agreement or to the poles of the public utilities and the authority of such public utilities to grant such right to the Grantee.

22.28 GRANTEE WITHOUT RECOURSE.

1. Grantee shall have no recourse whatsoever against the Town for any loss, cost, expense or damage arising out of any provision or requirement of this franchise or because of the enforcement thereof by the Town nor for failure of the Town to have authority to grant all or any part of this franchise.
2. Grantee expressly acknowledged on accepting this franchise that it did so relying on its own investigation and understanding of the power and authority of the Town to grant this franchise.
3. By acceptance of this franchise, Grantee acknowledged that it had not been induced to enter into this franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of the Town or by any other third person concerning any term or condition of this franchise not expressed herein.
4. Grantee further acknowledges by acceptance of this franchise that it has carefully read the terms and conditions hereof and is willing to and does accept all the risks of the meeting of such terms and conditions and agrees that in the event of any ambiguity therein or in the event of any dispute over the meaning thereof, the same shall be construed strictly against the Grantee in favor of the Town.

22.29 WORK PERFORMED BY OTHERS.

1. Grantee shall give notice to the Town specifying the names and addresses of any other entity other than the Grantee, which performs services pursuant to this franchise provided, however, that all provisions of this franchise remain the responsibility of Grantee.
2. All provisions of this franchise shall apply to any subcontractor or others performing any work or services, pursuant to the provisions of this franchise.

22.30 CONTEST OF VALIDITY. Grantee agrees by acceptance of this franchise that it will not at any time set up against the Town in a claim for proceeding any condition or term of this franchise as unreasonable, arbitrary or void or that the Town had no power or authority to make such term or condition, but shall be required to accept the validity of the terms and conditions of this franchise in its entirety.

22.31 PAYMENT OF ACCEPTANCE FEE. Any Grantee shall pay to the Town at the time of acceptance of the franchise an acceptance fee covering all costs and expense incurred by the Town in connection with the franchising process. Such costs and expense shall include, but shall not be limited to, the drafting of this chapter, a consideration and evaluation of any application or proposal and any legal and consultant fees in the awarding of the franchise.

22.32 PENALTY. Except as otherwise provided, any person found to be in violation of any provision of this chapter shall be subject to a penalty as provided in Section 25.04 of this General Code.