

TITLE 9

Public Utilities

Chapter 1 Cable Television

Chapter 1

Cable Television

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Sec. 9-1-1 Short Title.

This Chapter shall be known as the "Town of Taycheedah Cable Communications Ordinance."

Sec. 9-1-2 Purposes.

The purposes of this Chapter are to:

- (a) Protect the public health, safety and welfare;
- (b) Provide for the granting of a Franchise to permit the use of Town streets and other public way for a cable communications systems;
- (c) Provide for the regulation by the Town of the erection, construction, reconstruction, installation, operation, maintenance, dismantling, testing, repair and use of such systems in, upon, along, across, above, over and under or in any manner connected with the streets or other public ways within the Town, as it now or in the future may exist;
- (d) Provide for the payment of fees and other valuable considerations to the Town for the use of Town streets and other public ways by such systems as well as to compensate the Town for costs associated with such use;
- (e) Provide for the development of a cable communication system as a means to improve communications between and among, and to otherwise serve, the present and future needs of the citizens, government and private and public institutions, organizations and enterprises of the Town and surrounding communities; and
- (f) Provide remedies and prescribe penalties for violations of this Chapter and the franchise granted pursuant to this Chapter.

Sec. 9-1-3 Conflicting Provisions.

- (a) This Chapter is adopted pursuant to the authority of the Town under the Constitutions and Statutes of the State of Wisconsin and the United States of America, including but not limited to the Cable Communications Policy Act of 1984 (47 U.S.C. 521 ff.) and 66.082, Wis. Stats. Where any provision of this Chapter conflicts with any provision of state or federal law, this Chapter shall control to the full extent permitted by law.
- (b) In the case of an express conflict or any ambiguity between a provision in this Chapter and either a provision in a Franchise Agreement executed pursuant to this Chapter or a provision in a Franchise Proposal that is incorporated by reference into such Franchise Agreement, this Chapter shall control.

Sec. 9-1-4 Definitions.

- (a) **Definitions.** When not inconsistent with the context, words used in the present tense include the future tense, words used in the plural number include the singular number, and words used in the singular number include the plural number. For the purposes of this Chapter, the following terms, phrases and words and their derivations have the meanings given herein, unless it is clearly stated that another meaning is intended:

- (1) **Town.** The Town of Taycheedah, County of Fond du Lac, state of Wisconsin, in its present incorporated form or in any later recognized, consolidated, enlarged or reincorporated form.
 - (2) **Cable System or System.** Coaxial cables, wave guides or other conductors and equipment for transmitting video, audio and data services by cable or through its facilities as herein contemplated, and including closed-circuit special event programs and educational television.
 - (3) **Board.** The present Town Board of the Town or any future body constituting the legislative body of the Town.
 - (4) **Franchise.** An authorization issued by the Town to construct and operate a Cable System.
 - (5) **Grantee.** Star Cablevision Group, its agents, employees, lawful successors, transferees or assignees.
 - (6) **Gross Revenues.** Those revenues derived from the supplying of regular subscriber service within the Town; that is, the installation fees, disconnect and reconnect fees, and fees for regular cable benefits, including the transmission of broadcast signals and access and origination channels, and revenues derived from per-program or per-channel charges, if any. It does not include revenues derived from leased channel revenues, advertising revenues or any other income derived from the System.
 - (7) **Person.** Any individual, firm, partnership, association, corporation, company or organization of any kind.
 - (8) **Street or Public Way.** The surface of and space above and below any public street, road, highway, freeway, lane, alley, court, sidewalk, parkway or drive, now or hereafter existing as such within the Town. A Franchise granted under this Chapter shall be deemed to confer only such rights to use property in the Town as the Town may have the right and power to grant in such agreements.
 - (9) **Subscriber.** Any person or entity lawfully receiving for any purpose the Cable System services of a Grantee herein.
- (b) **Federal Act Definitions.** Any word, phrase or term defined in Section 522 of the Cable Communications Policy Act of 1984 but not defined in this Section shall have the meaning set forth in Section 522 of the Cable Communications Act of 1984.

Sec. 9-1-5 Franchise Territory.

A Franchise granted under this Chapter is for the present territorial limits of the Town, unless otherwise granted by the Town Board. For any areas within the Franchise territory not served under the Franchise, service under the Franchise must be offered when household density reaches the equivalent of forty (40) homes per cable mile including interconnecting trunk. Grantee shall be given a reasonable period of time to extend its Cable System to any areas achieving such density. Nothing herein is intended to preclude Grantee from extending its System to other

portions of the Town or outside the Town for the purpose of serving other areas, provided Grantee is legally authorized to service the other areas.

Sec. 9-1-6 Grant of Franchise.

- (a) The Town hereby grants to Grantee a non-exclusive Franchise for a period of fifteen (15) years from the date of acceptance by Grantee, unless renewed, revoked or terminated sooner as herein provided. No portion of a Franchise or any right granted thereunder may be separated or transferred, except as provided in Section 9-1-9. The prior Town of Taycheedah ordinance granted a fifteen (15) non-exclusive franchise to said Grantee, which ordinance was passed and adopted November 15, 1978 and the franchise granted therein accepted by the Grantee on November 24, 1978 shall be terminated by the acceptance of the Grantee of franchise granted by this Chapter and all rights under said prior agreement of both the Town and of the Grantee shall be terminated and shall be terminated and shall be as provided in this Chapter and franchise.
- (b) The rights are granted herein after due consideration and approval by the Town of the legal qualifications, technical ability, financial condition, and character of Grantee, and the adequacy and feasibility of its construction and operation of the System, as part of a full public hearing affording due process, which included specific notice and a reasonable opportunity to be heard.
- (c) The Board will use its discretion and judgment to determine if the granting of one (1) or more Franchises under this Chapter will serve the public's needs and protect the public's health, safety and welfare.
- (d) A Franchise granted under this Chapter shall not take the place of any other license or permit legally required of Grantee.
- (e) On or about the fifth and tenth anniversaries of the effective date of a Franchise granted under this Chapter, the Town may schedule public meeting or meetings with Grantee to review the Franchise performance, plans and prospects. The Town may require Grantee to make available specified information to determine if Grantee is supplying a level and variety of services reasonably equivalent to those being offered in comparable markets.

Sec. 9-1-7 Description of a System.

- (a) The minimum capacity for a Cable System in the Town shall be thirty-five (35) channels. Within three (3) years of its acceptance of the Franchise, pursuant to Section 9-1-8 herein, Grantee shall upgrade the System to a capability of fifty (50) channels.
- (b) Grantee shall, as part of its acceptance of a Franchise, provide the Town with a written description of the Cable System within the Town, including technical characteristics, channel capacity, channel carriage and a strand map. Grantee shall provide the Town with an updated description as substantial changes in the System are made.

Sec. 9-1-8 Franchise Acceptance.

To accept a Franchise granted under this Chapter, Grantee must file any required bonds, funds and proof of insurance, as well as written notice of acceptance with the Town Clerk within forty-five (45) days of the offer of the Franchise being made by the Town Board.

Sec. 9-1-9 Transfer of Franchise.

- (a) Any transfer or assignment of Grantee's rights and obligations granted pursuant to this Chapter to a subsidiary or to any partnership of which the Grantee is the controlling managing partner shall be made only by an instrument in writing, a duly executed copy of which shall be filed with the Town within thirty (30) days after any such transfer or assignment. Any other transfer or assignment of Grantee's rights or obligations shall be made only upon written approval of the Town, which approval shall not be unreasonably withheld.
- (b) When the Town accepts a transfer or assignment under this Section, the new Grantee shall indicate acceptance of the Franchise as specified in Section 9-1-8, including the filing of all necessary fees, proofs of insurance and certifications.
- (c) Notwithstanding any of the above, as long as Grantee continues to own and operate the Cable System in the City of Fond du Lac, any sale or transfer of the Franchise by Grantee which would otherwise require Town approval, as provided herein, shall be deemed automatically approved by the Town provided Grantee has obtained the consent of the franchising authority in the City of Fond du Lac to the sale or transfer of the Fond du Lac Franchise in accordance with the existing applicable laws.

Sec. 9-1-10 Franchise Term and Renewal.

- (a) Upon final passage and publication hereof as provided by law, and upon acceptance by Grantee, this Chapter shall take effect and shall then continue in full force and effect for a period of fifteen (15) years upon the terms and conditions set forth herein.
- (b) Any renewal of this Franchise shall be done in accordance with applicable federal, state and local laws and regulations.

Sec. 9-1-11 Revocation and Expiration.

- (a) The Town shall have the right to revoke the Franchise in the event that Grantee:
 - (1) Violates any material provision of this Chapter;
 - (2) Attempts to evade or violate any material provision of this Chapter;

- (3) Practices any deceit or fraud upon the Town or any Subscriber;
 - (4) Performs any act or fails to cure any event that requires the approval or consent of the Town without securing such approval or consent; or
 - (5) Triggers any provision in this Chapter that provides for revocation as a remedy.
- (b) If the Board chooses to revoke the Franchise, the Board shall provide Grantee with written notice of its intent and describing the reasons constituting cause for revocation. Grantee shall have at least sixty (60) days, or longer if the Board agrees, to remedy the cause. If Grantee fails to remedy the cause to the satisfaction of the Board during this period, the Board may, after public hearing at which Grantee is provided an opportunity to be heard, revoke the Franchise.
- (c) Should the Franchise be revoked or expire and there is no judicial or administrative review of the revocation or expiration taking place, Grantee shall begin to remove, within ninety (90) days of revocation or expiration, all property owned by Grantee and placed on public right-of-way unless permitted by the Town to abandon said property to a purchaser.

Sec. 9-1-12 Town Rights.

- (a) The Town may amend this Chapter to incorporate amendments to federal law which are applicable to Grantee's Cable System. Any provision herein in conflict with or preempted by federal law shall be superseded.
- (b) The Town and Grantee may agree to further amend this Chapter, or adopt additional ordinances, if they find that such amendments or additional ordinances would benefit the public health, safety and welfare.
- (c) In the event the Federal government cedes any power vested in the Federal government at the time a Franchise is granted under this Chapter, the Town reserves the right to exercise that power.
- (d) During the term of this Franchise and within the Town limits, the Town may, where aerial construction exists, maintain free-of-charge upon any poles owned by Grantee wire and pole fixtures necessary for a police and fire alarm system. Such wires and fixtures shall be constructed and maintained to the satisfaction of Grantee in accordance with standards set out in this Chapter.
- (e) The Town may inspect all construction or installation work during such construction or installation, or at any time after completion thereof, in order to insure compliance with the provisions of this Chapter and all other governing ordinances.
- (f) Grantee shall provide free basic service consisting of one (1) outlet to any and all existing public buildings, fire stations and schools, whether private, public or parochial, within the Franchise territory, provided that such public buildings are required to be served under the provisions of Section 9-1-5 Density Requirements. Additional outlets shall be provided at Grantee's cost for time and materials.

Sec. 9-1-13 Grantee Rules.

Grantee may promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable Grantee to exercise its rights and perform its obligations under the Franchise and to assure uninterrupted service to all its subscribers. However, such rules, regulations, terms and conditions shall not be in conflict with the provisions of this Chapter, other Town ordinances or the laws of the State.

Sec. 9-1-14 Technical Performance.

- (a) The Cable System shall be operated to comply with or exceed all guidelines and standards set by the FCC for signal quality and leakage. The Town reserves the right to test the System and independently measure the signal quality. The System shall at all times comply with or exceed standards set by the National Electrical Code of the National Fire Protection Association.
- (b) Grantee shall at all times keep its cables and other appurtenances used for transmitting signals shielded in such a manner that there will be no interference with electronic equipment not connected to Grantee's service.
- (c) The Town reserves the right to adopt and enforce technical standards to the extent allowed by Federal law. If such Town authority is expanded during the duration of a Franchise granted under this Chapter, the Town may choose to exercise its authority after discussions with Grantee and taking into account any economic burden imposed on Grantee to meet such standards.

Sec. 9-1-15 Conditions on Street Occupancy.

- (a) All transmission and distribution structures, lines and equipment erected by Grantee within the Town shall be so located as not to cause interference with the proper use of streets, alleys and other public ways and places, and not to cause interference with the rights or reasonable convenience of property owners who adjoin any of the streets, alleys or other public ways and places.
- (b) Grantee shall obtain permission from the appropriate Town authority before stringing cable or commencing disturbance of pavement, sidewalk, driveway or other surfacing, and shall, at its own cost and expense and in a manner approved by the appropriate Town authority, replace and restore all pavement, sidewalk, driveway or other surface of any street or alley disturbed in as good condition as before such work commenced. Grantee shall comply with all Town ordinances relating to street openings and utility facility placement and operation. In all installations of underground cable, such cable shall be buried in accordance with applicable local and state regulations.

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- (c) If, at any time during this Franchise, the Town shall elect to alter or change the location or grade of any street, alley or other public way, Grantee shall, upon reasonable notice by the Town, remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense. If any construction by Grantee is in violation of the provisions of Subsection (a), Grantee shall likewise, upon reasonable notice by the Town, remove, relay and relocate its property in such a manner as to remedy such violation at its own expense.
- (d) Grantee shall not place poles or other fixtures where the same shall interfere with any gas, electric, telephone or other fixture, water hydrant or main. All such poles or other fixtures placed in any street shall be placed between the outer edge of sidewalk and the curb line, and those placed in alleys shall be placed close to the line of the lot abutting on such alley in such a manner as not to interfere with the usual travel on the streets, alleys and public ways. Nothing in this Chapter shall prohibit the use by Grantee of existing public utility poles where practical, providing mutually satisfactory rental agreements can be entered into.
- (e) Grantee shall, on the request of any person holding a building moving permit issued by the Town, temporarily raise or lower its wires to permit the moving of buildings. The expenses of such temporary raising or lowering of the wires shall be paid by the person requesting the same, and Grantee may require such payment in advance. The Grantee shall be given at least seventy-two (72) hours advance notice to arrange for such temporary wire changes.
- (f) Grantee may, after obtaining permission from the Town in each instance, trim trees that overhang streets, alleys, sidewalks and public places of the Town so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee.

Sec. 9-1-16 Work Performed by Others.

- (a) Grantee shall give prior notice to the Town specifying the names and addresses of any entity, other than Grantee, that performs construction services in excess of Ten Thousand Dollars (\$10,000) pursuant to this Franchise, provided, however, that all provisions of this Franchise remain the responsibility of Grantee.
- (b) All provisions of this Franchise shall apply to any subcontractor or other performing any work or services pursuant to the provisions of this Franchise.
- (c) Nothing in this Section shall be construed as allowing the transfer of any rights or responsibilities of Grantee without Town approval.

Sec. 9-1-17 Indemnity.

- (a) Grantee shall defend and save the Town and its agents and employees harmless from all claims, damages, losses and expenses, including consultant and attorney fees, sustained by

the Town on account of any suit, judgment, execution, claim or demand whatsoever arising out of:

- (1) The enactment of this Chapter.
 - (2) The installation, operation or maintenance of the Cable System except for acts of the Town, its agents or employees, unless said acts are at the request of and under the direction or supervision of Grantee.
- (b) The Town shall notify Grantee within ten (10) days after the presentation of any claim or demand, either by suit or otherwise, made against the Town on the part of Grantee.
- (c) Grantee shall furnish to the Town, before this Franchise becomes effective, satisfactory evidence in writing that Grantee has in force and will maintain in force during the term of the Franchise public liability insurance.
- (d) Grantee shall maintain throughout the term of the Franchise a general comprehensive liability insurance policy naming as additional insured the Town, its officers, boards, commissions, agents and employees. The policy shall protect the Town and its agencies and employees against liability for loss or damage for personal injury, death or property damage occasioned by the operations of Grantee under any Franchise granted hereunder, in the amounts of One Million Dollars (\$1,000,000) for bodily injury or death to any one (1) person with the limit however of Ten Thousand Dollars (\$10,000) for bodily injury of death resulting from any one (1) accident, and One Million Dollars (\$1,000,000) for property damage resulting from any one (1) accident. The Town reserves the right to revise the levels of insurance required under this Section to reflect conditions on or about the fifth and tenth anniversaries of the effective date of a Franchise granted under this Chapter. The Town shall be named as an additional insured under such insurance and proof of such coverage shall be filed with the Town Clerk.

Sec. 9-1-18 Franchise Fee and Annual Report.

- (a) As compensation for permission to use the streets and public ways of the Town for the construction, operation, maintenance, modification, and reconstruction of a Cable System, and for the Town's costs in establishing a regulatory program for Grantee, Grantee shall pay to the Town an annual amount equal to five percent (5%) of the Grantee's annual Gross Revenues.
- (b) The Franchise fee shall be paid on an annual basis, within ninety (90) days after the end of Grantee's fiscal year.
- (c) With each Franchise fee payment, Grantee shall present to the Town a report showing the Gross Revenues received by Grantee from Subscribers for the previous year.
- (d) No acceptance of any payment by Grantee to the Town shall be construed as a release or as an accord and satisfaction of any claim the Town may have for further or additional sums payable as a Franchise fee or for the performance of any other obligation of Grantee.

Sec. 9-1-19 Rates Charged by Grantee.

- (a) Rates charged by Grantee for service under this Franchise shall be fair and reasonable and shall not exceed the rates charged to the residents of the City of Fond du Lac for like services.
- (b) Grantee shall maintain a current schedule of rates and service charges with the Town Clerk.
- (c) Grantee shall provide at least twenty-one (21) days notification to both the Town and Subscribers prior to any increase or material change in rates or service charges.
- (d) To the extent allowed by state and federal law, nothing in this Section shall prevent Grantee from applying a surcharge or late payment penalty to Subscriber bill to reflect delinquent balances due Grantee.

Sec. 9-1-20 Open Books and Records.

- (a) Grantee shall manage all of its operations in accordance with the policy of totally open books and records in respect to the Town. The authorized officers and agents of the Town shall have the right to inspect, upon at least twenty-four (24) hours notice, during normal business hours, all books, records, maps, plans, financial statements, service complaint logs, performance test results, records of request for service and other like materials of Grantee that relate to the operation of this Franchise.
- (b) Grantee shall prepare and furnish to the Town, at the times and in the form prescribed by the Town, such reasonable reports with respect to its operation as the Town deems necessary.
- (c) The Town may order an audit of Grantee's records, at the Town's expense, which may be conducted by a Town employee or by an independent entity.

Sec. 9-1-21 Subscriber Rights.

- (a) No monitoring of any terminal connected to the System shall take place without, on each occasion, specific written authorization by the user of the terminal in question and written notice to the Town. Written permission shall not be required for the conducting of Systemwide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing, nor shall it prevent the introduction of additional services agreed upon, such as two-way communications and security systems.
- (b) Grantee shall not, except as required by governmental action, provide any data concerning specific Subscribers or users or their use of Subscriber services except in compliance with the Cable Communications Policy Act of 1984.
- (c) Subscribers and users shall retain the right to deactivate their terminals, but shall continue to be responsible for charges until Grantee is notified to terminate service. The Subscriber shall not be charged any fee for the cancellation or downgrading of cable service.

- (d) Grantee shall provide Subscribers with a local or toll free telephone line, either staffed or with answering capabilities, which shall be available to Subscribers twenty-four (24) hours a day. Under normal conditions, telephones must be answered within thirty (30) seconds; Subscribers should reach a customer service representative within two (2) minutes in all cases. Under normal circumstances, less than three percent (3%) of callers to Grantee shall receive a busy signal.
- (e) Grantee shall answer Subscriber's service requests within twenty-four (24) hours, including weekends and holidays. Problems should be rectified within forty-eight (48) hours or, in case of a dispute, in fewer than ten (10) days. Customers shall be able to schedule with Grantee that a service visit occur during a four (4) hour block in either the morning or the afternoon.
- (f) Upon interruption of Subscriber's cable service, except for acts of God or with express prior permission of the Town, Grantee shall provide a credit of one-thirtieth (1/30) of one (1) month's subscriber fees for affected services for each twenty-four (24) hour period after the first twenty-four (24) hour period for all affected Subscribers.
- (g) For interruptions of seven (7) days or more in one (1) month, the Grantee shall provide a full month's credit for affected services for all affected Subscribers.
- (h) Once a Cable System is in place, all normal service installations must be made within seven (7) business days. Upon initial installation each Subscriber shall receive written notice of all services available, rates for such services and all Grantee policies affecting customer services.

Sec. 9-1-22 Community Channel.

Grantee shall make available at least one (1) channel for use by the Town and Subscribers for community announcements and messages.

Sec. 9-1-23 Emergency Alert Override System.

Grantee shall incorporate into its Cable System the capability for a temporary emergency override whereby, in times of emergency, a message may be relayed on all channels in the System simultaneously. Grantee shall provide and maintain all equipment necessary for the use of this capability.

Sec. 9-1-24 Unauthorized Connections and Modifications.

- (a) It shall be unlawful for any firm, person, group, company, corporation or governmental body or agency, without the expressed consent of the Grantee, to make or possess, or to

assist in making or possessing, any connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System.

- (b) It shall be unlawful for any firm, person, group, company, corporation or governmental body or agency to willfully interfere, tamper, remove, obstruct or damage, or assist thereof, any part or segment of the System for any purpose whatsoever.
- (c) Any firm, person, group, company, corporation or governmental body or agency found guilty of violating this Section may be fined not less than Fifty Dollars (\$50.00) and the costs of the action or more than Five Hundred Dollars (\$500.00) and the costs of the action for each and every subsequent offense. Each continuing day of the violation shall be considered a separate offense.

Sec. 9-1-25 Severability.

Should any word, phrase, clause, sentence, paragraph or portion of this Chapter be declared to be invalid by a Court of competent jurisdiction, such adjudication shall not affect the validity of this Chapter 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 Chapter had it known that any such word, phrase, clause, sentence, paragraph or portion of said Chapter were invalid.

Sec. 9-1-26 Foreclosure; Condemnation; Receivership.

Upon the occurrence of any event that may lead to the foreclosure, condemnation or receivership of any part of the Fond du Lac Cable System, Grantee shall immediately provide written notification to the Town. Such notification shall be notice of cause for revocation of this Franchise, and the Town may revoke this Franchise under procedures set forth herein.

Sec. 9-1-27 Nonenforcement by the Town.

The Grantee shall not be relieved of any obligation by reason of any failure of the Town to enforce prompt compliance with any provision of this Chapter, a Franchise or a Franchise Agreement.

Sec. 9-1-28 Waiver or Exemption.

The Town reserves the right to waive provisions of this Chapter, or exempt Grantee from meeting provisions of this Chapter, if the Town determines such waiver or exemption is in the public interest.

Sec. 9-1-29 Revocation of Conflicting Ordinances.

That upon acceptance of a Franchise by the Grantee herein provided, this Chapter shall revoke and amend the prior Chapter passed and adopted November 15, 1978 and the Franchise granted therein.