

City of New York Mills

ORDINANCE NO. 122 (REPLACING ORDINANCE NO. 98)

AN ORDINANCE GRANTING A
CABLE COMMUNICATIONS FRANCHISE TO
TEKSTAR ~~CABLEVISION~~, INC. DBA ARVIG COMMUNICATION SYSTEMS
Communications,

DEFINITIONS:

1. "Franchisor" or "franchising authority" means the City of New York Mills, Minnesota.
2. "Franchisee" means Tekstar Communications, Inc. dba Arvig Communication Systems
3. "Franchise" means New York Mills City Ordinance No. 122, as from time to time amended.
4. "FCC" means the Federal Communications Commission of the United States.
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 communication system.
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 communication electronic modules.
7. The words "shall" and "must" are mandatory.
8. The word "may" is permissive.
9. The words "may not" are unconditionally prohibitive.

GRANT OF AUTHORITY:

The New York Mills City Council ordains that a cable communications franchise for the installation, operation, and maintenance of a cable communications system within the City of New York Mills, subject to the following terms and performance conditions:

A. COMPLIANCE WITH MINNESOTA STATUTES, CHAPTER 238.

The Franchisee shall, at all times, comply with the provisions of Minnesota Statutes, Chapter 238, as from time to time amended.

B. COMPLIANCE WITH STATE AND FEDERAL LAWS.

The Franchisee and the franchising authority shall conform to all laws and rules of the State of Minnesota regarding cable communications no 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.

C. FRANCHISE TERM.

The term of the Franchise shall be fifteen (15) years and any renewal of the Franchise shall be for a period of not more than fifteen (15) years.

D. FRANCHISE NONEXCLUSIVITY.

This Franchise is nonexclusive.

E. SALE OR TRANSFER OF THE FRANCHISE, SALE OR TRANSFER OF SYSTEM OWNERSHIP.

The sale or transfer of this Franchise, in whole or in part, or the sale or transfer of a majority of Franchisee's assets, or of the stock of Franchisee so as to create a new controlling interest in the System, is prohibited, except upon the approval of the Franchisor, which approval shall not be unreasonably withheld. Such sale or transfer shall be completed pursuant to applicable state law.

F. 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, upon request, file with the franchising authority annual reports of gross subscriber revenues and other information as the franchising authority deems appropriate.

G. SUBSCRIBER CHARGES

1. The Franchisee's current subscriber charges are available for inspection at the Franchisor's offices.

2. Residential subscriber contracts, if any, may not exceed twelve (12) months in duration unless after twelve (12) months the contract may be terminated by the subscriber at any time, at the subscriber's option, with no penalty to the subscriber.

H. FRANCHISE ADMINISTRATOR.

The New York Mills City Clerk shall be responsible for the ongoing administration of this Franchise.

I. INDEMNIFICATION AND LIABILITY INSURANCE.

At all times during the term of the Franchise, the Franchisee shall indemnify and hold harmless the Franchisor, and maintain general liability insurance in the amount of \$1,000,000 and a maximum limit per occurrence of \$500,000. The Franchisee shall furnish on an annual basis to the Franchisor a Certificate of Insurance as evidence of coverage.

J. LIABILITY FOR INJURY TO FRANCHISEE'S FACILITIES.

Nothing in this Franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring 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.

K. PUBLIC HEARING REGARDING FRANCHISEE'S CREDENTIALS.

The Franchisee's technical ability, financial condition, and legal qualifications were considered and approved by the franchising authority in a full public proceeding affording reasonable notice and a reasonable opportunity to be heard.

L. CHANNEL CAPACITY.

The Franchisee shall construct a cable system with a channel capacity available for immediate or potential use equal to a minimum of twelve (12) channels.

M. DESCRIPTION OF SYSTEM, CONSTRUCTION SCHEDULE.

The system is constructed to provide at least a twelve (12) channel system comprised of trunk coaxial cable and 1/2 inch feeder coaxial cable. The system is currently operational and

serving customers within the Franchise service area. New construction is not currently required to comply with Franchise requirements.

N. AUTHORIZATION TO COMMENCE CONSTRUCTION.

The Franchisee shall obtain a permit, if required, from the Franchisor prior to commencing construction of any communication system, including the opening or disturbance of any street, sidewalk, driveway or public place.

O. FRANCHISEE RULES.

The Franchisee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business, as shall be reasonably necessary, to enable the Franchisee to exercise its rights and performance obligations under this Franchise and to assure uninterrupted service to each and all of its customers. Such rules, regulations, terms and conditions shall not, however, be in conflict with the provisions hereof or the laws of the State of Minnesota and, if required by law, shall be subject to approval by proper federal and/or state regulatory bodies.

P. CONSTRUCTION AND REPAIR STANDARDS.

The Franchisee shall, upon completion of any work requiring the opening of any street or public place, restore the same, including the pavement and its foundations, to as good a condition as it formerly was, and shall exercise reasonable care to maintain the same thereafter in good condition. Such work shall be performed with due diligence.

Q. COMPLIANCE WITH APPLICABLE CODES.

All wires, 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.

R. RELOCATION OF WIRES, ETC.

Whenever the Franchisor shall during the period of this Franchise, undertake any public improvement or authorize any project or action for a public purpose which affects cable communications equipment, it shall notify the Franchisee so as to provide advance notice adequate to allow for necessary planning in order to minimize service interruption to subscribers. Relocation or replacement of Franchisee's wires, conduits, cables, vaults, pedestals, utility holes, poles, and other fixtures shall be done at the Franchisee's expense.

S. TECHNICAL STANDARDS.

The rules contained in subpart K of Part 76 of the FCC's rules and regulations relating to cable communications systems are incorporated herein by reference. The results of any tests required by the FCC shall, upon request, be filed with the Franchisor within thirty (30) days from the date of such request.

T. SPECIAL TESTING.

In the event that special testing is required to determine the source of technical difficulties, the Franchisee shall be responsible for the costs of such special testing but only if the testing reveals the Franchisee to be responsible for the technical difficulties.

U. NON-VOICE RETURN CAPABILITY.

The Franchisee shall provide a cable communications system having the technical capability for non-voice return communications.

V. SUBSCRIBER PRIVACY.

No signals of a Class IV cable communications channel may be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is granting permission with full knowledge of the document's provisions. Such written permission shall be for a limited period of time not to exceed one year, which period may be renewed 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 of classification of class IV cable communications activity planned for the purpose.

No information or data obtained by monitoring transmission of a signal from a subscriber terminal including, without limitation, lists of the names and addresses of such subscribers or any lists that identify the viewing habits of subscribers, shall be sold or otherwise made available to any party other than to the Franchisee and its employees for internal business use, or to the subscriber who is the subject of that information, unless the Franchisee has received specific written authorization from the subscriber to make such data available.

Written permission from the subscriber shall not be required for the systems conducting system wide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing.

W. SUBSCRIBER COMPLAINTS.

All complaints by the Franchisor, subscribers, or other citizens regarding the quality of service, equipment malfunction, billing disputes, and other matters relative to the cable communications system shall be reasonably investigated by the Franchisee.

X. REPAIRS AND COMPLAINTS.

The Franchisee shall provide at least a toll-free or collect telephone number for the reception of subscriber complaints and 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.

Y. FRANCHISOR'S RIGHT TO TERMINATE AND TERMINATION PROCEDURES.

1. In addition to all other legal and equitable rights and remedies available to the Franchisor in connection with a breach by the Franchisee of this Franchise, the Franchisor shall have the right to terminate this Franchise, and all rights and privileges pertaining thereto, in the event that:

- (a) Franchisee breaches any material provision of this Franchise and fails to cure such breach as provided herein;
- (b) Franchisee attempts to evade any of its obligations under this Franchise;
- (c) Franchisee commits any fraud or deceit against the Franchisor or any subscriber;
- (d) Franchisee becomes insolvent, is unwilling or unable to pay its debts as they come due, or is adjudged a bankrupt; or
- (e) Franchisee misrepresents a material fact in applying for or negotiating for approval of this Franchise or any renewal thereof.

In the event Franchisor determines that any of the foregoing events ("default events") has occurred. Franchisor may make a written demand on Franchisee that it cure any default event within thirty (30) days of receiving Franchisor's demand. Franchisee shall be deemed to have received written demand from Franchisor three days after Franchisor deposits a written demand addressed to Franchisee, postage prepaid, in the United States mail.

2. If Franchisee fails to cure any default event within said thirty (30) days, Franchisor may place the issue of termination of the Franchise before the City Council at a regularly scheduled meeting of the council. If the City Council determines that good cause exists to terminate the Franchise, Franchisor shall proceed as follows:

(a) Franchisor shall conduct a public hearing on the issue of termination of the Franchise upon fourteen (14) days written notice to Franchisee, which notice shall include the date, time and place of the hearing and shall specify the default events which the Franchisor believes justify termination of the Franchise; and

(b) If, after a full public hearing is conducted, the Franchisor determines that Franchisee has committed a default event and has not cured the same, the Franchisor may, by resolution duly adopted in writing, terminate the Franchise and all of Franchisee's rights and privileges thereunder, effective thirty (30) days after the public hearing and only if Franchisee fails to cure its default within said thirty (30) days. The City Council shall place the issue of termination on its agenda for the first Council meeting following the expiration of the thirty (30) day period. If the Council finds at such meeting that Franchisee has failed to cure its default, Franchisor may immediately terminate the Franchise and all of Franchisee's rights and privileges thereunder.

Z. 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 Franchisor. No cable communications company may abandon any cable communications service or any portion thereof without compensating the Franchisor for damages resulting to it from such abandonment.

AA. REMOVAL OF CABLE EQUIPMENT UPON TERMINATION OR FORFEITURE.

Upon termination or forfeiture of the Franchise, the Franchisee shall remove its cable, wires, and appliances from the streets, alleys, and other public places within the Franchise area if the franchising authority so requests. If not so removed, the franchising authority shall have the right to remove them at the cost and expense of the Franchisee without any liability therefore and without any duty to account to the Franchisee for the property removed.

BB. MUNICIPAL RIGHT TO PURCHASE SYSTEM.

If the Franchise or cable system is offered for sale, the franchising authority shall have the first right, but no obligation, to purchase the system.

CC. ACCESS CHANNELS.

1. The Franchisee shall provide to each of its subscribers who will receive all, or any part of, the total services offered on the system, reception on at least one specifically designated access channel available for use by the general public on a first come, first served, nondiscriminatory basis.

Franchisees providing subscribers only alarm system services or only data transmission services for computer operated functions shall be exempt from this requirement. Channel time and playback of prerecorded programming on this specially designated access channel shall be provided without charge to the general public, provided, however, that personnel, equipment, and production costs may be assessed for live studio presentations exceeding five minutes in length. Charges for such production costs shall be consistent with the goal of affording the public a low-cost means of television access.

The specially designated access channel may be used by local education authorities and local government on a first come, nondiscriminatory basis during those hours when the channel is not in use by the general public, local educational authorities, local government, on this specially designated access channel. The VHF spectrum shall be used for the specially designated access channel required in this provision.

2. The Franchisee shall establish rules pertaining to the administration of the specially designated access channel(s).

DD. OPERATING STANDARDS.

1. The system shall deliver to the subscriber's terminal a signal that is capable of producing a black and white or colored picture without visual material degradation in quality within the limitations imposed by the technical state of the art.

2. The system shall transmit or distribute signals without causing objectionable cross-modulation in the cables or interfering with other electrical or electronic networks or with the reception of other television or radio receivers in the area not connected to the network.

EE. PIRATING OF SIGNALS.

It shall be unlawful for anyone to obtain any cable television service from the Franchisee with intent to cheat or defraud by installing, rearranging, or tampering with the facilities or equipment, or by any trick, stratagem, impersonation, pretension, falsification of fact or contrivance, or by any device or means whatsoever. Anyone found guilty of a violation of this section shall be guilty of a misdemeanor, and shall be liable to a fine not to exceed one thousand dollars (\$1,000.00) or imprisonment not to exceed ninety (90) days, or both.

FF. FRANCHISE FEES

During the term of this Franchise, the Franchisee shall pay to the Franchisor annually an amount equal to three percent (3%) of all revenue derived by the Franchisee from the provision of its One Star and Two Star service within the City of New York Mills, Minnesota. The payment shall be made to the Franchisor within 30 days after the last day of each calendar quarter.

GG. ACCEPTANCE OF FRANCHISE.

This grant is made upon the express condition that the Franchisee shall file with the Franchisor a written acceptance of this Franchise, and when this Franchise shall have been accepted by the Franchisee, such Franchise and acceptance shall constitute a contract between the Franchisor and Franchisee for all the uses, services and purposes set forth in this Franchise.

HH. SEVERABILITY

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

This Ordinance is adopted nunc pro tunc to be effective as of May 9, 2010. Passed and adopted by the City Council of New York Mills this 11th day of January, 2011.

CITY OF NEW YORK MILLS, MINNESOTA

By: *Sandy Hodson*
Its Mayor

Attest: *Darla Berry*
Its City Clerk

Communications
TEKSTAR CABLEVISION, INC.
DBA ARVIG COMMUNICATION SYSTEMS

By: *[Signature]*
Its *Director of Video*

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