

Town of Garfield, Jackson County, Wisconsin : Ordinances

May 1, 2007 Ordinance No. 2007-01 - Western Wisconsin Communications LLC

ORDINANCE #2007-01
TOWN OF GARFIELD

AN ORDINANCE GRANTING TO WESTERN WISCONSIN COMMUNICATIONS, LLC THE NON-EXCLUSIVE RIGHT TO ERECT, MAINTAIN, AND OPERATE IN, UNDER, ALONG, AND ACROSS THE STREETS, LANES, AVENUES, SIDEWALKS, AND OTHER PUBLIC PLACES IN THE TOWN OF GARFIELD, TOWERS, POLES, LINES, CABLES, WIRES, AND OTHER APPARATUS FOR THE PURPOSE OF TRANSMISSION AND DISTRIBUTION OF VIDEO, AUDIO, AND OTHER COMMUNICATIONS SIGNALS TO ENABLE SALE OF ITS CABLE SERVICE AND OTHER COMMUNICATION SERVICES TO RESIDENTS OF THE TOWN.

BE IT ORDAINED BY THE TOWN BOARD OF THE TOWN OF GARFIELD:

SECTION I " TITLE

This Ordinance shall be known and may be cited as the Western Wisconsin Communications, LLC Cable System Ordinance.

SECTION II " DEFINITIONS

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When consistent 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 shall include the plural number. The word "shall" is always mandatory and not merely directory.

1. "Board" is the Town of Garfield Board
2. "Cable Service" means the transmission of communications signals including the retransmission of broadcast and satellite received signals, and the origination of programming by the Grantee.
3. "Cable Television Reception Service" means the delivery by the Grantee to television receivers (or any other suitable type of equipment) electronic signals and other communications services carried over the Cable System.
4. "Cable Television System" or "Cable System" is a system utilizing certain electronic and other components which delivers to subscribing members of the public various communications services.
5. "FCC" means the Federal Communications Commission.
6. "Grantee" is Western Wisconsin Communications, LLC or its approved assignees.
7. "Gross Revenues" means any revenues derived by Grantee from the operation of the Cable System to provide Cable Services in the Service Area including Basic Service, Expanded Basic Service, Digital Cable Service, Premium and Pay-Per-View Services, installation, connection, re-connection fees and revenues from advertising sales, leased access, and home shopping. Provided, however, that such phrase shall not include any tax, fee, or assessment of any kind imposed by the Town or other governmental entity on a cable Grantee, or Subscriber or both, solely because of their status as such. Gross Revenue shall not include amounts which cannot be collected by the Grantee, and are identified as bad debt; provided; that if amounts previously representing bad debt are collected, then those amounts shall be included in Gross Revenues for the period in which they were

collected.

8. "Person" is any person, firm, partnership, association, corporation or organization of any kind and any other legally recognized entity.

9. "Subscribers" are those persons contracting to receive Cable Television Reception Service furnished under this Ordinance by Grantee.

10. "Town" is the Town of Garfield.

SECTION III " GRANT OF NON-EXCLUSIVE AUTHORITY

1. The Board hereby grants to Grantee, and to its successors, assigns or designees, the non-exclusive and revocable right to erect, maintain, and operate in, under, over, along, across and upon the present and future streets, lanes, avenues, sidewalks, alleys, bridges, highways, easements dedicated for compatible uses, and other public places in the Town and subsequent additions thereto, towers, poles, lines, cables, wires, manholes and all other fixtures and equipment necessary for the construction, maintenance and operation in the Town of a Cable Television System, for the purpose of transmission and distribution of video, audio, voice, data, electronic and electrical signals or impulses in order to furnish video and audio programs and various other communications services by what is commonly called a Community Antenna Television System, for a period of Twenty (20) years, commencing on the effective date of this Ordinance.

2. The right to use and occupy Town streets, alleys, public ways, and places for the purposes herein set forth shall not be exclusive.

SECTION IV " COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

Grantee shall, during the term, except in those areas which have been preempted by the Cable Communications Policy Act of 1984, or by any other statute or rule, or which are regulated by the FCC, be subject to all lawful exercise of the regulating and police powers of the Town. Nothing in this Ordinance or agreement shall be deemed to waive the requirements of the other codes and ordinances of general applicability enacted, or hereafter enacted by the Town.

SECTION V " TERRITORIAL AREA INVOLVED

This Ordinance relates to the present territorial limits of the Town and to any area annexed to the Town during the term of this Ordinance.

Grantee shall not be required to serve residents or businesses except where feasible. Grantee may, but shall not be required to, serve areas or individual homes adjoining, but outside the Town limits. Grantee may negotiate directly with customers the amount charged for furnishing Cable Television Reception Service or other communication services to the subscribers.

SECTION VI " LIABILITY AND INDEMNIFICATION

Grantee shall, at all times, keep in effect the following types of insurance coverage:

a) Worker's Compensation covering its employees engaged in any manner in the installation or servicing of its Cable System plant and equipment in amounts required by the Wisconsin statutes.

b) Property Damage Liability insurance to the extent of \$500,000/\$1,000,000 as to each occurrence and personal injury to the extent of \$500,000/\$1,000,000 as to each occurrence and Automobile bodily injury liability insurance of \$500,000/\$1,000,000 as to each occurrence and property damage liability of \$500,000/\$1,000,000 as to each occurrence.

Grantee shall indemnify, protect, and save harmless the Town from and against losses and physical damage to property and bodily injury or death to persons, including payments made under any worker's compensation law which may arise out of the erection, maintenance, presence, use or removal of attachments or poles within the Town, or by any act of the Grantee, its agents or employees. Grantee shall carry insurance for 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. Grantee shall also carry such insurance as it deems necessary to protect it from all claims under the Worker's Compensation law as in effect that may be applicable to Grantee. All insurance required shall be and remain in full force and effect for the entire life of the rights granted hereunder. Insurance certificates evidencing such insurance shall be deposited with and kept on file by the Town.

These damages or penalties shall include, but shall not be limited to, damages arising out of copyright infringements, and all other damages arising out of the installation, operation, or maintenance of a Cable Television System authorized herein, whether or not any act of omission complained of is authorized, allowed or prohibited by this Ordinance.

SECTION VII " TECHNICAL STANDARDS

Grantee shall be governed by applicable technical standards established by the FCC from time to time.

SECTION VIII " OPERATION AND MAINTENANCE OF SYSTEM

The Grantee shall render efficient service, make repairs promptly and interrupt service only for a good cause and for the shortest possible time.

SECTION IX " EMERGENCY USE OF FACILITIES

In the case of an emergency or disaster, the Grantee shall, upon the request of the Town Board, make available its facilities to the Town of emergency use during the emergency or disaster. If the Town wishes to operate a Civil Emergency Alert System on a plan that is mutually acceptable to the Town and the Town provides Grantee with the necessary equipment for such system, Grantee will permit the system to be used on the cable system.

SECTION X " SAFETY REQUIREMENTS

The Grantee shall, at all times, employ ordinary care and shall use and maintain commonly accepted methods and devices for preventing failures and accidents which are likely to cause damages, injuries, or nuisances to the public.

SECTION XI " LIMITATIONS ON RIGHTS GRANTED

1. All transmission and distribution structures, lines and equipment erected by the Grantee within the Town shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the streets, alleys or other public ways and places and Grantee's poles and towers shall be removed by Grantee whenever the Town Board reasonably finds that the poles or towers obstruct the operation or location of any future streets or public places of the Town, or reasonably finds structures, lines, equipment erected by Grantee cause interference, above the minimum interference standard, with proper use of streets, alleys and public ways and places, or with the rights and reasonable convenience of property owners who adjoin

any such streets, alleys, and public ways and places.

2. Construction and maintenance of the transmission distribution system shall be in accordance with the provisions of the National Electrical Safety Code, the National Electrical Code, and such applicable ordinances and regulations of the Town affecting electrical installation, which may be presently in effect, or changed by future ordinances.

3. The Grantee shall have the authority to trim trees or other vegetation in the right of way of streets, alleys, sidewalks, and public ways and places of the Town so as to prevent interference or contact with the lines, wires, and cables of the Grantee. This work will be done with good forestry practices

4. The Grantee shall, in the case of disturbance of any street, sidewalk, alley, public way, or paved area, restore it to its original condition, at Grantee's expense.

SECTION XII " FRANCHISE FEES

1. Franchise Fee

As consideration for the benefits and privileges granted under this Franchise and in consideration of permission to use the Town's streets and public ways, Grantee shall pay as a Franchise fee to the Town, throughout the duration of this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues derived from the operation of the Cable System to provide Cable Services in the Service Area. Accrual of such Franchise fees shall commence as of the effective date of this Franchise. The Franchise fees are in addition to all other fees, assessments, taxes, or payment of general applicability that Grantee may be required to pay under any federal, state or local law. This Franchise and the Franchise fees paid hereunder are not in lieu of any other generally applicable required permit, authorization, fee, charge, or tax.

2. Payments

Grantee's Franchise fee payments to the Town shall be computed quarterly. Each quarterly payment shall be due and payable no later than forty-five (45) days after the last day of the preceding quarter.

3. Acceptance of Payment Computation

No acceptance of any payment shall be construed as an accord by the Town that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the Town may have for further or additional sums payable of for the performance of any other obligation of Grantee.

4. Quarterly Reports

Each payment shall be accompanied by a written report to the Town, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount.

5. Annual Reports

Grantee shall, no later than one-hundred twenty (120) days after the end of each calendar year, furnish to the Town a statement stating the total amount of Gross Revenues and all payments, deductions, and computations for the period covered by the payments. Such statement shall be reviewed and certified by an officer of Grantee prior to submission to the Town.

6. Franchise Fee Audits

On an annual basis, upon thirty (30) days' prior written notice, the Town shall have the right to conduct an independent audit of Grantee's records reasonably related to the administration or enforcement of this Franchise, in accordance with generally accepted accounting principles. The Town may hire an independent certified public accountant to audit the Grantee's financial records, in which case the Grantee shall provide all necessary records to the certified public accountant. If the audit shows that Franchise fees have been underpaid by ten percent (10%) or more, Grantee shall pay the total cost of the audit.

7. Interest on Late Payments

In the event that a franchise fee payment or other sum is not received by the Town on or before the due date, or is underpaid, Grantee shall pay, in addition to the payment or sum due, interest from the due date at the rate equal to the highest rate permissible under the laws of the State of Wisconsin.

8. Costs of Publication

Grantee shall pay the reasonable cost of newspaper notices and publication pertaining to this Franchise and any amendments thereto, as such notice or publication is reasonably required by the Town or applicable law.

9. Tax Liability

Payment of the Franchise fees under this Franchise shall not exempt Grantee from the payment of any generally applicable license, permit fee or other generally applicable fee, tax, or charge on the business, occupation, property, or income of Grantee that may be lawfully imposed by the Town.

SECTION XIII " OWNERSHIP AND REMOVAL OF FACILITIES

All cable and equipment for Cable Television Reception Service installed by Grantee at a Subscriber's location shall remain the property of Grantee and Grantee shall have the right to remove any such cable and equipment.

SECTION XIV " TRANSFER OF AGREEMENT

The Grantee may assign this Agreement to another Person or entity with approval of the Board, which approval will not be unreasonably delayed, conditioned or withheld.

SECTION XV " DURATION AND RENEWAL OF AGREEMENT

The rights granted to Grantee herein shall, except as provided in this Section, terminate twenty (20) years from the effective date of this Ordinance and shall be subject to renewal pursuant to the provisions of the Cable Communications Policy Act of 1984, Section 626, applicable to new ordinances that are in the nature of a franchise. Pending final completion of renewal proceedings, the Ordinance shall remain in effect even if the original twenty (20) year term has expired. If this Ordinance is not renewed or if it is revoked for cause by the Town, the transfer of the Cable System shall be governed by Section 627 of the Cable Communications Policy Act of 1984.

SECTION XVI " MODIFICATIONS OF OBLIGATIONS

In addition to any other remedies provided by law or regulations, Grantee's obligations under this Ordinance may be modified, at its

request, in accordance with Section 625 of Cable Communications Policy Act of 1984 as it now exists, or as hereafter amended.

SECTION XVII " SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction or is superseded or preempted by Federal Communications Commission rules or regulations, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION XVIII " FRANCHISE RENEWAL

The Grantee shall be a party to any proceedings related to the Cable System and any other proceedings in which its rights, privileges or interest would be affected and shall be fully entitled to such due process rights as may be available under applicable laws, ordinances, rules, and regulations.

SECTION XIX " EFFECTIVE DATE

This ordinance shall take effect and be in force upon its passage and posting provided by law but not before May 1, 2007.

/s/ Steve Dickinsen, Town Chairman

/s/ Ardy Robertson, Town Clerk