

**CHAPTER 863. CABLE TELEVISION REGULATORY AND FRANCHISING
ORDINANCE OF 1995.**

863.01. Adoption of Pamphlet. The "Ashland Cable Television Regulatory and Franchising Ordinance of 1995" is hereby adopted in pamphlet form, as authorized by Wisconsin State Statute 66.035.

863.02 Pamphlet on File. The "Ashland Cable Television Regulatory and Franchising Ordinance of 1995" pamphlet shall be permanently on file and open to public inspection in the office of the Clerk after its adoption, and was on file and open to public inspection in the office of the City Clerk since August 10, 1994. Further, copies of the "Ashland Cable Television Regulatory and Franchising Ordinance of 1995" pamphlet were distributed to the Common Council members and official news media of the City of Ashland prior to adoption.

ADOPTED: 863 (1338) 12/13/1994

SECTION 1. ADDITION TO CODE. The following ordinance shall be added to the Licensing and Regulation Section of the Municipal Code of Ashland, Wisconsin.

SECTION 2. TITLE.

This ordinance of the Municipal Code of Ashland, Wisconsin, shall be known and may be cited as the "Ashland Cable Television Regulatory and Franchising Ordinance of 1995."

SECTION 3. DEFINITIONS.

The following words shall have the meaning set forth in this Section unless the context shall clearly require otherwise:

(a) Act or Cable Act shall mean the Cable Communications Policy Act of 1984 (47 USC 521 et seq.) as amended by the Cable Television Consumer Protection and Competition Act of 1992.

(b) Basic Cable Service shall mean any service tier which includes, at a minimum, the transmission of local television broadcast signals, and any other over **the air** television signals other than superstations.

(c) Basic Cable Equipment shall mean the equipment used by subscribers to receive the basic service tier, including, but not limited to, converter boxes, remote controls, connections for additional television sets and cable home wiring.

(d) Broadcast Services shall mean a broad category of programming which is received from broadcast television, low-power television, and radio stations and is capable of being received in the City.

(e) Cable Communication System or System, also referred to as Cable Television System, Cable System, CATV System, or Community Antenna TV System shall mean 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:

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

(2) A facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility uses any public right-of-way;

(3) A facility of a common carrier, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or

(4) Any facilities of any electric utility used solely for operating its electric utility system.

(f) Cablecast Signal shall mean a nonbroadcast signal that originates within the facilities of the Cable Communications System.

(g) Cable Service shall mean the total of the following:

(1) The one-way transmission to subscribers of video programming or other programming services; and

(2) Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

(h) Channel or Cable Channel shall mean 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.

(i) Commence Construction shall mean the time and date when construction of the Cable Communications System is considered to have commenced, which shall be when the first connection is physically made to a utility pole, or undergrounding of cables is initiated, after preliminary engineering (strand mapping) and after all necessary permits and authorizations have been obtained.

(j) Commence Operation shall mean that time and date when operation of the Cable Communications System is considered to have commenced which shall be when sufficient distribution facilities have been installed so as to permit the offering of full services to a dwelling unit located within the franchise area.

(k) Commercial Use Channel(s) shall mean the channel capacity designated for commercial use as defined and required by federal law.

(l) Completion of Construction shall mean that point in time when all distribution facilities specified in the Franchise Agreement have been installed by the Grantee so as to permit the offering of cable service to all of the potential subscribers in the franchise area, as well as the provision, in an operational state, of any facilities required by the Franchise Agreement.

(m) Control or Controlling Interest Actual working control or ownership of a Ashland cable system in whatever manner exercised. A rebuttable presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or indirectly, by any person or entity (except underwriters during the period in which they are offering securities to the public) of 49 percent or more of a Ashland cable system or the Franchise under which the system is operated. A change in the control or controlling interest of an entity which has control or a controlling interest in a Grantee parent shall constitute a change in the control or controlling interest of the Ashland cable system under the same criteria. Control or controlling interest as used herein may be held simultaneously by more than one person or entity.

(n) Converter shall mean an electronic device which converts signal carriers from one form to another.

(o) Developed Parcel shall mean any area of the City where there are at least thirty (30) occupied homes per mile to be served by either aerial cable plans or by cable underground plans as measured from the closest cable television distribution facility.

(p) Dwelling Unit shall mean any individual or multiple residential place of occupancy.

(q) FCC shall mean the Federal Communications Commission and any legally appointed or elected successor.

(r) Franchise shall mean the right granted through a franchise agreement between the Grantor and a person by which the Grantor authorizes such person to erect, construct, reconstruct, operate, dismantle, test, use and maintain a system in the City.

(s) Franchise Agreement shall mean a contractual agreement entered into between the Grantor and any grantee hereunder which is enforceable by Grantor and said grantee and which sets forth the rights and obligations between Grantor and said grantee in connection with the franchise.

(t) Franchise Fee shall mean any assessment imposed hereunder by the Grantor on a grantee solely because of its status thereas. The term "franchise fee" does not include:

(1) Any tax, fee, or assessment of general applicability (including any such tax for or assessment imposed on both utilities and cable operators or their services, but not including a tax, fee or assessment which is unduly discriminatory against grantee;

(2) Capital costs which are required by the franchise to be incurred by grantee for educational or governmental access facilities;

(3) Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, consulting or legal costs, indemnification, penalties or liquidated damages; or

(4) Any fee imposed under Title 17, United States Code.

(u) Grantee or Applicant shall mean any person granted a franchise hereunder, its agents, employees, or subsidiaries.

(v) Grantor shall mean the City.

(w) Gross Revenues shall mean all cash, credits, property of any kind or nature or other consideration derived directly or indirectly by a grantee, its subsidiaries, or any other person in which the grantee has a financial interest or which has a financial interest in the grantee arising from or attributable to operation of the system, including, but not limited to:

(1) Revenue from all charges for services provided to subscribers of entertainment and nonentertainment services including late fees, and downgrading charges;

(2) Revenue from all charges for the insertion of commercial advertisements upon the system;

(3) Revenues from all charges for leased access or use of studios;

(4) Revenue from all charges for the installation, connection and reinstatement of equipment for utilization of the system and provision of subscriber and other services;

(5) Revenue from the sale, exchange or use or cablecast of any programming developed on the system for community or institutional use; or

(6) Revenue from the sale or use of the system's subscriber list.

(7) Revenue from home shopping channels.

(8) Gross Revenues shall include in value at retail price levels, the value of any goods, services, or other remuneration in nonmonetary form received by the grantee or others described above in consideration of the performance of any advertising or other service on the system, provided, however, that the value of joint promotions between the grantee and other local media shall not be included.

(x) Initial Service Area shall mean the area of the City which will receive service initially, as set forth in the Franchise Agreement.

(y) Installation shall mean the connection of the system from feeder cable to subscribers, terminals, and the provision of service.

(z) Leased Access shall mean the use of the system by any business enterprise or other entity whether profit, nonprofit or governmental to render services to the

citizens of the City, and shall include, without limitation, all use pursuant to Section 532 of the Act.

(aa) Local Origination Channel shall mean any channel where the Grantee or its designated agent is the primary programmer, and provides locally-produced video programs to subscribers.

(bb) Normal Business Hours, as applied to the Grantee, shall mean those hours during which similar businesses in the City are open to serve customers. In all cases, Normal Business Hours must include some evening hours at least one night per week, and/or some weekend hours.

(cc) Normal Operating Conditions shall mean those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

(dd) Person shall mean any individual, firm, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof.

(ee) Public/Education/Government Access Facilities or PEG Access Facilities shall mean the total of the following:

(a) Channel capacity designated for public, educational or governmental use; and

(b) Facilities and equipment for the use of such channel capacity.

(ff) Resident shall mean any person residing in the City as otherwise defined by applicable law.

(gg) School shall mean any public or private elementary school, secondary school, junior college, college or university which conducts classes or provides instructional services and which has been granted a certificate of recognition by the State of Wisconsin.

(hh) Service Area or Franchise Area shall mean the entire geographic area within the City designated in a franchise agreement to receive cable service.

(ii) Service Interruption shall mean the loss of picture or sound on one or more cable channels.

(ij) Street shall mean the surface of and the space above and below any public street, road, highway, freeway, easement, lane, path, alley, court, sidewalk, parkway, driveway or other public way now or hereafter existing as such within the City.

(kk) Subscriber shall mean any person who legally receives any one (1) or more of the services provided by the system.

SECTION 4. INTENT.

The City finds that the development of cable communications systems has the potential of great benefit and impact upon the residents of Ashland. Because of the complex and rapidly changing technology associated with cable television, the City finds that the public health, safety and general welfare can best be served by establishing certain regulatory powers in the City as this Article shall designate. It is the intent of this Article to provide for the means to attain the best possible communication and developmental results in the public interest and for such public purpose, in these matters; and any franchise granted pursuant to this Article shall be deemed to include these findings as an integral part thereof.

SECTION 5. FRANCHISE TERRITORY.

A Franchise granted under this Ordinance is for the territorial limits of the City of Ashland as they may exist now and in the future.

(a) Grantee shall offer service to all residents and public buildings within the franchise territory, without regard to the race, religion, national origin, disability status, age,

or gender of the subscriber. Further, the Grantee may offer services to commercial areas within the City.

(b) Grantee shall offer service at equal rates, and on an equal basis with regards to deposits and service packages, to all residential subscribers. Grantee may, however, discontinue or refuse service to subscribers and potential subscribers who have not paid applicable charges. Further, the Grantee may offer special services or rates to senior citizens, or services to commercial subscribers at rates different from those charged residential subscribers, which shall include, but not be limited to, charging installation on a time and material basis. The Grantee may also enter into separate contracts with multiple dwelling unit buildings and may charge discounted rates for services based upon single point billing or other contractual considerations.

This section does not preclude the grantee from offering promotional rates for service introductions or temporary promotional discounts.

(c) Grantee shall provide a drop and basic service, at no charge, to all current and future public buildings, including, but not limited to, City Hall, fire stations, public works facility, water plant, public library , and public schools.

SECTION 6. POLICE POWERS.

Nothing in this Article or in any franchise agreement hereunder shall be construed as an abrogation by the City of any of its police powers.

SECTION 7. GRANT OF FRANCHISE.

(a) Application. All applicants for a franchise under this Article shall prepare and file a written application with the Grantor in such form as the Grantor shall designate.

(b) Review of Application. Upon receipt of an application under this Article, the Grantor shall review 'the same and make the application available for public inspection at such places as the Grantor shall designate. A decision shall be made on the

application by the Grantor after evaluation thereof. The Grantor may grant one (1) or more franchises, or may decline to grant any franchise.

(c) Franchise required. Subject to federal and state law, no cable system shall be allowed to occupy or use the streets in the franchise area or be allowed to operate without a franchise granted in accordance with the provisions of this Article.

(d) Franchise nonexclusive. Any franchise granted under this Article shall be revocable and nonexclusive.

(e) Franchise requirements. Grantor may establish appropriate requirements for new franchises or franchise renewals, and may modify these requirements from time to time to reflect changing conditions and technology in the cable industry.

(f) Grant. In the event the Grantor shall grant to a Grantee a nonexclusive, revocable franchise to construct, operate, maintain and reconstruct a cable system within the franchise area or a renewal of an existing franchise, said franchise shall constitute both a right and an obligation to provide the service of a cable system as required by this Article and the terms of the franchise agreement.

(g) Conflict with federal or state laws. Any franchise granted under this Article shall be consistent with Federal laws and regulations and State general laws and regulations. In the event of a conflict between the terms and conditions of the franchise agreement and the terms and conditions of Federal or State law under which Grantor can grant a franchise, except where the application of such Federal or State law would impose inconsistent or additional material obligations or duties upon Grantee, such general law or requirements shall control.

(h) Ordinance revisions. Any franchise granted under this Article, is hereby made subject to any revisions of this Article or the general ordinances of the City, provided that such revisions do not materially alter or impair the obligations of Grantee set forth in any franchise agreement.

(i) Term. The term of any new or renewal franchise granted under this Article, shall be established in the franchise agreement, provided that in no event shall any franchise granted under this Article exceed the term of fifteen (15) years.

(j) Other licenses or permits. A Franchise granted under this Ordinance shall not take the place of any other license or permit legally required of a Grantee.

SECTION 8. FRANCHISE ACCEPTANCE.

(a) To accept a Franchise granted under this Ordinance, a Grantee must file any required bonds, funds and proof of insurance, as well as written notice of acceptance with the City Clerk within 45 days of the offer of the Franchise being made by the Grantor.

(b) Such written notice shall include a certification that the Grantee:

(1) Will comply with this Ordinance, any Franchise Agreements made pursuant to this Ordinance, and all applicable City, county, state and federal regulations in regard to the construction, operation and maintenance of a cable system;

(2) Accepts the Franchise relying on its own investigation and understanding of the power and authority of the Grantor to grant the Franchise and the terms and conditions thereof;

(3) Acknowledges that it has not been induced to enter into the Franchise by any understanding or promise or by other statement, whether written or verbal, by or on behalf of the Grantor or by any other third person concerning any term or condition of the Franchise or Ordinance not expressed herein;

(4) Shall have no recourse whatsoever against the Grantor for any loss, cost, expense or damage arising out of any provision or requirement of a Franchise or the enforcement thereof, or for the failure of the Grantor to have authority to grant any or all parts of the Franchise;

(5) Agrees that, in the event of any conflict between the Ordinance and the Franchise Agreement, the terms of the Franchise Agreement shall prevail.

(6) Will not at any time claim in any proceeding involving the Grantor that any condition or term of the Franchise or Ordinance is unreasonable, arbitrary or void, or that the Grantor had no power or authority to make any such term or condition, but shall accept the validity of the terms and conditions of the Franchise and Ordinance in their entirety.

(c) A Grantee of a Franchise granted or transferred under this Ordinance may, at the time of acceptance of the Franchise, provide an initial payment to the Grantor in the amount of the Grantor's cost of granting or, in the case of a transfer, transferring the Franchise. The amount of such payment may be considered as reimbursement for administrative, legal, and other related costs incurred before the granting or transferring of the franchise.

SECTION 9. TRANSFER OF OWNERSHIP OR CONTROL.

(a) Transfer of franchise. Any franchise granted under this Article shall be a privilege to be held for the benefit of the public. Any franchise so granted cannot, in any event, be sold, transferred, leased, assigned or disposed of, including, but not limited to, by forced or voluntary sale, merger, consolidation, receivership, or other means, without the prior written consent of the Grantor, and then only under such reasonable conditions as the Grantor may establish. Such consent as required by the Grantor, shall be given or denied no later than ninety (90) days following any request, and shall not be unreasonably withheld. Prior consent shall not be required when transferring the franchise between wholly-owned subsidiaries of the same entity.

(b) Ownership or control. The Grantee shall promptly notify in writing the Grantor of any proposed change in, or transfer of, or acquisition by any other party of, control of the Grantee. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or transfer by any person or group of persons of ten percent (10%) or more of the beneficial ownership interest of the Grantee. Every change, transfer, or acquisition of control of the Grantee shall make the franchise subject to cancellation unless and until the Grantor shall have consented in writing thereto, which consent shall be given or denied no later than ninety

(90) days following any request, and shall not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the Grantor may inquire into the qualifications of the prospective controlling party, and the Grantee shall assist the Grantor in any such inquiry.

In seeking the Grantee's consent to any change in ownership or control, the Grantee shall have the responsibility:

(1) To show to the satisfaction of the Grantor whether the proposed purchaser, transferee, or assigns (the "proposed transferee"), which in the case of a corporation, shall include all directors and all persons having a legal or equitable interest in five percent (5%) or more of the voting stock:

a. Has ever been convicted or held liable for acts involving moral turpitude including, but not limited to, any violation of Federal, State or local law or regulations, or is presently under an indictment, investigation or complaint charging such acts;

b. Has ever had a judgment in an action for fraud, deceit or misrepresentation entered against it, her, him, or them by any court of competent jurisdiction; or

c. Has pending any legal claim, lawsuit or administrative proceeding arising out of or involving a cable system.

(2) To establish, to the satisfaction of the Grantor, the financial solvency of the proposed transferee by submitting all current financial data for the proposed transferee which the Grantee was required to submit in its franchise application, and such other data as the Grantor may request. Financial statements shall be audited, certified and qualified by a Certified Public Accountant.

(3) To establish to the satisfaction of the Grantor that the financial and technical capability of the proposed transferee is such as shall enable it to maintain and operate the cable system for the remaining term of the franchise under the existing franchise terms.

(c) The Grantor agrees that any financial institution having a pledge of the franchise or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the Grantor that it, or its designee satisfactory to the Grantor, shall take control and operate the cable system in the event of a Grantee default in its financial obligations. Further, said financial institution shall also submit a plan for such operation that will ensure continued service and compliance with all franchise requirements during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one (1) year unless extended by the Grantor in its discretion, but during said period of time it shall have the right to petition the Grantor to transfer the franchise to another Grantee. Except insofar as the enforceability of this subsection may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors, rights generally, and further subject to applicable federal, state or local law, if the Grantor finds that such transfer after considering the legal, financial, character, technical and other public interest qualities of the applicant are satisfactory, the Grantor shall transfer and assign the right and obligations of such franchise as in the public interest. The consent of the Grantor to such transfer shall be given or denied no less than ninety (90) days after any request, and shall not be unreasonably withheld.

(d) The consent or approval of the Grantor to any transfer by the Grantee shall not constitute a waiver or release of the rights of the Grantor in and to the streets, and any transfer shall by its terms, be expressly subject to the terms and conditions of any franchise.

(e) In the absence of extraordinary circumstances, the Grantor shall not approve any transfer or assignment of the franchise prior to completion of initial construction of the cable system.

(f) In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory of the franchise agreement.

(g) The Grantor may approve the transfer, deny the transfer with cause, or conditionally approve the transfer, provided that the Grantor shall not unreasonably refuse to

approve the transfer or condition the transfer upon unreasonable conditions. The conditions the Grantor may attach to the transfer approval may include, but are not limited to: reimbursement for reasonable and necessary expenses incurred in evaluating the transfer request; remedy of any existing or historical violations of City ordinances or the Franchise Agreement; payment of all fees and penalties owed by the Grantee at the time of transfer approval; and a guarantee by the prospective new Grantee to abide by any and all ordinances, agreements and conditions placed upon the Franchise and system by the Grantor and existing Grantee, unless mutually removed by the Grantor and Grantee.

(h) When the Grantee approves a transfer under this section, the new Grantee shall indicate acceptance of the Franchise as specified in Section 8, including the filing of all necessary bonds, funds, proofs of insurance and certifications.

SECTION 10. FRANCHISE RENEWAL

(a) The Grantor may decide to renew a Franchise granted under this Ordinance if the Grantee files a written request for such a renewal. At the time of such request, the Grantor may update this Ordinance and reevaluate the needs of the community for cable service and the performance of the Grantee.

(b) To the extent applicable, Section 546 of the Cable Communications Policy Act of 1984 shall govern the procedures and standards for renewal of any Franchise awarded pursuant to this Ordinance.

(c) To the extent that Section 546 of the Cable Communications Act of 1984 is not applicable, the Grantor in its sole discretion and judgment shall have the right to grant, deny or conditionally grant renewal of a Franchise, provided that the Grantor shall not unreasonably refuse to renew the Franchise or unreasonably condition the renewal. The conditions the Grantor may place on its approval shall include, but are not limited to: reimbursement for reasonable expenses incurred in evaluating the request for renewal, updating the Ordinance and surveying community cable needs, remedy of historical or existing violations

of the Franchise or Ordinance; payment of all fees and penalties owed by the Grantee at the time of the renewal; and acceptance of any updated Ordinance or Franchise Agreement.

(d) Unless otherwise agreed upon, any amended cable Ordinance or provision thereunder adopted before the Franchise renewal shall take effect at the Franchise renewal.

(e) When the Grantor approves a Franchise renewal, the Grantee shall accept the renewed Franchise under the procedures set out in Section 8.

SECTION 11. FRANCHISE FEE.

(a) Quarterly franchise payment. A Grantee of a franchise hereunder shall pay to the Grantor a fee in an amount as designated in the franchise agreement, which amount shall not be less than five percent (5%) of Grantee's gross revenues or such other amount as allowed by applicable law. Such payment shall commence as of the effective date of the franchise or any renewal date. The Grantor, on an annual basis, shall be furnished a statement within one hundred twenty (120) days of the close of the calendar year, either audited and certified by an independent Certified Public Accountant or certified by a financial officer of the Grantee, reflecting the total amount of the revenue and all payments, deductions and computations for the period covered by the payment. Upon ten (10) days prior written notice, Grantor shall have the right to conduct an independent audit of Grantee's records, in accordance with Generally Accepted Accounting Procedures, and if such audit indicates a franchise fee underpayment of five percent (5%) or more, the Grantee shall assume all reasonable costs of such an audit.

(b) Acceptance by Grantor. 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 or additional sums payable as a franchise fee under this Article or for the performance of any other obligations of the Grantee.

(c) Failure to Make Required Payment. In the event that any franchise payment or recomputed amount is not made on or before the dates specified herein, Grantee shall pay an additional compensation:

(1) An interest charge, computed from such due date, at an annual rate equal to the average rate of return on invested funds of the Grantor during the period for which payment was due.

(2) If the payment is late by forty-five (45) days or more, a sum of money equal to five percent (5%) of the amount due in order to defray those additional expenses and costs incurred by the Grantor by reason of delinquent payment.

(d) Payment schedule. The Franchise fee shall be paid on a quarterly basis according to the following schedule: revenues for January through March shall be reflected in a May 15th payment; revenues for April through June shall be reflected in an August 15th payment; revenues for July through September in an October 15th payment; and revenues for October through December in a February 15th payment.

(e) Pass through. Any Grantee "pass through" or itemization of franchise fee costs on subscribers, bills, shall be in accordance with Federal law.

SECTION 12. REVOCATION.

(a) Grounds for revocation. If the Grantee has been given due notice and a reasonable opportunity to cure, the Grantor reserves the right to revoke any franchise granted hereunder and rescind all rights and privileges associated with the franchise in the following circumstances, each of which shall represent a default under this Article and a material breach of the franchise.

(1) If the Grantee shall default in the performance of any of its material obligations under this Article or under such documents, agreements and other terms and provisions entered into by and between the Grantor and the Grantee, subject to the provisions on cure.

(2) If the Grantee should fail to provide or maintain in full force and effect, the liability and indemnification coverages or the security fund or bonds as required herein.

(3) If any court of competent jurisdiction, or any Federal or State regulatory body by rules, decisions or other action determines that any material provision of the franchise documents, including this Article, the franchise agreement and Grantee's proposal is invalid or unenforceable prior to the commencement of initial system construction.

(4) If the Grantee ceases to provide service for a period exceeding thirty (30) days for any reason within the control of the Grantee over the cable system, or abandons the management and/or operation of the system.

(5) If the Grantee willfully violates any of the material provisions of this Article or the franchise agreement or attempts to practice any fraud or deceit upon the Grantor.

(6) If the Grantee becomes insolvent, or upon listing of an order for relief in favor of Grantee in a bankruptcy proceeding.

(7) If the Grantee transfers a controlling interest of the franchise without the prior approval or consent of the Grantor as required in Section 9.

(b) Procedure prior to revocation.

(1) The Grantor may make a written demand that the Grantee comply with any such requirement, limitation, term, condition, rule or regulation or correct any action deemed cause for revocation. Such written demand shall detail the exact nature of the alleged non-compliance. In the event the stated violation is not reasonably curable within ninety (90) days, the franchise shall not be terminated or revoked, or damages assessed, if the Grantee provides within the said ninety (90) days a plan, satisfactory to the Grantor, to remedy the violation. If the failure, refusal or neglect of the Grantee continues for a period exceeding ninety (90) days following receipt of such written demand by the Grantee, the Grantor

may place its request for termination of the franchise upon a regular Council meeting agenda. The Grantor shall cause notice to be served upon such Grantee, at least twenty (20) days prior to the date of such meeting, a written notice of this intent to request such termination, and the time and place of the meeting, notice of which shall be published at least once, ten (10) days before such meeting, in a newspaper of general circulation within the franchise area.

(2) The Grantor shall hear any persons interested therein, and shall determine, within ninety (90) days, based upon the preponderance of the evidence, whether the Grantee has committed a material breach of this Article or the franchise agreement, and if so, whether such breach was willful.

(3) If the Grantor determines that the Grantee has willfully committed a material breach, then the Grantor may, by resolution, declare that the franchise of such Grantee shall be terminated and security fund and bonds forfeited, or the Grantor may, at its option and if the material breach is capable of being cured by the Grantee, direct the Grantee to take appropriate remedial action within such time and manner and upon such terms and conditions as the Grantor shall determine are reasonable under the circumstances.

SECTION 13. PROCEDURES ON TERMINATION.

(a) Disposition of facilities. Subject to federal, state and local laws, in the event a franchise expires, is revoked, or otherwise terminated, the Grantor may order the removal of the above-ground system facilities from the franchise area within a reasonable period of time as determined by the Grantor or require the original Grantee to maintain and operate its cable system for a period not to exceed twenty-four (24) months as indicated in (d) below.

(b) Restoration of property. In removing its plant, structures, and equipment, the Grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to the Grantee's removal of its plant, structures and equipment without affecting the electrical or telephone cable wires, or attachments. The liability, indemnity and insurance, and the security

fund and bonds provided, shall continue in full force and effect during the period of removal and until full compliance by the Grantee with the terms and conditions of this Section.

(c) Restoration by Grantor. Reimbursement of costs. In the event of a failure by the Grantee to complete any work required by Subsection (a) above and/or Subsection (b) above, or any other work required by Grantor by law or ordinance, within ninety (90) days after receipt of written notice, and to the satisfaction of the Grantor, the Grantor may cause such work to be done and the Grantee shall reimburse the Grantor the cost thereof within thirty (30) days after receipt of an itemized list of such costs or the Grantor may recover such costs through the security fund or bonds provided by Grantee. The Grantor shall be permitted to seek legal and equitable relief to enforce the provisions of this Section.

(d) Extended operation. Subject to federal, state and local law, upon either the expiration or revocation of a franchise, the Grantor may require the Grantee to continue to operate the cable system for a defined period of time not to exceed twenty-four (24) months from the date of such expiration or revocation. The Grantee shall, as trustee for its successor in interest, continue to operate the cable communications system under the terms and conditions of this Article and the franchise agreement and to provide the regular cable service and any of the other services that may be provided at that time.

(e) Grantor's right not affected. The termination and forfeiture of any franchise shall in no way affect any of the rights of the Grantor under any provision of law.

SECTION 14. RECEIVERSHIP. CONDEMNATION AND FORECLOSURE.

(a) Operation by receiver. Any franchise granted shall, at the option of the Grantor, cease and terminate one hundred twenty (120) days after the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of the Grantee, whether in a receivership, reorganization, condemnation, bankruptcy or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

(1) Such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Article and the franchise granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all defaults under the franchise; and,

(2) Such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the Court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the franchise agreement.

(b) Involuntary sale. In the case of a foreclosure or other involuntary sale of the plant, property and equipment of the Grantee, or any part thereof, the Grantor may serve notice of termination upon the Grantee and to the purchaser at such sale, in which event the franchise and rights and privileges of the Grantee hereunder shall cease and terminate thirty (30) days after service of such notice, unless:

(1) The Grantor shall have approved the transfer of the franchise, as and in the manner in this Article provided; and,

(2) Such successful purchaser shall have covenanted and agreed with the Grantor to assume and be bound by all the terms and conditions of the franchise agreement.

SECTION 15. FRANCHISE PROCESSING COSTS.

(a) New franchises. For a new franchise award, the costs to be borne by the Grantee shall include, but shall not be limited to, all costs of publication of notices prior to any public meeting provided for pursuant to a franchise, development and publication of relevant ordinances and franchise agreement, fees, and any cost not covered by the application fees, incurred by the Grantor in its study, preparation of proposal solicitation documents, evaluation of all applications, including, but not limited to, consultant and attorneys fees.

(b) Franchise renewal. For a franchise renewal, the Grantee shall reimburse the Grantor all processing costs of such renewal as provided by the renewal of the franchise agreement.

(c) Franchise transfer. For a franchise transfer, Grantee, and/or the approved transferee, shall reimburse Grantor for its processing costs as provided by the agreement approving the transfer.

(d) Other costs. The processing costs provided for in this Section shall be in addition to any other inspection or permit fee or other fees due to Grantor under any other ordinance.

SECTION 16. AUTHORITY FOR USE OF STREETS.

(a) Use of streets. For the purposes of operating and maintaining a system in City, Grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, across and along the streets within the City lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the system, provided that all applicable permits are applied for and granted, all fees paid and all other City codes and ordinances otherwise complied with. However, no rights hereunder may be transferred by Grantee to any other entity except Grantee's construction agents.

(b) Filing plans. Prior to construction or alteration, Grantee shall in each case file plans with all appropriate City departments and receive written approval of such plans, which approval shall not be unreasonably withheld. Grantee shall provide a monthly progress report to Grantor through the completion of construction or alteration.

(c) Non-interference. Grantee shall construct and maintain the system so as not to interfere with other uses of streets. Grantee shall make use of existing poles and other facilities available to Grantee whenever practicable. Grantee shall individually notify all residents directly affected by proposed construction prior to the commencement of that work.

(d) Denial of use by Grantor. Notwithstanding the above grant to use the streets, no street shall be used by Grantee if Grantor in its sole opinion, determines that such use is inconsistent with the conditions or provisions by which such street was created or dedicated, or presently used.

SECTION 17. CONDITIONS ON USE OF STREETS.

(a) Limit Interference. All transmission and distribution, structures, lines and equipment erected by Grantee within the City shall be so located as to cause minimum interference with the proper use of streets and other public places and the rights and reasonable convenience of property owners who adjoin any of said streets or other public places.

(b) Restoration of Streets. In case of disturbance of any street or public place, the Grantee shall, at its own cost and expense and in a manner approved by the City engineer, replace and restore such area in as good a condition as before the work involving such disturbance was done.

(c) Tree trimming. The Grantee shall comply with the provisions of the Ashland Tree Ordinance, as amended, being a part of the Municipal Code of Ashland, Wisconsin. Each Grantee shall be responsible for, shall indemnify, defend and hold harmless the Grantor and its officers, agents and employees from and against any and all damages arising out of or resulting from the removal, trimming, mutilation of or injury to any tree or trees proximately caused by the Grantee or its officers, agents, employees, contractors or subcontractors.

SECTION 18. ERECTION OF POLES.

(a) Consent to erection of poles. No franchise shall be deemed to expressly or impliedly authorize the Grantee to construct or install poles or wire-holding structures within streets for the purpose of placing cables, wires, lines or otherwise without the written consent of the Grantor. Such consent shall be given upon such terms and conditions as the City engineer

may prescribe, which shall include a requirement that the Grantee perform, at its sole expense, all tree trimmings required to maintain the poles clear of obstructions.

(b) Access to Poles. With respect to any poles or wire holding structures which a Grantee is authorized to construct and install within streets, a public utility serving the Grantor may, if denied the privilege of utilizing such poles or wire-holding structures by the Grantee, apply for such permission to the City engineer. If the City engineer finds that such use would enhance the public convenience and would not unduly interfere with the Grantee's operations, s/he may authorize such use subject to such terms and conditions as he deems appropriate. Such authorization shall include the condition that the public utility pay to the Grantee any and all actual and necessary costs incurred by the Grantee in permitting such use.

SECTION 19. UNDERGROUNDING.

(a) Underground installation required. Except as hereinafter provided, in all areas of the City where the cables, wires and other like facilities of a public utility are placed underground, each Grantee shall construct and install its cables, wires and other facilities underground. Amplifier boxes and pedestal mounted terminal boxes may be placed aboveground if existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe, in any area of the City where there are certain cables, wires and other like facilities of a public utility underground and at least one (1) operable cable, wire or like facility of a public utility is suspended above the ground from poles, a Grantee may construct and install its cables, wires and other facilities from the same pole with permission of the City engineer.

(b) Relocation underground. With respect to any cables, wires and other like facilities constructed and installed by a Grantee aboveground, the Grantee shall, at its sole expense reconstruct and reinstall such cables, wires, or other facilities underground pursuant to

any project under which the cables, wires or other like facilities of all like utilities are placed underground within an area.

SECTION 20. RELOCATION.

If, during the term of a franchise, the Grantor, a public utility, a sanitary district or any other similar special district elects to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any street or to replace, repair, install, maintain, or otherwise alter any aboveground or underground cable, wire, conduit, pipe, line pole, wire-holding structure, or other facility utilized for the provisions of utility or other services or transportation or drainage, sewage or other liquids, the Grantee, shall except as otherwise hereinafter provided, at its sole expense, remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and any other facilities which it has installed. If such removal or relocation is required within the subdivision in which all utility lines, including those for the system, were installed at the same time, the entities may decide among themselves who is to bear the cost of relocating; provided, that the Grantor shall not be liable to a Grantee for such costs. Regardless of who bears the costs, a Grantee shall take action to remove or relocate at such time or times as are directed by the agency undertaking the work. Reasonable advance written notice shall be mailed to the Grantee advising the Grantee of the date or dates that the removal or relocation is to be undertaken.

SECTION 21. PLACEMENT OF BUILDINGS.

Each Grantee shall, upon request by any person holding a building moving permit or other approval issued by the Grantor, temporarily remove, raise or lower its wires to permit the movement of buildings. The expense of such removal, raising or lowering shall be paid by the persons requesting same, and a Grantee shall be authorized to require such payment in advance. A Grantee shall be given not less than • seventy-two (72) hours written notice to arrange for such temporary wire changes.

SECTION 22. SYSTEM DESIGN AND CONSTRUCTION.

(a) System design. A cable system shall be a minimum of 550 MHz bandwidth or its functional equivalent.

(b) Coverage. Grantee shall design and construct the cable system in such a manner as to have the capability to pass and service every dwelling and business, school or public agency within the franchise area. Service shall be provided to subscribers in accordance with the schedules and line extension policies specified in the franchise agreement. Cable system construction and provision of service shall be non-discriminatory, and Grantee shall not delay or deter service to any section of the franchise area on the grounds of economic preference.

(c) Cable casting facilities and channel capacity.

Grantee shall provide cable casting facilities and channel capacity in accordance with the requirements of the franchise agreement.

(d) System construction schedule.

1. Grantee shall comply with the requirements of the system construction or upgrade schedule contained in the franchise agreement.

2. Grantee shall provide a detailed construction or upgrade plan indicating progress schedules, area construction maps, test plan, and projected dates for adding service. In addition, Grantee shall update this information on a monthly basis, by submitting a copy of its normal internal progress reports, showing specifically whether schedules are being met and the reason for any delays.

(e) Provision of service. After service has been established by activating trunk and distribution cables for any area, Grantee shall provide service to any requesting subscriber within the area within thirty (30) days from the date of the request.

SECTION 23. CONSTRUCTION STANDARDS.

(a) Each Grantee shall construct, install and maintain its system in a manner consistent and in compliance with all applicable laws, ordinances, construction standards, governmental requirements, and technical standards equivalent to those established by the FCC. Each Grantee shall provide to the Grantor written reports of the grantee's annual proof of performance tests conducted pursuant to FCC standards and requirements.

(b) Each Grantee shall at all times comply with the National Electrical Safety Code (National Bureau of Standards); National Electrical Code; National Bureau of Fire Underwriters; applicable FCC and other federal, state and local regulations; and codes and other ordinances of the City.

(c) In any event, the system shall not endanger or interfere with the safety of persons or property within the City or other areas where the Grantee may have equipment located.

(d) All working facilities, conditions, and procedures, used or occurring during construction and maintenance of the system, shall comply with the standards of the Occupational Safety and Health Administration.

(e) Construction, installation and maintenance of the system shall be performed in an orderly and workmanlike manner, and in close coordination with public and private utilities serving the City, following accepted construction procedures and practices and working through existing committees and organizations.

(f) All cable and wires shall be installed, where possible, parallel with electric and telephone lines, and multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

(g) Any antenna structure used in the system shall comply with construction, marking and lighting of antenna structures required by the United States Department of Transportation.

(h) RF leakage shall be checked at reception locations for emergency radio services so as to prove no interference signal combinations are possible. Radiation shall be

measured adjacent to any proposed aeronautical navigation or communication radio sites to prove no interference to air navigational reception.

SECTION 24. TECHNICAL STANDARDS.

(a) Standards. The Cable Communications System shall meet all technical and performance standards contained in the franchise agreement and those required by the FCC.

(b) Test and compliance procedure. The Grantee shall submit, within sixty (60) days after the effective date of the franchise agreement, a detailed test plan describing the methods and schedules for testing the Cable System on an ongoing basis to determine compliance with the provisions of the franchise agreement. The tests for Basic Cable Service shall be performed at intervals no greater than twelve (12) months. The tests may be witnessed by representatives of the Grantor, and written test reports shall be submitted to the Grantor. If more than ten percent (10%) of the locations tested fail to meet the performance standards, the Grantee shall be required to indicate what corrective measures have been taken, and the entire test shall be repeated. A second failure in the same locations of more than ten percent (10%) may be considered a breach of the franchise agreement.

(c) Special tests. At any time after commencement of service to subscribers, the Grantor 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 shall be limited to the particular matter in controversy. The Grantor shall endeavor to so arrange its requests for such special tests so as to minimize hardship or inconvenience to Grantee or to the subscriber.

(d) Costs of tests. The costs of all tests required by (b) and (c) above, and retesting as necessary, shall be borne by the Grantee, except that if Grantor requires the utilization of outside consultants or test personnel, such costs shall be borne by the Grantor.

SECTION 25. STANDBY POWER.

Each system shall include the equipment capable of providing standby powering which is specified in the franchise agreement. The system shall incorporate safeguards necessary to prevent injury to linemen resulting from a standby generator powering a "dead" utility line.

SECTION 26. OVERRIDE CAPABILITY.

Each system shall include an emergency alert capability which will permit the City, in times of emergency, to override by remote control the audio and/or video of all channels simultaneously under the conditions and in the manner specified in the franchise agreement, and including those capabilities for alternate broadcast so specified therein.

SECTION 27. INTERCONNECTION.

The system shall be interconnected with other systems within the City and adjacent areas as may be specified in the applicable franchise agreement.

SECTION 28. SERVICES.

(a) Service provided. The Grantee shall provide, as a minimum, the initial services listed in the franchise agreement. Services shall not be reduced without prior notification to Grantor.

(b) Basic cable service. The "Basic Cable Service" shall include any service tier which includes the retransmission of local television signals. This service shall be provided to all subscribers at the established monthly subscription rates.

(c) Local origination channels. If local origination programming is provided, the Grantee shall operate any cable casting studios on a high-quality, professional basis for the purpose of providing cable cast programming responsive to local needs and interests.

(d) Public, Educational and government (PEG) access facilities. The Grantee shall provide the PEG Access Facilities, including channel capacity, necessary interface equipment and cabling to permit operation as specified in the franchise agreement.

(e) Cable channel for commercial use. The Grantee shall designate channel capacity for commercial use as required by the Act and applicable law.

SECTION 29. CONSUMER SERVICE STANDARDS.

Nothing in this Ordinance shall be construed to prevent or prohibit: (i) the Grantor and the Grantee from agreeing to exceed the customer service standards set forth herein; (ii) the Grantor from enforcing, through the franchise term, pre-existing customer service requirements that exceed the requirements set forth herein and are contained in current Franchise Agreements; (iii) the establishment or enforcement of any State or municipal law or regulation concerning customer service or consumer protection that imposes customer service or consumer protection requirements that exceed, or address matters not addressed herein.

The Grantee shall maintain a local office to provide the necessary facilities, equipment and personnel to comply with the following consumer standards under normal conditions of operation:

(a) Service standards. The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled Service Interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system. A written log or an equivalent stored in computer memory and capable of access and reproduction, shall be maintained for all Service Interruptions and requests for cable service as required by this Ordinance.

(b) Telephone lines. Local toll-free or collect call telephone line capacity shall be made available by grantee to customers 24 hours per day, seven days a week, including holidays. The Grantee shall use best efforts under Normal Operating Conditions during Normal Business Hours to ensure that a minimum average of ninety percent (90%) of all callers (measured on a quarterly basis) for service will not be required to wait more than thirty (30) seconds before being connected to a trained customer service representative, and shall receive a busy signal less than three percent (3%) of the time (measured on a quarterly basis). If the call

needs to be transferred, the transfer time shall not exceed thirty (30) seconds. Inquiries received after Normal Business Hours may be answered by a service or an automated response system, and such calls must be responded to by a trained company representative on the next business day.

(c) Local office. A business and service office, conveniently located, open during Normal Business Hours, and adequately staffed to accept subscriber payments and respond to service requests and complaints.

(d) Installation staff. An installation staff shall install service to any subscriber located up to 125 feet from the existing distribution system within seven (7) days after receipt of a request. This Standard shall be met no less than ninety-five percent (95%) of the time, measured on a quarterly basis.

(e) Installation, Outages and Service call scheduling. Grantee shall schedule, either at a specific time, or, at maximum, within a specified four (4) hour time period, all appointments with subscribers for installation or service. Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If a Grantee representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer. These Standards shall be met no less than ninety-five percent (95%) of the time, measured on a quarterly basis.

(f) Repair standards. The Grantee shall maintain a repair force of technicians who, under Normal Operating Conditions, are capable of responding to subscriber requests for service within the following time frames:

1. System Service Interruption: Under Normal Operating Conditions, within two (2) hours, including weekends, of receiving subscribers calls which by number identify a system Service Interruption of sound or picture on one (1) or more channels, affecting all the subscribers of the system or two per cent (2%) thereof.

2. Isolated Service Interruption: Within twenty-four (24) hours, including weekends, of receiving requests for service identifying an isolated Service Interruption (less than 2% of subscribers) of sound or picture for one (1) or more channels. This Standard shall be met no less than ninety-five percent (95%) of the time, measured on a quarterly basis.

3. Inferior reception quality: Within forty-eight (48) hours, including weekends, of receiving a request for service identifying a problem concerning picture or sound quality.

Grantee shall be deemed to have responded to a request for service under the provisions of this Section when a technician arrives at the service location and begins work on the problem. In the case of a subscriber not being home when the technician arrives, response shall be deemed to have taken place if the technician leaves written notification of arrival.

(g) Notification of Service Interruption to City Administrator. The grantee shall promptly notify the City Administrator, in writing, or, if appropriate, by oral communication, of any significant interruption in the operation of the system. For the purposes of this section, a "significant interruption in the operation of the system" shall mean any interruption of sound or picture on one (1) or more channels of a duration of at least twenty-four (24) hours to at least five (5) percent of the subscribers.

(h) Subscriber Credit for Service Interruption. Upon Service Interruption of subscriber's cable service, the following shall apply:

(1) For Service Interruptions of over four (4) hours and up to seven (7) days, the Grantee shall provide, at the subscriber's request, a credit of one-thirtieth (1/30) of one month's fees for affected services for each instance service is interrupted for four (4) or more hours for all affected subscribers.

(2) For interruptions of seven (7) days or more in one month, the Grantee shall provide, at the subscriber's request, a full month's credit for affected services for all affected subscribers.

SECTION 30. PROOF OF COMPLIANCE.

(a) Compliance records. Upon reasonable notice, Grantee shall demonstrate compliance with any or all of the standards required by this Ordinance. Grantee shall provide sufficiently detailed information to permit Grantor to readily verify the extent of compliance.

(b) Breach for non-compliance. A repeated and verifiable pattern of non-compliance with the consumer protection standards of Section 29, after Grantee's receipt of due notice and an opportunity to cure, may be termed a breach of franchise, subject to any and all remedies prescribed in this Ordinance, the Act and applicable law. The Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards in Section 29 (b) unless an historical record of complaints indicates a clear failure to comply.

SECTION 31. COMPLAINT PROCEDURES.

(a) Complaints to Grantee. Grantee shall establish written procedures for receiving, acting upon and resolving subscriber complaints without intervention by the Grantor. The procedures shall prescribe the manner in which a subscriber may submit a complaint, either orally or in writing. At the conclusion of Grantee's investigation of a subscriber complaint, but in

no event more than ten (10) days after receiving the complaint, Grantee shall notify the subscriber of the results of the investigation and its proposed action or resolution, if any. The Grantee shall also notify the subscriber of the subscriber's right to file a complaint with the Grantor in the event the subscriber is dissatisfied with the Grantee's decision.

(b) Complaints to Grantor. A subscriber who is dissatisfied with Grantee's proposed decision, shall be entitled to have the complaint reviewed by the Grantor. The subscriber shall initiate the review by filing a complaint, together with the Grantee's decision, if any, with the Grantor, and by the Grantor notifying the Grantee of the filing. The subscriber shall make such filing and notification within twenty (20) days of receipt of Grantee's decision or, if no Grantee decision has been provided, within thirty (30) days after filing the original complaint with Grantee. The Grantor may extend these time limits for reasonable cause.

(c) Review by the Grantor. The Grantor shall determine, upon a review of a subscriber complaint and the Grantee's decision, if any, whether further action is warranted. In the event the Grantor does not initiate further proceedings within fifteen (15) days of the filing of the complaint, the Grantee's proposed action or resolution shall be final. If the Grantor decides to initiate further investigation, the Grantor shall require the Grantee and the subscriber to submit, within ten (10) days of notice thereof, a statement of the facts and arguments in support of their respective positions. The Grantor shall issue a written decision within fifteen (15) days of receipt of the statements or, if a hearing is requested, within fifteen (15) days of the conclusion of the hearing, setting forth the basis of the decision.

(d) Remedies for violations. The Grantor may, as a part of a subscriber complaint decision issued under the provisions of this Ordinance, impose damages on the Grantee. Damages may be imposed only if the Grantor finds that the Grantee has arbitrarily refused or failed without justification, to comply with the provisions of this Section.

SECTION 32. SUBSCRIBER NOTICE.

(a) Operating policies. As subscribers are connected or reconnected to the cable system, and at least annually, and at any time upon request, and when Grantee's procedures change, under Normal Operating Conditions, the Grantee shall provide each subscriber with written information concerning products and services offered, prices and options for programming services and conditions of subscription to programming and other services, • installation and service maintenance policies, instructions on how to use the cable services, channel positions of programming carried on the system, the procedures for billing and making inquiries or complaints (including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed) and also furnish information concerning the Grantor office responsible for administration of the franchise with the name and telephone number of the office. The notice shall also indicate Grantee's business hours, legal holidays and procedures for responding to inquiries after normal business hours.

The Grantee shall provide all subscribers and the Grantor written notice no less than thirty (30) days prior to any proposed change in these policies.

(b) Rates, programming service and channel position. The Grantee, under Normal Operating Conditions, shall provide all subscribers and the Grantor with notice of any change in rates, programming services, or channel position at least thirty (30) days prior to the change(s) through announcements on the Cable System and in writing.

(c) Billing. Bills will be clear, concise, understandable and shall include the Grantee's toll free or collect telephone number required by Section 29. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits. In case of a billing dispute, the Grantee must respond to a written complaint from a subscriber within thirty (30) days. Refund checks will be issued promptly, no later than either (i) the customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or (ii) the return of the equipment supplied by the Grantee if service is terminated. Credits for service shall be issued no later than the

customer's next billing cycle following the determination that a credit is warranted. Interest at prevailing rates must be credited to subscribers on all deposits required by the Grantee.

(d) Copies to Grantor. Copies of .. any notices provided to all subscribers shall be filed concurrently with the Grantor.

SECTION 33. QUALITY OF SERVICE.

The overall quality of service provided by Grantee to subscribers may be subject to evaluation by Grantor, not less often than once annually. In addition, Grantor may evaluate the quality of service at any time, based upon the number of subscriber complaints received by the Grantee, and the Grantor, and Grantee's response to those complaints. Grantor's evaluation that service quality is inadequate may lead to direction to Grantee to cure the inadequacies. Grantee shall commence corrective action within thirty (30) days after receipt of written notice. Failure to do so shall be deemed to be a breach of the franchise and subject to the remedies prescribed in this Article. Grantor, after due process, may utilize the performance bond and/or security fund provided for in this Article to remedy any such franchise breach.

SECTION 34. TENANT'S RIGHTS.

It is Grantor's intent that tenants not be discriminated against in the ability to subscribe to cable service. Grantee shall be required to provide service to tenants in individual units of a multiple housing facility with all services offered to other dwelling units within the franchise area, so long as the owner of the facility consents in writing, if requested by Grantee, to the following:

- (a) To Grantee's providing the service to units of the facility,
- (b) To reasonable conditions and time for installation, maintenance, and inspection of the system on the facility premises;
- (c) To reasonable conditions promulgated by Grantee to protect Grantee's equipment and to encourage widespread use of the system; and

(d) To not discriminate in rental charges, or otherwise, between tenants who receive cable service and those who do not.

SECTION 35. RIGHTS OF INDIVIDUALS.

(a) Discrimination Prohibited. Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, PEG access channel users, or general citizens on the basis of income, race, color, religion, national origin, age, gender, marital status or physical or mental disability. Grantee shall comply at all times with the Act and all other applicable Federal, State and local laws and regulations, and all executive and administrative orders relating to non-discrimination which are hereby incorporated and made part of this Ordinance by reference.

(b) Equal employment. Grantee shall strictly adhere to the equal employment opportunity requirements of Federal, State and local law and regulations in effect on the date of the franchise grant, and as amended from time to time.

(c) Personal information. The Grantee's policy with regard to personally identifiable information shall be consistent with Federal law.

(d) Equal accessibility. The entire system of the Grantee shall be operated in a manner consistent with the principle of fairness and equal accessibility of its facilities, equipment, channels, studios and other services to all citizens, ~~businesses,~~ public agencies and other entities having a legitimate use for the system, and no one shall be arbitrarily excluded from its use.

(e) Discontinuation of service

1. If a subscriber fails to pay any proper fee or charge for any service, the Grantee may discontinue said service, provided that the subscriber has been given no less than (15) days' prior, written notice of the intent to discontinue and such notice was given not less than forty-five (45) days after the due date of said fee or charge.

2. If the Grantee receives payment of all outstanding fees and charges, including any late charges, prior to the expiration of the fifteenth (15th) day after receipt transmittal of said notice from the Grantee, then the Grantee shall not discontinue said service. After any service has been discontinued, upon request of the subscriber accompanied by payment in full of all fees or charges due the Grantee and the payment of an appropriate reconnection charge, if any, the Grantee shall promptly reinstate said service.

3. Subscribers and users shall retain the right to deactivate their terminals, but shall continue to be responsible for charges until the Grantee is notified to terminate service. The subscriber shall not be charged any fee for the cancellation or downgrading of cable service.

SECTION 36. CONTINUITY OF SERVICE.

(a) Right to continuous service. It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify, or sell the system, or the Grantor gives notice of intent to terminate or fails to renew this franchise, the Grantee shall act so as to ensure that all subscribers receive continuous, uninterrupted service.

In the event of a change of Grantee, or in the event a new operator acquires the system, the original Grantee shall cooperate with the Grantor, new Grantee or operator in maintaining continuity of service to all subscribers. During such period, Grantee shall be entitled to the revenue for any period during which it operates the system, and shall be entitled to reasonable costs for its services when it no longer operates the system.

(b) Right of Grantor to operate system. In the event Grantee fails to operate the system for seven (7) consecutive days without prior approval of the Grantor or without just cause, the Grantor may, at its option, operate the system or designate an operator until such time as Grantee restores service under conditions acceptable to the Grantor or a permanent operator is selected. If the Grantor is required to fulfill this obligation for the Grantee,

then during such period as the Grantor fulfills such obligation, the Grantor shall be entitled to collect all revenues from the system, and the Grantee shall reimburse the Grantor for all reasonable costs or damages in excess of the revenues collected by the Grantor that are the result of the Grantee's failure to perform.

SECTION 37. IDENTIFICATION OF EMPLOYEES.

Every employee of the Grantee or its agents shall be clearly identified. All employees of Grantee shall display proper identification upon request of a subscriber. Every vehicle of the Grantee shall be similarly identified.

SECTION 38. RECORDS.

(a) Open books and records. The Grantee shall manage all of its operations in accordance with a policy of totally open books and records. The Grantor, upon reasonable notice, shall have the right to inspect at any time during normal business hours, all books, records, maps, plans, service complaint logs, performance test results and other like materials of the Grantee which relate to the regulation of the Franchise and are maintained at the local office required by Section 29, provided that the Grantor shall maintain the confidentiality of any trade secrets or other proprietary information in the possession of the Grantee and provided further, that records shall be exempt from inspection pursuant to this Section to the extent required by applicable law regarding subscriber privacy and to the extent such records are protected by law against discovery in civil litigation.

If any such books or records are not kept by the local office, or upon reasonable request made available to the Grantor, and if the Grantor shall determine that an examination of such records is necessary or appropriate to the performance of any of Grantor's duties, then Grantee shall make such records available locally.

(b) Required records. In any event the Grantee shall at all times maintain:

A. The complaint file required by Sections 29 and 47 herein,

B. A full and complete set of plans, records, and "as-built" maps showing the exact location of all Cable System equipment installed or in use in the franchise area, exclusive of subscriber service drops.

SECTION 39. REGULATORY AUTHORITY

The Grantor shall exercise regulatory authority under the provisions of this Article, the Act, and applicable law. If the franchise area served by the Cable System also serves other contiguous or neighboring communities, Grantor may, at its sole option, participate in a joint regulatory agency, with delegated responsibility in the area of cable and related communications.

SECTION 40. REGULATORY RESPONSIBILITY.

The Grantor, acting alone or acting jointly with other Grantors, may exercise or delegate the following regulatory responsibility:

- (a) Administering and enforcing the provisions of the Cable Communications System franchise(s),
- (b) Coordinating the operation of Public, Educational and Government (PEG) Access channel and facilities,
- (c) Providing technical, programming and operational support to public agency users, such as government departments, schools and health care institutions,
- (d) Establishing jointly with the Grantee, or as otherwise specified in the franchise agreement, procedures and standards for use of channels dedicated to public use and sharing of public facilities, if provided for in any franchise agreement,
- (e) Planning expansion and growth of public benefit cable services,
- (f) Analyzing the possibility of integrating cable communications with other local, State or national telecommunications networks,

(g) Formulating and recommending long-range telecommunications policy.

SECTION 41. PUBLIC USAGE OF THE SYSTEM.

If so specified in the franchise agreement, the Grantor may utilize a portion of the Cable Communication System capacity, and associated facilities and resources, to develop and provide non-commercial cable services that will be in the public interest. In furtherance of this purpose, the Grantor may establish a commission, public corporation, or other entity to receive and allocate PEG and institutional network facilities, support funds and other considerations provided by the Grantor, the Grantee, and/or others. Such an entity, if established, may be delegated the following responsibilities:

(a) Receive and utilize or reallocate for utilization, channel capacity, facilities, funding and other support provided specifically for PEG and institutional network usage of the Cable Communications System.

(b) Establish, jointly with the Grantee, operational procedures and guidelines for PEG and institutional network usage.

(c) Review the status and progress of each service developed for public benefit.

(d) Reallocate resources jointly with the Grantee on a periodic basis to conform with changing priorities and public needs.

(e) Report to the Grantor and the Grantee annually on the utilization of resources, the new public services developed and the benefits achieved for the Grantor and its residents.

SECTION 42. RATES.

The Grantee shall establish rates for its services that must be applied on a nondiscriminatory basis in the franchise area, except for commercial and bulk account rates, which are negotiated individually. Pursuant to federal law, the Grantor reserves the right to

assume regulation of rates paid by cable subscribers; such rate regulation shall be performed by the Ashland Cable Commission as advisory to the City Council in accordance with FCC Rules and Regulations "Part 76; Subpart N." As specified by the FCC's Rules (Part 76, Subpart N), such rate regulation shall cover Basic Service rates and customer premises Installations and equipment rates (equipment shall include, but not be limited to: converter boxes, remote control units, connections for additional television receivers and other cable home wiring). Grantor reserves the right to further regulate rates pursuant to any additional powers granted it by either the FCC or federal or state law.

SECTION 43. PERFORMANCE REVIEW

At Grantor's sole option, within ninety (90) days of the first anniversary of the effective date of each franchise, and each year thereafter throughout the term of the franchise, the Grantor may hold a public hearing at which the Grantee shall be present and shall participate to review the performance and quality of service of the Cable System. The report required in this Article regarding subscriber complaints, the records of performance tests and the opinion survey reports shall be utilized as the basis for review. In addition, any subscriber may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered.

(a) Performance report. Within thirty (30) days after the conclusion of the public hearing, Grantor shall issue a report with respect to the adequacy of system performance

and quality of service. If inadequacies are found, Grantor may direct Grantee to correct the inadequacies within a reasonable period of time.

(b) Breach upon failure to cure. Failure of Grantee, after due notice, to correct the inadequacies, shall be considered a breach of the franchise, and Grantor may, at its sole discretion, exercise any remedy within the scope of this Article considered appropriate.

SECTION 44. SYSTEM REVIEW.

To provide for technological, economic, and regulatory changes in the state of the art of cable communications, to facilitate renewal procedures, to promote the maximum degree of flexibility in the cable system, and to achieve a continuing, advanced modern system, the following system and services review procedures are hereby established:

(a) At Grantor's sole option, the Grantor may hold a public hearing on or about the third anniversary date of the franchise agreement at which the Grantee shall be present and shall participate, to review the cable communication system and service. Subsequent system and services review hearing may be scheduled by the Grantor each three (3) years thereafter.

(b) Sixty (60) days prior to the scheduled system and service review hearing, Grantee shall submit a report to Grantor indicating the following:

(1) All cable system services reported in cable industry trade journals that are being commonly provided on an operational basis, excluding tests and demonstrations, to communities in the State of Wisconsin with comparable populations, that are not provided to the Grantor.

(2) Any specific plans for provision of such new services by the Grantee, or a justification indicating why Grantee believes that such services are not feasible for the franchise area.

(c) Topics for discussion and review at the system and services review hearing shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, system performance, programming, subscriber

complaints, user complaints, rights of privacy, amendments to the franchise, undergrounding processes, developments in the law, and regulatory constraints.

(d) Either the Grantor or the Grantee may select additional topics for discussion at any review hearing.

SECTION 45. ANNUAL REPORTS.

Within one hundred twenty (120) days after the close of Grantees, fiscal year, the Grantee may be required to submit a written annual report, in a form requested by the Grantor, including, but not limited to, the following information:

(a) A summary of the previous year's (or, in the case of the initial report year, the initial year's) activities in development of the cable system, including, but not limited to, services begun or discontinued during the reporting year, and the number of subscribers for each class of service.

(b) A revenue statement, audited by an independent Certified Public Accountant, or certified by an officer of the Grantee;

(c) A statement of projected construction, if any, for the next two (2) years;

(d) A list of Grantee's officers, members of its council of directors, and other principals of Grantee;

(e) A list of stockholders or other equity investors holding five percent (5%) or more of the voting interest in the Grantee and its parent, subsidiary and affiliated corporations and other entities, if any, unless the parent is a public corporation whose annual reports are publicly available.

SECTION 46. SYSTEM SURVEY REPORTS.

At the Grantor's request, Grantee shall submit to the Grantor an annual system survey report which shall be a survey of the Grantee's plans and a report thereon. Said report

shall include, but not be limited to, a description and "as-built" maps of the portions of the franchise area that have been cabled and have all services available, an appropriate engineering test report or evaluation including suitable electronic measurements conducted in conformity with such requirements. Said report shall be in sufficient detail to enable the Grantor to ascertain that the service requirements and technical standards of the franchise are achieved and maintained.

SECTION 47. COMPLAINT FILE AND REPORTS.

An accurate and comprehensive file shall be kept by the Grantee of any and all complaints regarding the cable system. A procedure shall be established by the Grantee by the time of installation of the cable system to remedy complaints quickly and reasonably to the satisfaction of the Grantor. Complete records of Grantee's actions in response to all complaints shall be kept.

(a) A summary of service requests, identifying the number and nature of the requests and their disposition, upon Grantor request, shall be completed for each month and submitted to the Grantor by the tenth day of the succeeding month.

(b) A log and summary of all major service outages.

(c) If requested by the Grantor, the results of an opinion survey • report which identifies satisfaction or dissatisfaction among subscribers with cable communications services offered by the Grantee, shall be submitted to the Grantor no later than two (2) months after the end of Grantee's fiscal year. The survey required to make said report shall be in a form that can be transmitted to subscribers with one (1) or more bills for service, such as postage-paid self-addressed post cards. At the Grantor's option and expense, the Grantor may prepare the survey form and request its inclusion with a monthly bill to subscribers. The survey shall request only information over which Grantor has lawful jurisdiction.

SECTION 48. OTHER REPORTS AND INSPECTIONS.

In addition to other reports or inspections provided by this Article, Grantee shall provide the following reports to or permit the following inspections by Grantor:

(a) Copies of Federal and State reports. The Grantee may be required to submit to the Grantor copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by the Grantee to, as well as copies of all decisions, correspondence and actions by, any Federal, State and local courts, regulatory agencies and other government bodies relating to its cable television operations within the franchise area. Grantee shall submit such documents to the Grantor no later than thirty (30) days after receipt of a Grantor request.

(b) Public reports. A copy of each of Grantee's annual and other periodic public financial reports and those of its parent, subsidiary and affiliated corporation and other entities, as the Grantor requests, shall be submitted to the Grantor within thirty (30) days after receipt of a request.

(c) Miscellaneous reports. Grantee shall submit to the Grantor such other information or reports in such forms and at such times as the Grantor may reasonably request or require.

(d) Inspection of facilities. The Grantee shall allow the Grantor to make inspections of any of the Grantee's facilities and equipment during **normal business hours** upon at least ten (10) days notice, or in case of emergency, upon demand without prior notice, to allow Grantor to verify the accuracy of any submitted report.

(e) Public inspection. All reports subject to public disclosure shall be available for public inspection at a designated Grantor office during normal business hours.

(f) Failure to report. The willful refusal, failure or neglect of the Grantee to file any of the reports reasonably required, or such other reports as the Grantor reasonably may request, may be deemed a material breach of the franchise, and may subject the Grantee to all remedies, legal or equitable, which are available to the Grantor under the franchise or otherwise.

(g) False statements. Any materially false or misleading statement or representation made knowingly and willfully by the Grantee in any report required under the franchise, may be deemed a material breach of the franchise and may subject the Grantee to all remedies, legal or equitable, which are available to the Grantor under the franchise or otherwise.

(h) Cost of reports. One (1) copy of all reports and records required under this or any other Section shall be furnished at the sole expense of the Grantee.

SECTION 49. REMEDIES FOR FRANCHISE VIOLATIONS.

If the Grantee fails to perform any material obligation under the franchise, or fails to do so in a timely manner, the Grantor may at its option, and in its sole discretion:

(a) Assess against the Grantee monetary damages up to the limits established in the franchise agreement for material franchise violations, said assessment to be levied against the security fund if such fund is required by the franchise agreement, provided in this Article, and collected by Grantor after completion of the procedures specified in Section 50. The amount of such assessment shall be deemed to represent liquidation of damages actually sustained by Grantor by reason of Grantee's failure to perform. Such assessment shall not constitute a waiver by the Grantor of any other right or remedy it may have under the franchise or under applicable law, including without limitation, its right to recover from Grantee such additional damages, losses, costs and expenses, including actual attorney fees, as may have been suffered or incurred by Grantor by reason of or arising out of such breach of the franchise. This provision for assessment of damages is intended by the parties to be separate and apart from Grantor's right to enforce the provisions of the construction and performance bonds provided for in this Article and is intended to provide compensation to Grantor for actual damages.

(b) Terminate the franchise, for any of the causes stated in this Article.

(c) No remedy shall be imposed by Grantor against Grantee for any violation of the franchise without Grantee being afforded due process of law, as provided for in Section 50.

(d). The fine for certain violations of the franchise shall be as set forth below and the Grantor may determine the amount of the fine for other violations which are not specified in a sum not to exceed \$500 per day.

(1) Failure to furnish, maintain, or offer all cable services to any potential subscriber within the City upon order of the Grantor: Fifty dollars (\$50.00) per day, per violation, for each day that such failure occurs or continues;

(2) Failure to obtain or file evidence of required insurance, construction bond, performance bond, or other required financial security: Two hundred dollars (\$200.00) per day, per violation, for each day such failure occurs or continues;

(3) Failure to provide access to data, documents, records, or reports to the Grantor as required: One hundred dollars (\$100.00) per day, per violation, for each day such failure occurs or continues;

(4) Failure to comply with applicable construction, operation, or maintenance standards: Three hundred dollars (\$300.00) per day, per violation, for each day such failure occurs or continues.

(5) Failure to comply with a rate decision or refund order: Five hundred dollars (\$500.00) per day, per violation, for each day such violation occurs or continues.

Grantor may impose any or all of the above enumerated measures against Grantee, which shall be in addition to any and all other legal or equitable remedies it has under the franchise or under any applicable law.

SECTION 50. PROCEDURE FOR REMEDYING FRANCHISE VIOLATIONS.

In the event that the Grantor determines that the Grantee has violated any material provision of the franchise, the Grantor may make a written demand on the Grantee stating the exact nature of the alleged violation, and requesting that Grantee remedy such violation. If the violation is not remedied, or in the process of being remedied, to the satisfaction of the Grantor

within thirty (30) days following such demand, the Grantor shall determine whether or not such violation by the Grantee was excusable, in accordance with the following procedures.

(a) An administrative hearing shall be held to review the alleged violation. If this hearing does not result in a satisfactory resolution, and/or the Grantee requests a public hearing, then a public hearing shall be held, and the Grantee shall be provided with an opportunity to be heard upon thirty (30) days written notice to the Grantee of the time and the place of the hearing provided and the allegations of franchise violations.

(b) If, after notice is given and, at the Grantee's option, a full public proceeding is held, the Grantor determines that such violation by the Grantee was excusable as provided in Section 51 below, the Grantor shall direct the Grantee to correct or remedy the same within such additional time, in such manner and on such terms and conditions as the Grantor may reasonably direct.

(c) If, after notice is given and, at the Grantee's option, a full public proceeding is held, the Grantor determines that such violation was inexcusable, then the Grantor may impose a remedy in accordance with Section 49.

SECTION 51. EXCUSE OF NONPERFORMANCE.

In the event Grantee's performance of any of the terms, conditions, obligations, or requirements of the franchise is prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof, provided Grantee has notified Grantor within a reasonable time after Grantee's discovery of the occurrence of such an event. Such causes beyond Grantee's reasonable control or not reasonably foreseeable shall include, but shall not be limited to, Acts of God and civil emergencies.

SECTION 52. CONSTRUCTION BOND.

(a) Requirement of bond Within thirty (30) days after the granting of a new franchise, or a renewal which requires significant system construction, and prior to the commencement of any construction work by the Grantee, the Grantee shall file with the Grantor a construction bond in the amount specified in the franchise agreement in favor of the Grantor and any other person who may claim damages as a result of the breach of any duty by the Grantee assured by said bond.

(b) Form of bond. Such bond as contemplated herein shall be in the form approved by the Grantor and shall, among other matters, cover the cost of removal of any properties installed by the Grantee in the event said Grantee shall default in the performance of its franchise obligations.

(c) No limitation on liability. In no event shall the amount of said bond be construed to limit the liability of the Grantee for damages.

(d) Waiver of bond. Grantor, at its sole option, may waive this requirement, or permit consolidation of the construction bond with the performance bond and security fund specified, respectively in Sections 53 and 54.

(e) Release of bond. Upon completion of construction, any construction bonds then in force shall be released.

SECTION 53. PERFORMANCE BOND.

(a) Requirement of bond. In addition to the construction bond set forth in Section 50, Grantee may be required, at least thirty (30) days prior to the commencement of operation, to file with the Grantor a performance bond in the amount specified in the franchise agreement in favor of the Grantor and any other person who may be entitled to damages as a result of any occurrence in the operation or termination of the Cable System operated under the franchise agreement, and including the payment required to be made to the Grantor hereunder.

(b) Form of bond. Such bond as contemplated herein shall be in the form approved by the Grantor.

(c) No limitation of liability. In no event shall the amount of said bond be construed to limit the liability of the Grantee for damages.

SECTION 54. SECURITY FUND.

(a) Requirement of fund. Within thirty (30) days after the effective date of the franchise, the Grantee may be required to deposit into a bank account established by the Grantor, and maintain on deposit through the term of this franchise, the sum specified in the franchise agreement, as security for the faithful performance by it of all the provisions of the franchise, and compliance with all the orders, permits' and directions of any agency of the Grantor having jurisdiction over its acts or defaults under this Article, and the payment by the Grantee of any claims, liens and taxes due the Grantor which arise by reason of the construction, operation or maintenance of the system.

Subject to the provisions of (d) below, the security fund may be assessed by the Grantor for purposes including, but not limited to, the following:

(1) Failure of Grantee to pay Grantor sums due under the terms of the franchise.

(2) Reimbursement of costs borne by the Grantor to correct franchise violations not corrected by Grantee after due notice.

(3) Monetary remedies or damages assessed against Grantee due to **default** or violation of franchise **requirements**.

(b) Form of fund. At Grantor's sole option, some portion of the security fund may be provided in the acceptable form of an irrevocable letter of credit, in lieu of a cash deposit.

(c) Deposits to fund. Within thirty (30) days after notice to it that any amount has been withdrawn by the Grantor from the security fund, pursuant to Subsection (a) of this Section, the Grantee shall deposit a sum of money sufficient to restore such security fund to the amount required by the franchise agreement.

(d) Withdrawals from fund. If the Grantee fails, after thirty (30) days written notice to pay to the Grantor any franchise fee or taxes due and unpaid; or, fails to pay to the Grantor within such thirty (30) days, any damages, costs or expenses which the Grantor shall be compelled to pay by reason of any act or default of the Grantee in connection with the franchise; or fails, after thirty (30) days notice of such failure by the Grantee to comply with any material provision of the franchise which the Grantor reasonably determines can be remedied by an expenditure of the security fund, the Grantor may thereafter withdraw the amount thereof, and any penalties, from the security fund. Upon such withdrawal, the Grantor shall notify the Grantee of the amount and date thereof.

(e) Rights to fund. The security fund deposited pursuant to this Section shall become the property of the Grantor in the event that the franchise is revoked for cause by reason of the default of the Grantee in accordance with the procedures of this Article. The Grantee, however, shall be entitled to the return of such security fund, or portion thereof, as remains on deposit no later than ninety (90) days after the expiration of the term of the franchise provided that there is then no outstanding default on the part of the Grantee. The Grantee shall be entitled to any interest accrued on the cash portion of the security fund.

(f) Rights of Grantor. The rights reserved to the Grantor with respect to the security fund are in addition to all other rights of the Grantor whether reserved by this Article or authorized by law, and no action, proceeding or exercise of a right, with respect to such security fund shall constitute an election of remedies or a waiver of any other right the Grantor may have.

SECTION 55. WORK PERFORMED BY OTHERS

(a) The Grantee shall give prior notice to the Grantor specifying the names and addresses of any entity, other than the Grantee, that performs construction services in excess of \$10,000 per project pursuant to the Franchise, provided, however, that all provisions of the Franchise remain the responsibility of the Grantee.

(b) All provisions of a Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of the Franchise.

(c) Nothing in this section shall be construed as allowing the transfer of any rights or responsibilities of the Grantee without Grantor approval.

SECTION 56. GRANTEE INSURANCE.

(a) Insurance required. The Grantee shall maintain throughout the term of the franchise, insurance in amounts at least as follows:

(1) Worker's Compensation Insurance. Workers' Compensation with Coverage A at statutory limits and Coverage B at limits of ~~\$500,000/\$500,000/\$500,000~~. Insurance shall cover the employees of the grantee in compliance with the State of Wisconsin and all other states having jurisdiction over each employee.

(2) Comprehensive General Liability. Comprehensive General Liability including Premises/Operations; Products/Completed Operations; Broad Form Property Damage; Contractual Liability; Coverage for Explosion, Collapse and Underground Hazards; and Pollution Control Liability. The limits shall not be less than ~~\$500,000~~ for bodily injury (including death) and property damage for each occurrence and not less than \$500,000 in the aggregate.

(3) Comprehensive Automobile Liability. Comprehensive Automobile Liability including owned, non-owned and hired vehicles with limits of not less than \$500,000 for bodily injury (including death) and property damage for each occurrence.

(4) Umbrella Liability. Umbrella Liability with limits of not less than \$8,000,000 with coverage subject to the following:

"It is hereby understood and agreed that despite anything to the contrary where underlying insurance, as described herein, provides greater protection or indemnity to the

insured than the terms and conditions of this policy, this insurance shall pay on behalf of the insured the same terms, conditions and coverages which apply to the basic underlying insurance. Where no such broader underlying insurance exists, this policy shall pay on behalf of the insured upon terms and conditions and limitations of the carrier's umbrella excess policy."

(b) Certificates to Grantor. The Grantee shall furnish the Grantor with copies of such insurance policies or certificates of insurance.

(c) Grantor as additional insured. Such insurance policies provided for herein shall name the Grantor, its officers, boards, commissions, agents, and employees as additional insured, and shall be primary to any insurance carried by Grantor, and shall contain the following endorsement:

"It is hereby understood and agreed that this insurance policy may not be canceled by the surety or the intention not to renew be signed by the surety until thirty (30) days after receipt by the Grantor by registered mail of written notice of such intention to cancel or not to renew."

(d) No limitation on liability. The minimum amounts set forth in the franchise agreement for such insurance shall not be construed to limit the liability of the Grantee to the Grantor under the franchise issued hereunder to the amount of such insurance.

(e) Approved insurers. All insurance carriers providing coverage under (a) above, shall be duly licensed to operate in the State of Wisconsin.

SECTION 57. INDEMNITY.

(a) Extent of indemnity. The Grantee shall, by acceptance of any franchise granted, indemnify, defend and hold harmless the Grantor, its officers, boards, commissions, agents, and employees from any and all claims, suits, judgments, for damages or other relief, costs and attorneys, fees in any way existing out of or through or alleged to arise out of or through:

(1) The act of the Grantor in granting the franchise.

(2) The acts or omissions of Grantee, its servants, employees, or agents including, but not limited to, any failure or refusal by Grantee, its servants, employees or agents to comply with any obligation or duty imposed on Grantee by this Article or the franchise agreement.

(3) The exercise of any right or privilege granted or permitted by this Article or the franchise agreement.

Such indemnification shall include, but not be limited to, all claims arising in tort, contract, infringements of copyright, violations of statutes, ordinances or regulations or otherwise.

(b) Defense of claims. In the event any such claims shall arise, the Grantor or any other indemnified party shall tender the defense thereof to the Grantee. Provided, however, that the Grantor in its sole discretion may participate in the defense of such claims at its expense, and in such event, Grantee shall not agree to any settlement of claims without Grantor approval.

(c) Grantor's negligence. The Grantee shall not be required to indemnify the Grantor for negligence or willful misconduct on the part of Grantor's officials, boards, commissions, agents or employees.

SECTION 58. ALTERNATIVE REMEDIES.

No provision of this Ordinance shall be deemed to bar the right of the Grantor to seek or obtain judicial relief from a violation of any provision of the franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Ordinance, nor the exercise thereof, shall be deemed to bar or otherwise limit the right of the Grantor to recover monetary damages, (including all dispute related expenses such as attorneys' fees and except where liquidated damages are otherwise prescribed) for such violation by the Grantee, or judicial enforcement of the Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other judicial

remedy available at law or in equity. All judicial action sought for a violation of any provision of the franchise or any rule, regulation, requirement or directive promulgated thereunder shall be commenced in the Ashland County Circuit Court.

SECTION 59. NONENFORCEMENT.

Subject to the provisions of the Act, a grantee shall not be relieved of any obligation to comply with any of the provisions of the franchise or any rule, regulation, requirement or directive promulgated thereunder by reason of any failure of the Grantor or its officers, agents or employees to enforce prompt compliance nor shall such be considered a waiver thereof.

SECTION 60. COMPLIANCE WITH LAW.

Notwithstanding any other provisions of the franchise to the contrary, the Grantee shall at all times comply with all laws and regulations of the State and Federal government or any administrative agencies thereof. Provided, however, if any such State or Federal law or regulation shall require the Grantee to perform any service, or shall permit the Grantee to perform any service, or shall prohibit the Grantee from performing any service, in conflict with the terms of the franchise or any law or regulation of the Grantor, then as soon as possible following knowledge thereof, the Grantee shall notify the Grantor of the point of conflict believed to exist between such regulation or law and the laws or regulations of the Grantor or the franchise.

SECTION 61. UNAUTHORIZED RECEPTION. USE OR SALE OF CABLE SERVICES.

(a) It shall be unlawful for any person to lawfully obtain any cable signal or service from a Grantee of the Grantor and to resell such cable signal or service without the prior written consent of such Grantee.

(b) It shall be unlawful for any person to intercept, descramble, decode, or receive or assist in the interception, descrambling, decoding or receiving of any cable signal or service of a Grantee of the Grantor without the prior written consent of such Grantee. As used in this subsection "assist in interception, descrambling, decoding or receiving" shall include the manufacture or distribution of equipment intended by the manufacturer or distributor for . unauthorized reception of cable signal or service.

(c) It shall be unlawful for any person to intentionally damage any cables, lines or equipment of any Grantee of the Grantor used in or for the purpose of transmitting cable signals or service.

(d) It shall be unlawful for any person to obtain cable signals or service from any Grantee of the Grantor by means of fraud, deceit or theft.

SECTION 62. CONFLICTING ORDINANCES REPEALED.

This ordinance shall repeal Ordinance 863 (748).

SECTION 63. SEVERABILITY.

Any section or provision of this ordinance that is construed to be invalid or void, shall not affect the remaining sections or provisions which shall remain in full force and effect.

SECTION 64. WAIVER OR EXEMPTION.

The Grantor reserves the right to waive provisions of this ordinance, or exempt a Grantee from meeting provisions of this ordinance, if the Grantor determines such waiver or exemption is in the public interest.

SECTION 65. SECTION TITLES.

The underlined section titles appearing in this ordinance are used solely for convenience and are not intended to affect the meaning of the ordinance.

SECTION 66. EFFECTIVE DATE.

This ordinance shall be effective upon the passage, approval and publication in pamphlet form as provided by law.