

CABLE COMMUNICATIONS SYSTEM

CHAPTER 26

CABLE COMMUNICATIONS SYSTEM

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26.01 INTENT. It is the intent of this Chapter to provide for and specify the means to attain a cable communications system franchise in the City and to set forth the obligations and rights of the City and grantee accompanying such franchise.

26.02 DEFINITIONS. For the purposes of this Chapter, the following terms, phrases, words, and their derivation shall have the meaning specified herein. When not inconsistent with the context, words used in the present tense include the future and words in the singular number include words in the plural number.

- (1) **ADDITIONAL SERVICE.** A subscriber service provided by the grantee, in addition to basic service, for which a special charge is made based on program or service content, time or spectrum space usage.
- (2) **ANNUAL GROSS REVENUES.** Any and all revenues derived directly or indirectly by the grantee, or any affiliate that is a cable operator, in connection with the operation of the cable system pursuant to this chapter. Further, annual gross revenues includes compensation in whatever form, exchange or otherwise, derived from all cable services, cable operations, and cable-related activities within the service area, including, but not limited to: (a) revenues from subscriber rates, pay television, premium channels, service tiers, service clusters, institutional networks, on-air advertising, installations, reconnections, or similar fees; (b) rebates or commissions received from travel, home shopping or similar services, or commercial access; (c) any and all compensation from all ancillary cable services, cable operations, and cable-related activities within the service area, including, but not limited to, sale of cable or cable equipment, advertising inserted into periodic billing statements or other notices, fees from the sale of subscribers' late fees, rental or sale of descrambling converters, or other devices, rental or sale of remote control devices, rental or sale of a/b or input switches, rental or sale of digital equipment; and (d) compensation received for studio leased access and other facility rental, other than those not associated with the operation of the system.
- (3) **BASIC CABLE SERVICE OR BASIC SERVICE.** The service tier that includes all signals of domestic television broadcast stations provided to any subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the cable system), any public educational and governmental programming required by the franchise agreement to be carried on the basic tier, and any additional video programming signals added to the basic tier by the grantee, as defined from time to time by federal law and rules of the FCC.
- (4) **CABLE ACT.** Title VI of the Communications Act of 1934, as amended, 47 U.S.C. Ss 151, et seq., and all other provisions of the Cable Communications Policy Act of 1984, Pub. L. No.

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98-549; the Cable Television Protection and Competition Act of 1992, Pub. L. No. 102-385; and the Telecommunications Act of 1996 and any future amendments.

- (5) **CABLE COMMUNICATIONS SYSTEM - CCS.** Any network of cables, optical, electrical, or electronic equipment, including television systems, used for the purpose of transmission of electrical impulses of television, radio and other intelligence, either analog or digital, for sale or use by the inhabitants of the City.
- (6) **CITY.** The City of Algoma, its officers and employees, unless otherwise specifically designated, and the area within the territorial limits of the City.
- (7) **COMMENCE OPERATION.** Operation will be considered to have commenced when sufficient distribution facilities have been installed so as to permit the offering of "full system service" to at least twenty-five percent (25%) of the dwelling units located within the City.
- (8) **CITY COUNCIL.** The governing body of the City or any successors to the legislative powers of such body.
- (9) **DEDICATED INSTITUTIONAL ACCESS CHANNELS.** Interactive, broadband communications channels dedicated to serving city, county, state and federal governmental agencies, educational institutions, health care institutions, and other nonprofit and profit organizations that may be qualified by the City Board.
- (10) **EDUCATIONAL CHANNEL OR EDUCATIONAL ACCESS CHANNEL.** Any channel where educational programs are the only designated use.
- (11) **FCC.** The Federal Communications Commission and any legally appointed or elected successors.
- (12) **FRANCHISE.** The right, privilege and authority granted by the ordinance codified herein to construct, maintain and operate a cable television system in the City.
- (13) **FRANCHISE AGREEMENT.** A contractual agreement entered into between the City and any grantee hereunder which is enforceable by the City and said grantee and which sets forth the rights and obligations between the City and said grantee in connection with the franchise.
- (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) cable costs which are required by the franchise to be incurred by grantee for educational or governmental access facilities; (c) requirements or charges

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incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, 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 person, as herein defined, receiving a franchise pursuant to this chapter and any legal franchising resolutions as may be adopted by the City.
- (17) GRANTEE'S PROPOSAL. Incorporates all of the documents included in the response to and including the document entitled "Invitation for Applications," dated 3/3/97, submitted to the City Clerk.
- (18) HEAD END. The land, electronic processing equipment, antennas, tower, building and other appurtenances normally associated with and located at the starting point of a CCS.
- (19) LEASED CHANNEL OR LEASED ACCESS CHANNEL. Any channel available for lease and programming by persons or entities other than the grantee, including those portions of the other access channels not in use by their designated programmers.
- (20) LOCAL ORIGINATION. Any channel where the grantee is the only designated programmer and provides video programs to subscribers.
- (21) MAY. Is permissive.
- (22) PERSON. Any person, firm, partnership, association, corporation, company or organization of any kind.
- (23) PUBLIC AND GOVERNMENT ACCESS CHANNEL. Any channel where any member of the general public or any noncommercial organization may be a programmer without charge on a first-come, first-served, nondiscriminatory basis, in accordance with FCC regulations, or where local government programming is used.
- (24) REASONABLE NOTICE. The provisions of notice of contemplated action delivered at least forty-eight (48) hours prior to such action. Saturdays, Sundays, and holidays recognized by the City shall be excluded in the computation of this forty-eight (48) hours.
- (25) SALE. Includes any sale, exchange, barter or offer for sale.
- (26) SERVICE AREA. That geographical area within the incorporated limits of the City.
- (27) SHALL AND MUST. Each is mandatory.
- (28) STREET. Includes all streets, roadways, highways, avenues, lanes, alleys, courts, places,

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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.

- (29) **SUBSCRIBER.** Any person, firm, company, corporation or association receiving either "basic service" or additional service" from the grantee.
- (30) **SUBSTANTIALLY COMPLETED.** 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 ninety percent (90%) of the dwelling units in the City to which access is legally and reasonably available.
- (31) **USER.** A person utilizing a channel for purposes of production or transmission of material, as contrasted with receipts thereof, in a subscriber capacity.

26.03 CABLE COMMUNICATIONS SYSTEM REGULATORY BOARD.

- (1) **REGULATORY BOARD ESTABLISHED.** The Cable TV Advisory Committee, as formed by the City Council, is hereby designated and established as a Cable Communications System Regulatory Board. The City Administrator shall work with and assist the Board with the performance of its duties. This Board shall report to the City Finance & Personnel Committee.
- (2) **POWERS AND DUTIES OF THE REGULATORY BOARD.** The duties of the Regulatory Board shall be as follows:
 - (a) Resolving disputes or disagreements between subscribers and the grantee after investigation should the subscriber and the grantee not first be able to resolve their dispute or disagreement.
 - (b) Reviewing and auditing reports submitted to the City as required by SS 26.10 and 26.15 and such other correspondence as submitted to the City concerning the operation of the CCS so as to ensure that the necessary reports are completed and filed pursuant to the terms of this chapter.
 - (c) Reviewing the rules and regulations set by the grantee under the provisions of SS 26.10.
 - (d) Assuring that the public makes all tariffs, rates and rules pertinent to the operation of the CCS in the City available for inspection at reasonable hours and upon reasonable request.
 - (e) Reviewing rates and recommending any rate changes to the City Council as provided in SS 26.20 of this chapter.
 - (f) Confer with the grantee and advise on the interconnection of the City's cable system with

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other cable and communication systems.

- (g) Solicit, review and provide recommendations to the City Council to ensure compliance with this chapter.
- (h) Such other duties as the City Council may assign.

26.04 CABLE COMMUNICATIONS SYSTEM ADVISORY COUNCIL.

- (1) **CABLE COMMUNICATIONS SYSTEM ADVISORY COUNCIL ESTABLISHED.** There is established a Cable Communications System Advisory Council consisting of five (5) persons, with one (1) member each representing educational and governmental users and three (3) persons chosen at large to be representative of the community, all five (5) members to be appointed by the City Mayor subject to the approval of the City Council. The first appointments shall be three (3) members for a one (1) year term each and two (2) members for a two (2) year term each, and thereafter all appointments shall be for two (2) year terms.
- (2) **ADVISORY COUNCIL DUTIES.** The Cable Communications System Advisory Council shall perform the following functions:
 - (a) Make recommendations to the grantee of the CCS and to the users of the public, educational and governmental access channels.
 - (b) Ensure 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.
 - (c) Make recommendations to the grantee and Regulatory Board regarding the quality of services and programs.
 - (d) Planning and developing production and programming on dedicated access channels.
 - (e) Prepare and submit an annual budget for public access programming.
 - (f) Allocate funds it deems necessary to assist production and programming on the public access channels.
 - (g) Perform such other duties and functions as may be assigned from time to time by the City Council.
- (3) **ADVISORY COUNCIL RULES AND PROCEDURES.** The Advisory Council shall have the authority to submit proposed rules and regulations for the conduct of its business to the City Mayor and City Council for approval and, upon approval, shall have the right to hold hearings

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and make recommendations to the grantee of the CCS and to the educational and governmental communities on the coordination of the educational and government access channels. All such actions shall be advisory.

26.05 THE CABLE COMMUNICATIONS SYSTEM FRANCHISE. The City shall grant the right privilege and franchise to construct, operate and maintain a cable communications system in the City to the grantee, for a period not to exceed fifteen (15) years, subject to the rights, obligations, conditions and restrictions as hereinafter provided.

26.06 APPLICATION FOR FRANCHISE. Applications for a franchise hereunder shall be filed with the City Clerk and shall contain the following information and provisions:

- (1) **PROPOSAL BOND AND FILING FEE.** Provisions of the proposal bond as required in SS 26.17 and payment of a nonrefundable filing fee to the City of Five Hundred Dollars (\$500.00) shall be due and payable concurrently with the application information.
- (2) **NAME AND ADDRESS OF APPLICANT.** The name and business address of the applicant, date of application and signature of applicant or appropriate corporate officer.
- (3) **DESCRIPTION OF PROPOSED OPERATION.** 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 procedures and, if available, the rules of operation for public access.
- (4) **SIGNAL CARRIAGE.** A statement of the television and radio services to be provided, including both off the air and locally originated signals.
- (5) **SPECIAL SERVICES.** 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 and the Federal Communications Commission.
- (6) **PROGRAMMING ASSISTANCE.** 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.
- (7) **SCHEDULE OF CHARGES.** A statement of the applicant's proposed schedule of charges

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as set forth by the provisions of SS 26.20.

- (8) CORPORATE ORGANIZATION. A statement detailing the corporate organization of the applicant, if any, including the names and addresses of its officers and directors and the number of shares held by each officer and director.
- (9) STOCKHOLDERS. A statement identifying the number of authorized and outstanding shares of applicant's stock, including a current list of the names and current addresses of its shareholders holding five percent (5%) or more of applicant's outstanding stock.
- (10) INTRA COMPANY RELATIONSHIPS. A statement describing all intra company relationships of the applicant, including parent, subsidiary or affiliated companies.
- (11) AGREEMENTS AND UNDERSTANDINGS. 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 proposal submittal.
- (12) FINANCIAL STATEMENT. If the applicant is a corporation, audited financial statements for the two-(2) previous fiscal years. If the applicant is a partnership, copies of the "U.S. Partnership Return of Income" (IRS Form 1065) for the two (2) previous fiscal years. If the applicant is a sole proprietorship, copies of "U.S. Individual Tax Return" (IRS Form 1040) for the Two (2) previous fiscal years.
- (13) FINANCIAL PROJECTION. A ten (10) year operations pro forma 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 pro forma as required in this chapter, but shall be separately identified in the pro forma.
- (14) FINANCIAL SUPPORT. Suitable written evidence from a recognized financing institution, addressed to both the applicant and to the City, advising that the applicant's financial ability and planned operation have been analyzed by the institution and that the financing institution is prepared to make the required funds available to applicant, if awarded to franchise. If the planned operation is to be internally financed, a board resolution shall be supplied authorizing the obtainment and expenditure of such funds as are required to construct, install, and operate the CCS contemplated hereunder.
- (15) TECHNICAL DESCRIPTION. A technical description of the type of system proposed.
- (16) TECHNICAL STATEMENT. A statement from the applicant's senior technical staff member or consultant advising that he has reviewed the network description, the network technical standards, performance measurements, channels to be provided, service standards, construction standards and conditions of street occupancy and that the applicant's planned network and operations thereof shall meet all the requirements set forth therein.

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- (17) **EXISTING, PENDING AND PROPOSED FRANCHISES.** A statement of existing, pending and proposed franchises held or applied for by the applicant 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) **CONVICTIONS.** A statement as to whether the applicant or any of its officers or directors or holders of five percent (5%) or more of its voting stock have in the past ten (10) years been convicted of or have charges pending for any crime other than a routine traffic offense and the dispositions of each such case.
- (19) **OPERATING EXPERIENCE.** 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) **FRANCHISE RENEWAL INFORMATION.** If an application is for renewal of a franchise, the proposal shall include 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 forthcoming five (5) year review period.
- (21) **ADDITIONAL REQUIREMENTS.** The application for a new franchise shall respond specifically and in sequence to subsection (1) through (19) above and shall be bound separately from any additional information proffered by the applicant. Six (6) copies of the application shall be supplied to the City. Supplementary, additional or other information that the applicant deems reasonable for consideration may be submitted at the same time as its application, but shall be separately bound and submitted in the above number of copies. The City may at its discretion consider such additional information as part of the application.
- (22) **SUPPLEMENTATION TO APPLICATION.** The City may require such supplementary, additional or other information that the City deems reasonably necessary for its determinations. Such modifications, deletions, additions or amendments to the application shall be considered only if specifically requested by the City.
- (23) **REVIEW OF QUALIFICATIONS.** 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

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grantee's qualifications as a part of a public proceeding affording due process.

26.07 FRANCHISE REVIEW AND RENEWAL.

(1) PERFORMANCE REVIEW.

- (a) On or about the second, fifth and tenth anniversaries of the effective date of the franchise, the City shall schedule a public meeting or meetings with the grantee to review the franchise performance, plan and prospects. The grantee shall make available specified records, documents and information for this purpose and the City may inquire in particular whether the grantee is supplying a level and variety of services equivalent to those being generally offered at that time in the industry in comparable market situations.
- (b) Topics for discussion and review at both the regular and special review sessions shall include, but shall not be limited to, the following: services, rate structure, free or discounted services, application for new technologies, system performance, services provided, programming, subscriber complaints, user complaints, rights of privacy, amendments to this agreement, under-grounding processes and developments in the law.

(2) REVISING FRANCHISE REQUIREMENTS.

- (a) The City shall confer with the grantee regarding any modifications in the franchise which might impose additional obligations on the grantee, and the grantee may in turn seek to negotiate relaxation in any requirements imposed on it which are shown to be impractical.
- (b) Within thirty (30) days of the conclusions of such negotiations, the City may direct the grantee to show cause why specified terms and conditions should not be incorporated into the franchise and the grantee may similarly file with the City a written request that specified obligations of its franchise be removed or relaxed. Implementation of such requests shall correspond with the procedures set forth in SS 26.14(3). The City Council will order changes in the franchised rights and obligations of the grantee only if it finds from available evidence that such changes will not impair the economic viability of the system or degrade the attractiveness of the system's service to present and potential subscribers.

(3) FRANCHISE RENEWAL.

- (a) 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, the City may revise this ordinance, reevaluate the needs of the community for cable service, and review the performance of the grantee.
- (b) To the extent applicable, the Cable Act shall govern the procedures and standards for renewal of any franchise awarded pursuant to this ordinance.
- (c) To the extent that the Cable Act is not applicable, the City in its sole discretion and judgment

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shall have the right to grant, deny or conditionally grant renewal of a franchise, provided that the City shall not unreasonably refuse to renew the franchise or unreasonably condition the renewal. The conditions the City may place on its approval shall include, but are not limited to: 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.

26.08 SIGNIFICANCE OF FRANCHISE.

- (1) **FRANCHISE NONEXCLUSIVE.** The franchise shall not be exclusive and the City reserves the right to grant a similar franchise to any person, firm, company, corporation or association at any time.
- (2) **FRANCHISE AMENDABLE.** The scope of the franchise shall be deemed amendable from time to time to allow the grantee to innovate and implement new services and developments; provided, however, that no such services or developments be implemented without the expressed prior approval of the City Council.
- (3) **PRIVILEGES MUST BE SPECIFIED.** No privilege or exemption shall be inferred from the granting of the franchise unless it is specifically prescribed.
- (4) **AUTHORITY GRANTED.** The franchise shall give to the grantee the right and privilege to construct, erect, operate, modify and maintain, in, upon, along, above, over and under streets, as defined in SS 26.02, which have been or may hereafter be dedicated and open to public use in the City, towers, antennas, poles, cables, electronic equipment, and other network appurtenances necessary for the operation of a CCS in the City, subject to SS 26.29 of this chapter.
- (5) **MORTGAGE OR PLEDGE OF SYSTEM.** 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.
- (6) **PREVIOUS RIGHTS ABANDONED.** 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 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, except as granted by applicable state or federal law.

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- (7) **SUBJECT TO OTHER REGULATORY AGENCIES' RULES AND REGULATIONS.** 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.
- (8) **COMPLIANCE TO LAWS, RULES AND REGULATIONS.** In the event any valid law, rule or regulation of any governing authority or agency having jurisdiction, including, but not limited to, the Federal Communications Commission, contravenes the provisions of this chapter subsequent to its adoption, then the provision hereof shall be superseded by any such valid law, rule or regulation to the extent that the provisions hereof are in conflict and contrary to any such law, rule or regulation.
- (9) **POLE USE AGREEMENTS REQUIRED.** 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.
- (10) **NO RIGHT OF PROPERTY.** 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.
- (11) **FRANCHISE BINDING.** Anything contained herein to the contrary notwithstanding, all provisions of this chapter shall be binding upon the grantee, its successors, lessees or assignees.

26.09 TRANSFER OF OWNERSHIP AND CONTROL.

- (1) **TRANSFER OF FRANCHISE.** Any franchise granted under this chapter 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 by any method, including, but not limited to, forced or voluntary sale, merger, or consolidation, either in whole or in part, without the prior written consent of the City, and then only under such reasonable conditions as the City may establish. Such consent, as required by the City, shall be given or denied no later than one hundred twenty (120) 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.
- (2) **NOTICE TO CITY ON 20% CHANGE OF OWNERSHIP OR CONTROL.** The grantee shall promptly notify the City in writing of any proposed change in, or transfer of, control of the grantee. For the purpose of this subsection, a change in, or transfer of, control shall occur on the acquisition or transfer by any person of twenty percent (20%) or more of the beneficial ownership interest in the grantee.
- (3) **CONSENT OF CITY REQUIRED ON 51% CHANGE OF OWNERSHIP OR CONTROL.** In the event that any person or group of persons acquires or transfers fifty-one percent (51%)

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or more of the beneficial ownership interest in the grantee, grantee's franchise shall be subject to cancellation unless and until the City shall have consented in writing to the acquisition or transfer. The City shall give or deny consent no later than one hundred twenty (120) days after receiving written notice of the acquisition or transfer. The City's consent shall not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the City may inquire into the qualifications of the prospective controlling party, and the grantee shall assist the City in any such inquiry.

- (4) **GRANTEE'S RESPONSIBILITIES.** In seeking the grantee'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 five percent (5%) or more of the voting stock: (i) 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; (ii) 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 (iii) 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) **RIGHTS OF FINANCIAL INSTITUTIONS.** 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 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 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

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the right and obligations of such franchise as in the public interest. The consent of the City to such transfer shall be given or denied no less than one hundred twenty (120) days after any request, and shall not be unreasonably withheld.

- (6) **EFFECT OF CITY'S CONSENT TO TRANSFER.** 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) **CITY'S RIGHT TO PURCHASE SYSTEM.** 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 ninety (90) days of the City's receipt from the grantee of a copy of the written bona fide offer.

26.10 OPERATION OF FRANCHISE.

- (1) **OPERATIONS TO BE IN ACCORDANCE WITH RULES.** The grantee shall maintain and operate its CCS in accordance with the rules and regulations of the FCC, the State of Wisconsin and the City as are applicable or may be promulgated.
- (2) **INTERRUPTION OF SERVICE; NOTIFICATION.** 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.
- (3) **LOCAL PAYMENT CENTER.** The grantee shall maintain a local payment center, which shall be open during normal business hours. This payment center shall accept subscriber payments.
- (4) **REPAIR SERVICES.** The grantee shall maintain a repair and maintenance crew capable of responding to subscriber complaints or requests for service as specified in SS 26.27. No charge shall be made to the subscriber for this service, except as authorized by FCC regulations and state and federal law.
- (5) **SERVICE INFORMATION.** 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.

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- (6) **SERVICE RECORDS MAINTAINED.** The grantee shall at all times make and keep a list of all complaints and interruptions or degradation of service received or experienced during the term of franchise at its office in the City. The records maintained above shall also include complaint response time and service restorable period and shall be continuously open to inspection, examination or audit by any duly authorized representative of the City. Records must be kept three (3) years.
- (7) **GRANTEE RULES AND REGULATIONS.** 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) **Rules to be in Conformance with Other Regulations.** No such rules, regulations, terms and conditions promulgated under (7) 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) **All Rules to be filed with City.** Two (2) copies of all rules, regulations, terms and conditions promulgated under (7) above, together with any amendments, additions or deletions thereto, shall be kept currently on file with the City Clerk and another copy thereof shall be maintained for public inspection during normal business hours at grantee's office in the City (i.e., the local payment center); no such rules, regulations, terms, conditions, or amendments, additions, or deletions thereto shall take effect unless and until so filed and maintained.
- (8) **SUBSCRIBERS' ANTENNAS.** 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.
- (9) **SALE OR SERVICE OF TELEVISION RECEIVERS.** Neither the grantee during the period of the franchise, nor any of its affiliated, subsidiary, parent organizations, officers or directors or stockholders holding five percent (5%) or more of outstanding stock of the grantee, shall within the corporate limits of the City or within ten (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.
- (10) **ANTENNA SWITCH.** 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.

26.11 RIGHTS RESERVED TO THE CITY.

- (1) **RIGHT OF AMENDMENT RESERVED TO CITY.** The City may, from time to time, add to,

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modify or delete provisions of this charter as it shall deem necessary in the exercise of its regulatory powers, provided that such additions or revisions are reasonable and do not place an undue financial burden on the grantee. Such additions or revisions shall be made only after a public hearing for which the grantee shall have received written notice at least thirty (30) days prior to such hearing.

- (2) **NO IMPAIRMENT OF CITY'S RIGHTS.** 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.
- (3) **GRANTEE AGREES TO CITY'S RIGHTS.** The City reserves every right and power which is required to be reserved or provided by any ordinance of the City, and the grantee, by its acceptance of the franchise, agrees to be bound hereby and to comply with any action or requirements of the City in its exercise of such rights or powers which have been or may be enacted or established.
- (4) **CITY'S RIGHT OF INTERVENTION.** The City shall have the right to intervene and the grantee specifically agrees by its acceptance of the franchise not to oppose such intervention by the City in any suit or proceeding within the franchise territory.
- (5) **POWERS OF THE CITY.** Neither the granting of the franchise, nor any provision governing the franchise, shall constitute a waiver or bar to the exercise of any governmental right or power of the City.
- (6) **CITY'S RIGHT OF INSPECTION.** The City reserves the right during the life of the franchise to inspect and supervise all construction or installation work performed subject to the provisions of this chapter and to perform system measurements to ensure compliance with the terms of this chapter.
- (7) **CITY'S RIGHT OF ACQUISITION.** 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 SS 26.13(3) and in SS 26.09(6) herein.
- (8) **CITY'S RIGHT OF CCS INSTALLATION.** 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.
- (9) **CITY'S TRANSFER OF FRANCHISE.** Any right or power in or duty imposed upon any elected official, officer, employee, department or board of the City shall be subject to transfer

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by the City to any other elected official, officer, employee, department or board.

26.12 ACCEPTANCE AND EFFECTIVE DATE OF FRANCHISE.

- (1) **EFFECTIVE DATE.** The franchise(s) provided for in this chapter shall take effect and be in force after the 30th day following the execution of a franchise agreement between the City and the grantee, provided that within those thirty (30) days, the grantee shall file with the City the following:
 - (a) A notarized statement by the grantee of unconditional acceptance of the franchise.
 - (b) A certificate of insurance as required in SS 26.17(4).
 - (c) A performance bond as required in SS 26.19.
- (2) **GRANTEE TO HAVE NO RECOURSE.** The grantee shall have no recourse whatsoever against the City for any loss, cost, expense or damage arising out of any provision or requirement of this chapter or its regulation or from the City's exercise of its authority to grant additional franchises.
- (3) **ACCEPTANCE OF POWER AND AUTHORITY OF CITY.** The grantee expressly acknowledges that in accepting the franchise it has relied upon its own investigation and understanding of the power and authority of the City to grant this franchise.
- (4) **INDUCEMENTS NOT OFFERED.** The grantee, by acceptance of the franchise, acknowledges that it has not been induced to enter into this franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of the City concerning any term or condition of this franchise that is not included in the chapter.
- (5) **GRANTEE ACCEPTS TERMS OF FRANCHISE.** The grantee acknowledges by the acceptance of the franchise that it has carefully read its terms and conditions and it is willing to and does accept all the obligations of such terms and conditions and further agrees that it will not, prior to substantial completion of the system, set up as against the City the claim that any provision of this chapter, as adopted, is unreasonable, arbitrary, invalid or void.
- (6) **INCORPORATION OF PROPOSALS.** The grantee, by the acceptance of the franchise, agrees that the matters contained in the grantee's proposal and as stated in oral presentation and supplemental correspondence, except as inconsistent with federal and state rules and regulations or law, shall be incorporated into this chapter as though set out verbatim.

26.13 TERMINATION OF FRANCHISE.

- (1) **PERFORMANCE OF PROPOSAL BOND.** The City reserves the right to revoke the franchise and rescind all rights and privileges associated with the franchise in the following circumstances:

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- (a) If the grantee should default in the performance of any of its obligations under this chapter or under the franchise agreement.
 - (b) If the grantee should fail to provide or maintain in full force and effect the performance bond and liability and indemnification coverage as required in SS 26.19 and SS 26.17, respectively.
 - (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 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.
- (2) REVOCATION PROCEDURE. Upon the occurrence of any of the events enumerated in (1) of this section, the following procedures shall be followed:
- (a) The grantee shall be provided with a written notice of the alleged default, describing the alleged default in as much detail as possible.
 - (b) The grantee shall have thirty (30) calendar days to correct the alleged default or deny that such alleged default exists.
 - (c) If the alleged default is denied to exist, or if no satisfactory corrective action is undertaken within the thirty (30) day period, the grantee shall be afforded a public hearing, with twenty (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.
 - (d) The City Council shall conclude the hearing with a finding that the grantee is in default or is not in default.

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- (e) If the City Council determines that there is default, the grantee shall be granted an additional amount of time as the City Council shall deem reasonable to correct the default to the satisfaction of the City Council.
- (f) 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 resolved to be revoked without further notice or hearing.

(3) PURCHASE OF SYSTEM BY CITY ON NONRENEWAL.

- (a) 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.
- (b) If the determination of fair market value cannot be negotiated or determined, the value shall be determined by an impartial appraisal procedure pursuant to Ch. 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 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 non-renewal, including, without limitation, payment made by the City to another person or entity to operate the CCS for a temporary period after non-renewal. The City and grantee shall share the cost of the appraisal procedure equally.
- (c) The City shall have ninety (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.

(4) PURCHASE OF SYSTEM BY CITY ON REVOCATION.

- (a) If the City revokes the franchise for cause, the grantee shall first offer the CCS for sale to the City at an equitable price.
- (b) If the determination of an equitable price cannot be negotiated or determined, the price shall be determined by an impartial appraisal procedure pursuant to Ch. 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

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person or entity to operate the CCS for a temporary period after revocation. The City and grantee shall share the cost of the appraisal procedure equally.

- (c) The City shall have ninety (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.
- (5) **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 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 SS 26.17 and the performance bond in SS 26.19 shall continue in full force and effect during the period of removal.
- (6) **RESTORATION BY CITY; REIMBURSEMENT OF COSTS.** If the grantee fails to complete any work required by (4) 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 thirty (30) days after receipt of an itemized list of such costs or the City may recover such costs as provided in SS 26.19.
- (7) **EXPIRATION; EXTENDED OPERATION.** Upon the expiration of the franchise, the City may, by resolution, on its own motion or request of the grantee, require the grantee to operate the franchise for an extended period of time not to exceed six (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 thirty (30) days prior to expiration of the original franchise or any extensions thereof.

26.14 REGULATORY JURISDICTION AND PROCEDURES.

- (1) **CONTINUING REGULATORY JURISDICTION.** 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) **REGULATORY BOARD.** The continuing regulatory jurisdiction of the City shall be exercised through the Regulatory Board. The Board shall have the responsibilities and duties set for in SS 26.03.

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- (3) **REGULATORY PROCEDURES.** The Regulatory Board shall consider any inquiry or proceeding requiring City Council action in accordance with normal City Council procedures.
- (4) **FAILURE TO ENFORCE PROVISIONS.** 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) **CONTRAVENTION OF PROVISIONS.** The City may, at its option and in its sole discretion, impose a Five Thousand Dollar (\$5,000.00) penalty on 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 agreement, provided that the City's enforcement action is successful.

26.15 REPORTS AND RECORDS OF THE GRANTEE.

- (1) **ANNUAL FINANCIAL REPORTS REQUIRED.** The grantee shall file annually with the City Clerk, not later than three (3) months after the end of its fiscal year during which it accepted the franchise and within three (3) months after the end of each subsequent fiscal year, two (2) copies of:
 - (a) The report to its stockholders;
 - (b) An income statement identifying gross revenues, expenses and income applicable to its operations under this franchise during the fiscal year or fraction thereof; and
 - (c) A listing of its properties devoted to network operations, together with an itemization of its investment in each of such properties on the basis of original cost, less depreciation. These reports shall include a balance sheet, listing of substantial liabilities, and such other reasonable information as the City may request, and shall be certified by a certified public accountant.
- (2) **ANNUAL FACILITIES REPORT.** Upon request, the grantee shall file with the City Clerk, within thirty (30) days, two (2) copies of a total facilities report setting forth the total physical miles of plant installed or in operation during the fiscal year, a map showing the location of same, and a current annual statement of cost of construction by competent category.
- (3) **ANNUAL SERVICE RECORD REPORT.** Upon request, the grantee shall file with the City Clerk, within thirty (30) days, two (2) copies of a list of all trouble complaints and system "downtime" received or experienced during the fiscal year. All such submitted data shall also include complaint disposition and response time. For the purposes of this provision, certified copies of a "complaint" logbook reflecting all such incidents will suffice. Also, if requested by the City, uncertified additions to the annual complaint log shall be supplied in two (2) copies to the City at intervals of not more than ninety (90) days following the filing of the annual report.
- (4) **ANNUAL MEASUREMENTS REPORT.** Upon request, the grantee shall file with the City

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Clerk, within thirty (30) days, two (2) copies of a report on the system technical measurements.

(5) **ANNUAL OPERATIONS REPORTS.** Upon request, the grantee shall file with the City Clerk, within thirty (30) days, two (2) copies of the following supplemental information:

(a) If a nonpublic corporation, a list of all-current shareholders and bondholders both of record or beneficial. If a public corporation, a list of all shareholders who individually or as a concerted group hold five percent (5%) or more of the voting stock of the corporation.

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

(c) Copies of all pertinent agreements or contracts, including pole-use agreements, entered into by the grantee during the fiscal year in the conduct of its business under a franchise granted hereunder.

(d) The names and both business and residential address and telephone numbers of the CCS resident manager and engineer.

(e) Two (2) copies of all types of subscriber agreements. Copies of individual subscribers' agreements are not to be filed with the City.

(f) (f) Copies of all rules and regulations promulgated by the grantee during the fiscal year in the conduct of its business in accordance with the provisions of SS 26.10.

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

(6) **ANNUAL PROJECTED PLANS REPORT.**

(a) Projected plans for the future, including a projected plan for construction for the next two-(2) years.

(7) **REGISTRATION WITH THE FEDERAL COMMUNICATIONS COMMISSION.** The grantee shall give formal notice to the City that it is registering with the Federal Communications Commission. Within five (5) calendar days upon filing such registration with the Federal Communications Commission, the grantee shall file two (2) copies of its registration with the City Clerk.

(8) **PUBLIC AVAILABILITY OF REPORTS.** Such reports as required under this chapter must be available to the public in the office of the City Clerk, during normal business hours. Subscribers shall be notified of the availability of such reports in ways approved by the Regulatory Board.

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(9) **CORRESPONDENCE.** The grantee shall simultaneously file with the City Clerk a copy of each petition, application and communications transmitted by the grantee to, or received by the grantee from, any federal, state or other regulatory commissions or agencies having competent jurisdiction to regulate and pertaining to the operations of the CCS.

(10) **CITY'S ACCESS TO RECORDS.**

(a) The City reserves the right during the life of this franchise to have access, including the right to copy, at all normal business hours and upon the giving of reasonable notice, to the grantee's contracts, engineering plans, accounting, financial data, and service records relating to the property and the operations of the grantee and to all other records required to be kept hereunder. Nothing contained herein shall prevent the grantee from enjoining the City from reviewing documents relating to propriety interests not related to its operation under this chapter in the City's regulatory program.

(b) Records of subscriber lists and statistical data not otherwise required by this chapter shall be made available only upon a ruling by a judge of competent jurisdiction that such records are material to the City's regulatory program.

(11) **GRANTEE'S AGREEMENTS.** The form of grantee's agreements with its subscribers shall be subject to the approval of the City Board, and two (2) copies of all types of agreements used by the grantee shall be filed and maintained with the City Clerk.

26.16 FRANCHISE PAYMENT.

(1) **ACCEPTANCE FEE FOR NEW FRANCHISE.** Upon the grant of a new franchise, the grantee shall reimburse the City for all reasonable cost, including, but not limited to, publication fees incurred by the City relating to the grant of the new franchise.

(2) **ANNUAL FRANCHISE PAYMENT.** The grantee shall pay to the City a franchise fee in the amount of three percent (3%) of the grantee's gross revenues. In the event that the City decides to increase the franchise fee in accordance with state or federal law above three percent (3%) of the grantee's gross revenues, the grantee shall not be liable for such increase until the City shall give grantee written notice of such desire to change franchise fees. The franchise fee payment shall be in addition to any other payment owed to the City by the grantee and shall not be construed as payment in lieu of municipal property taxes or other state, county or local taxes.

(3) **METHOD OF COMPUTATIONS; INTEREST.**

(a) Sales taxes or other taxes levied directly on a per subscription basis and collected by the grantee shall be deducted from the local annual gross revenues before computation of sums due the City is made. Payments due the City under the provisions of (2) above shall be computed and paid in quarterly installments. Payments shall be made to the City of Algoma

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before the last day of March, June, September, December, and shall be paid at the Office of the City Clerk during his/her regular business hours. The payment period shall commence as of the effective date of the franchise or any renewal date. The City shall be furnished a statement with each payment, reflecting the local amounts of annual gross revenues, and the above charges, deductions and computations, for the annual payment period covered by the payment.

- (b) If any payment is not made as required, interest on the amount due, as determined from the annual gross revenues as computed, shall accrue from the date for the required submittal at any annual rate of twelve percent (12%). The grantee shall pay an additional compensation to the City if the payment is late by forty-five (45) days or more. Such additional compensation shall be equal to two percent (2%) of the amount due in order to defray those additional expenses and costs incurred by the City by reason of the delinquent payment.
- (c) The percentages designated in this section may be amended no more than once each year by the City Board, consistent with increased costs for municipal facilities and supervision and applicable rules of other regulatory agencies.
- (4) **RIGHTS OF RECOMPUTATION.** 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.
- (5) **ALTERNATIVE FEE BASIS.** In the event the franchise fee or payment established under this chapter is ruled unconstitutional or unenforceable, the City may impose and collect an equivalent charge on any legally permissible basis, provided such charge does not exceed the previously allowed limit on franchise fees or payments.

26.17 LIABILITY AND INDEMNIFICATION.

- (1) **INDEMNIFICATION OF FRANCHISE.** It is expressly understood and agreed by and between the City and the grantee that the grantee shall save the City harmless from all loss 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 enactment of this chapter and the award of the franchise.
- (2) **INDEMNIFICATION OF CITY IN FRANCHISE OPERATION.** It is expressly understood and agreed by and between the City and the grantee that the grantee shall save the City and its agents and employees harmless from and against all claims, damages, losses and expenses, including attorney's 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

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of the CCS authorized herein, 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) REIMBURSEMENT OF COSTS. The grantee shall pay and by its acceptance of this franchise agrees that it will pay all expenses incurred by the City in defending itself with regard to all damages and penalties mentioned in (1) and (2) above. These expenses shall include all out-of-pocket expenses, such as consultants or attorney fees, and shall also include the reasonable value of any services rendered by the City Attorney or his staff or any other employee of the City.
- (4) LIABILITY INSURANCE. The grantee shall maintain throughout the term of the franchise, and any extensions thereto, or as required in SS 26.13 herein, the insurance policies described below. Such policies shall name as the additional insured the City, its officers, boards, commissions, agents and employees, shall be primary to any insurance carried by the City, and shall be obtained from a company or companies approved by the Regulatory Board and in a form satisfactory to the Board. Such policies shall be in amounts at least as follows:
 - (a) Comprehensive General Liability Insurance. Comprehensive General liability Insurance containing the following coverage: Premises/Operations; Products/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 One Million Dollars (\$1,000,000.00) for bodily injury (including death) and property damage for each occurrence of not less than Two Million Dollars (\$2,000,000.00) in the aggregate.
 - (b) Worker's Compensation. Worker's Compensation Insurance in compliance with SS 102.31 of the Wisconsin Statutes and in compliance with the laws of each state having jurisdiction over each employee.
 - (c) Comprehensive Automobile Liability. Comprehensive Automobile Liability including owned, non-owned, and hired vehicles with limits of not less than One Million Dollars (\$1,000,000.00) for bodily injury (including death) and One Million Dollars (\$1,000,000.00) for property damage for each occurrence.
 - (d) Umbrella Liability. Umbrella Liability with limits of not less than Eight Million Dollars (\$8,000,000.00), 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 coverage which apply to the basic underlying insurance. Where no such broader underlying insurance exists the policy shall pay on behalf of the insured upon terms and conditions and limitations of the carrier's umbrella excess policy.

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- (5) **NOTICE OF CANCELLATION OF REDUCTION OF COVERAGE.** 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 Clerk by registered mail of 2 copies of a written notice of such intent to cancel or reduce the coverage.

- (6) **EVIDENCE OF INSURANCE FILED WITH CITY INSURANCE ADVISOR.** All policies of insurance or certified copies thereof and written evidence of payment of required premiums shall be filed and maintained with the City insurance advisor during the term of the franchise or any renewal thereof.
- (7) **NO WAIVER OF PERFORMANCE BOND.** 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 the grantee or limit the liability of the grantee under this franchise or for damages, either to the full amount of the bond or otherwise.

26.18 PROPOSAL BOND.

- (1) **PROPOSAL BOND REQUIRED.** 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 member of the Federal Deposit Insurance Corporation, payable to the order of the City in the amount of Ten Thousand Dollars (\$10,000.00).
- (2) **FORFEIT OF PROPOSAL BOND.** Should the applicant fail or refuse to accept a franchise hereunder or fail or refuse to furnish the performance bond as set forth in SS 26.19 within thirty (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 terms or to retain the proceeds of the certified check.
- (3) **RETURN OF PROPOSAL BOND.** 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) **BOND EVIDENCE TO BE FILED WITH CITY.** Two (2) copies of all bonds or certified copies thereof and written evidence of payment of required premium shall be filed and maintained with the City Clerk during the term of any franchise granted hereunder or any renewal thereof.

26.19 PERFORMANCE BOND.

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- (1) In the event of the construction of a new cable system or, if required by the franchise agreement, upon the rebuilding of all or a major part of the current cable communications system, a faithful performance bond running to the City penal sum of One Hundred Thousand Dollars (\$100,000.00), conditional upon the faithful performance of the grantee of the pledged construction or system rebuilt, shall be maintained throughout the period of construction until the project is judged completed by the Cable Commission.
- (2) Two (2) copies of the performance bond or certified copies thereof and written evidence of payment of required premium shall be filed and maintained with the City Clerk.

26.20 RATES.

- (1) ESTABLISHMENT OF RATES. 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 regulation shall be performed by the City Board 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 (including charges for, but not limited to, converter boxes, remote control units, connections for additional television receivers and other cable home wiring).
- (2) RESERVATION OF RIGHT TO REGULATE RATES. The City reserves the right to further regulate rates pursuant to any additional powers granted it by either the FCC or Federal or State law.
- (3) RATE REGULATION PROCEDURES. In the event that the City assumes rate regulatory powers pursuant to the Cable Act, the following shall apply:
 - (a) Initial Procedures. 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 thirty (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) Proprietary Information. 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) Refunds. As specified in the FCC regulations, the City Council may order the grantee to

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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 Board shall give the grantee notice and opportunity to comment.

- (d) **Basic Service Rate Increases and Equipment Charges.** 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 changes and/or basic service rates shall be subject to the procedures outlined in this section.
- (e) **Service Disconnection.** A subscriber shall have the right to have its service disconnected without charge, except such charges as may be allowable under FCC rules or state or federal law, 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 thirty (30) days following 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 the person, which remain due and owing.

26.21 SERVICES, FACILITIES AND EQUIPMENT, CHANNEL CAPACITY.

- (1) **SERVICES PROVIDED.** The grantee shall provide, at a minimum, the initial services listed in the franchise agreement. Such services shall include, but not be limited to, basic cable service and additional services, as defined herein. Services shall not be reduced without prior notification to the City.
- (2) **FACILITIES AND EQUIPMENT PROVIDED.** The grantee shall provide, at a minimum, the initial facilities and equipment listed in the franchise agreement.
- (3) **PUBLIC, EDUCATIONAL AND GOVERNMENT (PEG) ACCESS FACILITIES.** The grantee shall provide the PEG accesses facilities, including channel capacity, necessary interface equipment and cabling to permit operation as specified in the franchise agreement.
- (4) **PROGRAMMING PROVIDED.** The grantee shall provide, at a minimum, the categories of video programming listed in the franchise agreement.
- (5) **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.
- (6) **CABLE CHANNEL FOR COMMERCIAL USE.** The grantee shall designate channel capacity for commercial use as required by the Cable Act and applicable law.

26.22 EXTENSION OF SERVICE.

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- (1) **SYSTEM EXTENSION IN ANNEXED AREAS.** The grantee shall extend its cable system to provide full service to all residents of newly annexed areas within a reasonable length of time after such annexation, not to exceed six (6) months, where a density of twenty-five (25) potential subscribers per cable mile can be obtained. Notwithstanding the density requirement, the grantee shall extend and make available cable communicating services to any dwelling unit within three hundred (300) feet of existing cable plant.
- (2) **SYSTEM EXTENSION ACROSS CITY BOUNDARIES.**
 - (a) Before any subscriber located in a community other than the City is allowed to connect to the CCS, the grantee shall be capable of furnishing service to a "substantially completed" system for City residents unless a waiver of this section has been granted by the City Council.
 - (b) A written waiver request must be made thirty (30) days before requesting an appearance before the City Council. Such waiver request shall clearly state the potential impact of such occurrence on the operations and finances of the grantee, the costs of such an extension and who is to bear such costs, and any anticipated interconnection with such institutions, within the area to be served by such system extension.
 - (c) If permission is granted by other jurisdictions, the grantee shall extend the system or cooperate with other grantees in those jurisdictions to provide service to institutions pursuant to this chapter, only upon approval of the City Council.

26.23 TIME FOR PERFORMANCE.

- (1) **INITIAL FILINGS.**
 - (a) It is hereby deemed in the public interest that the system be extended as rapidly as possible to all citizens within the City with a density of twenty-five (25) potential subscribers per cable plant line mile. Within thirty (30) days of the effective date of this chapter, the grantee shall file with the appropriate authorities and utilities all initial papers and applications necessary to comply with the terms of this chapter, including the proposal for franchise and any additions or amendments thereto, and shall thereafter diligently pursue all such applications.
 - (b) After the grantee has diligently pursued the acquisition of necessary pole attachment contracts, or other necessary easements, and where such necessary contracts have not been executed or easements obtained after a reasonable period of time as determined by the City, the City may, at its discretion, provide assistance to ensure the extension of the system to all citizens.
- (2) **COMMENCEMENT OF CONSTRUCTION.** Within one hundred twenty (120) days of the effective date of FCC registration, the grantee shall initiate construction and installation of the CCS. Such construction and installation shall be pursued with reasonable diligence.

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- (3) **COMMENCEMENT OF OPERATION.** Within fourteen (14) months of the effective date of FCC registration, the grantee shall "commence operation" within the meaning set forth in SS 26.02 of this chapter.
- (4) **SUBSTANTIAL COMPLETION OF CONSTRUCTION.** Within fourteen (14) months of the effective date of FCC registration, the grantee shall have "substantially completed" construction of the "service area" within the meaning set forth in SS 26.02 of this chapter.
- (5) **PROVISION OF BASIC SERVICE.** Within twenty-four (24) months of the effective date of FCC registration, the grantee shall have placed in use sufficient distribution facilities so as to offer basic service to one hundred percent (100%) of the dwelling units in the City, subject to the density standard of twenty-five (25) units per cable plant line mile.
- (6) **DELAYS AND EXTENSION OF TIME.** The City may, in its discretion, extend the time for grantee, acting in good faith, to perform any act required hereunder. The time for performance shall be extended or excused, as the case may be, for any period during which grantee demonstrates to the satisfaction of the City Council that grantee is being subjected to delay or interruption due to any of the following circumstances if reasonably beyond its control:
 - (a) Necessary utility rearrangements, pole change-outs or obtainment of easement rights.
 - (b) Governmental or regulatory restrictions.
 - (c) Labor strikes.
 - (d) War.
 - (e) National emergencies.
 - (f) Fire.
 - (g) Acts of God.
 - (h) Any other circumstances reasonably beyond the control of the grantee.

26.24 CUSTOMER SERVICE STANDARDS.

- (1) **ADDITIONAL STANDARDS MAY BE IMPOSED.** Nothing in this chapter shall be construed to prohibit the grantee and City from agreeing to exceed the customer service standards set out in this chapter or the establishment or enforcement of any state or local law or regulation concerning customer service or consumer protection that imposes customer service

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standards or consumer protection requirements that exceed the customer service standards set out in this chapter or address matters not addressed in this chapter.

(2) TELEPHONE AVAILABILITY.

- (a) The grantee shall maintain a local, toll free or collect call telephone access line which will be available to its subscribers twenty-four (24) hours a day, seven (7) days a week. Trained representatives of the grantee will be available to respond to customer telephone inquiries during normal business hours. After normal business hours, the access line may be answered by a service or an automated response system, including an answer machine. Inquiries received after normal business hours must be responded to by a trained representative of the grantee on the next business day.
- (b) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis.
- (c) The grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless a historical record of complaints indicates a clear failure to comply.
- (d) Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time.

(3) INSTALLATIONS, OUTAGES AND SERVICE CALLS. Under normal operating conditions, each of the following four (4) standards shall be met by the grantee no less than ninety-five percent (95%) of the time, measured on a quarterly basis:

- (a) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to one hundred fifty (150) feet from the existing distribution system.
- (b) Excluding conditions beyond the control of the grantee, the grantee shall begin working on service interruptions promptly and in no event later than twenty-four (24) hours after the interruption becomes known to the grantee. The grantee must begin actions to correct other service problems the next business day after receiving notification of the service problem.
- (c) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-(4) hour time block during normal business hours. (The grantee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)
- (d) The grantee may not cancel an appointment with a customer after the close of business on

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the business day prior to the scheduled appointment. If the grantee's 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.

- (4) 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:
 - (a) Systems 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 of one (1) or more channels affecting all the subscribers of the system or two percent (2%) thereof.
 - (b) Isolated Service Interruption: Within twenty-four (24) hours, including weekends, of receiving requests for service identifying an isolated service interruption (less than two percent (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.
 - (c) Inferior Reception Quality: Within forty-eight (48) hours, including weekends, of receiving a request for service identifying a problem concerning picture or sound quality.

The 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.

- (5) NOTIFICATION OF SERVICE INTERRUPTION TO CITY CLERK. The grantee shall promptly notify the City Clerk, 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 percent (5%) of the subscribers.
- (6) SUBSCRIBER CREDIT FOR SERVICE INTERRUPTIONS. Upon service interruption of the subscriber's cable service, the following shall apply:
 - (a) For service interruptions of over four (4) hours and up to seven (7) days, the grantee shall provide a credit to the subscriber of one-thirtieth (1/30) of one month's fee for affected service for each twenty-four (24) hour period service is interrupted for four (4) or more hours.
 - (b) For service interruptions of seven (7) days or more in one month, the grantee shall provide a credit based on the hourly rate the subscriber pays for all monthly service and the number of

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hours of the service interruption.

(7) **UPGRADING OF FACILITIES AND SERVICE.** The grantee shall upgrade its facilities and service as subscribers' demands dictate so that its system is as advanced as the current state of technology with field-proven equipment will allow.

(8) **SUBSCRIBER INFORMATION.**

(a) **Operating Policies.** As subscribers are connected or reconnected to the cable system, and at least annually to all subscribers, and at any time upon request, 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 City office responsible for administration of the franchise, including the name and telephone number of the office. The notice shall also indicate the grantee's business hours, legal holidays, and procedures for responding to inquiries after normal business hours. The grantee shall provide all subscribers and the City written notice no less than thirty (30) days prior to any proposed change in these policies.

(b) **Rates, Programming Service, and Channel Position.** A grantee, under normal operating conditions, shall provide all subscribers and the City 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) **Copies to the City.** Copies of all notices provided to subscribers shall be filed concurrently with the City.

(9) **SUBSCRIBER BILLING PRACTICES.**

(a) **Billing.** Bills shall be clear, concise, understandable and shall include the grantee's toll free or collect telephone number for subscriber use. Bills shall be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills shall also clearly delineate all activity during the billing period, including optional charges, rebates and credits. In case of a billing dispute, the grantee shall respond to a written complaint from a subscriber within thirty (30) days. Refund checks will be issued promptly, and 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.

(b) **Late Charges.** The account of a subscriber shall not be considered delinquent until at least

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thirty (30) days have elapsed from the due date of the bill, which shall be a date certain. The following provisions shall apply to the imposition of late charges on subscribers:

- (i) The grantee shall not impose a late charge on a subscriber unless the subscriber's account is delinquent, the grantee has given the subscriber written notice of the delinquency in a clear and conspicuous manner, and the subscriber has been given at least eight (8) business days from the mailing of the notice to pay the balance due.
- (ii) A late charge for not more than Five Dollars (\$5.00) may be imposed monthly.
- (iii) No late charge may be assessed on the amount of a bill in dispute if found in favor of the subscriber.
- (iv) Any charge for returned checks shall be reasonably related to the costs incurred by the grantee in processing such checks.

Adding these provisions to the ordinance requires that the following definitions be added to the definition section of the ordinance:

Normal Business Hours. Those hours during which similar businesses in the City are open to service customers. In all cases, "normal business hours" must include some evening hours at least one night per week and some weekend hours.

Normal Operating Conditions. Those service conditions, which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. These conditions which are ordinarily within the control of the cable operator 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.

26.25 TECHNICAL STANDARDS.

- (1) STANDARDS. The CCS shall be designed, constructed and operated so as to meet those technical and performance standards set forth in the franchise agreement and as required by the FCC's rules and regulations relating to Cable Television Systems and found in 47 C.F.R. SS 76.601 to 76.618, as amended, or as may, from time to time, be amended.
- (2) TESTS AND COMPLIANCE PROCEDURES. 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 CCS on an ongoing basis to determine compliance with this ordinance and 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 City, and the grantee shall submit written test reports to the City. If more than ten percent (10%) of the locations tested fail to meet the performance standards,

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the grantee shall be required to indicate what corrective measures have been taken, and the entire test shall be repeated. Failure to take corrective action may be considered a breach of the franchise.

- (3) **ADDITIONAL TESTING.** At any time after commencement of service to subscribers, the City may require the grantee to perform additional tests, full or partial repeat tests, or tests involving service to a specific subscriber. Such additional tests will be made on the basis of complaints received or other evidence indicating an unresolved controversy or significant noncompliance with the technical standards established in this ordinance and the franchise agreement.
- (4) **COSTS OF TESTS.** The costs of all tests required in subsections (2) and (3) above, and re-testing as necessary, shall be paid by the grantee, except that if the City requires the use of outside consultants or test personnel, then such costs shall be paid by the City.

26.26 CONSTRUCTION STANDARDS.

- (1) **COMPLIANCE WITH SAFETY CODES.** All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970 and any amendments thereto, as well as all state and local codes, where applicable.
- (2) **COMPLIANCE WITH ELECTRICAL CODE.** All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the applicable sections of the then current edition of the National Electric Safety Code and all state and local codes, where applicable.
- (3) **ANTENNAS AND TOWERS.** Antenna supporting structures (towers) shall be designed for the proper loading zone as specified in Electronics Industry Association's R.S.-22A Specifications.
- (4) **COMPLIANCE WITH AVIATION REQUIREMENTS.** Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aeronautical Agency, the State Aeronautics Board governing the erection and operation of supporting structures or television towers, and all other applicable local or state codes and regulations.

26.27 CONSTRUCTION AND INSTALLATION.

- (1) **APPROVAL OF PROPOSED CONSTRUCTION.**
 - (a) The grantee shall first obtain the approval of the City prior to commencing construction on the streets, alleys, public grounds or places of the City. Applications for approval of construction shall be in a form provided by the City.
 - (b) The right of construction, including easements, is not implied except on locations where the

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City has the authority to grant such rights and easements and then only in conformity with the provisions of this chapter. All other rights of construction, including easements, shall be the responsibility of the grantee.

- (2) EXCAVATION PERMITS. The grantee shall not open or disturb the surface of any street, sidewalk, driveway or public place for any purpose without first having obtained a permit to do so in the manner provided by code.
- (3) CHANGES REQUIRED BY PUBLIC IMPROVEMENTS. The grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of the grantee when required by the City by reason of traffic conditions, public safety, street vacation, street construction, change or establishment of street grade, installation of sewers, drains, water pipes, City-owned power or signal lines, and tracts or any other type of structure or improvement by public agencies.
- (4) USE OF EXISTING POLES OR CONDUITS. Nothing in this chapter shall authorize the grantee to erect and maintain in the City new poles where existing poles are servicing the area. The grantee shall require permission from the City before erecting any new poles, underground conduit or appurtenances where none exist at the time the Grantee seeks to install its system.
- (5) FACILITIES NOT TO BE HAZARDOUS OR INTERFERE.
 - (a) All wires, conduits, cables and other property and facilities of the grantee shall be so located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic and travel upon the streets and public places of the City.
 - (b) The grantee shall keep and maintain all its property in good condition, order and repair. The City reserves the right hereunder to inspect and examine, at any reasonable time and upon reasonable notice, the property owned or used, in part or in whole, by the grantee.
 - (c) The grantee shall keep accurate maps and records of all its facilities and furnish copies of such maps and records as requested by the City under SS 26.15.
 - (d) The grantee shall not place poles or other equipment where they will interfere with the rights or reasonable convenience of adjoining property owners, or with any gas, electric or telephone fixtures or with any water hydrants or mains. All poles or other fixtures placed in a street shall be placed in the right-of-way between the roadway and the property, as specified by the City.
- (6) METHOD OF INSTALLATION.
 - (a) All wires, cables, amplifiers and other property shall be constructed and installed in an orderly and workmanlike manner. All cables and wires shall be installed parallel with existing

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telephone and electric wires whenever possible. Multiple cable configurations shall be arranged in parallel and bundled, with due respect for engineering and safety considerations.

- (b) All installations shall be underground in those areas of the City where public utilities providing both telephone and electric service are underground at the time of installation.
 - (c) In areas where both telephone and electric utility facilities are aboveground, provided that at such time as those facilities are required to be placed underground by the City or are placed underground, the grantee shall likewise place its services underground without additional cost to the City or to the residents of the City, other than as may be reflected in rates charged to subscribers.
- (7) PROTECTION OF FACILITIES. Nothing contained in this section shall relieve any person, company or corporation from liability arising out of the failure to exercise reasonable care to avoid injuring the grantee's facilities while performing any work connected with grading, re-grading, or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.
- (8) NOTICE OF CITY IMPROVEMENTS. The City shall give the grantee reasonable notice of plans for street improvements where paving or resurfacing of a permanent nature is involved. The notice shall contain the nature and character of the improvements, the streets upon which the improvements are to be made, the extent of the improvements and the work schedule for the project. The notice shall give the grantee sufficient time to make any additions, alterations or repairs to its facilities as it deems necessary in advance of the actual commencement of the work, so as to permit the grantee to maintain continuity of service.
- (9) REQUESTS FOR REMOVAL OR CHANGE. The grantee shall, on the request of any person holding a building moving permit, temporarily raise or lower its wires to permit the moving of such building. The expense of such temporary removal, raising or lowering the wires shall be paid by the person requesting the same, and the grantee shall have the authority to require such payment in advance. The grantee shall be given not less than ten-
- (10) working days' notice of any move contemplated to arrange for temporary wire changes.
- (10) AUTHORITY TO TRIM TREES ON OR OVERHANGING PUBLIC PROPERTY.
- (a) The grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and other public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the grantee. All trimming is to be done under the supervision and direction of the City after the explicit, prior written notification and approval of the City and at the expense of the grantee.
 - (b) The grantee may contract for such services; however, any firm or individual so retained shall receive City approval prior to commencing such activity.
 - (c) Required tree trimming on private property not affecting public property must be negotiated

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between the grantee and the owner of the private property.

(11) RESTORATION OR REIMBURSEMENT.

- (a) In the event of disturbance of any street or private property by the grantee, it shall, at its own expense and in a manner approved by the City and the owner, replace and restore such street or private property in as good a condition as before the work causing such disturbance was done.
- (b) If the grantee fails to perform such replacement or restoration, the City or the owner shall have the right to do so at the sole expense of the grantee. Payment to the City or owner for such replacement or restoration shall be immediate, upon demand, by the grantee. All requests for replacement or restoring of such streets or private property as may have been disturbed must be in writing to the grantee.

(12) OFFICE AND RECORDS IN CITY. The grantee shall at all times make and keep, at an office maintained by the grantee in the City, full and complete plans and records showing the exact location of all CCS equipment installed or in use in the streets and other public places of the City. Upon request, the grantee shall furnish the City a current map or set of maps, drawn to scale, showing all CCS equipment installed and in place in streets and other public places of the City.

(13) EMERGENCY REMOVAL OF PLANT. If, at any time, in case of fire or disaster in the City, it shall become necessary in the reasonable judgment of the City to cut or move any of the wires, cables, amplifiers, appliances or appurtenances thereto of the grantee, such cutting or moving may be done and any repairs rendered necessary thereby shall be made by the grantee, at its sole expense, provided that such repairs are not necessitated by negligent act of the City, in which case cost for repairs shall be borne by the City.

(14) ALTERNATE ROUTING OF PLANT. If continued use of a street is denied to the grantee by the City for any reason, the grantee will make every reasonable effort to provide service over alternate routes.

(15) PROPORTIONAL EXPANSION OF CONSTRUCTION. Any construction and installation of plant by the grantee shall be performed in such a way that the system is installed and made operational, roughly in proportion to population, simultaneously on both sides of the City.

26.28 INTERCONNECTION.

(1) NO PROHIBITION OF INTERCONNECTION. Nothing in this chapter shall be construed so as to prohibit the grantee from interconnecting its system with other similar contiguous systems either in the City or in other municipalities, counties or states, except as the provisions of SS 26.22 apply.

(2) STUDY REQUIRED FOR INTERCONNECTION.

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- (a) The grantee shall, if requested by the City, unless owner of the system to be interconnected with refuses such interconnection, 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 such interconnection.
- (b) If the study indicates technical feasibility only, the City may elect, but at its sole discretion, to arrange for compensation to be paid to the grantee, in amount sufficient to assure an economic "break even" by the grantee, and so order the interconnection.
- (c) If the study fails to show technical feasibility, the grantee shall have no further responsibility for accomplishing such interconnection until such time as improvements in technology permit such interconnection.

26.29 UNAUTHORIZED CONNECTIONS OR MODIFICATIONS.

- (1) **UNAUTHORIZED CONNECTIONS PROHIBITED.** No firm, person, group, company, corporation or governmental body or agency, without the expressed 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) **REMOVAL OR DESTRUCTION PROHIBITED.** No firm, person, group, company, corporation or governmental body or agency shall willfully interfere, tamper, 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 fringe upon rights presently enjoyed by utilities in the City.
- (3) **VIOLATION.** Any firm, person, group, company, corporation or governmental body or agency convicted of a violation of this section shall, for each offense, forfeit a sum of not less than Twenty Dollars (\$20.00) nor more than Two Hundred Dollars (\$200.00), together with costs of such prosecution. Each twenty-four-(24) hour period a violation continues shall be considered a separate offense.

26.30 PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED.

- (1) **SERVICES TO BE EQUALLY AVAILABLE.**
 - (a) The grantee shall not refuse cable television service to any person or organization who requests such service for lawful purpose, nor shall a grantee refuse any person or organization the right to cable cast pursuant to provisions of this chapter.
 - (b) The 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

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any prejudice or disadvantage. The grantee shall comply at all time with the Cable Act and all other applicable federal, state and local laws and regulations and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this ordinance by reference.

- (c) This provision shall not be deemed to prohibit promotional campaigns to stimulate subscription to the system or other legitimate uses thereof.
- (2) **FAIRNESS OF 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 or other entities having a legitimate use for the system and no one shall be arbitrarily excluded from its use; allocation of use of such facilities shall be made according to the rules or decisions or regulatory agencies affecting the same, and where such rules or decisions are not effect to resolve a dispute between conflicting users or potential users, the matter shall be submitted for resolution by the Regulatory Board.
- (3) **EQUAL EMPLOYMENT.** The 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.

26.31 SUBSCRIBER PRIVACY.

- (1) **USE OF DATA FROM SUBSCRIBER.** The grantee, City or any person shall not initiate or 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 for purposes of routine maintenance and monitoring of the system or to verify billing accuracy. Valid authorization shall mean written approval from the subscriber for a period of time not to exceed one (1) 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 subscribers' premises. In any case, the subscriber shall retain the right to deactivate his terminal.
- (2) **SUBSCRIBER DATA.** The City, the grantee or any persons 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) **SUBSCRIBER AGREEMENTS.** 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.

26.32 REMEDIES.

- (1) **LESSER REMEDIES.** Nothing shall prohibit the City from invoking lesser remedies than

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revocation for violations of the provision of this chapter or the franchise agreement, including the shortening of the franchise term and imposing monetary damages as set out below.

- (2) **MONETARY DAMAGES.** If, after notice to the grantee and opportunity for hearing, the City determines that the grantee has failed to perform any material obligation under this chapter or the franchise agreement, nor fails to do so in a timely manner, the City may, at its option and in its sole discretion, assess monetary damages against the grantee as provided in this section. This provision for assessment of damages is intended to be separate and apart from the City's right to enforce the provisions of the construction and performance bonds provided for in this chapter and are intended to be in addition to any other remedies. This provision is intended to provide compensation to the City for actual damages.
- (a) For failure to comply with any of the customer service standards adopted by the City in this chapter or set out in the franchise agreement, the grantee shall pay to the City the sum of Two Hundred Dollars (\$200.00) for each day the grantee fails to comply.
 - (b) For failure to furnish, maintain or offer cable services to any potential subscriber within the territorial limits of the City upon order of the City, the grantee shall pay to the City the sum of Two Hundred Dollars (\$200.00) for any such occurrence.
 - (c) For failure to obtain or file evidence of required insurance or other required financial security, the grantee shall pay to the City the sum of Three Hundred Dollars (\$300.00) for any such occurrence.
 - (d) For failure to provide access to data documents, records or reports to the City as required by this chapter, the grantee shall pay to the City the sum of One Hundred Dollars (\$100.00) for any occurrence.
 - (e) For failure to comply with applicable construction, operation or maintenance standards, the grantee shall pay to the City the sum of Three Hundred Dollars (\$300.00) for any such occurrence.
 - (f) For failure to comply with a rate decision or refund order issued by the City, the grantee shall pay to the City the sum of Five Hundred Dollars (\$500.00) for any such occurrence.

26.33 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.

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