

TRIBAL CODE

CHAPTER 41

FRANCHISE FOR THE OPERATION OF A COMMUNITY

ANTENNA TELEVISION SYSTEM (CABLE TV)

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HISTORY NOTE:

Current Franchise:

Adopted July 21, 1986, Resolution No. 271(86), effective immediately.

Prior Franchise:

Franchise granted to Chippewa Communications, Inc., March 12, 1984, Resolution No. 110(84). Franchise cancelled September 23, 1985, Resolution No. 333(85), effective November 22, 1985.

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CHAPTER 41:

FRANCHISE FOR OPERATION OF A  
COMMUNITY ANTENNA TELEVISION SYSTEM (CABLE TV)

41.101 Parties.

This franchise is being granted by the Lac du Flambeau Band of Lake Superior Chippewa Indians, hereinafter referred to as Grantor, to Charles Gauthier and Sandra Gauthier, husband and wife, doing business as Gauthier Cablevision, hereinafter referred to as Grantee, its successors, transferees or assigns.

41.102 Scope and Description of Franchise.

(1) Grantee has the right and authority to conduct a community antenna television system within the boundaries of the reservation of Grantor. Grantee may build, construct, equip, own, maintain, and operate along, under or over present and future streets, roads and other public places within the reservation such wires, lines, poles, cross-arms, cable, appurtenances, fixtures, and other apparatus as are reasonably necessary for operating the system.

(2) Grantee also has the right and authority to lease, rent, or in any other manner obtain the use of, and use within the reservation of Grantor, wires, lines, poles, cross-arms, cables, appurtenances, fixtures, and other apparatus of any and all holders of public permits, public licenses, or franchises granted by Grantor or any other public entity. Any such use shall be subject to all existing and future ordinances, resolutions, and regulations of the Grantor.

(3) "Community antenna television system," as used herein, means descramblers, receivers, modulators, antennas, coaxial cables, amplifiers, drop lines, other conductors, and other equipment or facilities not limited to the foregoing, including any of the same, and any services performed by the use of same furnished by any public utility or other person or entity, whether pursuant to tariffs or any other arrangement, necessary for or incidental to the receiving of television signals or the transmission thereto to customers at the selection of Grantee for a consideration, or as a public service.

(4) The terms and conditions of the franchise shall also be applicable to any facilities installed or operated by Grantee before the effective date of the franchise.

41.103 Quality of Service.

The community antenna television system shall be operated and maintained so that all customers shall receive signals of good technical quality and the full range of available services. Any complaints as to the quality of the signals or services shall be

promptly and satisfactorily investigated by Grantee, and adjustments required to correct situations disclosed by such investigations shall be made forthwith.

41.104 Quality of Installations and Facilities.

(1) All installations shall be of permanent and durable nature and installed in accordance with good engineering practices and comply with all existing and future ordinances, resolutions, regulations, and orders of Grantor so as not to interfere in any manner with the rights of the public or individual property owners. The system shall not interfere with the travel and use of public places or facilities by the public, and during the construction, repair, or removal thereof, shall not obstruct or impede traffic. Any transmission facilities of a community antenna television system or utilized in connection with a system anywhere within the reservation, either on trust or private property, shall consist of coaxial cables of low radiation characteristics.

(2) The community antenna television system and any facilities utilized in connection therewith, either on trust or private property, shall be installed and operated in such a manner as not to cause interference with the operation of any public safety radio stations or systems or other radio stations or systems operated by the Grantor.

41.105 Emergency Use of Facilities.

Any and all community antenna television system facilities shall, in areas serviced, be made available without charge as a public service for use by any public agency performing civil defense or disaster services.

41.106 FCC Regulations.

Grantee may only deliver to any customer the signal of a television station that is permitted or authorized to be delivered by any community antenna television system operating in the area of the reservation under the rules and regulations of the Federal Communications Commission (FCC) or any successor thereof, as established by such commission from time to time.

41.107 Limitation of Franchise Authorization.

(1) This franchise confers authorization on Grantee to conduct operations and erect, maintain, use, and receive services from facilities designed and intended to receive and distribute only those television signals telecast from properly authorized television stations operating pursuant to permission obtained from the Federal Communications Commission, or any successor thereof; provided, however, that Grantee may originate and/or provide to its customers informational, educational, recreational and other program materials on one or more channels of its system.

(2) Should Grantee desire to make any additional or other use of all or any part of the community antenna television system, then, notwithstanding any other authorization that it may now or subsequently possess from any governmental entity, Grantee shall apply to the Grantor for permission to make such use, and such use shall be subject to all provisions of the franchise, including, but not limited to, payment of the compensation prescribed hereunder, and shall be further subject to such additional terms and conditions as are mutually agreeable to Grantor and Grantee.

41.108 Right to Excavate.

For the purpose of carrying into effect the privileges granted hereunder, Grantee is authorized to make all necessary excavations in the streets, roads, sidewalks, and public grounds within the reservation of Grantor, but such excavations shall be carried out with reasonable dispatch and with as little interference with or inconvenience to the rights of the public as will be feasible. Grantee shall restore all streets, roads, sidewalks, and public grounds to their original condition of safety and utility after excavation. In case any obstruction caused by Grantee shall remain longer than one day after notice to remove it, or in case of neglect by Grantee to safeguard any dangerous places, Grantor may remove such obstruction or safeguard such dangerous places at the expense of Grantee.

41.109 Regulation of Franchised Service.

Grantor reserves the right to regulate in the public interest the rates charged and services provided by Grantee. Approval by the Grantor is hereby given to the rates and services of Grantee in effect on the commencement of this franchise. Grantee shall provide Grantor 15 days prior written notice of any proposed increase in rate or change in service. Unless disapproved or modified by Grantor within such notice period, such change shall take effect as proposed. Grantor shall not disapprove rate or service changes necessary to allow Grantee fair return on its investment. Grantor reserves the right to enforce such additional rules and regulations as may, from time to time, be deemed necessary to protect the interest, safety, welfare of the public in relation to the subject matter of the franchise, which rules and regulations shall be reviewed with Grantee before being adopted.

41.110: Records of Installation.

Grantee shall at all times keep at its office on the reservation full and complete plans, maps, and records showing the exact location of all franchise equipment and facilities in the streets, roads, and other public places within the reservation.

41.111 Removal of Facilities.

Except as otherwise provided herein, within 120 days after the use of any franchise equipment or facilities has been permanently discontinued or this franchise is otherwise terminated, Grantee shall remove such property from the streets, roads, and public places so as

to conform in all respects with the current condition of same at the date of such restoration; provided, that underground cable shall be cut at a depth of six inches underground below each pedestal.

41.112 Consideration.

(1) Grantee herein shall pay to Grantor during the life of the franchise a sum equal to three percent (3%) of the gross subscriber revenues per year from cable television operations on the reservation.

(2) For so long as Charles Gauthier is involved in the ownership and operation of the business, or another member of the Tribe holds at least 51% ownership and control of the business, the following percentages of gross subscriber revenues per year shall apply in lieu of the sum set forth in subsection (1):

1986: 0.3%	1991: 1.8%
1987: 0.6%	1992: 2.1%
1988: 0.9%	1993: 2.4%
1989: 1.2%	1994: 2.7%
1990: 1.5%	1995 and thereafter: 3.0%

(3) Payments shall be calculated on a calendar year basis beginning with 1986. Payment shall be made by February 1 of the following year. Payment shall be accompanied by a financial statement prepared by a certified public accountant or person otherwise satisfactory to Grantor showing in detail the gross subscriber revenues from cable television operations on the reservation during the preceding year. Pro rata payment shall be made in the event of termination hereof prior to the expiration of a full calendar year.

(4) Grantor shall have the right to inspect grantee's records showing the gross receipts from which its franchise payments are computed and the right of audit recomputation of any and all amounts paid under this franchise.

41.113 Duration of Franchise.

The franchise granted hereby shall last for a term of fifteen (15) years commencing November 23, 1985, and thereafter from year to year until cancelled by either party giving the other notice in writing ninety (90) days prior to the end of the then current term.

41.114 Forfeiture of Franchise For Noncompliance.

(1) Each right and privilege granted hereunder shall upon passage of a resolution by Grantor, be rendered null and void upon the failure of Grantee to comply with any or all of the terms and conditions specified herein. Grantee will be given forty-five (45) days following receipt of written notice of noncompliance in which to make corrections or take other required actions. In the event of such forfeiture, Grantee shall also forfeit and surrender to Grantor all equipment and facilities that may be located along, over, or under any streets, roads, or other public places within the reservation unless such

property is removed within one hundred twenty (120) days of the forfeiture.

(2) Grantor shall also have the right, at its option, to assess the sum of One Thousand Dollars (\$1,000.00) as liquidated damages for any substantial and material breach of this franchise by Grantee or to sue for recovery of actual damages caused by Grantee.

41.115 Performance Bond.

Prior to the removal of any equipment or facilities pursuant to Sections 41.111 or 41.114 hereof, Grantee shall post a performance bond of Fifty Thousand Dollars (\$50,000.00) to assure that the streets, roads, and public places from which such equipment and facilities are removed shall be placed in good condition, and no removal work may be performed until such bond is posted.

41.116 Assignment of Franchise.

(1) Grantee shall have the right, at any time, to pledge or mortgage the whole of its system or any part thereof.

(2) This franchise shall be assignable, and may be sold, transferred, leased, or assigned.

(3) Any transfer or assignment or other distribution of the rights under this franchise shall be made only by an instrument in writing, an executed copy of which shall be filed with Grantor within fifteen (15) days after such transfer or assignment shall have been executed or effected.

41.117 Tribal Capacity.

This franchise agreement is entered into by Grantor in its governmental capacity under powers contained in its constitution adopted pursuant to Section 16 of the Indian Reorganization Act, 25 U.S.C. s. 476. This franchise agreement is not undertaken pursuant to the Grantor's charter adopted under Section 17 of the Indian Reorganization Act, 25 U.S.C. s. 477. Nothing herein shall be construed to waive the sovereign immunity of the Grantor, its officers, or its employees in any way.

RESOLUTION NO. 333(85)

- WHEREAS, the Tribal Council of the Lac du Flambeau Band of Lake Superior Chippewa Indians, by adoption of Resolution No. 110(84), issued a franchise to Chippewa Communications, Inc., for operation of a community antenna television system (Cable TV); and
- WHEREAS, said franchise is expressly conditioned upon at least fifty-one percent (51%) of Chippewa Communications, Inc. being owned by a member of the Tribe; and
- WHEREAS, the tribal member who at the time of the issuance of the franchise, did own 51% of said business has severed all relations with Chippewa Communications as of November 30, 1984; and
- WHEREAS, the Tribe has since then provided Chippewa Communications, Inc., with sufficient opportunity to conform to the franchise requirement of tribal member majority ownership, which the business has to date failed to so do; and
- WHEREAS, as of this date, Chippewa Communications has also failed to comply with Section 12 of its franchise, which requires payment on or before March 1, 1985, of a One Dollar fee to the Tribe for each cable customer served by the business; now, therefore be it
- RESOLVED, by this Council, in Regular Session assembled, hereby exercises its authority under Section 1, of the franchise, and declares the authorization granted to Chippewa Communications is null, void, and of no force and effect on the 60th day from this date, being November 22, 1985; and it is further
- RESOLVED, that Chippewa Communications, Inc. shall post a bond in the amount of Fifty-Thousand Dollars (\$50,000), as required by Section 15 of the franchise prior removal of any equipment and facilities of said business upon termination of the franchise; said removal under the terms of Section 11 of the franchise being required on or before January 21, 1986; and be it further
- RESOLVED, that the Tribal President is hereby authorized to sign a franchise agreement for the provision of a community antenna system service with Charles F. Gauthier, to be effective on November 23, 1985, with terms identical to that of the franchise agreement entered into with Chippewa Communications, Inc.

CERTIFICATION

I, the undersigned, as Secretary of the Lac du Flambeau Band of Lake Superior Chippewa Indians, a tribal government operating under a Constitution adopted pursuant to Section 16 of the Indian Reorganization act, U.S.C., s.476, do hereby certify that the Tribal Council of the Band is composed of twelve members, of whom twelve constituting a quorum, were present at a Regular Meeting, duly called, noticed, convened, and held on the 23rd day of September, 1985, and that the foregoing resolution was duly adopted at said meeting by an affirmative vote of eleven members, none against, none abstaining, and that the said resolution has not been rescinded or amended in any way.

*Victoria A. Doud*  
 Victoria A. Doud, Secretary  
 Lac du Flambeau Band of Lake  
 Superior Chippewa Indians