

TOWN OF DUNN

ORDINANCE # 11-8

BROADBAND COMMUNICATIONS

Section 1: Title

This ordinance shall be known and may be cited as the "Broadband Communications Ordinance."

Section 2: Cable Regulatory Commission

(1) DUNN AREA CABLE REGULATORY COMMISSION ESTABLISHED.

(A) The Dunn Area Cable Regulatory Commission is hereby established. The Commission shall be composed of [three (3)/five (5)] citizens, appointed by the Board for a term of three (3) years; except the first appointees shall be appointed [two (2)/one (1)] for a term of three (3) years, [two (2)/one (1)] for a term of two (2) years, and one (1) for a period of one (1) year.

(B) The Board shall give public notice of its intentions to appoint the Dunn Area Cable Regulatory Commission before any citizens are appointed or reappointed. The Board shall consider any applicants who are citizens as well as such other citizens as may come to its attention as being qualified, and every effort shall be made to make said Commission as broadly representative of the citizens of the Town as possible. No person shall be appointed if any conflict of interest exists due to his or her association with any company or activity involving the operation of a Broadband Communications Network, radio or television station, or the manufacture or sale of any equipment used in or associated with any such activities. Commission members must be subscribers if service is available in the areas in which they live.

(2) DUTIES OF THE COMMISSION. The administrative and monitoring responsibilities of the Town with respect to any broadband communications system within the Town shall be exercised and performed by the Dunn Area Cable Regulatory Commission. The duties of the Commission shall be to:

(A) Resolve after investigation disputes or disagreements between any subscriber and a Grantee which the subscriber and Grantee are unable to resolve.

- (B) Review and audit the reports submitted to the Town by Grantees.
- (C) Review the regulations proposed by any Grantee pursuant to Section 10 of this ordinance.
- (D) Insure that all required reports are completed and filed pursuant to the terms of the ordinance.
- (E) Assure that all rates, schedules and rules pertinent to the operation of any Broadband Communications Network are made available for inspection by the public at reasonable hours and upon reasonable request.
- (F) Confer with and advice Grantees on the interconnection of the Town's cable systems with other cable and communication systems and to serve as a coordinator for any such interconnections.
- (G) Assist the Board in the solicitation of applications for Special Use Permits.
- (H) Review requests for rate changes filed by any Grantee and to recommend the action which should be taken on such requests to the Board.
- (I) To negotiate Special Use Permit Agreements with any applicant who is granted a Special Use Permit.
- (J) Advise Grantees and the educational and governmental access channel users of the educational and governmental program needs of the Town.
- (K) Report to the Board on the degree to which Grantee make their public access channels available to all residents of the Town on a nondiscriminatory basis.
- (L) Report to the Board on any instance in which a public access channel is not maintained free of program censorship and control.
- (M) Make recommendations to Grantees on the procedural aspects of the public access and educational access channels.
- (N) Conduct such inspections of any broadband communications system as may be necessary to support its review functions.
- (O) To prepare production and programming budgets for public access and government access channels.

- (P) To meet and coordinate activities with the cable regulatory commissions of any other municipality which serves as the head end or origination point for service in the Town.
- (Q) Perform such other duties and services as the Board may assign to it from time to time.
- (3) The Commission shall adopt such rules and regulations as are necessary to insure that due notice is given to all parties concerning any hearing on any complaint to said Commission and that hearings are held promptly after reasonable notice to all parties.
- (4) The Commission shall have the power to elect its own officers and to schedule its own public meetings.
- (5) The Commission shall have the authority to submit proposed rules and regulations for the conduct of its business to the Town Board for approval, and upon approval, shall have the right to hold hearings and make recommendations concerning the coordination and use of municipal, public and of education access channels.
- (6) All departments of the Town government shall cooperate with the Commission, to implement the discharge of its duties and responsibilities, as contemplated by this ordinance. To this end, department heads are directed to cooperate fully with the Commission and to make available for its use any information pertaining to broadband communications systems within the Town as it may require.
- (7) The Commission shall keep the Town Board informed on all matters pertaining to construction, operation, and maintenance of broadband communications systems within the Town.
- (8) The Town Attorney or his designated assistant shall provide legal counsel to the Commission with approval of the Town Board.
- (9) REGULATORY PROCEDURES.
- (A) The Commission shall first consider any inquiry or proceeding requiring Board action to be taken in regard to any broadband communications system, Special Use Permit, or Special Use Permit Agreement upon the application or request of the Board of any Grantee, or of any other party, and shall submit its recommendations to the Board within sixty (60) days of the receipt of such request if possible. Any action by the Board on any Commission recommendation shall be

taken only after thirty (30) days notice of said proposed action, inquiry, or proceeding is published in a daily or weekly newspaper of general circulation serving the Town and a copy of said notice is served upon the Grantee. The Grantee shall have an opportunity to respond at the hearing and/or in writing.

Members of the public shall have an opportunity to respond or comment in writing on the proposed action and appear at said proceeding or hearing; however, such hearing or proceeding shall be set not later than ninety (90) days after notice to the Grantee and the Board shall act upon this proceeding within one hundred eighty (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 subsection 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 Board. If a hearing is to be held, the public notice shall give the date, location and time of such hearing. The Grantee is a necessary party to any hearing conducted in regard to its operation.
- (C) The thirty (30) day notice period required by this subsection may be waived upon mutual agreement of the Board and the Grantee in those situations where significant financial harm would occur to the Grantee or the public would be deprived of important services. In the event that the notice period is waived, a public notice shall be published as required by paragraph (A) describing the action taken and the reason or reasons for waiving the notice period.

Section 3: Special Use Permit

- (1) SPECIAL USE PERMIT REQUIRED. No person, corporation, partnership, or legal entity of any sort shall construct, erect, operate, modify, or maintain any towers, antennas, poles, cables, electronic equipment or any other facilities necessary for the operation of a Broadband Communications Network, in, upon, along, above, over, or under any street, right-of-way, or site which has been or may hereafter be dedicated and open to public use within the Town without a permit authorizing such use issued in accordance with the provisions of this ordinance.

- (2) REVIEW OF QUALIFICATIONS. A special use permit to operate a Broadband Communications Network under the provisions of this ordinance may be granted, in the sole discretion of the Board, after review and approval of the legal, character, financial, and technical qualifications of any applicant, of the services which the applicant is offering to provide, and of the proposed fees, rates, and charges for such services.
- (3) PROCEDURE. The Board shall establish procedures leading to a determination of whether or not a special use permit will be issued to any applicant which procedures shall include a public hearing at which the public and the applicant are afforded an opportunity to appear and be heard on all matters concerning the application.
- (4) QUINQUENNIAL REVIEW. On or about the fifth and tenth anniversaries of the issue date of any Special Use Permit, the Board shall schedule at least one public hearing for the purpose of reviewing the performance, plans, and prospects of the Grantee and to determine whether the Grantee is providing a level, quality, and variety of services which is, at least, the equivalent of those offered in other comparable communities served by the Grantee or other cable television companies. The Grantee shall furnish such records, documents, and information as the Board may require for the purpose of such review. After such public hearing, or hearings as the case may be, the Board shall confer with the Grantee to determine what, if any, modifications should be made to the Special Use Permit Agreement imposing additional obligations upon the Grantee or relaxing any of the requirements set forth therein. If, after such hearings and conferences, the Board determines that any proposed modification will not reduce the service or quality of service provided by the Grantee, but will improve such service and be within the best interests of the Town, it may after affording interested parties an opportunity to be heard, direct the Grantee to make reasonable modifications in the operation of its system and service area and may, with the consent of the Grantee, supplement, amend, modify or extend the Special Use Permit Agreement.
- (5) REVIEW OF PERFORMANCE PRIOR TO REISSUE.
 - (A) Notification of Intent to Reapply. At least two (2) years prior to the expiration of its Special Use Permit, a Grantee shall file a statement indicating whether it intends to apply for renewal thereof with the Town Clerk.
 - (B) Public Hearings. Upon receipt of notice that a Grantee intends to apply for a renewal of its Special Use Permit, the Board shall schedule at least one public

hearing for the purpose of reviewing the performance of the Grantee during the term of its permit. The Grantee shall furnish such records, documents, and information as the Board may require for the purpose of such review.

- (C) Determination on Reissue. The Board shall, within one hundred eighty (180) days of the conclusion of such hearings determine whether or not it will renew the Special Use Permit of the Grantee. In making said determination, the Board shall consider the technical, financial and programming performance of the Grantee, the network extensions of the Grantee, and whether or not the Grantee has performed in accordance with any and all applications, promises, and agreements submitted, made, or entered into by it.
- (6) PERMIT NONEXCLUSIVE. Special Use Permits granted pursuant to the provisions of this ordinance shall not be exclusive and the Board may grant a Special Use Permit to any person, corporation, partnership, or legal entity whenever, in its sole discretion, it determines that it would be beneficial to the Town so to do.
- (7) AUTHORITY GRANTED.
- (A) Subject to the terms, conditions, and limitations hereinafter set forth, a Special Use Permit shall give the Grantee the right and privilege to construct, erect, operate, modify and maintain, in, upon, along, above, over, and under streets, rights-of-way and public sites which have been or may hereafter be dedicated and open to public use within the Town, towers, antennas, poles, cables and electronic equipment and such other network appurtenances as may be necessary for the operation of a Broadband Communications Network within the Town. No privilege or exemption, other than those specifically prescribed herein, is intended or to be inferred from the granting of any Special Use Permit.
- (B) Neither a Special Use Permit nor anything contained in this ordinance shall relieve a Grantee of any obligation to obtain conduit or pole-use agreements from any utility or other company, or to obtain easements wherever necessary for the provision of its cable communication service; or shall impart to the Grantee any property interest in, on, or to Town property.
- (8) TRANSFER RESTRICTIONS.

- (A) Each Special Use permit granted shall be a privilege to be held by the Grantee for the benefit of the public and shall not be leased, sublet, or mortgaged in any manner (except as hereinafter provided), nor shall title thereto either legal or equitable, or any right, interest, or property therein, pass to or vest in any person either by act of the Grantee or by operation of law without the prior consent of the Board expressed by written resolution and then only under such terms and conditions as the Board may establish.
- (B) The prior consent of the Board, expressed by written resolution, shall be required where any person, corporation, partnership, or legal entity of any sort not specifically named in the application for a Special Use Permit or in the Special Use Permit Agreement acquires any ownership interest in or rights to participate in the profits or losses of, or the right to manage or control the business of the Grantee in any way other than by inheritance or by gift from an immediate member of the transferee's family.
- (C) A Grantee shall promptly notify the Board of any actual or proposed change in, or transfer of, or acquisition by any other party, of control of the Grantee or of its broadband communications system. Within sixty (60) days after receiving said notice, the Board shall hold a public hearing on the matter and within ninety (90) days shall make its determination. For the purpose of determining whether it will consent to any change, transfer, or acquisition of control, the Board shall inquire into the qualification of the new party or parties, and the Grantee shall assist the Board in any such inquiry.

Consent shall not be withheld where the Grantee demonstrates to the satisfaction of the Board that the proposed transfer will not adversely affect the operation and maintenance of the Broadband Communications Network or the quality and level of services provided to subscribers, provided however, that no rate increase may be based, in whole or in part, upon any increase in the value of the Broadband Communications Network which results, directly or indirectly, from any consideration paid for such transfer.

- (D) Every change, transfer or acquisition of control of a Grantee or of its broadband communications system with respect to which the consent of the Board is required shall make the Special use Permit subject to revocation unless and until the Board shall have consented

thereto. In the event that the Board denies consent, and such change, transfer, or acquisition has been effected, the Board may revoke the Special Use Permit unless control of the Grantee or ownership of its facilities is restored to its status prior to the change or to a status acceptable to the Board.

- (E) Upon the foreclosure or other judicial sale of all or a substantial part of the Broadband Communications Network or upon the termination of any lease covering all or a substantial part of said system, the Grantee shall notify the Board of such fact, and such notification shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of paragraphs (B), (C) and (D) above shall apply.
- (F) The consent or approval of the Board to any assignment, lease, transfer, sublease, or mortgage of a Special Use Permit shall not constitute a waiver or release of the rights of the Town in and to any street, right-of-way or other public site.
- (G) Nothing in this section shall be deemed to prohibit a mortgage or pledge of the Broadband Communications Network equipment or any part thereof or a leasing by a Grantee from another person of said broadband communications equipment or a part thereof for financing purposes or otherwise. Any such mortgage, pledge, or lease shall be subject and subordinate to the rights of the Town under this Ordinance.
- (H) The granting or waiving of any consent required by this section on one or more occasions shall not render any subsequent consent unnecessary.

Section 4: Application for Special Use Permit

- (1) APPLICATION. Any person desiring a Special Use Permit shall file five (5) copies of an application therefor with the Town Clerk. The application shall be in writing and shall contain specifically, and in sequence, the following:
 - (A) Name and Address of Applicant. The name and business address of the applicant, date of application and signature of applicant or appropriate corporate officer.
 - (B) Description of Proposed Operation. A general description of the applicant's proposed operation, including but not limited to: business hours; operating staff; maintenance procedure beyond those required in

this ordinance; management and marketing staff complement operation for public access.

- (C) Description of Service Area. A specific description of the area which the applicant proposes to serve together with a schedule of the time or times within which its services will be made available to subscribers throughout that area.
- (D) Signal Carriage. A specific description of the television, radio and the broadband communication services to be provided, including both off-the-air and locally originated signals.
- (E) Special Services. A specific description of the programming assistance it will make available to users of the municipal, public, and educational access channels.
- (F) Programming Assistance. A description of the programming assistance it will make available to users of the municipal, public, and educational access channels.
- (G) Interconnection With Other System. A description of any proposed interconnection with other systems, the services such interconnections will provide, and the terms and conditions required with respect thereto.
- (H) Schedule of Charges. A Proposed Schedule of Charges setting forth all fees, rates, and charges to subscribers for all services or equipment which will be provided if a permit is granted.
- (I) Corporate Organization. A statement detailing the organization of any corporate applicant, including the names and current addresses of its officers, directors, and shareholders.
- (J) Company Relationships. A statement describing any inter and intra company relationships of the applicant, including parent, subsidiary or affiliated companies, interlocking directorships and overlapping officers.
- (K) Agreements and Understandings. A specific description of all agreements and understandings, whether written or oral, existing between the applicant and any other person, partnership, corporation or legal entity concerning the ownership, control or operation of the proposed broadband communication network.
- (L) Financial Statement. If applicant is a corporation,

audited financial statements for the two (2) previous fiscal years. If applicant is a partnership, copies of the "U.S. Partnership Return of Income" (IRS Form 1065) for the two (2) previous fiscal years and a current verified financial statement for each partner. If applicant is sole proprietorship, copies of the "U.S. Individual Income Tax Return" (IRS Form 1040) for the two (2) previous fiscal years and a current, verified, financial statement.

- (M) Financial Projection. A ten (10) year operation proforma which includes initial and continuing plant investments, annual profit and loss projections, and detailed income and expense projections.
- (N) Financial Support. Financing commitments from an established financial institution addressed both to 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 financing institution will make construction funds available to applicant if it is awarded a permit. If the planned operation is to be internally financed, verification of the fact that the funds necessary to construct the system are on deposit and available to the Grantee shall be provided.
- (O) Technical Description. A technical description of the type of system proposed by the applicant, including but not limited to, system configuration, system capacity, and two-way capabilities.
- (P) Existing Franchises. A list of all other cable television or broadband communication franchises or permits held by the applicant indicating the name and addresses of each issuer, when each was issued, and when each system was constructed.
- (Q) Convictions. A statement as to whether the applicant or any of its members, officers, directors or shareholders has in the past ten (10) years been convicted of or has charges pending for the commission of any crime other than a routine traffic offense and the disposition of each such case.
- (R) Actions By Regulatory Agencies. A statement as to whether the applicant or any of its officers, directors, or shareholders has in the past ten (10) years been charged with the violation of any law, rule, or regulation by a federal, state, or local regulatory body. Such statement shall also include the specific nature of the charge and the disposition of each such

case.

- (S) Operating Experience. A statement detailing the prior cable television experience of the applicant and of the officers, managers, and staff which will be associated with the proposed operation.
- (2) SUPPLEMENTAL INFORMATION. The Board may require an applicant to submit such supplemental, additional, or other information which it may deem necessary in connection with its review of any application. Any additional or supplemental information that an applicant would like the Board to consider may be submitted with its application, but it must be separately bound and submitted. Five copies of any supplemental or additional information shall be furnished by the applicant.
- (3) PERMIT RENEWAL INFORMATION. If the application is for renewal of a Special Use Permit, it must include the following items in addition to the information required in Section 4(1):
- (A) A summary of the technical, financial and programming and extension history of the network since its original Special Use Permit was granted.
- (B) A description and timetable outlining all proposed changes, expansion, improvements in the services, programming or technical specifications of its system during the renewal period.

Section 5: Effectuation of Permit

- (1) A Special use Permit shall not become effective unless and until the applicant:
- (A) Enters a Special Use Permit Agreement with the Town wherein the applicant agrees to provide the services offered in its proposal in accordance with the terms and conditions of the proposal and the provisions of this ordinance.
- (B) Furnishes the security required by Section 6.
- (C) Furnishes insurance policies, or certified copies thereof, which afford the coverage required in Section 7(2), together with proof of premium payment.
- (D) Reimburses the Town for any consulting fees, legal fees, and any other fees, costs, and expenses paid or incurred by the Town arising out of or in any way related to the application, review, and issuance of its

Special Use Permit.

- (2) In the event that an applicant fails to satisfy each of the requirements of Section 5(1) within thirty (30) days after the date upon which its application for a Special Use permit is approved, the applicant shall acquire no rights, privileges or authority under this ordinance but shall forfeit, as liquidated damages, the full amount of the proposal bond or certified check submitted with its application.

Section 6: Security for Performance

- (1) SECURITY REQUIRED. At the time the Special Use Permit Agreement is entered, each Grantee shall furnish security to the Town in the form of a bond, certificate of deposit, irrevocable letter of credit, or certified check. The amount of the security shall be determined and set by the Town Board at the time that it approves the application for a Special Use Permit.
- (A) The security shall guarantee: that the Broadband Communications Network will be constructed and cable communications services provided within the area and time periods set forth in the Special Use Permit Agreement; that the Grantee will perform as agreed therein; and that the Grantee will comply with all statutes, ordinances, and regulations applicable to the construction, maintenance, and operation of its Broadband Communications Network.
- (B) The security posted shall be in such form as is acceptable to the Town Board. When a certificate of deposit or certified check is posted as security, the instrument must be negotiable by the Town. When a letter of credit posted as security, the Town must be the beneficiary.
- (C) In the event that the security furnished by the Grantee is effective for a term which is less than the duration of its Special Use Permit, the Grantee shall, not less than sixty (60) days prior to the expiration of the security, furnish other security in equal amount so that security in the required amount is maintained on the deposit with the Town throughout the term of the Special Use Permit.
- (2) APPLICATION AND RELEASE OF SECURITY.
- (A) In the event that a Grantee fails to institute service within the time periods set forth in its Special use Permit Agreement, the full amount of the security shall

be forfeited to the Town as liquidated damages unless the Town Board has extended the time for performance.

- (B) In the event that a Grantee fails to remedy any breach or violation of its Special Use Permit Agreement other than a failure to perform timely, the Town may do so and deduct all costs and expenses arising out of or in any way related to doing so, together with any damages proximately caused by such breach or violation, from the security.
- (C) Unless the security has been forfeited or applied to remedy some breach or default on the part of the Grantee, it will be released upon expiration of the Special Use Permit.

Section 7: Indemnification and Insurance

- (1) INDEMNITY. Each Grantee shall be required to indemnify and save the Town, its officers, agents, servants and employees harmless from any and all claims, actions, and demands whatsoever, whether tortious, contractual, constitutional, legal or equitable in nature, for damages, losses, expenses, or any other legal or equitable relief and from any award, order, judgment, or execution which results therefrom, arising out of or in any way related to its Special Use Permit; its Special Use Permit Agreement; the construction, installation, operation and maintenance of its Broadband Communications Network whether or not the act or omission complained of was or is authorized, allowed, or prohibited by this Ordinance, its Special use Permit, or its Special Use Permit Agreement; negligence on the part of the Grantee, its members, contractors or subcontractors, or on the part of its or their agents, servants, or employees; violation of any federal, state, or local statute, ordinance, or regulation; violation or infringement of any copyright, trademark, franchise or similar right, statute, or law; any breach of the right of privacy; or any unfair competition, including reasonable attorneys' fees. This section is intended to and shall require indemnification from liability arising from or in any way related to the negligence of the Town or of its officers, agents, servants and employees.
- (2) INSURANCE.
 - (A) Each Grantee shall be required to obtain and maintain in full force and effect throughout the term of its Special Use Permit, comprehensive liability insurance against claims, losses, or damages for personal injuries, death, property damage, breach of contract or warranty, trespass, or violation of civil rights, arising out of or in any way related to the

construction, installation, operation and maintenance of its Broadband Communications Network. Such policy or policies shall name the Town and its agents, servants, and employees as additional assureds, shall be issued by a company which has been approved by the Town Board, shall be in a form which has been approved by the Town Attorney, shall provide coverage in the amount of \$1,000,000 for each occurrence, shall contain an endorsement extending coverage to any liability assumed by the Grantee under the terms of its Special Use Permit Agreement, and shall contain an endorsement which provides that the policy will not be changed or cancelled, nor the coverage reduced until thirty (30) days after receipt by the Town Clerk by registered U.S. mail of two (2) copies of a written notice of such intent to modify, cancel or reduce coverage.

- (B) The insurance policy or policies obtained pursuant to the terms of this section, or certified copies of such policy or policies, and of any renewal or replacement policy, together with proof of premium payment, must be filed with the Town Clerk.
- (C) If the Grantee demonstrates to the satisfaction of the Town Board that any of the risks described in this section are uninsurable or that the amount of the premium required to obtain insurance coverage for any such risk is unreasonable, the Town Board may, in its sole discretion and upon such terms and conditions as it may establish, waive the requirement of insuring any such risk.
- (3) **RIGHT TO CONTROL DEFENSE.** A Grantee shall have the duty to defend all claims or suits seeking any legal or equitable relief from which the Town is entitled to be indemnified even if any of the allegations of such claim or suit are groundless, false, or fraudulent. So long as the Grantee or its insurer, as the case may be, does not challenge the right of the Town to be indemnified and does not seek contribution from the Town, it shall have: the right to select and employ the attorneys who shall appear and defend the claim or suit on behalf of the Town at its expense; and the sole authority to direct the defense of any such claims or suit and to make such compromises and settlements thereof as it, in its sole discretion, deems expedient.

Section 8: Fees, Rates, and Charges for Service

- (1) **RATES TO BE FAIR AND REASONABLE.** The fees, rates, and charges for services or equipment furnished by any Grantee to its subscribers shall be fair and reasonable.

- (2) LIMITED TO APPROVED SCHEDULE OF CHARGES.
- (A) Approval Required. Approval of the Town Board shall be a condition precedent to the imposition or collection of any fees, rates or charges for services or equipment furnished to subscribers by any Grantee.
 - (B) Initial Rates. The initial fees, rates, and charges which any Grantee may impose shall be limited to those set forth in the schedule of charges submitted with its application for a special use permit.
 - (C) No Consideration Beyond Schedule. No Grantee shall receive or seek any consideration whatsoever from its subscribers for or in connection with its services other than the fees, rates, and charges set forth in the then current schedule of charges filed with an approved by the Town Board.
 - (D) New Services. If a Grantee desires to provide services which were not included in its application it may do so but, the imposition of any charges for such services shall be subject to and contingent upon approval by the Town Board.
- (3) SPECIAL RATES. Nothing contained in this section shall prohibit a Grantee from reducing or waiving charges in conjunction with promotional campaigns for the purpose of attracting subscribers, or from offering incentives for annual payments.
- (4) DISCONNECT CHARGES PROHIBITED. No fee shall be charged for disconnecting the service of any subscriber.
- (5) SCHOOLS AND MUNICIPAL BUILDINGS. Each Grantee shall provide without, charge, one outlet to each municipally owned building, fire station, police station, library, public and parochial school situated within 300 feet of its cable. If more than one outlet is required at any such location or if the building is passed by the Grantee's cable but is situated more than 300 feet from it, the Grantee shall provide the additional outlets or provide its service but may, at its option, charge the actual cost for any additional labor or materials. Each Grantee shall provide its basic service to any such building within its service area without charge.
- (6) SUBSCRIBER REFUNDS. If any subscriber terminates service within thirty (30) days of becoming a subscriber, because the Grantee fails to render service to such subscriber of the type and quality required, terminates service to the subscriber without good cause, or ceases to operate its

Broadband Communications Network for any reason except termination or expiration of its permit, then, in any of such events, the Grantee shall refund to such subscriber an amount equal to the installation and connection charge paid by such subscriber and shall also refund the monthly charge unless service has been rendered for fifteen (15) days.

- (7) SEPARATE CHARGE FOR CONVERTERS PROHIBITED. In the event that a converter, coaxial switch, or any other device is required to permit subscribers to receive any service, the Grantee shall furnish such device to its subscribers without any separate or special charge therefor.
- (8) TERMINATION OF SERVICE FOR NONPAYMENT.
- (A) If any subscriber fails to pay any monthly subscriber fees or any other properly imposed fee or charge when due, the Grantee may disconnect the subscriber's service. Such disconnection shall not be effected until forty (40) days after the date such delinquent fee or charge was due. Where the statement for services sent to the subscriber includes a notice that the Grantee will disconnect service if payment is not made when due, additional notice need not be given to a subscriber whose account is delinquent prior to disconnection. If such a notice is not included in the statement, disconnection shall not be effectuated until ten (10) days after written notice of the intent to disconnect has been given to the subscriber by the US Certified Mail, with return receipt requested. After disconnection, the Grantee shall promptly reinstate the subscriber's service, upon payment of any delinquent charges of any reconnection charges authorized in the then current schedule of approved charges, and advance payment for the next month of service.
- (B) Upon termination of service to any subscriber, the Grantee shall promptly remove all of its facilities and equipment from the premises of such subscriber upon his written request. The service will be disconnected at the poles if above ground or at the connection box if under ground so that such disconnection shall be outside rather than inside the home. For multiple family dwellings, such disconnection shall be made in the basement or other appropriate service area outside the living area itself. Any such removal shall be at not cost to the subscriber.
- (10) RATE CHANGES.
- (A) A Grantee may decrease rates to subscribers at any time. Not rate increase or new or additional charge,

not shown on the then current schedule of charges shall be imposed or collected by any Grantee unless an until it has been approved by the Town Board.

- (B) A Grantee may not file any application for any increase in or for the imposition of new fees, rates or charges until one year after the date upon which it commences service within the Town 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.
- (C) Any rate increase must be fair and reasonable and calculated to offset necessary costs reasonably incurred for provision of services, including a fair rate of return on the original capital investment of the Grantee plus subsequent capital expenditures decreased by depreciation calculated in accordance with generally accepted accounting practices but without regard for any increased costs or expenses which may result, in whole or in part, directly or indirectly, from any transfer described in Section 3(8) or from any increase in the value of the Broadband Communications Network which may result from the consideration paid for any such transfer.
- (D) The Board shall not approve any rate increase or the imposition of any new or additional charges for the services of a Grantee until a public hearing has been held which affords all interested members of the public and the Grantee an opportunity to be heard. Notice of such hearing shall be published in a newspaper of general circulation serving the Town and shall be posted at least thirty (30) days before the hearing. At such hearing, the Grantee shall be required to make such showing as the Board may require to substantiate the necessity and reasonableness of the rate change or charges requested.
- (E) Approval by the Board of any rate change or of the imposition of any new or additional subscriber charges shall be expressed through the adoption of a resolution amending or supplementing the Grantee's approved schedule of charges.

Section 9: Time for Performance

- (1) PERMITS, CONTRACTS, AND EASEMENTS. Within ten (10) days of the date of its Special use Permit Agreement, a Grantee shall register with the Federal Communications Commission; and within ninety (90) days thereof the Grantee shall obtain such certification, licenses, permits, pole attachment

contracts, conduit use contracts and easements as may be required for the operation of its Broadband Communications Network within the Town.

- (2) CONSTRUCTION. A Grantee shall initiate construction and installation of its Broadband Communications Network within forty-five (45) days of the effective date of its Special Use Permit. Such construction shall be pursued with reasonable diligence and shall be completed in the Grantee's initial service area within eighteen (18) months.
- (3) OPERATION. Within six (6) months of the effective date of its Special Use Permit, a Grantee shall commence operation and offer basic service to not less than one-half of the dwelling units within its initial service area. Full service shall be offered throughout the initial service area within eighteen (18) months of the effective date of the Special Use Permit.
- (4) DELAYS AND EXTENSIONS OF TIME. The Town Board may, in its sole discretion, extend the time within which a Grantee is required to perform any required act provided that the Grantee has acted in good faith, has made reasonable efforts to perform within the required time and demonstrates to the satisfaction of the Town Board, that the delay, interruption, or inability to perform timely is due to: inability, because of circumstances beyond its control, to obtain any required pole attachment, contract, conduit use contract, or easement; governmental or regulatory prohibitions; labor strikes; war; national emergencies; or fire.

Section 10: Required Services

- (1) NUMBER OF STATIONS. Each Grantee shall provide a broadband communications system which has a capacity of at least 26 downstream and 10 upstream television channels fully two-way active with emergency stand-by power and 20 FM radio stations. At the time any Grantee commences operation, no less than 20 television channels shall be activated.
- (2) MINIMUM BASIC SERVICES. The minimum basic services provided by any Grantee shall include:
 - (A) Government Access Channel. Each Grantee shall provide at least one fully operational channel available for continuous and unrestricted government use without charge.
 - (1) The government access channel shall permit the continual transmission of automated print messages concerning, but not limited to, emergency and

public services, street closing, voter information, government activities and meeting. The Grantee shall provide and install a character generator at the Town Hall which will permit such messages to be updated by the Town at any time.

- (2) This channel shall also be used by the Grantee to broadcast live, whenever technically possible or by video tape when not, all meetings of the Dunn Town Board; and unless the Grantee is unable to obtain authorization for such programming, the meetings of the Dane County Board, the Madison Common Council, and the McFarland, Stoughton, and Oregon Boards of Education.
- (3) When this channel is not in governmental use, it may be the sole discretion of the Town Board, be used as an additional public access or educational access channel.

(B) Public and Educational Access Channel. Each Grantee shall provide at least one fully operational public and educational access channel which will be available, without charge, for continuous and unrestricted use on a first-come, first-serve nondiscriminatory basis to the Dunn Community and school districts serving the Town. This channel shall also be made available to the public and school districts for cable casting of programs prepared on videotape for presentation.

- (1) Each Grantee shall provide, at no cost to public access users, production facilities for live presentations and equipment for cable casting color video tape.
- (2) Within six (6) months after the date its Special Use Permit becomes effective, the Grantee shall complete a set of rules for the use of the public access channel which shall be promptly forwarded to the Town Board for review and approval. The rules shall, at a minimum:
 - a. Provide for access on a first-come first-served, non-discriminatory basis for all residents of the Town;
 - b. Prohibit advertising for commercial or political purposes, as defined by the FCC;
 - c. Prohibit any presentation or lottery information, or obscene or indecent material, provided that in said rules the definition of

obscene or indecent material shall conform to any such definition contained in any Ordinance of the Town which is currently in effect or which is subsequently passed by the Town Board;

- d. Provide for public inspection of the log of requests for access time, which shall be retained for the duration of this Agreement;
- e. Contain procedures by which individuals or groups who violate any rule may be prevented from further access to the channel; and
- f. Provide for free use of reasonable amounts of channel time, equipment, and technical support.

(3) When this channel is not in use by the general public or school district, it may, in the sole discretion of the Town Board, be used by the Grantee.

(C) Time and Weather Channel. A channel which provides time and both audio and visual weather programming including, but not limited to, the National Oceanic Atmospheric Administration Weather Service, local time and temperature information, and automatically updated weather forecasts.

(D) Madison Stations. Four channels which carry all programming of: MWTV, Channel 15, Madison, NBC; WKOW, Channel 27, Madison, ABC; WHA, Channel 21, Madison, PBS; and of WISC Channel 3, Madison, CBS.

(E) Video Program Guide. A channel which carries programming information for the Dunn Cable Television Network.

(F) Late Night Programming. Whatever broadcast stations are available pursuant to the late night signal rules of the FCC.

(G) Additional Signals. In the event that the signal carriage rules of the FCC are changed, the Grantee shall add to its program complement such broadcast channels or signals as are available or are carried by comparable systems in the Dane County area.

(3) PRODUCTION FACILITIES.

(A) Studio or Mobile Facilities Required.

1. Each Grantee shall provide a television studio which shall be available for the origination and transmission of local programming; or such mobile television production equipment as may be necessary to originate live programming within the Town.
2. Where the Grantee provides a television studio, the studio shall be designed, constructed, and equipped to enable full color local origination, color video taping, taped or filmed programming, and editing of video tape and movie film. If the head end facilities of the Broadband Communications Network are situated within the Town, the studio shall be located within the Town. If the head end facilities are situated in another community whose Broadband Communications Network facilities are integrated with those serving the Town, the studio may, subject to the provisions of subsection 4 of this section, be located in such other community.
3. Where the Grantee does not provide a television studio, it shall provide mobile facilities, which include: a full color mobile unit; two color cameras; a switcher/audio control console; a color video cassette recorder; and all associated monitors, microphones, transmission facilities, and cable.
4. Where a Grantee does not provide either a mobile production unit or a television studio situated within the Town at the time it commences operation:
 - A. It shall be required to do so within five years of the effective date of its Special Use Permit unless the Grantee demonstrates to the satisfaction of the Town Board that neither is warranted or unless the Special Use Permit Agreement contains provisions specifying the time, terms, and conditions under which such facilities will be made available.
 - B. The Grantee shall provide the Town with such color television cameras, color video cassette recorders and editing equipment, and associated monitors, lighting, microphones, and related equipment as may be necessary to

permit the full color video taping of programs or activities within the Town for broadcast over the Government access or public access channels.

- (B) Production Costs. The portable and studio television production equipment and editing facilities of each Grantee shall be available for use, free of charge, by those persons and organizations which provide technical personnel who have completed the Madison Community Access Center or comparable training class and have demonstrated their capabilities and knowledge of proper use of the equipment to the Grantee. If the user does not have or provide qualified technical personnel, the Grantee shall provide such personnel and may charge the user the actual cost which it incurs in doing so, or less, at the option of the Grantee. Each Grantee shall make all reasonable efforts to obtain, train, and make qualified technical personnel available without cost or at the lowest possible cost to users.
- (C) Maintenance. Each Grantee shall, at its expense, keep all of its portable and studio television production equipment and editing facilities in good working order and repair.
- (D) Technical Assistance. Each Grantee shall provide reasonable technical and programming assistance to all persons, and organizations utilizing the public, educational, and government access channels for programming.
- (4) ADDITIONAL ACCESS CHANNELS. Whenever its public access channels or educational access channels or government access channels are in use during eighty percent (80%) of the weekdays (Monday through Friday) for eighty percent (80%) of the time during any consecutive three-hour period for six (6) consecutive weeks, a Grantee shall make an additional channel of like type available within six (6) months. The Grantee may make a one-time charge for time and materials for this service. Such additional channel shall be operated on the same basis and in accordance with the same rules as all other access channels.

Section 11: Service Areas

- (1) DESCRIBED IN SPECIAL USE PERMIT AGREEMENT. The service area of each Grantee shall be described and the time within which its services will be made available to subscribers throughout that area shall be set forth in its Special Use Permit Agreement.