

CHAPTER 3
CABLE TELEVISION FRANCHISE REGULATIONS

3.01 Definitions	3.17 Extension of Network
3.02 Granting a Franchise	3.18 Time for Performance
3.03 Significance of Franchise	3.19 Network Technical Requirements
3.04 Operation of Franchise	3.20 Performance Measurements
3.05 Rights Reserved by Village	3.21 Channels to be Provided
3.06 Application for Franchise	3.22 Service Standards
3.07 Acceptance and Effective Date of Franchise	3.23 Construction Standards
3.08 Termination of Franchise	3.24 Conditions of Street Occupancy
3.09 Regulatory Jurisdiction and Procedures	3.25 Interconnection
3.10 Committee Administrator	3.26 Preferential or Discriminatory Practices Prohibited
3.11 Reports and Records of the Grantee	3.27 Subscriber Privacy
3.12 Franchise Payment	3.28 Unauthorized Connections or Modifications
3.13 Liability and Indemnification	3.29 Penalties
3.14 Bonds	
3.15 Fees, Rates and Charges	
3.16 Education and Governmental Connection to the Broadband Communications Network	

3.01 Definitions. For the purpose of this ordinance, the following terms, phrases, and words and their derivatives shall have the meaning specified herein. When not inconsistent with the context, words used in the present tense include the future and words in the singular number include words in the plural number.

- (1) **Additional Service.** A subscriber service provided by the Grantee for which a special charge is made based on program or service content, time or spectrum space usage.
- (2) **Annual Gross Subscriber Revenues.** All revenues received by the Grantee, its affiliates or subsidiaries from and in connection with the operation of the Broadband Telecommunication Network in the Town, including, but not limited to, basic services, additional services, channel leasing and advertising revenue and as such term may be defined by the FCC.
- (3) **Basic Service.** All 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.
- (4) **Broadband Telecommunications Network (BTN).** Any network of cables, optical, electrical or electronic equipment, including cable television systems, used for the purpose of transmission of electrical impulses of television, radio and other intelligences, either analog or digital for sale or use by the inhabitants of the Town.

- (5) Commence Operation. Operation shall 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 fifty percent (50%) of the dwelling units located within the service area.
- (6) FCC. The Federal Communications Commission and any legally appointed or elected successor.
- (7) Franchise. The right, privilege and authority granted by this ordinance to construct, maintain and operate a cable television system in the Town.
- (8) Franchise Payment. Includes 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 such franchise.
- (9) Full Network Service. All basic services and additional services offered by the Grantee.
- (10) Grantee. All persons including, but not limited to, subsidiaries, parents, or affiliate companies, associations or organizations having any rights, power, privileges, duties, liabilities or obligations under this ordinance 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 agreement or operating agreement or whether otherwise arising or created.
- (11) Head End. The land, electronic processing equipment, antennas, tower, building and other appurtenances normally associated with and located at the starting point of a BTN, excluding the studio.
- (12) Reasonable Notice. The provision of notice of contemplated action delivered at least 48 hours prior to such action.
- (13) Sale. Includes any sale, exchange, barter or offer for sale.
- (14) Service Area. That geographical area within the incorporated limits of the Town which is served by a cable television system as from time to time agreed to between the Town and the Grantee.
- (15) Shall & Must. Each is mandatory.
- (16) Street. All streets, roadways, highways, avenues, lanes, alleys, courts, places, squares, curbs, sidewalks, easements, rights-of-way or other public ways of the Town which have been or may hereafter be dedicated and open to public use or such other public property so designated by law.

- (17) 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.
- (18) Subscriber. Any person, firm, company, corporation or association receiving either basic service or additional service from the Grantee under the schedule of charges filed with and approved by the Town.
- (19) Subscriber Terminal. The BTN's 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.
- (20) 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 90 percent of the dwelling units in the service area to which access is legally and reasonably available.
- (21) Town. The Town of Spring Green.
- (22) Town Board. The Town Board of the Town of Spring Green.

3.02 Granting a Franchise.

- (1) Required. No person shall construct, install, maintain or operate within any public street of 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 ordinance and unless such franchise is in full force and effect.
- (2) Review of Qualifications. Specific permission to operate a BTN under the provisions of this ordinance may be granted by the Town Board 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 Board has approved the Grantee's qualifications as a part of a public proceeding affording due process. Such review by the Town Board may be held in conjunction with a similar review of the Grantee by other municipalities.
- (3) Duration of Franchise. Upon filing by the Grantee of the property acceptance, the bond and the required insurance, the franchise shall take effect as in 3.07 and shall continue in full force and effect for 15 years unless earlier terminated as herein provided.

(4) Franchise Review.

- (a) Public Meetings. On or about the second, fifth, and tenth anniversaries of the effective date of the franchise, the Town shall schedule a public meeting or meetings with the Grantee to review the franchise performance, plans and prospects. If appropriate and agreeable, this meeting may be held jointly with the Village of Spring Green. The Grantee shall make available specified records, documents and information for this purpose and the Town may inquire in particular whether the Grantee is supplying a level and variety of services equivalent to those being generally offered at that time in the industry in comparable market situations.
- (b) Revising Franchise Requirements. The Town shall first confer with the Grantee regarding modifications in the franchise which might impose additional obligations on the Grantee and the Grantee may in turn seek to negotiate relaxations in any requirements previously imposed on it which are subsequently shown to be impractical.
- (c) Written Requests. Within 30 days of the conclusion of such negotiations, as determined by the Town, the Town may direct the Grantee to show cause why specified terms and conditions should not be incorporated into the franchise and the Grantee may similarly file with the Town a written request that specified obligations of its franchise be removed or relaxed. Implementation of such requests shall correspond as nearly as possible with the procedure set forth in 3.09(3). The Town Board shall order changes in the franchised rights and obligations of the Grantee only if it finds from all available evidence that such changes shall not impair the economic viability of the system or degrade the attractiveness of the system's service to present and potential subscribers.

(5) Review of Franchise Prior to Expiration.

- (a) Public Meeting to be Scheduled. At least 6 months prior to the expiration of the franchise, the Town shall schedule a public meeting or meetings with the Grantee to review the performance of the Grantee, including the results of the previous franchise reviews. If appropriate and agreeable, this meeting may be held jointly with the Village of Spring Green. The Town may require the Grantee to make available specified records, documents and information for this purpose and may inquire in particular whether the Grantee is supplying a level and variety of services equivalent to those being generally offered at that time in the industry in comparable market situations.
- (b) Determination on Reissue. The Town shall, within 45 days of the conclusion of such meeting, provide a determination as to whether a BTN franchise or franchises shall be reissued. In making such decision, the Town

shall consider the technical, financial and programming performance of the franchise holder and specifically with relation to any applications, promises or agreements made or entered into by the franchise holder and its performance of such applications, promises or agreements. If the Town determines not to reissue the franchise or franchises for reasons other than a material breach of the franchise or for causes unrelated to the performance thereunder, it shall be stated for purposes of 3.08(3).

- (c) **Public Proceedings.** The Town shall establish public proceedings leading to a final decision and such public proceeding shall include, but not be limited to, a public hearing providing opportunity for the public and applicant for the reissued franchise to appear. If appropriate and agreeable, such public proceedings may be held jointly with the Village of Spring Green.

3.03 Significance of Franchise.

- (1) **Franchise Nonexclusive.** Any franchise granted by the Town shall not be exclusive and the Town may grant a similar franchise to any person at any time.
- (2) **Franchise Amendable.** The scope of any franchise granted shall be amendable to allow the Grantee to innovate and implement new services and developments; provided that no such services or developments shall be implemented without the express approval of the Town Board.
- (3) **Privileges shall be Specified.** No privileges or exemption shall be inferred from the granting of any franchise unless it is specifically prescribed. Nothing in this ordinance shall be deemed to require the granting of a franchise when in the opinion of the Town Board it would not be in the public interest to do so.
- (4) **Authority Granted.** Any franchise granted shall permit the Grantee to construct, erect, operate, modify and maintain in, upon, along, above, over and under streets as defined in 3.01(16) which have been or may 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 BTN in the Town subject to the requirements of 3.25.
- (5) **Consent Prior to Transfer of Franchise.** Any franchise granted shall be a privilege to be held for the benefit of the public by the Grantee. The franchise shall not be sold, transferred, leased, assigned, or disposed of in whole or in part, either by forced or voluntary sale, merger, consolidation, mortgage, trust, receivership or any other means without the prior consent of the Town expressed by a Town Board resolution under such conditions as the Town Board may establish. Such consent by the Town Board shall not be withheld without a showing of reasonable cause.

- (6) Consent Prior to Change of Control. Prior approval of the Town Board shall be required where ownership or control of more than 5 percent of the voting stock of the Grantee is acquired by a person or group of persons acting in concert, none of whom already owns or controls 5 percent or more of such right of control, singly or collectively. Transfer from a subsidiary to a parent corporation or vice-versa shall not be considered as a change of control. Prior approval of the Town Board shall also be required for all changes in ownership or control by a person or group of persons acting in concert who already own or control 5 percent or more of such right of control, singly or collectively.
- (7) Mortgage or Pledge of Network. Nothing in this ordinance shall prohibit the mortgage or the pledge of the network or any part thereof. However, any such mortgage or pledge shall be subject to and subordinate to the right of the Town under the franchise, this ordinance or applicable law.
- (8) Subject to Other Regulatory Agencies' Rules and Regulations. The Grantee shall during the life of any franchise granted hereunder be subject to all lawful exercise of the police power by the Town and other duly authorized regulatory State and Federal bodies and shall comply with any ordinances which the Town has or shall adopt applying to the public generally and to other Grantees.
- (9) Compliance to Laws, Rules and Regulations. If any valid law, rule or regulation of any governing authority or agency having jurisdiction, including, but not limited to, the FCC, contravenes the provisions of this ordinance, such provisions shall be superseded by any such valid law, rule or regulation to the extent that these provisions are in conflict and contrary to any such law, rule or regulation.
- (10) Pole Use Agreements Required. Any franchise granted shall not relieve the Grantee of any obligation involved in obtaining pole or conduit use agreements from the gas, electric and telephone companies or others maintaining poles or conduits in the streets of the Town, when the Grantee finds it necessary to make use of such poles or conduits.
- (11) No Right of Property. Anything contained herein to the contrary notwithstanding, the award of any franchise hereunder shall not impart to the Grantee any right of property in or on Town owned property.
- (12) Franchise Binding. All provisions of this ordinance and any franchise granted shall be binding upon the Grantee, its successors, lessees or assigns.

3.04 Operation of Franchise.

- (1) Operation to be in Accordance with Rules. The Grantee shall maintain and operate its BTN in accordance with the rules and regulations of the FCC, the State of Wisconsin and the Town as are incorporated herein or as may be promulgated.

- (2) Studios, Office and Phone for Complaints. The Grantee shall maintain an office, production studio and public access facilities in the Village of Spring Green which shall be open during all normal business hours, have a listed local telephone number and be so operated that complaints and requests for repairs or adjustments shall be received at any time.
- (3) Service Records Maintained. The Grantee shall make and keep at an office maintained by Grantee in the Village of Spring Green a list of all complaints and interruptions or degradation of service received or experienced during the term of the franchise. The records shall also include complaint response time and service restoral period and shall be continuously open to inspection, examination or audit by any duly authorized representative of the Town.
- (4) 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 reasonable and necessary to enable the Grantee to exercise its rights and perform its obligations under this ordinance and any franchise granted hereunder.
 - (a) Rules to be in Conformance with Other Regulations. No rules, regulations, terms and conditions promulgated under subsection (4) shall be in conflict with the provisions of this ordinance or the laws of the State of Wisconsin or the rules and regulations of the FCC or any rules and regulations promulgated by the Town in the exercise of their respective regulatory authorities.
 - (b) Rules to be Filed with Town. Town copies of all rules, regulations, terms and conditions promulgated under subsection (4), together with any amendments, additions or deletions thereto shall be kept currently on file with the Town Clerk and another copy thereof shall be maintained for public inspection during normal business hours at the Grantee's office in the Village of Spring Green. No such rules, regulations, terms, conditions or amendments thereto shall take effect until so filed and maintained.
- (5) Subscribers' Antennas. The Grantee shall not require the removal or offer to remove or provide any inducements for removal of any potential or existing subscriber's antenna as a condition or provision of service.
- (6) Sale or Service of Television Receivers. Neither the Grantee during the period of the franchise nor any of its affiliates, subsidiaries, parent organizations, officers, directors or stockholders holding 5 percent or more of outstanding stock of the Grantee, shall within the corporate limits of the Village of Spring Green or Town or within 10 miles in any direction from the Village of Spring Green, directly or indirectly, engage in the retail sale, renting, leasing, or repairing of radio or television receivers or their appurtenances, nor shall they require any subscriber to utilize the services of any specific television or radio service business for the repair or maintenance of the subscriber's receiver, either radio or television.

- (7) Antenna Switch and Lightning Grounder. The Grantee, upon request from any subscriber, shall install at a reasonable charge thereof a lightning grounder or switching device so as to permit a subscriber to continue to utilize his own television antenna as he chooses.

3.05 Rights Reserved by Village.

- (1) Right of Amendment Reserved to Town. 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 unreasonable financial burden on the Grantee. Such additions or revisions shall be made only after a public hearing and the Grantee shall receive written notice of such hearing at least 30 days prior to the same. If appropriate and agreeable, the hearing provided by this paragraph may be held jointly with the Village of Spring Green.
- (2) No Impairment of Town Rights. 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 in this ordinance shall be construed to contract away, modify or abridge either for a term or in perpetuity, the Town's right of eminent domain.
- (3) Grantee Agrees to Town's Rights. 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 requirement of the Town in its exercise of such rights of powers which have been or shall be enacted or established.
- (4) Town's Right of Intervention. 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 in which the Grantee is a party.
- (5) Powers of the Town. Neither the granting of any franchise nor any provision governing the franchise shall constitute a waiver or bar to the exercise of any governmental right or power of the Town.
- (6) Town's Transfer of Functions. Any right or power in or duly imposed upon any elected official, officers, employee, department or board of the Town shall be subject to transfer by the Town to any other elected official, officer, employee, department, board or those of another municipality. Notwithstanding any other provisions herein, the Town shall have the unqualified right to delegate such of its rights and powers under this ordinance as it deems appropriate to the Village of Spring Green and as agreed between the Town and the Village of Spring Green.

- (7) Town's Right of Inspection. 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 ordinance and perform network measurements to insure compliance with the terms of this ordinance.
- (8) Town's Right to Acquisition. 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 control, the Town, or its municipal designee, shall have a right to purchase the BTN as set forth in section 3.08(3).
- (9) Town's Right of Network Installation. The Town may during the life of any franchise granted hereunder 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.

3.06 Application for Franchise. Applications for a franchise hereunder shall be filed with the Town Clerk and shall contain the following information and provisions:

- (1) Proposal Bond and Filing Fee. Provisions of the proposal bond as required by section 3.14 and payment of a nonrefundable filing fee of \$400.00, which sum shall be due and payable concurrently with the request for application information.
- (2) Name and Address of Applicant. The name and business address of the applicant and signature of applicant or appropriate corporate officers.
- (3) Description of Proposed Operation. A general description of the applicant'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 ordinance, management and marketing staff complement and procedures, and, if available, the rules of operation for public access.
- (4) Signal Carriage. A statement of television and radio services to be provided, including both off-the-air and locally originated signals.
- (5) Special Services. A statement setting forth a description of the automated services proposed and a description of the production facilities to be made available by the Grantee for the public, municipal and educational channels required to be made available under this ordinance and the FCC.
- (6) Programming Assistance. A statement establishing any additional funding facilities, equipment or personnel beyond those required elsewhere to be designated to effect and promote local programming development. It is understood that the foregoing shall be available without charge to all on a fair

and nondiscriminatory basis and may be used by the Grantee as well. Such funding and services shall be contingent upon a special showing where required that the proposed uses are consistent with the regulatory program of the FCC.

- (7) **Schedule of Charges.** A statement of applicant's proposed schedule of charges as required by the provisions of section 3.15.
- (8) **Corporate Organization.** 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.
- (9) **Stockholders.** 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 the applicant's outstanding stock.
- (10) **Intra Company Relationships.** A statement describing all intra company relationships of the applicant including parent, subsidiary or affiliated companies.
- (11) **Agreements and Understandings.** A statement setting forth all agreements and understandings, whether written or oral, existing between the applicant and any other person with respect to any franchise awarded hereunder and the conduct of the operation thereof existing at the time the application is submitted.
- (12) **Financial Statement.** If the applicant is a corporation, audited financial statements for the previous two fiscal years. If the applicant is a partnership, copies of the US Partnership Return of Income (IRS Form 1065) for the two previous fiscal years. If the applicant is a sole proprietor, copies of the US Individual Income Tax Return (IRS Form 1040) for the two previous fiscal years.
- (13) **Financial Projection.** A 10-year operating proforma which shall include the initial and continuing plant investment, annual profit and loss statements detailing income and expenses, annual balance sheets and annual levels of subscriber penetration. Costs and revenues anticipated for voluntary services shall, if presented, be incorporated in the proforma as required in this ordinance but shall be separately identified in the proforma.
- (14) **Financial Support.** Suitable written evidence from a recognized financial institution, addressed to both the applicant and to the Town, advising that the applicant's financial ability and planned operation have been analyzed by the institution and that the financial institution is prepared to make the required funds available to the applicant if awarded the franchise. If the planned operation is to be internally financed, a board resolution shall be supplied authorizing the obtaining and expenditure of such funds as are required to construct, install and operate the BTN contemplated hereunder.

- (15) **Technical Description.** A technical description of the type of system proposed.
- (16) **Technical Statement.** A statement from the applicant's senior technical staff member or consultant advising that he has reviewed the network description, the network technical standards, performance measurements, channels to be provided, service standards, construction standards and conditions of road occupancy as required under section 3.19 through 3.25 and that the applicant's planned network and operation thereof shall meet all the requirements set forth therein.
- (17) **Existing, Pending and Proposed Franchises.** 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 who has knowledge of the applicant.
- (18) **Convictions.** A statement as to whether the applicant or any of its officers or directors or holders of five percent or more of its voting stock has in the past 10 years been convicted of or has charges pending for any felony or misdemeanor and the disposition of each such case.
- (19) **Operating Experience.** A statement detailing the prior cable television experience of the applicant including that of the applicant's officers, management and staff to be associated with the proposed operation.
- (20) **Franchise Renewal Information.** If an application is for renewal of a franchise, the proposal shall include, in addition to the information required under subsections (1) through (19) above, the following:
 - (a) A summary of the technical, financial and programming history of the network since the granting of the franchise.
 - (b) A statement and timetable that outlines all proposed changes, expansion or improvements in the system as to services, programming or technical specifications during the forthcoming five year review period.
- (21) **Additional Requirements.** The applicant for a franchise shall respond specifically and in sequence to subsections (1) through (19) and shall be bound separately from any additional information offered by the applicant. Fifteen copies of the application shall be supplied to the Town. Supplementary, additional or other information that the applicant deems reasonable for consideration may be submitted at the same time as its application but shall be separately bound and submitted in the above number of copies. The Town may at its discretion consider such additional information as part of the application.

- (22) **Supplementation to Application.** The Town may require such supplementary, additional or other information that the Town deems reasonably necessary for its determinations. Such modifications, deletions, additions or amendments to the application shall be considered only if specifically requested by the Town.

3.07 Acceptance and Effective Date of Franchise.

- (1) **Franchise Acceptance Procedure.** 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 date 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 of insurance as set forth in section 3.13(6).
 - (c) A performance bond in the penal sum of \$50,000.00 as set forth in section 3.14(2).
 - (d) Written notification of the Grantee's location and address for mail and official notification from the Town.
- (2) **Forfeiture of Proposal Bond.** If the Grantee fails to comply with subsection (1), it shall acquire no rights, privileges or authority under this ordinance whatever and the amount of the proposal bond or certified check in lieu thereof submitted with its application shall be forfeited in full or the Town as liquidated damages.
- (3) **Grantor to Have No Recourse.** The Grantee shall have no recourse against the Town for any loss, cost, expense or damage arising out of any provisions or requirement of this ordinance 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 which are performed outside the regulatory or franchise awarding authority hereunder.
- (4) **Acceptance of Power and Authority of Town.** 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.
- (5) **Inducements Not Offered.** 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 ordinance.

- (6) **Grantee Accepts Terms of Franchise.** The Grantee acknowledges by the acceptance of this ordinance and the franchise 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 against the Town the claim that any provision of this ordinance as adopted and any franchise granted hereunder is unreasonable, arbitrary, invalid, or void.
- (7) **Incorporation of Proposals.** The Grantee, by the acceptance of any franchise awarded hereunder, agrees that the matters contained in the Grantee's application for a 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.

3.08 Termination of Franchise.

- (1) **Grounds for Revocation.** The Town may revoke any franchise and rescind all rights and privileges associated with the franchise in the following circumstances:
 - (a) If the Grantee defaults in the performance of any of its obligations under the franchise and fails to cure the default within 30 days after receipt of written notice of the default from the Town.
 - (b) If the Grantee should fail to provide or maintain in full force and effect the performance bond and liability and indemnification coverage as required in section 3.14 and 3.15.
 - (c) If a petition is filed by or against the Grantee under the Bankruptcy Act or any other insolvency or creditors rights law, state or federal, and the Grantee fails to have it dismissed.
 - (d) If a receiver, trustee or liquidator of the Grantee is applied for or appointed for all or part of its assets.
 - (e) If the Grantee makes an assignment for the benefit of creditors.
 - (f) If any court of competent jurisdiction, the FCC or any state regulatory body by rules, decision or other action determines that any material provision of the franchise documents, including this ordinance, is invalid or unenforceable.
 - (g) If the Grantee violates any orders or ruling of any regulatory body having jurisdiction over the Grantee unless the Grantee is lawfully contesting the legality or applicability of such order or ruling.

- (h) If the Grantee fails to receive the necessary FCC or state certification unless such failure is directly attributable to an action or condition imposed by the Town.
 - (i) If the Grantee fails to obtain all necessary approvals, permits and agreements as set forth in section 3.25.
- (2) Procedure Prior to Revocation. Upon the occurrence of any of the events enumerated in subsection (1), the Town Board may, after hearing, upon 30 days written notice to the Grantee citing the reasons alleged to constitute cause for revocation, set a reasonable time in which the Grantee shall remedy the cause. If during the 30 day period the cause shall be cured to the satisfaction of the Town, the Town may declare the notice to be null and void. If the Grantee fails to remedy the cause within the time prescribed, the Town Board may revoke the franchise. Before a franchise may be terminated, the Grantee shall be provided with an opportunity to be heard before the Town Board. If agreeable and appropriate, the hearing provided by this paragraph may be held jointly with the Village of Spring Green.
- (3) Purchase of System by Town.
 - (a) If the Town determines not to reissue the franchise for reasons other than a material breach of the franchise or reasons unrelated to the performance of the franchise holder or upon receipt of an application for assignment of the franchise or upon change of control, the Grantee shall first offer the BTN for sale to the Town, or its municipal designee, at a fair and just market value, which value shall include the fair market value of the system as a going concern including the franchise itself and the rights and privileges granted by the Town.
 - (b) When a franchise is revoked pursuant to this section or expires and is not renewed because of a material breach of the franchise or for reasons related to the performance of the franchise holder, the Grantee shall first offer the BTN for sale to the Town, or its municipal designee, at a fair and just market value, which value shall not include any value for the franchise itself or for any of the rights or privileges granted by the Town.
 - (c) If the determination of fair market value cannot be negotiated or determined, such value shall be determined by an impartial arbitration procedure pursuant to Chapter 298 of the Wisconsin Statutes, wherein the Grantee and the Town, or the Town's municipal designee, shall each choose an arbitrator and the arbitrators chosen shall select a third arbitrator and the three arbitrators thus chosen shall determine the fair market value of the BTN. The value thus determined shall be decreased by the amount of any damages sustained by the Town in connection with the revocation or expiration of the franchise, including without limitation, payment made by the Town to

another person or entity to operate the BTN for a temporary period after revocation. The cost of the arbitration procedure shall be shared equally by the Town and the Grantee.

- (d) The Town shall have 90 days to exercise the right of first refusal to purchase the network, such 90 days commencing on the day the fair market value of the system is determined either through negotiation or the arbitration procedure. If the Town does not exercise its option to purchase and the BTN is not sold to another person who has obtained a franchise from the Town in a reasonable period of time, the Grantee, upon request of the Town, shall promptly remove all its plant, structures and equipment; provided that if the Town determines not to exercise its right of first refusal it shall not unreasonably refuse to renew or grant a franchise during a reasonable interim period. While transfer of the network and franchise is being negotiated, arranged or ordered, the Grantee may be required to continue service to the public unless for reasons beyond the control of the Grantee such operation shall be economically unfeasible to the Grantee.
- (4) Restoration of Property. In removing its plant, structures, and equipment, the Grantee shall refill at its own expenses any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to the Grantee's removal of its equipment and appliances, without affecting the electric or telephone cables, wires or attachments. The Town shall inspect and approve the condition of the public ways and public places and cables, wires, attachments and poles after removal. Liability insurance and indemnity provided in section 3.13 and the performance bond in section 3.14 shall continue in full force and effect during the period of removal.
- (5) Restoration by Town; Reimbursement of Costs. If the Grantee fails to complete any work required by subsection (4) or any work required by other Town ordinance within the time established and to the satisfaction of the Town, the Town may cause such work to be done and the Grantee shall reimburse the Town the costs thereof within 30 days after receipt of an itemized list of such costs or the Town may recover such costs as provided in section 3.14(2).
- (6) Lesser Sanctions. Nothing shall prohibit the Town in its rules and regulations from imposing lesser sanctions or censures than revocation for violations or provisions of this ordinance including the shortening of the franchise period for substantial and repeated violations.
- (7) Expiration: Extended Operation. Upon the expiration of a franchise, the Town may by resolution on its own motion or request of the Grantee require the Grantee to operate the franchise for an extended period of time not to exceed 6 months from the date of any such resolution. All provisions of the franchise shall continue to apply to operation during an extension period. The Town shall serve written notice at the Grantee's place of business office of intent to extend under

this section at least 30 days prior to expiration of the original franchise or any extensions thereof.

3.09 Regulatory Jurisdiction and Procedures.

- (1) Continuing Regulatory Jurisdiction. The Town shall have continuing regulatory jurisdiction and supervision over the operation of any franchise granted hereunder and may from time to time adopt such reasonable rules and regulations as it may deem necessary for the conduct of the business contemplated hereunder.
- (2) Broadband Telecommunications Committee. The continuing regulatory jurisdiction of the Town shall be exercised by a Broadband Telecommunications Committee composed of one member of the Town Board and two citizen members all appointed by the Town Chairman with the approval of the Town Board and all to serve a term of two years. By agreement with the Village of Spring Green, the Town may decline to appoint a Broadband Telecommunications Committee of its own or a Committee Administrator under section 3.10 and may have its interests represented in all matters herein provided by the Broadband Telecommunications Committee and Committee Administrator of the Village of Spring Green or, in the alternative, and subject to agreement with the Village of Spring Green may have its own representative on the said Broadband Telecommunications Committee. In the event the Town appoints a Broadband Telecommunications Committee, the duties of the Committee shall include:
 - (a) Resolving disputes or disagreements between subscribers and the Grantee after investigation should the subscriber and the Grantee not first be able to resolve their dispute or disagreement. Such decisions may be appealed as set forth in section 3.09(3).
 - (b) Reviewing and auditing all reports and filings submitted to the Town as required hereunder and such other correspondence as may be submitted to the Town concerning the operation of the BTN. Reviewing the rules and regulations set by the Grantee under the provisions of section 3.04.
 - (c) Assuring that all tariffs, rates and rules pertinent to the operation of the BTN in the Town are made available for inspection by the public at reasonable hours and upon reasonable request.
 - (d) Conferring and coordinating with the Grantee on the interconnection of its BTN with other similar networks.
 - (e) Reviewing rates and recommending any rate changes to the Town Board as provided in section 3.15.
 - (f) Allocating funds it deems necessary to assist production and programming on the public access channels.

- (g) Conduct or cause to be conducted from time to time a market survey to determine the quality and quantity of service being provided as viewed by existing and potential subscribers.
 - (h) Monitor and review programming provided over the BTN and to make recommendations to the Grantee and to users especially with respect to public access or local origination programming.
- (3) Regulatory Procedures.
- (a) The Committee shall first consider any inquiry or proceeding requiring Town Board action to be taken in regard to the BTN or franchise, whether upon application or request by the Grantee or any other party or on its own motion and shall submit such consideration, together with a recommendation, to the Town Board within 60 days of the receipt of such request unless such time is extended by agreement between the Committee and the requesting party. Any final action taken by the Town Board on any recommendation shall be taken after 30 days notice of such proposed action, inquiry or proceeding is published in The Home News and a copy of such notice is served upon the Grantee. The Grantee shall have an opportunity to respond at the hearing and in writing. Members of the public shall have an opportunity to respond to comment in writing on the proposed action and appear at such proceeding or hearing. Such hearing or proceeding shall be set no later than 90 days after notice to the Grantee and the Town Board shall act upon the proceeding within 180 days of the notice of hearing unless such time is extended by agreement between the Town and the Grantee.
 - (b) The public notice required by this section shall state clearly the action or proposed action to be taken, the time provided for response, including response by the public, the person or persons in authority to whom such responses shall be addressed and such other procedures as may be specified by the Town Board. If a hearing is to be held, the public notice shall give the date, location and time of such hearing. The Grantee shall be a necessary party to any hearing conducted in regard to its operation.
- (4) Failure to Enforce Provisions. The Grantee shall not be excused from complying with any of the terms and conditions of the franchise by any failure of the Town upon one or more occasions to insist upon or to seek compliance with any such terms or conditions.
- (5) Contravention of Provisions. The cost of any successful litigation incurred by the Town to enforce provisions of this ordinance or of the franchise or in relation to a franchise shall be reimbursed to the Town by the Grantee. Such costs shall include filing fees, costs of depositions, discovery and expert witnesses, all other expenses of suit and reasonable attorney fees.

3.10 Committee Administrator.

- (1) Responsibilities of the Administrator. The Broadband Telecommunications Committee shall designate one of its members to act as Administrator of the Committee. The Administrator shall be charged with such responsibilities as may be assigned to him, including the following:
 - (a) Receive and investigate such complaints, disputes, or disagreements as may be directed or referred to the Town between subscribers and the Grantee of a BTN and other distribution systems interconnected with the BTN not first able to resolve their differences.
 - (b) Report his recommendations upon complaints, disputes or disagreements after investigation to the Committee.
 - (c) Review and audit reports, records, communications and Grantee regulations submitted to the Town and conduct such inspections of the system as may be necessary in support of such review as provided for in this ordinance.
 - (d) Work with the Committee, the public and the media to insure that all tariffs, rates, charges and rules pertinent to the operation of the BTN in the Town are made available for inspection by the public at reasonable hours upon reasonable request.
 - (e) Confer and coordinate with the Grantee on the interconnection of its BTN with other similar networks.
 - (f) Perform such other duties as assigned by the Town Board.

3.11 Reports and Records of the Grantee.

- (1) Annual Financial Reports Required. The Grantee shall file annually with the Town Clerk not later than 3 months after the end of the fiscal year of the Grantee during which Grantee accepted a franchise hereunder and within 3 months after the end of each subsequent fiscal year, 2 copies of:
 - (a) The report to Grantee's stockholders.
 - (b) An income statement identifying all revenues and expenses applicable to Grantee's operations under the franchise during the fiscal year or fraction thereof.
 - (c) A balance sheet listing the assets and liabilities of the Grantee which shall include a listing of Grantee's properties devoted to the network operations together with an itemization of Grantee's investment in each of such properties on the basis of original cost less depreciation.

- (d) The documents and reports described in (b) and (c) hereof and such other information as the Town may request pertaining to the financial condition of the Grantee shall be prepared by a certified public accountant.
- (2) Annual Facilities Report. The Grantee shall file annually with the Town Clerk not later than 3 months after the end of the Grantee's fiscal year, 2 copies of a total facilities report setting forth the total physical miles of plant installed or in operation during the fiscal year and a map showing the location of the same.
- (3) Annual Service Record Report. The Grantee shall, if requested by the Town, file annually with the Town Clerk not later than 3 months after the end of the Grantee's fiscal year, 2 copies of a list of all trouble complaints and network "downtime" received or experienced during the fiscal year. All such submitted data shall also include complaint disposition and response time. For the purposes of this provision, certified copies of a complaint logbook reflecting all such incidents shall suffice.
- (4) Annual Measurements Report. The Grantee shall file annually with the Town Clerk not later than 3 months after the end of the Grantee's fiscal year, 2 copies of a report on the network's technical measurements set forth in section 3.21.
- (5) Annual Operations Report. The Grantee shall file annually with the Town Clerk not later than 3 months after the end of the Grantee's fiscal year, 2 copies of the following supplemental information:
 - (a) If a nonpublic corporation, a list of all current shareholders and bondholders both of record or beneficial. If a public corporation, a list of all shareholders who individually or as a concerted group hold 5 percent or more of the voting stock of the corporation.
 - (b) A current list of all Grantee's officers and directors including addresses and telephone numbers.
 - (c) Copies of all pertinent agreements or contracts, including pole use agreements, entered into by the Grantee during the fiscal year in the conduct of its business under a franchise agreement granted hereunder.
 - (d) Two copies of all types of subscriber agreements if different from those on file. Copies of individual subscribers' agreements shall not be filed with the Town.
 - (e) Copies of all rules and regulations promulgated by the Grantee during the fiscal year in the conduct of its business in accordance with the provisions of section 3.04.

- (f) A copy of the annual report of the parent firm which owns an interest of 5 percent or more of the voting stock of the Grantee and such other annual reports of subsidiaries or divisions of the new parent firm as the Town deems necessary.
- (6) **Public Availability of Reports.** Such reports as required under this chapter shall be available to the public in the office of the Town Clerk or, if agreed to between the Town and the Village of Spring Green, in the office of the Village Clerk of the Village of Spring Green during normal business hours. Subscribers shall be notified of the availability of such reports.
- (7) **Correspondence.** The Grantee shall simultaneously file with the Town Clerk a copy of each petition, application and communication transmitted by the Grantee to or received by the Grantee from any federal, state or other regulatory commission or agency having competent jurisdiction to regulate and pertaining to the operations of any BTN authorized hereunder.
- (8) **Town's Access to Records.**
 - (a) The Town shall during the life of any franchise granted hereunder have access at all normal business hours and upon the giving of reasonable notice, to the Grantee's contracts, engineering plans, accounting, financial data and service records relating to the property and the operations of the Grantee and to all other records required to be kept hereunder. Nothing contained herein shall prevent the Grantee from enjoining the Town from reviewing documents relating to proprietary interests not related to its operation under this ordinance in the Town's regulatory program.
 - (b) Records of subscriber lists and statistical data not otherwise required by this chapter shall be made available upon a ruling by a judge of competent jurisdiction that such records are material to the Town's regulatory program.
- (9) **Subscriber Agreement.** The form of Grantee's agreements with its subscribers shall be subject to the approval of the Town Board and 2 copies of all types of agreements used by the Grantee shall be filed and maintained with the Town Clerk.

3.12 Franchise Payment.

- (1) **Filing Fee.** Applicants for a franchise shall pay a nonrefundable filing fee to the Town of \$400.00 due and payable concurrently with the request for the proposal information.
- (2) **Franchising Compensation.** Grantees of a franchise hereunder shall provide an initial payment to the Town in an amount equal to the direct costs of granting the franchise not to exceed \$7,500.00 due and payable concurrently with the

Grantee's acceptance of the franchise to offset the Town's costs in the franchise awarding process.

- (3) Annual Franchise Payment. Grantees of a franchise shall pay to the Town an annual fee of three percent (3%) of annual gross subscriber revenue. Such fee shall be used to offset the administrative and regulatory costs incurred by the Town with respect to the BTN and shall be in lieu of all other Town permits and fees but shall not be in lieu of municipal property tax, other state, county or local taxes or any other payment owed to the Town.
- (4) Method of Computation; Interest.
 - (a) Sales taxes or other taxes levied directly on a per subscription basis and collected by the Grantee shall be deducted from the local annual gross subscriber revenues before computation of sums due the Town is made. Payments due the Town under the provisions of subsection (3) shall be computed annually as of December 31 for the preceding year and shall be paid simultaneously with the filing of annual reports required under section 3.11 to the Town Clerk during regular business hours. The payment period shall commence on the effective date of the franchise. The Town shall be furnished a statement with each payment by a Certified Public Accountant reflecting the total amounts of annual gross subscriber revenues and the above charges, deductions and computations for the annual payment period covered by the payment.
 - (b) If any payment is not made as required, interest on the amount due as determined from the annual gross subscriber revenues as computed by a Certified Public Accountant shall accrue from the date of the required submittal at a rate equal to the rate then being charged by the Village of Spring Green for delinquent water and sewer bills.
- (5) Recomputation. 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 under this ordinance or for the performance of any other obligation of the Grantee.

3.13 Liability and Indemnification.

- (1) Indemnification of Franchise. The Grantee shall save the Town harmless from all loss sustained by the Town on account of any suit, claim or demand which the Town may legally be required to pay as a result of the enactment of this ordinance and the award of a franchise thereunder except as such suit, judgment, execution, claim or demand may arise from the process or action of selection of a Grantee or Grantees for award of a franchise.

- (2) Indemnification of Town in Franchise Operation. The Grantee shall save the Town and its agents, employees, assigns and any municipality with which the Town may have an agreement relating in any manner to the BTN within the Town harmless from and against all claims, damages, losses and expenses, including attorney fees sustained by the Town on account of any suit, judgment, execution, claim or demand arising out of, but not limited to, copyright infringement and other damages arising out of the installation, operation or maintenance of the BTN authorized herein, whether or not any act or omission complained of is authorized or allowed or prohibited by this ordinance and any franchise granted. This shall not apply to acts of the Town, its agents, employees or assigns or any municipality with which the Town may have an agreement relating in any manner to the BTN within the Town.
- (3) Reimbursement of Costs. The Grantee shall pay and by its acceptance of any franchise granted agrees that it shall pay all expenses incurred by the Town in defending itself with regard to all damages and penalties mentioned in subsections (1) and (2). Such expenses shall include all out of pocket expenses such as consultants or attorney fees and shall also include the reasonable value of any services rendered by the Town Attorney or any other agent or employee of the Town or any municipality with which the Town may have an agreement relating in any manner to the BTN within the Town.
- (4) Public Liability Insurance. The Grantee shall maintain throughout the term of the franchise and any extensions thereto or as required by section 3.08(4) a general comprehensive liability insurance policy naming as an additional insured the Town, its officers, boards, committees, agents, employees and assigns in a company rated "A" or better in financial capability in the Best Rating Service and approved by the Town and in a form satisfactory to the Town, protecting the Town and all persons against liability or loss or damage for personal injury, death, or property damage, occasioned by the operations of Grantee under any franchise granted hereunder in the amount of:
- (a) \$1,000,000.00 for personal injury or death resulting from any one occurrence.
 - (b) \$500,000.00 for property damage resulting from any one occurrence.
- (5) Notice of Cancellation or Reduction of Coverage. The insurance policies mentioned above shall contain an endorsement stating that the policies are extended to cover the liability assumed by the Grantee under the terms of this ordinance and shall contain the following endorsement:
- It is hereby understood and agreed that this policy may not be cancelled nor the amount of coverage thereof reduced until 30 days after receipt by the Town Clerk by registered mail of 2 copies of a written notice of such intent to cancel or reduce coverage.

- (6) Evidence of Insurance Filed With Town Clerk. All policies of insurance or certified copies thereof and written evidence of payment of required premiums shall be filed and maintained with the Town Clerk during the term of any franchise granted or any renewal thereof.
- (7) No Waiver of Performance Bond. Neither the provisions of this ordinance nor any insurance accepted by the Town pursuant hereto, nor any damages recovered by the Town thereunder, shall be construed to excuse performance by the Grantee or limit the liability of the Grantee under any franchise issued hereunder or for damages, either to the full amount of the bond or otherwise.

3.14 Bonds.

- (1) Proposal Bond. Each applicant for a franchise shall submit a proposal bond in a form acceptable to the Town or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Town in the amount of \$10,000.00.
- (2) Performance Bond. The Grantee shall maintain and by his acceptance of any franchise granted agrees that he shall maintain through the term of the franchise or any renewal or extension thereof or as required in section 3.08(4), a performance bond running to the Town with at least one good and sufficient surety or other financial guaranties approved by the Town in the penal sum total of not more than \$50,000.00 conditioned upon the performance of the Grantee and upon the further condition that if the Grantee shall fail to comply with any law, ordinance or regulation governing the franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damage 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 fees and costs, up to the full amount of the bond. The bond shall contain the following endorsement:

It is hereby understood and agreed that this bond shall not be cancelled nor the intention not to renew be stated until 30 days after receipt by the Town Clerk by registered mail of 2 copies of a written notice of such intent to cancel or not renew.

- (3) Forfeit of Proposal Bond. If the applicant fails or refuses to accept a franchise or fails or refuses to furnish the performance bond within 30 days after written notification of the award of a franchise by the Town, the applicant shall be considered to have abandoned its proposal and the Town shall enforce the proposal bond in accordance with its terms or retain the proceeds of the certified check.

- (4) Return of Proposal Bond. Proposal bonds or certified checks received in lieu thereof from applicant's whose proposals are not accepted by the Town shall be returned to the applicant as soon as the proposal is rejected.
- (5) Bond Evidence to be Filed With Town. Two copies of all bonds or certified copies thereof and written evidence of payment of required premiums shall be filed and maintained with the Town Clerk during the term of any franchise granted hereunder or any renewal thereof.

3.15 Fees, Rates and Charges.

- (1) Charges for Services. All of the following charges for services shall be subject to Town Board approval in accordance with the schedules of charges contained in the Grantee's application for franchise which schedule is included by reference and any modifications to such schedule that may result from a review requested by the Town on its own motion or at the request of the Grantee. The charges shall be in accordance with the requirements set forth in (a) through (c):
 - (a) Basic Service Charges. The Grantee may make a charge to subscribers, private or commercial, for installation and connection and reconnection to its BTN and a fixed monthly charge for "basic service" within the meaning of section 3.01.
 - (b) Buried Service Charge. If a subscriber requests a buried service drop to his residence, the Grantee shall bury such drop upon the payment of such fee that has been approved by the Town Board.
 - (c) Unusual Connection Charges. The Grantee may make a charge to subscribers for installation and connection to its network in addition to those charges set forth in (a) above where unusual circumstances exist, such as remote or relatively inaccessible subscriber locations or for an antenna switching device.
- (2) Notification of Charges. The Grantee may establish charges for its services not specified in subsection (1); however, all such charges, including, but not limited to, additional service, leased channel, discrete channel, production and advertising rates and the charge to all users of the access channels for reasonable production and origination costs shall be made public and 2 copies of the schedule of charges as originally established and thereafter modified shall be filed with the Committee Administrator.
- (3) Rates to be Fair and Reasonable. Charges set by the Grantee for services shall be fair and reasonable and calculated to offset all necessary costs for provision of service, including a fair rate of return on its investment devoted thereto under efficient and economical management.

- (a) No Consideration Beyond Schedule. The Grantee shall receive no consideration for or in connection with a service to its subscribers other than what may have been filed with or approved by the Town in accordance with this section.
 - (b) Deposits on Advance Payments to be Approved. The Grantee shall receive no deposit, advance payment or penalty from any subscriber other than those established in the schedule of charges previously filed with or approved by the Town Board.
 - (c) Purchase of Convertor or Switch. If a set convertor, coaxial switch or other appurtenant device is required to permit subscribers to receive full network service, the Grantee shall give the subscriber the option of purchasing the convertor at a reasonable cost at the time of initial installation, or of purchasing the convertor switch or other appurtenant device on the then prevailing local installment plan with interest. The Grantee shall allow the subscriber to provide a convertor, switch or other appurtenant device at its subscriber terminal, provided that such device meets with the approval of the Grantee. Such approval shall not be withheld if it is shown that such device does not interfere with the operation of the BTN. If the subscriber elects not to purchase or provide the convertor, switch or other appurtenant device, the Grantee may make an additional charge for the rental of such convertor, switch or other appurtenant device provided that the additional charge is in accordance with the schedule of charges contained in the Grantee's application for a franchise or hereafter filed with and approved by the Town.
 - (d) Subscriber Refunds. If any subscriber of the Grantee of less than 30 days terminates service due to the Grantee's failure to render services to such subscriber of a type and quality provided for herein, or if service to a subscriber is terminated by the Grantee without good cause, or if the Grantee ceases to operate the BTN authorized herein for any reason except termination or expiration of a franchise granted hereunder, the Grantee shall refund to such subscriber an amount equal to the installation and connection charge paid by such subscriber in accordance with the then existing schedule of charges. The Grantee shall not be required to refund the monthly charge unless he expresses a willingness to do so.
- (4) Acceptance of Town's Authority to Regulate Rates. The Grantee shall agree and by its acceptance of a franchise specifically agrees to be subject to the Town or other regulatory bodies having competent jurisdiction to fix just, reasonable and compensatory rates.
- (5) Rates Subject to Other Regulations. The Grantee in submitting its request for approval of initial rates or any subsequent rates shall do so for all services to be performed to or for subscribers described in subsection (1). If FCC rules and regulations or any other applicable laws or regulations shall subsequently

determine that the Town has jurisdiction over other services or service to be offered or performed such rates shall be subject to approval by the Town at that time.

- (6) Reduction of Fees. If during the term of any franchise or renewal thereof granted hereunder the Grantee receives refunds or if the cost of operation to the Grantee is reduced as a result of an order of any regulatory body having competent jurisdiction, the Grantee shall pass on to its subscribers on a prorated basis any such savings or reduced costs on a basis to be determined by the Town Board.
- (7) Rate Change Procedures.
 - (a) Freeze on Initial Rates. The Grantee shall file an application for an increase in fees, rates or charges until 24 months have expired from the time the Grantee has been determined to have commenced operation or from the date the franchise is granted, whichever is later, except to seek relief from the imposition of any federal, state or local taxes, copyright or other legally imposed fees not contemplated in the original rate determinations.
 - (b) Limitation on Application for Increase in Rates. The Grantee shall not file more than one application for an increase in fees, rates or charges during any calendar year except to seek relief from the imposition of federal, state or local taxes, copyrights or other legally imposed fees not contemplated in the most recent rate determination.
 - (c) Review of Rates. The Grantee's schedule of fees, rates, or charges and any contemplated modifications shall be submitted to the Town Board. The Town Board may reduce or increase such fees, rates or charges by resolution and no change in the Grantee's schedule of fees, rates or charges shall be effective without the prior action of the Town Board as expressed in such resolution. No such resolution shall be adopted without prior public notice and opportunity for all interested members of the public, including the Grantee, to be heard, subject to the procedures set forth in section 3.09(3). No change in rates shall take effect until 30 days after the approval of the rates by the Town Board.
 - (d) Documentation of Request for Increase. Any increase requests, in addition to other factors described in this section, shall be supported by a showing of increased costs for the existing services or proposed services and 2 copies shall be filed with the Town Clerk and the Committee Administrator. If a Grantee requests a change, it shall present in detail, in writing, the statistical basis, in addition to other requirements as set out in this section, for the proposed fee change at least 90 days prior to the proposed effective date.

- (e) Records to be Made Available. In addition, for purposes of determining the reasonableness of Grantee fees, rates or charges, all such information, in accordance with section 3.11 shall be made available to the Town.
- (f) Notification of Changes in Regulatory Fees. The Grantee shall provide written notification to the Town Board of any changes received in regulatory fees payable by it to any other agency having regulatory jurisdiction over the Grantee.

3.16 Education and Governmental Connection to the Broadband Communications Network.

The Grantee shall provide free of charge upon request within the Town one connection and monthly service for basic service to each public and service institution as the Town may from time to time designate.

3.17 Extension of Network. The Grantee shall file with the Town Clerk 2 copies of its extension policy for potential subscriber dwellings beyond 300 feet from the nearest point of the existing network but within the Town limits. Such policy shall be approved by the Town and the Grantee shall not make or refuse to make any extension except as permitted by this approved policy.

3.18 Time for Performance.

- (1) Permit Application. The system shall be extended as rapidly as possible to all citizens within the Town as is reasonably possible to do under the circumstances of population density, distance and any other applicable factor. Within 60 days of the effective date of a franchise granted, the Grantee shall file with the appropriate authorities and utilities all initial papers and applications necessary to comply with the terms of this ordinance including the application for a franchise and any additions or amendments thereto and shall thereafter diligently pursue the acquisition of necessary pole attachment contracts or other necessary easements and where such necessary contracts have not been executed or easements obtained after a reasonable period of time as determined by the Town, the Town may in its discretion provide assistance to insure the extension of the system to all citizens.
- (2) Commencement of Construction. Within 120 days of the effective date of FCC certification, the Grantee shall initiate construction and installation of the BTN. Such construction and installation shall be pursued with reasonable diligence.
- (3) Commencement of Operation. Within 12 months of the effective date of FCC certification, the Grantee shall commence operation as defined in section 3.01.
- (4) Substantial Completion of Construction. Within 18 months of the effective date of FCC certification, the Grantee shall have substantially completed construction of the service area as defined in section 3.01.

- (5) Provisions of Basic Service. Within 24 months of the effective date of FCC certification, the Grantee shall have placed in use sufficient distribution facilities so as to offer basic service to 100 percent of the dwelling units in the service area to which access is legally and reasonably available.
- (6) Delays and Extension of Time. 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 case may be, for any period during which the Grantee demonstrates to the satisfaction of the Town Board that the Grantee is being subject to delay or interruption due to any of the following circumstances if reasonably beyond its control:
 - (a) Necessary utility arrangements, pole changeout or obtaining easement rights.
 - (b) Governmental or regulatory restrictions.
 - (c) Labor strikes.
 - (d) Lock outs.
 - (e) War.
 - (f) National emergencies.
 - (g) Fire.
 - (h) Acts of God.

3.19 Network Technical Requirements.

- (1) FCC Requirements Adopted. The Grantee shall operate the BTN in accordance with FCC technical standards and regulations as from time to time amended and which standards and regulations are hereby adopted and incorporated into this ordinance by reference.
- (2) Modifications by Town Board. The regulations adopted in subsection (1) shall continue to apply until repealed or made inapplicable by the Town Board. Notwithstanding the fact that the BTN may be in compliance with all applicable FCC rules and regulations and all other standards set forth herein, the Town may, after a hearing require a higher level of performance in any area to resolve signal quality or interference problems.

3.20 Performance Measurements.

- (1) FCC Requirements Adopted. The BTN shall meet FCC performance measurements as from time to time amended and which performance measurements are hereby adopted and incorporated into this ordinance by reference.
- (2) Modifications by Town Board. The performance measurements adopted in subsection (1) shall continue to apply until repealed or made inapplicable by the Town Board. The Town Board reserves the right to require additional tests at

specific terminal locations and conduct its own inspection of the BTN at its own motion at any time during normal business hours.

- (3) Report of Measurements. Copies of reports of measurements required by the FCC or other regulatory agencies shall be filed with the Town.

3.21 Channels to be Provided.

- (1) Public Access Channel. The Grantee shall provide at least one dedicated, non-commercial public access channel, associated production equipment and necessary staff production assistance to be made available for the first 5 minutes of live production to the public at no charge on a first come--first served nondiscriminatory basis. Hours of availability for use of such channel shall be specified in the application for franchise.
- (2) Education and Government Access Channels. The Grantee shall provide at least one dedicated channel for educational use and one dedicated channel for governmental use. Unless prohibited by FCC regulations, the Grantee shall make no charge to the users of such channels and if prohibited such charges shall be in accordance with the schedule of charges filed with the Town Clerk and approved by the Town Board.
- (3) Costs. The Grantee shall not be responsible for the production costs of programs prepared for transmission (other than for brief live studio presentations not exceeding 5 minutes) over the channels described in subsections (1) and (2), other than as Grantee may elect to do so. A schedule of rates for production and origination charges shall be filed with the Town Clerk and approved by the Town Board.
- (4) Television Broadcast Signal Carriage. The Grantee shall carry those television broadcast signals and FM signals as determined and directed by the Town Board.
- (5) Emergency Alert Override. The Grantee shall incorporate into its facilities the capability for an emergency override audio alert whereby a designee of the Town, in times of crisis, may introduce an audio message on all BTN appropriate channels simultaneously. The Grantee shall provide, in a location to be designated by the Town, all equipment necessary for use of the emergency alert system.
- (6) Parental Lockout. The Grantee shall provide for a reasonable fee a device which shall enable the operator to deny access to designated channels at times selected by the operator.

3.22 Service Standards.

- (1) Service Response and Rebate. The Grantee shall provide same day service response 7 days a week for all complaints and requests for repairs or adjustments

received prior to 2:00 p.m. each day. The response time for calls received subsequent to 2:00 p.m. shall not exceed 27 hours. The Grantee shall credit 1/30 of the monthly charge for basic service to each subscriber for each 24 hours following report of loss of service to the Grantee.

- (2) Service Interruptions and Notification. The Grantee, whenever it is necessary to interrupt service over the BTN for network maintenance, alteration or repair, shall do so at such time as shall cause the least amount of inconvenience to subscribers and unless such interruption is unforeseen and immediately necessary, the Grantee shall give reasonable notice thereof to the affected subscribers.
- (3) Upgrading of Facilities, Equipment and Service. The Grantee shall upgrade its facilities, equipment and service as subscribers' demands dictate so that its network is as advanced as the current state of technology with field-proven equipment shall allow.

3.23 Construction Standards.

- (1) Compliance With Safety Codes. All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970 and any amendments thereto as well as all state and local codes where applicable.
- (2) Compliance With Electrical Codes. All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the applicable state and local codes.
- (3) Antennas and Towers. Antenna supporting structures (towers) shall be designed for the proper loading zone as specified in Electronics Industry Association's R.S. 22A Specifications, as amended.
- (4) Compliance With Aviation Requirements. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aeronautical Agency, the State Aeronautics Board governing the erection and operation of supporting structures of television towers and all other applicable local or state codes and regulations.

3.24 Conditions of Street Occupancy.

- (1) Approval of Proposed Construction. A Grantee shall obtain the approval of the Town prior to commencing construction on the streets, highways, alleys, public grounds or places of the Town. Applications for approval shall be made to the Town Board.
- (2) Excavation Permits. A Grantee shall not open or disturb the surface of any street, sidewalk, driveway or public place without first having obtained the permission of

the Town Board to do so and the permission of any other governmental body that may be required with respect to any proposed excavation.

- (3) **Changes Required by Public Improvements.** A Grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place or remove from the street or other public place any property of the Grantee when required by the Town by reason of a traffic condition, public safety, street vacation, street construction, change or establishment of street grade, installation of sewers, drains, water pipes, Town owned power or signal lines or any other type of structures or improvements by public agencies.
- (4) **Use of Existing Poles or Conduits.** Nothing in this ordinance or any franchise granted hereunder shall authorize the Grantee to erect and maintain in the Town new poles where existing poles are servicing an area. The Grantee shall require permission from the Town before erecting any new poles, underground conduit or appurtenances where none exist at the time the Grantee seeks to install its network.
- (5) **Facilities not to be Hazardous or Interfere.** All wires, conduits, cables and other property and facilities of the Grantee shall be so located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic and travel upon the streets and public places of the Town. The Grantee shall keep and maintain all its property in good condition, order and repair. The Town may inspect and examine at any reasonable time and upon reasonable notice the property owned or used, in part or in whole, by the Grantee. The Grantee shall keep accurate maps and records of all its facilities and furnish copies of such maps and records as requested by the Town under section 3.11. A Grantee shall not place any poles or other equipment where they shall interfere with the rights or reasonable convenience of adjoining property owners or with any gas, electric or telephone fixtures or with any water hydrants or mains. All poles or other fixtures placed in a street shall be placed in the right-of-way between the roadway and the property as specified by the Town.
- (6) **Method of Installation.** All wires, cables, amplifiers and other property shall be constructed and installed in an orderly and workmanlike manner. All cables and wires shall be installed parallel with existing telephone and electric wires whenever possible. Multiple cable configurations shall be arranged in parallel and bundled, with due respect for engineering and safety considerations. All installations shall be underground in those areas of the Town where public utilities providing either telephone or electric service are underground at the time of installation. Where both telephone and electric utility facilities are above ground at the time of installation, the Grantee may install its service above ground provided that at such time as those facilities are required to be placed underground by the Town or are placed underground, the Grantee shall likewise place its services underground without additional cost to the Town or the residents of the Town other than as may be granted under the provisions of section 3.15.

- (7) Protection of Facilities. Nothing contained in this section shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing any work connected with grading, regrading or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.
- (8) Notice of Town Improvements. The Town shall give the Grantee reasonable notice of plans for street improvements where paving or resurfacing of a permanent nature is involved. The notice shall contain the nature and character of the improvements, the streets upon which the improvements are to be made, the extent of the improvements and the work schedule for the project. The notice shall give the Grantee sufficient time to make any additions, alterations or repairs of its facilities as it deems necessary in advance of the actual commencement of the work to permit the Grantee to maintain continuity of service.
- (9) Requests for Removal or Change. The Grantee shall, on the request of any person holding a building permit, temporarily raise or lower its wires to permit the moving of such building. The expense of such temporary removal, raising or lowering of 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 10 days notice of any move contemplated to arrange for the temporary wire changes.
- (10) Authority to Trim Trees. The Grantee may trim trees upon and overhanging streets, alleys, sidewalks, highways, and other 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. All trimming shall be done under the supervision and direction of the Town after the explicit, prior written notification and approval of the Town and at the expense of the Grantee. The Grantee may contract for such services; however, any firm or individual so retained shall receive Town approval prior to commencing such activity. The Grantee may trim trees on private property only after receiving the property owner's permission.
- (11) Restoration or Reimbursement. If any street or private property is disturbed by the Grantee, it shall, at its own expense and in a manner approved by the Town and the owner, replace and restore such street or private property in as good a condition as before the work causing such disturbance was done. If the Grantee fails to perform such replacement or restoration, the Town or the owner shall have the right to do so at the sole expense of the Grantee. Payment to the Town or owner for such replacement or restoration shall be immediate, upon demand, by the Grantee. All requests for replacement or restoring of such streets or private property as may have been disturbed shall be in writing to the Grantee.
- (12) Office and Records. The Grantee shall at all times make and keep at an office maintained by the Grantee in the Village of Spring, Green, full and complete plans and records showing the exact location of all BTN equipment installed or in use in

the streets and other public places of the Town. The Grantee shall furnish the Town a current map or set of maps, drawn to scale, showing all BTN equipment installed and in place in streets and other public places of the Town.

- (13) **Emergency Removal of Plant.** If, in case of fire or disaster in the Town, it shall become necessary in the reasonable judgment of the Town to cut or remove any of the wires, cables, amplifiers, appliances or appurtenances thereto of the Grantee, such cutting or moving may be done and any repairs rendered necessary thereof shall be made by the Grantee at its sole expense provided that such repairs are not necessitated by the negligent act of the Town, in which case cost for repairs shall be borne by the Town.
- (14) **Alternate Routing of Plant.** If continued use of a street is denied to the Grantee for any reason, the Grantee shall make every reasonable effort to provide service over alternative routes.

3.25 Interconnection. The Grantee may be required to connect its BTN with any other broadband telecommunications network operation in an adjacent territory. Such interconnection shall be made within 60 days of a request by the Town. For good cause shown, the Grantee may request and the Town Board may grant reasonable extensions of time to comply with the requirement.

3.26 Preferential or Discriminatory Practices Prohibited.

- (1) **Equal Employment.** The Grantee shall establish and maintain a nondiscriminatory policy providing that no individual shall be discriminated against with respect to compensation, terms, conditions or other privileges because of race, color, marital status, religion, sex, national origin, handicap or age.
- (2) **Services and Facilities to be Equally Available.** The Grantee shall not refuse cable television service to any person or organization who requests such service for a lawful purpose, within the service area, nor shall a Grantee refuse any person or organization the right to cablecast pursuant to provisions of this chapter. Except as provided herein, the Grantee shall not as to rates, charges, service facilities, rules, regulations or in any other respect make or grant any unreasonable preference or advantage nor subject any person to any prejudice or disadvantage. The Grantee shall take affirmative steps to disseminate information on a continuing basis concerning programming, the availability of its services and facilities. This shall include the training necessary to enable effective use of cablecasting facilities over public access channels. This shall not be deemed to prohibit promotional campaigns to stimulate subscriptions to the system or other legitimate uses thereof; nor shall it be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classifications shall be entitled, provided such schedules have been filed with and approved by the Town as provided in section 3.15.

- (3) Fairness of Accessibility. The entire system of the Grantee shall be operated in a manner consistent with the principles of fairness and equal accessibility of its facilities, equipment, channels, studios, and other services to all citizens, businesses, public agencies or other entities having a legitimate use for the system within the service area; and no one within the service area shall be arbitrarily excluded from its use; allocation of use of such facilities shall be made according to the rules or decisions of regulatory agencies affecting the same and where such rules or decisions are not effective to resolve a dispute between conflicting users or potential users, the matter shall be submitted for resolution by the Broadband Telecommunications Committee.

3.27 Subscriber Privacy.

- (1) Use of Data From Subscriber. The Grantee, the Town or any person shall not, in addition to other requirements of this ordinance, initiate or use any form, procedure or device for procuring information or data from cable subscribers' terminals by use of the cable system without prior written valid authorization from each subscriber so affected. Valid authorization shall mean written approval from the subscriber for a period of time not to exceed one year and shall not have been obtained from the subscriber as a condition of service. A Grantee shall not, without such authorization, activate or utilize any cable television channel from the subscriber's premises. The subscriber shall retain the right to deactivate his terminal.
- (2) Subscriber Data. The Town or a Grantee or any person shall not without prior written valid authorization from each subscriber so affected, provide any data identifying or designating subscribers. Any data so authorized shall be made available to the authorizing subscriber in understandable fashion.
- (3) Subscriber Agreements. Any agreement or contract such as is necessary for subsections (1) and (2) shall not be part of any other contract or agreement and shall not be a condition of subscribing to the system.

3.28 Unauthorized Connections or Modifications.

- (1) Unauthorized Connections Prohibited. It shall be unlawful for any firm, person, group, company, corporation or governmental body or agency, without the express written consent of the Grantee, to make or possess any connection, extension or division whether physically, acoustically, inductively, electronically or otherwise with or to any segment of a franchised BTN for any purpose whatsoever except as specifically provided herein.
- (2) Removal or Destruction Prohibited. It shall be unlawful for any person, firm, group, company, corporation, or governmental body or agency to willfully

interfere, tamper, remove, obstruct or damage any part, segment or content of a franchised BTN for any purpose whatsoever.

3.29 Penalties. Any person who shall violate any provision of this ordinance shall be subject to a forfeiture of not less than \$50.00 nor more than \$5,000.00 together with costs and penalty assessment provided by section 165.87 of the Wisconsin Statutes. A violation of any provision of this ordinance shall be considered a separate offense for each 24 hour period during which the violation continues.