

ORDINANCE NO. 2019-03

AN ORDINANCE GRANTING A FRANCHISE TO ARVIG TELEPHONE COMPANY, D/B/A/ TDS TELECOM (“GRANTEE”) TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE SYSTEM IN IDEAL TOWNSHIP, MINNESOTA (“GRANTOR”); SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS.

The Board of Supervisors for the Township of Ideal, Minnesota ordains:

STATEMENT OF INTENT AND PURPOSE

The Grantor intends, by the adoption of this Franchise, to bring about the construction of a Cable System, and the continued operation of it. Such an adoption can contribute significantly to the communications needs and desires of the residents and citizens of the Grantor and the public generally. Further, Grantor may achieve better utilization and improvement of public services and enhanced economic development with the operation of a new Cable System.

FINDINGS

In the review of the request for a franchise by Grantee and negotiations related thereto, and as a result of a public hearing, the Board of Supervisors for Ideal Township, Minnesota, makes the following findings:

1. The Franchise granted to Grantee by the Grantor complies with the existing applicable Minnesota Statutes, federal laws and regulations; and
2. The Franchise granted to Grantee is nonexclusive.

TERMS

1. **Definitions:** For the purpose of this Franchise, the following terms, phrases, words and their derivations shall have the meaning given herein. Words used in the present tense include the future, in the plural number include the singular number, and words in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in this section. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

a. “Basic Service” means any service tier which includes the lawful retransmission of local television broadcast signals. Basic Cable Service shall be the definition set forth in 47 U.S.C. § 522(3).

b. “Board of Supervisors” means the governing body of the Township of Ideal, Minnesota.

c. "Cable Act" means the Cable Communications Policy Act of 1984, as amended, 47 U.S.C. §521 et. Seq.

d. "Cable Service" shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Cable Service as defined herein shall be the definition set forth in 46 U.S.C. §522(6).

e. "Cable System" or "System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include:

i. a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;

ii. a facility that serves Subscribers without using any public right-of-way;

iii. a facility of common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers; unless the extent of such use is solely to provide interactive on-demand services;

iv. an open video system that complies with 47 U.S.C. § 573; or

v. any facilities of any electric utility used solely for operating its electric utility system.

Cable System as defined herein shall be the definition set forth in 47 U.S.C. § 522(7).

f. "Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel as defined by the Federal Communications Commission.

g. "Franchise" means the authorization granted hereunder of a franchise privilege permit, license or otherwise to construct, operate and maintain a Cable System within the Jurisdictional limits of the Grantor.

h. "GAAP" means generally accepted accounting principles as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC").

i. "Grantee" means Arvig Telephone Company, d/b/a/ TDS Telecom, and its permitted successors and assigns.

j. "Grantor" means the Township of Ideal, Minnesota.

k. "Gross Revenues" means any and all revenues derived by the Grantee from the operation of the Cable System to provide Cable Services in the Township of Ideal, Minnesota. Gross Revenues shall not include any tax, fee or assessment of general applicability. The parties acknowledge and agree that under applicable law as of the date of adoption of this Franchise, a franchise fee is not such a tax, fee or assessment. Gross Revenues shall not include: PEG fees; tower rent; bad debt written off by Grantee in the normal course of its business, provided, however, that bad debt recoveries shall be included in Gross Revenues upon collection; or Subscriber deposits. Grantor acknowledges and accepts that Grantee shall maintain its books and records in accordance with GAAP.

l. "Standard Installation" means any residential installation which can be completed using a drop of one hundred twenty-five (125) feet.

m. "Streets and dedicated easements" means the public streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, alleys, all other rights-of-way and easements, and the public grounds, places or water within the Jurisdictional boundaries of Grantor.

n. "Subscriber" means any person lawfully receiving Cable Service from the Grantee.

2. **Granting of Franchise.** The Grantor hereby grants to Grantee a non-exclusive Franchise for the use of the Streets and dedicated easements within the Grantor for the construction, operation and maintenance of the Cable System, upon the terms and conditions set forth herein.

3. **Term.** The Franchise shall be for a term of fifteen (15) years, commencing on the effective date of this Franchise. Subsequent renewals shall be pursuant to the renewal provisions of the Cable Act as it shall provide.

4. **Use of the Streets and Dedicated Easements.**

a. Grantee shall have the right to use the Streets and dedicated easements of the Grantor for the construction, operation and maintenance of the Cable System.

b. Grantee, at its own cost, shall have the right pursuant to the provisions of this Franchise to construct, erect, suspend, install, renew, maintain and otherwise own and operate throughout the Streets and dedicated easements of the Grantor, as now laid out or dedicated and all extensions thereof and additions thereto in the Grantor, the Cable System, either separately or in conjunction with any public utility operating within the Grantor. The Franchise shall further include the right, privilege, easement and authority

to construct, erect, suspend, install, lay, renew, repair, maintain and operate such poles, wires, cable, underground conduits, manholes, ducts, trenches, fixtures, appliances and appurtenances for the purpose of distribution to inhabitants within the jurisdictional limits of the Grantor. Without limiting the generality of the foregoing, the Franchise shall and does hereby include the right to repair, replace and enlarge and extend the Cable System, provided that Grantee shall utilize the facilities of utilities whenever practicable

c. Grantee shall have the right to remove, trim, cut and keep clear of the Cable System, the trees in and along the Streets and dedicated easements of the Grantor, provided that in the exercise of such right, the Grantee shall not, cut remove, trim or otherwise injure such trees to any greater extent than is necessary for the installation, maintenance and use of the Cable System.

d. Grantee in the exercise of any right granted to it by the Franchise shall, at no cost to the Grantor, promptly repair or replace any facility or service of the Grantor which Grantee damages, including but not limited to any Street or dedicated easement or sewer, electric facility, water main, fire alarm, police communication or traffic control.

5. **Maintenance of the System.**

a. Grantee shall at all times employ ordinary care in the maintenance and operation of the Cable System so as not to endanger the life, health or property of any citizen of the Grantor or the property of the Grantor. The Cable System shall at all times be kept in good repair and in a safe and acceptable condition.

b. Grantee shall install and maintain the Cable System so as not to interfere with the equipment of any utility of the Grantor or any other entity lawfully and rightfully using the Streets and dedicated easements of the Grantor.

c. All conductors, cables, towers, poles and other components of the Cable System shall be located and constructed by Grantee so as to reasonably minimize interference with access by adjoining property owners to the Streets and dedicated easements. No pole or other fixtures of Grantee placed in the Streets and dedicated easements shall interfere with the usual travel on such public way.

d. Grantee shall at all times maintain a full and complete set of plans, records and "as-built" drawings and/or maps showing the location of the Cable System installed or in use in the Township of Ideal, exclusive of Subscriber service drops and equipment provided in Subscribers' homes. The Grantor shall have the ability to review such "as-built" drawings and/or maps upon request at a mutually agreed upon location convenient for representatives of the Town.

6. **Service.**

a. Grantee shall provide to its Subscribers broad categories of video programming services.

b. Grantee shall extend the Cable System to new developments within the jurisdictional limits of the Grantor, provided that the homes are within Grantee's Exchange Area and are within two hundred fifty (250) feet of Grantee's IPTV-equipped distribution cable.

c. Grantee shall provide Basic Service and one (1) free outlet to each of the facilities listed on Exhibit A, attached hereto. No monthly service fee shall be charged for such outlet. Grantee shall provide Basic Service to new construction thereafter for similar public facilities; provided they are within one hundred twenty-five (125) feet of the existing service lines of Grantee.

7. **Franchise Fee.**

a. Beginning ninety (90) days from the date of adoption of this Franchise by the Town and for the remaining term of this Franchise, Grantee shall pay quarterly to Grantor or its delegates a Franchise Fee in an amount equal to five percent (5%) of its quarterly Gross Revenues. The payment of Franchise Fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter.

b. Any Franchise Fees owing pursuant to this Franchise which remain unpaid more than forty-five (45) days after the dates specified herein shall be past due and subject to a late fee of not more than three quarter percent (.75 %) per month or the maximum amount permitted by law.

c. Each Franchise Fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the Franchise Fees paid during that period in a form and substance substantially equivalent to Exhibit B, attached hereto. Nothing in Exhibit B will modify the Gross Revenues definition of this Franchise.

d. No acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for further additional sums payable as a Franchise Fee under this Franchise or for the performance of any other obligation of the Grantee.

8. **Not Franchise Fees. Taxes.**

a. Grantee acknowledges and agrees that the Franchise Fees payable by Grantee to Grantor pursuant to this section shall take precedence over all other material provisions of the Franchise and shall not be deemed to be in the nature of a tax. The Franchise Fees payable by Grantee to Grantor pursuant to this section shall be defined consistent with 47 U.S.C. § 542 (g).

b. No more than once every three (3) years and upon thirty (30) days prior written notice, Grantor shall have the right to conduct an independent review/audit of Grantee's records solely for the purpose of assessing Grantee's compliance with the Franchise Fee obligations herein.

9. **Insurance/Indemnity.**

a. From and after the effective date of this Franchise, Grantee shall maintain in full force and effect at all times for the full term of the Franchise, at the expense of the Grantee, a comprehensive general liability insurance policy, written by a company authorized to do business in the state, protecting against liability for loss or bodily injury and property damage occasioned by the installation, removal, maintenance or operation of the Cable System by Grantee in the following minimum amounts:

i. One Million Dollars (\$1,000,000) for property damage in anyone occurrence

ii. One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for general liability insurance Worker's compensation coverage in accordance with state law

b. The Grantor and its officials and employees shall be named as additional insureds on said policy. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.

c. Grantee hereby agrees to indemnify and hold the Grantor, including its agents and employees, harmless from any claims or damages resulting from the actions of Grantee in constructing, operating or maintaining the Cable System. Grantor agrees to give the Grantee written notice of its obligation to indemnify Grantor within ten (10) days of receipt of a claim or action pursuant to this section. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of Grantor or for the Grantor's use of the Cable System.

10. **Pledge, Assignment of Assets.** Consistent with Minnesota Statutes §238.083 which shall govern any proposed sale, transfer or assignment of the franchise, Grantee may not transfer or assign the Franchise, other than by operation of law or to an entity controlling, controlled by, or under common control with the Grantee, and Grantee shall not sell or transfer stock as to create a new a new controlling interest under Minnesota Statutes §238.083 without first obtaining the expressed written consent of the Board of Supervisors, which consent shall not be unreasonably withheld, provided, however, that Grantee may mortgage or pledge the Franchise for financing purposes.

11. **Cancellation and Expiration.**

a. Unless earlier terminated in accordance with this Franchise, the Franchise shall expire fifteen (15) years after the effective date.

b. Prior to revocation or termination of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the

exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the Grantor has not received a satisfactory response from Grantee, it may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise.

c. At the hearing, the Grantor shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days. The Grantee may appeal such determination to an appropriate court.

d. Upon termination of the Franchise, Grantee agrees to remove the Cable System from the Streets and dedicated easements of the Grantor; provided, however, that the Grantee will not be required to remove its System to the extent it is authorized to provide non-Cable Services over the System.

12. **Enforcement of Terms and Conditions.** Either the Grantor or Grantee may institute proceedings in a court of competent jurisdiction to enforce the terms and conditions of this Franchise.

13. **Franchise Requirements for Other Franchise Holders.**

a. In the event that Grantor grants one (1) or more Franchise(s) or similar authorization(s), for the construction, operation and maintenance of any communication facility which shall offer services substantially equivalent to services offered by the Grantee it shall not make the grant on more favorable or less burdensome terms. If Grantee finds that the agreement(s) granting said other Franchise(s) contain provisions imposing lesser obligations on the Company(s) thereof than are imposed by the provisions of the Franchise, Grantee may petition Grantor for a modification of the Franchise. The Grantee shall be entitled, with respect to said lesser obligations to such modifications(s) of this Franchise as may be determined to be necessary to insure fair and equal treatment by this Franchise and said other agreements.

b. In the event that a non-Franchise multichannel video programming distributor provides service to the residents of the Grantor, the Grantee shall have a right to request Franchise amendments that relieve the Grantee of regulatory burdens that create a competitive disadvantage to the Grantee. In requesting amendments, the Grantee shall file a petition seeking to amend the Franchise. Such petitions shall:

- i. Indicate the presence of non-Franchised competitor(s);
- ii. Identify the basis for Grantee's belief that certain provisions of the Franchise place Grantee at a competitive disadvantage;

iii. Identify the regulatory burdens to be remanded or repealed in order to eliminate the competitive disadvantage;

The Grantor shall not unreasonably withhold granting the Grantee's petition and so amending the Franchise.

14. **Notices, Miscellaneous.**

a. Every notice served upon the Grantor shall be delivered or sent by certified mail, return receipt requested, to:

Ideal Township Clerk/Treasurer
35458 Butternut Point Rd.
Pequot Lakes, MN 56472

and every notice served upon Grantee shall be delivered or sent by certified mail, return receipt requested, to:

Arvig Telephone Company
525 Junction Rd.
Madison, WI 53717
Attn: Legal Dept.

b. All provisions of this Franchise shall apply to the respective parties, their successors and assigns.

c. If any particular section of this Franchise shall be held invalid, the remaining provisions and their application shall not be affected thereby.

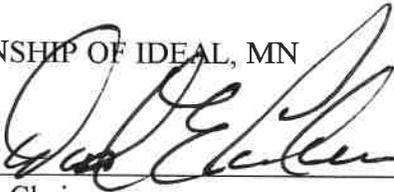
15. **Effective Date.** This Franchise shall take effect on the date adopted by the Board of Supervisors.

Passed by the Board of Supervisors for the Township of Ideal, Minnesota on the 13th day of May, 2019.

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TOWNSHIP OF IDEAL, MN

By: _____



Chairperson



Witness

John J. Klein

(Print Name)

ARVIG TELEPHONE COMPANY

D/B/A TDS Telecom

By: _____

Its: _____

Dated: _____, 2019

EXHIBIT A
Service to Public and Private Buildings

	<u>Building Name</u>	<u>Address</u>
1.	Town Hall/Community Center	35458 Butternut Point Road, Pequot Lakes, MN
2.	Fire Department – Station 1	35458 Butternut Point Road, Pequot Lakes, MN
3.	Maintenance Department	35489 Butternut Point Road, Pequot Lakes, MN

EXHIBIT B
Franchise Fee Payment Worksheet

TRADE SECRET – CONFIDENTIAL

	Month/Year	Month/Year	Month/Year	Total
Cable Service Revenue				
Installation Charge				
Franchise Fee Revenue				
Advertising Revenue				
Home Shopping Revenue				
Other Revenue				
Equipment rental				
REVENUE				
Fee Calculated				

Fee Factor: 5%

