

ORDINANCE NO. 99-1
CABLE COMMUNICATIONS ORDINANCE

The Town Board for the Town of LeSauk ORDAINS that the following is adopted as Ordinance No. 99-1:

An ordinance governing the construction, installation, operation, repair, maintenance, removal and relocation of facilities and equipment used for the transmission of telecommunications or related services in the public ground of the Town of LeSauk; and regulating the granting, operation and renewal of cable television franchises within the Town of LeSauk.

Section 1: DEFINITIONS. The terms defined in this Section have the meanings given them:

Subd. 1. "Franchisor" is the Town of LeSauk.

Subd. 2. "Franchisee" refers to any cable television companies to which the Town of LeSauk may from time to time award a cable communication franchise.

Subd. 3. "FCC" is the Federal Communications Commission of the United States.

Subd. 4. "Company" is a natural or corporate person, business, association, political subdivision, public or private agency of any kind, its successors and assigns, who or which seeks or is required to construct, install, operate, repair, maintain, remove or relocate facilities in the Town.

Subd. 5. "Director" is the Town Board supervisor who oversees Town roads, (or equivalent position at the Town) or designated representative.

Subd. 6. "Facilities" are the telecommunications equipment of any kind, including but not limited to audio, video, paging, facsimile or similar service, including all trunks, lines, circuits, physical connections, switching equipment, wireless communication equipment of all kinds, and any necessary appurtenances owned, leased or operated by a company on, over, in, under, across or along public ground.

Subd. 7. "Public Grounds" are highways, roads, streets, alleys, public ways, utility easements and public grounds in the Town.

Subd. 8. "Town" is the Town of LeSauk, Minnesota.

Section 2: GRANT OF AUTHORITY. The Town Board of LeSauk is authorized to grant cable communications franchises for the installation, operation and maintenance of a cable

communications system within the Town of LeSauk. All franchises shall be subject to the terms and performance conditions stated in this Ordinance.

Section 3: COMPLIANCE WITH STATE AND FEDERAL LAWS. The franchisee and the franchising authority shall conform to all state and federal laws and rules regulating cable communications as they become effective.

Section 4: FRANCHISE TERMS. Each franchise or renewal shall have a term as may be stated in the franchise or renewal, but no franchise may be granted or renewed for a term greater than fifteen (15) years.

Section 5: FRANCHISE EXCLUSIVITY. No franchise shall be exclusive.

Section 6: SALE OR TRANSFER OF THE FRANCHISE, SALE OR TRANSFER OF STOCK.

Subd. 1. Any transfer of a franchise shall be subject to the approval of the Franchisor. The Franchisor has 120 days from the submission of information regarding the successor's ability to operate in accordance with the terms of this Ordinance to approve or disapprove the transfer. Approval of a transfer shall not be unreasonably denied. Approval may be denied only upon a finding that the successor does not have the ability or capability to operate the franchise in accordance with the terms of this Ordinance and this franchise.

Subd. 2. No sale or lease of the rights granted herein shall be effective until the successor or lessee shall have filed in the office of the Town Clerk an instrument, duly executed, reciting the fact of such sale or lease, accepting the terms contained herein, and agreeing to perform all conditions required of the franchise. At that time, the successor or lessee shall also file with the Town Clerk a duly executed bond, fully complying with any bonding requirements of this Ordinance.

Section 7: ACCESS TO FINANCIAL RECORDS. The Town is granted the authority to audit the franchisee's accounting and financial records upon reasonable notice. The franchisee shall file annually with the Town reports of gross revenues and other information as the Town deems appropriate. Reports of gross revenues shall be open to public inspection.

Section 8: RATES, RATE CHANGE PROCEDURE AND RESIDENTIAL SUBSCRIBER CONTRACTS.

Subd. 1. Rates. Prior to offering service to any member of the general public, the franchisee shall prepare a clear and concise list of all current subscription rates and charges, including all installation and disconnect charges, charges for optional services and charges or

deposits for the use of equipment offered to subscribers for use with the service. A verified copy of this list of rates and charges shall then be filed with the LeSauk Town Clerk and shall be available for public inspection at the office of the Town Clerk. An amended list of rates and charges shall be prepared and filed with the Town Clerk at anytime there is any change or adjustment in the subscription rates and charges.

Subd. 2. Residential Subscriber Contract. The franchisee shall file with the Town Clerk a copy of the then current residential subscriber contract, if a written contract exists. If no written contract exists, the franchisee shall file with the Town Clerk a document completely and concisely stating the terms of the residential subscriber contract offered to customers, specifically including the length of the subscriber contract. The subscriber contract, and/or the summary of the terms of the non-written contract on file with the Town Clerk shall be open to inspection by the public and shall govern the contractual relationship between the franchisee and all subscribers receiving service under the authority of this ordinance, except service provided to institutions, business premises or multiple housing locations, which service may be governed by separate written contract.

Subd. 3. Rate Regulations. With regard to all franchises, the Town reserves the right to seek certification by the FCC to engage in the regulation of rates, and implement reasonable regulations during the term of the franchise as permitted by law and/or the FCC. The Town shall also reserve the right to regulate rates for the installation and rental of equipment for the hearing impaired.

Section 9: FRANCHISE ADMINISTRATOR. The Town Clerk shall be responsible for day to day municipal administration of a franchise. The Town Board may by resolution, create a Cable Commission and appoint members to this Commission. The Cable Commission shall have such duties and delegations as established by the Town Board, and shall serve the Town Board in an advisory capacity. Members of the Cable Commission shall receive compensation as set by the Board and shall serve at the will of the Board. Establishment of and delegation of duties to the Cable Commission shall be by resolution of the Town Board. The Town Board shall retain ultimate authority for the administration of a franchise.

Section 10: LIABILITY INSURANCE. A franchisee shall indemnify and hold harmless the Town at all times during the term of the franchise and shall maintain throughout the term of the franchise insurance as follows:

Liability for damage to property	\$ 300,000.00
Liability for personal injury	\$ 500,000.00 per person \$1,000,000.00 per occurrence
Workmen's Compensation coverage	as required by State law

These policies shall insure both the Town 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 the franchise. A franchisee shall provide the Town with evidence of required coverage and shall name the Township as an additional insured.

Section 11: INDEMNIFICATION.

Subd. 1. A franchisee shall hold the Town harmless from any and all claims and actions, litigations and from damage arising out of the construction, erection, installation, maintenance or operation of its property operated by authority of this Ordinance within the corporate limits of the Town or the negligence of the franchisee's employees in the operation thereof. A franchisee shall defend in the name of the Town any claims made against the Town arising out of the franchise. A franchisee also agrees to hold the Town harmless from and all claims and actions arising from alleged infringements of copyrights.

Subd. 2. Nothing contained in a franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injury to the 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.

Section 12: PERFORMANCE BOND. Prior to beginning construction, and within a minimum of three months of the date any franchise becomes effective, the franchisee shall furnish a performance bond, certificate of deposit, or any other type of instrument approved by the Town in the amount as established by the Town, but not to exceed seventy-five thousand dollars (\$75,000.00). The Town agrees to discontinue said performance bond upon such time as the construction is completed and the Town is satisfied that the performance of the system meets all standards according to this ordinance.

Section 13: CONSTRUCTION SCHEDULE. Franchises shall provide service to Town residents within a reasonable time from when the franchise is granted. Absent evidence to the contrary, it shall be presumed that a "reasonable period" is no later than one (1) year from the grant of the franchise.

Section 14: CONSTRUCTION STANDARDS.

Subd. 1. Permits. The franchisee shall obtain a permit from the proper governmental authority before commencing construction of any communications system, including the opening or disturbance of any street, sidewalk, driveway or public place. If the franchisee fails to meet the conditions of the permit, the franchisor, after reasonable notice to the franchisee, and providing franchisee the opportunity to remedy said complaint, can cause said problem to be remedied and bill the Franchisee for the costs incurred in so remedying.

Subd. 2. Compliance with Codes. All wire, conduits, cable and other property and facilities of the franchisee shall be located, constructed, installed, and maintained in compliance with applicable codes. The 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.

Subd. 3. Relocation of Wires. In the event it becomes necessary for the Town to relocate or remove the franchisee's wires, conduits, cables and other property located in any street, right-of-way or public place to facilitate the undertaking of a public improvement which affects the cable equipment, franchisee shall make all necessary changes in its equipment at its own expense, as requested, upon due notice from the Town Board or its designated officer.

Subd. 4. Restoration. Upon completion of the work, the company must restore the general area of the work, including paving and its foundations, to the same condition that existed prior to commencement of the work and must exercise reasonable care to maintain the same condition for two (2) years thereafter. The work must be completed as promptly as weather permits. If the company does not promptly perform and complete the work, remove all direct, rubbish, equipment and material, and restore the public ground to the same condition, the Town may put it in the same condition at the expense of the company. The company must, upon demand, pay to the Town the direct and indirect cost of the work done for or performed by the Town, including but not limited to the Town's administrative costs. To recover its costs, the Town will first draw on the security posted by the company and then recover the balance of the costs incurred from the company directly by written demand. This remedy is in addition to any other remedies available to the Town.

Subd. 5. Company Initiated Relocation. The company must give the Town written notice prior to a company initiated relocation of facilities. A company initiated relocation must be at the company's expense and must be approved by the Town, such approval not to be unreasonably withheld.

Subd. 6. Town Required Relocation. The company must promptly and at its own expense, with due regard for seasonal working conditions, permanently relocate its facilities whenever the Town requires such relocation.

Subd. 7. Relocation Where Public Ground Vacated. The vacation of public ground does not deprive the company of the right to operate and maintain its facilities in the Town. If the vacation proceedings are initiated by the company, the company must pay the relocation costs. If the vacation proceedings are initiated by the Town or other persons, the company must pay the relocation costs unless otherwise agreed to by the Town, company and other persons.

Subd. 8. Inspection of Work. When the work is completed, the company must request an inspection by the director. The director will determine if the work has been satisfactorily completed and provide the company with a written report of the inspection and approval.

Subd. 9. Notice. If the company is in default in the performance of the work authorized by the permit, including but not limited to restoration requirements, for more than thirty (30) days after receiving written notice from the Town of the default, the Town may terminate the rights of the company under the permit. The notice of default must be in writing and specify the provisions of the permit under which the default is claimed and state the grounds of the claim. The notice must be served on the company by personally delivering it to an officer thereof at its principal place of business in Minnesota or by certified mail to that address.

Subd. 10. Town Action on Default. If the company is in default in the performance of the work authorized by the permit, the Town may, after the above notice to the company and failure of the company to cure the default, take such action as may be reasonably necessary to abate the condition caused by the default. The company must reimburse the Town for the Town's reasonable costs, including costs of collection and attorney fees incurred as a result of the company default. The security posted under Section 2, Subdivision 5, will be applied by the Town first toward payment for such reimbursement.

Subd. 11. Use of Public Ground. Facilities must be located, constructed, installed, maintained or relocated so as not to endanger or unnecessarily interfere with the usual and customary traffic, travel, and use of public ground. The facilities are subject to additional conditions of the permit as established by the director including but not limited to (i) the right of inspection by the Town at reasonable times and places; (ii) the obligation to relocate the facilities pursuant to Section 3, Subdivisions 3 and 4; and (iii) compliance with all applicable regulations imposed by the Minnesota Public Utilities Commission, Minnesota Code of Rules, Sec. 7819.0050 et seq., and other state and federal law, including prompt compliance with the requirements of the Gopher State One Call program, Minnesota Statutes Chapter 216D.

Subd. 12. Location. The facilities must be placed in a location agreed to by the Town. The company shall give the Town forty-five (45) days advanced written notice of the company's proposed location of facilities within the public ground. No later than forty-five (45) days after the Town's receipt of the company's written notice, the Town will notify the company in writing of the Town's acceptance or rejection of the proposed location. If the Town rejects the company's proposed location, the Town shall propose alternative locations. The Town does not waive or forfeit its right to reject the location of facilities by failure to respond within the forty-five (45) days.

Subd. 13. Emergency Work. A company may open and disturb the surface of public ground without a permit where an emergency exists requiring the immediate repair of its facilities.

In such event, the company must request a permit not later than the second working day thereafter and comply with the applicable conditions of the permit. In no event, may the company undertake such an activity which will result in the closing of a street or alley without prior notification to the Town.

Subd. 14. Street Improvements, Paving and Resurfacing. The Town will give the company written notice of plans for street improvements where permanent paving or resurfacing is involved. The notice must contain (i) the nature and character of the improvements; (ii) the streets upon which the improvements are to be made; (iii) the extent of the improvements, the time when the Town will start the work; and, (iv) if more than one street is involved, the sequence in which the work is to proceed.

Subd. 15. Company Protection of Facilities. The company must take reasonable measures to prevent the facilities from causing damage to persons or property. The company must take reasonable measures to protect its facilities from damage that could be inflicted on the facilities by persons, property, or the elements. The company must take specific protective measures when the Town performs work near the facilities.

Subd. 16. Prior Service Connections. In cases where the Town is undertaking the paving or resurfacing of streets and the facilities are located under such street, the company may be required to install service connections prior to the paving or resurfacing, if it is apparent that service will be required during the five (5) year period following the paving or resurfacing.

Subd. 17. Public Ground Other Than Right-Of-Way. Nothing in this ordinance is intended to grant to the company authority beyond that given by Minnesota Statutes 222.37 or Minnesota Code of Rules, Sec. 7819.0050, et seq, for use of the public right-of-way for construction and operation of facilities. If the Town allows the company to use its non-right-of-way public ground, the terms of this ordinance apply to the extent they are consistent with the contract, statutory and common law rights the Town owns in such property.

Subd. 18. Regulations; Permit Schedules. The director is authorized and directed to prepare suitable regulations and schedules for the administration of permits issued under this ordinance.

Section 15. SPECIAL TESTING. At any time after commencement of service to subscribers, the Town may require additional tests, full or partial repeat tests, different test procedures or tests involving a specific subscriber's terminal. Requests for such tests will be made on the basis of complaints received or other evidence indicating an unresolved controversy or significant noncompliance; and such tests will be limited to the particular matter in controversy. The cost of said testing shall be borne by the franchisee.

Section 16: SUBSCRIBER PRIVACY.

Subd. 1. 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 contained 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 revocable 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.

Subd. 2. 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 that information, unless the franchisee has received specific written authorization from the subscriber to make the data available.

Subd. 3. Written permission from the subscriber shall not be required for the systems conducting system-wide 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 provision set forth in 4 MCAR § 4.202 W.1.

Section 17: SUBSCRIBER COMPLAINTS.

Subd. 1. All franchises shall conduct their business in accordance with the customer service standards established by the FCC and 47 C.F.R. § 76.309.

Subd. 2. All complaints by the Town or other citizens regarding the quality of service, equipment malfunction, billing disputes, and any other matters relative to a franchise granted pursuant to this Ordinance shall be investigated by the franchisee within two business days and resolved by the franchisee. Any complaints not resolved to the satisfaction of the complaining party, shall be communicated to the Town. A record of unresolved complaints may be retained by the Town and may be considered by the Town Board in making decisions relating to the franchise.

Subd. 3. A franchisee shall provide to the subscriber a toll-free or collect 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 and adjustment shall be

borne by the franchisee unless it can be clearly determined that the repair or adjustment was made necessary by abuse or intentional misuse of the system by the subscriber. Costs of installation shall be borne by the subscriber.

Section 18: UNLAWFUL DENIAL.

Subd. 1. A franchisee shall not deny access to cable service because of the income of a resident.

Subd. 2. A Franchisee shall not deny access to cable service to a geographical area of the Town because of income demographics.

Section 19: TERMINATION. The franchising authority shall have the right to terminate and cancel any franchise and all rights and privileges of a franchise, if the franchisee attempts to evade any of the provisions of the franchise or this ordinance, practices any fraud or deceit upon the Town or its customers, or fails to operate the franchise in accordance with this Ordinance. The Town shall provide the franchisee with a written notice of the cause for termination and its intention to terminate the franchise and shall allow the franchisee a minimum of thirty (30) days after service of the notice in which to correct the violation. The franchisee shall be provided the opportunity for a public hearing before the Town Board prior to the termination of the franchise. In the event that the franchisor determines to terminate the franchise, the franchisee has thirty days from the date of termination of the franchise to take such available action challenging the termination, as provided by law, or its right to challenge termination is waived.

Section 20: ABANDONMENT. The franchisee may not abandon any portion of the cable communications service provided under a franchise without prior written notice to the Town.

Section 21: REMOVAL OF CABLE EQUIPMENT UPON TERMINATION OR FORFEITURE: Upon termination or forfeiture of a franchise, the franchisee shall remove, if the franchising authority so requests, all of its plants, structures, works, pipes, mains, conduits, cables, poles and wires and refill at its own expense any excavation that shall be made by it and shall leave said streets, alleys, public ways and places, in as good condition as that prevailing prior to the franchisee's removal of equipment and appliances. In the event the franchisee fails to do so, the franchisee shall pay to the franchisor as liquidated damages 125 percent of the cost of removal.

Section 22: MUNICIPAL RIGHT TO PURCHASE SYSTEM. The Town shall have the right to purchase any franchise or cable system offered for sale pursuant to the same terms and conditions of any bona fide offer to purchase. The Franchisee shall provide the Town with a copy of the bona fide written offer, and the Town has sixty (60) days of receipt to exercise its option to

purchase. The purchase option shall be exercised in writing. If not exercised within sixty (60) days of notice, the Town's right to purchase is forfeited with respect to that offer, but only that offer.

Section 23: ACCESS CHANNELS.

Subd. 1. A franchisee shall provide to each of its subscribers who receive some or all of the services offered on the system, reception on at least one specially designated access channel. The specially designated access channel may be used by local educational authorities and local government on a first-come, first served nondiscriminatory basis. During those hours that the specially designated access channel is not being used by the local educational authorities or local government, the franchisee may lease time to commercial or noncommercial users on a first-come, first served nondiscriminatory basis if the demand for that time arises. The franchisee may also use this 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.

Subd. 2. The Town reserves the right to establish rules for the administration of the specially designated access channel and establish reasonable rates for the use and administration of the access channel.

Subd. 3. Franchisees providing only alarm services or only data transmission services for computer-operated functions do not need to provide access channel reception to alarm and data service subscribers.

Section 24: FRANCHISE FEE.

Subd. 1. During the term of any franchise granted hereunder, the franchisee shall pay to the Town of LeSauk quarterly a franchise fee in accordance with the terms of the Resolution granting the franchise. The franchise fee shall not exceed five (5) percent of gross revenues. If a franchise fails to state a fee, a fee based on four (4) percent of gross revenues shall be assumed.

Subd. 2. "Gross Revenues" are defined to include revenue derived from the LeSauk system from basic television service, pay cable, advertising, auxiliary services, equipment rental and installation charges.

Section 25: NON-INTERFERENCE. Installations shall be maintained so as not to interfere with television reception already in existence within the Town.

Section 26: LINE EXTENSION. The Town shall have the right to require reasonable extensions of the franchisee's transmission and distribution system from time to time, and to make

such rules and regulations as may be required to secure adequate and proper service and to provide accommodations for the public. The Town may not require an extension into areas where there are less than twenty-five (25) residential units per mile of trunk or distribution cable as is required.

Section 27: OBSCENITY.

Subd. 1. For purposes of this Section, obscenity shall mean a program when, to the average person applying contemporary community standards, the program taken as a whole, appeals to the prurient interest; the program depicts or describes, in a patently offensive way, sexual conduct, that is, patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated or patently offensive representations or descriptions of masturbation, excretory functions or lewd exhibition of genitals; and the program taken as a whole lacks serious literary, artistic, political or scientific value.

Subd. 2. It shall be a misdemeanor to originate or produce any obscene program which is transmitted over any cable communications system. However, neither the cable communications franchisee whose facilities are used to transmit a program produced by a person other than the cable communications franchisee, nor the officers, directors, or employees of the cable communications franchisee, shall be liable for any penalty or damages arising from any obscene program presented thereon when the franchisee or its employees does not originate or produce a program. Any entity which schedules the programming of the access channels of a cable communications system shall not be liable for the presentation of any obscene program thereon unless the entity itself originates or produces the program.

Section 28: CONTRADICTIONS WITH STATE OR FEDERAL LAW. Any provisions of this Ordinance or a franchise which are in direct contradiction to any State or Federal law, rule or regulation of cable television franchising, shall be deemed invalid but only to the extent of the contradiction. All other portions of this Ordinance shall continue in full force and effect. As may be possible, all provisions of this Ordinance shall be construed in a manner consistent with State or Federal law so as to maintain the validity of those provisions.

Section 29: ADDITIONAL FRANCHISE REQUIREMENTS. All cable communication franchises shall also be subject to the following terms and conditions:

Subd. 1. The franchisee shall provide for citizen participation in selecting programming, and consider citizen preference.

Subd. 2. The franchisee shall provide customers with reasonable notice of rate changes. "Reasonable notice" shall be a minimum of thirty (30) days.

Subd. 3. The franchisee shall offer customers a device to allow channels to be blocked-out.

Subd. 4. All franchises shall be subject to review and renegotiation at any time in the event of a significant change in technology, equipment or regulatory laws, or if the service provided by the franchise fails to meet industry standards with respect to channel capacity, system reliability or quality of signal.

Section 30. FRANCHISE TERMS. All franchises granted pursuant to this Ordinance shall be considered to have incorporated the terms of this Ordinance by reference. In granting a franchise, the Town may incorporate additional terms and conditions, as permitted by law.

Section 31. ENFORCEMENT. The Town reserves the right to enforce any violation of this Ordinance by seeking declaratory or injunctive relief in Stearns County District Court. In the event the Town is the prevailing party in any such action, the Town shall be entitled to judgment for reasonable attorney's fees incurred in pursuing the action.

The Town Clerk is directed to proceed with publication of this Ordinance by summary publication as permitted by statute.

This Amendment shall be effective upon passage and publication. This Amendment is approved this 27th day of July, 1999, by the LeSauk Town Board.

TOWN OF LESAUK

Dwight M. Sharp
Dwight Sharp, Town Chair

Marlyce Plante
Marlyce Plante, Town Clerk

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July 19, 1999 N:\city\LeSauk