

CHAPTER XVIII

CABLE COMMUNICATION FRANCHISE

Section 1800 - Creating, Awarding, & Establishing Rules

1800.01 Definitions. For purposes of this Ordinance, the following terms have the designated meaning. Subdivision 1. "Franchisor". Franchisor is the City of Rice, Minnesota.

Subd. 2 "Franchisee". Franchisee is Benton Communications & Sales Corp., a Minnesota corporation.

Subd. 3 "Board". Board is the Minnesota Cable Communications Board.

Subd. 4 "FCC". The FCC is the Federal Communications Commission of the United States.

Subd. 5 "Class IV Channel". Class IV Channel means a signaling path provided by a cable communication system to transmit signals of any type from a subscriber terminal to another point in the cable communications system.

Subd. 6 "Non-voice Return Communications". Non-voice Return Communications means the provision of appropriate system design techniques with the installation of cable and amplifiers suitable for the subsequent insertion of necessary non-voice communications electronic modules.

Subd. 7 The words "shall" and "must" are mandatory.

Subd. 8 The word "may" is permissive.

Subd. 9 The words "may not" are unconditionally prohibitive.

1800.03 Grant of Authority. WHEREAS, the Franchisor has, following reasonable notice, conducted a full public hearing affording all persons reasonable opportunity to be heard, which proceeding was concerned with the analysis and consideration of the technical ability, financial condition, legal qualification and general character of the Franchisee; and

WHEREAS, the Franchisor, after such consideration, analysis and deliberation, has approved and found sufficient the technical ability, financial condition, legal qualification and character of said Franchisee; and

WHEREAS, the said Franchisor has, at said public hearing also considered and analyzed the plans of the Franchisee for the construction and operation of the cable

communication system and found the same to be adequate and feasible in view of the needs and requirements of the area to be served by the said system.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Rice, that there is hereby created, granted and established a full, complete and non-exclusive franchise for a period of fifteen (15) years, commencing on or about the Sixth day of August, 1984 for the construction, installation, operation and maintenance of a cable communications system within portions of the City of Rice and within Sections 1 through 24 of the Township of Watab, Benton County, Minnesota corporation, subject to the following terms and conditions:

TERMS AND PERFORMANCE CONDITIONS

ARTICLE I. COMPLIANCE WITH STATE AND FEDERAL LAWS. The Franchisee and the franchising authority shall conform to all State Laws and rules regarding cable communications not later than one (1) year after they become effective unless otherwise stated and to all Federal Laws and Regulations regarding cable communications as they become effective.

ARTICLE II. FRANCHISE TERM AND FRANCHISE FEES. The Franchise shall have an initial franchise term of fifteen (15) years commencing August 6, 1984 and any renewal term if granted by the Franchising authority, shall be for a period not greater than 15 years. During the initial franchise term of the franchise the Franchisee shall pay a franchise fee equal to three (3) per cent (%) of the Franchisee's gross receipts from its operations under this franchise, in the City of Rice and Township of Watab, payable on a monthly basis.

ARTICLE III. RENEGOTIATION. Renegotiation of any and all of the terms of this franchise may occur at such times as may be mutually agreed upon by Franchisor and Franchisee. Such renegotiation shall occur not less than one year prior to the expiration of this franchise unless the Franchisor determines not to reissue the franchise to the Franchisee or desires to consider additional applicants for the franchise.

ARTICLE IV. FRANCHISE EXCLUSIVITY. This franchise agreement is non-exclusive.

ARTICLE V. SALE OR TRANSFER OF FRANCHISE/STOCK OR TRANSFER OF STOCK. Sale or transfer of this franchise or sale or transfer of stock so as to create a new controlling interest is prohibited except at the approval of the franchising authority, which approval shall not be unreasonably withheld.

ARTICLE VI. ACCESS TO FINANCIAL RECORDS. Franchisor shall have the authority to inspect and/or audit Franchisee's accounting and financial records as related to this franchise upon reasonable notice and purposes. Franchisee shall file with Franchisor, at Franchisor's written

request, such reports as Franchisor shall deem necessary.

ARTICLE VII. RATES. The following is the initial rate schedule for cable and associated services:

| CLASS OF SERVICE | |
|--|--------|
| Basic Service | \$9.75 |
| Premium Service #1 Movies and Specials (CINEMAX) | \$8.75 |
| Premium Service #2 Family Entertainment (THE DISNEY CHANNEL) | \$8.75 |
| Premium Service #3 Movies and Specials (SHOWTIME) | \$9.75 |
| Premium Service #4 Movies and Specials (HOME BOX OFFICE: HBO) | \$9.75 |

After the subscriber has received basic services he can add any or all of the premium services.

The following discounts will be offered to multiple premium service users:

- (a) If a subscriber takes three premium services he will receive a \$2.00 reduction.
- (b) If a subscriber takes three premium services he will receive a \$3.00 reduction.
- (c) If a subscriber takes all four premium services he will receive a \$4.00 reduction.

Franchise shall also provide FM radio service through the cable system.

INSTALLATION:

| | |
|-----------------------------|---------|
| First Outlet | \$25.00 |
| Additional Outlet | \$20.00 |
| Disconnect | FREE |
| Reconnect (within one year) | \$15.00 |

| <u>CONVERTOR RENTAL OR PURCHASE:</u> | <u>LEASE</u> | <u>PURCHASE</u> |
|---|--------------|-----------------|
| Pioneer Basic Convertor | \$1.50 | \$49.75+tax |
| Pioneer Remote Control Convertor w/Parental Lock Out | \$2.75 | \$78.75+tax |

CONVERTOR DEPOSIT:

Franchisee shall have the right to request a deposit on any account for which it is unable to establish a satisfactory credit rating. The deposit will be as follows:

| | |
|--------------------------|---------|
| Basic Converter | \$20.00 |
| Remote Control Converter | \$30.00 |

Interest on deposit: 6% simple interest refundable after 18 consecutive months of service or upon return of the converter.

Franchisee agrees to waive installation charges on all monthly pay outlets for subscribers who sign up and receive service prior to the completion of initial construction.

Multiple dwellings or other multiple units of any type may be subject to special installation rates and service charges not to exceed an amount equal to the number of installations times the number of subscribers.

Any special equipment desired and ordered by any subscriber may be furnished by Franchisee at such additional costs or rental service as Franchisee shall determine and which are approved by Franchisor.

Franchisee reserves the right to require a reasonable deposit before connection of a new service for any potential subscriber unable to furnish satisfactory credit references, and shall require any and all past due accounts to be paid in full prior to any reconnection of service.

ARTICLE VIII. RATE CHANGES AND RATE PROCEDURE. Franchisee agrees that there will be no rate change or rate structure change (other than for special equipment desired and ordered by subscribers) for a period of two (2) years from and after completion of initial construction. This is applicable for (2) years after the system is energized.

The procedure to change any or all of the rates set forth in ARTICLE VII (other than for special equipment desired and ordered by the subscribers) shall be as follows:

- (a) The Franchisee shall make application to Franchisor in writing and shall make any pertinent information which shall tend to substantiate the need for such change available to Franchisor.
- (b) The Franchisor shall submit all information received to the Chairperson of the Rice Cable TV Board and such Board shall make findings and recommendations to franchisor, in writing, within thirty (30) days of receipt.
- (c) Franchisor shall, within thirty days after receipt of such findings and recommendations, approve or disapprove, shall set fourth in writing, their

reasons for such disapproval to Franchisee.

ARTICLE IX. SUBSCRIBER CONTRACTS. There shall be no subscriber contract, other than an application for service which, when accepted by the Franchisee, shall be considered a month-to-month contract for such services as requested.

ARTICLE X. FRANCHISE ADMINISTRATION. The Mayor and City Council of Rice, shall be responsible for the continuing administration of this franchise.

ARTICLE XI. LIABILITY INSURANCE. Franchisee shall indemnify and hold harmless franchisor at all times during the term of this franchise and shall maintain throughout the term of this franchise liability insurance in an amount not less than \$50,000.00 combined limits insuring both the Franchisor and the Franchisee with regard to all damages and penalties which they may legally be required to pay as a result of the exercise of this franchise.

ARTICLE XII. BOND FOR NONPERFORMANCE. At the time the franchise becomes effective and at all times thereafter, until the Franchisee has liquidated all of its obligations with the Franchisor, the Franchisee shall furnish a performance bond, certificate of deposit or any other type of instrument approved by the Franchisor in the amount of \$50,000.00 for any damages resulting from the Franchisee's nonperformance. Franchisor may, from year to year, in its sole discretion, reduce the amount of the performance bond or instrument.

ARTICLE XIII. LIABILITY FOR INJURIES TO FRANCHISEE'S FACILITIES. Nothing in this franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring Franchisee or Franchisee's facilities while performing any work connected with grading, regrading or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

ARTICLE XIV. FRANCHISEE'S CREDENTIALS. Franchisee's technical ability, financial condition and legal qualification were considered by Franchisor in a full public hearing affording reasonable notice and a reasonable opportunity to be heard.

ARTICLE XV. CHANNEL CAPACITY. The Franchisee shall construct a cable system with a channel capacity available for immediate use equal to a minimum of 23 television broadcast channels that can be expanded to 54 broadcast channels in the City of Rice and 45 channels in the covered portions of the Township of Watab.

ARTICLE XVI. CONSTRUCTION SCHEDULE. Within ninety days of the granting of the franchise, the franchise shall apply for all necessary governmental permits, licenses, certificates and authorizations.

Construction shall begin immediately after receipt of all such permits, licenses, certificates and authorizations. Construction shall be completed no later than October 1, 1985 and persons along the route of the energized cable will have individual "Drops" as desired during the same period of time. The requirements of this section may be waived by Franchisor upon occurrence of unforeseen events or acts of God. Extensions of cable lines of Franchisee beyond the initial service territory shall be made when there are 12 or more subscribers per mile of line. In all other events, extension of cable lines shall be at the sole discretion of the Franchisee.

ARTICLE XVII. EASEMENTS AND CONSTRUCTION AUTHORIZATIONS. The City of Rice as Franchisor for this cable communications franchise shall grant and hereby does grant unto the Franchisee an easement over its Municipal properties including, but not limited to, roads, streets, sidewalks and driveways and all public places for the sole purpose of constructing and operating a cable communications system. Franchisee's duty to provide cable communication service to any subscriber or subscribers is conditioned upon the receipt by Franchisee of necessary easements from private parties without unreasonable cost or effort to Franchisee.

Franchisee shall apply for and obtain permits from the proper Municipal authority before commencing construction on any cable communications system, including the opening or disturbance of any road, street, sidewalk, driveway or public place. If Franchisee fails to meet the conditions of the permit, Franchisor shall have the right to correct or cause to be corrected, at the sole expense of Franchisee, any violations of the conditions of the permit such as the return of the land to its previous grading, the clean up of construction debris and the like.

ARTICLE XVIII. TYPE OF CONSTRUCTION. In accordance with Franchisee's proposal to furnish cable communications within its franchise territory, all construction of cable, conduit, etc. shall be buried underground to the maximum extent possible utilizing armored cables.

ARTICLE XIX. COMPLIANCE WITH APPLICABLE CODES. All wires, conduits, cable and other property and facilities of Franchisee shall be located, constructed, installed and maintained in compliance with applicable codes. Franchisee shall keep and maintain all of its property so as not to unnecessarily interfere with the usual and customary trade, traffic or travel upon the streets and public places of the franchise area or endanger the lives or property of any person.

ARTICLE XX RELOCATION OF PLANT. The following procedure shall be used by the Franchisee and Franchisor for the relocation or removal of Franchisee's wires, conduits, cables and other property located in a street, right-of-way or public place whenever Franchisor undertakes public improvements which affect Franchisee's property:

(a) Franchisor shall give 60 days written notice to Franchisee of the actions it wishes Franchisee to take with respect to the relocation or removal of franchisee's equipment and shall allow a reasonable period of time thereafter to complete such request.

(b) Franchisee shall, at its expense, protect, support, temporarily disconnect, relocate or remove its property when required by Franchisor. Franchisor hereby consents to the abandonment of any buried property in place and Franchisee shall submit to Franchisor an instrument approved by Franchisor for transferring ownership of such property to Franchisor.

(c) Any other person or entity requesting relocation or removal of Franchisee's property shall reimburse Franchisee for all costs of such relocation or removal. Any person or entity which damages Franchisee's property shall reimburse Franchisee for the cost of all necessary repairs and testing and for the loss of revenues, if any, to the Franchisee caused by interruption of cable service due to the damaging of Franchisee's property.

ARTICLE XXI. TECHNICAL STANDARDS. The rules of the Federal Communications Commission relating to cable communications systems contained in subpart K of part 76 of the Federal Communications Commission's rules and regulations relating to cable communications systems are incorporated herein by reference. The results of any tests required by the Federal Communications Commission shall be filed within 10 days of the conduct of such tests with the Franchisor. During the term of this franchise and any extension thereof, Franchisee shall keep informed of technological developments in the area of cable communications and shall make reasonable efforts to make such technology available to its subscribers, subject to technical, financial and other limitations of the system. Franchisee shall meet with Franchisor at least every three years to discuss the availability of technological innovations and attempt to establish priorities for making such innovations available.

ARTICLE XXII. SPECIAL TESTING. In the event special testing is required to determine the source of technical difficulties, Franchisee shall be responsible for the costs of such special testing.

ARTICLE XXIII. NON VOICE RETURN CAPABILITY. Franchisee shall construct and maintain a cable communications system having the technical capacity for non-voice return communications. Nothing herein shall be construed to require Franchisee to supply or otherwise provide to the subscribers any terminal equipment or devise necessary to utilize non-voice return capability of the system.

Franchisee shall provide such a capability upon request by a subscriber with respect to the energized cable, "Drops" and connections. Upon such request, Franchisee shall propose rates and charges to apply to installation and use of such capability by subscribers.

ARTICLE XXIV. SUBSCRIBER PRIVACY. No signals of a Class IV cable communications channel may be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for such permission shall be obtained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one year which shall be renewable at the option of the subscriber. No penalty shall be invoked for a subscriber's failure to provide or renew such authorization. The authorization shall be revokable at any time by the subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of Class IV cable communications activity planned for the purpose.

No information or data obtained by monitoring transmission of a signal from a subscriber terminal, including but not limited to lists of the names and addresses of the subscribers or any lists that identify the viewing habits of subscribers may be sold or otherwise made available to any party other than the Franchisee and its employees for internal business use, or to the subscriber subject of the information, unless the Franchisee has received specific written authorization from the subscriber to make the data available.

Written permission from the subscriber shall not be required for the systems conducting systemwide or individually addressed electron sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provisions set forth above.

ARTICLE XXV. SUBSCRIBER COMPLAINTS. All complaints by the Franchisor, subscribers, or other citizens regarding the quality of service, equipment malfunction, billing disputes, and any other matters relative to the cable communications system shall be investigated by the Franchisee. Should the complaint be unresolved for a period longer than three (3) business days after receipt by the Franchisee, the complainant may file, in writing, a copy of said complaint with the Franchisor. Franchisee shall, unless unduly burdensome, follow the recommendations of the Franchisor when received from Franchisor within five (5) business days thereafter.

ARTICLE XXVI. REPAIRS AND ADJUSTMENTS. The Franchisee shall provide to the subscriber at least a toll-free telephone number for the reception of subscriber complaints and the Franchisee shall maintain a repair service capable of responding to subscriber complaints or requests for service within 24 hours after receipt of the complaint or request. Costs included in making repairs, adjustment and installation shall be borne by Franchisee, unless covered in ARTICLE VI or ARTICLE XX (c) above.

ARTICLE XXVII. TERMINATION. Franchisor shall have the right to terminate and

cancel the franchise and all rights and privileges of the franchise Ordinance, in the event that Franchisee substantially violates and provision of this franchise Ordinance, attempts to evade any of the provisions contained herein or practices any fraud or deceit upon Franchisor. Franchisor shall provide Franchisee with a written notice of the cause for termination and its intention to terminate said franchise and shall allow Franchisee a minimum of thirty (30) days subsequent to receipt of the notice in which to correct the violation. Franchisee shall be provided with opportunity to be heard at a public hearing before Franchisor prior to termination of the franchise. In the event that Franchisor determines to terminate the franchise, Franchisee shall have a period of thirty (30) days beginning the day next following the date of the conclusion of the public hearing at which the termination of the franchise is considered, within which to file an appeal with the Board, pursuant to Minnesota Statute 238.14. During such 30-day period and until the Board determines the appeal, if an appeal is taken, the franchise shall remain in full force and effect, unless the term thereof expires earlier. If the Board approves of the action of Franchisor, the franchise shall terminate immediately; if the Board disapproves of the action of Franchisor, the franchise shall remain in full force and effect during the term thereof unless sooner terminated in accordance with law or the Board rules. Any such appeal is a contested matter to which the Board is not a party.

ARTICLE XXVIII. ABANDONMENT. Franchisee may not abandon any portion of the cable communications service provided hereunder without having given three (3) months prior written notice to the Franchisor and the Board. No cable communications company may abandon any cable communications service or any portion thereof without compensating the Franchisor for damages resulting to it from such abandonment.

ARTICLE XXIX. REMOVAL OF CABLE EQUIPMENT UPON TERMINATION OR FORFEITURE. Upon termination or forfeiture of a franchise, the franchisee shall remove its cable, wires and appliances from the streets, alleys, and other public places within the franchise ares if Franchisor so requests in writing. This does not appeal to buried cable installations which will be left in place.

In the event Franchisee fails to remove its equipment within a reasonable time after the written request of Franchisor, Franchisor may accept bids for a contract to remove the equipment. Franchisee shall have the right to bid on such a contract. Franchisor may award the contract to the appropriate bidder and charge the cost of such contract to Franchisee. The provisions of this ARTICLE shall not apply to equipment of Franchisee which is buried; provided, however, that Franchisee shall transfer ownership of any buried equipment not so removed to Franchisor.

ARTICLE XXX. MUNICIPAL RIGHT TO PURCHASE SYSTEM. If the franchise or cable system is offered for sale, Franchisor shall have the right to purchase the system. This right is a right of first refusal and if utilized must be on terms substantially identical to those of any prospective purchaser's bonafide offer.

Franchisor shall have a period no longer than sixty (60) days to complete said purchase or Franchisee shall be permitted to sell such system to the bonafide potential purchaser.

ARTICLE XXXI. ACCESS CHANNELS. Franchisee shall provide to each of its subscribers who receive all, or any part of, the total services offered on the system, reception on at least one specially designated access channel. Franchisee shall also obtain a character generator for use on the special access channel within two (2) years after completion of initial construction. The specially designated access channel may be used by local educational authorities and local government on a first come, non-discriminatory basis. During those hours that the specially designated access channel is not being used by the local educational authorities or local government. Franchisee shall lease time to commercial or non-commercial users on a first come, non-discriminatory basis if the demand for such time arises. Franchisee may also use the specially designated access channel for local origination during those hours when the channel is not in use by local educational authorities, local government or commercial or non-commercial users who have leased time on the specially designated access channel. The VHF spectrum shall be used for the specially designated access channel required in this ARTICLE.

Franchisee and Franchisor shall establish rules pertaining to the administration of the specially designated access channel.

Nothing in this Ordinance shall be construed so as to preclude the installation of converters by the system on a voluntary basis, or as a result of any agreement arrived at through negotiation between the parties to this franchise, or by a potential access user who wishes to install converters in order to make use of any additional channel or channels.

Any proposed changes to the number or type of channels shall be reviewed with the Cable TV Board and approved by the City of Rice before any such changes are put into effect.

COST OF FRANCHISE. Franchisee shall pay to Franchisor a sum of money sufficient to reimburse for all reasonable expenses incurred in connection with the granting and administering of this franchise up to the date of the adoption of this Ordinance. Such expenses shall include the costs of any required public notices, meetings, attorney fees, copy costs and direct expenses. Such payment shall be made by Franchisee to Franchisor within thirty (30) days after Franchisor furnished Franchisee with a written statement of expenses, which statement shall be submitted after adoption of this Ordinance.

Thereafter, Franchisee shall no longer be obligated to reimburse Franchisor for expense incurred in connection with the granting and administering of this franchise.

ARTICLE XXXIII. UNAUTHORIZED CABLE TAPPING. It shall be unlawful, a misdemeanor, for any person or persons to obtain any cable television services by installing, rearranging or tampering with any facilities or equipment of any cable communications system, or any firm or private person unless the same is done with the knowledge and permission, in writing, of such Franchisee, firm and private persons.

ARTICLE XXXIV. AMENDMENTS. Franchisor shall have the continuing inherent right, during the term hereof or any renewal, to amend this franchise Ordinance from time to time as it shall see fit, subject to the following:

(a) Prior to any amendment hereto being adopted, Franchisor shall give Franchisee reasonable notice, in writing, of the proposed amendment and shall permit Franchisee to appear before Franchisor and give oral or written testimony regarding such amendment.

(b) Any amendment hereto shall not materially alter the terms herein nor shall such amendment materially interfere with Franchisee's privilege herein granted to conduct its cable communications business and to make a reasonable return therefrom.

ARTICLE XXXV. SEVERABILITY. If any ARTICLE, subsection, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion or provision and such holding shall not affect the validity of the remaining portions hereof.

Should any provision of this franchise be inconsistent or at variance with any rule, regulation or policy, in whole or in part of the Federal Communications Commission or any other agency having jurisdiction, such provision shall be invalid, but the remaining provisions hereof shall not be affected hereby.

ARTICLE XXXVI. REPEAL. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

ARTICLE XXXVII. EFFECTIVE DATE. The effective date of the franchise granted herein is June 18, 1984. Adopted by the Rice City Council on June 18, 1984.