

CHAPTER 22

CABLE COMMUNICATIONS SYSTEM

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CABLE COMMUNICATIONS [#403 8/27/96]

22.01 PURPOSE. It is the purpose of this chapter to establish the terms upon which the City may grant a franchise to construct, maintain and operate a cable television system in the City, and to set forth the respective obligations and rights of the City as grantor of a cable television franchise and the grantee of the cable franchise.

22.02 DEFINITIONS. For the purpose of this chapter, the following terms, phrases and words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number.

(1) **ADDITIONAL SERVICE.** A subscriber service provided by a grantee for which a special charge is made based on program or service content, time or spectrum space usage.

(2) **ANNUAL GROSS SUBSCRIBER REVENUES.** Revenues derived directly or indirectly by a grantee, its affiliates or subsidiaries, or any persons or entities in which a grantee has a financial interest of 5% or more, from or in connection with the operation of a Kiel cable system including, but not limited to, basic or extended basic subscriber service monthly fees, leased channel fees, converter rentals, studio rental, production equipment rental and advertising revenues.

(3) **BASIC SERVICE.** All subscriber services provided by the grantee, including the delivery of broadcast signals and programming originated over the cable system, covered by the regular charge paid by all subscribers.

(4) **CABLE TELEVISION CHANNEL.** A frequency band 6 MHz in width within which a standard television broadcast signal is delivered by cable to a subscriber terminal.

(5) **CABLE COMMUNICATIONS COMMITTEE.** A Committee of the City appointed by the Mayor on an annual basis, with approval of the nominations of members to be required by the City Council.

(6) **CABLE COMMUNICATIONS SYSTEM (CCS).** Any network of cables, optical, electrical or electronic equipment used for the purpose of transmission of electrical impulses of television, radio and other intelligences, either analog or digital, for sale or use by the inhabitants of the City.

(7) **CABLE COMMUNICATIONS SYSTEM CHANNEL CAPACITY.** The highest total number of cable television channels on which television signals from

separate sources may be delivered downstream simultaneously to every subscriber in the system. The system may have additional channel capacity for specialized or discrete purposes, but the technical performance specified shall not be materially degraded thereby.

(8) CHANNEL FREQUENCY RESPONSE. The relationship, within a cable television channel, as measured at a subscriber terminal between amplitude and frequency of a constant-amplitude input signal at all specified frequencies within each channel.

(9) CITY. The City of Kiel or the area within the corporate limits of the City and such territory outside of the City over which the City has jurisdictional control by virtue of constitutional or charter provisions, or any law. The term City shall include any areas hereafter incorporated within the corporate limits of the City as of the time of such incorporation.

(10) COMMENCE OPERATION. When sufficient distribution facilities have been installed so as to permit the offering of "full system service" to at least 25% of the dwelling units located within the designated "service area".

(11) CITY COUNCIL. The governing body of the City or any successors to the legislative powers of that body.

(12) FCC. The Federal Communications Commission and any legally appointed or elected successor thereof.

(13) FRANCHISE. The right, privilege and authority granted by the City to construct, maintain and operate a cable communications system within the City.

(14) FRANCHISE FEE OR PAYMENT. Includes any tax, fee or assessment the City imposes on the grantee solely because of the grantee's status as such. The term "franchise fee" or "franchise payment" does not include:

(a) 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 the grantee);

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

(c) 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

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

(15) FULL SYSTEM SERVICE. All “basic services” and “additional services” offered by the grantee.

(16) GRANTEE. Any firm, corporation or other entity to which the City grants a franchise to construct, maintain and operate a cable communication system within the City, and any lawful successor or assignee of the franchise recipient, the succession of or assignment to which the City has duly approved.

(17) GRANTEE’S PROPOSAL. Incorporates “Applicant Questionnaire” and “Supplement to Application”, both submitted to the City Administrator.

(18) NORMAL BUSINESS HOURS. Those hours between 8 a.m. and 5 p.m., Monday through Friday, plus at least one night from 5 p.m. until 8 p.m. and at least four hours on the weekend.

(19) NORMAL OPERATING CONDITIONS. Those conditions affecting service within the control of the grantee. Those conditions presumed to be outside normal operating conditions include natural disasters, human-caused disasters and civil disturbances, power or telephone outage, and severe or unusual weather conditions where such conditions reasonably limit the grantee’s ability to provide service. Those conditions presumed to be within normal operating conditions include special promotions, pay-per-view events, rate increases, regular or seasonal demand periods and maintenance, rebuilding or upgrading of the cable system.

(20) SERVICE AREA. The geographical area within the incorporated limits of the City.

(21) SERVICE OUTAGE. The loss of signal for one or more channels which continues for a period of 4 or more continuous hours.

(22) STREET. Includes all streets, roadways, highways, avenues, lanes, alleys, courts, places, squares, curbs, sidewalks, easements, rights-of-way or other public ways in the City which have been or may hereafter be dedicated and open to public use, or such other public property so designated by law.

(23) SUBSCRIBER. Any person, firm, company, corporation, partnership, or association receiving either “basic service” or “additional service” from a grantee under a schedule of charges filed with and approved by the City.

(24) **SUBSTANTIALLY COMPLETED.** An operation will be considered substantially completed when sufficient distribution facilities have been installed so as to permit the offering of “full system service” to at least 75% of the dwelling units in the City to which access is legally and reasonably available.

(25) **USER,** A person utilizing a channel for purposes of production or transmission of material, as contrasted with receipt thereof, in a subscriber capacity.

22.03 RIGHTS AND PRIVILEGES. (1) The City may grant the right, privilege and franchise to construct, operate and maintain a CCS in the City to a grantee which meets the qualifications for a franchise recipient established by the City for a period not to exceed 15 years, subject to the rights, obligations, conditions and restrictions hereinafter provided. A franchise so granted shall be designed to give to the grantee the right and privilege to construct, erect, operate, modify and maintain in, upon, along, across, above, over and under streets which have been or may hereafter be dedicated open to public use in the City, towers, antennas, poles, cables, electronic equipment and other appurtenances necessary for the operation of a CCS in the City, utilizing wherever possible existing facilities, with the right, upon application to the Superintendent of the Electrical Utility of the City, to set such poles and other equipment on new facilities constructed by the grantee. The Superintendent of the Electrical Utility will not unreasonably refuse permission for construction, but the City hereby signifies that it is City policy that poles not be unreasonably proliferated within the City and that aesthetic concerns be taken into account whenever placement of equipment is undertaken or considered. The right and privilege of a grantee to construct, erect, operate, modify and maintain equipment as set forth above shall be subject to the requirements of the subdivision and zoning regulations of the City and all other existing City ordinances.

(2) The City shall require all developers of future subdivisions, when making provisions for or restrictions of utilities in their subdivision plat, to include cable communications services.

22.04 CONDITIONS OF FRANCHISE. A grantee shall be subject to the following restrictions and conditions with regard to the operation of the CCS, which conditions and restrictions shall be in addition to any other provisions of this Municipal Code.

(1) Cables, wires and other equipment in connection with such system shall only be installed and operated on or under the public rights-of-way upon the poles or in underground conduit and equipment of the existing utilities within the City, and their successors or assigns, where conduits exist and where space in installed conduits is available. Installation of any additional poles, conduits or

other equipment for the installation of cables, wires and other overhead and underground equipment in public rights-of-way in connection with the system shall be subject to the authorization of the City Council or its designated representative. The City Council may consider the suggestions of the utility companies servicing or planning to serve the area for which location of additional poles or equipment is proposed. It is the City's policy that underground installations shall always be preferred; however, the City may grant the grantee permission to construct its plant aerial so long as there is at least one utility aerial.

(2) All wires, cables and other underground or overhead equipment shall be located as may be required of telephone companies or power lines by the Public Service Commission. All equipment shall be grounded in the same manner as required by the State Electrical Code for electrical services existing on the date of installation of any equipment.

(3) A grantee shall pay all costs incurred by the City if it becomes necessary to restore public rights-of-way as a result of the grantee's construction of its system or its operation. The grantee and the City shall coordinate the restoration of the public rights-of-way if it becomes necessary for the grantee to open or otherwise serve public rights-of-way.

(4) A grantee shall, at its own expense, protect, support, temporarily or permanently disconnect, relocate in the same public right-of-way or remove from any public right-of-way any property owned or used by the grantee if required to do so by the City for reason of traffic conditions, public safety, vacating of streets, street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, tracks or any other type of structures or improvements by governmental agencies when acting in a governmental capacity. The City shall provide a grantee with notice of its intention to make changes which might otherwise cause the grantee expense pursuant to this paragraph and the grantee shall have an opportunity to comment. A grantee shall obtain pole- or conduit-use agreements from the gas, electric and telephone companies maintaining poles or conduits in streets of the City whenever the grantee finds it necessary to make use of these poles or conduits.

(5) A grantee shall, upon the request of any person holding a building moving permit issued by the City, temporarily raise or lower its lines or disconnect or take them down to permit the moving of buildings. The expense of such removal, raising or lowering of wires shall be paid by the person requesting the same, and the grantee shall be given not less than 3 working days' advance notice to arrange for such temporary wire changes.

(6) All installations of cables and incidental equipment by a grantee shall

comply in all respects with all laws, ordinances, rules and regulations of the FCC, the State or any agency or department thereof, and the City or any agency or department thereof, now or hereafter in effect.

(7) A grantee shall provide and maintain its equipment in such condition and of such quality that none of its services will adversely affect radio and television reception.

(8) Installation and maintenance of equipment by a grantee shall be such that standard color signals shall be transmitted with reasonable fidelity to all subscribers.

(9) A grantee shall not directly or indirectly require of any subscriber the patronage of any designated person or company engaged in the servicing or repair of television receivers. This shall not apply to the repair or adjustment of equipment which is part of the system of the grantee.

(10) A grantee shall submit to inspections by authorized personnel of the City and shall make available to such inspectors or authorized personnel its facilities and equipment wherever situated. The City reserves the right to enact reasonable regulations regarding the installation and maintenance of the facilities of a grantee.

(11) The City or any assignee thereof shall have the right during the life of this franchise, free of charge, to install and maintain upon the fixtures and conduits of a grantee within the City limits, wire and appropriate attachments necessary for a security and fire alarm system. Such wire and fixtures shall be constructed and maintained to the satisfaction of the grantee and in accordance with its specifications.

(12) The City, in its use and maintenance of such wires and attachments as it may install pursuant to sub. (11) above, shall at all times comply with the rules and regulations of the grantee so that there may be a minimum danger of contact or conflict between the wires and fixtures of the grantee and the wires and attachments used by the City.

(13) A grantee shall have the authority to trim trees upon and overhanging public rights-of-way of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the grantee, except that at the option of the City, such trimming may be done by it or under its supervision and direction.

(14) Anything contained herein to the contrary notwithstanding, the award of a franchise by the City under the terms established by this chapter shall not

impart to a grantee any right of property in or on City-owned property.

22.05 FUNCTIONS OF THE CABLE COMMUNICATIONS COMMITTEE. A Cable Communications Committee is established consisting of five members with two members representing governmental users and 3 persons chosen at large to be representative of the community; all 5 members to be appointed by the mayor annually subject to approval of the City Council. The duties of the Committee shall be the following:

- (1) Make recommendations to the grantee of the CCS and to the users of the public, educational and governmental access channels.
- (2) Insure that the grantee makes the public access channel available to all residents of the City on a nondiscriminatory basis and advise the grantee on procedural rules for this purpose.
- (3) Assure that the operation of the public access channel be free of program censorship.
- (4) Make recommendations to the grantee and City Council regarding the quality of services and programs.
- (5) Plan and develop production and programming on dedicated access channels.
- (6) Prepare and submit an annual budget for public access programming.
- (7) Allocate funds it deems necessary to assist production and programming on the public access channels.
- (8) Perform such other duties and functions as may be assigned from time to time by the City Council.

22.06 FRANCHISE APPLICATION. Prior to the granting of a franchise under this chapter, a grantee shall file with the City Administrator an application (original and four copies) containing the following information and provisions:

- (1) The name and business address of the applicant, date of application and signature of applicant or appropriate corporate officer.
- (2) Payment of a nonrefundable filing fee of \$500.
- (3) Providing of a proposal bond or certified check for \$10,000 as set forth in Section 22.19.
- (4) A general description of the applicant's proposed operation in the

service area and in other areas within the State, including but not limited to business hours, operating staff, maintenance procedures beyond those required in this chapter, management and marketing staff complement and procedure, and, if available, the rules of operation for public access.

(5) A statement of the television and radio services to be provided including both off-the-air and locally originated signals.

(6) A statement setting forth a description of the automated services proposed and a description of the production facilities to be made available by the grantee for the public, municipal and educational channels required to be made available under this chapter or by the Federal Communications Commission.

(7) A statement establishing any additional funding, facilities, equipment or personnel beyond those required elsewhere to be designated to effect and promote local programming development. It is understood that the foregoing shall be available without charge to all on a fair and nondiscriminatory basis and may be used by the grantee as well. Such funding and services shall be contingent upon a special showing, where required, that the proposed uses are consistent with the regulatory program of the FCC.

(8) A statement of the applicant's proposed Schedule of Charges for service to be provided under its franchise.

(9) A statement detailing the organizational form of the applicant, including the number of authorized and outstanding shares of applicant's stock, and the names and addresses of officers and directors and of the corporate shareholders, partners or members who individually or in concert have an ownership interest of 5% or more of the applicant.

(10) A statement describing all of the applicant's intracompany relationships, including parent, subsidiary or affiliated companies.

(11) A statement setting forth all agreements and understandings, whether written or oral existing between the applicant and any other person with respect to any franchise awarded hereunder and the conduct of the operation thereof existing at the time of submittal of the proposal.

(12) If the applicant is a corporation, audited financial statements for the 2 previous fiscal years. If the applicant is a partnership or a limited liability company, copies of the "U.S. Partnership Return of Income" (IRS Form 1065) for the 2 previous fiscal years. If the applicant is a sole proprietorship, copies of "U.S. Individual Tax Return" (IRS Form 1040) for the 2 previous fiscal years. The applicant shall also provide a copy of a Board of Directors resolution authorizing

the obtaining and expenditure of such funds as are required to construct, install and operate the CCS contemplated by the applicant for the City. The applicant shall also provide a copy of its most recent annual report.

(13) A 10-year operations proforma which shall include the initial and continuing plant investment, annual profit and loss statements detailing income and expenses, annual balance sheets and annual levels of subscriber penetration. Costs and revenues anticipated for voluntary services shall, if presented, be incorporated in the program as required in this chapter, but shall be separately identified in the proforma.

(14) A suitable written statement from a recognized lending or funding institution or agency, addressed both to the applicant and the City, advising that the applicant's financial ability and planned operation have been analyzed by the institution or agency and that the institution or agency is prepared to make such funds as the applicant may require available if the applicant is awarded a franchise by the City.

(15) A brief technical description of the type of system proposed for use by the applicant.

(16) A statement from the applicant's senior technical staff member or consultant advising that he has reviewed the CCS description, the CCS technical standards, performance measurements, channels to be provided, service standards, continuation standards and conditions of street occupancy and that the applicant's planned CCS and operations in these respects will meet all the requirements established by this chapter.

(17) A statement of existing pending and proposed franchises held or applied for by the applicant or which the applicant proposes to apply for, indicating as applicable when the franchises were issued and when the systems were constructed and the present state of the system or application in each respective governmental unit, together with the name, address and telephone number of a responsible governmental official knowledgeable of the applicant.

(18) A statement as to whether the applicant or any of its officers or directors or holders of 5% or more of its voting stock has, in the past 10 years, been convicted of or has charges pending for any crime other than a routine traffic offense, together with a statement of the disposition made in any such case.

(19) A statement detailing the prior cable television experience of the applicant including that of the applicant's officers, management and staff to be associated with the proposed operation.

(20) If an application is for renewal of a franchise, the proposal shall include, in addition to the information required in subs. (1) through (19) above, the following:

(a) A summary of the technical, financial and programming history of the network since the granting of the original franchise.

(b) A statement and timetable that outlines all proposed changes, expansion or improvements in the system as to services, programming or technical specifications during the following 5-year period.

(21) A statement setting forth the applicant's agreement to conform to all of the provisions of this chapter. The City may require such supplementary information as the City deems reasonably necessary for its determinations. Modifications, deletions, additions or amendments to the application shall be considered only if specifically requested by the City. Specific permission to operate a CCS under the provisions of this chapter may be granted by the City Council to any grantee after a review of the legal, character, financial and technical qualifications and the adequacy and feasibility of the grantee's construction arrangements and after the City Council has approved the grantee's qualifications as a part of a public proceeding affording due process.

22.07 FRANCHISE TERM, REVIEW AND RENEWAL. (1) The term of any franchise issued by the City shall be for a period of up to 15 years and shall be in full force and effect for the term set, subject to the provisions of this chapter.

(2) On or about the 2nd, 5th and 10th anniversaries, of the effective date of a franchise, the City shall schedule a public meeting or meetings with the grantee to review the franchise performance, plans and prospects. Specifically the City will inquire whether the grantee is supplying a level and variety of services equivalent to those being generally offered at the same time in the industry and in comparable market situations. If the grantee desires to change or modify its obligations, it may negotiate with the City Council to do so at that time. Within 60 days of the conclusion of the review, the City and the grantee shall report in a public hearing the result of their review and their conclusions. The City Council may then order unilateral changes in the franchise rights and obligations of the CCS where the changes do not adversely affect the economic viability of the cable communications franchise or adversely affect programming and maintenance services to subscribers. Disputes hereunder are to be resolved by arbitrators, one to be selected by each party and a third to be selected by the other two. The decision of the arbitrators shall be final. The arbitrators are to base their decisions on what is fair and equitable to both the City and the grantee, as well as to subscribers and the residents of the City in general.

(3) The grantee shall make available specified records, documents and

information concerning the operation of the franchise for the purpose of these meetings. Topics for review at the said meetings shall include, but not be limited to, the following: services, rate structure, free or discounted services, use and availability of new technologies, subscriber complaints, user complaints, programming and any amendments which may be proposed to the franchise terms.

(4) The City shall determine whether to renew a franchise granted under this ordinance in the event that the grantee files a written request for such a renewal. The grantee shall submit such a request no sooner than 36 months before the expiration of the franchise. At the time of such request, the City may revise this ordinance, reevaluate the needs of the community for cable service, and review the performance of the grantee. The City may grant a franchise renewal for a term to be negotiated between the City and the grantee, but in no event for more than 15 years.

(5) To the extent that federal cable communications legislation permits, the City in its sole discretion and judgment shall have the right to grant, deny or conditionally grant renewal of a franchise, provided that the City shall not unreasonably condition the renewal. The conditions the City 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; acceptance of any updated ordinance; and acceptance of any updated franchise agreement.

22.08 COMPLETION OF CONSTRUCTION AND EXTENSION OF SYSTEM.

(1) A grantee shall initiate construction and installation of its CCS within 6 months of receiving necessary authority from the FCC, including microwave licenses and a Certificate of Compliance, and within 18 months the grantee shall commence operations. The grantee shall have substantially completed construction within the franchise area within 24 months of the effective date of the grant of the franchise by the City.

(2) The City may, in its discretion, extend the time for a grantee, acting in good faith, to perform any act required hereunder. The time for performance shall be extended or excused for any period during which a grantee demonstrates to the satisfaction of the City Council that the grantee is being subjected to delay or interruption due to any of the following circumstances if reasonably beyond its control:

- (a) Necessary utilities rearrangements or pole changeouts.
- (b) Governmental or regulatory restrictions.

- (c) Labor strikes.
- (d) Lockouts.
- (e) War.
- (f) National emergencies.
- (g) Fire.
- (h) Other acts of God.

(3) A grantee shall extend the CCS so as to provide full system service to all residents within the City limits. For newly annexed areas and new subdivisions the grantee shall extend service when the density reaches 15 houses per lineal mile.

(4) A grantee shall be allowed to furnish service to areas other than the City, provided that the construction or provision of the services to areas other than the City does not prohibit, impede or delay the substantial completion date of the system in the City.

22.09 FRANCHISE CHARACTERISTICS. (1) The franchise shall not be exclusive and the City reserves the right to grant a similar franchise to any person, firm, partnership, company, corporation or association at any time.

(2) The scope of the franchise shall be amenable from time to time allowing the grantee to innovate and implement new services and technology; provided, however, that no such services or technological development be implemented without the express prior approval of the City Council.

(3) No privilege or exemption shall be inferred from the granting of the franchise unless it is specifically prescribed.

(4) Nothing in this chapter shall be deemed to prohibit the mortgage or the pledge of the system or any part thereof. However, any such mortgage or pledge shall be subject to and subordinate to the right of the City under this franchise or applicable laws.

(5) The franchise shall be in lieu of any and all other rights, privileges, powers, immunities, and authorities owned, possessed, controlled or exercisable by the grantee or any successor pertaining to the construction, operation or maintenance of a cable communications system in the City. The acceptance of the franchise shall operate, as between the grantee and the City, as an abandonment of any and all of such rights, privileges, powers, immunities and authorities within the City. All construction, operation and maintenance by the

grantee of any cable system in the City shall be under the franchise and not under any other right, privilege, power, immunity or authority.

(6) The grantee shall at all times during the life of the franchise be subject to all lawful exercise of the police power by the City and other duly authorized regulatory State and federal bodies and shall comply with any and all codes which the City has adopted or shall adopt applying to the public generally and to other grantees.

(7) The franchise shall not relieve the grantee of any obligation involved in obtaining pole-or conduit-use agreements from the gas, electric and telephone companies, or others maintaining poles or conduits in the streets of the City, whenever the grantee finds it necessary to make use of such poles or conduits.

(8) Anything contained herein to the contrary notwithstanding, the franchise shall not impart to the grantee any right of property in or on City-owned property.

22.10 TRANSFER OR SALE OF CABLE TELEVISION SYSTEM. (1) A CCS franchise granted by the City may be transferred, assigned or sold only with the written consent of the City Council and approved only if the transferee, assignee or purchaser agrees in writing to be subject to all the terms and conditions of this chapter.

(2) A grantee of this franchise shall notify the City Council at least 30 days before a proposed transfer, assignment or sale is to take effect. Such notice must be in the form of a written request to the City Administrator stating the reasons why such an assignment is necessary and/or advisable and detailing the expected changes in the operation of the system.

(3) A franchise granted hereunder shall be a privilege to be held for the benefit of the public by the grantee. The franchise shall not in any event be sold, transferred, leased, assigned or disposed of in whole or in part, either by forced or voluntary sale, merger, consolidation, mortgage, trust, receivership or any other means without the prior consent of the City expressed by Council resolution, and then only under such conditions as the Council may establish. Such consent shall be given or denied no later than 120 days following a request for consent and consent shall not be withheld by the City unreasonably.

(4) In seeking the City's consent to any change in ownership or control, the grantee shall have the responsibility to do the following:

(a) To show to the satisfaction of the City whether the proposed purchaser, transferee, or assignee (the "proposed transferee"), which in the case of a corporation shall include all directors and all persons having a legal or equitable

interest of 5% or more of the voting stock:

1. Has even 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.

2. 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

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

(b) To establish, to the satisfaction of the City, 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 City may request, where the same shall be audited, certified and qualified by a certified public accountant.

(c) To establish to the satisfaction of the City 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.

(5) 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 City that the financial institution, or its designee, as approved in writing by the City, shall take control and operate the cable system in the event of a grantee's 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 1 year unless extended by the City in its discretion, but during said period of time it shall have the right to petition the City 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 City finds that such transfer, after considering the legal, financial, character, technical and other public interest qualities of the proposed transferee, is satisfactory, the City shall transfer and assign the right and obligations of such franchise as in the public interest. The consent of the City to transfer shall be given or denied no less than 120 days after any request, and shall not be unreasonably withheld.

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

(7) The City shall be entitled to a right of first refusal of any bona fide offer to purchase the CCS made to the grantee. Bona fide offer as used in this section means a written offer which has been accepted by grantee subject to the City's rights under this franchise. The price to be paid by the City shall be the price of the bona fide offer at the same terms and conditions as the bona fide offer. The City shall notify grantee of its decision to purchase within 90 days of the City's receipt from the grantee of a copy of the written bona fide offer.

22.11 OPERATIONAL RULES FOR FRANCHISE. (1) The grantee shall maintain and operate its CCS in accordance with all such rules and regulations of the FCC, the State of Wisconsin and the City as are applicable or as may be promulgated. The grantee, whenever it is necessary to interrupt service over the CCS for the purpose of maintenance, alteration or repair, shall do so at such times as will cause the least amount of inconvenience to the subscribers, and unless such interruption is unforeseen and immediately necessary, the grantee shall give reasonable notice thereof to the affected subscribers.

(2) The grantee shall cooperate with the City to establish a production studio and public access production facilities and shall provide a toll-free telephone number which subscribers may call with questions or concerns about billing or service and where complaints and requests for repairs or adjustments may be received at any time. The grantee shall also designate at least one local depository for receipt of payments by subscribers of bills for service provided by the grantee. The grantee shall maintain a repair and maintenance crew capable of responding to subscriber complaints or requests for service.

(3) The grantee shall furnish each subscriber at the time service is installed, written instructions that clearly set forth procedures, furnish information concerning the procedure for 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 furnish information concerning the City office responsible for administration of the franchise with the address and telephone number of the office.

(4) The grantee shall make a list of all complaints and interruptions or degradation of service received or experienced during the term of franchise. It shall also maintain records on complaint response time and service restoration periods. These records shall be continuously open to inspection, examination or audit by any duly authorized representative of the City; the City shall review such records at the end of the fiscal year and, once the City's annual review has been

completed, the grantee shall not be required to continue to maintain the specific documents for the year reviewed by the City.

(5) The grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonable and necessary to enable the grantee to exercise its rights and perform its obligations under this chapter.

(a) No such rules, regulations, terms and conditions promulgated under (5) above shall be in conflict with the provisions hereof or the laws of the State, or the Rules and Regulations of the Federal Communications Commission, or any rules and regulations promulgated by the City in the exercise of its regulatory authority.

(b) Two copies of all rules, regulations, terms and conditions promulgated under (5) above, together with any amendments, additions or deletions thereto, shall be kept currently on file with the Administrator and another copy thereof shall be maintained for public inspection during normal business hours at grantee's office serving the City; no such rules, regulations, terms, conditions, or amendments, additions or deletions thereto shall take effect unless and until so filed and maintained.

(6) The grantee shall not require the removal, or offer to remove or provide any inducements for removal of, any potential or existing subscriber's antenna as a condition of provision of service.

(7) Neither the grantee during the period of the franchise nor any of its affiliated, subsidiary, parent organizations, officers, directors or stockholders holding 5% or more of outstanding stock of the grantee, shall within the corporate limits of the City or within 10 miles in any direction, directly or indirectly, engage in the retail sale, renting, leasing, or repairing of radio or television receivers or their appurtenances, nor shall they require any subscriber to utilize the services of any specific television/radio service business for the repair or maintenance of the subscriber's receivers, either radio or television.

(8) The grantee, upon request from any subscriber, shall install at a reasonable charge therefor, a switching device so as to permit a subscriber to continue to utilize his own television antenna as he chooses.

22.12 RIGHTS RESERVED TO THE CITY. (1) Nothing herein shall be deemed or construed to impair or affect, in any way to any extent, the right of the City to acquire the property of the grantee through the exercise of the right of eminent domain, at a fair and just value, which shall not include any amount for the franchise itself or for any of the rights or privileges granted, and nothing shall be construed to contract away or to modify or abridge, either for a term or in

perpetuity, the City's right to eminent domain.

(2) The City shall have the right to intervene in any suit or proceeding to which a grantee is a party and which in any respect involves the CCS and service supplied by the grantee in the City. The City also reserves the right during the life of any franchise granted hereunder to inspect and supervise all construction or installation work performed subject to the provisions of this chapter and to perform system measurements to insure compliance with the terms herein.

(3) Upon expiration of the term of the franchise, or revocation, or other termination as provided by law, or upon receipt of application for approval of an assignment of the franchise or upon change of de facto control, the City shall have a right to purchase the CCS as set forth in Sections 22.10(7), 22.26 and 22.27.

(4) The City reserves the right during the life of the franchise to install and maintain free of charge upon or in the poles and conduits of the grantee any wire and pole fixtures necessary for municipal subsystems on the condition that such installation and maintenance thereof does not interfere with the operation of the grantee.

22.13 FRANCHISE FEE. (1) A grantee shall pay to the City a franchise fee of 5% of the grantee's "annual gross subscriber revenues" from its operation of the CCS within the City limits, or such other amount as allowed by law upon reasonable advance notice by the City. This sum shall be paid quarterly and shall be due by the tenth day of the month following the end of each quarter. The first three quarterly payments shall be calculated at one-quarter of the annual payment for the prior year (with an adjustment made for the first year from 3% to 5% of "annual gross subscriber revenues") and the final quarterly payment shall contain an adjustment to reflect actual receipts and shall be due no later than the 30th day of March. Any payment received after the tenth day of the month following the end of the quarter shall be subject to an interest charge at the rate of 1% per month on the unpaid balance. The payment of this sum shall be in addition to any other payment owed to the City by a grantee and shall not be construed as payment in lieu of municipal property taxes or other State, County or local taxes. The annual user franchise fee is subject to annual review for an increase or decrease subsequent to the 4th year of operation. It is to be utilized by the City to offset its regulatory and administrative costs incurred in connection with the operation of the CCS.

(2) Charges for past due payments as set forth in sub. (1) are made in order to defray those additional expenses and costs incurred by the City by reason of the delinquent payment.

(3) No acceptance of any payment by the City shall be construed as a

release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee under this chapter or for the performance of any other obligation of the grantee. All amounts paid shall be subject to audit and recomputation by the City.

22.14 AMENDMENTS. The City may from time to time, add to, modify or delete provisions of this chapter as it shall deem necessary in the exercise of its regulatory powers, provided that such additions, modifications or revisions are reasonable and do not adversely affect a grantee economically. Such additions, modifications or revisions shall be made only after a public hearing for which the grantee shall have received written notice at least 30 days prior to such hearing.

22.15 REPORTS. (1) A grantee shall file annually with the City Administrator not later than 3 months after the end of the fiscal year during which it accepted a CCS franchise and within 3 months after the end of each subsequent fiscal year, or upon reasonable advance notice by written request from the City, the following information:

(a) A total facilities report setting forth the total physical miles of plant installed or in operation during the fiscal year, including an as-built system map showing the location of all local apparatus, to be maintained in the City Administrator's office.

(b) All records regarding complaints within the City required by the FCC and the resolution or outcome of each complaint.

(c) A list of all current owners, shareholders and bondholders, both of record or beneficial, who individually or as a concerted group hold an ownership interest of 5% or more of the grantee. If the grantee is a corporation, the grantee shall supply a list of all shareholders who individually or as a concerted group hold 5% or more of the voting stock in the corporation.

(d) A current list of all officers and directors of grantee, including addresses and telephone numbers.

(e) Copies of all pertinent operational agreements or contracts, including pole-and conduit-use agreements, entered into by the grantee during the fiscal year in the conduct of its business under the CCS franchise granted by the City. Copies of individual subscribers' agreements need not be filed with the City, but shall be made available upon request by the City.

(f) The names, addresses and current business and home telephone numbers of the resident manager and engineer of the CCS located in or serving the City.

(g) One copy of all types of subscriber agreements used by the grantee in providing service within the City.

(h) Copies of all rules and regulations promulgated by the grantee during each fiscal year in the conduct of its business.

(i) A copy of the annual report of a parent firm which owns an interest of 5% or more of the voting stock of the grantee, and such other annual report of subsidiaries or divisions of a parent firm as the City deems necessary.

(j) The grantee's engineering plans, accounting and financial data, service records and contracts relating to the CCS, which the City shall, during the life of any CCS franchise it grants, have access to, at all normal business hours and upon the giving of at least 72 hours' notice to a grantee.

22.16 UNAUTHORIZED CONNECTIONS OR MODIFICATIONS. (1) No person, without the express consent of a grantee, shall possess or make any connection, extension or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of a franchised CCS for any purpose whatsoever.

(2) No person shall willfully interfere with, remove, obstruct or damage any part, segment or content of a franchise CCS for any purpose whatsoever.

(3) Violation of subs. (1) and (2) shall result in a forfeiture under Section 25.04 and the reimbursement to the grantee for all losses incurred through the prohibited activities.

22.17 SUBSCRIBER PRIVACY. (1) No person shall initiate or use any form, procedure or device for procuring information or data from a subscriber's terminals by use of the CCS, except for routine maintenance of the system and verification of billing accuracy, without prior authorization from each subscriber so affected. Such authorization shall mean approval from the subscriber for a period of time not to exceed one year and shall not have been obtained from the subscriber as a condition of providing service to the subscriber.

(2) No person shall, without prior written valid authorization from the City Council, provide any data identifying designated subscribers to anyone seeking such information.

22.18 LIABILITY AND INDEMNIFICATION. (1) It is expressly understood and agreed by and between the City and the grantee that the grantee shall save the City harmless from all losses sustained by the City on account of any suit, judgment, execution, claim or demand which the City may legally be required to pay as a result of the award of a CCS franchise to a grantee under the terms of

this chapter.

(2) It shall be expressly understood and agreed by and between the City and a grantee that the grantee shall save the City and its agents and employees harmless from and against all claims, damages, losses and expenses, including attorneys' fees sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever, arising out of, but not limited to, copyright infringements and all other damages arising out of the installation, operation or maintenance of a CCS franchise granted by the City, whether or not any act or omission complained of is authorized, allowed or prohibited by this chapter. This provision shall not apply to acts of the City, its agents or employees.

(3) A grantee shall pay and, by its acceptance of any CCS franchise granted by the City, agrees that it will pay all expenses incurred by the City in defending itself with regard to all damages and penalties provided in subs. (1) and (2) above. These expenses shall include all out-of-pocket expenses, such as consultants' or attorneys' fees, and shall also include the reasonable value of any services rendered by the City Attorney or any other employee of the City.

(4) A grantee shall maintain and, by its acceptance of a CCS franchise, agrees that it will maintain throughout the term of the franchise and any extension thereto, a general comprehensive liability insurance policy naming as an additional insured the City, its officers, boards, commissions, agents and employees. The policy shall be issued by a company approved by the City Council and in a form satisfactory to the Council, which shall protect the City, its officers, boards, commissions, agents and employees against liability for loss or damage for personal injury, death or property damage occasioned by the operations of the grantee under any franchise granted hereunder, in the following amounts:

(a) General Comprehensive Liability Insurance containing the following coverages: Premises/Operations; Product/Completed Operations; Broad Form Property Damage; Contractual Liability; Coverage for Explosion, Collapse and Underground Hazards; and Pollution Control Liability. The policy shall include limits of not less than \$1,000,000 for bodily injury (including death) and property damage for each occurrence of not less than \$2,000,000 in the aggregate.

(b) Worker's Compensation Insurance in compliance with Sections 102.28 and 102.31 of the Wisconsin Statutes and in compliance with the laws of each state having jurisdiction over each employee.

(c) Comprehensive Automobile Liability including owned, non-owned, and hired vehicles with limits of not less than \$1,000,000 for bodily injury (including death) and \$1,000,000 for property damage for each occurrence.

(d) Umbrella Liability with limits of not less than \$8,000,000, which shall

carry the following endorsement:

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.

(5) The insurance policies mentioned above shall contain an endorsement stating that the policies are extended to cover the liability assumed by the grantee under the terms of this chapter and shall contain the following endorsement:

It is hereby understood and agreed that this policy may not be canceled nor the amount of coverage thereof reduced until 30 days after receipt by the City Administrator by registered mail of 2 copies of a written notice of such intent to cancel or reduce the coverage.

(6) All policies of insurance or certified copies thereof and written evidence of payment of required premiums shall be filed with the City Administrator during the term of any CCS franchise granted by the City or any renewal thereof.

(7) Neither the provisions of this chapter nor any insurance accepted by the City pursuant hereto, nor any damages recovered by the City thereunder, shall be construed to excuse faithful performance by a grantee of the obligations established for it under this chapter or limit the liability of the grantee under any franchise granted hereunder, or for damages, either to the full amount of the performance bond or otherwise.

22.19 PROPOSAL BOND. (1) Each applicant for a franchise hereunder shall submit a proposal bond in a form acceptable to the City Attorney or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the City in the amount of \$10,000.

(2) Should the applicant fail or refuse to accept a franchise hereunder or fail or refuse to furnish the performance bond as set forth in Section 22.20 within 30 days after written notification of the award of a franchise by the City, such applicant will be considered to have abandoned the proposal and the City shall enforce the proposal bond in accordance with its term or retain the proceeds of the certified check.

(3) Proposal Bonds or certified checks received in lieu thereof from

applicants whose proposals are not accepted by the City shall be returned to the applicant as soon as the proposal is rejected.

(4) Two copies of all bonds or certified copies thereof and written evidence of payment of required premiums shall be filed and maintained with the City Administrator during the term of any franchise granted hereunder or any renewal thereof.

22.20 PERFORMANCE BOND. (1) A grantee shall maintain and, by its acceptance of a CCS franchise granted by the City, agrees that it will maintain throughout the terms of the franchise or any renewal or extension thereof, a faithful performance bond running to the City, with at least 2 good and sufficient sureties or other financial guarantees approved by the City Council. This bond shall be in the penal sum of \$10,000, except that the City may require a grantee to provide a bond in the penal sum of \$100,000 if construction of a system upgrade is undertaken, with said \$100,000 bond to be carried by the grantee until the construction is completed. The performance bond or bonds shall be conditioned upon the faithful performance of the grantee and, upon the further condition that, if the grantee fails to comply with any law, ordinance or regulation governing the franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the grantee, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond.

(2) The bond shall contain the following endorsement: It is hereby understood and agreed that this bond may not be canceled nor the intention not to renew be stated until 30 days after receipt by the City Administrator by registered mail of two copies of a written notice of such intent to cancel or not renew.

(3) Two copies of the performance bond or certified copies thereof and written evidence of payment of required premiums shall be filed with the City Administrator during the term of the franchise and any renewal thereof.

22.21 RATES. (1) The grantee shall establish rates for its services which shall be applied on a nondiscriminatory basis in the service area, except for commercial and bulk account rates, which are negotiated individually. Pursuant to federal law, the City reserves the right to assume regulation of rates paid by cable subscribers; if so assumed, such rate regulations shall be performed by the City Council in accordance with FCC Rules and Regulations set forth in 47 CFR Ch. 1, Part 76, Subpart N. As specified by the FCC's Rules (47 CFR Ch. 1, Part 76, Subpart N), such rate regulation shall cover basic service rates and customer premises installations and equipment rates (including, but not limited to charges for: converter boxes, remote control units, connections for additional television

receivers and other cable home wiring).

(2) The City reserves the right further to regulate rates pursuant to any additional powers granted it by either the FCC or Federal or State law.

(3) In the event that the City assumes rate regulatory powers pursuant to Federal cable communications legislation, the following shall apply:

(a) The City shall notify the grantee of the City's FCC certification and of the City's adoption of rate regulations which are consistent with the FCC regulations and which provide for a reasonable opportunity for consideration of the views of interested parties. Upon receipt of such notification by the grantee, basic service regulation shall become effective. The grantee shall be prohibited from raising basic service rates without the approval of the City Council, and the grantee shall, within 30 days, submit for review its basic service, installation and equipment rates and supporting documentation using either the FCC's benchmark calculations or the FCC's cost-of-service standards.

(b) To aid in the evaluation of the grantee's proposed rates, the City Council may require the production of proprietary information, and in such cases will apply procedures analogous to those set forth in FCC regulations, and consistent with Federal and State law.

(c) As specified in the FCC regulations, the City Council may order the grantee to refund to subscribers that portion of previously paid rates which have been found to be unreasonable. Before ordering the grantee to refund previously paid rates to subscribers, the City Council shall give the grantee notice and opportunity to comment.

(d) The grantee shall not file for increases in equipment charges and/or basic service rates more often than allowed under FCC regulations. All subsequent requests by the grantee for increases in equipment charges and/or basic service rates shall be subject to the procedures outlined in this section.

(e) A subscriber shall have the right to have his service disconnected without charge, which shall include the removal of any equipment owned by the grantee from the subscriber's residence. Such disconnection shall be made as soon as practicable and in no case later than 30 days following written notice to the grantee of same. No grantee shall enter into any agreement with a subscriber which imposes any charge following disconnection of service, except for reconnection and subsequent monthly or periodic charges, and those charges shall be no greater than charges for new customers. This section shall not prevent a grantee from refusing service to any person because of the grantee's prior accounts with that person which remain due and owing.

22.22 SERVICES, FACILITIES AND EQUIPMENT, CHANNEL CAPACITY. (1)

The grantee shall provide, at a minimum, the initial services listed in Section 22.23. Such services shall include, but not be limited to, basic cable service and additional service, as defined herein. Services shall not be reduced without prior notification to the City.

(2) The grantee shall provide, at a minimum, the initial facilities and equipment listed in Section 22.23.

(3) The grantee shall provide the public, educational and government (PEG) access facilities, including channel capacity, necessary interface equipment and cabling to permit operation as specified in Section 22.23.

(4) The grantee shall provide, at a minimum, the categories of video programming listed in Section 22.23.

(5) 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.

(6) The grantee shall designate channel capacity for commercial use as required by Federal cable communications legislation.

22.23 SERVICE AND OPERATION STANDARDS. (1) A grantee shall maintain and operate its CCS in accordance with the rules and regulations of the FCC, State and City as incorporated herein or as may be promulgated. The City hereby adopts the standards established by the FCC for customer service for cable television. The City shall notify a grantee by certified mail that it has ordered and intends to enforce the FCC customer service standards.

(2) Nothing in this ordinance shall be construed to prohibit the grantee and City from agreeing to exceed the FCC customer service standards or the establishment or enforcement of any State or municipal law or regulation concerning customer service or consumer protection that imposes customer service standards or consumer protection requirements that exceed the FCC customer service standards or address matters not addressed in this ordinance.

(3) Whenever it is necessary to interrupt services over the CCS for the purpose of system maintenance, alteration or repair, a grantee shall do so at such time as will cause the least amount of inconvenience to the subscribers.

(4) A grantee shall provide a network having a minimum immediate or potential capacity of 54 channels with immediate or potential 2 way, "video grade" capability. The grantee shall also provide as part of its basic service at least one noncommercial public/government access channel together with

suitable production and distribution equipment therefor. The City government shall be entitled to preferential scheduling of up to 10 hours per week of programming, and the balance of the remaining time shall be made available to the public access channels. A grantee shall also provide up to 2 additional channels and associated distribution equipment for educational use when requested by the public and parochial school systems. A grantee shall carry, to the extent permitted by the FCC or any other regulatory agency which may have jurisdiction, and shall exercise its best efforts to obtain permission from such regulatory agencies to carry, the stations it has listed in its franchise proposal as approved by the City.

(5) A grantee shall provide one channel carrying continuous time and weather programming and one local interest channel carrying a minimum of 15 hours per month of locally originated programming.

(6) A grantee shall provide "same day service" response 7 days a week for all complaints of service outages received prior to 2 p.m. each day. In no event shall the response time for calls received subsequent to 2 p.m. for service outages exceed 24 hours. Service within 48 hours shall be provided for all other complaints and requests for repairs or adjustments.

(7) Upon failing to correct a service deficiency within 24 hours, a grantee shall rebate 1/30th of the monthly charge for basic service and additional service to each subscriber for 24 hours or fraction thereof after the first 24 hours following report of the loss of service to the grantee, except to the extent that restoration of service is prevented by strike, injunction or other cause beyond the control of the grantee. A grantee shall maintain a log, which shall be filed annually with the City, of such reports and the time of restoration of service. A loss of one or more channels shall be one of the operational developments considered a service deficiency.

(8) A grantee shall also make available, when requested by a subscriber, a lockable means of disabling reception of basic and/or other additional services to which the subscriber may have access.

(9) Basic service shall be provided free of charge to all public and parochial school buildings and public buildings used primarily for municipal purposes by the grantee.

(10) A grantee shall upgrade its facilities, equipment and service as subscribers' demand dictates so that its system is as advanced as the current state of technology with field-proven equipment will allow.

22.24 TERMINATION OF FRANCHISE. (1) The City reserves the right to revoke any franchise granted hereunder and to rescind all rights and privileges

associated with the franchise in the following circumstances:

(a) If the grantee should default in the performance of any of its obligations under this chapter and fail to cure the default within 30 days after receipt of written notice of the default from the City.

(b) If the grantee should fail to provide or maintain in full force and effect the performance bond and liability and indemnification coverages as required in this chapter.

(c) If a petition is filed by or against the grantee under the Bankruptcy Act, or any other insolvency or creditors' rights law, State or Federal, and the grantee shall fail to have it dismissed.

(d) If a receiver, trustee or liquidator of the grantee is applied for or appointed for all or part of its assets.

(e) If the grantee makes an assignment for the benefit of creditors.

(f) If any court of competent jurisdiction, the FCC or any State regulatory body by rules, decision or other action determines that any material provision of the franchise documents, including this chapter, is invalid or unenforceable.

(g) If the grantee should violate any orders or ruling of any regulatory body having jurisdiction over the grantee, unless the grantee is lawfully contesting the legality or applicability of such order or ruling.

(h) If the grantee fails to receive the necessary FCC authorization within a reasonable period of time, unless such cause is directly attributable to an action or condition imposed by the City.

(i) If the grantee knowingly and with intent to deceive makes any false, misleading or fraudulent statements of fact in its proposal for a franchise or other reports or information provided to the City, other regulatory agencies or subscribers.

22.25 REVOCATION PROCEDURE. Upon the occurrence of any of the events enumerated in Section 22.24, the following procedures shall be followed:

(1) The grantee shall be provided with a written notice of the alleged default, describing the alleged default in as much detail as possible.

(2) The grantee shall have 30 calendar days to correct the alleged default or deny that such alleged default exists.

(3) If the alleged default is denied to exist, or if no satisfactory corrective

action is undertaken within the 30-day period, the grantee shall be afforded a public hearing, with 20 days advance notice, before the City Council in order to respond to the allegation of default. The public shall be permitted to speak at such hearing, and the hearing may be continued from time to time as appropriate.

(4) The City Council shall conclude the hearing with a finding that the grantee is in default or is not in default.

(5) If the City Council determines that there is a default, the grantee shall be granted such an additional amount of time as the City Council shall deem reasonable to correct the default to the satisfaction of the City Council.

(6) At the conclusion of such reasonable period, the City Council shall again at a public meeting determine whether the default has been satisfactorily corrected and, if it has not, the franchise granted under authority of this chapter may be immediately revoked by resolution without further notice or hearing.

22.26 PURCHASE OF SYSTEM BY CITY ON NONRENEWAL. (1) If the City determines not to renew the franchise, the grantee shall first offer the CCS for sale to the City at fair market value, determined on the basis of the CCS valued as a going concern but with no value allocated to the franchise itself.

(2) If the determination of fair market value cannot be negotiated or determined, the value shall be determined by an impartial appraisal procedure pursuant to Chapter 788, Wis. Stats., Arbitration, wherein the grantee and the City shall each choose an appraiser and the appraisers chosen shall choose a third appraiser and the valuation determined by such appraisers shall be considered the fair market value at which the system will be offered to the City. The determination of the value of the system shall be decreased by the amount of any damages sustained by the City in connection with nonrenewal, including without limitation, payment made by the City to another person or entity to operate the CCS for a temporary period after nonrenewal. The cost of the appraisal procedure shall be shared equally by the City and the grantee.

(3) The City shall have 90 days commencing on the day the fair market value of the system is determined either through negotiation or the appraisal procedure to exercise its option to purchase. If the City does not exercise its option to purchase, and the CCS is not sold to another operator who has obtained a franchise from the City, the grantee, upon request by the City, shall promptly remove all its plant, structures and equipment. While transfer of the system and franchise is being negotiated, arranged or ordered, the grantee may be required to continue service to the public unless for reasons beyond the control of the grantee such operation will be economically infeasible to the grantee.

22.27 PURCHASE OF SYSTEM BY CITY ON REVOCATION. (1) If the City revokes the franchise for cause, the grantee shall first offer the CCS for sale to the City at an equitable price.

(2) If the determination of an equitable price cannot be negotiated or determined, the price shall be determined by an impartial appraisal procedure pursuant to Chapter 788, Wis. Stats., wherein the grantee and the City shall each choose an appraiser and the appraisers chosen shall choose a third appraiser and the price determined by such appraisers shall be considered the equitable price at which the system will be offered to the City. The determination of the price of the system shall be decreased by the amount of any damages sustained by the City in connection with revocation, including without limitation, payment made by the City to another person or entity to operate the CCS for a temporary period after revocation. The cost of the appraisal procedure shall be shared equally by the City and the grantee.

(3) The City shall have 90 days commencing on the day the equitable price of the system is determined either through negotiation or the appraisal procedure to exercise its option to purchase. If the City does not exercise its option to purchase, and the CCS is not sold to another operator who has obtained a franchise from the City, the grantee, upon request by the City, shall promptly remove all its plant, structures and equipment. While transfer of the system and franchise is being negotiated, arranged or ordered, the grantee may be required to continue service to the public unless for reasons beyond the control of the grantee such operation will be economically infeasible to the grantee.

22.28 RESTORATION; ALLOCATION OF COSTS. (1) 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 company's removal of its equipment and appliances, without affecting the electric or telephone cables, wires or attachments. The City shall inspect and approve the condition of the public ways and public places and cables, wires, attachments and poles after removal. Liability insurance and indemnity provided in Section 22.18 and the performance bond in Section 22.20 shall continue in full force and effect during the period of removal.

(2) If the grantee fails to complete any work required by (1) above or any work required by City law or ordinance within the time established and to the satisfaction of the City, the City may cause such work to be done and the grantee shall reimburse the City the costs thereof within 30 days after receipt of an itemized list of such costs or the City may recover such costs as provided in Section 22.20.

(3) Nothing shall prohibit the City from imposing lesser sanctions or

censures than revocation for violations of provisions of this chapter, including the shortening of the franchise term.

(4) Upon the expiration of the franchise the City may by resolution, on its own motion or at the request of the grantee, require the grantee to operate the franchise for an extended period of time not to exceed 6 months from the date of any such resolution. All provisions of the franchise shall continue to apply to operations during an extension period. The City shall serve written notice at least 30 days prior to expiration of the original franchise or any extensions thereof.

22.29 REGULATORY JURISDICTION AND PROCEDURES. (1) The City shall have continuing regulatory jurisdiction and supervision over the operation of the franchise and may from time to time adopt such reasonable rules and regulations as it may deem necessary for the conduct of the business contemplated thereunder.

(2) The continuing regulatory jurisdiction of the City shall be exercised through the Cable Communications Committee. The Committee shall have the responsibilities and duties set forth in Section 22.05.

(3) The Cable Communications Committee shall consider any inquiry or proceeding requiring City Council action in accordance with normal City Council procedures.

(4) The grantee shall not be excused from complying with any of the terms and conditions of the franchise by any failure of the City upon one or more occasions to insist upon or to seek compliance with any such terms or conditions.

(5) The City may at its option and in its sole discretion impose liquidated damages in the amount of \$5,000 upon a grantee whose action or failure to act causes the City to bring a court action to enforce any provision of this chapter or the franchise grant, provided that the City's enforcement action is successful.

22.30 ACCEPTANCE AND EFFECTIVE DATE OF FRANCHISE. (1) Any franchise awarded hereunder and the rights, privileges and authority granted thereby shall take effect and be in force from and after the 30th day following the award thereof, provided that within 30 days of such award the grantee shall file with the City the following:

(a) A notarized statement by the grantee of its unconditional acceptance of the franchise.

(b) Certificates of insurance as required by this chapter.

(c) A performance bond in the penal sum of \$100,000 as required by this

chapter.

(2) Should the grantee fail to comply with sub. (1) above, it shall acquire no rights, privileges or authority under its franchise whatever, and the amount of the filing fee, and the proposal bond or a certified check in lieu thereof submitted with the franchise application shall be forfeited in full to the City as liquidated damages.

22.31 PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED.

(1) A grantee shall not refuse cable communications service to any person or organization who requests such service for a lawful purpose. A grantee shall not, as to rates, charges, service facilities, rules regulations or in any other respect, make or grant any unreasonable preference or advantage nor subject any person to any prejudice or disadvantage. This provision shall not be deemed to prohibit promotional campaigns to stimulate subscription to the CCS or other legitimate uses thereof; nor shall it be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any subscriber coming within such classifications shall be entitled, provided such schedules have been filed with and approved by the City as provided in Section 22.21.

(2) The entire CCS shall be operated in a manner consistent with the principles of fairness and equal accessibility of its facilities, equipment, channels, studios and other services to all citizens, businesses, public agencies or other entities having legitimate use for the CCS. No one shall be arbitrarily excluded from its use. The allocation of use of the grantee's facilities shall be made according to the rules or decisions of regulatory agencies affecting the same.

22.32 FRANCHISE GRANT. The grant of a CCS franchise may be made by a City Council resolution granting to the successful applicant the CCS franchise, and the resolution shall bind the grantee pursuant to the resolution to all of the terms and provisions contained in this chapter.

22.33 INTERCONNECTION. (1) Nothing in this chapter shall be construed so as to prohibit a grantee from interconnecting its CCS with other similar contiguous systems either in the City or in other municipalities, counties or states. However, any revenues derived therefrom shall be equitably allocated in the calculation of annual gross subscriber revenues as defined in Section 22.02(2) herein.

(2) A grantee shall, if requested by the City, conduct a technical and economic feasibility study of any interconnection requested by the City. The study shall be presented to the City, and if the study shows such interconnection to be feasible, the grantee shall, if so instructed by the City, accomplish the interconnection.

(a) If the study indicates technical feasibility only, the City may elect at its sole discretion to arrange for compensation to be paid to the grantee, in an amount sufficient to assure an economic break-even by the grantee, and so order the interconnection.

(b) If the study fails to show technical feasibility, the grantee shall have no further responsibility for accomplishing interconnection until such time as improvements in technology permit such interconnection

22.34 UNAUTHORIZED CONNECTIONS OR MODIFICATIONS. (1) No firm, person, group, partnership, company, corporation or governmental body or agency, without the express consent of the grantee, shall make any connection, extension or division, whether physically, inductively, electronically or otherwise, with or to any segment of a franchised CCS for any purpose whatsoever, except as may be provided in this chapter.

(2) No firm, person, group, partnership, company, corporation or government body or agency shall willfully interfere with, tamper with, remove, obstruct or damage any part, segment or content of a franchised CCS for any purpose whatsoever. This section shall in no way impair or infringe upon rights presently enjoyed by utilities in the City.

(3) Any firm, person, group, partnership, company, corporation, or governmental body or agency convicted of a violation of this section shall be assessed a forfeiture under Section 25.04 of these ordinances. Each 24-hour period a violation continues shall be considered a separate offense.

22.35 CONSTRUCTION AND SYSTEM TECHNICAL STANDARDS AND MEASUREMENTS. The technical standards, including measurements of the construction and the system to be operated in the City, shall comply with the minimum standards established by the FCC.

22.36 SUBSCRIBER PRIVACY. (1) The grantee, City or any person shall not initiate nor use any form, procedure or device for procuring information or data from cable subscribers' terminals by use of the cable system, without prior written valid authorization from each subscriber so affected, except to conduct routine maintenance and verify billing accuracy. Valid authorization shall mean written approval from the subscriber for a period of time not to exceed one year and shall not have been obtained from the subscriber as a condition of service. Further, a grantee, without such authorization, shall not activate and/or utilize any "television signal" in any manner from the subscriber's premises. In any case the subscriber shall retain the right to deactivate his terminal.

(2) The City, the grantee or any person shall not, without prior written valid authorization from each subscriber so affected, provide any data identifying or

designating subscribers. Any data so authorized will be made available to the authorizing subscriber in understandable fashion.

(3) Any agreement or contract such as is necessary for (1) and (2) above shall not be part of any other contract or agreement and shall not be a condition of subscribing to the system.

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