

ORDINANCE NO. 15

The Town Board of the Town of Ellington, Outagamie County, Wisconsin, does hereby create the following ordinance granting unto American Television and Communications Corporation, a cable television franchise, upon the terms and conditions herein set forth.

.01 Grant of Franchise. This ordinance grants to American Television and Communications Corporation ("ATC"), with offices at 1620 S. Lawe Street, Appleton, WI 54915, a nonexclusive 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.

.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 monthly 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 monthly charge paid by all subscribers.

C. "Board." The duly elected Town Board of the Town of Ellington 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 Ellington.

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

F. "Grantee." ATC, doing business as Cablevision of the Fox Cities.

G. "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.

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 Service Area.

A. The initial service area to be covered by the franchise is as per Exhibit A.

.04 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.

.05 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 highways, streets, alleys, and utility easements of the Town of Ellington 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 Town Board.

.06 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 streets, alleys, and public places without first procuring a written permit from the Town Engineer 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 Engineer 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 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.

.07 Authority to Trim Trees. The grantee shall have the authority to trim trees upon any 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. Prior to trimming the trees, the grantee will present to the Town Clerk, or other authorized party, a plan as to what trimming will be done. In an emergency, if the grantee deems it necessary to trim trees to maintain service or to prevent a safety hazard to employees or the general public, grantee will trim the trees and notify the Town Clerk or authorized party of where the tree trimming was done.

.08 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 attorneys's fees, sustained by the Town on account of any suit, judgment 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.

B. The grantee shall maintain throughout the term of the franchise a general comprehensive liability insurance policy naming as an additional insured the Town, its officers, boards, commissions, agents, and employees, 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 the franchise granted hereunder, in the amounts of Five Hundred Thousand Dollars (\$500,000.00) for bodily injury or death to any one person, and One Million Dollars (\$1,000,000.00) for bodily injury or death resulting from any one accident, and One Hundred Thousand Dollars (\$100,000.00) for property damage resulting from any one accident.

.09 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 Town shall exercise no censorship or control over programming services and/or content thereof.

.10 Subscriber Privacy. No monitoring of any terminal connected to the system shall take place without specific written authorization by the user of the terminal in question.

.11 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.

.12 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 Town Board determines it is in the public interest to terminate the cable television franchise, the Town Board shall give the grantee thirty (30) days written notice of its intention to terminate and stipulate the cause. If during the thirty (30) day period, the cause shall be cured, the notice and right to terminate shall be null and void. Any material violation of the ordinance shall be cause for termination and if the cause is such that it cannot be cured, the contract shall be terminated. The grantee shall, in any event, be given an

opportunity to be heard before the Town Board regarding termination, and the grantee shall be afforded all due process rights regarding termination. In the event of termination, the Town 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, Section 626.

.13 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.

.14 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 provision of this ordinance subsequent to its adoption, then the provisions hereof shall be superseded to the extent that the provisions hereof are in conflict with any such law, rule, or regulation.

.15 Protection of Non-subscribers. 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.

.16 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:

3-1-'89

Approved:

Orville Nelson - Chairman
Donald Jones Secy 1st Dep.
Carl Brandt 2nd Supervisor
TOWN OF ELLINGTON

Attest:

Gale Botman, Clerk

ATC, d/b/a Cablevision of the Fox Cities, hereby accepts the franchise, to install, maintain, and operate a cable system in the Town of Ellington, as set forth in the ordinance above, including all the terms and conditions thereof.

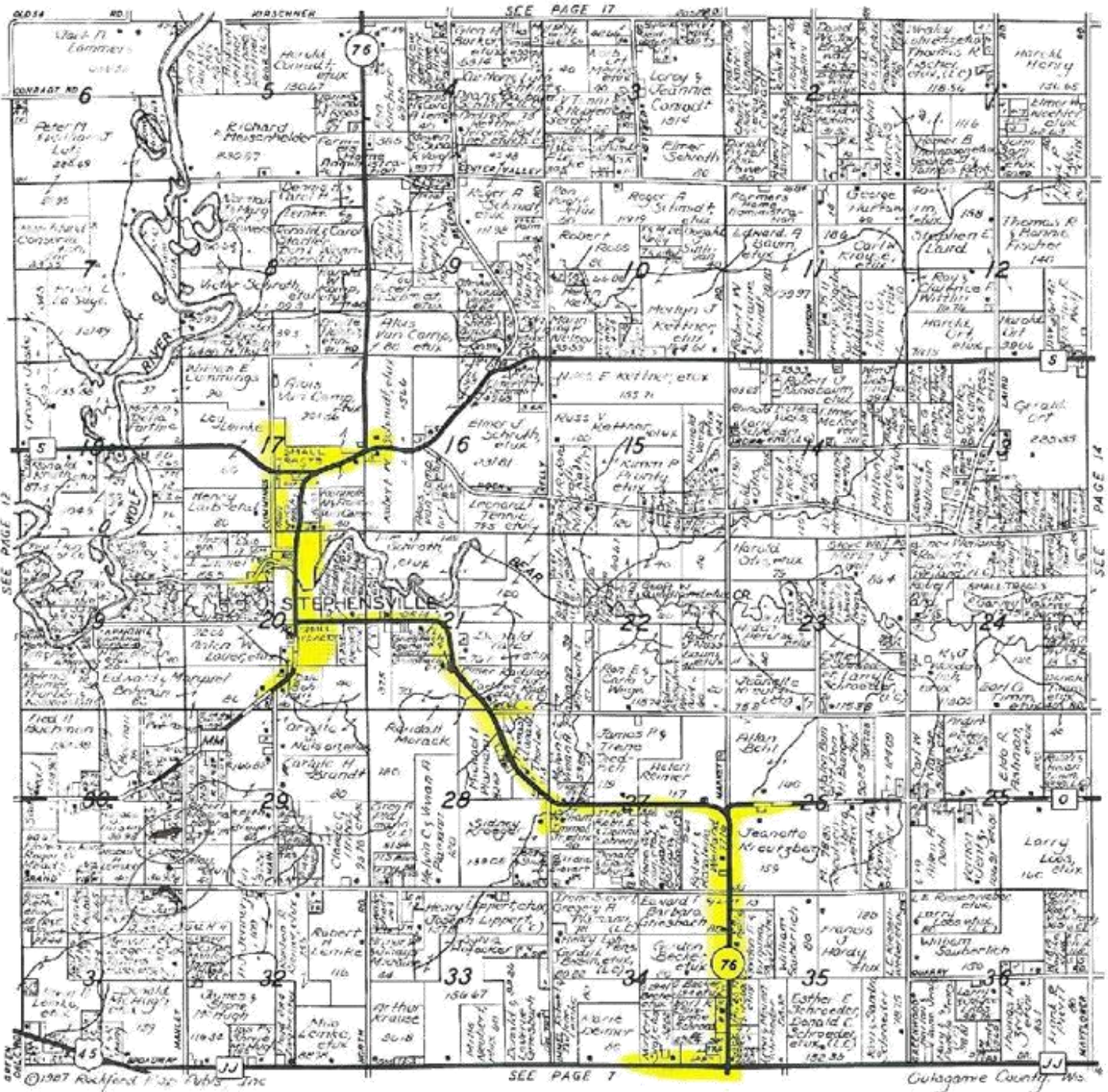
Dated:

March 1 1989

Kent A Rice
Division President

ELLINGTON

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