

(2) EXTENSION OF SERVICES.

(A) Required Extensions.

1. Each Special Use Permit Agreement shall set forth the terms and conditions under which a Grantee shall be required to extend its services to subscribers within or adjacent to its service area.
2. Upon receipt of an application signed by forty (40) or more persons who reside within any area of the Town which is outside of but adjacent to a then existing broadband communications service area and which has a density of at least twenty (20) subscribers per linear mile, the Town Board may require a Grantee to prepare a report, which shall include a cost analysis, on the feasibility of extending its cable communications service to such area. The Grantee shall extend its service to such area if, after reviewing such report and affording interested parties an opportunity to be heard, the Town Board determines that the extension of service to such area is feasible and within the best interests of the Town.

(B) Extension Beyond Town Boundaries.

1. Nonresident Service. Except as hereinafter provided or as otherwise provided in its Special Use Permit Agreement, a Grantee shall not extend its network beyond the boundaries of the Town until its services have been made available throughout the Town. A Grantee may request that the Town Board waive this restriction. Such a request shall be in writing and shall include a feasibility study and cost analysis of the proposed extension. If, after reviewing such report and affording interested parties an opportunity to be heard, the Town Board determines that the extension of service beyond the boundaries of the Town is feasible and within the best interests of the Town, it may, in its sole discretion, waive this restriction in whole or in part.
2. Government and Education Bodies. Notwithstanding the provisions of the preceding paragraph, a Grantee may, upon obtaining any required authorizations, extend its network beyond the boundaries of the Town to provide program origination from: the University of Wisconsin-

Madison; the City-County Building, Madison, Wisconsin; the Madison Public Library, Madison, Wisconsin; the main office of the Madison Metropolitan School District; the site of the meetings of the Oregon Board of Education; the site of the meetings of the McFarland Board of Education; the site of the meetings of the Stoughton Board of Education; the Oregon, Stoughton, and McFarland fire and emergency medical services stations; and such other locations as may be suggested from time to time, by the Town Board.

3. Interconnection. Nothing in this section is intended to or shall be construed as prohibiting the Grantee from interconnecting its network with other similar networks within or outside of the boundaries of the Town, provided, however, that until such time as the services of the Grantee has been made available throughout its service area, any revenues derived by a Grantee from such interconnection shall be included in annual gross receipt for the purpose of determining the annual payment required by Section 18(3) unless otherwise expressly provided in the Special Use Permit Agreement.

Section 12: Minimum Technical Requirements and Equipment

(1) GENERAL REQUIREMENTS.

- (A) Each Broadband Communications Network shall be so engineered, installed, maintained operated and equipped so as to at all times meet the technical standards which are the then current "state of the art" of the cable communications industry. Each Grantee shall also, at all times, meet the technical standards established by the FCC, including specifications for frequency boundaries, visual carriers, frequency levels, aural carrier frequency levels, channel frequency response, terminal isolation, and system radiation, and all other standards which the FCC may set.
- (B) Each Broadband Communications System shall be engineered and equipped so as to possess a capacity of thirty-six (36) channels.
- (C) The facilities used by any Grantee, including studio, mobile and local origination programming equipment, shall be capable of producing and distributing color TV signals and when the signals the Grantee distributes

are received in color they shall be distributed in color.

- (D) Each Broadband Communications System shall be engineered and installed with the capacity for two-way communications.
 - (E) Each Broadband Communications System shall utilize a dual trunk with a "mid-band split," providing a frequency range of 54 to 300 MHz in the main trunk and of 168 to 300 MHz in the second trunk.
 - (F) Converters utilized in any Broadband Communications System shall be capable of delivering thirty-six (36) channels.
- (2) ADDRESSABLE CONVERTERS. Each Grantee shall utilize addressable converters and supply the head end computer equipment necessary to assure remotely controlled computer access to its Broadband Communications Network. The system shall also afford subscribers selective access to the system on a per program basis unless the Grantee demonstrates to the satisfaction of the Town Board that such service is not economically feasible.
 - (3) EMERGENCY ALTER OVERRIDE. Each Grantee shall incorporate into its facilities the capability for an emergency override audio alert whereby a designee of the Board, in times of crisis, may introduce an audio message on all appropriate Broadband Communications Network channels simultaneously. The Grantee shall provide, in a location to be designated by the Board, all equipment necessary for use of such emergency audio alert system.
 - (4) SHIELDING. Each Grantee shall keep its cable and other equipment shielded in such a manner that there will be no interference with signals received by private receivers.

Section 13: Conditions of Street Occupancy

- (1) METHOD OF INSTALLATION. All transmission and distribution structures, lines and equipment erected by any Grantee within the Town shall be located so as not to interfere with the proper use of the streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places, and not to interfere with existing public utility installations. All installations shall be underground in those areas of the Town where either of the public utilities providing telephone or electric service are underground at the time of installation. In areas where

both telephone and electric utility distributions facilities are above ground at the time of installation, the Grantee may install its facilities above ground, but in such case the Grantee, to the maximum extent possible and subject to approval by the affected public utility, shall place its facilities on the poles of said public utilities. If, subsequently, said telephone or electric utility facilities go underground, the facilities of the Grantee shall go underground simultaneously.

- (2) **CHANGES REQUIRED BY PUBLIC IMPROVEMENTS.** If, at any time during the period of a Special Use Permit, it becomes necessary to remove, relay, relocate, or disconnect any equipment, poles, wires, cables or underground fixtures, to enable the Town to alter or change the grade or location of any street or to install, construct, or maintain any sanitary sewer, storm sewer, water lines, drainage ways, or any other type of public improvement or structure, the Grantee shall, upon reasonable notice, do so at its expense and in each instance comply with the requirements of the Town.
- (3) **NOTICE OF REQUIRED DETOURS.** A Grantee shall notify the Town of its proposed work schedule at least seven days prior to commencing any construction or excavation which will require traffic to be rerouted.
- (4) **EXCAVATION PERMITS.** No Grantee shall open or disturb the surface of any street, sidewalk, driveway, or public place for any purpose without first having obtained any required excavation permits.
- (5) **FACILITIES NOT TO BE HAZARDOUS OR TO INTERFERE.** All wires, conduits, cables and other property and facilities of any 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. A Grantee shall not place poles, conduits, wires or other facilities above or below ground in a manner which results in the public utility facility violating any applicable safety statute, ordinance or administrative regulation. All buried cables, 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) **NOTICE OF TOWN IMPROVEMENTS.** The Town shall give a Grantee reasonable notice of its plans for any construction or repair of municipal improvements which may affect the Grantee's facilities. The notice shall describe the nature and character of the construction, the places where it is to occur, the extent and work schedule for the project. The

notice shall give the Grantee sufficient time to move, remove, relocate or install such facilities to maintain or expand its service.

- (7) **REQUESTS FOR REMOVAL OR CHANGE.** A Grantee shall, on the request of any person holding a moving permit, temporarily move or remove its wires or facilities to permit the moving of a building. The expense of such temporary move or removal, shall be paid by the person requesting the same and the Grantee may, at its option, require payment in advance. A Grantee shall be given not less than ten (10) days advance notice to arrange such temporary moves or removal.
- (8) **AUTHORITY TO TRIM TREES.** A Grantee shall have the authority to trim trees upon and overhanging streets, rights-of-way, and other public sites within the Town so as to prevent branches from coming in contact with its wires and cables. No trees shall be trimmed until the Grantee has obtained the approval of the Town Board. The Grantee may contract for such services but any firm or individual so retained shall obtain Town approval prior to commencing such activity.
- (9) **RESTORATION OF SURFACES.** In the event that a Grantee disturbs any street, driveway, lawn, or other surface, it shall, at its own expense and in a manner approved by the Town Board or the property owner, replace and restore such surface to as good a condition as it was in before it was disturbed. In the event a Grantee fails to so replace or restore such surface the Town may do so at the sole expense of the Grantee. The Grantee shall reimburse the Town for any such replacement or restoration upon demand.
- (10) **FACILITY MAPS TO BE FURNISHED AND AVAILABLE.** Each Grantee shall furnish the Town with current, detailed, plans, records and maps showing the exact location and placement of all transmission lines, facilities, and equipment installed over, under, or upon any streets, rights-of-way, or other public sites within the Town. Three copies thereof and of any amendments, revisions, or supplements thereto shall be filed with the Town Clerk; and another copy shall be made available for public inspection at the office of the Grantee during normal business hours. Such maps, plans and records shall be updated no less often than monthly.
- (11) **EMERGENCY REMOVAL OF FACILITIES.** If in case of fire, storm, accident, disaster, or other emergency it becomes necessary to cut, move, or remove, any facilities or equipment belonging to a Grantee, the Town may do so and any repairs necessitated thereby shall be made by the Grantee at its sole expense.

Section 14: Construction Standards

- (1) **QUALITY OF INSTALLATIONS AND FACILITIES.** All installations shall be of a permanent and durable nature and installed in accordance with good engineering practices and comply with all existing and future ordinances, resolutions, regulations, and orders of the Town so as not to interfere in any manner with the rights of the public or individual property owners. The system shall not interfere with the travel and use of public places or facilities by the public, and during the construction, repair, or removal thereof, shall not obstruct or impede traffic.
- (2) **COMPLIANCE WITH SAFETY CODES.** The construction practices of any Grantee and of its agents, servants, employees, contractors and subcontractors shall comply with and all work shall be performed in accordance with all applicable state, federal and local statutes, ordinances, rules and regulations including, but not limited to, the Wisconsin Safe Place Statute, the Construction Safety Act of 1969, the Occupational Safety Act of 1969, and the Occupational Safety and Health Act of 1970.
- (3) **COMPLIANCE WITH ELECTRICAL CODES.** All electronic equipment shall be installed in accordance with the applicable sections of the current edition of the National Electric Safety Code and all state and local codes.
- (4) **ANTENNAS AND TOWERS.** Antenna supporting structures shall be designed for the proper loading zone as specified in Electronics Industry Association's R.S.-22A Specification. All installations greater than fifty (50) feet in height shall be approved by a professional engineer licensed in this State.
- (5) **COMPLIANCE WITH AVIATION REQUIREMENTS.** Antenna supporting structures shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Agency, the Wisconsin Department of Transportation governing the erection and operation of supporting structures or television towers, and all other applicable local or state codes and regulations.

Section 15: Operation of Broadband Communications Network

- (1) **OPERATIONS TO BE IN ACCORDANCE WITH RULES.** Each Grantee shall maintain and operate its Broadband Communications Network in accordance with the rules and regulations of the Federal Communications Commission, the State of Wisconsin, and the Town of Dunn.
- (2) **OFFICE AND PHONE.** Each Grantee shall maintain public access

production facilities and an office easily accessible to citizens of the Town which shall be open during all normal business hours, shall have a listed local telephone number, and shall be so operated that complaints and requests for repairs or adjustments may be received at all times.

- (3) **SUBSCRIBER'S ANTENNAS.** No Grantee shall require the removal, or offer to remove, or provide any inducement for removal of a potential or existing subscriber's antenna as a condition of provision of service.
- (4) **SALE OR SERVICE OF TELEVISION RECEIVERS.** During the period of any Special Use Permit, neither a Grantee nor any of its members, affiliates, subsidiaries, parent organizations, officers, directors, or shareholders shall directly or indirectly, engage in the retail sale, renting, leasing, or repairing of radio or television receivers or their appurtenances within the limits of the Town; nor shall it require any subscriber to utilize the services of any specific television or radio service business for the repair or maintenance of the subscriber's radio or television receiver.
- (5) **ANTENNA SWITCH.** A Grantee shall, upon request from any subscriber, install a switching device upon the subscriber's television receiver which permits the subscriber to disconnect the receiver from the Grantee's cable system and to utilize the subscriber's antenna for the reception of over-the-air television signals. A Grantee shall not charge a subscriber any fee for the installation of such device if installed at the time of the original installation required for basic service. Thereafter, the actual cost of installing such device may, at the option of the Grantee, be charged to the subscriber.

Section 16: Service Standards

- (1) **QUALITY OF SERVICE.** Each Grantee shall operate and maintain its Broadband Communications Network so that all subscribers shall receive signals of good technical quality and the full range of available services.
- (2) **RESPONSE TIME AND REBATE.** Each Grantee shall promptly and satisfactorily investigate any complaints as to the quality of its signal or services and make such adjustments as may be required to correct situations disclosed by such investigations seven (7) days a week. In the event that a Grantee is unable to restore any loss of service within forty-eight (48) hours, the Grantee shall credit one-thirtieth (1/30) of the subscriber's monthly service charges to each affected subscriber for each twenty-four (24) hour period that subscriber is without service following

loss

report of the of service to the Grantee.

- (3) **SERVICE INTERRUPTIONS AND NOTIFICATIONS.** Whenever it is necessary to interrupt service over a Broadband Communications Network for the purpose of maintenance, alteration or repair, the Grantee shall do so at such times as will cause the least amount of inconvenience to subscribers, and unless such interruption is unforeseen and immediately necessary, shall give reasonable advance notice of such interruption to all affected subscribers. Such notice may be given over the Broadband Communications Network. If a Grantee fails to resume service within thirty-six (36) hours of any such interruption, it shall credit one-thirtieth (1/30) of its monthly service charges to each affected subscriber for each twenty-four (24) hour period that the subscriber is without service.
- (4) **UPGRADING OF FACILITIES, EQUIPMENT AND SERVICE.** Each Grantee shall, from time to time, reasonably upgrade its facilities, equipment and service so that its Broadband Communications Network is so engineered, installed, maintained, operated and equipped as to, at all times, meet the technical standards which are the then current "state of the art" of the cable communications industry. Each Grantee shall also meet, at all times, the technical standards established by the FCC, including specifications for frequency boundaries, visual carriers, frequency levels, aural carrier frequency levels, channel frequency response, terminal isolation, and system radiation, and all other standards set by the FCC.
- (5) **SERVICE RECORDS.** Each Grantee shall maintain a record of the response time and length of service interruption, for all complaints and service interruptions received or experienced during each five-year period of its Special Use Permit. Such records shall be kept at the office of the Grantee and shall be made available for inspection by representatives of the Town, during normal business hours. At the end of each five-year period the Grantee shall offer to turn such records over to the Town and if the Board refuses to take them, the Grantee may have them destroyed.

Section 17: Books, Records and Reports of Grantees

- (1) All books and records of any Grantee concerning its operations within the Town including but not limited to its income tax returns and financial records shall be made available for inspection and audit by the Commission or its designated agent within thirty (30) days after any request for such inspection or audit is made.
- (2) Each Grantee shall keep and maintain all records required by

the FCC.

- (3) Copies of all petitions, applications and communications submitted by Grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matter affecting the operation of its broadband communications system shall also be submitted simultaneously and filed with the Town.
- (4) Each Grantee shall keep and maintain a complete record of all persons or groups requesting or utilizing time on its access channels.
- (5) All records required by this section shall be kept on file by the Grantee for the duration of its Special Use Permit and shall be made available for inspection upon request of the Town Board.

Section 18: Permit Fees and Required Payments

- (1) **FILING FEE.** An applicant for a special use permit shall pay a filing fee of \$250 to the Town at the time its application is filed.
- (2) **EXPENSES INCURRED BY TOWN.** Each applicant for a Special use Permit shall be required to pay any consulting fees, legal fees, and any other fees, costs, or expenses incurred by the Town arising out of or in any way related to its application and to the formulation of its Special use Permit Agreement if the application is approved. To guarantee payment of such expenses, each applicant shall deposit the sum of \$1,500 with the Town Clerk at the time its application is filed. If such expenses are paid timely, the deposit will be refunded at the time that the Special Use Permit is issued or thirty days after the application is rejected. If an applicant fails to pay or to reimburse the Town for payment of such expenses within 14 days of the date that the Town submits its bills therefor, the Town may deduct the amount of such expenses from the deposit.
- (3) **ANNUAL COST OFFSET AND PROGRAMMING ASSISTANCE PAYMENT.**
 - (A) Payment Required. Each Grantee shall pay an amount equal to three percent (3%) of its annual gross receipts to the Town each year to offset any costs and expenses incurred by the Town which arise from or are in any way related to the construction, operation, supervision, or regulation of broadband communications networks or to municipal, public, or educational access channels including, but not limited to, acquisition of equipment, training of personnel, development and

presentation or programming, provision of services, aiding in the provision of educational services, and affording access to said channels at minimal cost to the citizens.

- (B) Gross Receipts Defined. The term "annual gross receipts" shall include all revenues received by a Grantee from and in connection with the provision of its broadband communications services, disconnect and reconnect fees, fees for cable benefits including public access and origination channels, and other special fees associated with services provided on its Broadband Communications Network. The term shall not include revenues derived from sales taxes and other taxes collected by the Grantee.
- (C) Time of Payment. The amount of the payment shall be computed semi-annually as of the last day of June and of December. Within thirty (30) days of the expiration of each such month, the Grantee shall file a financial statement showing in detail its gross receipts during the preceding semi-annual period. Payment shall be due and made at the time each such statement is filed. Within three (3) months following the conclusion of each fiscal year of the Grantee, the Grantee shall also file an annual report prepared and audited by a certified public accountant showing the gross receipts and all charges, deductions, and computations utilized in determining the amount of the payment due to the Town.
- (D) Interest. In the event that any payment or part thereof, is not made within thirty (30) days of the close of the semi-annual period for which it is due, interest shall accrue on the unpaid balance at the current prime rate plus five percent per annum from the last day of the semi-annual period for which such payment was due.
- (E) Rate Reduction. In the event that any court or administrative agency, whether state or federal, determines, for any reason, that the annual charge imposed by this section or any part thereof is invalid or unconstitutional or that any payment required herein is unlawful or uncollectible, or in the event that any legislation, regulation, or administrative agency prohibits the imposition or collection of such charge, then upon the happening of any such event, the Grantee shall reduce all rates set forth in its then applicable schedule of charges by three percent (3%).
- (F) Charge Not A Tax Payment. The payment required by this

subsection shall be in addition to any other payment owed to the Town by a Grantee and is not intended to be nor shall it be construed as a payment of or in lieu of property taxes, income taxes, or any other local, county, state or federal taxes.

- (G) Rights of Recomputation. Acceptance of any payment by the Town shall not be construed as a release or as an accord and satisfaction of any claim which the Town may have for further or additional sums due under the provisions of this section or any other section of this Ordinance.

Section 19: Revocation of Special Use Permit

- (1) GROUNDS FOR REVOCATION. The Town Board may revoke any Special Use Permit and rescind all rights and privileges associated therewith in the following circumstances:
- (A) If the Grantee defaults in the performance of any of its obligations under the Special Use Permit Agreement and fails to cure the default within thirty (30) days after written notice of the default is given by the Town.
 - (B) If the Grantee fails to provide or maintain in full force and effect, the insurance coverage required by Section 7(2).
 - (C) Any violation of the transfer restrictions imposed by Section 3(8).
 - (D) If the Grantee fails to comply with any ordinance, state or federal statute, or any rule or regulation applicable to the construction, operation, or maintenance of its Broadband Communications Network.
 - (E) If a petition, which affects the operation of the system, 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 shall fail to have it dismissed within six (6) months of the date of filing.
 - (F) If a receiver, trustee or liquidator is appointed for all or part of the assets of the Grantee.
 - (G) If the Grantee makes an assignment for the benefit of creditors.
 - (H) If any court of competent jurisdiction, the FCC, or any

state regulatory body by rule, decision or other action determines that any material provision of the Special Use Permit Agreement or of this Ordinance is invalid or unenforceable.

- (I) If the Grantee violates any order 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.
- (J) If the FCC or State of Wisconsin denies the Grantee permission to operate the broadband communications system for which the Special Use Permit was granted or if such permission is revoked at any time.

(2) REVOCATION PERMIT.

- (A) The Board may revoke a Special Use Permit upon the occurrence of any one or more events enumerated in Section 19(1). In all such cases, however, the Grantee shall have the right to request a hearing at which it may be represented by counsel.
- (B) Notice. Prior to revoking any Special Use Permit the Board shall notify the Grantee, in writing, of the facts which constitute cause for revocation. The Grantee shall have thirty (30) days from the date of such notice to remedy the violation or default or to request a hearing with respect to the proposed revocation. If the Grantee fails to remedy the violation or default or to request a revocation hearing within such thirty (30) days, the Board may revoke the Special Use Permit.
- (C) Request for Hearing. A Grantee may obtain a revocation hearing by filing a written request for a hearing with the Town Clerk. The request shall identify the Grantee and shall set forth the Grantee's response to the grounds for revocation specified in the notification and any other matter which the Grantee deems relevant to a full consideration of the issues.
- (D) Revocation Hearing. The Board shall set a date for a public hearing which shall not be less than ten (10) days nor more than twenty-one (21) days following the filing of the Grantee's request for hearing. At the hearing, the proponent of the revocation shall present its testimony and the evidence first. The Grantee, who may be represented by counsel, shall then have the opportunity to be heard in person and to present witnesses and testimony on its behalf. Both the

proponent of the revocation and the Grantee shall have the right to cross-examine adverse witnesses and to compel the attendance of witnesses by subpoenas which shall be issued by the Town Chairman upon request.

- (E) Sanctions. If grounds for the revocation of the Special Use Permit exist, the Board may pass a resolution imposing a lesser penalty or sanction, upon the Grantee provided that such lesser penalty or sanction is agreed to by the Grantee.
- (F) Findings Required. The Board shall reduce its finding and determinations to writing and shall file them with the Town Clerk within ten (10) days of the hearing. The Clerk shall forward a copy thereof to the proponent of the revocation action and to the Grantee by certified mail with return receipt requested.

Section 20: Purchase Rights of the Town

(1) TRANSFER OF INTEREST.

- (A) Upon the receipt of an application to transfer a Special Use Permit or upon the receipt of an application for consent to any transfer described in Section 3(8), the Town shall have the right to purchase the interest in the Broadband Communication Network which is to be transferred for the fair market value thereof.
- (B) The fair market value of the interest being transferred shall be the amount offered for such interest by the person, corporation or entity seeking to acquire such interest provided the offer was made in good faith, reflects an arm's length transaction, and is not the result of any collusion.
- (C) The Grantee shall file and executed copy of the offer to purchase the interest proposed to be transferred with the application for consent to such transfer. The Town Board shall have forty-five (45) days, commencing upon the date of such filing, to notify the Grantee in writing of its intention to purchase such interest. If the Town does not timely elect to purchase such interest, or elects not to purchase such interest. If the Town does not timely elect to purchase such interest, or elects not to purchase such interest, or is unable to obtain any authorization or financing necessary to purchase such interest within a reasonable time, the Grantee may sell such interest to the person, corporation, or entity which submitted the offer for the exact price and upon the exact terms and conditions

set forth in the offer; and, in such event, the Town shall not unreasonable withhold its approval of the requested transfer of the Special Use Permit or interest in the Broadband Communications Network so long as:

- (i) the proposed transferee meets all requirements of this ordinance regarding the ownership and operation of a Broadband Communications Network; and
- (ii) the Offer to Purchase was made in good faith, reflects an arm's length transaction and was not the result of collusion; and,
- (iii) the proposed transfer will not adversely affect the operation and maintenance of the Broadband Communications Network or the quality and level of service provided to the subscribers.

(2) EXPIRATION OR REVOCATION OF PERMIT.

- (A) In the event that a Grantee elects not to apply for renewal of its Special Use Permit; or in the event such renewal is denied for good reason or in the event that its Special Use Permit is revoked and the permit is issued to a new grantee, the Town or the new grantee, whichever is applicable, shall have the right to purchase the Broadband Communications Network for the fair market value thereof.
- (B) If the market cannot be agreed upon by the Grantee and the Town or the new grantee, as the case may be, it shall be determined by a panel of arbitrators consisting of three persons. The Grantee and the Town Board or the new grantee, as the case may be, shall each appoint an arbitrator of their choice to such panel and the two arbitrators so chosen shall select the third member of the panel. The arbitration procedure shall be in accordance with the provisions of Chapter 298 of the Wisconsin Statutes and the amount which the arbitration panel determines to be the fair market value of the system shall be the price at which the Town or the new grantee may purchase the system. In determining the fair market value of the interest being transferred, the arbitrators shall include the depreciated value of the real property, plant, equipment and facilities of the Broadband Communications Network reduced by the amount of any lien, encumbrance, or obligations which the Town may assume and agree to pay; shall include the value of any

subscriber contracts; but shall not include any amount for good will or for the value of the Special Use Permit or of any right or privilege created by this Ordinance. The expense of the arbitration proceeding shall be shared equally by the Town or new grantee and the Grantee.

- (C) Payment for the Broadband Communications Network shall be made within one hundred twenty (120) days after the date that the fair market value of the system is determined by negotiation or arbitration.

Section 21: Protection of Individual Rights

- (1) DISCRIMINATORY PRACTICES PROHIBITED. No grantee shall deny service, deny access, or otherwise discriminate against subscribers, programmers, or the general public on the basis of race, color, religion, national origin, creed, or sex.
- (2) EMPLOYMENT PRACTICES OF GRANTEES. In the carrying out of the construction, maintenance and operation of its Broadband Communications System, a Grantee may not discriminate against any employee or applicant because of race, creed, color, religion, sex, or national origin. Grantee shall strictly adhere to the equal employment opportunity requirements of the FCC as expressed in Sections 76.13(a)(8) and 76.311 of Chapter 1 of Title 47 of the Code of Federal Regulations. Grantees shall comply at all times with all other applicable federal, state, town and county laws, and all executive and administrative orders relating to non-discrimination in employment.
- (3) CABLE MONITORING. Neither a Grantee nor any governmental bureau, department, unit, agency or entity, at the federal, state, county, or local level, nor any other person or entity, shall monitor, or arrange for the monitoring of, any cable, line, signal input device, or subscriber outlet or receiver for any purpose whatsoever except to the extent necessary to provide the services subscribed for.
- (4) RIGHT OF PRIVACY. No Grantee shall transmit any signal to or from any dwelling or other building without the express authorization of the owner of said dwelling or building, provided that where the owner has leased such dwelling or building or a portion thereof, authorization shall be obtained from the lessee and not from the owner.
- (5) RIGHTS OF TENANTS.
 - (A) An owner or operator of an apartment building, condominium, nursing home, hospital, mobile home park or any other multiple dwelling unit or rental facility

shall not interfere with or charge any fee for the installation of cable facilities for the use of a lessee, tenant, or resident of said property of premises, except that such owner or operator may require:

1. Installation to conform to reasonable conditions necessary to protect safety, appearance and function of the premises;
 2. A Grantee, occupant or tenant to pay the installation, operation or removal of such facilities;
 3. A Grantee, occupant or tenant to agree to indemnify the owner or operator for any damages caused by the installation, operation or removal of such facilities.
- (B) It shall be unlawful for any Grantee to make or offer to make, or for any such owner or operator to demand or receive any payment for permitting a Grantee to install the facilities or equipment necessary to connect such premises to the broadband communications system.
- (C) No such owner or operator may discriminate in the amount of rent charged to tenants or occupants who receive cable services and to those who do not.
- (D) No Grantee shall take any actions which would diminish or interfere with the privilege of any owner, tenant, or other occupant of any such building to use or avail themselves of master or individual antenna equipment.
- (6) **SALE OF SUBSCRIBER LISTS PROHIBITED.** No Grantee shall sell, or otherwise make available, lists of the names and addresses of its subscribers, to any person, agency, or entity, for any purpose whatsoever.

Section 22: Compliance to Laws and Public Regulations.

Each Grantee shall at all times during the term of its Special Use Permit be subject to and comply with: any and all ordinances which the Town has adopted or shall hereafter adopt; and all state and federal statutes, rules and regulations applicable to the cable communications services provided by the Grantee. In the event any valid statute, rule, or regulation adopted by any state or federal governing authority, including, but not limited to the Federal Communications Commission, contravenes any provision of this ordinance, then such provision shall be supersede by and to the extent that it is in conflict with and contrary to, such statute, rule, or regulation.

Section 23: Rights of the Town

- (1) **RIGHT TO AMEND ORDINANCE.** The Board may from time to time, add to, modify or delete provisions of this ordinance as it shall deem necessary in the exercise of its regulatory powers provided that such additions or revisions are reasonable and do not place an undue financial burden on the Grantee. Such additions or revisions shall be made only after a public hearing for which the Grantee shall have received written notice at least thirty (30) days prior to such hearing. 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, such material provision may be amended as herein provided.
- (2) **RIGHT TO CONDEMN.** Nothing herein shall be deemed or construed to impair or affect the right of the Town to acquire any property of a Grantee through the exercise of the right of eminent domain when the exercise of such right is necessary or convenient to the performance of Town services. Property acquired through the exercise of the right of eminent domain shall be at a fair and just value, which shall not include any amount for the Special Use Permit or for any of the rights or privileges granted therein.
- (3) **RIGHT TO INTERVENE.** The Town shall have the right to intervene in any suit or proceeding to which the Grantee is a party.
- (4) **RIGHT TO EXERCISE GOVERNMENTAL POWERS.** 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.
- (5) **RIGHT TO INSPECT AND COPY RECORDS.** The Town shall have the right to inspect and copy, during normal business hours and upon reasonable notice, the contracts, engineering plans, accounting, financial data, and service records relating to the property and the operations of any Grantee and to all records it is required to keep under the provisions of this Ordinance. 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.
- (6) **RIGHT TO INSPECT AND TEST.** The Town shall have the right to inspect any construction or installation work performed by a Grantee, its agents, servants, employees, contractors, or

subcontractors pursuant to its Special Use Permit Agreement of this ordinance to determine whether it complies with the terms thereof and shall have the right to perform, from time to time such tests and inspections, as may be necessary to assure continuing compliance.

- (7) **USE OF FACILITIES.** The Town shall have the right to install and maintain, free of charges, wires, fixtures, or equipment upon the poles or within the conduits of any Grantee provided such installation and maintenance will not interfere with the services of the Grantee.

Section 24: Protection of Grantee's Equipment

- (1) **TAMPERING WITH EQUIPMENT PROHIBITED.** No person shall intentionally damage or cause to be damaged any wire, cable, conduit, apparatus, equipment or facilities belonging to any Grantee, or tap, tamper with, or connect any wire or device to any wire, cable, conduit, apparatus, equipment, or facilities, belonging to any Grantee with the intention of obtaining a signal or impulse therefrom without the written consent of the Grantee.
- (2) **REMOVAL OF EQUIPMENT PROHIBITED.** No person shall move, remove, disconnect, interfere with, or render inoperable any wire, cable, conduit, apparatus, equipment, or facilities belonging to any Grantee without the written consent of the Grantee.
- (3) **EXCEPTIONS.**
- (A) This section shall not prohibit a public utility from removing, disconnecting, or otherwise rendering inoperable, any apparatus or equipment attached to or in any way connected to its facilities if done for reasonable cause.
- (B) This section shall not prohibit the Town from moving, removing, disconnecting, or otherwise rendering inoperable any equipment, apparatus, or facilities belonging to a Grantee when it is necessary to do so because of fire, storm, accident, disaster, or other emergency.

Section 25: Penalties for Violations

Any person, firm, or corporation violating the provisions of sections 3(1), 13, 14, 21, 22 or 24 of this ordinance shall, upon conviction thereof, be subject to a forfeiture of up to \$500 for each violation. Each violation and each day on which a violation occurs or continues shall constitute a separate offense.

Section 26: Severability

The provisions of this ordinance are severable. If any provision of the ordinance is invalid, or if its application to any person or circumstance is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.

Section 27: Effective Date

This ordinance shall take effect on the day after its publication as provided by law.

Section 28: Definitions

In Chapter 15, the following terms, words, and phrases shall have the designated meaning unless a different meaning is expressly provided or clearly indicated by the context:

- (1) ADDITIONAL SERVICE. Any service provided to a subscriber by a Grantee other than its basic service for which a special charge is made.
- (2) ACCESS CHANNELS. The channels which a Grantee is required to provide by section 10(2) of this ordinance.
- (3) ANNUAL GROSS SUBSCRIBER REVENUES. All revenues received by a Grantee, its affiliates or subsidiaries, from and in connection with the provision of the services, disconnect and reconnect fees, fees for regular cable benefits including access and origination channels, and other special fees associated with regular subscriber services on a Broadband Communications Network in the Town of Dunn, Wisconsin. The term does not include leased channel revenues.
- (4) BASIC SERVICES. The simultaneous delivery by a Grantee to its subscribers of all broadcast and nonbroadcast channels which it is required to provide by its Special Use Permit Agreement and which is included in the regular monthly charge paid by all subscribers.
- (5) BOARD. The Dunn Town Board.
- (6) BROADBAND COMMUNICATIONS NETWORK (BCN). Any network of cables, optical, electrical, or electronic equipment, including cable television systems, used for the transmission of electrical signals of television, radio and other intelligences, either analogue or digital, for sale or use by the inhabitants of the Town.
- (7) BCN CHANNEL CAPACITY. The highest total number of cable

television channels on which television signals from separate sources may be delivered downstream simultaneously to every subscriber in the network. The network may have additional channel capacity for specialized or discrete purposes, but the technical performance specified shall not materially degraded thereby.

- (8) CHANNELS. A group of frequencies in the electromagnetic spectrum capable of carrying an audio-data or audio-visual television signal. Each channel is a block of frequencies containing 6 MHz bandwidth.
- (9) CONVERTER. Any electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber and by an appropriate channel selector also permits a subscriber to view all signals delivered at designated dial locations.
- (10) COMMENCE OPERATION. That point in time when sufficient distribution facilities have been installed so as to permit immediate subscription by and network service to at least seventy-five percent (75%) of the dwelling units located within the initial service area of a Grantee.
- (11) COMMISSION. The Dunn Area Cable Regulatory Commission.
- (12) DOWNSTREAM. The direction of the transmission over the BCN from the head end or hub to a subscriber's terminal.
- (13) EDUCATIONAL ACCESS CHANNEL. The channel which the Grantee is required to provide by section 1(2)(B) of this ordinance.
- (14) FCC. The Federal Communications Commission and any legally appointed or elected successor.
- (15) FULL NETWORK SERVICE. All basic services and additional services offered by a Grantee.
- (16) GRANTEE. Any person, corporation, partnership or entity of any sort to whom a Special Use Permit has been issued pursuant to this ordinance.
- (17) HEAD END. The land, electronic processing equipment, antennas, tower, building and other appurtenances normally associated with and located at the starting point of a BCN.k.
- (18) MONITOR. To observe a one-way or two-way communication signal without the express prior consent of the subscriber receiving or sending said communication signal, whether said signal is observed by visual or electronic means, for any purpose whatsoever.

- (19) MUNICIPAL ACCESS CHANNEL OR GOVERNMENT ACCESS CHANNEL. That channel which the Grantee is required to provide by section 10(2)(A) of this ordinance.
- (20) PUBLIC ACCESS CHANNEL. That channel which the Grantee is required to provide by section 10(2)(B) of this ordinance.
- (21) PUBLIC NOTICE. The publication of a proposed action, inquiry, or proceeding in a daily or weekly newspaper of general circulation serving the Town at least fourteen (14) days prior to such action, inquiry, or proceeding.
- (22) REASONABLE NOTICE. Notice of any contemplated action given at least forty-eight (48) hours prior to such actin.
- (23) SERVICE AREA. That geographical area within the legal limits of the Town specified in the Special Use Permit Agreement throughout which a Grantee is authorized and required to provide its services.
- (24) STATE. The State of Wisconsin.
- (25) STREET. Any street, roadway, highway, avenue, lane, alley, court, place, square, curb, sidewalk, easement, right-of-way, or other public way in the Town which has been or may hereafter be dedicated and open to public use.
- (26) SUBSCRIBER. Any person, firm, company, corporation, or association receiving either basic service or additional service from a Grantee under the schedule of charges filed with and approved by the Town.
- (27) THE GRANTEE'S SYSTEM; THE SYSTEM; OR THE BROADBAND COMMUNICATIONS SYSTEM. Any broadband communications system constructed or operated by a Grantee pursuant to a Special Use Permit Agreement issued by the Town.
- (28) TOWN. The Town of Dunn, its officers and employees unless otherwise specifically designated, the area within the territorial limits of the Town, and such territory presently outside the Town limits over which the Town may assume jurisdiction or control by virtue of any boundary adjustment.
- (29) UPSTREAM. The direction of transmission over the BCN from a subscriber terminal to the network head end or hub.
- (30) USER. A person utilizing a channel for purposes of production or transmission of material, as contrasted with receipt thereof, in a subscriber capacity.

The Town of Dunn does hereby amend and waive certain provisions (listed below) of the Broadband Communications Ordinance Chapter 11-8 for the exclusive proposed service area of the U.S. Cable of Viking (page 5-10 Section 4(C) Application).

Page

- 9 Section 4(1)(D) Refer to Page 15-23 Section 10(1) Amended.
- 9 Section 4(1)(L)f Delete Sentence beginning, "If
Line 3 applicant..."
- 10 Section 4(1)(M)f Delete
- 10 Section 4(L)(N) Acceptance of letter from U.S.
Cable Corporation dated March 18, 1981.
(Waiver)
- 11 Section 5 Refer to Page 15-40 Section 18(2)
Amended.
- 13 Section 6(3) SECURITY FOR PERFORMANCE--The grantee shall furnish security in the form of a bond, certificate of deposit, certified check or an irrevocable letter of credit in the amount of Twenty Thousand Dollars (\$20,000) to the Town, provided, however, that when full service is available throughout the Grantee's service area, the security may be reduced to Ten Thousand Dollars (\$10,000). The security shall be in such form as is acceptable to the Town Board and shall guarantee; that the Broadband Communications Network will be constructed and cable communication services provided within the time period set forth in this agreement; that the grantee will perform as agreed herein; and that the grantee will comply with all statutes, ordinances, and regulations applicable to the construction, maintenance, and operation of its Broadband Communications Network. This security shall be in effect for the remainder of the special use permit period. (Eight years from date of execution of ordinance.)
- 16 Section 8(9)(A) Delete Sentence beginning, "No rate..."

Insert sentence, "When the subscriber count equals or exceeds 55 percent of

the living units representing potential subscribers, then grantee shall agree and by its acceptance of the ordinance, specifically agrees to be subject to the town or other regulatory bodies having competent jurisdiction to fix just, reasonable and compensatory rates. Until that time, the grantee shall be allowed to establish its own rates for all services."

17 Section 8(10)(B)(C) Delete

18 Section 9(2)(3) Delete

18 Section 9(2) Insert, "Construction. Construction will start within forty-five (45) days after such permits, licenses and so forth have been obtained. Such construction shall be pursued, with reasonable diligence and shall be completed in Grantee's indicated service area within twelve (12) months of the effective date of the Special Use Permit."

18 Section 9(3) Insert, "Operation. Within five (5) months after construction completed grantee shall commence operations 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 twelve (12) months of the effective date of the special-use permits."

18 Section 10(1) Delete

Insert, "Refer to Insert #1 of Application for services at date of application."

18 Section 10(2) Delete

20 Section 10(3) Delete

22 Section 10(4) Delete

23 Section 11(2)(A) Delete

Insert, "Extensions of the present cable television line shall be required only where the extensions will provide a density ratio of 40-subscribers per mile and/or 50-homes per mile. As the density ratio is less

extensions shall be required only as the monthly rates paid by subscribers to the extension will increase to such sum as will provide a return to cable system equivalent to the total rates which would be received at the ratio of 40-subscribers per mile.

EXAMPLE: Assuming an extension of one mile with 20 subscribers instead of 40, the 20-subscribers would each pay a monthly rate of \$16.00 where the standard rate is \$8.00

- 24 Section 12(C) Delete
- 25 Section 12(D) Delete
- 25 Section 12(E) Delete
- 25 Section 12(2) Delete
- 25 Section 12(3) Delete
- 28 Section 15(2) Delete

Insert, "Viking CATV Associates office is presently located at 5007 Monona Drive, Monona, WI 53716, phone number 222-7317."

- 29 Section 16(2) Delete, "forty-eight (48)"

Insert, "seventy-two (72)"

- 31 Section 18(2) Delete

Insert, "US Cable Corporation will reimburse the Town of Dunn for all reasonable and administrative and legal expenses incurred but not to exceed seven hundred dollars (\$700)."

- 32 Section 18(3)(C) Delete

Insert, "US Cable remits payments quarterly within 60-days of each quarter."

- 32 Section 18(3)(D) Delete

- 32 Section 18(3)(E) Delete

Insert, "Covenant Not to Sue. The Grantee covenants that neither it nor any of its members will ever institute or participate in, directly or indirectly, any action or

suit, at law or in equity, or institute, prosecute, or submit any claim, demand, action or cause, against the town or any of its elected, appointed or hired officials, officers, agents, servants and employees, or any of their successors, to restrain or enjoin, the collection of any payment required by the Broadband Communications Ordinance, to recover any such payment once made, or to obtain a declaration that such payment is, for any reason, excessive, unreasonable, unwarranted, illegal, or uncollectible."

40 Section 24

Delete

Insert,

Section 24: Protection of Grantee's Equipment

- (1) UNAUTHORIZED CONNECTIONS OR MODIFICATIONS. It shall be unlawful for any firm, person, group, company, corporation or governmental agency, without the express written consent of the Grantee to make any connection, extension or division whether physically, accoustically, inductively, electronically, or otherwise with or to any segment of a franchised Broadband Telecommunications Network for any purpose whatsoever.
- (2) REMOVAL OR DESTRUCTION PROHIBITED. It shall be unlawful for any firm, person, group, company, corporation, or governmental agency to willfully interfere, tamper, remove, or obstruct or damage any part, segment or content of a franchising Broadband Telecommunications Network for any purpose whatsoever, without the written permission of Grantee.
- (3) VIOLATION. Any firm, person, group, company, corporation or governmental agency or body convicted of a violation of this section shall for each offense forfeit a sum of not less than one-hundred dollars (\$100) nor more than five-hundred dollars (\$500) together with the cost of such prosecution. Violation of this section shall be

considered a separate offense for each twenty-four (24) hour period the violation continues following notification or discovery.

- (4) EXCEPTIONS. This section shall not prohibit a public utility from removing, disconnecting, or otherwise rendering inoperable any equipment, apparatus, or facilities belonging to a Grantee when it is necessary to do so because of fire, storm, accident, disaster, or other emergency within the limits of the law."