

10.04 Reserved for future use

10.05 CABLE TELEVISION (TV) ORDINANCE

(1) **GRANT OF FRANCHISE**. Pursuant to this ordinance, the Village may create in a franchise grantee, its successors and assigns, a nonexclusive franchise to install, maintain, and operate a cable television system for the distribution of television signals, frequency modulated radio signals and closed circuit television programs for a term of fifteen (15) years, provided that the franchise grantee conforms to the conditions, limitations, and requirements of this ordinance. This ordinance may be amended from time to time by the Village through the enactment of amendments hereto and will be subject to State and Federal laws.

(2) **FRANCHISE RIGHTS SUBJECT TO POLICE POWER**. In accepting this franchise, the grantee acknowledges that its rights hereunder are subject to the police power of the Village of New Auburn to adopt and enforce general and specific ordinances necessary to the health, safety and welfare of the public; and it agrees to comply with all applicable general and specific laws enacted by the Village of New Auburn pursuant to such power.

(3) **DEFINITIONS**. The following words and phrases, whenever used in this chapter, shall be construed as defined in this section unless from the context a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such word or phrase:

(A) **"Cable System"**. A system of antennas and other receiving equipment, cables, wires, lines, towers, waveguides, laser beams or any other conductors, converters, equipment or facilities, designed or constructed for the purpose of producing, receiving, amplifying and distributing by audio, video and other forms of electronic or electrical signals to and/or from locations in and outside of the Village of New Auburn.

(B) **"Grantee"**. A recipient of a grant of franchise which shall be considered a public utility for purposes of this ordinance.

(C) **"Subscriber"**. A purchaser of any service delivered by grantee pursuant to this franchise, and "subscriber" shall also include all persons who are not required to pay any fee, but receive any service delivered by grantee pursuant to this franchise.

(D) **"User"**. Any person using such service whether such person pays

grantee or is allowed to utilize such service by subscriber.

(E) **"Village Board"**. The duly elected Village Board of the Village of New Auburn.

(F) **"Basic Subscriber Cable Revenues"** and **"Basic Subscriber Service"**. Revenues from all services provided the subscriber, including pay cable, but excluding installation costs.

(4) **REVIEW AND RENEGOTIATION**. In order to provide for a maximum degree of flexibility in this franchise, which covers a field that is relatively new and rapidly changing and which probably will see regulatory, technical, financial, marketing, and legal changes during the term of this franchise, and to help achieve a continued advanced and modern system for the Village of New Auburn, the following terms and conditions are part of any franchise hereby granted pursuant to this ordinance.

(A) At the option of the Village, approximately five (5) and three (3) years prior to the expiration of this franchise, at a regular or special Village Board meeting, the Village and the grantee shall, at the Village's option, meet to discuss application of new technologies, system performance, service provided, programming offered, customer complaints, whether the franchisee is providing reasonable service to the community, privacy in human rights, amendments to this ordinance, undergrounding progress and judicial and FCC rulings. The parties may renegotiate any of the above provisions at that time.

(B) Board members, administrative personnel, the public, or the grantee may add further topics to the list recited in subparagraph 10.04(4)(A).

(C) It is the presumed intent of the Village that the Village will extend a franchise granted under this ordinance if, upon the review set forth in subparagraph (A) above the performance of the grantee as required by this chapter has been satisfactory. In considering renewal, the Village and franchisee will be subject to the standards set forth and made applicable by Federal law as amended from time to time. These standards currently are 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 has been reasonable in light of the community needs;

(3) The operator has the financial, legal, and technical ability to provide the service facilities and equipment as set forth in the operator's proposal;

(4) The operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests;

(5) Whether the operator has provided a reasonable level of service; and,

(6) Whether the operator has fully complied with all requirements of law including the Cable Television and Consumer Protection Act of 1992.

(D) The meeting described in paragraph 10.04(4)(A) shall be open to the public and notice shall be given of the time and place of such meeting, through newspaper, radio, and grantee's medium, of at least five (5) days prior to such meeting.

(5) FRANCHISE EXPIRATION AND CANCELLATION, CONTINUITY OF SERVICE, AND BUYBACK PROVISIONS

(A) The Village Board may cancel a franchise granted pursuant to this chapter prior to its expiration. Such cancellation shall not be made until the Village has given the grantee thirty (30) days notice of a proposed cancellation and has made a determination based on public hearing, that the grantee has failed to cure one or more of the following defects during a sixty (60)-day period following such written notice of proposed cancellation. Such cancellation shall be based on one or more of the following defects:

(1) Material breach, whether by act or omission, of any term or condition of this ordinance, including whether the franchisee is providing reasonable service; or,

(2) Insolvency of the grantee, or inability or unwillingness of the grantee to pay its just debts when they accrue, or application by grantee for adjudication as a bankrupt, or the filing of a voluntary assignment for the benefit of the creditor, or if a judgment, tax warrant, or tax lien remains unsatisfied for a period of six (6) months.

(B) In the event any of the above-mentioned defects are caused by equipment failure or the grantee's inability to obtain certain equipment for reasons beyond grantee's control, then grantee shall be allowed an additional sixty (60) days before there is deemed grounds for termination.

(C) Termination or forfeiture of this franchise shall in no way affect the right of the Village under the franchise or of any provision of law.

(D) In the period between expiration or cancellation of the franchise and the transfer of the cable system as provided in this ordinance, the grantee shall continue to provide service to the public as if its franchise were still in effect, but in the capacity of a trustee for its successor in interest.

(6) **TRANSFER OF CONTROL**. No transfer of effective ownership or control of the cable system may take place, whether by forced or voluntary sale, lease, mortgage, assignment, encumbrances, or any other form of disposition, without prior ninety (90)-day notice to the Village Board under Section 66.82(5)(a), Wisconsin Statutes. The Village Board's refusal to approve must be related to the service and the obligations of this agreement or the requirements of Federal law and not be unreasonably withheld. The grantee's notice to the Village Board shall include the full identifying particulars of the proposed transaction. The acquisition within a consecutive period of thirty-six (36) months or more than thirty percent (30%) interest in the grantee's voting stock, franchise, plant, equipment, or other property used in the conduct of the business, including the requirement that the franchisor has provided a reasonable level of service, or more than a thirty percent (30%) representation on the grantee's Board of Directors, by any person or group of persons acting in concert who before that time did not enjoy such interest or representation shall conclusively be presumed to be a transfer of effective ownership or control. The term "transfer of effective ownership or control" shall not include the disposition of facilities or equipment no longer required in the conduct of the grantee's business, nor shall it include a pledge or mortgage or similar instrument which transfer conditional ownership of all or part of the system's assets to a lender or creditor in the ordinary course of business so long as the lender or creditor does not thereby acquire the right to control and direct the system's operations. If more than ten percent (10%) of the ownership interest in the cable television system is transferred, the cable operator shall inform the Village within thirty (30) days of the date of transfer.

(7) **FRANCHISE TERRITORY**. The franchise is for the present territorial limits of the Village of New Auburn and for any henceforth added thereto during the term of this franchise.

(8) SUBSCRIBER PRIVACY

(A) No monitoring of any terminal connected to the system shall take place without specific written authorization by the user of the terminal in question on each occasion and without written notice to the Village.

(B) Grantee shall not, except as required by governmental action, provide any data concerning specific subscribers or users or their use of its services without first securing written authorization for the provision of such data.

(C) The subscriber or user shall retain the right to deactivate his or her terminal but shall continue to be responsible for charges until the grantee is notified to terminate service.

(9) TECHNICAL STANDARDS AND COMPLAINTS

(A) The grantee's operations shall conform to the technical standards set by the Federal government. The grantee shall maintain on file consistent with the rules of the Federal government, all testing results which shall be open to inspection by the Village Board. The grantee shall, upon request, inform the Village of any audit by an employee of the Federal government together with the name(s) of the employee(s) who conducted such audit. The grantee shall perform all tests required by the Federal government which are now in effect or which may be required in the future.

(B) Grantee shall keep a record of complaints received and shall make available to the Village, upon request, compilation of such complaints showing when received and the general nature of the complaint. Individual names will not be used, but it shall be possible to ascertain the action taken to satisfy the complaint.

(C) The grantee shall maintain a locally listed telephone, a toll-free number, or enterprise number to allow customers to contact the franchisee without cost to the customer. The grantee shall maintain a repair and maintenance crew capable of responding to subscriber complaints or requests for service within forty-eight (48) hours after receipt of the complaint or request. No charge shall be made to the subscriber for this service.

(10) DESCRIPTION OF SERVICE. Grantee shall, as part of the acceptance of this franchise, provide a complete description of the cable system in the Village of New Auburn. Such description shall be updated as additions or changes are made.

(11) GRANTEE'S USE OF VILLAGE'S RIGHTS. Grantee, upon written acceptance of this franchise, is hereby granted the right to erect, maintain, and operate in the streets, alleys and utility easements of the Village of New Auburn and other public places, a cable system. The poles used for such distribution shall be those erected or used by the local utilities. The grantee may erect its own poles if the Village's permission is first obtained.

(12) METHOD OF INSTALLATION

(A) INSTALLATION

(1) All installations made by the grantee shall be made in good, substantial, safe condition and maintained in such condition at all times. The grantee shall make no excavations in the streets, alleys, and any other public places without first procuring a written permit from the Village Board or other authorized representative of the Village and all work of such kind shall be done under the supervision of the Village authorities.

(2) The grantee's transmission and distribution system poles, wires, and appurtenances shall be located, erected, and maintained so as not to interfere with the lives or safety of persons, or to interfere with new improvements the Village may deem proper to make, or to unnecessarily undermine or obstruct the free use of the streets, alleys, bridges, or other public property. Removal of poles to avoid such interference will be at the grantee's expense.

(3) All land shall be substantially restored to the condition which existed prior to the beginning of construction and/or excavation.

(4) The company shall utilize the easement of other public utilities when possible and shall obtain the written permission of the utility for said use and the landowner's consent if required by said utility easement.

(B) COMMENCEMENT AND COMPLETION OF CONSTRUCTION

(1) Within thirty (30) days of the date of the award of this franchise, the grantee must advise the Village, in writing, of its acceptance of the franchise and must undertake the necessary steps to secure authorization to operate from appropriate governmental agencies, regulating cable service, and from satellite systems and/or operators to use satellite systems. If authorization to operate is not received within twelve (12) months of the date of franchise, the franchise may be canceled at the option of the Village.

(2) Service shall be afforded to the degree of at least seventy-five percent (75%) of the proposed system no later than eighteen (18) months following the appropriate governmental agency's grant to authorization. If this state of completion is not met, the Village Board may cancel the franchise.

(13) **AUTHORITY TO TRIM TREES.** The grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and other public places of the Village, so as to prevent the branches of such trees from coming in contact with the wires and cables of the company. The grantee may contract for such services.

(14) **INDEMNITY**

(A) **INDEMNIFICATION.** The grantee shall defend and save the Village and its agents and employees harmless from all claims, damages, losses, and expenses including attorney's fees sustained by the Village on account of any suit, judgment, execution, claim or demand whatsoever arising out of:

(1) The enactment of this ordinance and granting of a franchise thereunder, except such claims as may arise from the Village's selection of a grantee to be awarded a franchise pursuant to this ordinance.

(2) The installation, operation, or maintenance of the Cable TV Network except for acts of the Village, its agents or employees unless said acts are the request of and under the direction or supervision of grantee.

(B) **LIABILITY INSURANCE.** All grantees shall maintain throughout the term of the permit a general comprehensive liability insurance policy naming as the additional insured the Village, its officers, boards, commissions, agents and employees, in a company approved by the Village Board and in a form satisfactory to the Village Attorney, protecting the Village and its agencies and employees 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: (1) \$500,000.00 for bodily injury or death to any one person with the limit, however, of \$1,000,000.00; and, (2) \$100,000.00 for property damage resulting from any one accident.

(15) **JOINT USE.** The grantee shall grant to the Village, free of expense, joint use of any and all poles owned by it for any proper municipal purposes, insofar as it may be done without interfering with the free use and enjoyment of the company's own wires and fixtures, and the Village shall hold the company harmless from any and all actions, causes of actions, or damage caused by the placing of the Village's wires

or appurtenances upon the poles of the company. Proper regard shall be given to all existing safety rules governing construction and maintenance in effect at the time of construction.

(16) UNAUTHORIZED CONNECTIONS OR MODIFICATIONS

(A) UNAUTHORIZED CONNECTIONS PROHIBITED. It shall be unlawful for any firm, person, group, company, corporation, or governmental body or agency, without the expressed 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 CATV system for any purpose whatsoever. However, this section shall not be construed to apply to any signal receptions by unmodified television sets.

(B) 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 CATV System for any purpose whatsoever.

(C) FORFEITURE. Any person violating this section shall forfeit an amount not greater than \$25.00 per occurrence. Each continuing day of the occurrence shall be considered a separate violation.

(17) SEVERABILITY. Should any word, phrase, clause, sentence, paragraph or portion of this ordinance and franchise be declared to be invalid by a Court of competent jurisdiction, such adjudication shall not affect the validity of this ordinance and franchise as a whole, but shall only affect the portion thereof declared to be invalid; and the Village Board hereby expressly states and declares that it would nonetheless have passed this ordinance and granted this franchise had it known that any such word, phrase, clause, sentence, paragraph or portion of said franchise were invalid. This ordinance is subject to the Cable Communication Policy Act of 1984 and all provisions of this ordinance shall be interpreted with respect to such Act as amended from time-to-time.

(18) REMOVAL OF EQUIPMENT. In the event this franchise terminates and neither the Village nor anyone else purchases grantee's cable system, grantee shall remove its cables, wires, and appliances from the streets, alleys, public ways and places within the Village, except any underground cables, appliances or other appurtenances and restore the streets, alleys, public ways and places to original condition.

(19) ACCEPTANCE BY GRANTEE. The franchise granted under this ordinance shall be effective upon written acceptance of the franchise being filed with the Village Clerk, and the franchise shall continue in force for a period of ten (10) years.

(20) ARBITRATION

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

(B) In the event of arbitration, the parties shall select the arbitrator or if they fail to do so, a Circuit Judge for Chippewa and/or Barron County shall select the arbitrator. The expenses of the arbitration and compensation of the arbitrator shall be borne by the Village and the grantee as the award shall provide, but in no event shall the Village be obligated to pay more than one-half of such expenses and compensation. The arbitration award shall be binding upon the parties.

(21) INCORPORATION OF AMENDMENTS. This franchise shall be amended to incorporate all amendments to the statutes, rules and regulations of the Federal government as they are promulgated by the Federal government. Any provisions herein, in conflict with or preempted by said rules and regulations or statutes shall be superseded.

(22) PENALTIES. In addition to the procedures specified in Section 10.05(5), the following shall be in effect:

(A) After notice and hearing, the Village may reduce any or all of the subscriber rates if the grantee fails to provide the services specified in this chapter or fails to comply with any applicable government regulation. Additionally, the Village may require the grantee to forfeit a sum not to exceed 10% of gross revenues per day for such failure. It being intended hereby to enforce construction requirements and customer service requirements including requirements related to interruption of service; disconnection rebates and credits to consumers; deadlines to respond to consumer requests for complaints; and the location of the cable operator's consumer service offices; and such other requirements as are permissible under the Cable Communication Policy Act of 1984 as amended from time-to-time. 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

including the lack of material or parts.

(B) Upon interruption of service except for acts of God or with express prior permission of the Village, the following shall apply:

(1) Over 72 hours and up to seven (7) days, a 50% rebate of one month's fees for all affected subscribers.

(2) A full month's rebate for any month in which one (1) week or more of the service is interrupted.

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

(24) **CONDITIONS OF REQUIRED EXTENSIONS.** Grantee shall within sixty (60) days of the acceptance of this franchise, file a plan with the Village for the initial installation of cable. Following such initial installation, the grantee shall not be obligated to extend its cable network to additional subscribers unless the proposed subscribers shall be located within five hundred (500) feet of the existing network, or unless at least ten (10) additional subscribers will be serviced per mile of cable extension required. In instances wherein the grantee is not required to provide service pursuant to this paragraph, the grantee and subscriber may nevertheless contract to have service provided on terms and conditions agreeable to both the subscriber and grantee.

(25) **SUBSCRIBER SERVICE.** The Company will maintain a toll-free telephone number so that subscriber services can be handled conveniently.

(26) **FEDERAL COMMUNICATIONS COMMISSION (FCC) RULES TO APPLY.** The Company shall comply fully with all Federal Communications Commission rules and regulations as may be presently in effect or may become effective in the future, and all other Federal and State rules and regulations applicable to the television distribution system. Any and all modifications of Section 76.31 of the Federal Communications Commission rules resulting from amendment of said rules by the Commission shall be incorporated into this ordinance within one (1) year of the adoption of the modification by the Federal Communications Commission or at the time of franchise renewal, whichever event shall first occur. Compliance with all Federal Communications Commission rules or modifications thereof shall be a condition for continuation of any franchise.

(27) **FRANCHISE.** Pursuant to the foregoing ordinance and subject to its provisions, the Village Board does hereby grant to K. W. Cable, Inc. the following franchise:

(A) That the Village of New Auburn, Chippewa County, Wisconsin, hereinafter called the Village, does hereby grant to K. W. Cable, Inc., owned by Scott T. Krenz and James A. Waldorf, 18154 Country Court, Chippewa Falls, Wisconsin, hereinafter called the Company, the right, privilege and franchise to construct, operate and maintain lines of coaxial television cable, including poles, wires and fixtures where necessary, upon, along, over, and under the public streets and alleys of the Village, subject to the terms and conditions herein. K. W. Cable, Inc. may assign this franchise to a financial institution that loans money for the construction of the cable system, subject to Section 10.05(6). The Village will also allow assignment of this franchise to any future purchaser, provided that the purchaser is a reputable business with good credit plus good business background. Assignments of the Franchise after approval by the Village Board shall be set forth in Appendix M.

(B) The Company shall build its aerial portion of the television distribution plant using existing poles such as those directed and maintained by the Power Company and Telephone Company. Any new poles that may have to be installed by the Company shall first be approved by the Village.

(C) The Company will build its underground portion of the television distribution plant only after it has received permission from the Village. All streets and sidewalks disturbed or damaged in the construction or maintenance of said cable lines shall be promptly repaired by the Company at its expense, to the satisfaction of the Village.

(D) All coaxial cable erected in the Village by the Company shall at all times meet with the applicable minimum standards of the Village, as provided by ordinance or code.

(E) The Company shall be subject to all ordinances now in effect or that may be hereinafter enacted relative to the use by it of the streets and alleys of the Village.

(F) The Company shall hold the Village harmless from all claims for damages arising out of the construction, maintenance, or operation for said cable.

(G) The franchise is hereby granted for the term of fifteen (15) years

from the date of this ordinance. This franchise is conditional upon the Company to start construction within twelve (12) months and to complete construction within eighteen (18) months of the adoption and publication of this ordinance as provided by law. If the Company fails to comply with the aforementioned conditions, then the Village may terminate this franchise.

(H) Proposed programming services to be carried are as follows:

Channel Lineup (Tentative)

Cable Channel	2	KTCA	PBS	CH. 2 (Minneapolis)
	3	WTBS	Ind	CH. 17 (Atlanta)
	4	WCCO	CBS	CH. 4 (Minneapolis)
	5	KSTP	ABC	CH. 5 (Minneapolis)
	6	TNN		Country Music (Nash.)
	7	HBO		Movies (New York)
	8	WKBT	CBS	CH. 8 (La Crosse)
	9	KMSP	Ind	CH. 9 (Minneapolis)
	10	WHWC	PBS	CH. 28 (Menomonie)
	11	KARE	NBC	CH. 11 (Minneapolis)
	12	CNN		News (Atlanta)
	13	WEAU	NBC	CH. 13 (Eau Claire)
	17	ESPN		Sports (New York)
	18	WQOW	ABC	CH. 18 (Eau Claire)
	19	CBN		Family/Movies (N.Y.)
	20	Discovery		Family/Educational
	21	USA Network		Family/Movies
	22	WGN	Ind	CH. 9 (Chicago)

NOTE: Channel 7 (HBO) will be a premium service separate from the basic service.

NOTE: The Company has the right to change these services as they see necessary.

(I) The initial service and maintenance charged by the Company shall be as follows: