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Chapter 2 Water and Sewer Utilities Regulation [Reserved for Future Use]

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Section 5.1.1 Short Title.

Town of Oregon Cable Television (CATV) Franchise Enabling Ordinance

Section 5.1.2 Definitions.

For the purpose of this chapter the following terms, phrases, and words and their derivations shall apply:

- a) Additional service - A subscriber service provided by the Grantee for which a special charge is made based on program or service content or time of usage.
- b) Basic service - Any service tier which includes the retransmission of local broadcast signals including all tiers of subscriber service provided by the grantee including the delivery of broadcast signals, the delivery of broadcast signals and programming originated over the cable system covered by the regular monthly charge paid by the subscribers.
- c) Board - The duly elected Town Board of the Town of Oregon, Dane County, Wisconsin or other future governing body of the said entity.
- d) Cable Act - The Federal Cable Communications Policy Act of 1984, 47 U.S.C. Sections 521-559.
- e) Cable Channel - The term "cable channel" or "channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Commission by regulation).
- f) Cable Operator - The term "cable operator" means any person or group of persons
 - 1. who provides cable service of a cable system and directly or through one or more affiliates own a significant interest in such cable system; or
 - 2. who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.
- g) Cable Service - The term "cable service" means
 - 1. the one-way transmission to subscribers of video programming, or other programming service, and
 - 2. subscriber interaction, if any, which is required for the selection of such video programming or other programming service.
- h) Cable System - Any system using coaxial cables, wave guides, or other conductors and equipment which receives and amplifies signals broadcast by television and/or radio stations or distributed via satellite and which transmits video and audio programming

originated by the system itself or by other parties, and distributes such signals and programming by wire, cable, microwave, satellite, or other means to persons who subscribe to such service. Such terms do not include:

1. a facility that serves only to retransmit the television signals of one or more television broadcast stations;
2. a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility or facilities uses any public right of way;
3. a facility of a common carrier which is subject, in whole or in part, to the provisions of the Cable Act, except that such facility shall be considered as a cable system to the extent such facility is used in transmission of video programming directly to subscribers; or
4. any facilities of any electric utility used solely for operating its electric utility system.

i) Commence operation - Operation shall be considered commenced when sufficient distribution facilities have been placed in use to offer full network service to at least twenty-five percent (25%) of the inhabitants in the initial service area.

j) Completed - Operations shall be considered completed when sufficient distribution facilities have been placed in use to offer full network service to one hundred percent (100%) of the inhabitants in the initial service area.

k) Extension policy - The policy of the Cable Operator in regard to extending service beyond the limits as defined in the "Initial Service Area". The "Extension Policy" is to be presented to the Town Board at the time of application for a Franchise and becomes one of the conditions for granting of the Franchise.

l) Federal Agency - Any agency of the United States, including the Federal Communications Commission.

m) Franchise - The term "franchise" means an initial authorization, or renewal thereof (including renewal of an authorization which has been granted subject to the Cable Act, Section 626), issued by the Town of Oregon to construct and operate a cable system.

n) Franchise Fee - The term "franchise fee" includes any tax, fee, or assessment of any kind imposed by the Town of Oregon on a cable operator or cable subscriber, or both, because of the cost to the Town of Oregon in enabling the cable operation to take place to selected areas in the Town of Oregon.

o) Full Network Service - All "Basic Services" and "Additional Services" offered by the Grantee.

p) Grantee - Any person, firm, company, corporation, association or governmental entity to whom or which a Franchise under this ordinance is granted or lawfully transferred under this ordinance.

q) Gross Revenues - Any and all compensation derived by a Grantee from the provision of Cable Services in the Town of Oregon. The term does not include any taxes on services provided by a Grantee and imposed directly upon any subscriber or user by the state, town, or other governmental unit and collected by a Grantee on behalf of said unit.

r) Initial Service Area - The territory, services, and policies of the Grantee. The "Initial Service Area" is presented to the Town Board at the time of application and is one of the conditions upon which the Franchise is granted.

s) Person - Means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

t) Service Tier - The term "service tier" means a category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator.

u) State - The term "State" means any state, or political subdivision or agency thereof.

v) Subscriber - Any person, firm, company, corporation, or association, receiving reception service for the Grantee.

w) Town - Town of Oregon in its present form or as it may be changed by annexation.

Section 5.1.3 Franchise Required.

a) No person, firm, company, corporation, or association shall construct, install, maintain, or operate within any public street in the Town, or within any other public property of the Town, any equipment or facilities for the distribution of television signals or radio signals or other intelligences either analog or digital over a Broadband Information Network subscriber unless a franchise authorizing the use of the streets or properties or areas has first been obtained pursuant to the provisions of this ordinance, and unless such franchise is in full force and effect.

b) Any franchise granted hereunder shall be a privilege to be held for the benefit of the public by the parties.

Section 5.1.4 Grant of Franchise.

a) The Town shall have the right to award one or more non-exclusive franchises within its jurisdiction from a date certain for an initial term not to exceed fifteen (15) years.

b) Said franchise shall be construed to authorize the right and privilege to construct, erect, operate, and maintain in, upon, along, across, above, over, and under the streets, alleys, public ways, and through easements and public places now laid out or dedicated, and all extension thereof and additions thereto, in the Town, poles, wires, cables, and underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation in the Town of cable communications system.

c) In the event that any such easement is used, a Grantee shall ensure:

1. that the safety, functioning, and appearance of the property and the convenience and safety of other persons not be adversely affected by the installation of construction of facilities necessary for a cable system.

2. that the cost of the installation, construction, operation, or removal of such facilities be borne by the cable operator or subscriber, or a combination of both.

3. that the owner of the property be justly compensated by the cable operator for any damages caused by the installation, construction, operation or removal of such facilities by the cable operator.

Section 5.1.5 Franchise Rights to Police Power.

The Grantee shall, at all times during the life of the Franchise, be subject to the lawful exercise of the police power by the Town and to such reasonable regulations as the Town shall hereinafter provide. Such additions or revisions shall be made only after public hearings of which the grantee shall have received written notice at least thirty (30) days prior to such hearing.

Section 5.1.6 Review, Renegotiation, and Modification.

a) In order to provide for a maximum degree of flexibility in the franchise, which covers a field that is relatively new and rapidly changing and which probably will see many regulatory, technical, financial, marketing, and legal changes during the term of the franchise, and to help achieve a continued advanced and modern system for the Town of Oregon, the following terms and conditions are a part of the franchise granted.

1. Each year during the month of March at the regular or special Town Board meeting the Town and the Grantee at the Town's option shall meet to discuss application of new technologies, system performances, services

provided, programming offered, customer complaints, privacy and human rights, amendments to this ordinance, and judicial and FCC rulings. The parties may renegotiate any of the above provisions at that time. The local and corporate Grantee shall provide year end financial statements and operating statements for review by the Town Board. The Town is to receive a copy of any report required to be filed with any regulatory agency having jurisdiction.

2. Board members, administrative personnel, the public or the Grantee may add further topics to the list recited in "1".

3. It is the intent of the Town of Oregon to consider extension of the franchise during the 6 month period which begins with the 12th month before the franchise expiration as outlined in Section 626 of the Cable Act.

b) Section 626 of the Cable Act regarding Modification of Franchise obligations is incorporated herein as if fully set forth except for the commencement of review for extension outlined in Paragraph a.3 above.

Section 5.1.7 Franchise Expiration and Cancellation, Continuity of Service.

a) The Town Board may cancel the franchise granted by this Chapter, or provide for its termination at a date prior to expiration date of the franchise at any time upon a finding, made after thirty (30) days notice of proposed cancellation or reduction in duration and public hearing, that the Grantee has failed to cure one or more of the following defects during a sixty (60) day period following written notice by the Town Clerk to the Grantee of such defect:

1. Material breach, whether by act or omission, of any term or condition of the chapter; or the Franchise Agreement; or

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

3. Failure to complete the system within one (1) year as defined in the Initial Service Area attached to the Franchise Agreement would also be cause for cancellation.

b) In the event any of the above mentioned defects are caused by equipment failure or the Grantee's inability to obtain certain equipment for reasons beyond Grantee's control, then

Grantee shall be allowed an additional sixty (60) days beyond the date of receiving the necessary equipment before there is deemed a ground for termination.

c) Termination or forfeiture of the franchise shall in no way affect the rights of the Town under the franchise or any provision of the law.

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

Section 5.1.8 Transfer of Control, Conditions of Sale.

a) No transfer of effective ownership or control of the cable system may take place, whether by forced or voluntary sale, lease, mortgage, assignment, encumbrance or any other form of disposition, without prior notice to and approval by the Town Board. Refusal to approve must be related to Grantee's future service and performance; otherwise approval shall not be unreasonably withheld. The notice shall include full identifying particulars of the proposed transaction. For purposes of this section, a "transfer of effective ownership or control" shall be taken to mean and include the acquisition, within any consecutive period of thirty-six (36) months of more than thirty percent (30%) interest in the Grantee's voting stock, franchise, plant, equipment, or other property used in the conduct of business, or more than thirty percent (30%) representation on the Grantee's Board of Directors, by any person or group of persons acting in concert who before that period did not enjoy such interest or representation in the partnership. Such definition shall not include the disposition of facilities of equipment no longer required in the conduct of business or a pledge or mortgage or similar instrument transferring conditional ownership of all or part of the system's assets to a lender or creditor in the ordinary course of business so long as the lender or creditor does not thereby acquire the right to control the system's operations.

b) If a franchise held by a cable operator is denied and the franchising authority acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be:

1. At fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the franchise itself.
2. In the case of any franchise existing on the effective date of this title, at a price determined in accordance with the franchise if such franchise contains provisions applicable to such an acquisition or transfer.

c) If a franchise held by a cable operator is revoked for cause and the franchising authority acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be at an equitable price.

d) Anything contained herein to the contrary notwithstanding all provisions of this ordinance and any franchise granted hereto shall be binding upon grantee and its successors, lessee's or assigns.

Section 5.1.9 Franchise Territory and Extension of Service.

a) The Grantee shall provide its service to the areas as outlined in the "Initial Service Area" to be attached to the Franchise Agreement.

b) The service shall be provided subject to the Grantee's "Extensions Policy" for unusual or lengthy installations. Grantee's "Extension Policy" shall be filed at the time of acceptance of the franchise for approval by the Town Board. The Town Board shall act upon the extension policy within thirty (30) days after filing with the Town Board. In the event that the Grantee is requested by a subscriber to extend the system beyond two hundred fifty (250) feet beyond its main cable, Grantee shall be allowed to recover its costs in making same. In the event said subscriber is not willing to pay same, Grantee shall not be required to either extend the system or make the installation.

c) The Grantee shall not deny cable service to any group of potential residential cable subscribers because of the income of the residents of the local area, in which such group resides.

d) Grantee shall update the definition of "Initial Service Area" whenever it is changed with the approval of the Town.

Section 5.1.10 Subscriber Privacy.

a) No monitoring of any terminal connected to the system shall take place without either specific written authorization by the user of the terminal in question on each occasion or written notice to the Town Board.

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

c) Section 631 of the Cable Act relating to Protection of Subscriber Privacy is incorporated herein as if fully set forth.

Section 5.1.11 Subscriber Protection.

The Cable Committee defined in Section 5.1.24 will receive information on cable system performance and act as liaison between the subscriber(s) and the Grantee.

Section 5.1.12 Protection of Nonsubscribers.

Grantees shall at all times keep its cables and other appurtenances used for transmitting signals shielded in such a manner that there will be no interference with signals received by private receiver sets owned by person not subscribing to the Grantee's service.

Section 5.1.13 Technical Standards and Complaints.

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

b) Grantee shall keep a record of complaints received and shall make available to the Cable Committee upon request, a compilation of such complaints showing when received and the general nature of the complaint. Individual names will not be used by the Cable Committee in resolving complaints without the permission of complainant.

Section 5.1.14 Description of System.

Grantee shall, as part of the acceptance of the franchise, provide a complete description of the cable system in the Town of Oregon, including the possibility of two way capability. Such description shall be updated as additions or changes are made.

Section 5.1.15 Grantee's Use of Town's Rights.

Grantee, upon acceptance of the franchise, is hereby granted the right to bury, erect, maintain, and operate in the streets, alleys, and utility easements of the Town of Oregon and other public

places a cable system. The poles used for such distribution shall be those erected or used by local utilities. The Grantee may erect its own poles if the Town's permission is first obtained.

Section 5.1.16 Method of Installation.

a) All installations made by the Grantee shall be made in good, substantial, safe condition and maintained in such condition at all times. The Grantee shall make no excavations in the streets, alleys, and public places without first procuring a written permit from the authorized representative of the Town, and all work of such kind shall be done under the supervision of the Town authorities and so as to meet the approval of the Town authorities. All buried cables allowed to cross paved town roads shall only be done by a bored hole under the road, etc.

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

c) Nothing in this Chapter or any franchise granted hereunder shall relieve the Grantee of the obligation of placing network facilities underground in areas presently served or to be served in the future by underground electric utility facilities. The Grantee shall abide by the requirements of the Town Board in regard to the installation or relocation of such service facilities.

d) All land shall be restored to the condition which existed prior to the beginning of construction and/or excavation within thirty (30) days after initial construction and/or excavation.

e) The Grantee shall utilize the easements of other public utilities when possible for said use and the landowner's consent if required by said utility easement. All easements required from subscribers or nonsubscribers shall be on a standard form supplied by the company and approved by the Town Board.

f) In areas where either telephone or electric utility facilities are above ground at the time of installation, the Grantee may install its service above ground. In the event telephone and electric utility facilities are placed underground in the future, then Grantee shall likewise relocate its service underground as soon as reasonably practicable as directed by the Town.

g) Authority to Trim Trees. The Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and other public places of the Town so as to prevent the branches of such trees from coming in contact with the wires and cables of

the Grantee. All trimming is to be done under the supervision and direction of the Town and the property owner, and written approval from the Town. The Grantee may contract for such services, however, any firm or individual so retained shall receive Town approval prior to commencing such activity.

Section 5.1.17 Indemnity.

a) Indemnification. All Grantees shall defend and save the Town and its agents and employees harmless from all claims, damages, losses and expenses including attorney's fees sustained by the Town on account of any suit, judgment, execution, claim or demand whatsoever arising out of:

1. The enactment of this ordinance and the award of a permit hereunder, except as may arise from the process or action or selection of a Grantee for award of a permit as provided herein.
2. The installation, operation, or maintenance of the cable communications system except for acts of the Town, its agents or employees unless said acts are the request of and under the direction or supervision of Grantee.

b) Liability Insurance. All Grantees shall maintain throughout the term of the franchise a general comprehensive liability insurance policy naming as the additional insured the Town, its officers, boards, commissions, agents, and employees, in a company approved by the Town Board and in a form satisfactory to the Town Attorney, protecting the Town, its officers, boards, commissions, agents, and employees against liability for loss or damage for bodily injury, death or property damage, occasioned by the operations of Grantee under any franchise granted hereunder, in the amounts of:

1. \$250,000.00 for bodily injury or death to any one person within the limit, however, \$500,000.00 for bodily injury or death resulting from any one occurrence; and
2. \$500,000.00 for property damage resulting form any one occurrence.

Section 5.1.18 Franchise Fee.

a) The Grantee shall pay to the Town a Franchise Fee of up to five percent (5%) of Grantee's annual revenues from the previous calendar year on or before March 31 of the following year. The Town may retain an independent certified public accountant, at the Town's expense, to conduct an audit of a Grantee's books and records for the purpose of calculating the Franchise Fee. Such audit shall be limited to those books and records necessary for verifying the accuracy of the franchise fee and the certified public

accountant shall disclose only that information necessary to inform the Town of the accuracy of the payment.

b) A Grantee may pass through to subscribers the amount of any increase in a franchise fee unless the Town demonstrates that the rate structure specified in the franchise reflects all the cost of franchise fees and so notifies the Grantee in writing.

c) In any court action under subsection b), the Town shall demonstrate that the rate structure reflects the cost of the franchise fee.

d) A Grantee may designate that portion of a subscriber's bill attributable to the franchise fee as a separate item on the bill.

Section 5.1.19 Joint Use.

The Grantee shall grant to the Town, free of expense, joint use of any and all poles owned by it for any proper municipal purposes, insofar as it may be done without interfering with the free use and enjoyment of the company's own wires and fixtures, and the Town shall hold the Grantee harmless from any and all actions, causes of action, or damage caused by the placing of the Town's wires, or appurtenances upon the poles of the company. Proper regard shall be given to all existing safety rules governing construction and maintenance in effect at the time of construction.

Section 5.1.20 Unauthorized Connections or Modifications.

a) Unauthorized Connections Prohibited. It shall be unlawful for any firm, person, group, company, corporation, or government body or agency, without the expressed consent of the Grantee, to make or possess any connection, extension, or division, whether physically, acoustically, inductively, electronically, or otherwise, with or to any segment of a cable communications system for any purpose whatsoever.

b) Removal or Destruction Prohibited. It shall be unlawful for any firm, person, group, company, corporation, or government body or agency to willingly interfere, tamper, remove, obstruct, or damage any part, segment of content of a cable communications system for any purpose whatsoever.

c) Fine. The Town may fine the person violating this section up to five hundred (\$500.00) dollars per occurrence. Each continuing day of the violation shall be considered a separate occurrence.

Section 5.1.21 Removal of Equipment.

In the event the franchise terminates and neither the Town nor anyone else purchases Grantee's cable system, Grantee shall remove its exposed cables, wires, and appliances from the streets, alleys, public ways, and places within the Town, except any underground cables, appliances, or other appurtenances. If not removed within one (1) year from abandonment or franchise termination, they become the property of the Town.

Section 5.1.22 Acceptance by Grantee.

The franchise shall take effect and be in force for up to fifteen years commencing with the date of award of the franchise to the Grantee, subject to its passage by the Town Board and the acceptance of the Grantee's "Initial Service Area" and "Extension Policy".

Section 5.1.23 Penalties.

a) In the event that the Grantee shall fail to comply with any of the provisions of this chapter, the Grantee shall be subject to a penalty in an amount not to exceed five hundred (\$500.00) dollars, plus costs of prosecution. Each day in which the Grantee remains in violation of the provisions of this ordinance shall be deemed to be a separate violation of this ordinance.

b) Notwithstanding the foregoing, in the event that any reduction or interruption of service, or any violation of the provisions of this chapter, shall be the result of acts of God, strikes, government or military action, or other conditions beyond the control of Grantee, including the lack of material or parts, the Grantee shall not be deemed to be in violation of this ordinance and subject to the provisions of this section until such conditions have ceased.

Section 5.1.24 Creation of Cable Committee.

The Town of Oregon hereby agrees to the creation of a "Cable Committee" appointed by the Town Board which shall consist of up to five members of which one (1) member is from the Town Board, up to three (3) members are from the service areas, and one (1) member is from the Plan Commission. One representative of any cable operator having a franchise in the Town will also serve on the committee but will have no vote. Said Committee shall adopt rules and regulations for procedures, rules, and regulations subject to the approval of the Town Board. The "Cable Committee" is to act as a liaison between the cable subscribers and the Grantee(s).

Section 5.1.25 Incorporation of Amendments.

The franchise shall be amended to incorporate all amendments to the statutes, rules, and regulations of the Federal government. Any provisions herein, in conflict with or preempted by said rules and regulations, or statutes, shall be superseded.

Section 5.1.26 Severability.

Should any word, phrase, clause, sentence, paragraph, or portion of this chapter and franchise be declared to be invalid by a Court of competent jurisdiction, such adjudication shall not affect the validity of this ordinance and franchise as a whole, but shall only affect the portion thereof declared to be invalid; and the Town Board hereby expressly states and declares that it would nonetheless have passed this ordinance and granted this franchise had it known that any word, phrase, clause, sentence, paragraph, or portion of said franchise were invalid.

Original Ordinance #43 passed on March 6, 1990, posted on March 7, 1990.

Franchise Agreement

and CATV Permit

The TOWN BOARD OF OREGON, Dane County, Wisconsin hereby grants

(Name of Grantee)_____ a permit to construct, erect, operate and maintain in, upon, along, across, above, over and under streets, alleys, public ways and public places now laid out of dedicated and all extension thereof and additions thereto in the town, poles, wires, cables and underground conduits, manholes and other conductors and fixtures necessary for the maintenance and operation in the Town of a cable communications system and a franchise pursuant to Section 5.1.12 of the Town of Oregon CATV Franchise Enabling Ordinance for a period of ____ years up to a maximum of fifteen (15) years subject to the restrictions and conditions now or hereinafter imposed by state of federal regulations, subject to the terms and conditions of the Town of Oregon Ordinances and amendments thereto and subject to the following terms and conditions:

A. SCOPE OF SYSTEM

1. The Grantee shall provide its service to all areas within the limits of the Town subject to its Initial Service Area and Extension Policy for unusual

or lengthy installations. Grantee's Definition of Initial Service Area and Extension Policy shall be filed at the time of submission of the franchise for approval by the Town Board. The Town Board shall act upon the franchise and attached Initial Service Area and Extension Policy within thirty (30) days after filing with the Town Board.

2. The Grantee shall not deny cable service to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.

B. MISCELLANEOUS INFORMATION

1. (Name of Grantee)_____ shall deposit \$_____ dollars, equivalent to 1250f the anticipated restoration costs, in an interest bearing account with the (Name of Financial Institution)_____ prior to the start of construction. The Town may use these funds to cover costs of landscaping or other operations required to restore yards, boring locations, etc. to their original condition should (Name of Grantee)_____ fail to do so. Said account shall be subject to a separate escrow agreement to be entered into by the parties.

2. (Name of Grantee)_____ further agrees to pay an amount not to exceed \$_____ dollars towards the attorneys fees and other costs incurred by the Town of Oregon towards securing this franchise.

3. The Grantee shall provide subscribers a toll free phone number which may be used to make compliance and secure information. Failure of (Name of Grantee)_____ to comply with the terms of this Franchise Agreement shall be cause for revocation or termination pursuant to Section 2.7(1)(a) of the ordinances.

4. The Grantee shall pay to the Town of Oregon before March 31 of the following year an amount equal to _____ Of the gross revenues as defined in Section 12.18.

ISSUED BY AUTHORITY OF THE TOWN OF OREGON

Date Town Chairman

Date Town Clerk

Date Grantee Representative

Date Grantee Representative

Attachments:

Grantee's "Initial Service Area"

Grantee's "Extension Policy"