

## LICENSING AND REGULATION OF COMMUNITY ANTENNA TELEVISION SYSTEM

**Section I. Title/Purpose.** This Ordinance is entitled “Licensing and Regulation of Community Antenna Television System”. The purpose of this Ordinance is as follows:

To provide for the orderly installation and operation of “Community Antenna Television Systems”, also known as “Cable Television Systems”.

**Section II. Definitions.** For the purpose of this Ordinance, the following terms or phrases shall have the following meanings:

“Licensee” shall mean any person, firm, partnership or corporation obtaining a license under this Ordinance;

“Town” shall mean the Town of Shelby, La Crosse County, Wisconsin;

“Board” shall mean the Board of Supervisors of the Town of Shelby;

“Applicant” shall mean any person, firm, Partnership or corporation applying for a license hereunder;

“Subscriber” shall mean any person receiving for any purpose the Community Antenna Television Service;

“Community Antenna Television Service” shall be referred to as “CATV” and shall be defined as set forth in Section 66.082(2)(d) of the Wisconsin Statutes.

### **Section III. Franchise Fee Gross Revenue.**

A. Any tax, fee or assessment the Town imposes on the Licensee, solely because of the Licensee’s status as such. The term “Franchise Fee” does not include: (i) any tax, fee or assessment of general applicability including any such tax for, or assessment imposed on, both utilities and cable operators or their services, but not including a tax, fee or assessment which is unduly discriminatory against the Licensee; (ii) capital costs which are required by this Ordinance to be incurred by Licensee for governmental access facilities; (iii) requirements or charges incidental to the awarding or enforcing of the Licensee, including payments for bonds, security

funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or (iv) any fee imposed under title 17, United States Code.

B. Any and all revenues derived directly by a Licensee, its affiliates, subsidiaries, parents, or any person in which the Licensee has a financial interest from or in connection with the operation of the CATV pursuant to this Chapter. Annual gross revenues includes revenues in whatever form, derived from all cable services, cable operations, and cable-related activities within the Town area including, but not limited to: (i) revenues from subscriber rates, pay television, premium channels, service tiers, service clusters, institutional networks, on-air advertising, installations, reconnections, or similar fees; (ii) rebates or commissions received from travel, home shopping or similar services, or commercial access; and (iii) any, and all compensation from all supplementary cable services, cable operations, and cable-related activities within the Town.

**Section IV. License Required.** Any person desiring to own, maintain or operate a CATV shall secure a license from the Town prior to commencing construction and operation and shall be subject to all provisions of this Ordinance.

**Section V. Grant of Authority.** A Licensee shall have the non-exclusive right and privilege during the term of the license to construct, erect, operate and maintain a cable television system in, on, above and under the streets, alleys, public ways and places now laid out or dedicated, and any extensions thereof. All poles, wires, cables, underground conduits, manholes and television conductors and fixtures which are necessary for the maintenance and operation of said system are also included. The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall be granted to the Licensee during the term of the license.

**Section VI. Compliance with Laws and Ordinances.** All persons who are granted licenses hereunder shall at all times during the term of the license be subject to all lawful exercise of the police power of the Town and to such reasonable regulations as the Town by resolution or ordinance provides. In addition, such persons shall be subject to all State and Federal laws and regulations.

**Section VII. Application for License.** A license required under this Ordinance shall be applied for in the following manner:

A. All persons applying for licenses to operate a CATV system shall make written application to the Town Clerk prior to the date on which such person desires to commence operations. If the applicant be an individual, applicant shall list: name, address, occupation,

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number of other community antenna systems owned or operated by applicant or in which applicant has any interest, and shall include a detailed explanation of the nature, extent and scope of operation of the system in which the applicant proposes to operate and shall further include a complete financial statement of the applicant.

B. If the applicant be a partnership or any unincorporated association, the application shall state the names of the partners or members of the association, and contain all the information required by subsection A. above. All general and limited partners shall be so set forth.

C. If the applicant be a corporation, the application shall list the names and degree of financial interest of each stockholder in said corporation and, in addition, shall contain all the information required by subsection A. above.

D. Cash or a certified check in the amount of Two Hundred Fifty Dollars (\$250.00) shall accompany the application. The application fee shall be non-refundable and shall not be credited against the license fee specified in Section XIX.

**Section VIII. Approval by Town Board.** Upon the filing of an application in proper form with the Town Clerk, and upon receipt of the application fee, the Clerk shall refer the application to the Board for issuance or denial. At the next regular Board meeting, the Board shall hear any interested persons, or their attorneys, or any citizen of the Town in favor of or against the said application. The meeting may be adjourned from time to time, but shall be decided upon within sixty (60) days after referral of said matter to the Board, within which period the Board shall reject or grant the application and, if the application be granted, direct the Town Clerk to issue a license to the applicant.

**Section IX. Term.** The license shall come into effect upon issuance by the Town Clerk and shall remain in effect for a term of eight (8) years thereafter, unless terminated earlier as provided herein. Prior to or upon the expiration of the license the Licensee may apply for a new license by the procedure specified in Section VI.

**Section X. Conditions and Restrictions on Operation.** Any person granted permission to install cables and equipment for the transmission of television signals in the operation of a CATV System within the Town shall be subject to the following restrictions and conditions:

A. Use of Streets. Wherever possible, providing suitable agreements can be reached, all transmissions and distribution structures, lines and equipment erected by the Licensee within the Town shall be located on, or in, present distribution systems of

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Century Telephone, Vernon Electric Power Company or Xcel Energy Company. If it becomes necessary in the operation of the CATV system to construct or erect poles, or underground installations, over and above those owned by the aforementioned public utilities, such poles or underground installations shall be located as to cause minimum interference with the prior use of the streets, alleys or other public ways and places, and to cause minimum interference with the rights of reasonable convenience of the property owners who adjoin any of the said streets, alleys or other public ways and places, and may only be erected or constructed upon written application to the Board, whose decision as to whether or not permission shall be granted, and the location of poles, shall be final.

B. Restoration of Streets. In case of any disturbances of pavement, sidewalks, driveways, boulevards or any other public ground, the Licensee shall, at its own cost and expense, and in a manner approved by the Board, replace and restore all paving, sidewalks, driveway or surface of any street or alley disturbed, or any boulevard, in as good condition as before said work was commenced, and shall maintain the restoration in an approved condition for a period of one (1) year.

C. Alteration of Streets. In the event at any time during the period the CATV system is licensed under the provisions of this Ordinance the Town shall elect to alter or change the grade of any street, alley or other public way or shall object to the location of any transmission and distribution structures, lines and equipment erected by the Licensee, the Licensee, upon reasonable notice by the Town, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and any other fixtures at its own expense.

D. Interference with Utilities. Under no circumstances shall the Licensee be permitted to place poles or other fixtures where the same will interfere with any gas, electric, or telephone fixtures, water hydrant or main, and all poles or other fixtures permitted to be placed in any street shall be as prescribed and directed by the Board.

E. Moving of Building. Licensee shall, upon request of any person holding a building-moving permit issued by the Town, temporarily raise or lower its lines or disconnect or take down to permit the moving of buildings. The expense of such removal, raising or lowering of wires, shall be paid in advance by the person requesting same, and the Licensee shall be given not less than seventy-two (72) hours advance notice to arrange for such temporary wire changes.

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F. Installation of Cables. Cables shall be installed only on such streets and on such poles at such height and such location and in such manner as shall in advance be approved by the Board.

G. Town's Right to Use Licensee's Poles. The Fire Department or any other department of the Town shall have the specific right to use any pole placed by any Licensee under the terms and conditions of this Ordinance for the installation of fire alarm cables, wires or equipment without any charge to the Town.

H. Forfeiture of License. In addition to all other rights and powers pertaining to the Town by virtue of this Ordinance or otherwise, the Town reserves the right to terminate and cancel this license and all rights and privileges of the Licensee hereunder in the event the Licensee:

1. Violates any provision of this license or any rule, order or determination of the Town made pursuant to this Ordinance, except where such violation, other than subsection 2 below, is without fault or through excusable neglect and is not cured within thirty (30) days following written notice to the licensee;
2. Becomes insolvent, unable or unwilling to pay his debts and taxes or is adjudged a bankrupt;
3. Attempts to evade any of the provisions of this Ordinance or practices any fraud or deceit upon the Town or any citizen of the Town;
4. Fails to have in operation a CATV System with at least fifty (50) subscribers within one (1) year of the date of issuance of Certificate of Compliance of the Federal Communications Commission.

Termination or cancellation of this license shall be by resolution of the Town adopted after thirty (30) days written notice to Licensee, and it shall in no way affect any of the Town's rights under this license or any provisions of law. In the event that such termination and cancellation depends upon a finding of fact by the Board, the license shall not be terminated or cancelled unless the Licensee is provided with an opportunity to be heard before the Board.

I. Commencement of Service. As a condition to applicant's retaining any license granted hereunder, applicants shall, within a period of sixty (60) days from date of issuance of any license, initiate test procedures to determine what television signal service will be

available, and shall inform the Town Clerk at the completion of such tests what signals appear to be reasonably available to residents of the Town. Eleven (11) viewing channels shall be furnished by Licensee to its subscribers as a minimum.

J. Limitations on Licensee's Business. No Licensee shall engage either directly or indirectly in the business of selling, renting or repairing of any television sets within the Town's boundaries, however Licensee may make repairs to its own equipment.

**Section XI. Licensee to Promulgate Rules.** The Licensee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Licensee to exercise its rights and to perform its obligations under this Ordinance, and to assure an uninterrupted service to each and all customers. Such rules shall not be in conflict with this or any other ordinance or resolution of the Town, or in conflict with any Federal or State laws or regulations. Such company rules shall be filed with the Town Clerk, and such rules shall be open to public inspection.

**Section XII. Area of Service.** The Licensee shall provide service within the limits of the Town of Shelby, as they now exist or shall exist in the future, during the term of license, where economically feasible under ordinary business standards.

**Section XIII. Abandonment of Service.** Licensee may not abandon operations or license either formally or informally unless done with permission of the Board. If the Licensee desires to abandon one's license and discontinue operations, licensee must notify the Board in writing of one's intentions to do so. Upon receipt of said notification, the Board shall either at a regular meeting or special meeting hold a public hearing on said abandonment. The Board shall not unreasonably refuse to allow Licensee to abandon one's license, and if abandonment is approved, the Board may prescribe reasonable rules for phasing out of operations.

**Section XIV. Service Standards.** The Licensee shall maintain its service with reasonable standards regarding uniformity of transmission, noise levels and channel signal voltages. The Licensee's distribution systems shall conform to the requirements of the Federal Communication Commission, particularly with respect to freedom from spurious radiation. The antenna and receiving equipment shall be installed and maintained so as to give a reasonable noise-free picture on each channel. The installation and maintenance of equipment shall also be such that no unreasonable inter-modulation distortion will occur.

Licensee shall, as reasonably as possible, considering the current state of technology, provide clear and uninterrupted service. Licensee shall provide for a reasonable method of processing and resolving complaints of subscribers, and shall keep a record of each subscriber complaint lodged and the resolution, if

any, of the problem. This record shall be open to inspection by the Board, or Town Clerk, at reasonable times during business hours. Complaints shall be handled by the Licensee in a courteous and efficient manner at all times.

Licensee shall maintain a local business office or agent in the vicinity of the Town of Shelby, which is accessible to residents of the Town of Shelby, for the investigation and resolution of all complaints regarding the quality of service, equipment, malfunctions and similar matters.

**Section XV. Supervision and Inspection.** The Town and its designate shall have the right to supervise all construction or installation work performed, subject to the provisions of this Ordinance, and to make such inspections as it shall find necessary to insure compliance with the Ordinances of the Town, applicable State and Federal laws, the National Electrical Code and regulations of the Federal Communications Commission.

**Section XVI. Signing of Contract.** Upon the granting of a license, the Licensee shall enter into a written agreement incorporating by reference the terms of this Ordinance.

**Section XVII. Indemnification.** The Licensee shall indemnify, protect and save harmless the Town from and against losses and physical damages to property, and bodily injury or death to persons, including payments made under any Workmen's Compensation Law, which may arise out of or be caused by erection, maintenance, presence, use or removal of said attachments on poles within the Town, or by any act of Licensee, its agents or employees. The Licensee shall carry insurance to protect the parties hereto from and against all claims, demands, actions, judgments, costs, expenses and liabilities which may arise or result directly or indirectly from or by reason of such loss, injury or damage. The amounts of such insurance against liability due to physical damage to property shall not be less than Three Hundred Thousand Dollars (\$300,000.00) as to any one accident and not less than Six Hundred Thousand Dollars (\$600,000.00) aggregate in any single policy year; and against liability due to bodily injury or death of persons not less than One Hundred Thousand Dollars (\$100,000.00) as to any one person and not less than Two Million Dollars (\$2,000,000.00) as to any one accident. Licensee shall also carry all insurance necessary to protect it from all claims under any Workmen's Compensation laws in effect. All insurance required by this agreement shall be and remain in full force and effect for the entire term of the license. Said policy, or policies, of insurance, or a certified copy or copies thereof, shall be made available to the Town upon demand.

**Section XVIII. Transfer of Licenses.** No Licensee shall sell, transfer or assign its plant, system or equipment to another, nor transfer any rights granted under this Ordinance to another without approval of the Town Board. Any proposed transferee, Licensee or assignee must make application for a license as provided for above. The Town shall be notified of any change of corporate ownership unless the stock is publicly held, and any such change of corporate

ownership involving a transfer of fifty percent (50%) or more of the outstanding stock issued shall constitute a transfer of rights for purposes of this section.

**Section XIX. Franchise.**

A. Licensee shall pay to the Town a franchise fee in an amount equal to three percent (3%) of the Licensee's gross revenue for subscribers. The Licensee shall be allowed to add a three percent (3%) franchise fee to each paid subscriber's monthly bill as a separate item on the bill. The Town set the percentage Franchise Fee as allowed by State or Federal Law and may change the percentage at any time provided that at least sixty (60) days written notice is given to the Licensee. Any increases in the Franchise Fee may be added to a paid subscriber's bill as a separate item on the subscriber's bill.

B. Within forty-five (45) days after the end of each calendar quarter, throughout the term of the license and within thirty (30) days after the expiration of the license, Licensee shall render to the Town, a statement settling for the quantity of subscribers and the sales price of each CATV service provided to each subscriber during the previous calendar quarter. Each such statement shall also set forth the Franchise Fee payable by Licensee to the Town.

C. At the time of rendering of each statement, Licensee shall pay in accordance with the terms of this Ordinance, all amounts indicated by such statement to be due and payable to the Town.

D. Licensee shall keep accurate records of its sale of CATV services to subscribers in sufficient detail to enable the Town's accountant to determine the correctness of the statements submitted by Licensee. Such books of account shall be open at all reasonable business hours for inspection by the Town, the Town's accountant and the Town's attorney upon prior notice, who shall have the right to examine and audit said books and records.

E. If any report of the Town's accountant concludes that Franchise Fees due the Town have been underpaid by more than five percent (5%), Licensee shall pay all costs associated with the audit and/or report and shall pay to the Town, upon receipt of the audit report, all underpaid royalties. Otherwise, the cost of the audit shall be borne by the Town. Any overpayment of royalties by Licensee to the Town as reported by the accountant shall be credited against future royalties due the Town.

F. If any Franchise Fee payment is not made as required, interest on the amount due shall accrue from the date of the required submittal at an annual rate of twelve percent (12%). The Licensee shall pay an additional compensation to the Town if the payment is late by forty-five (45) days or



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more. Such additional compensation shall be interest equal to an additional annual rate of six percent (6%) in order to defray those additional expenses and costs incurred by the Town by reason of the delinquent payment.

G. No acceptance of any payment by 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 under this Ordinance or for the performance of any other obligation of the Licensee.

H. In the event the Franchise Fee payment established under this Ordinance is ruled unconstitutional or unenforceable, the Town may impose and collect an equivalent charge on any legally permissible basis, provided such charge does not exceed the previously allowed limit on Franchise Fee payments.

I. Licensee shall provide to Town, at all Town facilities requested by the Town Board, CATV and internet services, at the level of service requested by the Town Board, at no charge to the Town.

**Section XX. Severability.** The provisions of this Ordinance shall be deemed severable, and it is expressly declared that the Town Board would have passed the provisions of this Ordinance irrespective of whether one or more provisions may be declared invalid, and if any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the remainder of the Ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

**Section XXI. Effective Date.** This Ordinance shall take effect upon passage and publication. The provisions of this Ordinance shall prevail over any previous Ordinances of the Town of Shelby that are or may be in conflict therewith.

Date passed: March 22, 2010

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Lynnetta P. Kopp, Town Chair

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Randall R. Knapp, Town Supervisor

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John O. Zahn, Town Supervisor

ATTEST:

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Catherine Brott, Town Clerk