

## **TITLE 5**

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### **CHAPTER 1**

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**SEC. 5-1-1 GRANT OF FRANCHISE.**

This Chapter grants to Nor-Com Cable Investors, a limited partnership, a nonexclusive franchise to install, maintain and operate a cable system for the distribution of television signals, frequency-modulated radio signals and closed-circuit television programs for a term ending September 1, 1995; providing conditions, limitation and requirements; stipulating protective and indemnity provision; providing for certain payments to the Town of Marion; providing for charges and rates; providing for acceptance by the grantee; imposing duties on the grantee at the expiration of its franchise; prohibiting assignments, subleases and encumbrances. This Chapter shall govern Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the Town of Marion and the franchise will not extend to any other sections located in said Town of Marion.

**SEC. 5-1-2 FRANCHISE RIGHTS SUBJECT TO POLICE POWER.**

In accepting this franchise, the grantee acknowledges that its rights hereunder are subject to the police power of the Town of Marion to adopt and enforce general and specific ordinances necessary to the health, safety and welfare of the public; and it agrees to comply with all applicable general and specific laws enacted by the Town of Marion pursuant to such power.

**SEC 5-1-3 DEFINITIONS.**

The following words and phrases, whenever used in this Chapter, shall be construed as defined in this Section unless, from the context, a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such work or phrase:

- (a) **Cable System.** A system of antennas and other receiving equipment, cables, wires, lines, towers, waveguides, laser beams or any other conductors, converters, equipment or facilities, designed or constructed for the purpose of producing, receiving, amplifying and distributing by audio, video and other forms of electronic or electrical signals to and or from locations in and outside the Town of Marion, Wisconsin.
- (b) **Grantee or Company.** Nor-Com Cable Investors, 901 Kilbourn Avenue, Tomah, WI 54660.
- (c) **Subscriber.** A purchaser of any service delivered by grantee pursuant to this franchise, and "subscriber" shall also include all persons who are not required to pay any fee but receive any service delivered by grantee pursuant to this franchise.
- (d) **User.** Any person using such service, whether such person pays grantee or is allowed to utilize such service by subscriber.
- (e) **Town or Town Board.** The duly elected Town Board of the Town of Marion or other future governing body of said municipal corporation.
- (f) **Basic Subscriber Cable Revenues and Basic Subscriber Service.** Revenues from all non-premium service provided the subscriber, excluding installation costs.

#### **SEC. 5-1-4 REVIEW AND RENEGOTIATION.**

In order to provide for a maximum degree of flexibility in this 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 this franchise, and to help achieve a continued advanced and modern system for the Town of Marion, the following terms and conditions are part of the franchise hereby granted;

- (a) At the option of the Town of Marion, approximately five (5) and ten (10) years prior to the expiration of this franchise, during the month of February at a regular or special Board meeting, the Town and the grantee, at the option of the Town, shall meet to discuss application of new technologies, system performances, services provided, programming offered, customer complaints, privacy in human rights, amendments to this ordinance, undergrounding progress and judicial and FCC rulings. The parties may renegotiate any of the above provisions at that time.
- (b) Board members, administrative personnel, the public or the grantee may add further topics to the list recited in Subsection (a).
- (c) It is the intent of the Town of Marion to consider extension of the franchise six (6) years before its termination if agreeable to the grantee and if the performance of the grantee, as required by this Chapter and as discussed at the hearings listed in Subsection (a), has been satisfactory.

- (d) The meeting described in Subsection (a) shall be open to the public and notice shall be given of the time and place of such meeting, through newspaper, radio and grantee's medium, at least five (5) days prior to such meeting.

#### **SEC. 5-1-5 FRANCHISE EXPIRATION AND CANCELLATION, CONTINUITY OF SERVICE AND BUYBACK PROVISIONS.**

- (a) The Town Board may cancel the franchise granted by this Chapter or provide for its termination at a date prior to September 1, 1995, at any time, upon a finding, made after thirty (30) days' notice of proposed cancellation or reduction to cure one (1) 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, or any term or condition of this Chapter; or
  - (2) Insolvency of the grantee, or inability or unwillingness of the grantee to pay its just debts when they accrue, or application by 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.
- (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 grounds for termination.
- (c) Termination or forfeiture of this franchise shall, in no way, effect the rights of the Town under the franchise or any provision of 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.

#### **SEC. 5-1-6 TRANSFER OF CONTROL.**

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 the business, or more than a 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 representative. Such definition shall not include the disposition of facilities or equipment no longer required in the conduct of the 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 operation.

#### **SEC. 5-1-7 FRANCHISE TERRITORY AND EXTENSION OF SERVICE.**

The grantee shall provide its service to all areas within the limit of the Town subject to its extension policy for unusual or lengthy installations. Grantee's extension policy shall be filed at the time of acceptance of the franchise and shall be deemed accepted and approved by the Town if no objection or exception is filed with the Town Board within thirty (30) days of filing the policy. In the event that the grantee is requested to extend its system beyond three hundred (300) feet of its then-existing trunk cable or is requested to make an installation three hundred (300) feet beyond its main cable, grantee shall be allowed to recover its costs in making the same. In the event said subscriber is not willing to pay the same, grantee shall not be required to either extend the system or make the installation.

#### **SEC. 5-1-8 SUBSCRIBER POLICY.**

- (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 without written notice to the Town.
- (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 written authorization for the provision of such data.

#### **SEC. 5-1-9 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 Board. The grantee shall, upon request, inform the Town of any audit by an employee of the federal government, together with the name(s) of the employee(s) who conducted such audit. The grantee shall perform all tests required by the federal government which are not 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 Town upon request a compilation of such complaints showing when received and the general nature of the complaint.

#### **SEC. 5-1-10 DESCRIPTION OF SYSTEM.**

Grantee shall, as part of the acceptance of this franchise, provide a complete description of the cable system in the Town of Marion. Such description shall be updated as additions or changes are made.

#### **SEC. 5-1-11 RATES.**

- (a) Rates for basic subscriber service shall be subject to the regulation and approval of the Town Board.
- (b) The grantee shall be allowed to charge up to Twenty-five Dollars (\$25.00) per installation charge. It is understood that the grantee may, from time to time, waive the installation charge for purposes of marketing.
- (c) The grantee is hereby given authority and approval to, from time to time, discount the basic subscriber charge provided, however, there is a valid economic reason, such as a prepayment or guarantee of subscribers, but provided further that said discount does not in any way discriminate against or favor any one (1) class of subscribers in the Town of Marion.
- (d) All of the rates and charges shall be at the discretion of the grantee, including commercial rates, multiple dwelling rates and pay programming rates, including per program. Grantee shall file with the Town a list of all such rates and said rates shall not be effective until thirty (30) days after the filing of said rates.
- (e) The Town Board shall act on all rate request changes by grantee, including rates for installation within thirty (30) days of receipt of a written request by grantee, which request shall be directed to the Town Clerk. Grantee shall provide whatever financial information is requested by the Town in support of its application. In the event the Town does not act upon the rate request, it shall be deemed approved thirty (30) days after the first meeting subsequent to the written request being filed by the grantee.

#### **SEC. 5-1-12 GRANTEE'S USE OF TOWN'S RIGHTS.**

Grantee, upon acceptance of this franchise, is hereby granted the right to erect, maintain and operate in the streets, alleys and utility easements of the Town of Marion and other public places a cable system. The poles used for such distribution shall be those erected or used by the local utilities. The grantee may erect its own poles if the Town's permission is first obtained.

### **SEC. 5-1-13 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 Town Board or other authorized representative of the Town, and all work of such kind shall be done under the supervisor of the Town authorities and so as to meet the approval of the Town Board.
- (b) The company'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 company's expense.
- (c) All land shall be substantially restored to the condition which existed prior to the beginning of construction and/or excavation.
- (d) The company shall utilize the easements of other public utilities when possible and shall obtain the written permission of the utility for said use and the landowner's consent if required by said utility easement.
- (e) All easements required from subscribers or nonsubscribers shall be on a standard form supplied by the company and approved by the Town Board or its attorney.

### **SEC. 5-1-14 AUTHORITY TO TRIM TREES.**

The grantee shall have the authority to trim trees upon the 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 company. The grantee may contract for such services.

### **SEC. 5-1-15 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 Chapter and the award of a permit thereunder, except as may arise from the process or action of selection of a grantee for award of a permit as provided herein.

(2) The installation, operation or maintenance of the Cable TV Network, except for acts of the Town, its agents or employees, unless said acts are the request of and under the direction or supervisor of grantee.

(b) **Liability Insurance.** All grantees shall maintain throughout the term of the permit 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 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) Five Hundred Thousand Dollars (\$500,00.00) for bodily injury or death to any one (1) person within the limit, however, of One Million Dollars (\$1,000,000.00) for bodily injury or death resulting from any one (1) accident: and (b) Five Hundred Thousand Dollars (\$500,00.00) for property damage resulting from any one (1) accident.

#### **SEC. 5-1-16 FEE**

Grantee shall pay to the Town of Marion annually in January an amount equal to three percent (3%) of the grantee's revenues from basic subscriber cable services. Annually an independent auditor shall certify the amount of the grantee's revenues from all cable services in order to verify the fee paid pursuant hereto.

#### **SEC. 5-1-17 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 company 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.

#### **SEC. 5-1-18 WAIVER OF CHARGES.**

During the term of this franchise, grantee shall provide free service to any and all schools, whither private, public or parochial, all churches and fire station within the area of this franchise. Grantee may charge for unusual installation costs.

#### **SEC. 5-1-19 UNAUTHORIZED CONNECTIONS OR MODIFICATIONS.**



- (a) **Unauthorized Connections Prohibited.** 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 any connection, extension or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of a CATV system for any purpose whatsoever. However, this Section shall not be construed to apply to any signal receptions by unmodified television sets.
- (b) **Removal or Destruction Prohibited.** It shall be unlawful for any firm, person, group, company, corporation or government body or agency to willfully interfere, tamper, remove, obstruct or damage any part, segment or content of a CATV system for any purpose whatsoever.
- (c) The Town may penalize the person violating this Section a forfeiture of up to Five Hundred Dollars (\$500.00) per occurrence. Each continuing day of the violation shall be considered a separate occurrence.

#### **SEC. 5-1-20 REMOVAL OF EQUIPMENT.**

In the event this franchise terminates and neither the Town nor anyone else purchases grantee's cable system, grantee shall remove its cables, wires and appliances from the streets, alleys, public ways and placed within the Town, except any underground cables, appliances or other appurtenances.

#### **SEC. 5-1-21 ACCEPTANCE BY GRANTEE.**

This franchise shall take effect and be in force for fifteen (15) years commencing September 1, 1980, subject to its passage by the Board and the acceptance of its term in writing by the grantee or its assigns.

#### **SEC. 5-1-22 ARBITRATION.**

- (a) Any matter expressly made arbitrable in this Chapter shall be resolved in favor of the party making the determination on such matter unless arbitration shall be demanded by the other party within thirty (30) days after receipt of written notice of such determination. Such demand shall be made in writing and mailed to the other party by certified mail, return receipt requested.
- (b) In the event of arbitration, the parties shall select the arbitrator or if they fail to do so, a circuit judge for Waushara County shall select the arbitrator. The expense of the arbitration and compensation of the arbitrator shall be borne by the town and the grantee as the award shall provide, but in no event shall the Town be obligated to pay more than one-half (1/2) of such expenses and compensation. The arbitration award shall be binding upon the parties.

### **SEC. 5-1-23 INCORPORATION OF AMENDMENTS.**

This franchise 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 and regulations or statutes, shall be superseded.

### **SEC. 5-1-24 PENALTIES.**

In addition to the procedures specified in Section 5-1-5, the following penalty provision shall be in effect:

- (a) After notice and hearing, the Town may reduce any or all of the subscriber rates if grantee fails to provide the service specified in this Chapter, or any applicable government regulation, and may penalize the grantee a forfeiture of up to Five Hundred Dollars (\$500.00) per day for said failure. Grantee is not responsible for failure to provide adequate service which is caused by acts of God, strikes, governmental or military action, or other conditions beyond its control, including the lack of material or parts.
- (b) Upon interruption of service, except for acts of God or with express prior permission of the Town, the following shall apply:
  - (1) Over forty-eight (48) hours and up to seven (7) days a fifty percent (50%) rebate of one (1) month's fees for all affected subscribers.
  - (2) A full month's rebate for any month in which one (1) week or more of the service is interrupted.

### **SEC. 5-1-25 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's sets owned by persons not subscribing to grantee's service.

## CHAPTER 2

### Natural Gas

5-2-1 Natural Gas Franchise

#### SEC. 5-2-1 NATURAL GAS FRANCHISE.

- (a) The Town Board of the Town of Marion, upon application of Wisconsin Gas Company (hereinafter known as the "Company"), does hereby grant onto the Company, its successors and assigns, the rights and privilege to lay, construct, maintain, operate, repair, remove and replace a pipeline for the transportation of natural gas or gaseous fuels across the said Town of Marion and in, under, through and across the public highways, ditches and drains therein which are under the jurisdiction and control of the said Town Board. The said Town Board does hereby further grant to the Company, its successors and assigns, the exclusive right, authority and permission to construct, maintain, operate, enlarge and repair in said Town a system for the furnishing and distribution of natural gas and gaseous fuels, and to use the highways, roads, streets, alleys, lanes, boulevards, parks, public ways, public grounds and bridges in said Town for constructing, maintaining, operating, enlarging and repairing its transmission and distribution pipelines with all the necessary, usual or convenient manholes, valves, passage ways and appurtenances for the purpose of supplying and selling natural gases and/or other gaseous fuels to said Town and its residents and to any building, structure, factory, processing plant, industry or public or private house or any gas user therein.
- (b) The rights hereby granted shall be subject at all times to the restrictions and conditions contained in applicable sections of the Wisconsin Statutes and superior rights of the public in said highways, ditches and drains. All operations shall be carried on in such a manner as to afford reasonable security for life and property.
- (c) Said pipelines shall be so constructed and maintained as not to interfere with, endanger and impair the use of said highways and ditches, drains and culverts in connection therewith for travel by the public or for drainage and sewerage.
- (d) The Company, at its expense, shall restore said highways, ditches, drains to their respective condition prior to said work and shall diligently pursue its work and complete the same and restore the highways, ditches and drains as rapidly as circumstances will permit.
- (e) Wisconsin Gas Company, its successors and assigns, shall indemnify and save harmless the said Town Board of the Town of Marion, and the said Town of Marion, from any loss, damage or expense growing out of or resulting from any and all claims, demands or

causes of action for injury to persons or property arising from or growing out of the exercise of the rights herein granted.