

ORDINANCE NO. 20 (I)

CABLE TELEVISION FRANCHISE

STATEMENT OF PURPOSE: The purpose of the Saginaw Chippewa Cable Television Ordinance is to empower the Tribal Council to grant a non-exclusive franchise for the establishment and operation thereof.

BE IT ENACTED, by the Saginaw Chippewa Tribal Council as follows:

SECTION 1. Short Title. This Revised Ordinance shall be known and may be cited as the Cable Television Franchise Ordinance.

SECTION 2. Authority. This Revised Ordinance is enacted pursuant to Article VI Section 1(e)(j)(k) and (o) of the Amended Constitution of November 4, 1986.

SECTION 3. Definitions. For the purposes of this Revised Ordinance, the following terms, phrases and words shall have the meaning hereinafter given, unless the context clearly indicates that a different meaning is intended:

- a. "Cable Television System" shall mean a system of antennas, cables, wires, lines, towers, wave guides, laser beams, or any other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, amplifying and distributing by audio, video, and other forms of electronic or electrical signals to and from subscribers in locations in and outside Tribal Jurisdiction.
- b. "Channel" shall mean a signaling path provided by cable television system to relay to subscriber terminals television and radio broadcast programs that are received off the air or are obtained by microwave or by direct connection to a television or radio broadcast station.
- c. "Converter" is an electronic device, which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by an appropriate channel selector, also permits a subscriber to view all signals delivered at designated dial locations.
- d. "Person" is any person, partnership, association or corporation.
- e. "Subscriber" shall mean any person or organization which is specifically wired to receive any transmission from the system.
- f. "Subscriber Revenue" is any and all compensation and other consideration in any form paid by any subscriber arising from the sale of regular monthly service to subscriber.

- g. "Franchisee" is a person to whom a franchise has been granted pursuant to the provisions of this Revised Ordinance.
- h. "Public Ways" shall mean streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, alleys, and all other public rights of way, and public grounds or waters within or belonging to the Saginaw Chippewa Indian Tribe of Michigan.
- i. "Basic Service" shall mean the provision by franchisee to subscribers of all signals of over-the-air television stations required by the Federal Communications Commission (hereinafter referred to as FCC), public channels and additional channels at the option of franchisee.
- j. "Franchise" shall mean the granting of authority to franchisee to operate a cable television system within Tribal Jurisdiction.
- k. "Gross Revenues" shall mean the total revenues received by the franchisee from all services rendered pursuant to the franchise entered into between the Tribe and franchisee as authorized hereby.

SECTION 4. Application for Franchise. Any person who demonstrates to the Tribal Council of the Saginaw Chippewa Indian Tribe of Michigan that he has available for his use, facilities, equipment and authority to develop a duplex cable system to transmit television and radio programs from an input point (tower or studio) to a terminal point on the premises of cable television subscribers, may file an application with planning commission for a franchise to operate a cable television and radio system within the Tribal Jurisdiction. The said application shall include such information as is set forth in this Revised Ordinance as well as such additional information as the Tribal Council shall from time to time require.

SECTION 5. Service Area. Each applicant shall in its application be required to provide a service area map setting out the entire area it proposes to service within Tribal Jurisdiction. Applicant shall be required to provide service at regular rates to all structures, which are not covered otherwise under this Revised Ordinance, within 150 feet of its trunk line. Applicant shall, within 12 months after a request for service, extend cable service to any unserved area of at least 25 homes per mile which subsequently becomes part of the any Saginaw Chippewa Reservation.

SECTION 6. Stations Carried. Each applicant shall, in his application, designate the telecasting stations which will be carried by the system.

SECTION 7. Financial Responsibility. Each applicant shall attach to his application a copy of his profit and loss statement and balance sheet covering the operation of any other cable television system of which such applicant is the owner, or in which such applicant was a stockholder for the last succeeding fiscal year, and shall, in addition, submit such financial statements and net worth statements as shall

reasonably indicate the financial responsibility of the applicant, and his ability to provide service required by the contract in this Revised Ordinance.

SECTION 8. Franchise Fee. The Franchise entered into between applicant and the Tribe shall provide that the contractor shall pay to the Tribe a franchise fee of not less than 3% of the gross revenues of the contractor annually.

SECTION 9. Indemnification. Each applicant shall, in his application, agree:

- a. To indemnify the Tribe for any and all liability arising out of the institution, operation or maintenance of a cable television system.
- b. To indemnify the Tribe against all expenses incurred by the Tribe in defending itself in the event that any claims are made against the Tribe or litigation resulting therefrom.
- c. Maintain insurance of not less than \$500,000.00 for bodily injury or death of any one person, and \$1,000,000.00 for bodily injury or death to more than one person resulting from the same accident, and in addition thereto, \$100,000.00 for property damage resulting from any one accident, \$1,000,000 aggregate.

All insurance policies shall be subject to the approval of the Tribal Council and certificates of such coverage shall be filed with the Tribal Treasurer at the Tribal Controller's Office.

SECTION 10. Rates. In the application filed by applicant, the applicant shall set forth all rates charged to subscribers, including installation, monthly service, monthly charge for additional taps, security deposit, and disconnect charges, which rates shall be subject to those provisions set forth in the "Cable Communications Policy Act of 1984" and any subsequent amendments thereto (47 USC 543). In its rates, charges, service facilities, rules, regulations, or in any other respect, the franchisee shall not make or grant any preference or advantage to any person nor subject any person to any prejudice or disadvantage within the same classification of service. The franchisee shall have the right to establish different classifications of service for residential and commercial users and adopt charges and rate schedules for each such classification, subject to the approval of the Tribal Council as hereinabove set down.

Should the franchisee pay any copyright royalties as a result of any action by the Congress of the United States, the total amount of such royalty payment may be passed along to the subscribers on a prorated basis without prior approval of the Tribal Council, provide, however, that the franchisee shall give the Tribal Council 60 days' notice in writing of any such increase.

SECTION 11. Services, Standards and Requirements. The company shall maintain its service in accordance with the best accepted standards of the industry, so as to provide its subscribers with the highest possible level of quality and reliability.

This system shall meet all applicable FCC radiation specifications as provided for in paragraph 76.605(a)(12) of the Commission's rules. Conformance to said standards will insure non-interference with any other type of communication system operating in or near the Tribal Jurisdiction.

Whenever it shall be necessary to shut off or interrupt the service for purpose of making repairs, adjustments or installations, the contractor shall do so at such time as will cause the least amount of inconvenience to its subscribers and unless such interruption is unforeseen and immediately necessary, it shall give reasonable notice thereof to its subscribers.

In the event of any interruption of service, whether planned or unforeseen, the company shall proceed with due diligence and restore service as quickly as possible under the circumstances.

SECTION 12. Franchisees' Rules and Regulations. The franchisee shall file with the Tribal Chief copies of all rules, regulations, terms and conditions adopted by contractor for the conduct of its business, and shall likewise file with the Tribal Chief any amendments or alterations therein as made.

SECTION 13. Operations. Franchisee shall maintain an office which shall be open during all usual business hours, equipped with telephones, bearing listed numbers, to receive, investigate and resolve all Tribal service complaints. Such local service complaints shall be resolved within 48 hours from the time of reception thereof, unless good cause shall be shown excusing such failure to correct. The franchisee shall, in writing, advise the Tribal Chief or Sub-Chief of the procedures and personnel which shall be available for the handling of consumer complaints. The designate, shall be accorded an opportunity to review all consumer complaints, and the method in which the same have been handled by the franchisee.

SECTION 14. Annual Financial Statements. The franchisee shall file in the Tribal Controllers Office with Tribal Treasurer, annually an audited statement of revenues received from the operation of cable television within Tribal Jurisdiction, within 60 days after the close of the fiscal year, and shall make his financial records pertaining thereto available to the Tribe for inspection, at a place designated within the State of Michigan, at any reasonable time, maintaining separate records as to its business conducted pursuant to any franchise granted. On demand, the franchisee shall also file with the Tribe, copies of all FCC filings and reports.

- SECTION 15.** Program Alterations. All programs from standard telecasting stations shall be carried by the franchisee in their entirety, without additions or deletions. The Tribal Council shall permit changes in programming occasioned or necessitated by changes in FCC rules and regulations.
- SECTION 16.** Preference or Discrimination Prohibited. Franchisee shall not give preference to or discriminate against any users or potential users of the service within Tribal Jurisdiction and shall comply with all rules of the Federal Communications Commission relative to equal employment opportunity and the employment of persons of ethnic minority groups and women.
- SECTION 17.** Limitation of Service. Franchisee shall not be engaged, directly or indirectly, in the business of repairing, servicing, or sale of television and radio receiving equipment.
- SECTION 18.** Transmission Lines. All transmission lines shall be underground in areas where telephone and electrical utility lines are underground, and shall, at the operator's expense, be moved underground when, and at the same time that, telephone and electrical utility lines presently above ground are so moved.
- SECTION 19.** Transfer. No franchisee shall sell or otherwise transfer his cable television system to another without reporting such sale to the Tribal Chief and obtaining the approval of the Tribe of the Saginaw Chippewa Indian Tribe of Michigan, of such transfer. Such approval shall not be unreasonable withheld, but the proposed transferee may be required to submit such financial information as shall establish his ability to maintain and operate the system in accordance with the provisions hereof. For purposes of this section, the transfer of 30% or more of the corporate stock of any franchisee shall be deemed to be a transfer hereunder.
- SECTION 20.** Franchise Grant. Upon the receipt by the Tribal Planning Commission of an application signed by the applicant, complying with all of the requirements of this Section the Planning Commission shall forward the materials to the Tribal Council for study. Should the Tribal Council in its sole discretion deem the application to be in the best interests of the Tribe, it shall direct the Tribal Attorney to draft a non-exclusive franchise to operate a community cable television and radio system within Tribal Jurisdiction for a period of 15 years from the date of issuance of such franchise. The franchisee shall proceed as soon as practicable after the receipt of such franchise with the necessary work to construct Cable Television system in the Tribe. The franchisee shall, within 12 months of the date of the franchise, make such service available to 95% of the

population within the service area. The Tribal Council may extend such period upon proof that construction and installation of the system is in progress and presentation of justifiable cause and need for additional time to complete the same. Failure or neglect to complete the system within the above allotted time, or any extension thereof, shall render the contract null and void and the same shall have no further force and effect. The installation and operation of such cable television system by the franchisee shall be so constructed and maintained as not to interfere in any way with television and radio reception already in existence.

SECTION 21. Violation of Ordinance and/or Franchise. Any violation of the provision of this ordinance of any contract issued pursuant thereto, shall be considered a violation of the ordinances of the Saginaw Chippewa Indian Tribe of Michigan, and subject to fine in amount not to exceed \$500.00. Each day that such violation continues shall be considered a separate violation.

SECTION 22. Cancellation of Contract. In the event of repeated violations of the franchise or this ordinance by the franchisee, the Tribe acting through its Tribal Council, may elect to cancel said contract. In the event of such cancellation, the system shall, at the election of Tribe, become the property of the Tribe at a cost not to exceed its then current fair market value according to generally accepted accounting principles, with a reduction for any damages incurred by the Tribe in connection with such cancellation. Damages incurred by the Tribe shall include, without limitation, any payment made by the Tribe pursuant to a resolution of the Tribal Council authorizing or directing another person to operate the system for a temporary period until a new franchise for the operation therefore is granted.

SECTION 23. Expiration of Term. In the event that the franchise expires by its own terms and no renewal thereof has been negotiated between the Tribe and franchisee, the Tribe may, at its election, purchase said system at its then fair market value. Beginning within two years prior to the expiration, and whether or not the Tribe has then elected to purchase the system. If the Tribe does not purchase the system, the franchisee shall remove that part of the system located in the street and restore the streets to a condition satisfactory to the Tribe.

SECTION 24. Necessity for Franchise. No person shall own or operate a cable Television and/or radio system in the Tribal Jurisdiction, except by a franchise granted pursuant to this ordinance.

SECTION 25. Power to Amend. The Tribe, in addition to its power to revoke, shall retain the power to amend this Revised Ordinance annually. Notice of consideration of amendments in the area to which such amendments may occur, shall be given to the franchisee in October of each year. Such amendments may include:

- a. Rates;
- b. Number of Channels;
- c. Number of Channels for specified purposes;
- d. Performance standards; and
- e. Type of Service.

SECTION 26. Separability. If any section, subsection, sentence, clause, phrase, or portion of this Revised 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 thereof. In the event that any portion of this chapter shall be inconsistent with the rules and regulations of the Federal Communications System and result in the withholding of a certificate of compliance therefrom the Federal Communications Commission is authorized to declare such provision of this ordinance inoperable and authorize the operation of the cable television system during the period that this ordinance is being amended; provided, however that all such provision struck by the Federal Communications Commission shall be renegotiated and the Tribal Attorney shall be a party to such negotiations.

SECTION 27. Ordinances Repealed. All ordinances and/or parts of ordinances inconsistent with this Revised Ordinance are hereby repealed.

SECTION 28. Effective Date. This Revised Ordinance shall take effect upon its enactment.

Legislative History

Ordinance No. 20 was enacted January 18, 1988; and was amended May 7, 1991.