

ORDINANCE NO. _____

An Ordinance granting a cable television franchise to Niagara Community TV Cooperative.

An Ordinance granting a cable television franchise.

The Town Board of the Town of Niagara does hereby create the following ordinance granting unto Niagara Community TV Cooperative, a cable television franchise upon the terms and conditions herein set forth.

.01 Grant of Franchise. This ordinance grants to Niagara Community TV Cooperative, with offices at Box 47, Niagara, Wisconsin 54151, an exclusive franchise to install, maintain and operate a cable television system for the distribution of television signals, frequency modulated radio signals, closed circuit television programs, data transmissions and any and all additional services which are now or may be commonly associated with the cable television industry in the future. The term of this grant is for fifteen (15) years.

This franchise is exclusive and the Town waives the right to grant a similar franchise to any person, firm or corporation at any time during the existence of this franchise or any renewals, or any future form of franchise which might be granted to the Grantee by the Town.

.02 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 word or phrase:

A. **"Additional Service."** Any subscriber service provided by the grantee for which a special charge is made in addition to the regular charge paid by all subscribers.

B. **"Basic Subscriber Service."** Subscriber services provided by the grantee, including the delivery of broadcast signals and programming originated over the cable system, covered by the regular charge paid by all subscribers.

C. **"Board."** The duly elected Town Board of the Town of Niagara or other future governing body of said entity.

D. **"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 Niagara.

E. **"Full Network Service."** All "basic services" and "additional services" offered by the grantee.

F. **"Grantee."** Niagara Community TV Cooperative.

G. **"Subscriber."** Is an active member of the Niagara Community TV-Cooperative.

H. **"Substantially Completed."** Construction will be considered substantially completed when sufficient distribution facilities have been installed so as to permit the offering of "basic subscriber service" to at least eighty percent (80%) of the dwelling units in each of the service areas.

.03 Initial Service Area and Extension Policy.

A. The initial service area to be covered by the franchise is the municipal limits of the Town of Niagara and the cable operator shall provide service to that portion of the Town where there are a minimum of forty (40) homes per linear mile of cable plant. The Grantee shall be required to extend its service to any additional part of the municipality pursuant to said extension policy. In the event a subscriber agrees to pay the full loaded costs of an otherwise uneconomical extension, or an extension that does not comply with the extension policy, the Grantee shall provide such extension. The Grantee shall substantially complete the construction of the cable television system within the initial service area within eighteen (18) months of the grant of the cable television franchise.

.04 Transfer of Franchise or Control. The Grantee shall not sell, transfer, assign or dispose of the franchise rights herein either by a sale of its assets, or sale of stock effectuating a change of control without the prior written approval of the Town Board. Approval of the Town Board shall not be unreasonably withheld and shall be granted provided that the successor-in-interest provides adequate assurance to the Board that it will comply with the terms and provisions of the franchise and it has the operational and financial capability to do so.

.05 Technical Standards.

A. Grantee shall maintain a cable television system at all times in compliance with the Federal Communications Commission Technological Standards and shall file all necessary reports as required by the Rules of the Federal Communications Commission.

.06 Grantee's Use of Town Rights. Upon acceptance of this franchise, Grantee is hereby granted the right to erect, maintain, and operate a cable system in the roads, lanes, streets, alleys and utility easements of the Town of Niagara and other public places. The poles used for such distribution shall be those erected or used by the local utilities. The grantee may erect its own poles where necessary after first obtaining permission from the Board.

.07 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 and shall be made in accordance with all applicable rules and regulations, including the rules and regulations of the utility company owning any poles utilized by the grantee. The grantee shall make no excavations in the roads, lanes streets, alleys and public places without first procuring a written permit from the Maintenance Supervisor or other authorized representative of the Town, and all work of such kind shall be done so as to meet the approval of the Town's Maintenance Supervisor or other person authorized by the Town to approve such work.

B. The grantee's transmission and distribution system poles, wires and appurtenances shall be located, erected and maintained so as not to interfere with the lives or safety of persons, or to interfere with improvements the Town may deem proper to make, or to unnecessarily hinder or obstruct the free use of the roads, lanes, streets, alleys, bridges or other public property.

C. Grantee shall restore all areas of construction and/or excavation to the condition existing prior to the beginning of construction and/or excavation.

.08 Authority to Trim Trees. Subject to existing municipal ordinances regarding tree trimmings, Grantee shall have the authority to trim trees upon any overhanging roads, lanes, 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, but must remove all trimmings and be responsible for clean up of trimmings.

.09 Indemnity.

A. The grantee shall indemnify, 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, judgement execution, claim or demand whatsoever arising out of the installation, operation, maintenance, repair, use or removal of the cable system, except for such claims, damages, losses and expenses, including attorney's fees, which are attributable in part or in whole to acts of the Town or its agents.

.10 Services Provided. The Grantee shall provide the maximum amount of services as are economically feasible to provide taking into consideration all costs of operation and the density of the cable television system as it relates to number of subscribers. Pursuant to the Federal Cable Communications Policy Act of 1984, the municipality shall exercise no censorship or control over programming services and/or content thereof.

.11 Subscriber Privacy. No monitoring of any terminal connected to the system shall take place without specific written

authorization by the user of terminal in question and the Grantee shall comply with Section 631 of the Cable Television Policy Act of 1984.

.12 Unauthorized Connections or Modifications:

A. It shall be unlawful for any firm, person, group, company, corporation or governmental body or agency, without the expressed written consent of the grantee, to make or possess any connection, extension or diversion, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the cable system for any purpose whatsoever.

B. 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 the cable system for any purpose whatsoever.

C. Any person violating this section shall be subject to a forfeiture of up to Five Hundred Dollars (\$500.00) per occurrence and may be required to pay for any damages resulting from said violation. Each continuing day of the violation shall be considered a separate occurrence.

.13 Franchise Revocation and Expiration.

A. The Town may, subject to the procedure in paragraph B below, revoke any franchise granted hereunder and rescind all rights and privileges associated therewith in the event of a material or substantial breach of any term or condition of this ordinance.

B. In the event the Board determines it is in the public interest to terminate the cable television franchise, the Board shall give the grantee sixty (60) days written notice of its intention to terminate and stipulate the cause. If during the sixty (60) day period, the cause shall be cured, the notice and right to terminate shall be null and void. The grantee shall, in any event, be given an opportunity to be heard before the Board regarding termination and the grantee shall be afforded all due process rights regarding termination. In the event of termination, the Board shall provide a written summary of its reasons for termination and said decision shall be subject to judicial review.

C. The expiration of this franchise shall be governed by the terms and provisions of the Cable Communications Policy Act of 1984.

.14 Severability. Should any word, phrase, clause, sentence, paragraph or portion of this ordinance and franchise be declared to be invalid by a Court of competent jurisdiction, such adjudication shall not affect the validity of this ordinance and franchise as a whole, but shall only affect the portion thereof declared to be invalid; and the Town hereby expressly states and declares that it

would nonetheless have passed this ordinance and granted this franchise had it known that any such word, phrase, clause, sentence, paragraph or portion of said franchise were invalid.

.15 Landlord/Tenant Subscription. No apartment owner, lessor or landlord will be allowed to prohibit the installation of the providing of service by the Grantee to any lessee or person renting, including all mortgages and assignees or sublessees of a lease, if said person wishes to subscribe to the Cable Television System by the subscriber. The apartment owner, lessor or landlord shall receive no compensation for the installation or operation of the Cable System, except where he acts as a collection agent.

.16 Compliance to Laws, Rules and Regulations. In the event any valid law, rule or regulation of any governing authority or agency having jurisdiction, including but not limited to, the Federal Communications Commission, contravenes the provisions of this ordinance subsequent to its adoption, then the provisions hereof shall be superseded to the extent that the provisions hereof shall be superseded to the extent that the provisions hereof are in conflict with any such law, rule or regulation.

.17 Protection of Nonsubscribers. Grantee shall at all times keep its cables and other appurtenances used for transmitting signals protected in such a manner that there will be no interference with communications signals received by persons not subscribing to grantee's service.

.18 Conflict With Other Ordinances. Should any other ordinance or part thereof be in conflict with the provisions of this ordinance, this ordinance shall prevail insofar as it applies to the Cable Communications System Franchise granted to Grantee.

Adopted: August 1, 1990

APPROVED:

Fuscon Kanariera
In Chrg.

Attest:

Seely A. Phillips

Niagara Community TV Cooperative hereby accepts the franchise, to install, maintain and operate a cable system in the Town of Niagara as set forth in the ordinance above, including all the terms and conditions thereof.

Dated: August 1, 1990