

## **CHAPTER 16**

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## **16.01 DEFINITIONS.**

In Chapter 16 of the Municipal Code of the Village of Bloomfield, the following words and phrases have the designated meanings:

- 1) **ADDITIONAL AND AUXILIARY SERVICE** shall mean service other than service provided by the Grantee to the subscriber on a monthly basis and for which the subscriber pays a set fee.
- 2) **BASIC SERVICE** means those audio and visual signals carried on the service tier of the Cable System which includes local off-air television signals. Basic Service shall not include any other tier of service or any premium or pay-per-view channels or services.
- 3) **BROADBAND TELECOMMUNICATIONS NETWORK (BTN)** hereinafter referred to as "System" shall mean any network of cables, optical, electrical, or electronic equipment, including cable television systems, used for the purpose of transmission of electrical impulses of television, radio and other intelligence, either analog or digital for sale or use by the inhabitants of the Village of Bloomfield.
- 4) **CABLE ACT** means the Cable Communications Policy Act of 1984, P.L. 98-549, 47 U.S.C. §521 Supp., as it may be amended or superseded.
- 5) **CABLE SERVICE** shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- 6) **CABLE SYSTEM** or **SYSTEM** means a system of antennas, cables, wires, lines, towers, microwaves, waveguides, laser beams or any other conductors, converters, equipment or facilities designed, constructed, or operated for the purpose of producing, receiving, amplifying, modifying and distributing audio, video, and other forms of communication or electronic signals for the purpose of providing Cable Services to and from residential and business subscribers and locations within the jurisdictional limits of the Grantor.
- 7) **COMMENCE OPERATION** shall mean that the operation will be considered to have commenced when sufficient distribution facilities have been installed so as to permit the offering of cable service to at least twenty-five (25%) of the dwelling units located within the designated "service area".
- 8) **DISCRETE CABLE TELEVISION CHANNEL** a signaling path provided by a cable television system to transmit signals of any type to specified subscriber terminals with the cable television system.
- 9) **FCC** shall mean the Federal Communication Commission and any legally appointed or elected successor.
- 10) **FRANCHISE** means the authorization granted hereunder of a franchise, privilege, permit,

license or otherwise to construct, operate and maintain a Cable System within the jurisdictional limits of the Grantor.

- 11) FRANCHISE AREA (service area) shall mean the Village of Bloomfield or the areas within the limits of the Village of Bloomfield.
- 12) FRANCHISE PAYMENT shall include all charges imposed for a franchise whether the object be regulation, revenue or one time reimbursement of costs incurred by the Village of Bloomfield in the award of this franchise.
- 13) GRANTEE shall mean any persons, firm, company, corporation or association to whom a franchise is granted by the Village Board of the Village of Bloomfield hereunder and the lawful successor or assigns of such persons, firm, company corporation or association.
- 14) GRANTOR means the Village of Bloomfield, Wisconsin.
- 15) GROSS SUBSCRIBER REVENUE shall mean any and all compensation for cable television service provided to the subscriber including pay television service, but excluding any and all tax on said revenue including sales tax.
- 16) REASONABLE NOTICE shall mean provision of notice of the contemplated action delivered at 72 hours prior to such legal action.
- 17) STREET shall include all streets, roadways, highways, avenues, lanes, alleys, courts, places, squares, curbs, sidewalks, easements, rights-of-way or other public ways in the Village which have been or may hereafter be dedicated and open to the public use, or such other public property as designated by law.
- 18) SUBSCRIBER is 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.
- 19) SUBSTANTIALLY COMPLETED operation will be considered substantially completed when sufficient distribution facilities have been installed so as to permit the offering of "full network service" to at least seventy-five(75%) percent of the dwelling units reasonably in the "franchise area".
- 20) VILLAGE shall mean the Village of Bloomfield or the area within the limits of the Village of Bloomfield.
- 21) VILLAGE BOARD (Board) shall mean the Village Board for the Village of Bloomfield and any legally appointed or elected successor or agency thereof.

## **16.02 GRANT OF AUTHORITY.**

- 1) The franchise granted hereunder shall give to the Grantee the right and privilege to construct, erect, operate, modify and maintain, in, upon, along, across, over and under streets, (as defined in Section 16.01(17) herein) which have been or may hereafter be dedicated and open to public use in the Village, towers antennas, poles, cables, electronic equipment, and other network appurtenances necessary for the operation of Broadband Telecommunication Network in the Village of Bloomfield utilizing wherever possible existing facilities with the right upon application to the designated Village Official, to set poles or other equipment on facilities constructed by applicant. Said designated village official will not unreasonably refuse permission for said construction. However, a non-proliferation of poles policy for aesthetic purposes shall be considered.
- 2) The Village shall require all developers of future subdivisions, when making provisions for or restrictions of utilities in the subdivision plat to include cable television services. It is intended by this paragraph to include cable television services in the same class of public utilities.

## **16.03 CONDITIONS OF FRANCHISE.**

The Grantee shall be subject to the following restrictions and conditions with regard to the operation of the System, which conditions and restrictions shall be in addition to any other subsections of this Section or other Sections of the Municipal Code.

- 1) Cables, wires and other equipment in connection with such System shall only be installed and operated on or under the public Rights-of-Way upon the poles, or in underground conduit and equipment of the existing utilities within the Village and their successors, or assigns, where conduits exist and where space for installed conduits is available. Installation of any additional poles, conduit or other equipment for the installation of cables, wires, and other overhead equipment and underground equipment in Public Rights-of-Way in connection with the said System shall be subject to the authorization of the Village Board or its designated representative. In reaching a decision as to such additional poles or equipment, the suggestions, if any, of the utility companies servicing or planning to serve such area may be considered. Underground installations shall always be preferred. However, the Grantee may construct its plant aerial so long as there is one utility aerial.
- 2) Such wires, cables and other underground or overhead equipment shall be located as may be required of telephone companies or power lines by the Public Service Commission of Wisconsin. All equipment shall be grounded in the manner as required by the State of Wisconsin Electrical Code for electrical services existing on the date of installation of any equipment.
- 3) The Grantee shall pay all costs incurred by the Village of Bloomfield in the event of the necessity of restoration of the Public Rights-of-Way as a result of the Grantee's construction of its System or its operation. The Grantee and the Village shall coordinate the restoration of the Public Rights-of-Way if it becomes necessary for the Grantee to open or otherwise disturb said Public Right-of-Way.

- 4) The Grantee shall, at its own expense, protect, support, temporarily or permanently disconnect, relocate in the same Public Right-of-Way, any property owned or used by the Grantee if required by the Village of Bloomfield for reasons of traffic conditions, public safety, street vacation, freeway and street construction change or establishment of a street grade, installation of sewers, drains, water pipes, power lines and tracts or any other type of structures or improvements by governmental agencies when acting in a governmental capacity. The Village shall provide the Grantee notice of its intention to make changes which might otherwise cause Grantee expense pursuant to this paragraph and the Grantee shall have an opportunity to comment.
- 5) The Grantee shall, upon the request of any person holding a building moving permit issued by the Village, temporarily raise or lower its lines or disconnect or take them down to permit the moving of buildings. The expense of such removal, raising or lowering of the wires shall be paid by the person requesting the same, and the Grantee shall be given not less than three (3) working days advance notice to arrange for such temporary wire changes.
- 6) All installations by the Grantee of cables and incidental equipment shall comply in all respects with all laws, ordinances, rules and regulations of the Federal Communications Commission, the State of Wisconsin or any agency or department thereof, and of the Village or any agency or department thereof, now or hereafter in effect.
- 7) The Grantee shall provide and maintain its equipment in such condition and of such quality so that none of its service will adversely affect radio and television reception.
- 8) Installation and maintenance of equipment shall be such that standard color signals shall be transmitted with reasonable and acceptable fidelity to all subscribers.
- 9) The Grantee shall not directly or indirectly require or solicit of any subscriber the patronage of any designated person or company engaged in the servicing sale or repair of television receivers. The foregoing shall not apply to the repair or adjustment of equipment which is in part of the System of the Grantee.
- 10) The Grantee shall submit to inspections by duly authorized personnel of the Village and shall make available to such inspectors or duly authorized personnel its facilities and equipment wherever situated. The Village reserves the right to enact reasonable regulations regarding the installation and maintenance of the facilities of the Grantee. The Grantee will be offered the option of providing security and fire alarm service if, or when the Village deems it necessary.
- 11) The Village shall have the right, during the life of this franchise, free of charge, to install and maintain upon the fixtures and conduits of the Grantee within the Village limits wires and appropriate attachments necessary for a security and fire alarm system. Such wires and fixtures shall be constructed and maintained to the satisfaction of the Grantee and in accordance with its specifications.
- 12) The Village, in its use and maintenance of such wires and attachments shall at all times

comply with the rules and regulations of the Grantee so that there may be a minimum danger of contact or conflict between the wires and fixtures of the Grantee and the wires and attachments of the Village.

- 13) The Grantee shall have the authority to trim trees upon and overhanging Public Right-of-Way of the Village so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, except that at the option of the Village, such trimming may be done by it or under its supervision and direction.

#### **16.04 TRANSFER OR SALE OF CABLE TELEVISION.**

This franchise may be transferred, assigned or sold only with the written consent of the Village Board and approved only if the transferee, assignee or purchaser agrees in writing to be subject to all the terms and conditions of this ordinance. The franchise shall notify the Village Board at least thirty (30) days before a proposed transfer, assignment, or sale is to take effect. Such notice must be in the form of a written request to the Village Clerk, stating the reasons why such an assignment is necessary and/or advisable and detailing the expected changes in the operation of the System. Information regarding the legal, character, financial, technical, and other qualifications of the party or parties to whom the franchise is to be transferred, assigned, or sold or by whom the same is to be operated shall also be provided. This Section shall apply to any transfer, assignment, or sale of greater than twenty-five(25%) percent of the ownership, operation, or management of the franchise. The Village Board shall not withhold approval or consent regarding the transfer, assignment or sale, without cause and unless it is shown that the operation or management of the System will be affected to the detriment of the public by approving said transfer, assignment or sale. This provision shall not apply to either the mortgage or hypothecation of the System in respect to any mortgages or the remedies therein.

#### **16.05 FRANCHISE TERM, REVIEW AND RENEWAL.**

- 1) The term of this franchise shall be for a period of twelve (12) years and shall be in full force and effect for said term subject to the provisions of this ordinance.
- 2) Every two (2) years, prior to the expiration of this franchise, during the month of January, at a regular or special Village Board meeting, the Village and the Grantee, at either party's option, may meet to discuss application of new technologies, system performances, services provided, programming offered, customer complaints, and judicial and FCC rulings affecting the operation of the System. The parties shall compare the services offered by Grantee to those of other stand-alone systems in similar market situations, and if appropriate, the parties may renegotiate any of the above provisions, provided that such changes do not adversely affect economic viability of the franchise or adversely affect programming and maintenance services to the subscribers.
- 3) At the tenth (10) year of the franchise, or if mutually agreed by the Village and the Grantee during one of the review and renegotiations described in Paragraph(2) above, the Village of Bloomfield and the Grantee shall consider extension of this franchise for fifteen additional years. The purpose of this provision is to allow for maximum flexibility in the

financial planning on the part of the Grantee, and for the Village in anticipating future services. It is further the purpose of this provision to encourage the Village to examine the Grantee's performance and to plan for the future in providing cable television service as well as to reward the satisfactory performance of the Grantee. The Village may at any time reward the Grantee for satisfactory performance by the extension of the franchise for five(5) year increments. This authority is granted so as to provide incentive to the Grantee for satisfactory performance and maximum service.

- 4) The Franchise grant to Charter Communication Partners, LLC. shall expire June 14, 2016.

#### **16.06 RESPONSIBILITIES UPON TERMINATION OR EXPIRATION.**

Should the Grantee's franchise be terminated or expire and there is no judicial or administrative review of the termination or expiration taking place, the Grantee shall begin removal within ninety (90) days of termination or expiration all property owned by Grantee and placed on a Public Right-of-Way unless permitted by the Village to abandon said property in place or transfer said property to a purchaser.

#### **16.07 RATES.**

In the event of a rate increase of the basic service, the Grantee shall provide the subscribers a thirty (30) day notice of such increase. Said Notice shall be forwarded to the Village Clerk of the Village of Bloomfield, with supporting data for said increase.

#### **16.08 TERMINATION OF FRANCHISE.**

- 1) The Village reserves the right to revoke any franchise granted hereunder and rescind all rights and privileges associated therewith in the event of noncompliance by the Grantee with any material provisions of this Ordinance.
- 2) Prior to revocation or termination of the Franchise, the Franchising Authority shall give written notice to the Grantee of its intent to revoke the Franchise. The notice may specify the purpose of the revocation or termination. The Grantee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the Village has not received a satisfactory response from Grantee, it may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise, in compliance with the open meeting laws.
- 3) At the hearing, the Village shall give the Grantee an opportunity to state its position on the matter present evidence and question witnesses, after which the Village shall determine whether or not the Franchise shall be revoked. Public hearing shall be on the record. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Village upon a certiorari review.

### **16.09 FRANCHISE FEE.**

- 1) Grantee shall pay to the Grantor, within sixty (60) days after each calendar quarter ends, an amount equal to five percent (5%) of the Gross Revenues for such calendar quarter.
- 2) Each year during which the Franchise is in force, Grantee shall file with the Grantor no later than ninety (90) days after the end of each calendar quarter a financial statement showing total Gross Revenues derived from the Cable System during such quarter. The Grantor shall have the right to review the previous year's books of the Grantee to ensure proper payment of the fees payable hereunder. The Grantor shall bear the expense of review unless it is determined there has been an underpayment of more than five percent (5%), in which case the Grantee shall bear such expense of the entire review.

### **16.10 BROADBAND CABLE COMMUNICATIONS SERVICE.**

- 1) The Cable Communications System permitted to be installed and operated hereunder shall be operated on conformance with the FCC's Technical Standards 47 C.F.R.ss76.601 et. seq.
- 2) The Grantee shall continue, throughout the term of the franchise, to maintain the technical standards and quality of service set forth in this Section. Should the Village Board reasonably find, by Resolution, that the Grantee has failed to maintain these technical standards and quality of service, and should it be by Resolution it shall specifically enumerate improvements to be made; then the Grantee shall make such improvements.
- 3) The Cable System shall carry and deliver to all subscribers all of the signals as provided in the Grantee's application.

### **16.11 COMPLAINT PROCEDURE.**

Grantee shall investigate all complaints within twenty-four (24) hours of their receipt and shall in good faith attempt: to resolve them within forty-eight(48) hours after notice. Grantee shall maintain a record of each complaint and shall maintain said record for a period of two(2) years. Said record shall be available to the Village upon reasonable notice for review.

### **16.12 LIABILITY AND INDEMNIFICATION.**

- 1) The Grantee shall maintain and by its acceptance of any franchise granted hereunder agrees that it will maintain throughout the term of the franchise, a general comprehensive liability insurance policy 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) \$1,000,000.00 for bodily harm or death to any one person, within the limit, \$2,000,000.00 aggregate for general liability insurance, and (b) \$1,000,000.00 for property damage resulting from any one accident.

- 2) It shall be expressly understood and agreed by and between the Village and any grantee hereunder that the Grantee shall save the Village and its agents and employees harmless from and against all claims, damages, losses and expenses, including attorney's fees sustained by the Village on account of any suit judgment, execution, claim or demand whatsoever arising out of but not limited to copyright infringements and all other damages arising out of the installation, operation or maintenance of the Broadband Telecommunications Network authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this Ordinance and any franchise granted hereunder. This provision shall not apply to acts of the Village, its agents or employees.
- 3) The insurance policies mentioned in Subsection (1) above shall be obtained from the same company and shall contain an endorsement stating that the policies are extended to cover the liability assumed by the Grantee under the terms of this Ordinance and shall contain the following endorsement:
  - a) "It is hereby understood and agreed that this policy may not be cancelled nor the amount of coverage thereof reduced until thirty(30) days after such receipt by the Village Clerk by registered mail of a written notice of such intent to cancel or reduce the coverage."
- 4) The Grantee shall maintain, and by its acceptance of any franchise granted hereunder agrees that it will maintain throughout the term of the franchise a faithful performance bond running to the village in the penal sum of \$25,000.00 conditioned that the grantee shall well and truly observe, fulfill and perform each term and condition of this Ordinance and any franchise granted hereunder and that in case of any breach of condition of the bond, the amount thereof shall be forfeited to the Village as liquidated damages. The bond shall contain the following endorsement:
  - a) "It is hereby understood and agreed that this bond may not be cancelled nor the intention not to renew be stated until thirty(30) days after such receipt by the Village Clerk of the Village of Delavan, Wisconsin, by registered mail a written notice of such intent to cancel or not renew."
- 5) Upon completion of the construction of the physical plant, the Grantee may petition the Village Board to reduce or eliminate this bond of faithful performance.

### **16.13 CONSTRUCTION AND NETWORK TECHNICAL STANDARDS AND MEASUREMENTS.**

The technical standards including measurements of the construction and Systems to be operated in the Village shall comply with the minimum standards established by the Federal Communications Commission.

#### **16.14 ADDITIONAL REQUIREMENTS.**

The Grantee shall comply with all conditions imposed by Federal Communications Commission and by the State of Wisconsin. Failure to obtain any required licenses or to comply with all such conditions shall be grounds to revoke the franchise under the procedure of Section 16.09 of this Municipal Ordinance without liability assigned to the Village of Bloomfield.

#### **16.15 SUBSCRIBER PRIVACY.**

- 1) Neither the Grantee, the Village, nor any person shall initiate nor use any form, procedure or device for procuring information or data from cable subscribers' terminals by use of the cable System, without prior authorization from each subscriber so affected. Valid authorization shall mean approval from the subscriber for a period of time not to exceed one (1) year and shall not have been obtained from the subscriber as a condition of service.
- 2) The Village or a Grantee or any person shall not without prior written valid authorization from the Village Board, provide any data identifying designated subscribers.

#### **16.16 SWITCHING DEVICE AND CHANNEL LOCK.**

- 1) The Grantee shall make available switching devices as are necessary to permit a subscriber to use the subscriber's own antenna. Grantee shall also provide a channel lock to enable the subscriber to control viewing. The Grantee may charge for such devices.
- 2) Subscriber has the option of providing subscriber's own switching device at no charge. Such switching device must meet the specifications of the Grantee.

#### **16.17 PENALTIES.**

In addition to the procedures specified in Section 16.19 the following shall be in effect:

- 1) After notice and hearing the Village may fine the Grantee if fails to provide the service specified in this Chapter, or any applicable government regulation. 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.
  - a) Upon interruption of service, except for acts of God, strikes, governmental or military action, or with express prior permission of the Village, the following shall apply:
  - b) Over forty-eight (48) and less than seventy-two (72) hours, a ten percent (10%) rebate of one month's fees for all affected subscribers.
  - c) Over seventy two (72) hours, a twenty percent (20%) rebate of one month's fees for all affected subscribers.

- 2) A full month's rebate for any month in which one half or more of the service is interrupted.
- 3) If Grantee violates any provision of this Chapter, it shall forfeit together with the costs of prosecution, a sum not less than \$50.00 nor more than \$500.00 for each violation.

#### **16.18 GOVERNMENT CONNECTIONS.**

The Grantee shall provide a free one-time connection to the below listed governmental building and/or facilities, along with free internet service for the life of its franchise. The franchising authority shall pay for all wiring within said building or facilities in excess of two hookups. This includes two internet modems with internet service. This list may be changed from time to time as the parties may agree and the circumstances change. This list shall include:

Village Hall  
Police Department

#### **16.19 VILLAGE'S RIGHT OF INTERVENTION.**

The Village shall have the right to intervene and the Grantee specifically agrees by his acceptance of a franchise hereunder not to oppose such intervention by the Village in any suit or proceeding to which the Grantee is a party.

#### **16.20 PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED.**

Grantee shall not, as to rates, charges, service, service facilities, rules, regulations, employment, or in any other respect, make or grant any undue preference or advantage to any party, nor subject any party to any unlawful prejudice or disadvantage.

#### **16.21 SEVERABILITY.**

If any subsection, sentence, clause or phrase of this Section is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of this Ordinance as a whole, and any portions in conflict are hereby repealed. However, in the event that the Federal Communications Commission declares any subsection invalid, then such subsection or subsections shall be renegotiated by the Village of Bloomfield and the Grantee.

#### **16.22 NON-EXCLUSIVE FRANCHISE GRANT.**

The cable television franchise, pursuant to this Ordinance is hereby granted to Charter Cable Partners, LLC (CC Partners). All of the terms, provisions and statements contained in their application, including the response and supplement submitted by Charter Cable Partners, LLC (CC Partners) is incorporated herein reference and Charter Cable Partners, LLC (CC Partners)

shall be bound to said statements and promises.

### **16.23 SERVICE.**

- 1) Grantee shall provide to its Subscribers broad categories of video programming services.
- 2) Grantee shall extend the Cable System to new developments within the jurisdictional limits of the Grantor, subject to a minimum density requirement of thirty (30) homes per linear mile.
- 3) Grantee shall provide Basic Service and one free outlet to each of the public facilities located within one hundred twenty-five (125) feet of points on existing service lines of the Grantee from where service can be provided and within the jurisdictional limits of the Grantor. Such public facilities shall include municipal buildings used solely for municipal purposes and all public and private schools. No monthly service fee shall be charged for such outlet. Grantee shall provide Basic Service to new construction hereafter for similar public facilities; provided they are within one hundred twenty-five (125) feet of the existing service lines of Grantee.

### **16.24 NOTICES, MISCELLANEOUS.**

- 1) Notices served upon the Grantor shall be delivered or sent by certified mail, return receipt requested, to:

Village Clerk  
Village of Bloomfield  
P.O. Box 609  
Pell Lake, WI 53157

and notices served upon Grantee shall be delivered or sent by certified mail, return receipt requested, to:

Charter Communications  
5618 Odana Road  
Madison, WI 53719  
Attention: Vice President of Operations

With a copy to:  
Charter Communications  
12405 Powerscourt Drive  
St. Louis, MO 63131

- 2) All provisions of this Ordinance shall apply to the respective parties, their successors and assigns.