

## CHAPTER 8

### Cable Television Franchises

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#### **SEC. 6-8-0** GRANT OF FRANCHISE.

This chapter allows the City of Thorp to grant to a franchise grantee, its successors and assigns, a nonexclusive license to install, maintain, and operate a cable television system for the distribution of television signals, frequency-modulated radio signals and closed circuit television programs for a term of not less than 3 years or more than 10 years, provided that the franchise grantee conforms to the conditions, limitations and requirements of this ordinance. This ordinance may be amended from time to time by the City through the enactment of amendments thereto.

SEC. 6-8-1

DEFINITIONS.

For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number.

- (a) **City** means the City of Thorp, State of Wisconsin, in its present incorporated form or in any later recognized, consolidated, enlarged or reincorporated form.
- (b) **Cable** means coaxial cables, wave guides or other conductors and equipment for providing television service by cable or through its facilities as herein contemplated, and including closed-circuit special event programs and educational television.
- (c) **Grantee** means a person or entity to whom or which a franchise under this chapter is granted by the common council and the lawful successors or assigns of such person or entity.
- (d) **Street** means 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 City.
- (e) **Subscriber** means any person or entity receiving and paying for any purpose the services of a Grantee herein.
- (f) **Gross revenues** means any revenue, derived directly or indirectly by a Grantee, its affiliates, subsidiaries, parents and any persons or entities in which a Grantee has a financial interest of five percent or more from or in connection with the operation of a Thorp cable system including, but not limited to, basic subscriber service monthly fees, pay cable fees, installation and reconnection fees, leased channel fees, converter rentals, enhanced telecommunications services, studio rental, production equipment rental and advertising revenues. The term does not include any taxes on services furnished by Grantee and imposed directly upon any subscriber or used by the State, City or other governmental unit and collected by Grantee on behalf of said governmental unit.

**SEC. 6-8-2** RENEWAL.

- (a) A Grantee shall have the right to apply to the City for renewal or extension of the franchise. The City shall grant such renewal or extension application unless it finds that:
  - (1) The Grantee has not substantially complied with the material terms of the Ordinance and with applicable law, or its officers have been convicted of a felony;
  - (2) The legal, technical or financial qualifications of the Grantee are inadequate to provide the services proposed by it;
  - (3) The services and facilities to be provided by the Grantee are not reasonable in light of the community need for and cost of such services and facilities;
  - (4) The service quality of the cable system has not been reasonable in light of community needs; or
  - (5) The proposals contained in the renewal application are otherwise unreasonable.
- (b) A Grantee must file for renewal at least thirty (30) months before the expiration of the franchise. The City must consider the renewal application within one hundred twenty (120) days of submission of the application and conduct any proceedings necessary to adequately consider the application; and may not request, accept or consider any other franchise application until the Grantee's application is denied or approved.
- (c) The City shall negotiate in good faith with the Grantee regarding franchise renewal within sixty (60) days after the completion of proceedings pursuant to section 6-8-3(b); and shall make a preliminary decision on granting or denying renewal within four (4) months after receipt of an application. If the City denies an application it must notify the Grantee by written statement, within seven (7) days after its decision, of the reasons for the denial.
- (d) The Grantee, if adversely affected or aggrieved by a decision of the City made pursuant to this section, may appeal such decision in any court of competent jurisdiction. The franchise shall remain in effect pending the completion of such appeal.

- (e) Both the City and Grantee shall comply with all the provisions of Section 626 of the Cable Communications Policy Act of 1984 regarding renewal procedures.
- (f) In the event that the Act changes, the City shall conduct renewal procedures in accordance with then applicable law.

**SEC. 6-8-4**           TERMINATION OR EXPIRATION.

- (a) Should a Grantee's franchise be terminated or expire and there is no judicial or administrative review of the termination or expiration taking place, the Grantee shall begin removal within ninety (90) days of termination or expiration of all property owned by the Grantee and placed on a public right-of-way unless permitted by the City to abandon said property to a purchaser.
- (b) In the event that a franchise has been terminated or has expired, the City shall have options, to the extent then permitted by law, to purchase the tangible assets of the Grantee's cable television system previously governed by the franchise at its fair market value, to assign such rights to purchase, or to require removal of all Grantee's property located within the public ways of the City at the Grantee's expense. Such an option must be exercised within one (1) year from the date of the revocation or expiration of the franchise, the entry of a final judgment by a court reviewing the question of the revocation or expiration, or the entry of final order upon appeal of the same, whichever is later.

**SEC. 6-8-5**           TRANSFER PROCEDURE.

All of the rights and privileges and all the obligations, duties and liabilities created by this Ordinance shall pass to and be binding upon the successors of the City and the successors and assigns of any Grantee; and the same shall not be assigned or transferred without the written approval of the City hereunder, which approval shall not be unreasonably withheld without a showing of good cause; provided, however, that this section shall not prevent the assignment or pledge of a Franchise or

system by a Grantee as security for debt without such approval; and provided further that transfers or assignments of a Franchise between any parent and subsidiary corporation or between entities of which at least fifty-one percent (51%) of the beneficial ownership is held by the Grantee or any parent corporation shall be permitted without the prior approval of the City. The sale, transfer or assignment of a material portion of the tangible assets of a Grantee to an unrelated third party shall be considered an assignment subject to the provisions of this section.

- (a) The parties to the sale or transfer of a Franchise shall make a written request to the City for its approval of a sale or transfer of the Franchise.
- (b) The City shall reply in writing within thirty (30) days of the request and shall indicate approval of the request or its determination that a public hearing is necessary due to potential adverse effect on the Franchise subscribers.
- (c) If a public hearing is deemed necessary pursuant to section 6-8-5(b), the City shall conduct such hearing within thirty (30) days of such determination and notice of any such hearing shall be given fourteen (14) days prior to the hearing by publishing notice thereof once in a newspaper of general circulation in the area being served by the Franchise. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by the City.
- (d) Within thirty (30) days after the public hearing, the City shall approve or deny in writing the sale or transfer request.
- (e) The parties to the sale or transfer of a Franchise only, without the inclusion of a cable communications systems in which at least substantial construction has commenced, shall establish that the sale or transfer of a Franchise only will be in the public interest.
- (f) A Grantee, upon transfer, shall within sixty (60) days thereafter file with the City a copy of the deed, agreement or other written instrument evidencing such sale, transfer of ownership or control or lease, certified and sworn to as correct by the Grantee.

**SEC. 6-8-6** FRANCHISE TERRITORY.

Any Franchise is for the present territorial limits of the City of Thorp. For any area henceforth added thereto during the term of the Franchise, service shall be extended wherever household density reaches 30 homes per mile, including interconnecting trunks.

**SEC. 6-8-7** SUBSCRIBER PRIVACY.

- (a) No monitoring of any terminal connected to the system shall take place without specific written authorization by the user of the terminal in question on each occasion and written notice to the City.
- (b) A Grantee shall not, except as required by governmental action, provide any data concerning specific subscribers or users or their use of subscriber services without first securing written authorization from the subscribers or users.
- (c) Subscribers and users shall retain the right to deactivate their terminals, but shall continue to be responsible for charges until the grantee is notified to terminate service.

**SEC. 6-8-8** TECHNICAL PERFORMANCE.

The cable system shall be operated to comply with all guidelines and standards set by the FCC for signal quality and leakage. The City reserves the right to test the system and independently measure the signal quality. The system shall comply at all times with the National Electrical Code of the National Fire Protection Association.

**SEC. 6-8-9** OPEN BOOKS AND RECORDS.

Any Grantee shall manage all of its operations in accordance with the policy of totally open books and records with the City. The authorized officers of the City shall have the right to inspect, upon notice, during normal business hours all books,

records, maps, plans, and service complaint logs of the Grantee that relate to the operation of the franchise.

**SEC. 6-8-10** SUBSCRIBER SERVICE.

A Grantee shall be required to maintain a local payment center within the City and shall provide access to a toll free telephone number for programming questions and service requests.

- (a) The Grantee shall provide a line, either staffed or with answering capabilities, available twenty-four (24) hours a day.
- (b) During standard business working hours, the Grantee's local payment center must be open and able to accept payments; exchange or accept return of converters; and answer subscriber inquiries. On weekends, these activities may occur in the field.
- (c) The Grantee shall answer service requests within forty-eight (48) hours, excluding weekends and holidays. Problems should be rectified in forty-eight (48) hours or in case of a dispute, in fewer than thirty (30) days. Customers shall be able to request from the Grantee that a service visit occur during a four hour block of time in either the morning or the afternoon.

**SEC. 6-8-11** DESCRIPTION OF SYSTEM.

A Grantee shall, as part of the acceptance of a Franchise, provide a complete written description or map of the cable system in the City of Thorp. Such written description or map shall be updated as additions or changes are made.

**SEC. 6-8-12** RATES.

- (a) Rates charged by a Grantee for service hereunder shall be fair and reasonable. The Grantee shall not engage, directly or indirectly, in any sales or service of individual television sets.

- (b) Subsequent additions or amendments to rates and service charges shall likewise be filed with the City Clerk before the same become effective.

**SEC. 6-8-13**      CONDITIONS ON STREET OCCUPANCY.

- (a) All transmission and distribution structures, lines and equipment erected by a Grantee within the City 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 of or reasonable convenience of property owners who adjoin any of the streets, alleys or other public ways and places.
- (b) In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Grantee shall first give notice to the Director of Public Works of any contemplated disturbances of pavement, sidewalk, driveway or other surfacing, and shall, at its own cost and expense and in a manner approved by the Director of Public Works, 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. The Grantee shall otherwise comply with City ordinances relating to street openings.
- (c) If, at any time during the period of a Franchise, the City shall elect to alter or change the location or grade of any street, alley or other public way, the Grantee, upon reasonable notice by the City, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense. If any construction by the Grantee is in violation of the provisions of subsection (a) of this section, the Grantee shall likewise, upon reasonable notice by the City, remove, relay and relocate its property in such a manner as to remedy such violation at its own expense.
- (d) The Grantee shall not place poles or other fixtures where the same will 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. However, nothing in this chapter shall prohibit the use by the Grantee of existing public utility poles where practical, providing mutually satisfactory rental agreements can be entered into with the Grantee.

- (e) A Grantee shall, on the request of any person holding a building moving permit issued by the City, 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 the Grantee may require such payment in advance. The Grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.
- (f) The Grantee, to the same extent that the City has such authority, may trim trees that overhang streets, alleys, sidewalks and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee.

**SEC. 6-8-14 INDEMNITY.**

- (a) The Grantee shall defend and save the City and its agents and employees harmless from all claims, damages, losses and expenses including attorney's fees sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever arising out of:
  - (1) The enactment of this Ordinance and granting of a franchise thereunder, except such claims as may arise from the City's selection of a Grantee to be awarded a franchise pursuant to this ordinance.
  - (2) The installation, operation or maintenance of the cable system except for acts of the City, its agents or employees, unless said acts are at the request of and under the direction or supervision of the Grantee.

- (b) The City shall notify the Grantee within ten (10) days after the presentation of any claim or demand, either by suit or otherwise made against the City on the part of the Grantee. The Grantee shall furnish to the City, before any franchise becomes effective, satisfactory evidence in writing that the Grantee has in force and will maintain in force during the term of the franchise public liability insurance.
- (c) All Grantees shall maintain throughout the term of the permit a general comprehensive liability insurance policy naming as additional insured the City, its officers, boards, commissions, agents and employees in a form satisfactory to the City Attorney. The policy shall protect the City 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 (a) \$500,000.00 for bodily injury or death to any one person with the limit however of \$1,000,000.00 for bodily injury or death resulting from any one accident, and (b) \$500,000.00 for property damage resulting from any one accident. The City shall be named as an additional insured under such insurance and a copy of the current in-force policy shall be deposited with the City Clerk.

**SEC. 6-8-15** BOND, SECURITY FUND AND REMEDIES.

- (a) At the time a Franchise is accepted, the Grantee shall deposit into a bank account established by the City and maintain on deposit through the term of the Franchise the sum of Two Thousand Dollars (\$2,000.00) as a common security fund for the faithful performance by the Grantee of all the provisions of the Franchise. Interest accrued on this deposit shall be paid to the Grantee on an annual basis. Provision shall be made to permit the City to withdraw funds from the security fund. The Grantee shall not use the security fund for other purposes and shall not assign, pledge or otherwise use this security fund as security for any purpose. Within ten (10) days after notice to it that any amount has been withdrawn by the City

from the security fund pursuant to this section, the Grantee shall deposit a sum of money sufficient to restore such security fund to the required amount.

- (b) Any violation by a Grantee, its vendor, lessee or successor of the provisions of a Franchise or any material portion or portions thereof, or the failure promptly to perform any of the provisions thereof shall, after prior written notice of fifteen (15) days is given to the Grantee, cause the Grantee to be fined up to one hundred dollars (\$100) a day from the Security Fund until proper correction is made. A Grantee is not responsible for failure to provide adequate service caused by acts of God, strikes, governmental or military action, or other conditions beyond its control including the lack of material or parts. Except as otherwise provided, upon interruption of service of greater than forty-eight (48) hours without the prior express permission of the City, the Grantee shall provide its customers with a refund based on one of the following formulas:

- (1) If the channel(s) affected is part of the basic service, then

$$\begin{aligned} & \text{Basic Service Rate} \\ x & \quad (\# \text{ of days of interruption} / \# \text{ of days in month}) \\ x & \quad (\# \text{ of channels affected} / \# \text{ of basic service} \\ & \quad \text{channels}) \end{aligned}$$

- (2) If the channel(s) affected is a pay channel, then

$$\begin{aligned} & \text{Monthly Pay Channel Charge} \\ x & \quad (\# \text{ of days of interruption} / \# \text{ of days in month}) \end{aligned}$$

**SEC. 6-8-16** FRANCHISE FEE AND FINANCIAL REPORTING.

- (a) As compensation for permission to use the streets and public ways of the City for the construction, operation, maintenance, modification, and reconstruction of a cable system, and for the City's costs in establishing a

regulatory program for a Grantee, the Grantee shall pay to the City an annual amount not greater than five percent (5%) of the Grantee's gross annual receipts for the preceding calendar year, unless disapproved by the Federal Communications Commission.

- (b) No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee or for the performance of any other obligation of the Grantee.
- (c) Not later than July 1 of each year, the Grantee shall present to the City an annual report, certified as true and correct by an officer of the Grantee, of system finances which shall include gross revenues from all sources. The franchise fee payment amount shall be derived from this report and shall be due concurrently with the report. In the event that the City so requests, an independent auditor shall be employed to audit the books and records of the Grantee and attest to the gross receipts as defined herein. In the event that the gross revenues attested to by the independent auditor do not differ materially from the gross revenues reported by the Grantee, then the Grantee shall be entitled to deduct the cost of the audit from the franchise fee due to the City. In the event that the gross revenues attested to by the independent auditor differ materially from the gross revenues reported by the Grantee, then the franchise fee payment amount shall be derived from the auditor's report and the Grantee shall promptly pay all franchise fees due to the City.

**SEC. 6-8-17**      RIGHTS OF THE CITY.

- (a) The right is hereby reserved to the City to adopt, in addition to the provisions contained in this chapter and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of its police powers. Such regulations, by ordinance or otherwise, shall be reasonable and not be in conflict with the rights granted in this chapter and not be in conflict with the laws of the State.

- (b) The City may, during the term of a franchise, free of charge where aerial construction exists, maintain upon the poles of the Grantee with the City limits wire and pole fixtures necessary for a police and fire alarm system, such wires and fixtures to be constructed and maintained to the satisfaction of the Grantee and in accordance with its specifications.
- (c) The City 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.

**SEC. 6-8-18** WAIVER OF CHARGES.

- (a) During the term of a Franchise, the Grantee shall provide free service to any and all schools whether private, public or parochial, within the area of the Franchise. Grantee may charge for usual installation costs.
- (b) The Grantee shall provide at least one dedicated, non-commercial public access channel and associated video replay equipment to be made available to the public at all times on a non-discriminatory basis.
- (c) The Grantee shall not be responsible for the production costs of the dedicated, non-commercial public access channel.

**SEC. 6-8-19** SEVERABILITY.

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

**SEC. 6-8-20** ACCEPTANCE BY GRANTEE.

Any franchise granted under this ordinance shall be effective upon written acceptance of the franchise being filed with the Clerk of the City within thirty (30) days from the adoption hereof, and the franchise shall continue in force for a period of no less than three years or more than ten years.

**SEC. 6-8-21** INCORPORATION OF AMENDMENTS.

This Ordinance shall be amended to incorporate all amendments to the statutes, rules and regulations of the Federal government as they are promulgated by the Federal government. Any provision herein, in conflict with or preempted by said rules, regulations or statutes, shall be superseded.

**SEC. 6-8-22** PROTECTION OF NONSUBSCRIBERS.

A Grantee shall at all times keep its cables and other appurtenances used for transmitting signals shielded in such a manner that there will be no interference with signals received by radios or televisions not connected to the Grantee's service.

**SEC. 6-8-23** GRANTEE RULES.

A Grantee may promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the 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 or the laws of the State.

**SEC. 6-8-24** WORK PERFORMED BY OTHERS.

- (a) A Grantee shall give prior notice to the City specifying the names and addresses of any entity, other than the Grantee, that performs services pursuant to the Franchise, provided, however, that all provisions of the Franchise remain the responsibility of the Grantee.
- (b) All provisions of any Franchise shall apply to any subcontractor or others performing any work or services