

Chapter 7

Ordinance Creating Cable Television Franchise Regulations for the Town of Hustisford, WI

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7.01 Definitions

- 1) A.C.-Alternating Current Abbreviation
- 2) Additional and Auxiliary Service. A subscriber service provided by the grantee to the subscriber on a monthly basis and for which a special charge is made, at a set fee, based on program or service content time or spectrum space usage.
- 3) Annual Gross Subscriber Revenues. All revenues received by the grantee, its affiliates or subsidiaries form and in connection with the operation of the Broadband Telecommunications Network in the Town as such term is defined by the FCC or a court of competent jurisdiction and shall include if so determined, revenues from all sources, including without limitation, revenues for pay television service, from advertising, channel leasing, data transmission, and per program charges, in addition to

the subscribers' regular monthly payments, but excluding any and all taxes on said revenue, including sales tax.

- 4) A.G.C. Automatic Gain Control- An electronic circuit which automatically increases or decreases, within its design range, the gain of any amplifier in order to maintain a stable or fixed output level. Sometimes called ALC or AVC.
- 5) ASC-Automatic Slope or Tilt Control. An electronic circuit or thermal device that compensates for changes in cable or amplifier characteristics caused by temperature variations.
- 6) Basic Service. Shall mean subscriber services provided by the grantee, including the delivery of broadcast signals and programming originated over the cable system, covered by the regular monthly charge paid by all subscribers.
- 7) Broadband Telecommunications Network. Shall mean any network of cables, optical, electrical, or electronic equipment, including cable television's systems, used for the purpose of transmission of electrical impulses of television, radio and other intelligences, either analog or digital for the sale or use by the inhabitants of the Town.
- 8) BTN Channel Capacity. The highest total number of cable television channels on which television signals from separate sources may be delivered downstream simultaneously to every subscriber in the network. The network may have additional channel capacity for specialized or discrete purposes, but the technical performance specified shall not be materially degraded thereby.
- 9) Cable Television Channel. A frequency band 6 MHz in width within which a standard television broadcast signal is delivered by cable to a subscriber.
- 10) Channel Frequency Response. Within a cable television channel, the relationship as measured at a subscriber terminal between amplitude and frequency of a constant-amplitude input signal at all specified frequencies within each channel.
- 11) Class I Cable Television Channel. A signaling path provided by a cable television system to relay to subscriber terminals television broadcast programs that are received off the air or are obtained by microwave or by direct connection to a television broadcast station.
- 12) Class II Cable Television Channel. A signaling path provided by a cable television system to deliver to subscriber terminals television signals that are intended for reception by a television broadcast receiver without the use of an auxiliary decoding device and which signals are not involved in a broadcast transmission path.
- 13) Class III Cable Television Channel. A signaling path provided by a cable television system to deliver to subscriber terminals signals that are intended for reception by equipment other than a television broadcast receiver or by a television broadcast receiver only when used with auxiliary decoding equipment.
- 14) Class IV Cable Television Channel. A signaling path provided by a cable television system to transmit signals of any type from a subscriber terminal to another point in the cable television system.
- 15) Commence Operations. Operation will be considered to have commenced when sufficient distribution facilities have been installed so as to permit the offering of "full network services" to at least twenty-five percent (25%) of the dwelling units located within the designated "service area."
- 16) Data Grade. Shall mean coded transmission primarily digital in nature.
- 17) Decibel (db). The level in the network expressed in db's above or below a power corresponding to the root mean square voltage of one millivolt across seventy-five (75) ohms.
- 18) Discrete Cable Television Channel. A signaling path provided by a cable television system to transmit signals of any type to specified subscriber terminals within the cable television system.

- 19) Downstream. The direction of transmission over the BTN from the “head end” or “hub” to a subscriber’s terminal.
- 20) FCC. Shall mean the Federal Communications Commission and any legally appointed or elected successor.
- 21) Franchise Payment. Shall include all charges imposed for a franchise whether the object be regulation, revenue, or one-time reimbursement of costs incurred by the Town in the award of this franchise.
- 22) Full Network Services. All basic services and additional services offered by the grantee.
- 23) Grantee. All persons including but not limited to subsidiaries, parents or affiliate companies, associations, or organizations having any rights, powers, privileges, duties, liabilities or obligations under this chapter and under any franchise ordinance, collectively called the “Franchise” including also all persons having or claiming any title to or interest in the system, whether by reason of the franchise itself directly or by interest in a subsidiary, parent or affiliate company, association or organization or by any subcontract, transfer, assignment, mortgage security agreement, management or operating agreement or whether otherwise arising or created.
- 24) Head End. Shall mean the land, electronic processing equipment, antennas, tower, building and other appurtenances normally associated with and located at the starting point of a Broadband Telecommunications Network, excluding the studio.
- 25) Hub Configuration. A BTN design technology wherein all transmission paths either originate or terminate at a central location within the community.
- 26) Physical Mile of Plant. Messenger strand as measured from pole to pole without taking into consideration sag or down guys and for buried plant, actual trench feet.
- 27) Reasonable Notice. Shall mean the provision of notice of contemplated action delivered at least seventy-two (72) hours prior to such notice.
- 28) Sale. Includes any sale, exchange, barter or offer for sale.
- 29) Service Area. That geographical area within the incorporated limits of the “town”.
- 30) Street. Shall include all streets, roadways, highways, avenues, lands, alleys, courts, places, squares, curbs, sidewalks, easements, rights-of-way or other public ways in the Town which have been or may hereafter be dedicated and open to public use, or such other public property as designated by law.
- 31) Studio. The land, electronic processing equipment, towers, building, cameras, lights and other appurtenances normally associated with and located at the grantee’s local origination or public access points of a BTN, excluding the head end.
- 32) Subscriber. Any person, firm, company, corporation or association receiving either basic service or additional serviced from the grantee under the schedule of charges filed with and approved by the Town.
- 33) Subscriber Terminal. The BTN’s 75 ohm cable terminal to which the subscriber’s equipment is connected. Separate terminals may be provided for delivery of cable television signals, FM broadcast or other signals of differing classifications.
- 34) Substantially Completed. Operation shall be considered substantially completed when sufficient distribution facilities have been installed so as to permit the offering of full network service to at least 75% of the dwelling units in the service area to which access is legally and reasonably available.
- 35) Terminal Isolation. At any subscriber terminal, the attenuation between that terminal and any other subscriber terminal in the network.

- 36) Video Grade. Shall mean transmission primarily analog in nature including the picture phase of a television broadcast.
- 37) Town. Shall mean the town of Hustisford, or the area within the limits of the Township, and such territory outside of the Town over which the Town has jurisdictional control by virtue of any constitutional or charter provisions, or any law.
- 38) Town Council. Shall mean the Town Council of the Town of Hustisford or any legally appointed or elected successor or agency.
- 39) Cable Operator. Shall mean any person or group of persons
 - a) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or
 - b) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system
- 40) Grade B Contour. Shall mean the field strength of television broadcast station computed in accordance with regulations promulgated by the FCC.

7.02 Granting a Franchise

- 1) No person shall construct, install, maintain or operate within any public street in the Town or within any other public property of the Town any equipment or facilities for the distribution of television signals or radio signals or other intelligences either analog or digital over a BTN to any subscriber unless a franchise authorizing the use of the streets or properties or areas has first been obtained pursuant to the provisions of this chapter and unless such franchise is in full force and effect.
- 2) Specific permission to operate a BTN under the provisions of this chapter may be granted by the Town Council to any grantee after a review of the legal, character, financial and technical qualifications and the adequacy and feasibility of the grantee’s construction arrangements and after the Town Council has approved the grantee’s qualifications as a part of a public proceeding affording due process.
- 3) Upon filing by the grantee of the proper acceptance and the required insurance, the franchise shall take effect and shall continue in full force and effect for 15 years.

7.03 Grant of Authority

- 1) The franchise granted hereunder shall give to the grantee the right and privilege to construct, erect, operate, modify and maintain, in, upon, along, across, over and under streets, (as defined in Section 7.01 30) herein) which have been or may hereafter be dedicated and open to public use in the Town, towers, antennas, poles, cables, electronic equipment, and other network appurtenances necessary for the operation of a Broadband Telecommunications Network in the Town utilizing, wherever possible and economically feasible, existing facilities with the right, upon application to the designated Town Officials, to set poles or other equipment on facilities constructed by applicant. And said designated Town official will not unreasonably refuse permission for said construction, however, a non-proliferation of poles policy for aesthetic purposes shall be considered.
- 2) The Town shall require all developers of future subdivision, when making provisions for or restrictions of utilities in the subdivision plat, to include cable television services.

7.04 Conditions of Franchise

- 1) The grantee shall be subject to the following restrictions and conditions with regard to the operation of the System, which conditions and restrictions shall be in addition to any other subsections of this Section or other Sections of the Municipal code.
 - a) Cables, wires and other equipment in connection with such System shall only be installed and operated on or under the Public Rights-of-Way upon the poles, or in underground conduit and equipment of the existing utilities within the Town and their successors, or assigns, where conduits exist and where space is installed conduits is available. Installation of any additional poles, conduits or other equipment or the installation of cables, wires, and other overhead equipment and underground equipment in Public Rights-of-Way in connection with the said System shall be subject to the authorization of the Town Board or its designated representative. In reaching a decision as to such additional poles or equipment, the suggestions, if any, of the utility companies servicing or planning to serve such area may be considered. Underground installation shall always be preferred, provided however, the grantee may construct its plant aerial so long as there is one utility aerial.
 - b) Such wires, cables and other underground or overhead equipment shall be located as may be required of telephone companies or power lines by the Public Service commission of Wisconsin. All equipment shall be grounded in the same manner as required by the State of Wisconsin Electrical Code for electrical services existing on the date of installation of any equipment.
 - c) The grantee shall pay all costs incurred by the Town in the event of the necessity of restoration of the Public Rights-of-Way as a result of the grantee's construction of its system or its operation. The grantee and the Town shall coordinate the restoration of the Public Rights-of-Way if it becomes necessary for the grantee to open or otherwise disturb said Public Rights-Of-Way.
 - d) The grantee shall, at its own expense, protect, support, temporarily or permanently disconnect, relocate in the same Public Right-of-Way, or remove from any Public Right-of-Way, any property owned or used by the grantee if required by the Town for reasons of traffic conditions, public safety, street vacation, freeway and street construction change or establishment of street grade, installation of sewers, drains, water pipes, power lines and tracts or any other type of structures or improvements by governmental agencies when acting in a governmental capacity. The Town shall provide the grantee notice of its intention to make changes which might otherwise cause grantee expense pursuant to this paragraph and the grantee shall have an opportunity to comment.
 - e) The grantee shall, upon the request of any person holding a building moving permit issued by the town, temporarily raise or lower its lines or disconnect or take them down to permit the moving of buildings. The expense of such removal, raising or lowering of wires shall be paid by the person requesting the same, and the grantee shall be given not less than three (3) working days advance notice to arrange for such temporary wire changes.
 - f) All installations by the grantee of cables and incidental equipment shall comply in all respects with all laws, ordinances, rules and regulations of the Federal Communications commission, the State of Wisconsin or any agency or department thereof, and of the Town or any agency or department thereof, now or hereafter in effect.
 - g) The grantee shall provide and maintain its equipment in such condition and of such quality so that none of its service will adversely affect radio and television reception.
 - h) Installation and maintenance of equipment shall be such that standard color signals shall be transmitted with reasonable and acceptable fidelity to all subscribers.

- i) The grantee shall not directly or indirectly require or solicit of any subscriber the patronage of any designated person or company engaged in the servicing, sale or repair of television receivers. The foregoing shall not apply to the repair or adjustment of equipment which is in part of the system of the grantee.
- j) The grantee shall submit to inspections by duly authorized personnel of the Town and shall make available to such inspectors or duly authorized personnel its facilities and equipment wherever situated. The Town reserves the right to enact reasonable regulations regarding the installation and maintenance of the facilities of the grantee.
- k) The grantee shall have the authority to trim trees upon and overhanging Public Rights-of-Way of the Town so as to prevent the branches of such trees from coming in contact with the wires and cables of the grantee except that, at the option of the town, such trimming may be done by it or under its supervision and direction.

7.05 Construction Standards

The technical standards including measurements of the construction and Systems to be operated in the Town shall comply with the minimum standards established by the Federal Communications Commission.

7.06 Service and complaint Standards.

Grantee shall investigate all complaints within twenty-four (24) hours of their receipt and shall in good faith attempt to resolve them within forty-eight (48) hours after notice. Grantee shall maintain a record of each complaint and shall maintain said record for a period of two (2) years. Said record shall be available to the Town upon reasonable notice for review. The grantee shall maintain a local telephone listing.

7.07 Rights Reserved by Town.

- 1) The Town may, from time to time, add to, modify or delete provisions of this chapter in the exercise of its regulatory powers, provided that such additions or revisions are reasonable and do not place an undue financial burden on the grantee. Such additions or revisions shall be made after a public hearing. The grantee shall receive written notice of such hearing at least 30 days prior to the same.
- 2) Nothing in this Section shall impair or affect the right of the Town to acquire the property of the grantee through the exercise of the right of eminent domain at a fair and just value, which shall not include any amount for the franchise itself or for any of the rights or privileges granted and nothing shall contract away, modify or abridge, either for a term or in perpetuity, the Town's right to eminent domain.
- 3) The Town reserves every right and power which is required to be reserved or provided by an ordinance of the Town and the grantee by its acceptance of the franchise agrees to be bound thereby and to comply with any action or requirements of the town in its exercise of such rights or powers which have been or shall be enacted or established.
- 4) The Town may intervene and the grantee specifically agrees by its acceptance of the franchise not to oppose such intervention by the Town in any suit or proceeding to which the grantee is a party.
- 5) Neither the granting of any franchise nor any provision governing the franchise shall constitute a waiver or bar to the exercise at any governmental right of power of the Town.

- 6) Any right or power in or duty imposed upon any elected official, officer, employee, department or board of the Town shall be subject to transfer by the Town to any other elected official, officer, employee, department or board.
- 7) The Town may, during the life of any franchise granted hereunder, inspect and supervise all construction or installation work performed subject to the provisions of this chapter, and may perform network measurements to insure compliance with the terms of this chapter.
- 8) Upon expiration, revocation, or other termination of the franchise as provided by law, or upon receipt of application for approval of an assignment of the franchise, or upon change of de facto control, the town shall have a right to purchase the BTN as set forth in this chapter.
- 9) The Town may
 - a) During the life of any franchise granted thereunder, install and maintain, free of charge, upon or in the poles and conduits of the grantee, any wire and pole fixtures necessary for municipal networks if such installation and maintenance thereof does not interfere with the operation of the grantee.
 - b) The Town or any assignee thereof shall have the right, during the life of this franchise, free of charge, to install and maintain upon the fixtures and conduits of the grantee within the Town limits wires and appropriate attachments necessary for a security and fire alarm system. Such wires and fixtures shall be constructed and maintained to the satisfaction of the grantee and in accordance with its specifications.
 - c) The Town, in its use and maintenance of such wires and attachments, shall at all times comply with the rules and regulations of the grantee so that there may be a minimum danger of contact or conflict between the wires and fixtures of the grantee and the wires and attachments used by the Town.

7.08 Modification of Franchise Obligations.

- 1) a) During the period a franchise is in effect, the cable operator may obtain from the Town Board modifications of the requirements in such franchise
 - (1) in the case of any such requirement for facilities or equipment, including public, educational, or governmental access facilities or equipment, if the cable operator demonstrates that
 - (i) it is commercially impractical for the operator to comply with such requirement, and
 - (ii) the proposal by the cable operator for modification of such requirement is appropriate because of commercial impracticability or
 - (2) in the case of any such requirement for services, if the cable operator demonstrates that the mix, quality, and level of services required by the franchise at the time it was granted will be maintained after such modifications.
- b) Any final decision by the Town Board under this subsection shall be made in a public proceeding. Such decision shall be made within 120 days after receipt of such request by the Town board, unless such 120 day period is extended by mutual agreement of the cable operator and the Town Board.

- 2) a) Any cable operator whose request for modification under subsection 1. Has been denied by a final decision of the Town board may obtain modification of such franchise requirements pursuant to the provisions of judicial proceeding.
- 1) In the case of any proposed modification of a requirement for facilities or equipment, the court shall grant such modification only if the cable operator demonstrates to the court that:
 - (1) It is commercially impracticable for the operator to comply with such requirement; and
 - (2) The terms of the modification requested are appropriate because of commercial impracticability.
- 2) In the case of any proposed modification of a requirement for services, the court shall grant such modification only if they cable operator demonstrates to the court that the mix, quality, and level of services required by the franchise at the time it was granted will be maintained after such modifications.
- 3) Notwithstanding subsections 1. And 2., a cable operator may, upon 30 days advance notice to the Town Board, rearrange, replace, or remove a particular cable service required by the franchise if:
 - a) Such service is no longer available to the operator or
 - b) Such service is available to the operator only upon the payment of a royalty required under section 801 (B) (2) of Title 17, United States Code, which the cable operator can document
 - (1) Is substantially in excess of the amount of such payment required on the date of the operator’s offer to provide such service, and
 - (2) Has not been specifically compensated for through a rate increase or other adjustment.
- 4) Notwithstanding subsections 1. And 2., a cable operator may take such actions to rearrange a particular service form one service tier to another, or otherwise offer the service, if the rates for all of the service tiers involved in such actions are not subject to regulations.
- 5) A cable operator may not obtain modification under this section of any requirement for services relating to public, education, or governmental access.
- 6) For purposes of this section, the term “commercially impracticable” means, with respect to any requirement applicable to a cable operator, what it is commercially impracticable for the operator to comply with such requirement as a result of a change in conditions which is beyond the control of the operator and the nonoccurrence of which was a basic assumption on which the requirement was based.

7.09 Time for Performance.

- 1) The grantee shall initiate construction and installation of the Broadband Telecommunications Network within six (6) months of receiving necessary authority from the Federal communications Commission including microwave licenses and a Certificate of compliance and within twelve (12) months the grantee shall commence operations. The grantee shall have substantially completed construction within the franchise area within twelve (12) months of the effective date of the franchise grant here under.
- 2) The Town may in its discretion extend the time for grantee, acting in good faith, to perform any act required hereunder. The time for performance shall be extended or excused, as the cause may be, for any period during which grantee demonstrates to the satisfaction of the Town board that grantee is being subjected to delay or interruption due to any of the following circumstances if reasonably beyond his control:

- a) Necessary utilities rearrangements or pole change outs;
 - b) Governmental or regulatory restrictions or economic conditions;
 - c) Labor strikes;
 - d) Lock outs;
 - e) War;
 - f) National emergencies;
 - g) Fire or extreme weather conditions;
 - h) Other acts of God.
- 3) The grantee shall complete construction within a reasonable time, provided, however, that grantee shall not be required to construct said system beyond any area in which there are less than 50 homes per linear cable mile. Line extensions or installations beyond 150 feet will be paid for by the subscriber at the grantee's cost. It is intended by this paragraph to protect the grantee and the subscribers from subsidizing unreasonable extensions.
- 4) The grantee shall be allowed to furnish service from the head end to other areas than the Town, provided, however, that the construction or provision of services to areas other than the Town does not prohibit, impede, or delay the substantial completion date of the System in the Township. If any such program, service, or initial customer rate provided to said other areas shall be in any manner superior to the program service or initial customer rates provided within the Township, then such program service or initial customer rates shall be provided to the Township.

7.10 Franchise Payment.

The Grantee shall pay to the town a franchise fee of three percent (3%) of the Grantee's gross subscriber revenues from the operation of the cable communications system within the Township limits. Said annual sum shall be paid within forty-five (45) days of the end of the calendar year. Annually an independent auditor shall certify the amount of the Grantee's revenue from all cable services in order to verify the fee paid pursuant thereto.

7.11 Franchise Terms

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

7.12 Franchise Review.

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

7.13 Franchise renewal.

- 1) During the 6-month period which begins with the 36th month before the franchise expiration, the Town Board may on its own initiative, and shall at the request of the cable operator, commence proceedings for the purposes of:
 - a) Identifying the future cable-related community needs and interests: and
 - b) Reviewing the performance of the cable operator under the franchise during the then current franchise term.
- 2) a) Upon completion of a proceeding under subsection 1., a cable operator seeking renewal of a franchise may, on its own initiative or at the request of the town board, submit a proposal for renewal.
 - b) Any such proposal shall contain such material as the Town board may require, including proposals for an upgrade of the Cable System.
 - c) The Town board may establish a date by which such proposal shall be submitted.
- 3) a) Upon submittal by a cable operator of a proposal to the Town board for the renewal of a franchise, the Town Board shall provide prompt public notice of such proposal and, during the 4-month period which begins on the completion of any proceeding under subsection 1., renew the franchise or issue a preliminary assessment that the franchise should not be renewed and at the request of the operator or on its own initiative, commence an administrative proceeding, after providing prompt public notice of such proceeding, in accordance with paragraph (b) to consider whether:
 - (1) the cable operator has substantially complied with the material terms of the existing franchise and with applicable law;
 - (2) the quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix, quality, or level of cable services or other services provided over the legal system, has been reasonable in light of community needs;
 - (3) the operator has the financial, legal and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal: and
 - (4) the operator's proposal is reasonable to meet the future cable related community needs and interest, taking into account the cost of meeting such needs and interest.
 - b) In any proceeding under paragraph a), the cable operator shall be afforded adequate notice and the cable operator and the Town Board, 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 proceeding under subsection 1., to require the production of evidence, and to question witnesses. A transcript shall be made of any such proceeding.
 - c) At the completion of a proceeding under this subsection, the Town Board 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 cable operator. Such decision shall state the reasons therefore.
- 4) Any denial of a proposal for renewal shall be based on one or more adverse findings made with respect to the factors described in subparagraphs (1) through (4) of subsection 3) a) , pursuant to the record of the proceeding under subsection 3. The Town Board may not base a denial of renewal on a failure to substantially comply with the material terms of the franchise under subsection 3 a) (1) or on events considered under subsection 3 a) 2) in any case in which a violation of the franchise or the events considered under subsection 3 a) 2) occur after the effective date of this title unless the town board has provided the operator with notice and the opportunity to cure, or in any case in which it is documented that the Town Board, has waived its right to object, or has effectively acquiesced.

- 5) a) Any cable operator whose proposal for renewal has been denied by a final decision of the Town board made pursuant to this section, or has been adversely affected by a failure of the Town Board to act in accordance with the procedural requirements of this section, may appeal such final decision or failure pursuant to the provisions of judicial proceedings.
- b) The court shall grant appropriate relief if the court finds that:
 - (1) Any action of the Town board is not in compliance with the procedural requirements of this section; or
 - (2) In the event of a final decision of the town board denying the renewal proposal, the operator has demonstrated that the adverse finding of the ton board with respect to each of the factors described in subparagraphs (1) through (4) of subsection 3 a) on which the evidence, based on the record of the proceeding conducted under subsection 3.
- 6) Any decision of the town board on a proposal for renewal shall not be considered final unless all administrative review by the State has occurred or the opportunity therefore has lapsed.
- 7) For purposed of this section, the term “franchise expiration” means the date of the expiration of the term of the franchise, as provided under the franchise, s it was in effect on the date of the enactment of this title.
- 8) Notwithstanding the provisions of subsection 1 through 7 of this section, a cable operator may submit a proposal for the renewal of a franchise pursuant to this subsection at any time, and the Town Board may grant or deny such proposal at any time (including after proceedings pursuant to this section have commenced). The provisions of subsections 1 through 7 of this section shall not apply to a decision to grant or deny a proposal under this subsection. The denial of a renewal pursuant to this subsection shall not affect action on a renewal proposal that is submitted in accordance with subsections 1. through 7.

7.14 Termination.

- 1) The town reserves the right to revoke any franchise granted hereunder and rescind all rights and privileges associated therewith in the event of noncompliance by the Grantee with any material provisions of this ordinance.
- 2) In the event that the Town shall decide to terminate for cause a franchise granted hereunder, it shall give the Grantee ninety (90) days written notice of its intention to terminate and stipulate the cause. If during the ninety (90) day period the cause shall be cured to the satisfaction of the town, the Town shall declare the notice to be null and void. In any event, before a franchise may be terminated, the Grantee must be provided with an opportunity to be heard before the Town Board.

7.15 Transfer or Sale of Cable Television system.

- 1) This franchise may be transferred, assigned, or sold only with the written consent of the Town Board and approved only if the transferee, assignee, or purchaser agrees in writing to be subject to all the terms and conditions of this Ordinance. The franchisee shall notify the Town Board at least thirty (30) days before a proposed transfer, assignment or sale is to take effect. Such a notice must be in the form of a written request to the Town clerk, stating the reasons why such an assignment is necessary and or advisable and detailing the expected changes in the operation of the system. Information as to the legal character, financial capability, technical and other qualifications of the party or parties to

whom the franchise is to be transferred, assigned, or sold, or by whom the same is to be operated, shall also be provided. This Section shall apply to any transfer, assignment, or sale of greater than twenty-five percent (25%) of the ownership, operation, or management of the franchise. The Town Board shall not withhold approval or consent regarding the transfer, assignment, or sale, without due cause and unless it is shown that the operation or management of the System will be affected to the detriment of the public by approving said transfer, assignment, or sale. This provision shall not apply to either the mortgagee or hypothecation of the System in respect to any mortgages or the remedies therein.

- 2) All provisions of this chapter and any franchise granted shall be binding upon the Grantee, its successors, lessees, or assignees.
- 3) If a renewal of the franchise held by a cable operator is denied or is revoked for cause, and the Town Board acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be at fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the franchise itself.

7.16 Responsibilities Upon 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 him and placed on a Public Right-of-Way, unless permitted by the Town to abandon said property in place or transfer said property to a purchaser.

7.17 Liability and Indemnification.

- 1) Liability. The Grantee shall maintain, and by his acceptance of any franchise granted hereunder agrees that he will maintain, throughout the term of the franchise, a general comprehensive liability insurance policy against liability for loss or damage for personal injury, death, or property damage, occasioned by the operations of Grantee under any franchise granted hereunder, in the amounts of
 - a) \$500,000.00 for bodily injury or death to any one person, within the limits and
 - b) \$500,000.00 for property damage resulting from any one accident.
- 2) Indemnification of Township in franchise Operation. It shall be expressly understood and agreed by and between the Town and any grantee hereunder that the Grantee shall save the Town and its agents and employees harmless from and against all claims, damages, losses, and expenses, including attorney's fees sustained by the Township, on account of any suit, judgment, execution, claim, or demand whatsoever, arising out of but not limited to copyright infringements ,and all other damages arising out of the installation, operations, or maintenance of the Broad Band Telecommunications network authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Ordinance and any franchise granted hereunder. This provision shall not apply to acts of the Township, its agents, or its employees.
- 3) The insurance policies mentioned in subsection 1 above shall be obtained from the same company and shall contain an endorsement stating that the policies are extended to cover the liabilities assumed by the Grantee under the terms of this ordinance and shall contain the following endorsement:

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

7.18 Application for Franchise.

Application for a franchise hereunder shall be filed with the town clerk and shall contain the following information and provisions:

- 1) The name and business address of the applicant, date of application and signature of applicant or appropriate corporate officer.
- 2) A general description of the application’s proposed operation in the service area and in other areas within the State, including but not limited to, business hours, operating staff, maintenance procedures beyond those required in this chapter; management and marketing staff complement and procedures; and if available the rules of operation for public access.
- 3) A statement of the applicant’s proposed schedule of charges.
- 4) A statement detailing the corporate organization of the applicant, if any, including the names and addresses of its officers and directors and the number of shares held by each officer and director.
- 5) A statement identifying the number of authorized and outstanding shares of applicant’s stock including a current list of the names and current addresses of its shareholders holding 5 percent or more of applicant’s outstanding stock.
- 6) A statement of existing, pending, and proposed franchises held or applied for by the applicant which the applicant proposes to apply for indicating as applicable when the franchises were issued and when the systems were constructed and the present state of the system or application in each respective governmental unit, together with the name, address and phone number of a responsible governmental official knowledgeable of the applicant.
- 7) The Town board may require such supplementary, additional, or other information that the Town board deems reasonably necessary for its determination. Such modifications, deletion, additions, or amendments to the application shall be considered only if specifically requested by the Town Board.

7.19 Acceptance and Effective Date of Franchise.

- 1) Any franchise awarded, and the rights, privileges, and authority granted thereby, shall take effect and be in force from and after the 30th day following the award thereof, provided that within 30 days from the day of such award the grantee shall file with the town the following:
 - a) A notarized statement by the grantee of unconditional acceptance of the franchise.
 - b) A certificate as to necessary insurance.
 - c) Written notification of the grantee’s location and address for mail and official notifications from the Town.
- 2) The grantee shall have no recourse against the Town for any loss, cost, expense, or damage arising out of any provision or requirements of this chapter or its regulation or from the Town’s exercise of authority to grant additional franchises hereunder. This shall not include negligent acts of the Town, its agents, or employees, which are performed outside the regulatory or franchise awarding authority thereunder.

- 3) The grantee expressly acknowledges that in accepting any franchise awarded it has relied upon its own investigation and understanding of the power and authority of the Town to grant such franchise.
- 4) The grantee, by acceptance of any franchise awarded, acknowledges that it has not been induced to enter into such franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of the Town concerning any term or condition of such franchise that is not included in this chapter.
- 5) The grantee acknowledges, by the acceptance of this chapter and the franchise ordinance, that it has carefully read its terms and conditions and accepts all obligations of such terms and conditions and further agrees that it shall not, prior to substantial completion of the system, set up as against the Town the claim that any provision of this chapter as adopted, and any franchise granted hereunder is unreasonable, arbitrary, invalid, or void.
- 6) The grantee, by the acceptance of any franchise awarded hereunder, agrees that the matters contained in the grantee's application for franchise and as stated in oral presentation, except as inconsistent with the FCC rules and regulations, law, or ordinance, shall be incorporated into the franchise as though set out verbatim.

7.20 Significance of Franchise.

Any franchise granted by the Town shall not be exclusive and the Town may grant a similar franchise to any person at any time.

7.21 Broadband Cable communications Service.

- 1) The Cable Communications System permitted to be installed and operated hereunder shall be operated in conformance with the FCC's Technical Standards 47 C.F.R. §76.601 et. Seq.
- 2) The grantee shall continue, throughout the term of the franchise, to maintain the technical standards and quality of service set forth in this Section. Should the Town Board reasonably find, by Resolution, that the grantee has failed to maintain these technical standards and quality of serviced, and should it, by Resolution, specifically enumerate improvements to be made, the grantee shall make such improvements.
- 3) The Cable System shall carry and deliver to all subscribers all of the signals as provided in the grantee's application.

7.22 Preferential or Discriminatory Practices Prohibited.

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

7.23 Unauthorized Connections or Modifications.

- 1) Unauthorized connections Prohibited. It shall be unlawful for any firm, person, group, company corporation, or governmental boy or agency, without the expressed consent of the grantee, to make any connection, extension, or division, whether physically, acoustically, inductively, electronically, or

otherwise, with or to any segment of the grantees' cable system. It shall further be illegal for any firm, person, group, company, corporation or governmental body or agency, without the expressed consent of the grantee, to possess or receive any signals or transmissions, including specifically the transmission of messages or programming over the cable system on a pay channel or pay per program basis.

- 2) Unauthorized Sale. It shall be unlawful for any firm, person, group, company corporation, or governmental body or agency, to sell, or solicit for sale, any facilities, devices, or appurtenances used for the purpose of any or all acts unlawful as prohibited by paragraph 1, above.
- 3) Removal or Destruction Prohibited. It shall be unlawful for any firm, person, group, company corporation, or governmental body or agency to willfully interfere, tamper remove, obstruct, or damage any part, segment, or content of a franchise Broadband Telecommunications network for any purpose whatsoever.
- 4) Violations. Any firm, person, group, company corporation, or governmental body or agency convicted of violation of this Section shall be subject to a fine of not more than Five Hundred dollars (\$500), together with costs of such prosecution. Violation of this Section shall be considered a separate offense for each twenty-four (24) hour period the violation continues following notification or discovery.

7.24 Government connections.

The grantee shall provide a free one-time connection to any governmental building and/or facility which is passed by the cable. The town Board shall pay for all wiring within said building or facilities in excess of one hookup.

7.25 Subscriber Privacy.

- 1) Use of Data from Subscriber. A grantee, Town, or any person shall not initiate or use any form, procedure, or devise, for procuring information or data from cable subscriber's' terminals by use of the cable system, without prior authorization from each subscriber so affected. Valid authorization shall mean approval from the subscriber for a period of time not to exceed one (1) year and shall not have been obtained from the subscriber as a condition of service.
- 2) Subscriber Data. The Township or a grantee or any person shall not, without prior written valid authorization from the Town Board, provide any data identifying designated subscribers.

7.26 Penalties.

In addition to the procedures specified in Section 15.06, the following shall be in effect:

- 1) After notice and hearing the township may fine the grantee if granted fails to provide the service specified in this chapter, or any applicable government regulation. Grantee is not responsible for failure to provide adequate service which is caused by Acts of god, strikes, governmental or military action, or other conditions beyond its control.
- 2) Upon interruption of all services or channels, except for Acts of God, strikes, governmental or military action, or with express prior permission of the Town, the following shall apply:

- a) Over forty-eight (48) and less than seventy-two (72) hours, a ten percent (10%) rebate of one month's fees for all affected subscribers.
 - b) Over seventy-two (72) hours and twenty percent (20%) rebate of one month's fees for all affected subscribers.
 - c) A full month's rebate for all affected subscribers for any month in which one half or more of the service is interrupted.
- 3) If grantee violates any provision of this Chapter, it shall forfeit, together with the costs of prosecution, a sum of not less than \$50.00 nor more than \$500.00 for each violation.

7.27 Severability.

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

7.28 Franchise Grant.

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