

Chapter 9.01

Cable Communication Franchise

Section 1: Definitions. For purposes of this Ordinance, the following terms have the designated meaning:

Subdivision 1. “Franchisor” is the City of Howard Lake.

Subdivision 2. “Franchisee” is Westel, Incorporated.

Subdivision 3. “Board” is the Minnesota Cable Communications Board.

Subdivision 4. “FCC” is the Federal Communications Commission of the United States.

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

Subdivision 6. “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.

Subdivision 7. The words “shall” and “must” are mandatory.

Subdivision 8. The word “may” is permissive.

Subdivision 9. The words “may not” are unconditionally prohibitive.

Section 2: Grant of Authority. The City Council of Howard Lake authorizes that a cable communications franchise for the installation, operation and maintenance of a cable communications system within the City of Howard Lake is granted to Westel, Incorporated, provided, however, that the franchise shall be subject to the terms and performance conditions stated in this Ordinance.

Section 3: Compliance With Minnesota Cable Communications Board’s Franchise Standards. The franchisee shall at all times be in compliance with the franchise standards of the Minnesota Cable Communications Board.

Section 4: Compliance With State And Federal Laws. The franchisee and the franchising authority shall conform to all 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.

Section 5: Certificate Of Confirmation. The franchise shall cease to be in force and effect if

the franchisee fails to obtain either a regular certificate of confirmation or renewal of a certificate of confirmation from the Board, provided, however, that the franchise may operate the cable communications system while the Board is considering the application for the renewal of the certificate of confirmation.

Section 6: Franchise Terms. The franchise shall have an initial franchise term of fifteen (15) years effective from the date of the grant of authority, and any renewal term if granted by the franchising authority, shall be for a period of not less than 10 years and not greater than 15 years.

Section 7: Renegotiation Of Franchise Terms. Renegotiation between the franchisor and franchisee shall occur at least one year before the end of the franchise term unless the franchising authority determines not to reissue the franchise to the franchisee or desires to consider additional applications for a franchise. Such renegotiation periods must be specified and must be mutually agreed upon by the franchisor and franchisee.

Section 8: Franchise Exclusivity. This franchise is non-exclusive.

Section 9. Sale Or Transfer Of The Franchise, Sale Or Transfer Of Stock.

Subdivision 1. 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, and except that such sale or transfer is completed pursuant to Board rules, Chapter 12.

Subdivision 2. No sale or lease of the rights granted herein shall be effective until the assignee or lessee shall have filed in the office of the City 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 hereunder. At that time, the assignee or lessee shall also file with the City Clerk a duly executed bond, fully complying with the bonding requirements of this Ordinance.

Section 10. Access To Financial Records. The franchising authority is granted the authority to audit the franchisee's accounting and financial records upon reasonable notice. The franchisee shall file annually with the franchising authority reports of gross subscriber revenues and other information as the franchising authority deems appropriate. Reports of gross subscriber revenues shall be open to public inspection.

Section 11. Rates, Rate Change Procedure And Residential Subscriber Contracts.

Subdivision 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 Howard Lake City Clerk and shall be available for public inspection at the office of the City Clerk. An amended list of rates and charges shall be prepared and filed with the City Clerk at anytime there is any change or adjustment in the subscription rates and charges.

Subdivision 2. Residential Subscriber Contract. The franchisee shall file with the City 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 City 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 City Clerk shall be open to inspection by the public and shall govern the contractual relationship between the franchise 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.

Subdivision 3. Rate Change Procedure.

- a) Prior to the grant of authority set forth in Section 2 of this Ordinance, the franchisee shall submit to the City Council a complete and concise list of rates and charges of the type specified in Section 11, subd. 1 of this Ordinance. This list of rates and charges shall be in effect for at least one year after the date of the grant of authority.
- b) At the conclusion of the first year of the franchise authority, and at any time thereafter, the franchisee may request the City Council to approve a rate increase. Within 45 days of this request, a public hearing shall be conducted to consider the rate increase request. At this hearing, the franchisee shall be allowed the opportunity to present all materials and arguments in support of its request. The Council may also hear testimony or comments from members of the general public. Within 30 days of this hearing, the Council shall approve, disapprove or modify the rate increase request and approve with the modification. The Council shall prepare written findings stating the basis for its decision.
- c) The Council shall not disapprove any reasonable request for rate increase. In considering the reasonableness of a request, the Council shall consider:
 1. The rates charged for comparable cable service in other communities of a comparable size;
 2. The quality of the service to the customers;
 3. The rates necessary for the franchisee to make a reasonable profit when conducting their business in a prudent and professional manner; and
 4. Other criteria which the Council deems to be relevant at the time of this consideration.
- d) When considering a request for a rate increase, the Council may consider the advice or recommendations of a City Cable Commission or other advisory committees as may be created by the Council by resolution from time to time.

- e) The franchisee shall be entitled to submit a request for a rate increase only once during any 12 month period, whether or not the previous request for rate increase had been granted.

Section 12. Franchise Administrator. The City Clerk shall be a liaison person between cable subscribers and the franchisee. The City Council 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 City Council, and shall serve the City Council in an advisory capacity. Members of the Cable Commission shall serve at the will of the Council. Establishment of and delegation of duties to the Cable Commission shall be by resolution of the City Council. The City Council shall retain ultimate authority for the administration of this franchise.

Section 13. Liability Insurance. The franchisee shall indemnify and hold harmless the franchising authority 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
Workmen's Compensation coverage	\$1,000,000.00 per occurrence

These policies shall insure both the franchising authority 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. The franchisee shall provide the franchisor with evidence of required coverage upon request.

Section 14. Indemnification.

Subdivision 1. The franchisee shall hold the City harmless from any. and all claims and actions, litigations and from damage arising out of the passage of this Ordinance or 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 City or the negligence of the franchisee's employees in the operation thereof. The franchisee agrees to defend in the name of the City any claims made against the City arising out of the franchise. The franchisee also agrees to hold the City harmless from all claims and actions arising from alleged infringements of copyrights.

Subdivision 2. Nothing contained in the 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 15. Performance Bond.

Subdivision 1. Prior to beginning construction, and within a minimum of three months of the date the franchise becomes effective, the franchisee shall furnish a performance bond, certificate of deposit, or any other type of instrument approved by the franchising authority in the amount of seventy-five thousand dollars (\$75,000.00).

Subdivision 2. The City agrees to discontinue said performance bond upon such time as the construction is completed and the City is satisfied that the performance of the system meets all standards according to this Ordinance.

Section 16. Public Hearing Re: Franchisee's Credentials. The franchisee's technical ability, financial condition and legal qualification were considered and approved by the franchising authority in a full public proceeding pursuant to 4 MCAR Sec. 4.140 E.1. which afforded reasonable notice and a reasonable opportunity to be heard.

Section 17. Channel Capacity. The franchisee shall construct a cable system with a channel capacity available for immediate or potential use, equal to a minimum of 400 MHz of bandwidth (the equivalent of 54 television broadcast channels).

Section 18. Construction Schedule.

Subdivision 1. Schedule. Within 60 days of the granting of the franchise, the franchisee shall apply for all necessary permits, licenses, certificates and authorizations; that energized trunk cable shall be extended substantially throughout the authorized area within 270 days after receipt of all necessary governmental permits, licenses, certificates and authorizations; and that 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 the franchising authority only upon occurrence of unforeseen events or acts of God.

Subd. 2. Limits. The service provided by the grantee under this franchise shall be made available by it to all points within the corporate limits of the City of Howard Lake as they may be established during the term of this franchise as permitted by contracts negotiated with franchised public utility systems within the City; provided that the franchisee shall not be required to make any extensions for the purpose of providing service when any of the following conditions exist:

- a) Where service is not desired in the area.
- b) Where the extension will require the installation of more than four hundred (400) feet of distribution cable for each potential Customer to be served.

During the existence of any condition set forth in (b) above, the grantee may render service to customers under a special contract predicated on contract rates mutually agreeable.

Section 19. Construction Standards.

Subdivision 1. Permits. The franchisee shall obtain a permit from the proper municipal 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.

Subdivision 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. The franchisor shall have its own stand alone system and therefore shall not be dependent upon reception of signals from any other cable franchise city. The Cable Communications and Program Service Franchise Proposal submitted by the franchisee to the franchisor dated April 16, 1984, and all of the representations, provisions, and specifications contained therein are incorporated herein by reference. If the provisions of the within Franchise Ordinance conflict with the provisions of the said Franchise Proposal, the Franchise Ordinance provisions shall be controlling.

Subdivision 3. Relocation of Wires. In the event it becomes necessary for the franchising authority 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 City Council or its designated officer.

Section 20. 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 franchising authority and the Board.

Section 21. Special Testing. At any time after commencement of service to subscribers, the City may require additional tests, full or partial repeat tests, different test procedures or tests involving a specific subscriber's terminal. Requests for such additional 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. In the event that special testing is required by the City to determine the source of technical difficulties, the cost of said testing shall be borne by the franchisee, if the testing reveals the franchisee to be responsible. If the testing reveals the difficulties to be caused by factors beyond the control of the franchisee, the cost of testing shall be borne by the City.

Section 22. Non-Voice Return Capacity. The franchisee shall construct and maintain a cable communications system having the technical capacity for non-voice return communications.

Section 23. 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.

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

Subdivision 3. 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 in 4 MCAR Sec. 4.202 S.1.

Section 24. 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 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 franchisor. A record of unresolved complaints may be retained by the franchisor and may be considered by the City Council in making any discretionary decisions relating to the franchise.

Section 25: Repairs And Complaints. The franchisee shall provide to the subscriber at least 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 26. Termination. The franchising authority shall have the right to terminate and cancel the franchise and all rights and privileges of the franchise ordinance, if the franchisee attempts to evade any of the provisions of the franchise ordinance or practices any fraud, or deceit upon the franchising authority. The municipality 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 days after service of the notice in which to correct the violation. The franchisee shall be provided with an opportunity to be heard at a public hearing before the City Council prior to the termination of the franchise. In the event that the franchisor determines to terminate the franchisee, the franchisee has thirty days from 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 Minn. Stat. Sec. 238.14. During the thirty day period and until the Board determines the appeal, if an appeal is taken, the franchise remains in full force and effect, unless the term of the franchise ends sooner. If the Board approves of the action of the franchising authority, the franchise terminates immediately; if the Board disapproves of the

action of the franchising authority, the franchise remains in full force and effect during its term unless sooner terminated in accordance with law or 4 MCAR Sec. 4.001 - 4.250. Any appeal to the Board is a contested case to which the Board is not a party.

Section 27: Abandonment. The franchisee may not abandon any portion of the cable communications service provided hereunder without having given three (3) months prior written notice to the franchising authority and the Board. No cable communications company may abandon any cable communications service or any portion thereof without compensating the franchising authority for damages resulting to it from such abandonment.

Section 28. 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 the cost of removal.

Section 29. Municipal Right To Purchase System. If the franchise or cable system is offered for sale, the franchising authority shall have the right to purchase the system.

Section 30. Access Channels.

Subd. 1. The franchisee shall provide to each of its subscribers who receive some or all of the service 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 shall 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 noncommercial users who have leased time. The VHF spectrum (Channels 2-13) must be used for the specially designated access channel required in 4 MCAR § 4.202 DD.

The franchisee shall establish rules for the administration of the specially designated access channel. The operating rules governing the specially designated access channel shall be filed by the franchisee with the Minnesota Cable Communications Board within 90 days after any access channel is put into use.

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 31. Franchise Fees. During the term of this franchise, Franchisee shall pay to the City of Howard Lake an amount equal to five percent (5%) of Gross Revenues. Gross Revenues

means any revenues from the operation of the cable system to provide cable services in the City of Howard Lake, received by Grantee from Subscribers for basic cable service, expanded basic cable service, premium services, and pay per view services. Gross Revenues shall not include franchise fees, the FCC User Fee or any other tax, fee or assessment whether of general applicability or because of Grantee's status as a cable operator regardless of whether such is collected by the Grantee from Subscribers for pass-through to a government agency or not. Payments of franchise fees made under this provision shall be paid quarterly within forty-five (45) days after the end of each quarter.

Section 32. Non-Interference. Installations shall be maintained so as not to interfere with television reception already in existence within the City, and Wes-Tel, Inc., shall carry all commercial and educational signals of stations serving the City of Howard Lake as established by the Federal Communications Commission via off-the-air pickup.

Section 33. Obscenity.

Subdivision 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 intimate 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.

Subdivision 2. It shall be a misdemeanor to originate or produce any obscene program which is transmitted over the cable communications system. However, neither the cable communications system whose facilities are used to transmit a program produced by a person other than the cable communications system, nor the officers, directors, or employees of the cable communications system, shall be liable for any penalty or damages arising from any obscene program presented thereon when the cable communications system 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.