



Legislation Text

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980530  
SUBSTITUTE 1

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A substitute ordinance relating to cable systems regulations.  
81-16 cr  
99 rc

- Analysis -

This ordinance revises the city regulation of cable television systems. The ordinance transfers city regulatory authority for cable television from the director of the department of administration to the city clerk. The ordinance provides for a franchise fee of 5% of gross revenues, or more, if provided by the franchise agreement. The ordinance specifies detailed regulations for applications, approval of applicants and actions of franchisees. The ordinance includes findings that cable systems make extensive use of valuable public rights-of-way and are a public trust.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 81-16 of the code is created to read:

81-16. Cable Television System. The application processing fee for the initial grant, renewal, modification or transfer of a cable system franchise is \$10,000.

Part 2. Chapter 99 of the code is repealed and recreated to read:

CHAPTER 99  
CABLE SYSTEMS

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99-1. Intent. The city of Milwaukee finds that the further development of cable systems has the potential of having great benefit and impact upon the people of Milwaukee. Cable systems permanently occupy and extensively make use of scarce and valuable public rights-of-way in a manner different from the way in which the general public uses them, and in a manner reserved primarily for those who provide essential services to the public subject to special public interest obligations, such as utility companies. The grant of a franchise has the effect of giving the franchisee extensive economic benefits and placing the franchisee in the position of public trust. Because of the complex and rapidly changing technology associated with cable systems, the city further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the city or such persons as the city will designate. It is the intent of this chapter to provide for and specify the means to attain the best possible public interest and public purpose in these matters and any franchise issued pursuant to this chapter shall be deemed to include this finding as an integral part thereof. Further, it is recognized that cable systems have the capacity to provide not only entertainment and information services to the city's residents, but a variety of broadband, interactive cable services to institutions and individuals. Many of these services involve city agencies and other public institutions, such as the

provision of governmental, educational or health care communications. For these purposes, the following goals underlie the regulations:

1. Cable services shall be provided to the maximum number of city residents.
2. The system shall be capable of accommodating the present and future cable-related needs and interests of Milwaukee.
3. The system shall be constructed and maintained during a franchise term so that changes in technology may be integrated to the maximum extent possible with existing facilities.
4. A system shall be responsive to the needs and interests of the local community and shall provide the widest possible diversity of information sources and services to the public.
5. A cable operator shall pay fair compensation to the city for the use of local public rights-of-way.

99-2. Title. This ordinance shall be known and may be cited as the "City of Milwaukee Cable Systems Ordinance."

99-3. Definitions. For the purpose of this chapter the following terms, phrases, words and their derivations shall have the meaning given herein. Except when inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words used in the singular include the plural. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given the meaning set forth in Title 47 of the United States Code, as amended, the statutes of the state of Wisconsin, as amended, and, if not defined therein, their common and ordinary meaning.

1. ACCESS MANAGER means any non-profit corporation that is selected under the provisions of s. 99-11.
2. BASIC SERVICE means any service tier that includes the retransmission of all signals of locally-received television broadcast stations provided to any subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such stations, regardless of how such signal is ultimately received by the cable system), any public, educational and governmental access channels, and any additional video programming signals added to the basic tier by a franchisee.
3. CABLE ACT means the cable communications policy act of 1984, 47 U.S.C., §§ 521 et seq., as amended from time to time.
4. CABLE SERVICE means:
  - a. The one-way transmission to subscribers of video programming or other programming services.
  - b. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Cable service includes the provision of internet access or service over a cable system unless otherwise provided by federal law.
5. CABLE SYSTEM or SYSTEM means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within the city. A reference to a cable system in this chapter refers to any part of such system, including, without limitation, converters, but such term does not include:
  - a. A facility that serves only to retransmit the television signals of one or more television broadcast stations.
  - b. A facility that serves subscribers without using any public rights-of-way.
  - c. A facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the communications act, except that such facility shall be considered a cable system if such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; or
  - d. Any facilities of any electric utility used solely for operating its electric utility system.
6. CHANNEL means a full 6 megahertz (MHz) frequency band, which is at least capable of carrying one standard NTSC video signal, a number of audio, digital or other non-video signals, or some combination of such signals.
7. CITY means the city of Milwaukee and any agency, department or agent thereof.
8. CITY CLERK means the city clerk or his or her designee.
9. COMMISSIONER means the city's commissioner of public works.
10. CONVERTER means an electronic device which may serve as an interface between a system and a subscriber's television receiver or other terminal equipment, and which may perform a variety of functions, including signal security, de-scrambling, electronic polling, frequency conversion and channel selection.
11. DWELLING UNIT or HOUSING UNIT or HOME means a habitable residence recognized by the U.S. bureau of the

census and so recorded in periodic federal census counts in the city.

12. EDUCATIONAL ACCESS CHANNEL means an access channel dedicated to educational use.

13. FCC means the federal communications commission, its designee, and any legally appointed or elected successor.

14. FRANCHISE means the nonexclusive right granted pursuant to this chapter to construct and operate a cable system along the public rights-of-ways within all or a specified area of the city.

15. FRANCHISE AGREEMENT means a contract entered into pursuant to this chapter between the city and a franchisee that sets forth, subject to this chapter, the specific provisions of the franchise granted, including referenced specifications, franchise applications and other related material.

16. FRANCHISEE means any person receiving a franchise pursuant to this chapter and its lawful successor, transferee or assignee.

17. GROSS REVENUE means any and all revenue, whether received in the form of cash, credits, barter, trade, property or consideration of any kind or nature, arising from, attributable to, or in any way derived by the franchisee from the operation of a franchisee's system to provide cable service, whether such revenue is received by franchisee, its affiliates, or any person in which franchisee has a financial interest, or by any other entity that is a cable operator of the system directly or indirectly. This definition is intended to reach as broadly as possible to encompass all revenue. Gross revenue includes, by way of illustration and not limitation, amounts charged for basic service, optional premium, per-channel, per-program services, cable programming services, audio services, channel guide subscriptions, internet access or service; installation, disconnection, re-connection, and changes-in-service; equipment sales or rentals, leased channel fees; late fees and administrative charges of any type; consideration received from programmers; advertising revenue; and revenue from the sale of subscriber names and addresses. Gross revenue also includes the full value of complimentary services provided by the franchisee, exclusive of complimentary services provided to employees of the cable system, non-profit corporations or as required by a franchise agreement. Gross revenue shall not include:

a. Bad debt except to the extent that bad debts are recovered.

b. The revenue of any person including, without limitation, a supplier of programming to the franchisee to the extent that said revenue is also included in gross revenue of the franchisee.

c. Pass-through payments received by the franchisee from third-party programmers to purchase services from entities other than the franchisee, which services benefit only the third-party programmers and for which the franchisee neither received nor provides any consideration.

d. Any taxes on services furnished by the franchisee which are imposed directly on any subscriber or user by the state, the city or other governmental unit and which are collected by the franchisee on behalf of said governmental unit. A franchise fee is not such a tax.

18. INSTITUTIONAL NETWORK means a communication network which is constructed or operated by a franchisee and which is generally available only to government entities and other subscribers who are not residential subscribers.

19. LEASED CHANNEL or LEASED ACCESS CHANNEL means any channel on a cable system designated or dedicated for use by a person unaffiliated with the franchisee.

20. NORMAL BUSINESS HOURS means those hours during which most similar businesses in the community are open to serve customers, including some evening hours at least one night per week or some weekend hours, or both.

21. NORMAL OPERATING CONDITIONS means those service conditions that are within the control of a franchisee. Conditions that are deemed to be within the control of a franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular or seasonal demand periods that the franchisee can reasonably anticipate, and maintenance or upgrade of a cable system. Conditions that are deemed not to be within the control of a franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions.

22. OUTAGE means a failure of the technical plant that results in service interruption affecting more than one subscriber.

23. PEG or PEG ACCESS CHANNEL or PEG CHANNEL means any channel on a cable system set aside by a franchisee for public, educational or governmental use. The term includes all accompanying facilities and support.

24. PERSON means an individual, partnership, association, organization, corporation, or any lawful successor, transferee or assignee of said individual, partnership, association, organization or corporation. Whenever used in any clause prescribing a penalty, the term "person" as applied to partnerships or associations includes partners or members thereof. "Person" shall not apply to the city unless otherwise indicated.

25. PROGRAMMER means any person or entity that produces or otherwise provides program material or information for transmission by video, audio, digital or other signals, either live or from recorded tapes or other storage media, to users or subscribers by means of the cable system.

26. PUBLIC ACCESS CHANNEL means an access channel dedicated to use by the general public, including groups and individuals, and which is available for such use on a nondiscriminatory basis.

27. PUBLIC RIGHTS OF WAY means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, parkway, waterway, easement or similar property dedicated to travel within the city which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining the cable system. No reference herein to a "public right-of-way" shall be deemed to be a representation or guarantee by the city that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a franchisee shall be deemed to gain only those rights to use as are properly in the city and as the city may have the right and power to give.

28. REASONABLE NOTICE shall be written notice addressed to the city clerk, or to the franchisee at its principal office or such other office as the franchisee has designated to the city as the address to which notice shall be transmitted to it, which notice shall be by first-class mail, facsimile or e-mail.

29. RESIDENT means any person who or which resides in the city as otherwise defined by applicable law.

30. SALE shall include any sale, exchange, barter or offer for sale.

31. SECTION means any section, subsection or provision of the Milwaukee code of ordinances, as amended from time to time.

32. SERVICE AREA means the geographic area within the city in which a franchisee has the right to operate a cable system as defined in a franchise agreement.

33. SERVICE INTERRUPTION means loss of picture or sound on one or more cable channels, or a reduction in the quality of sound or picture of one or more channels.

34. STANDARD INSTALLATION means an installation to a structure located within 175 feet of the closer of the following:

- a. The nearest right-of-way, or
- b. The nearest tap on the franchisee's cable system.

35. STATE means the state of Wisconsin.

-36. STRUCTURE means any habitation or business establishment constructed or erected on a fixed location on the ground, including but not limited to a mobile home or building of any kind.

37. SUBSCRIBER or CUSTOMER means any person, including the city, that receives, whether or not for a fee, a service provided by the franchisee by means of or in connection with the cable system.

99-4. Applications for Initial Grant, Renewal, Modification or Transfer of Franchise.

1. APPLICATION REQUIRED. a. A written application shall be filed with the city clerk for grant of an initial franchise, a renewal franchise, modification of a franchise agreement pursuant to 47 U.S.C. § 545, or transfer of a franchise.

b. To be acceptable for filing, a signed original of the application shall be submitted together with 12 copies. The application shall be accompanied by any required application processing fee as set forth in s. 81-16, conform to any applicable request for proposals ("RFP") and contain all required information. All applications shall include the names and addresses of persons authorized to act on behalf of all applicants with respect to the application.

c. Application Processing Fees and Deposits. c-1. No application shall be processed except upon payment of the required application processing fee as set forth in s. 81-16, and the deposit fee required by subd. 2.

c-2. Deposits. Any person filing an application shall deposit a sum estimated as sufficient to pay the cost of processing the application in accordance with a schedule provided by the city clerk. If the actual cost of processing the application exceeds the deposit, such person will be billed for the balance. If the actual cost is less than the deposit, the excess shall be refunded. Payment of any bill issued under this section within 30 days after its issuance shall be a condition of any approved application.

d. All applications accepted for filing shall be made available by the city clerk for public inspection.

e. Public Hearings. An applicant shall be notified of any public hearings held in connection with the evaluation of its application and shall be given an opportunity to be heard. In addition, prior to the issuance of a franchise, the city shall provide for the holding of a public hearing within the proposed franchise area, following reasonable notice to the public, at which every applicant and its application shall be examined and the public and all interested parties afforded a reasonable opportunity to be heard.

2. APPLICATION FOR GRANT OF INITIAL FRANCHISE. a. At the direction of the common council, the city clerk may solicit applications through a RFP after conducting, if necessary, a proceeding to identify the future cable-related needs and interest of the community. The RFP

may contain a proposed franchise agreement.

b. An applicant shall respond to the RFP within the time specified by the city clerk. The procedures, instructions and requirements set forth in the RFP shall be followed by each applicant. Any applicant that has already filed materials pursuant to this section need not file the same material with its RFP response, but must amplify its application to include any additional or different materials required by the RFP. The city clerk may seek additional information from any applicant and establish deadlines for the submission of such information.

c. Unsolicited Application for Grant of Initial Franchise. Notwithstanding the provisions of par. b, a person may apply for an initial franchise by submitting an unsolicited application to the city clerk containing the information required in par. d.

d. Contents of Application. An application for the grant of an initial franchise, whether in response to a RFP or not, shall contain, at a minimum, the following information:

d-1. Name and mail, facsimile and e-mail address of the applicant and identification of the ownership and control of the applicant, including: the names and addresses of the 10 largest holders of an ownership interest in the applicant and affiliates of the applicant, and all persons with 5% or more ownership interest in the applicant and its affiliates; the persons who control the applicant and its affiliates; all officers and directors of the applicant and its affiliates; and, any other business affiliation and cable system ownership interest of each named person.

d-2. A demonstration of the applicant's technical ability to construct or operate the proposed cable system, or both, including identification of key personnel.

d-3. A demonstration of the applicant's legal qualifications to construct or operate the proposed cable system, or both.

d-4. Financial statements and disclosures that demonstrate the applicant's financial ability to complete the construction and operation of the cable system proposed.

d-5. A description of the applicant's prior experience in cable system ownership, construction and operation, and identification of communities in which the applicant or any of its principals have, or have had a cable franchise or any interest therein.

d-6. Identification of the proposed timetable to provide cable service to the entire franchise area, including a description of the proposed initial service area's boundaries.

d-7. A detailed description of the physical facilities proposed, including channel capacity, technical design, performance characteristics, headend and access facilities.

d-8. Where applicable, a description of the construction of the proposed system, including an estimate of plant mileage and its location; the proposed construction schedule; a description, where appropriate, of how services will be converted from existing facilities to new facilities; and information on the availability of space on poles and in conduits including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities.

d-9. The proposed rate structure, including projected charges for each service, installation, converters and all other proposed equipment or services.

d-10. A demonstration of how the applicant will reasonably meet the future cable-related needs and interests of the community, including descriptions of how the applicant will meet the needs described in any recent community needs assessment conducted by or for the city, and how the applicant will provide adequate public, educational and governmental access channel capacity, facilities, or financial support to meet the community's needs and interests.

d-11. Pro forma financial projections for the proposed franchise term, including a statement of projected income and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules.

d-12. If the applicant proposes to provide cable service to an area already served by an existing franchisee, the identification of the area where the overbuild would occur and the ability of the public rights-of-way and other property that would be used by the applicant to accommodate an additional system.

d-13. Any additional information that the applicant believes may be reasonably necessary to demonstrate compliance with the requirement of this chapter.

d-14. An affidavit or declaration of the applicant, signed by 2 authorized officers, certifying the truth and accuracy of the information in the application, acknowledging the enforceability of application commitments, and certifying that the application meets all federal and state law requirements.

e. Legal Qualifications. In order to be deemed legally qualified, an applicant must meet the following criteria:

e-1. If the city has denied an applicant's previous request for an initial or renewal franchise, such applicant may not apply for an initial or renewal franchise again until at least 3 years have elapsed since the date of such denial.

e-2. The applicant shall not have had any cable system franchise validly revoked by any franchising authority within 3 years preceding the

submission of the application.

e-3. The applicant shall have the necessary authority under Wisconsin law to operate a cable system.

e-4. The applicant must have the necessary authority under federal law to hold the franchise and operate a cable system. An applicant must have, or show that it is qualified to obtain, any necessary federal franchises or waivers required to operate the system proposed.

e-5. The applicant shall not be issued a franchise if at any time during the 10 years preceding the submission of the application, the applicant was convicted of any act or omission of such character that the applicant cannot be relied upon to deal truthfully with the city and the subscribers of the cable system, or to substantially comply with its lawful obligations under applicable law, including obligations under consumer protection laws and laws prohibiting anti-competitive acts, fraud, racketeering or other similar conduct. The city may waive this requirement if the applicant demonstrates that the individuals responsible for such acts or omissions are no longer associated with the applicant in any way.

e-6. The applicant shall not be issued a franchise if it files materially misleading information in its application or intentionally withholds information that the applicant lawfully is required to provide.

e-7. The applicant shall not be issued a franchise if an elected official of the city holds a controlling interest in the applicant or an affiliate of the applicant.

e-8. The applicant shall be willing to comply with applicable local laws.

f. Evaluation of Applications. f-1. The city clerk may reject an application which does not meet the minimum requirements of par. d.

f-2. Applicants shall respond to requests that the city clerk deems relevant to the city's consideration of the application and necessary to determine whether the applications satisfy the standards set forth in this chapter.

g. The city clerk shall recommend to the council whether one or more additional franchises should be awarded. The recommendation shall be based upon, among other things, the following factors:

g-1. The extent to which the applicant has substantially complied with the applicable law and the material terms of any existing cable franchise for the city.

g-2. Whether the quality of the applicant's service under any existing franchise in the city, including signal quality, response to customer complaints, billing practices, and the like, has been reasonable in light of the needs and interests of the community.

g-3. Whether the applicant has the financial, technical and legal qualifications to provide cable service.

g-4. Whether the application satisfies any minimum requirements established by the city in a RFP and is otherwise reasonable to meet the future cable-related needs and interests of the community, taking into account the cost of meeting such needs and interests.

g-5. Whether, to the extent not considered under subd. 4, the applicant will provide adequate public, educational and governmental access channel capacity, facilities or financial support.

g-6. Whether issuance of a franchise is warranted in the public interest considering the immediate and future effect on the public rights-of-way and private property that would be used by the cable system, including the extent to which installation or maintenance as planned would require replacement of property or involve disruption of property, public services or use of the public rights-of-way; the effect of granting a franchise on the ability of all franchised cable systems to meet the cable-related needs and interests of the community; and the comparative superiority or inferiority of competing applications.

g-7. What effects a grant of the application may have on competition in the delivery of cable service in the city.

h. If the city finds that it is in the public interest to issue a franchise considering the factors set forth in pars. g-1 to g-7, and subject to the applicant's entry into an appropriate franchise agreement, it shall issue a franchise. Prior to deciding whether or not to issue a franchise, the city may hold one or more public hearings or implement other procedures under which comments from the public on an application may be received. The city also may grant or deny a request for a franchise based on its review of an application without further proceedings and may reject any application that is incomplete or fails to respond to RFP. This chapter is not intended and shall not be interpreted to grant any applicant or existing franchisee standing to challenge the denial of its application or the issuance of a franchise to another.

3. APPLICATION FOR GRANT OF A RENEWAL FRANCHISE. The renewal of any franchise to provide cable service shall be conducted in a manner consistent with section 626 of the cable act.

a. If neither a renewal applicant nor the city activates in a timely manner or cannot as a matter of law activate the renewal process set forth in 47 U.S.C. § 546(a) through (g) (including, for example, if the provisions are amended or repealed), and except as to applications submitted pursuant to 47 U.S.C. § 546(h), the provisions of sub. 2 shall apply and a renewal request shall be evaluated using the same criteria as any other request for a franchise.

b. Notwithstanding par. a, a cable operator may submit an application for renewal of a franchise pursuant to 47 U.S.C. § 546(h). Such a

proposal may be submitted at any time and the city clerk shall recommend to the common council, after affording the public adequate notice and opportunity for comment, that the city grant or deny such proposal at any time (including after proceedings have been commenced in accordance with 47 U.S.C. § 546(a)). An informal renewal application may be denied for any reason.

4. APPLICATION FOR MODIFICATION OF A FRANCHISE. An application for modification of a franchise agreement shall include, at minimum, the following information:

a. The specific modification requested.

b. The justification for the requested modification, including the impact of the requested modification on subscribers and others, and the financial impact on the applicant if the modification is approved or disapproved, demonstrated through, inter alia, submission of financial pro forma information.

c. A statement whether the modification is sought pursuant to section 625 of the cable act, and, if so, a demonstration that the requested modification meets the standards set forth in the cable act.

d. Any other information that the applicant believes is necessary for the city to make an informed determination on the application for modification.

e. An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, and certifying that the application is consistent with all federal and state law requirements.

5. TRANSFER OF A FRANCHISE. a. City approval required.

a-1. A franchise shall be a privilege that is in the public trust and personal to the franchisee. A franchisee's obligations under its franchise involve personal services whose performance involves personal credit, trust and confidence in the franchisee.

a-2. A franchisee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part either by forced or involuntary sale, or by ordinary sale, contract, consolidation or otherwise, the franchise or any of the rights or privileges therein granted, nor shall thereby transfer control of the franchise, without the prior consent of the city and then only upon such terms and conditions (reasonably related to the qualifications of the transferee) as may be reasonably prescribed by the city, which consent shall not be unreasonably denied or delayed. Any attempt to sell, transfer, lease, assign or otherwise dispose of the franchise without the consent of the city shall be a material violation of the cable ordinance and this franchise agreement. The granting of a security interest in any assets, or any mortgage or other hypothecation in the ordinary course of business shall not be considered a transfer for the purposes of this subsection. A transfer of control is presumed to occur if 40% or more of the ownership interest in a cable system is transferred. If 10% or more of the ownership interest in a cable system is transferred, the cable operator shall inform the city of the transfer in writing within 30 days after the date of the transfer.

a-3. For the purpose of determining whether it shall consent to such transfer, the city may inquire into the qualifications of the prospective transferee or controlling party, and franchisee shall assist the city in such inquiry. In seeking the city's consent to any change or ownership or control, the franchisee shall have the responsibility of insuring that the franchisee or the proposed transferee, or both, complete an application in accordance with FCC form 394 or equivalent. An application shall be submitted to the city not less than 120 days prior to the proposed date of transfer. The transferee shall be required to establish that it possesses the qualifications and financial and technical capability to operate and maintain the cable system and comply with all franchise requirements for the remainder of the term of the franchise. If, in the reasonable judgment of the city, the legal, financial, character and technical qualifications of the applicant are satisfactory and if the franchisee is in compliance with all material requirements of the franchise, the city shall consent to the transfer of the franchise. If the franchisee (the 'transferor' under this subsection) is not then in compliance, the city shall consent to the transfer, notwithstanding such non-compliance, if the transferee agrees to cure the event of non-compliance. The consent of the city to such transfer shall not be unreasonably denied or delayed.

a-4. If any financial institution having a pledge of the franchisee or its assets for the advancement of money for the construction or operation of the franchise, or both, shall take control of and operate the cable system, it shall notify the city clerk. Further, said financial institution shall also submit a plan for such operation to the city clerk within 30 days of assuming such control that will insure continued service and compliance with all franchise requirements during the term the financial institution exercises control over the cable system. The financial institution shall not exercise control over the cable system for a period exceeding one year unless extended by the city in its reasonable discretion, and during said period of time, it shall have the right to petition the city to transfer the franchise to another franchisee.

b. Application. b-1. A franchisee shall promptly notify the city clerk of any proposed transfer.

b-2. At least 120 calendar days prior to the contemplated effective date of a transfer, the franchisee shall submit to the city clerk an application for approval of the transfer. The application shall provide complete information on the proposed transaction, including details on the legal, financial, technical and other qualifications of the transferee, and on the potential impact of the transfer on subscriber rates and service. At a minimum, the following information shall be included in the application, provided that, a franchisee is not required to duplicate information that it submits to the city clerk to comply with its obligations under federal or state law:

b-2-a. All information and forms required under federal law or the equivalent of such forms if no longer required by federal law.

b-2-b. All information required in sub. 2-d.

b-2-c. Any contracts or other documents that relate to the proposed transaction, and all documents, schedules, exhibits, or the like referred to therein.

b-2-d. Any shareholder reports or filings with the securities and exchange commission that discuss the transaction.

b-2-e. Other information necessary to provide a complete and accurate understanding of the financial position of the cable system before and after the proposed transfer.

b-2-f. Complete information regarding any potential impact of the transfer on subscriber rates and service.

b-2-g. A brief summary of the proposed transferee's plans for at least the next 5 years regarding line extension, plant and equipment upgrades, channel capacity, expansion or elimination of services and any other changes affecting or enhancing the performance of the cable system.

b-2-h. A list of all the proposed transferor's obligations under the franchise, and a statement given under oath identifying which obligations have been met and in what manner they have been met.

b-3. For the purposes of determining whether it shall consent to a transfer, the city, acting through the city clerk or its agents, may inquire into all qualifications of the prospective transferee and such other matters as the city clerk may deem necessary to determine whether the transfer is in the public interest and should be approved, denied or conditioned as provided under par. a-3. A franchisee and any prospective transferees shall assist the city clerk in any such inquiry, and if they fail to do so, the request for a transfer may be denied.

c. Determination by City. In making a determination as to whether to recommend to the common council that the city grant, deny or grant, subject to conditions, an application for a transfer of a franchise, the city clerk may consider, without limitation, the legal, financial and technical qualifications of the transferee to operate the cable system; any potential effects of the transfer on subscriber rates or services; whether a franchisee is in compliance with its franchise, and this chapter and, if not, the proposed transferee's commitment to cure such noncompliance; whether the transferee owns or controls any other cable system in the city, and whether operation by the transferee may eliminate or reduce competition in the delivery of cable service in the city; and whether operation by the transferee or approval of the transfer would adversely affect subscribers, the public or the city's interest under this chapter, a franchise or other applicable law.

d. Transferee's Agreement. No application for a transfer of a franchise shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this chapter and the franchise and that it will assume the obligations, liabilities and responsibility for all acts and omissions, known and unknown, of the previous franchisee under this chapter and the franchise, for all purposes, including renewal.

e. Approval Does Not Constitute Waiver. Approval by the city of a transfer does not constitute a waiver or release of any of the rights of the city under this chapter or a franchise agreement, whether arising before or after the date of the transfer.

99-5. Grant of Franchise. 1. GRANT. a. The city may grant one or more cable franchises, and each such franchise shall be awarded in accordance with and subject to the provisions of this chapter.

b. This chapter may be amended from time to time, and in no event shall this chapter be considered a contract between the city and a franchisee such that the city would be prohibited from amending any provision hereof subject to subs. 6 and 10-c.

c. No person may construct or operate a cable system without a franchise granted by the city.

d. No person may be granted a franchise without having entered into a franchise agreement with the city pursuant to this chapter.

e. The grant of a franchise shall not be deemed to circumscribe or limit the authority of the city to regulate or franchise the activities of any other communications system or provider of communications services to the full extent permitted by law.

f. Any franchise agreement issued to a franchisee shall define the services that the franchisee is authorized to provide using the public rights-of-way.

2. ACCEPTANCE OF FRANCHISE. Following approval by the city, any franchise granted pursuant to this chapter, and the rights, privileges and authority granted by a franchise agreement, shall take effect and be in force from and after the first date on which both the franchisee and the city have accepted and signed the franchise agreement.

3. TERM OF FRANCHISE. No franchise shall be granted for a period of more than 17 years.

4. FRANCHISE CHARACTERISTICS. a. A franchise authorizes use of public rights-of-way for installing cables, wires, lines, optical fiber, underground conduit and other devices necessary and appurtenant to the operation of a cable system to provide cable service within a franchise area, but does not expressly or implicitly authorize a franchisee to provide service to, or install a cable system on, private property without owner consent (except for use of compatible easements pursuant to section 621 of the cable act, § 541(a)(2)), or to use publicly or privately owned conduits without a separate agreement with the owners.

b. A franchise shall constitute both a right and an obligation to provide the cable services regulated by the provisions of this chapter and the franchise agreement to all persons within the city in the manner specified in the franchise agreement.

c. A franchise is non-exclusive and will not explicitly or implicitly preclude the issuance of other franchises to operate cable systems within the city; affect the city's right to authorize use of public rights-of-way by other persons to operate cable systems or for other purposes as it determines appropriate; or affect the city's right to itself construct, operate or maintain a cable system, with or without a franchise.



d. All privileges prescribed by a franchise shall be subordinate to (without limitation) the city's use and any prior lawful occupancy of the public rights-of-way.

e. The city, acting through the commissioner of public works, reserves the right to designate where a franchisee's facilities are to be placed within the public rights-of-way and to resolve any disputes among users of the public rights-of-way in accordance with the commissioner's authority under city ordinances, including but not limited to s. 7-04 of the city charter and s. 115-3-1.

f. The franchise does not include any license or permit required for the privilege of transacting and carrying on a business within the city as required by other ordinances and laws of the city, or for attaching devices to poles or other structures, whether owned by the city or a private entity, or for excavating or performing other work in or along public rights-of-way.

5. FRANCHISEE SUBJECT TO OTHER LAWS AND FCC REGULATIONS. a. A franchisee shall at all times be subject to and shall comply with all applicable federal, state, and local laws, including without limitation, the city's street construction and work on public ways provisions, ch. 115.

b. A franchisee is prohibited from engaging in any activity it is prohibited from engaging in under FCC regulations, as if those regulations were set forth in full herein.

6. INTERPRETATION OF FRANCHISE TERMS. a. The provisions of this chapter and any franchise agreement shall be liberally construed in favor of the city in order to effectuate their purposes and objectives and to promote the public interest.

b. In the event of a conflict between this chapter and a franchise agreement, the conflict shall be resolved as provided in the franchise agreement.

c. Subject to federal law or regulation, a franchise agreement will be governed by and construed in accordance with the laws of the state.

7. OPERATION OF A CABLE SYSTEM WITHOUT A FRANCHISE. Any person found to be operating or constructing a cable system without a franchise shall be subject to all provisions of this chapter, including but not limited to its provisions regarding construction and technical standards and franchise fees. In its discretion, the city at any time may require such person to enter into a franchise agreement within 30 days of receipt of a written notice by the city clerk that a franchise agreement is required; require such person to remove its property and restore the area to a condition satisfactory to the city within a reasonable time period, as the city shall determine; remove the property itself and restore the area to a satisfactory condition and charge the person the costs therefor; or take any other action or combination of actions it is entitled to take under applicable law, including filing for and seeking damages under trespass. In no event shall a franchise be created unless it is issued by action of the city acting by ordinance and subject to a written franchise agreement.

8. ACTS AT FRANCHISEE'S EXPENSE. Any act that a franchisee is or may be required to perform under this chapter, a franchise agreement or applicable law shall be performed at the franchisee's expense, unless expressly provided to the contrary in this chapter, the franchise agreement, or applicable law. Nothing contained herein shall preclude the franchisee from exercising its rights under appropriate federal and state law.

9. EMINENT DOMAIN. Nothing herein shall be deemed or construed to impair or affect in any way or to any extent the city's rights of eminent domain to the extent to which they may apply to any public utility or cable system.

10. POLICE POWERS. a. A franchisee shall at all times be subject to all lawful exercise of the police power of the city, including all rights the city may have under 47 U.S.C. § 542, and no franchise shall be interpreted to prevent the city from exercising its police powers with respect to a franchisee. Likewise, nothing in a franchise agreement shall be deemed to waive the requirements of the city code of ordinances regarding permits, fees to be paid or manner of construction.

b. No course of dealing between a franchisee and the city, or any delay on the part of the city in exercising any rights hereunder, or any acquiescence by the city in the actions of a franchisee that are in contravention of such rights, except to the extent such rights are expressly waived by the city, shall operate as a waiver of any such rights of the city.

c. The city shall have the maximum authority to regulate cable systems, franchisees and franchises as may now or hereafter be lawfully permissible; except where rights are expressly waived by a franchise agreement, they are reserved, whether expressly enumerated or not.

d. The city may, from time to time, issue rules and regulations concerning cable systems. If a rule or regulation is contrary to, or diminishes, any right or privilege which a franchisee has under a franchise agreement, it may not be implemented as to that franchisee without its specific consent.

11. FRANCHISE FEE. a. Payment of Franchise Fee. Each franchisee shall pay a franchise fee of 5% of gross revenues. Every franchise agreement shall reserve the right to increase this fee to the maximum that may be charged consistent with federal and state law.

b. Not a Tax or in Lieu of Any Other Tax or Fee. b-1. Payment of the franchise fee shall not be considered in the nature of a tax or in lieu of other taxes or fees imposed by the city.

b-2. The franchise fee is in addition to all taxes, fees and payments that a franchisee may be required to pay under its franchise or any federal, state, or local law, and to any other tax, fee or assessment imposed upon utilities and cable operators for use of their services, facilities or equipment, except to the extent that such fees, taxes or assessments shall be treated as a franchise fee under section 622 of the cable act.

c. Not Designated as a Tax. Unless provided for otherwise by applicable federal or state law, a franchisee shall not knowingly designate the franchise fee as a tax in any written communication to a subscriber, and all staff training materials shall reflect this provision.

d. No Accord or Satisfaction. No acceptance by or payment to the city of a franchise fee, or any portion thereof, shall be construed as a release or an accord and satisfaction of any claim the city may have for further or additional sums due or for the performance of any other obligation of a franchisee, or as an acknowledgment that the amount paid is the correct amount due.

e. Prompt Payment to City. Except as provided below, the franchisee shall pay any additional franchise fee due to the city within 30 days following written notice to the franchisee by the city clerk, which notice shall include a copy of the city clerk's report detailing the additional payment claimed. At least 15 days prior to issuance of the report, the city clerk shall meet and confer with the franchisee concerning the potential franchise fee underpayment. The franchisee shall have 30 days, unless extended by mutual agreement, after receipt of the city clerk's report to either pay the additional amount or provide a written report to the city clerk setting forth the nature of any dispute with the city clerk's report. Any additional payment claim disputed or withheld by the franchisee and eventually settled in full or in part shall bear interest at the rate stipulated in the franchise agreement beginning on the date of the underpayment.

12. FORFEITURE OR REVOCATION. a. Grounds for Revocation. The city reserves the right to revoke any franchise granted hereunder and rescind all rights and privileges associated with the franchise in the following circumstances, each of which shall represent a default and breach under this chapter and the franchise grant:

a-1. If a franchisee shall violate any material provision of its franchise agreement or this chapter.

a-2. If the franchisee shall fail to provide or maintain in full force and effect the liability and indemnification coverage or the performance bond as required herein.

a-3. If any court of competent jurisdiction, the FCC or any state regulatory body by rule, decision or other action determines that any material provision of a franchise document, including this chapter, is invalid or unenforceable prior to the commencement of system construction.

a-4. If a franchisee violates any orders or rulings of any regulatory body having jurisdiction over the franchisee material to this franchise.

a-5. If a franchisee attempts to evade any of the provisions of this chapter or the franchise agreement or practices any fraud or deceit upon the city.

a-6. If a franchisee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt.

a-7. If a franchisee fails to serve any geographic area of the city in accordance with the provisions of its franchise, or to make all of its services available to all potential subscribers in the city.

a-8. If a franchisee fails to strictly adhere to all federal, state and local requirements governing discrimination and equal employment opportunities with respect to its franchise with the city.

b. Contractual Obligation. Except where a stay is granted by a court of competent jurisdiction, pending litigation against a franchisee, provided that the city is a party to the litigation, shall not excuse the franchisee from the performance of any of its obligations under this chapter and under the franchise agreement between the city and franchisee, except where such litigation challenges the award of the franchise to the franchisee or where the outcome of such litigation may materially affect the terms and conditions of the franchise. In such event, the franchisee and city shall enter into negotiations and shall negotiate in good faith so as to reasonably adjust the franchisee's obligations hereunder and under the franchise agreement in light of the potential impact of such litigation.

c. Procedure Prior to Revocation. c-1. The city shall make written demand that the franchisee do so comply with any such requirement, limitation, term, condition, rule or regulation or correct any action deemed cause for revocation. If the failure, refusal or neglect of the franchisee continues for a period of 30 days following such written demand, the city shall place its request for termination of the franchise upon a regular common council meeting agenda. The city shall cause to be served upon such franchisee, at least 10 days prior to the date of such council meeting, a written notice of this intent to request such termination, and the time and place of the meeting, notice of which shall be published by the city clerk at least once, 10 days before such meeting in a newspaper of general circulation within the city, including such publications as are circulated in the minority communities.

c-2. The council shall hear any persons interested therein, and shall determine, in its discretion, whether or not any failure, refusal or neglect by the franchisee was with just cause.

c-3. If such failure, refusal or neglect by the franchisee was with just cause, as defined by the city, the council shall direct the franchisee to comply within such time and manner and upon such terms and conditions as are reasonable.

c-4. If the council shall determine such failure, refusal or neglect by the franchisee was without just cause, the council shall, by resolution, declare that the franchise of such franchisee shall be terminated and bond forfeited.

c-5. The procedures set forth in subds. 1 to 4 shall not apply in the case of an act or omission subject to revocation under par. a-4. In such a case, the franchise may be revoked after notice and hearing.

d. Disposition of Facilities. In the event a franchise expires, is revoked or otherwise terminated, the city may in its sole discretion, do one of the following:

d-1. Purchase the system under the procedures set forth in s. 99-14.

d-2. Order the removal of the system facilities required by public necessity from the city within a reasonable period of time as determined by the city or require the original franchisee to maintain and operate its system until a subsequent franchisee is selected.

e. Restoration of Property. In removing its cable system, the franchisee 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 franchisee's removal of its cable system without affecting the electrical or telephone cable 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. The liability, indemnity and insurance as provided herein and the performance bond provided therein shall continue in full force and effect during the period of removal and until full compliance by the franchisee with the terms and conditions of this paragraph and this chapter.

f. Restoration by City; Reimbursement of Costs. In the event of a failure by a franchisee to complete any work required by par. d or e or any other work required by city law or ordinance, after reasonable written notice, unless impossible or impracticable by reason of an emergency, by the city to the franchisee to complete such work within the time as may be established and to the satisfaction of the city, the city may cause such work to be done and the franchisee shall reimburse the city the cost thereof within 30 days after receipt of an itemized list of such costs, or the city may recover such costs through the security fund provided by franchisee. Nothing herein contained shall prohibit the franchisee from contracting directly with the city for the city to perform some or all of such work. The city shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

g. City's Right Not Affected. The termination and forfeiture of any franchise shall in no way affect any of the rights of the city under the franchise or any provision of law.

13. RECEIVERSHIP AND FORECLOSURE. a. Termination by Insolvency. The franchise herein granted shall at the option of the common council, cease and terminate 120 days after the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of the franchisee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days, unless all of the following actions occur:

a-1. Such receivers or trustees have, within 120 days after their election or appointment, fully complied with all the terms and provisions of this chapter and the franchise granted pursuant hereto, and the receivers or trustees within said 120 days shall have remedied all defaults under the franchise.

a-2. Such receivers or trustees have, within said 120 days, executed an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the franchise herein granted.

b. Termination by Judicial Action. In the case of a foreclosure or other judicial sale of the plant, property and equipment of the franchisee, or any part thereof, including or excluding this franchise, the council may serve notice of termination upon the franchisee and the successful bidder at such sale, in which event the franchise herein granted and all rights and privileges of the franchisee hereunder shall cease and terminate 30 days after service of such notice, unless all of the following actions occur:

b-1. The council approves the transfer of this franchise, as and in the manner provided in this chapter.

b-2. The successful bidder has covenanted and agreed with the city to assume and be bound by all the terms and conditions of this franchise.

14. EQUAL OPPORTUNITY POLICY. The franchisee shall comply with Title VII of the federal civil rights act and other applicable local, state and federal laws and regulations, including FCC regulations, which prohibit discrimination on the basis of race, color, religion, sex, marital status, national origin, sexual orientation, age or handicap. The franchisee shall insure that all employment decisions are in accordance with the principles of equal employment opportunity. This includes, but is not limited to, decisions relating to employment, upgrading and promotion, demotion or transfer, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The franchisee shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The franchisee shall include a nondiscrimination clause in all contracts with its contractors, subcontractors, suppliers and vendors requiring such contractors, subcontractors, suppliers and vendors to comply with these provisions.

a. Affirmative Action. The franchisee shall abide by all applicable local, state and federal regulations related to affirmative action. The franchisee shall develop and maintain an affirmative action program aimed at maximizing the participation of minorities and females at all levels of the work force. The franchisee and all of its contractors, subcontractors, suppliers and vendors having employees located within

Wisconsin shall comply with the following:

b. Plan Required. The franchisee shall develop a written affirmative action plan which contains the following minimum requirements:

b-1. Development of an equal employment policy statement.

b-2. Procedures for internal and external dissemination of the policy statement.

b-3. Designation of a responsible official and assignment of responsibilities related to implementing and monitoring the affirmative action program.

b-4. Statistical analysis consisting of a work force analysis, identification of job group incumbents by job title, and utilization analysis. The minority and female availability percentages in the utilization analysis shall be based on the city's minority and female resident percentages for all job groups.

b-5. Identification of problem areas by organizational units and job groups.

b-6. Establishment of goals and timetables for minorities and females for all job groups based on resident percentages. Separate goals shall be set for each racial or ethnic minority group where such group represents 2% of the city's population. Establishment of construction projects and contract goals in crafts where the workforce availability is below resident parity as deemed by the city clerk, may be expressed in percentages of total hours of employment and training of minorities and female utilization to reach resident parity.

b-7. Establishment of goals, objectives and a plan for execution of action-oriented programs designed to eliminate problem areas.

b-8. Design and implementation of internal audit and reporting systems to measure the total effectiveness of the program.

b-9. Development of local training opportunities and programs for minorities and women, including upgrading programs, apprenticeships and trainee programs relevant to the franchisee, contractors' and subcontractors' employment needs.

b-10. Development of alternative recruitment and labor source for minorities and women whenever traditional sources are unable to supply sufficient numbers. The franchisee shall support local community action programs designed to improve the employment opportunities of minorities and women.

b-11. Establishment of criteria guidelines and procedures to be utilized in reviewing and approving the affirmative action plans and monitoring the compliance status of contractors, subcontractors, suppliers and vendors. The franchisee is to comply with s. 504 of the federal vocational rehabilitation act. The franchisee shall analyze its work force and efforts in delivery of services for the handicapped. A program shall be developed to insure affirmative action and equal employment opportunity.

c. Franchisee Responsibility. Contractors, subcontractors, suppliers and vendors of a franchisee having employees located in the state who provide goods or services for the construction, operation and maintenance of the system shall develop written affirmative action plans covering the matters set forth in par. b. Such plans may give due consideration to the reasonableness of the goals in view of the size, resources, business and other circumstances of the entity involved. It shall be the franchisee's responsibility to insure this requirement is met.

d. The city reserves the right to amend these requirements to conform to applicable laws and regulations governing affirmative action.

e. Disadvantaged Business Enterprise Involvement. e-1. Each franchisee shall abide by ch. 360, disadvantaged business enterprise (DBE), as specified in its franchise agreement. DBE participation is required in all contracting and procurement activities, including, without limitation, the construction and rebuild requirement of a franchise agreement and the operation and maintenance of a cable system.

e-2. Joint ventures of DBE firms with non-DBE firms shall be credited toward the franchisee's percentage of DBE participation by crediting the proportion of the dollar amount of the joint venture's subcontract equal to the proportion of the DBE's share in the total dollar amount of the contract. A joint venture is defined as 2 or more separate entities forming one legal entity for the purpose of competing for contracts. To be eligible as a joint venture, the DBE partners must be responsible for a clearly defined portion of the work to be performed and share in the ownership, control, management responsibilities, risks and profits of the joint venture.

99-6. Regulation of Franchise. 1. REGULATORY AUTHORITY. The city's regulatory authority shall be vested in the common council and administered through the utilities and licenses committee.

a. The city shall have the following regulatory responsibility:

a-1. Administering and enforcing the provisions of cable system franchises.

a-2. Rate regulation.

a-3. Performance evaluation.

a-4. Franchise award or renewal as specified herein.

a-5. Review access manager's performance.

a-6. Exercise of any other authority the city may now have or later obtain.

b. The city may also:

b-1. Coordinate the operation of government channels on any franchised system.

b-2. Coordinate plans for expansion and growth of cable services.

b-3. Analyze the possibility of integrating cable services with other city, state or regional communications networks.

b-4. Assure compliance with all applicable ordinances, rules and franchise provisions.

b-5. Arrange and evaluate tests of a franchisee's equipment and performance, and monitor adherence to all construction and operational standards and customer service requirements.

b-6. Receive, examine and maintain all required records, plans, maps and reports.

2. REGULATORY DUTIES OF THE CITY CLERK. The city clerk shall, on behalf of the city, exercise day-to-day administrative duties necessary to fulfill the regulatory authority of the city under this chapter and a franchise agreement. In addition, the city clerk shall perform the following duties:

a. Review and audit all reports and filings submitted by the franchisee or the access manager, or both, to the city and recommend appropriate actions related to a franchise agreement.

b. In cooperation with the commissioner of public works, propose regulations regarding the construction, reconstruction, operation, maintenance, dismantling, testing or use of a cable system, which shall be submitted to the common council for review and approval.

c. Review all rules and regulations promulgated by a franchisee to insure compliance by the franchisee.

d. Develop funding proposals and administer any grant funds obtained by the city for the development of a cable system.

e. Retain consultants' service as authorized.

f. Furnish reports as required.

g. Coordinate the activities of advisory bodies, ad hoc committees and other entities as required.

h. Attend all meetings of the common council and the utilities and licenses committee relating to cable communications, and such other bodies as required.

i. Maintain information and research files.

j. Maintain liaison with similar offices of other cities and relevant professional organizations, and with other governmental units including cities, county, state and federal agencies operating in the Milwaukee area.

k. Provide a coordination function between a franchisee and the common council, the utilities and licenses committee and all city agencies on any matter.

L. Act as information source to a franchisee on any matter relating to the cable system.

m. Mediate disputes or disagreements between subscribers or users and a franchisee at the request of any party, conduct required investigations and oversee their remediation.

n. Maintain and make available to the public, during normal business hours, all rates, rules and regulations pertinent to the operations of the cable system.

o. Act as an information source and channel of communication on any citizen concern regarding the cable system.

p. Administer compliance with the DBE participation requirements of this chapter.

3. RATE REGULATION. a. Scope of Authority. a-1. The city may regulate all rates and charges of any franchisee, except to the extent it is prohibited from doing so by law.

a-2. The city shall regulate rates in accordance with the regulations adopted by the FCC governing the regulation of basic service rates and equipment to the extent such regulations are effective and applicable, and as they may be amended from time to time, as if those regulations were set forth in full herein.

a-3. No delay or failure to enforce any provision of this section shall operate against the city as estoppel or waiver.

b. Non-discrimination. b-1. Non-discriminatory rates. Subject to and except as otherwise permitted by applicable law, a franchisee shall establish rates that are non-discriminatory within the same general class of subscribers and which must be applied fairly and uniformly to all subscribers within the franchise area for all services offered by the franchisee. Nothing contained herein shall prohibit a franchisee from offering:

b-1-a. Discounts to senior citizens or economically disadvantaged groups.

b-1-b. Discounts to commercial and multiple family dwelling subscribers billed on a bulk basis.

b-1-c. Bona fide, temporary promotional discounts (so long as these discounts are offered to similarly situated subscribers throughout the city).

b-1-d. Reduced installation rates for subscribers who have multiple services.

b-1-e. Other discounts that the franchisee is entitled to offer as a matter of federal or state law.

b-2. Applicability. The provisions of this paragraph shall apply to all rates, whether or not they are otherwise subject to rate regulation, except to the extent specifically prohibited by law.

b-3. Gratuities and Payments to Permit Service Prohibited. Neither the owner of any multiple unit residential dwelling nor the owner's agent or representative shall demand or require any payment, service or gratuity in any form as a condition for permitting or cooperating with the installation of a cable service to the dwelling unit occupied by a tenant or resident requesting service.

b-4. Penalties and Charges to Tenants for Service Prohibited. Neither the owner of any multiple unit residential dwelling nor the owner's agent or representative shall penalize, charge or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or receives cable television service from a franchisee operating under a valid and existing cable system franchise issued by the city.

4. PERFORMANCE EVALUATION SESSIONS. The city may schedule performance evaluation sessions as established in a franchise agreement.

99-7. General Financial and Insurance Provisions.

1. PERFORMANCE BOND. a. Within 30 days after the granting or renewal of a franchise and prior to the commencement of any construction work by the franchisee, the franchisee shall file with the city a performance and surety bond or comparable equivalent, as provided in the amount stated in the franchise agreement, in favor of the city. If the franchisee shall faithfully comply with all applicable statutes, ordinances and regulations governing the franchise and shall faithfully complete the construction, rebuild or upgrade of the facilities required by a franchise agreement and shall receive a certificate of completion from the city, the obligation under such bond shall be void. Otherwise, it shall remain in full force and effect.

b. Such bond as contemplated herein shall be in the form approved by the city attorney and shall among other matters cover the cost of removal of any properties installed by the franchisee in the event said franchisee shall default in the performance of its franchise obligation.

c. In no event shall the amount of said bond be construed to limit the liability of the franchisee for damages.

d. The bonds required herein are not in lieu of bonds which may be required as a condition of permitting.

2. ADDITIONAL BOND FOR NEW PROJECTS. a. In the event the performance bond set forth in sub. 1-a has become void, or the bond has been exhausted, or a franchisee is required under a franchise agreement to complete additional projects which require guarantees by the franchisee beyond the amount of the performance bond, a franchisee shall, upon 30 days notice from the city, file with the city an additional bond in the amount stated in the franchise agreement in favor of the city as a result of any failure to complete the maintenance, construction, rebuild or upgrade required.

b. Such bond as contemplated herein shall be in the form approved by the city attorney and shall among other matters cover the cost of removal of any properties installed by the franchisee in the event said franchisee shall default in the performance of its franchise obligation.

c. In no event shall the amount of said bond be construed to limit the liability of the franchisee for damages.

d. The bonds required herein are not in lieu of bonds which may be required as a condition of permitting.

3. SECURITY FUND. a. Within 30 days after the effective date of a franchise or a renewal franchise, a franchisee shall deposit, or otherwise provide for, with the city the sum specified in the franchise agreement to be held in trust by the city during the term of the franchise, as security for the faithful performance by it of all the provisions of its franchise, and compliance with all orders, permits and directions of any agency of the city having jurisdiction over its acts or defaults, and the payment by the franchisee of any claims, liens and taxes due the city which arise by reason of the construction, operation or maintenance of the system.

b. Within 30 days after notice to it that any amount has been withdrawn by the city from the security fund pursuant to par. a, the franchisee shall deposit a sum of money sufficient to restore such security fund to the original amount.

c. If the franchisee fails, after 10 days notice to pay to the city any claims, liens or taxes due and unpaid, or fails to repay to the city, within such 10 days, any damages, costs or expenses which the city shall be compelled to pay by reason of any act or default of the company, or fails, after 30 days notice by the city clerk to comply with any provision of the franchise or orders, permits and directions of any agency in the city having jurisdiction over its acts and defaults which the city reasonably determines can be remedied by an expenditure of the security, the city clerk may withdraw, in accordance with the provisions of the franchise agreement, the amount thereof, with interest and any penalties, from the security fund. Upon such withdrawal, the city clerk shall notify the franchisee of the amount and date thereof.

d. The security fund deposited pursuant to par. a shall become the property of the city in the event that the franchise is canceled by reason of the default of the franchisee or revoked for cause. The franchisee, however, shall be entitled to the return of such security fund, or portion thereof, as remains on deposit at the expiration of the term of the franchise, or upon termination of the franchise at an earlier date, provided that there is then no outstanding default on the part of the franchisee.

e. The rights reserved to the city with respect to the security fund are in addition to all other rights of the city whether reserved by a franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund shall affect any other right the city may have.

4. INDEMNIFICATION. Each franchisee, upon acceptance or renewal by the city of a franchise agreement shall indemnify, defend and hold harmless the city, its officers, boards, commissions, agents and employes from any and all claims, suits, judgments or damages in any way arising out of or through or alleged to arise out of or through, first, the act of the city in granting this franchise, and secondly, any acts or omissions of franchisee, its servants, employes or agents. Both such indemnifications shall cover such claims arising in tort, contracts, or violations of statutes, ordinances or regulations or otherwise. The city shall promptly notify the franchisee as soon as is reasonably possible but no later than 10 days after learning of the event or occurrence giving a right to indemnification under this subsection or of any and all claims, suits, judgments or damages. In case of litigation against the city in connection with the matters referred to herein, the notice by the city to the franchisee shall be in sufficient detail to permit the franchisee to elect to either intervene in such litigation or defend the city and its officers, if it elects to do so, or both.

5. INSURANCE. a. Each franchisee shall maintain throughout the term of the franchise insurance in amounts set forth in its franchise agreement as follows:

a-1. Worker's compensation insurance in such coverage as may be required by worker's compensation insurance and safety laws of the state and amendments thereto.

a-2. Franchisee's liability in the amount stated in the franchise agreement.

a-3. Comprehensive general liability for bodily injury and property damage in the amounts stated in the franchise agreement.

a-4. Comprehensive automobile liability including non-ownership and hired car coverage as well as owned vehicles with limits for bodily injury for each person and each occurrence; and property damage for each occurrence in the amounts stated in the franchise agreement.

b. The franchisee shall furnish the city with certificates of insurance and evidence that all premiums have been paid.

c. Such insurance policies as are provided for herein shall name the city, its officers, boards, commissions, agents and employes as additional insured parties and shall contain the following endorsement: "It is understood and agreed that this insurance policy may not be canceled by the surety or the intention to not renew be stated by the surety until 30 days after receipt by the city, by registered mail, of written notice of such intention to cancel or not renew."

d. The minimum amounts set forth in a franchise agreement for such insurance shall not be construed to limit the liability of the franchisee to the city under the franchise to the amounts of such insurance.

6. FRANCHISE PROCESSING COSTS. Consistent with provisions of applicable laws, costs to be borne by the franchisee shall include, but shall not be limited to:

a. Application processing fees and required deposits for the grant of:

a-1. Initial franchise.

a-2. Renewal franchise.

a-3. Modification of a franchise.

a-4. Transfer of a franchise.

b. All costs of publications of notice prior to any public meeting provided for pursuant to a franchise.

c. Reasonable out-of-pocket expenses, including but not limited to consultants' fees, not covered by the application processing fees and deposits, incurred by the city in its study, preparation of proposal documents, evaluation of all applications and processing of any franchise application identified herein.

99-8. Design and Construction Provisions. 1. SYSTEM DESIGN. A cable system shall be designed, constructed, upgraded or rebuilt in accordance with the design requirements contained in the franchise agreement. The design requirement shall ensure that the cable system will satisfy the cable-related interests of the community for the franchise term.

2. GEOGRAPHICAL COVERAGE. Each franchisee shall design and construct its cable system in such a manner as to serve all dwelling units, commercial premises and public buildings within the service area, in accordance with the terms of the franchise agreement.

3. SYSTEM CONSTRUCTION SCHEDULE. Within the time established in the franchise agreement, and upon the request of any person in the service area, a cable system operator shall make cable service available to every structure within the service area, and shall complete any rebuild or upgrade required under the franchise agreement.

4. PENALTIES FOR DELAY IN CONSTRUCTION. The city may at its sole option, apply any of the following in connection with delays in system construction subject to the procedures set forth in the franchise agreement:

a. Reduction in the duration of the franchise on a month-for-month basis for each month of delay exceeding 6 months.

b. Forfeiture of performance bonds for delays exceeding one year.

c. Termination of the franchise for delays exceeding 18 months.

d. Imposition of liquidated damages as specified in the franchise agreement.

5. CONDITIONS OF RIGHTS-OF-WAY OCCUPANCY. a. Permit Required. a-1. Construction, rebuild, upgrade, operation or repair of a cable system shall not commence until a franchisee has properly filed for, paid associated fees and obtained from the proper city officials a required permit, all in accordance with, but not limited to, ch. 7 of the city charter and ch. 115. The franchisee, at the time of or prior to submitting a permit application, shall provide the city with a description of the type of service to be provided by the cable system operator in sufficient detail for the city to determine compliance with the franchise and applicable law.

a-2. Reimbursement paid through the permitting process is separate, and in addition to, any other fees included in the franchise.

b. A cable system operator shall notify the city clerk at least 10 days prior to the commencement of any system construction, modification or upgrade of any kind in any rights-of-way, unless a shorter notice period is approved by the city clerk.

c. A cable system operator shall install facilities in a manner that minimizes interference with the use of the public rights-of-way by others, including others that may be installing cable systems, other communications facilities or utilities.

d. To maximize public and employee safety, to minimize visual clutter of aerial plant, and to minimize the amount of trenching and excavation in and along city rights-of-way and sidewalks for underground plant, a cable system operator shall co-locate compatible facilities within the rights-of-way subject to the engineering requirements of the owners of utility poles and other facilities. The city may require a person using the public rights-of-way to cooperate with others to minimize adverse impacts on the public rights-of-way through joint trenching and other arrangements.

e. Each cable system operator shall utilize existing poles, conduits and other facilities whenever possible and shall not construct or install any new, different or additional poles, conduits or other facilities until the written approval of the public works commissioner is obtained. No location or any pole or wire-holding structure of the franchisee shall be a vested interest, and such poles or structures shall be removed or modified by the cable system operator at its own expense whenever the city determines that the public convenience would be enhanced thereby.

f. Unless otherwise specified in a franchise, all system facilities shall be constructed, installed and located in accordance with all applicable laws, ordinances, regulations and policies, and in accordance with the following terms and conditions:

f-1. Poles, underground conduits, ducts or other wire-holding structures shall not be installed on property of any third party without the written permission of the owner.



f-2. Whenever all existing telephone, electric utility or other similar facilities are located underground within the public rights-of-way, cable system facilities shall also be placed underground. In areas where all other such facilities are installed aerially at the time of cable system construction, the cable system operator may install its facilities aerially.

f-3. Whenever all existing telephone, electric utility or communications facilities are relocated underground, cable system operators that occupy the same locations shall concurrently relocate their respective facilities underground, at their own expense. Similarly, if existing facilities located on poles that are also being used by a cable system operator are relocated to new or different poles, the cable system operator shall concurrently relocate its facilities to the same poles.

g. All transmission and distribution lines, equipment and structures shall be so installed and located as to cause minimum interference with the unencumbered use of rights-of-way and other public places and minimum rights and reasonable convenience of property owners who adjoin any of the rights-of-way and public places and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The cable system operator shall, at all times, employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

h. All public rights-of-way, public property or private property that is disturbed or damaged during the construction, operation or repair of a cable system shall be promptly repaired, at the cost and expense of the cable system operator that disturbed or damaged the public rights-of-way, public property or private property to a condition as good as or better than its condition before the work performed by the cable system operator that caused such disturbance or damage.

i. Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the chief of the fire department or chief of the police department to remove any of the cable system operator's facilities, no charge shall be made by the cable system operator against the city for restoration and repair, unless such acts amount to gross negligence by the city.

j. The cable system operator shall install in conduit all cable passing under any roadway unless exempted by permit.

k. The city may prescribe under the provisions of ch. 7 of the city charter and ch. 115, the manner in which a cable system operator shall perform any work performed within the public rights-of-way, on public property or on private property.

L. Each cable system operator shall, on request of the city or any person holding a permit to move a building, temporarily raise or lower its wires to permit the movement of such buildings. With the exception of requests by the city, the expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the cable system operator shall have the authority to require such payment in advance. The cable system operator shall be given not less than 48 hours advance notice to arrange such temporary wire alterations.

m. Each cable system operator that places facilities underground shall be a member of the Diggers Hotline program and shall field mark the locations of its underground facilities upon request. Throughout the term of a franchise, a cable system operator shall locate its facilities for the city at no charge to the city.

n. If the franchise terminates or renewal is denied, the poles and conduits owned by a cable system operator shall become the property of the city, if the city elects to assume ownership of the cable system operator's poles and conduits by notifying the cable system operator in writing within 180 days of the denial of the renewal. If the city does not elect to assume ownership, the cable system operator shall remove all poles and conduits within 180 days unless the cable system operator receives further authorization from the city to retain ownership and occupancy.

6. OTHER FACILITIES IN RIGHTS-OF-WAY. If the city or any person that is authorized to place facilities in the public rights-of-way requests a cable system operator to protect, support, temporarily disconnect, remove or relocate its facilities to accommodate the construction, operation or repair of the facilities of such other person, the cable system operator shall, after 30 days advance written notice, take action to effect the necessary changes requested. The reasonable costs shall be borne by the requesting parties unless:

a. The matter is governed by a valid contract, a local ordinance, regulation or policy, or a state or federal law or regulation.

b. In other cases where the system that is being requested to move was not properly installed, the reasonable cost of the same shall be borne by the party requesting the protection, support, temporary disconnection, removal or relocation and performed at no charge to the city.

7. EMERGENCY ACTION. If the requested action is necessary to address an emergency that, in the opinion of the city, might affect the public health, safety or welfare, the cable system operator shall take immediate action upon receipt of notice of the request to complete the requested action. Nothing in this chapter or any franchise agreement shall be in preference to, or in hindrance of, the right of the city, the common council, or any board, authority, commission or public service corporation to perform or carry on any public works or public improvements of any description. Should a cable system operator's system in any way interfere with the construction, maintenance or repair of any public works or public improvements, the cable system operator shall, at its sole cost and expense, protect or relocate its system, or part thereof, as directed by the city, the common council, the city clerk or any city official, board, authority or commission.

8. POLICY GUIDELINES. The city may issue reasonable policy guidelines to all cable system operators to establish procedures for determining how to control issuance of permits to multiple cable system operators for the use of the same rights-of-way for their facilities. The cable system operator shall comply with the procedures established by the commissioner or the commissioner's designee to

coordinate the issuance of multiple permits in the same right-of-way segments.

9. CONSTRUCTION AND TECHNICAL STANDARDS. a. Continuous Operation. The cable system operator shall maintain equipment capable of providing continuous 24-hour daily operation without severe material degradation or loss of signal. Persons engaged in the construction, operation or repair of cable systems shall exercise reasonable care in the performance of all their activities, and use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.

b. System Construction Schedule. Every franchise agreement shall specify the construction schedule that will apply to any required construction, upgrade or rebuild of the cable system. The schedule shall provide for prompt completion of the construction, upgrade or rebuild, considering the amount and type of work required, and shall show areas of the city that will be affected.

c. Inspection Procedures. Every system, and all parts thereof, shall be subject to the right of periodic inspection and testing by the commissioner or city clerk, or both of them, to determine compliance with the provisions of this chapter, a franchise agreement, and other applicable law. The commissioner and city clerk, or their designees, shall have the right, upon request, to be notified and to be present when a system is tested by a cable system operator.

d. Technical Standards. The cable system shall meet all FCC technical and performance standards.

e. Test and Compliance Procedure. The cable system operator shall comply with all testing and compliance procedures set forth in the FCC Rules.

f. Special Tests. At any time after commencement of service to subscribers, the city may require additional tests, full or partial repeat tests, different test procedures, or tests involving a specific subscriber's terminal. Requests for such additional tests will be made on the basis of complaints received or other evidence indicating an unresolved controversy or significant noncompliance, and such tests will be limited to the particular matter in controversy. The city may require a cable system operator to undertake such tests as a part of any regularly scheduled testing program or the city will endeavor to so arrange its requests for such special tests so as to minimize hardship or inconvenience to franchisee or to the subscriber.

10. INTERCONNECTION. a. Interconnection Required. Cable system operators shall interconnect their systems with any or all other systems located in the city, upon the directive of the city. In addition, each cable system operator shall interconnect all access channels and any institutional network it provides or maintains with any or all other cable systems in areas adjacent to the city, upon the directive of the city. Interconnection of systems shall permit both transmission and reception of program material, and may be done by direct cable connection, microwave link, satellite or other appropriate method.

b. Interconnection Procedure. Upon receiving the directive of the city to interconnect, a cable system operator shall immediately initiate negotiations with the other affected system or systems. The cost of interconnection shall be borne by both franchisees. In the case of regional or state-wide interconnection, the same principles shall apply.

c. Relief. The cable system operator may be granted reasonable extensions of time to interconnect or the city may rescind its order to interconnect upon petition by the cable system operator to the city. The city may grant the request if it finds that the cable system operator has negotiated in good faith and has failed to obtain an approval from the system or systems of the proposed interconnection, or that the cost of the interconnection would cause an unreasonable or unacceptable increase in subscriber rates.

d. Cooperation Required. The cable system operator shall cooperate with any interconnection corporation, regional interconnection authority or city, county, state or federal regulatory agency which may be hereafter established for the purpose of regulating, financing or otherwise providing for the interconnection of cable systems beyond the boundaries of the city.

99-9. Provision of Service. 1. PROVISION OF SERVICE. As specified in its franchise agreement, a franchisee shall provide cable service to any person within the franchisee's service area who requests it, whether that person is located in, without limitation, an individual dwelling unit, a multiple-unit residential building, a condominium, a cooperative building, a townhouse, an office, store or other commercial building, or any other structure within the service area.

2. STANDARD INSTALLATION. Unless otherwise provided in a franchise agreement, a franchisee shall connect to the cable system, at no charge other than the standard installation charge, all persons located within 175 feet of the closer of one of the following:

a. The nearest edge of the public right-of-way.

b. The nearest tap on a franchisee's system. In determining what is the drop length from the "nearest edge of the right-of-way," the drop length shall be measured to the nearest edge of the right-of-way directly adjoining the structure of the person, in the direction in which the franchisee's plant is located (or is to be located, in a case involving a line extension). In the case of a line extension, the franchisee, upon request by any potential subscriber in the service area, shall extend its system.

3. CONTINUITY OF SERVICE MANDATORY. If a franchisee fails to operate the system for 7 consecutive days without prior approval of the city or without just cause, or if the franchisee unlawfully refuses to provide service for any period, as required herein, the city may, at its option, and upon reasonable notice, declare the franchise abandoned and operate the system or designate an operator until such time as the franchisee restores service under conditions acceptable to the city or until a permanent operator is selected. If the city is required to fulfill this obligation for a franchisee, the franchisee shall reimburse the city for all reasonable costs or damages in excess of

revenues from the system received by the city that are the result of the franchisee's failure to perform.

99-10. PEG Access, Leased Access and Institutional Network. 1. PEG CHANNELS. Each franchise agreement shall require the franchisee to provide adequate access channel capacity, facilities and financial support.

2. LEASED ACCESS CHANNELS. Each franchise agreement shall require a franchisee to provide leased access channels. At a minimum the franchise shall require a franchisee to satisfy the obligations of 47 U.S.C. § 612.

3. INSTITUTIONAL NETWORK. Each franchise agreement may require the franchisee to design, construct, activate or otherwise participate in the support of an institutional network to serve those institutions designated in the franchise agreement. Institutional network services and support shall be provided in accordance with schedules and line extension policies specified in the franchise agreement.

99-11. PEG Access Managers; Public and Educational Access Channels. 1. INTENT. In order to achieve utilization of access channels that is in the best public interest, it is the intent of the city to ensure that the public and educational access channels on any franchised cable system are governed by an independent, nonprofit corporation (the "access manager"), such that these channels may be free of censorship, open to all residents of the city and available for all forms of public expression, community information and debate of public and educational issues.

2. FUNCTIONS. The access manager shall have the following functions:

a. Responsibility for administration of program production for and management of the public and educational access channels and all other channels as designated in the franchise agreement.

b. Encourage the use of public and educational access channels among a wide range of individuals, groups and institutions within the city.

c. Assure that the public and educational access channels are made available to all residents of the city on a fair and equitable basis.

d. Assure that no censorship or control over program content of the channels exist, except as necessary:

d-1. To comply with legal, statutory and regulatory prohibitions on transmission of material that is obscene, contains commercial advertising or conducts a lottery.

d-2. To prevent the cablecasting of programs which have commercial content. Commercial content includes, but is not limited to, product placement, advertisement and service descriptions provided in exchange for value of any kind or nature where the benefits do not accrue to the operation of the access channel. Commercial content also includes promotion of any individual business, partnership or corporation by direct or indirect reference or testimonial for the purpose of commercial exploitation. Commercial content does not include the type of activities identified in par. i.

e. Devise, establish and administer all rules, regulations and procedures pertaining to the use and scheduling of the public access and educational channels.

f. Prepare such regular or special reports as may be required or desirable.

g. Hire and supervise staff and insure compliance with applicable affirmative action and equal opportunity guidelines in the hiring of personnel.

h. Make all purchases of materials and equipment that may be required and assure utilization of disadvantaged business enterprises whenever possible.

i. Develop additional sources of funding, such as foundation or federal or state grants or community underwriting and support, to further educational and community programming.

j. Perform such other functions relevant to the access channels as may be appropriate.

3. ACCESS RULES. The access manager shall complete a set of rules governing the use of the access channels which shall be promptly forwarded to the city. The rules shall, at a minimum, provide for:

a. Access on a nondiscriminatory basis.

b. Prohibition of any presentation of lottery information, or obscene or indecent material.

c. Public inspection of the log of producers, which shall be retained by the access manager for a period coincident with the review of performance periods.

d. Procedures by which individuals, groups or institutions who violate any rule may be prevented from further access to the channel.

e. Use of reasonable amounts of channel time, cable casting facilities and technical support in accordance with an agreement

between the access manager and the city.

4. **REPORTS TO CITY.** The access manager shall provide a report to the city clerk, at least annually, indicating achievements in educational and community-based programming and services and compliance with the requirements of the access management agreement. Quarterly statements of revenues and expenditures shall be submitted to the city clerk within 45 days of the end of each calendar quarter, and an annually audited financial statement shall be submitted to the city clerk within 120 days of the end of the year. The access manager shall also provide such other reports and records as may be requested by the city clerk.

5. **PROCEDURE FOR DESIGNATION OF ACCESS MANAGER.** a. The city may at any time designate upon recommendation of the city clerk, an access manager, or direct the city clerk to solicit applications and proposals from persons wishing to be designated as the city's access manager.

b. Upon recommendation of the city clerk, the city may grant or deny an application for designation as an access manager. Prior to making such recommendation, the city clerk may conduct such investigations as are necessary to determine whether the applicant has the financial, technical, administrative and legal capabilities to satisfy the requirements of this section. If the city finds that it is in the public interest to designate an applicant as an access manager, considering the capabilities of the applicant and the factors set forth above, and subject to the applicant's entry into an appropriate written agreement with the city, it shall issue such a designation. The city clerk also may reject any application that is incomplete or fails to respond to information requested by the city clerk.

99-12. Consumer Protection. 1. **GENERAL PROVISIONS.**

a. This section sets forth customer service standards that a franchisee shall satisfy. In addition, a franchisee shall at all times satisfy any additional or stricter requirements established by its franchise agreement or other applicable federal, state or local law or regulation, as the same may be amended from time to time, including, without limitation, consumer protection laws.

b. Nothing in this chapter shall be construed to prevent or prohibit the common council from waiving the requirements established in this section, where such waiver is in the best interests of the city and its residents.

c. A franchisee shall maintain sufficient staff and facilities to comply with this section.

2. **TELEPHONE AND OFFICE AVAILABILITY.** a. Each franchisee shall maintain an office at a convenient location in the city that shall be open at least during normal business hours to allow subscribers to request service, pay bills, return and pick up converters and conduct other business. Each franchisee shall establish a publicly-listed, local toll-free telephone number. The phone shall be answered by customer service representatives at least Monday through Saturday, 8:30 a.m. to 8:00 p.m., for the purpose of receiving requests for service, inquiries and complaints from subscribers. After those hours, a franchisee shall arrange for the phone to be answered so that customers can register complaints and report service problems on a 24-hour-per-day, 7-day-per-week basis, and so that the franchisee can respond to service outages as required herein.

b. Telephone answering time shall not exceed 30 seconds, and the time to transfer the call to a customer service representative (including hold time) shall not exceed an additional 30 seconds. This standard shall be met at least 90% of the time, measured quarterly. Under normal operating conditions, a subscriber will receive a busy signal less than 3% of the time. When the business office is closed, a franchisee shall employ an answering service or automated answering system capable of receiving and recording service complaints and inquiries. Thirty days after the end of each calendar year or at shorter intervals if requested in writing by the city clerk, a franchisee shall supply the city statistical data to verify it has met the standards set forth herein.

3. **SCHEDULING WORK.** a. A franchisee shall provide trained company representatives to respond adequately to customer inquiries, complaints and requests for service in its office, over the telephone, and at the subscriber's residence.

b. At a minimum, each franchisee shall perform service calls, installations and disconnections during normal business hours, including evening and weekend hours.

c. All appointments for service, installation or disconnection shall be specified by date. Each franchisee shall specify a specific time at which the work shall be done or offer a choice of time blocks, which shall not exceed 4 hours in length. Unless otherwise agreed to by the subscriber, a franchisee shall also, upon reasonable request, schedule service installation calls outside normal business hours, for the express convenience of the customer. If at any time an installer or technician believes it impossible to make a scheduled appointment time, an attempt to contact the customer will be made prior to the time of appointment and the appointment scheduled at a specific time convenient to the customer, if rescheduling is necessary. A franchisee shall retain records for scheduled work to determine compliance with this section.

d. A franchisee shall provide subscribers who have experienced a missed appointment, where the missed appointment was not the subscriber's fault or was not beyond the control of the franchisee, at a minimum the lesser of the following:

d-1. The maximum permitted rate for the installation of service to an unwired home.

d-2. During years 1-5 of the franchise term, \$20; during years 6-10, \$25; during years 10-15, \$30; and during years 16-17, \$35.

e. With regard to mobility-limited customers, upon a subscriber's request, each franchisee shall arrange for pickup or replacement of converters or other franchisee equipment, or both, at the subscriber's address or by a satisfactory equivalent, such as the provision of a postage-prepaid mailer.

f. Requests for service, repair and maintenance shall be acknowledged by a trained customer service representative no later than the end of the next business day. For referrals from the office of the city clerk made before 2:00 p.m., the franchisee shall make best efforts to contact the subscriber the same day. A franchisee shall respond to all other inquiries, including billing inquiries, within 30 days of the inquiry or complaint.

g. Excluding those situations which are beyond its control, the franchisee will respond to any service interruption promptly and in no event later than 24 hours from the time of the initial notification. Work on all other requests for service shall be begun by the next business day after notification of the problem and shall be completed within the shortest time possible. Unless prohibited by federal, state or local law, a charge may be made to the subscriber for this service. The subscriber shall be responsible for the cost of repairs to the franchisee's equipment or facilities where it can be documented that the equipment or facility was damaged by a subscriber.

h. The standards of pars. f and g shall be met at least 95% of the time, measured on a quarterly basis.

i. The franchisee shall satisfy the installation time standard in this subsection no less than 95% of the time, measured on a quarterly basis: requests for additional outlets, service upgrades or other connections (i.e., digital audio service, VCR, A/B switch) separate from an initial installation shall be performed within 7 business days after an order has been placed or later if at customer's request.

4. NOTICE TO SUBSCRIBERS. a. At the time of installation of cable service, the franchisee shall provide the following written information in a clear, concise and understandable form:

a-1. Instructions on how to use the cable service.

a-2. Instructions for placing a service call, filing a complaint or requesting an adjustment, including when a subscriber is entitled to refunds for outages and how to obtain them.

a-3. A notice showing the telephone number of the city office responsible for receiving customer complaints.

a-4. A schedule of rates and charges, channel positions and a description of programming services.

a-5. A description of the franchisee's installation and service maintenance policies, delinquent subscriber disconnect and reconnect procedures, and any other of its policies applicable to its subscribers.

a-6. A copy of the service contract.

b. The franchisee, on an annual basis, will provide the notices required by pars. a-1 to 5 in addition to such notices as are required in FCC rules and regulations.

c. The franchisee, upon request of a subscriber, will provide the notice required by par. a-6.

d. Except as applicable federal, state and local rate regulations may provide to the contrary, a franchisee shall provide the city clerk and all subscribers with at least 30 days notice of any significant changes in the information required to be provided by this subsection. Such notice shall be in writing and by announcement on the system.

e. All franchisee promotional materials, announcements and advertising of cable service to subscribers and the general public, where price information is listed in any manner, shall clearly and accurately disclose price terms. In the case of telephone orders, a franchisee shall take appropriate steps:

e-1. To ensure that customer service representatives clearly and accurately disclose price terms to potential customers in advance of taking the order, and

e-2. To provide a written confirmation of the order, detailing all terms and conditions to the subscriber on or before the 15th day after the consumer subscribes, or on or before the day that the franchisee first bills the consumer under the subscription, whichever comes later.

f. Each franchisee shall maintain a public file containing all notices provided to subscribers under these customer service standards, as well as all promotional offers made to subscribers. The notices and offers shall be kept in the file for at least one year from the date of such notice or promotional offer.

5. INTERRUPTIONS OF SERVICE. a. A franchisee may intentionally interrupt service on the cable system only for good cause, during periods of minimum use, and for the shortest time possible.

b. For any period in which a subscriber suffers a service interruption for more than 4 hours in any 24-hour period, other than a planned interruption pursuant to par. a, a franchisee shall credit against the subscriber's next bill an amount equal to 1/30 of the monthly charge for any service or service tier affected, and shall pay a direct refund to any subscriber who terminates service before all credits owed are applied. The charge for any per-program selection that is materially affected by the service interruption shall also be refunded or credited. A franchisee shall be responsible for making such refunds or credits upon receipt of a complaint of a service interruption from a subscriber, unless the franchisee can show that the service interruption was insufficient in length or character to require a credit, or that the subscriber was responsible for the service interruption.

6. BILLING. a. A franchisee's first billing statement after a new installation or service change shall be prorated as appropriate and shall reflect any security deposit.

b. A franchisee's billing statement shall be clear, concise and understandable. 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.

c. A franchisee's billing statement shall show a specific payment due date for current charges.

d. A franchisee may assess an administrative collection fee on the following month's billing statement for a balance not received within 10 days after the due date provided that all the following conditions are met:

d-1. The franchisee does not extend credit for cable service. A due date on or before the tenth calendar day of the billing month shall be acceptable to satisfy the requirement under this subsection that a franchisee does not extend credit and therefore may assess an administrative collection fee.

d-2. The prior month's billing statement identifies the specific amount of the fee and includes a notice stating that the fee will be assessed for balance not received within 10 days after the due date.

d-3. The fee shall recover only the franchisee's reasonable and necessary cost of collecting late subscriber payments which are not otherwise recovered through other fees or rates and are calculated on the basis of franchisee's total annual collection cost prorated over the limitations imposed by state or federal law.

d-4. Subscribers shall not be charged such fee because of any failure by a franchisee, including failure to timely or correctly bill a subscriber, or failure to properly credit a subscriber for a payment timely made.

e. A franchisee shall notify a subscriber that he or she can remit payment in person at the franchisee's office in the city and inform the subscriber of the address of that office.

f. A franchisee shall respond to all written billing complaints from subscribers within 30 days of receipt of the complaint.

g. Refund checks to subscribers shall be issued no later than:

g-1. The earlier of the subscriber's next billing cycle following resolution of the refund request or 30 days.

g-2. The date of return of all equipment to franchisee, if service has been terminated.

h. Credits for cable service shall be issued no later than the subscriber's next billing cycle after the determination that the credit is warranted.

i. If a subscriber terminates service before the end of a prepaid period, a pro rata portion of any prepaid service fee, using the actual number of days in the month as a basis, shall be refunded to the subscriber. If any subscriber terminates service during the first 30 days of that service because of the failure of a franchisee to render satisfactory service to that subscriber, the franchisee shall refund to the subscriber an amount equal to the installation charge paid by the subscriber.

7. DISCONNECTION AND DOWNGRADES. a. A subscriber may terminate service at any time.

b. A franchisee shall promptly disconnect from its system or downgrade any subscriber who so requests. No period of notice prior to voluntary termination or downgrade of service may be required of subscribers by any franchisee. Any charge imposed for any voluntary disconnection or downgrade shall be in accordance with applicable law. No charge may be imposed by any franchisee for any cable service delivered after the date of the disconnection.

c. A subscriber may be asked, but not required, to disconnect a franchisee's equipment and return it to the business office. In the event a subscriber does not cooperate with the franchisee's reasonable efforts to recover the equipment, the franchisee may require the subscriber to return the equipment to its business office.

d. Any security deposit and or other funds, or both, due a subscriber that disconnects or downgrades service shall be returned to the subscriber within 30 days from the date the disconnection or the downgrade was requested or in the next billing cycle, whichever is earlier, except in cases where the subscriber does not permit a franchisee to recover its equipment, in which case the amounts owed shall be paid to subscribers within 30 days of the date the equipment was recovered, or in the next billing cycle, whichever is earlier.

e. If a subscriber fails to pay a monthly subscriber fee or other fee or charge, a franchisee may disconnect the subscriber's service. However, such disconnection shall not be effected until after 45 days from the due date of the monthly subscriber fee or other charge including a 10-day advance written notice prior to actual disconnection. If the subscriber pays all delinquent amounts due, including late charges, in time to be processed by the franchisee in its normal course of business, the franchisee shall not disconnect service. After disconnection, upon payment by the subscriber in full of all proper fees or charges, including the payment of a re-connection charge, if any, the franchisee shall promptly reinstate service.

f. A franchisee may immediately disconnect a subscriber if the subscriber is damaging or destroying the franchisee's cable system or equipment; or the subscriber is not authorized to receive cable service, or is facilitating, aiding or abetting the unauthorized reception of cable service by others. A franchisee may pursue criminal or civil action against said subscriber as appropriate. After disconnection, a franchisee shall not unreasonably withhold the restoration of service if the subscriber provides adequate assurances, including monetary or legal assurances, that it has ceased the practices that led to disconnection, and paid all proper fees and charges, including any reconnect fees and amounts owed the franchisee for damage to its cable system or equipment.

g. A franchisee may also disconnect service to a subscriber without notice where signal leakage is detected originating from the subscriber's premises in excess of federal limits, provided that the franchisee shall immediately notify the subscriber of the problem and, once the problem is corrected, reconnect the subscriber without charge if the reason for the signal leakage was not the subscriber's fault.

h. When a subscriber voluntarily terminates service, and a franchisee intends to remove its home wiring from the subscriber's premises, the franchisee shall remove such wiring in accordance with the procedures specified in 47 C.F.R. §76.802. In other cases where the franchisee elects to remove its home wiring from the subscriber's premises, it shall do so within 7 business days of disconnecting the subscriber's service, unless federal or state law provides otherwise.

8. DEPOSITS. A franchisee may require a reasonable, fair and uniform monetary deposit on equipment provided to subscribers, in addition to any allowable monthly fees. Any subscriber deposit required by a franchisee shall bear interest in accordance with applicable law or at the going rate, which shall be not less than the prime rate of the bank being used by the city for the conduct of ordinary business. All deposits, with interest, shall be returned to a subscriber within 9 months, if the subscriber is current in the payment of all franchisee billings, or when the equipment is returned upon disconnection of reception of service, whichever is sooner.

9. COMPLAINT PROCEDURES. a. Each franchisee shall establish a clear procedure for resolving complaints filed by any interested party, providing that complaints may be made orally or in writing, at the complainant's option, and identifying a person responsible for handling complaints that are not already being handled by a customer service representative.

b. Each franchisee shall provide a written response within 30 days after the complaint is made. The final written response shall include a notice stating that, if the complaint has not been resolved to the complainant's satisfaction, the matter may be referred to the city clerk.

10. PARENTAL CONTROL OPTION. A franchisee shall make available to any subscriber, upon request, the option of blocking the video and audio portion of any channel or channels of programming entering a subscriber's home. This control option shall be provided at no charge, except to the extent that federal law specifically provides that a franchisee shall be permitted to so charge a subscriber, provided that the franchisee may require a reasonable deposit for the use of any customer premises device. The control option described herein shall be made available to all subscribers requesting it when any cable service is provided, or within a reasonable time thereafter.

11. EXCLUSIVE CONTRACTS AND ANTI-COMPETITIVE ACTS PROHIBITED. a. A franchisee may not require a subscriber or a building owner or manager to enter into an exclusive contract as a condition of providing or continuing cable service. However, nothing herein prevents a franchisee from entering into an otherwise lawful, mutually desired exclusive arrangement with a building owner or manager of a multiple dwelling unit or commercial subscriber.

b. No franchisee shall engage in acts that have the purpose or effect of limiting competition for the provision of cable service or services similar to cable service in the city, except for such acts as are expressly authorized by federal or state law.

12. RIGHTS OF INDIVIDUALS. a. Nondiscrimination Required. A franchisee shall not deny service, deny access or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin, age, sex, sexual orientation or mental or physical handicap provided that the subscriber shall pay all applicable fees for the service desired. The franchisee shall comply at all times with all other applicable federal, state and local laws and regulations, and all executive and administrative orders relating to nondiscrimination which are incorporated and made part of this chapter by reference.

b. Monitoring Prohibited. No reverse signals shall be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for such permission shall be contained in a separate written document, which may be the subscriber agreement, with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed 2 years, which shall be renewable at the option of the subscriber either by affirmative or negative consent, upon request by franchisee. No penalty shall be invoked for a subscriber's failure to provide or renew such an authorization. The authorization shall be revocable at any time by the subscriber without penalty of any kind whatsoever. Such authorization is required for each type or classification of reverse signal use planned provided, however, that the franchisee shall be entitled to conduct system-wide or individually addressed "sweeps" for the purpose of verifying system integrity, controlling return transmission or billing for pay services.

c. Prohibition of Disclosure of Subscriber Information. Any information concerning individual subscriber viewing habits or responses, except for information for billing purposes, shall be destroyed within 90 days, except where the subscriber consents to the retention of such information for a longer period of time. A franchisee shall explain its information gathering functions to its subscribers and shall maintain adequate safeguards to ensure the security and confidentiality of all subscriber information. Subscriber agreements shall identify information which may be developed by franchisee and shall allow subscribers an adequate opportunity not to participate. Bulk data shall not be made available to third parties without first ensuring that individual identities are safeguarded. A franchisee shall comply with all applicable privacy laws, and shall notify subscribers promptly if permitted to do so by law, when government agencies request information. Subscriber mailing lists shall not be made available to third parties without first allowing subscribers the opportunity to have their names removed from such lists. No

lists shall be made available to third parties which identify viewing habits of individual subscribers. Subscribers may examine any information pertaining to them upon the franchisee's premises upon reasonable notice during regular business hours. A franchisee shall make corrections of any records shown to be inaccurate. Third parties who participate in providing services to a franchisee's subscribers shall adhere to all of the privacy provisions in this paragraph.

d. Fairness of Accessibility. The entire system of a franchisee shall be operated in compliance with all federal and state anti-discrimination laws.

13. FRANCHISEE RULES AND REGULATIONS. A franchisee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the franchisee to exercise its rights and perform its obligations under a franchise agreement, and to assure an uninterrupted service to each and all of its customers. Such rules, regulations, terms and conditions shall not be in conflict with the provisions of this chapter, the franchise agreement or applicable state and federal laws, rules and regulations.

99-13. Reports and Records. 1. BOOKS AND RECORDS REQUIRED. a. Mandatory Books and Records. The franchisee shall at all times maintain:

a-1. Complete and accurate financial books and records on the operations of the franchise. Such books and records shall be maintained in accordance with generally accepted accounting principles (GAAP) and shall be sufficient to facilitate an audit or examination by an independent certified public accountant.

a-2. Records of complaints received and records of interruptions or degradations of service.

a-3. Records showing the exact location of all underground and above-ground facilities installed or in use in the city, exclusive of subscriber service drops, and records setting forth the physical miles of plant constructed, rebuilt or in operation during each fiscal year of the franchise.

a-4. Any records required to determine compliance with s. 99-5-14.

a-5. Public files containing all notices provided to subscribers under the customer service standards specified in s. 99-12-4, as well as all promotional offers made to subscribers. Expired notices and offers may be removed from the file after 2 years from the expiration date of such notice or promotional offer.

b. Other records. The city clerk may require additional books and records related to compliance with this chapter and the franchise agreement.

c. Unless otherwise specified in the franchise, the franchisee shall maintain all books and records for a period of not less than 6 years.

2. BOOKS AND RECORDS AVAILABLE TO CITY. The city clerk, city comptroller or any duly authorized representatives and agents of the city shall have the right to examine, inspect, transcribe and audit at any time during normal business hours, and upon reasonable notice, all books, records, maps, plans, financial statements, service complaint logs, performance test results, franchise property and all other documents related to compliance with this chapter and the franchise, whether in paper, electronic or other form. It is the responsibility of the franchisee to produce the materials requested. If any of the books, records or other franchise-related documents are not kept in the city nor made available in the city upon request, and if the city clerk shall determine that an examination is necessary or appropriate to the performance of any of the city clerk's duties or the city's regulatory responsibilities as set forth in s. 99-6, all travel and maintenance expense necessarily incurred in making such examination shall be paid by franchisee.

3. REPORTS REQUIRED. At its sole expense, the franchisee shall prepare and file with the city clerk:

a. Gross Revenue and Franchise Fee Reports. A gross revenue report and earned franchise fee reconciliation report shall be filed quarterly and annually. The reports shall contain a descriptive and comprehensive breakout of gross revenue as defined by this chapter and the franchise agreement, and shall be in a format approved by the city clerk and city comptroller. The annual reports shall include the audit opinion of an independent certified public accountant concerning compliance with the definitions in this chapter and the franchise agreement, as deemed appropriate by the city comptroller.

b. A Disadvantaged Business Enterprise Utilization Report. An annual report regarding the percentage (by dollar value) of the utilization of DBE contractors, subcontractors, suppliers, vendors and other business enterprises and persons for construction and repair, services, supplies, equipment and all other procurement used to establish, operate, market, program and maintain the cable system. Such report shall be in a format approved by the city clerk.

c. Subscriber Rules and Regulations. The franchisee shall document and file with the city clerk all terms and conditions and policies and procedures regarding the provision of cable service to subscribers, including rates and charges and fees, contract and application forms, subscriber complaints, delinquent subscriber collection actions and disconnections and reconnections. All subscriber terms and conditions and policies and procedures shall be filed with the city clerk 30 days prior to becoming effective. Only those subscriber terms and conditions over which the city has approval authority under this chapter, a franchisee agreement or applicable law shall be approved by the city prior to their becoming effective. City approval shall not be unreasonably withheld.



d. Regulatory Communications. All petitions, applications and communications of all types submitted by franchisee to the FCC, securities and exchange commission or any other federal or state regulatory commission or agency having jurisdiction over any matter affecting operation of the franchisee's system shall be submitted simultaneously, or at a reasonable time which does not prejudice any of the city's rights, to the city clerk who shall advise interested city departments of such filing.

e. Additional Reports. The franchisee shall prepare and furnish to the city at the times and in the form prescribed by the city clerk such additional audited and unaudited reports that the city clerk deems necessary and appropriate to determine compliance with this chapter and the franchise agreement.

f. Unless otherwise stated in this chapter, all quarterly reports shall be filed with the city clerk within 30 days following the end of the quarter and all annual reports within 120 days following the franchisee's year-end.

g. The provisions of this section may be modified by the franchise agreement.

4. PROPRIETARY INFORMATION. a. Submission of Information Deemed Proprietary. If the provisions of this chapter, or any request for information or reports made by the city clerk, within the scope of his or her authority hereunder, require the production of proprietary or confidential information, the franchisee shall produce the information. However, at the time the allegedly proprietary or confidential information is submitted, a franchisee may request that specific, identified portions of its response be treated as confidential and withheld from public disclosure and, the portions so identified shall be treated by the city, its officers, agents, employees and consultants, as confidential in accordance with this section and subject to the provisions of pars. d and e. Disclosure of information contained therein shall be limited to officers and employees of the city having responsibilities in connection with the franchise and to consultants to the city who require the information to perform their duties and who have agreed in writing to treat the information as confidential. The request for confidential treatment shall state the reason why the information should be treated as proprietary or confidential and the facts that support those reasons. When necessary, requests for confidential treatment, or for inspection of proprietary or confidential information will be reviewed by the city clerk based on FCC regulations and state and local law, as applicable.

b. Identification of Information Deemed Proprietary. Information that the franchisee claims is proprietary or confidential shall be clearly identified. If it is part of a larger submission, such as a rate filing, the proprietary or confidential information shall be segregated from the remainder of the submission. It shall also be clearly marked so that the city clerk may determine where the proprietary or confidential information belongs within the submission, how it relates to the remainder of the submission and the basis for the franchisee's claim that the marked material is proprietary or confidential.

c. Optional Advance Confirmation. c-1. In connection with submission of information deemed proprietary or confidential, a franchisee, at its option, may request in particular cases that the city clerk provide advance written confirmation that the information will be received pursuant to an agreement that it will be treated as confidential, providing with the request a sufficient description of the information to enable the city clerk to determine whether the request is appropriate. If such a request is made, the city clerk shall review the matter and, if he or she determines based upon the description furnished by the franchisee that confidential treatment is appropriate, provide such written confirmation.

c-2. The fact that advance written confirmation has been provided by the city clerk as to particular information shall not preclude the city clerk from concluding upon review of the actual information submitted by the franchisee that confidential treatment is inappropriate in which case the provision of par. e shall apply prior to any release or disclosure of the information. The city clerk's declining to provide written confirmation as to particular information shall not preclude the franchisee from submitting the information as proprietary or confidential.

d. Requests to Inspect Proprietary Information. The city clerk is designated the custodian of all public records of the city containing information submitted by a franchisee as confidential or proprietary. Any interested party may file with the city clerk a request to inspect a record containing such information, and the city clerk shall handle the request in accordance with par. e and the provisions of subch. II, ch. 19, Wis. Stats., as it may be amended from time to time. The city clerk shall notify the franchisee promptly upon receipt of such a request.

e. Procedure Prior to Disclosure. Unless release or disclosure is ordered by a court of competent jurisdiction, information submitted by a franchisee as proprietary or confidential shall not be released or disclosed until the city clerk shall have reviewed the matter in consultation with the city attorney. Such city attorney review shall take place regardless of a request for advance confirmation under par. c and regardless of the disposition of any such request. If the city clerk determines upon such review that release or disclosure of the information is legally appropriate, the city clerk shall provide written notice to the franchisee at least 10 business days in advance of release or disclosure of the information to enable the franchisee, if it so desires, to commence appropriate legal proceedings to enjoin such release or disclosure.

f. Nothing herein shall be read to require the city to violate open records laws of the state.

99-14. Rights Reserved to the City. 1. RIGHT TO PURCHASE SYSTEM BY THE CITY. a. Right to Purchase. If a franchisee forfeits and the city terminates this franchise pursuant to this chapter, or upon denial or abandonment, the city shall have the right, directly or as an intermediary, to purchase the franchised cable system. The purchase price shall be based upon the value of the system determined pursuant to this section.

b. Date of Valuation. The date of valuation shall be no earlier than the day following the date of expiration, renewal, denial and exhaustion of all appeals or termination and no later than the date the city makes a fair and reasonable offer for the system or the date of transfer of ownership, whichever occurs first.

c. Transfer to City. Upon exercise of this option and the payment of the purchase price by the city and its service of official notice of

such action upon a franchisee, the franchisee shall immediately transfer to the city possession and title to all facilities and property, real and personal, of the cable system, free from any and all liens and encumbrances not agreed to be assumed by the city in lieu of some portion of the purchase price set forth in this section and the franchisee shall execute such warranty deeds or other instruments of conveyance to the city as shall be necessary for this purpose.

d. System Valuation. The value of the cable system shall be determined by a qualified appraiser appointed by the city. The appraiser shall determine the current worth of the assets based upon what a willing buyer would pay a willing seller for the assets involved. Under no circumstances shall the value under this section be less than the net book value of the assets, nor greater than the current replacement cost of the system. No value shall be assigned to either the franchise itself or any right, privilege or expectancy arising to the franchisee out of the right to transact business under the franchise, and particularly no value shall be allowed for any increase in value arising out of any expectation of cable system revenues beyond the forfeiture and termination date or expiration date, whichever is sooner.

e. Intent to Purchase. Upon receipt of notice of the city's intent to purchase the system at the value established in par. d, a franchisee shall have 30 days within which to accept that valuation as the purchase price of the system. In the event that purchase price is not acceptable, the parties shall have 120 days in which to negotiate an acceptable purchase price.

f. Arbitration. In the event the city and a franchisee are unable to agree upon the value of the cable system within the time limits set forth, either party may require by written notice to the other that the value of cable system be submitted to arbitration in the following manner:

f-1. The city and a franchisee shall each within 15 days after such written notice select an arbitrator who shall be a disinterested person with reasonable knowledge and experience relative to the subject to be arbitrated. The 2 arbitrators thus selected shall immediately thereafter select a 3rd arbitrator who shall likewise be a disinterested person having reasonable knowledge and experience relative to the subject to be arbitrated.

f-2. Within 30 days after appointment of all arbitrators and upon 10 days written notice to the parties, the panel of arbitrators shall commence a hearing on the issue of valuation and shall receive all relevant information from the parties.

f-3. The hearing shall be recorded and may be transcribed at the request of either party. All hearing proceedings, debate and deliberation shall be open to the public and at such times and places as contained in the notice or as thereafter publicly stated in the order to adjourn, except that if 2 arbitrators agree, debate and deliberation may be held in closed session.

f-4. The value of the system as determined by the arbitration panel shall be the current worth of the assets based upon what a willing buyer will pay a willing seller. Under no circumstances shall the value established by the arbitration panel be less than the net book value of the assets nor greater than the current replacement cost of the system as determined by the appraiser appointed under par. d.

f-5. Within 30 days after the close of the hearings, the panel of arbitrators shall prepare findings and decision agreed upon by a majority of the panel which shall be filed with the city and served by mail upon the franchisee. Unless the parties extend by mutual agreement the time which the panel of arbitrators has to make a decision, if no findings and decision have been filed with the city after such 30 days, the proceedings shall become null and void and shall be started anew.

f-6. The decision of the panel regarding the value of the system shall be final and binding upon the parties.

f-7. Either party may seek judicial relief in the following circumstances:

f-7-a. A party fails to select an arbitrator.

f-7-b. The arbitrators fail to select a third arbitrator.

f-7-c. One or more arbitrators is unqualified.

f-7-d. Designated time limits have been exceeded.

f-7-e. The panel has not proceeded expeditiously.

f-7-f. The decision was procured by corruption, fraud or undue means.

f-7-g. There was evident partiality on the part of one or more of the arbitrators.

f-7-h. The arbitration panel exceeded its authority hereunder.

f-7-i. Based upon the record, the panel abused its discretion.

f-8. If a court of competent jurisdiction determines that judicial relief is appropriate to the circumstances set forth in par. f-7, the court in its discretion may order the arbitration procedure repeated and issue findings, orders and directions.

f-9. The expenses of the arbitrators shall be borne by the parties and the expenses of the third arbitrator and those expenses incurred by the panel as a whole shall be borne equally by the parties.

g. Notification. Upon receipt of the decision of the arbitration panel, the city shall have 30 days in which to notify the franchisee of its intent to exercise its option to purchase the system. The purchase price shall be the value of the system as determined by the arbitration panel.

2. RIGHT OF INTERVENTION. The city shall have the right of intervention in any suit or proceeding to which a franchisee is party, and the franchisee shall not oppose such intervention by the city.

3. RIGHT TO REQUIRE REMOVAL OF PROPERTY. Upon its revocation of the franchise, abandonment or denial of any renewal as provided for herein, the city shall have the right to require a franchisee to remove, at its own expense, all portions of the cable system required by public necessity from all rights of way within the city.

99-15. Theft of Service and Tampering; Penalties.

1. PROHIBITIONS. No person may intentionally do any of the following:

a. Obtain or attempt to obtain any cable service from a franchisee by trick, artifice, deception, false information, use of an illegal device or illegal decoder or other fraudulent means with the intent to deprive franchisee of any or all lawful compensation for rendering each type of service obtained. The intent required for a violation of this paragraph may be inferred from the purchase of such a device or the presence on the property and in the possession of the individual of a device not authorized by franchisee, the major purpose of which is to permit reception of any cable service without payment. This inference is rebutted if the individual demonstrates that he or she purchased that device for only legitimate uses.

b. Give technical assistance or instruction to any person in obtaining or attempting to obtain any cable service without payment of all lawful compensation to the franchisee providing that service. This paragraph does not apply if the individual demonstrates that the technical assistance or instruction was given or the installation of the connection, descrambler or receiving device was for only legitimate uses.

c. Make or maintain a connection, whether physical, electrical, mechanical, acoustical or by other means, with any cables, wires, components or other devices used for the distribution of cable service for the purpose of or which has the effect of distributing cable service to any other person without authority from the franchisee.

d. Make or maintain a connection, whether physical, electrical, mechanical, acoustical or by other means, with any cables, wires, components or other devices used for the distribution of cable services for the purpose of or which has the effect of obtaining cable service without payment of all lawful compensation to the franchisee providing that service. The intent required for a violation of this paragraph may be inferred from proof that the cable service to the individual's residence or business was connected under a cable service agreement with the individual and has been disconnected by the franchisee and that thereafter there exists in fact a connection to the cable system at the individual's residence or business.

e. Make or maintain any modification or alteration to any device installed with the authorization of the franchisee for the purpose of intercepting or receiving any program or other service offered by the franchisee which that person is not authorized by the franchisee to receive. The intent required for a violation of this paragraph may be inferred from proof that, as a matter of standard procedure, the franchisee places written warning labels on its converters or decoders explaining that tampering with the device is a violation of law and the converter or decoder is found to have been tampered with, altered or modified so as to allow the reception or interception of services, offered by the franchisee, without authority to do so. The trier of fact, may also infer that a converter or decoder has been altered or modified from proof that the franchisee, as a matter of standard procedure, seals the converters or decoders with a label or mechanical device, that the seal was shown to the subscriber upon delivery of the decoder and that the seal has been removed or broken. The inferences under this paragraph are rebutted if the franchisee cannot demonstrate that the intact seal was shown to the subscriber.

f. Possess without authority any device or printed circuit board designed to utilize or receive from a franchisee any services offered for sale over the franchisee's cable system, whether or not the services are encoded, filtered, scrambled or otherwise made unintelligible, or perform or facilitate the performance of any of the acts under pars. a to e with the intent that the device or printed circuit be used to receive the franchisee's services without payment. Intent to violate this paragraph for direct or indirect commercial advantage or private financial gain may be inferred from proof of the existence on the property and in the actual possession of the individual of a device in the totality of circumstances, including quantities or volumes, indicates possession for resale.

g. Manufacture, import into this city, distribute, publish, advertise, sell, lease or offer for sale or lease any device, printed circuit board or any plan or kit for a device or for a printed circuit designed to receive the cable services offered for sale over a cable system from a cable system, whether or not the services are encoded, filtered, scrambled or otherwise made unintelligible, with the intent that the device, printed circuit, plan or kit be used for the reception of the franchisee's services without payment. The intent required for a violation of this paragraph may be inferred from proof that the individual has sold, leased or offered for sale or lease any device, printed circuit board, plan or kit for a device or for a printed circuit board in violation of this paragraph and during the course of the transaction for sale or lease the individual expressly states or implies to the buyer that the product will enable the buyer to obtain cable service without charge.

h. Fail or refuse to return to the franchisee any equipment of the franchisee in the person's possession, including any devices or printed circuit boards designed to utilize or receive from a cable system any services offered for sale over the cable system, after 30 days notice of the demand from the franchisee to return such equipment, whether such person is a subscriber or not at the time of the failure or refusal.

2. In the event of a violation of sub. 1-a, c, d or e, the individual who signed the service agreement shall be presumed liable for the violation. If for any reason there is no individual present at the residence or business who signed the service agreement, the owner of the property or the lessee, if the premises were leased, shall be presumed liable for the violation.

3. "Private financial gain" as used in this section does not include the gain resulting to any individual from the individual's sole use in that individual's dwelling unit of any programming for which the individual has not obtained authorization.

4. Except as provided in sub. 5, any person convicted of violating any provision of this section is subject to a forfeiture of not less than \$100 nor more than \$500 for each offense. Each day's violation of this section shall be considered a separate offense.

5. a. Any person convicted of violating any provision of this section for direct or indirect commercial advantage or private financial gain is subject to a forfeiture of not less than \$1,000 nor more than \$2,000. Each day's violation of this section shall be considered a separate offense.

b. Any person convicted of violating any provision of this section for direct or indirect commercial advantage or private financial gain as a second or subsequent violation is subject to a forfeiture of not less than \$2,000 nor more than \$5,000. Each day's violation is a separate offense.

99-16. Miscellaneous Provisions. 1. NOTICES. All notices from a franchisee to the city pursuant to a franchise shall be to the city clerk's office. Each franchisee shall maintain with the city, throughout the term of the franchise, an address for service of notice by mail and by facsimile and e-mail, if available. Each franchisee shall also maintain within the franchise area, a local office and telephone number for the conduct of matters related to this franchise during normal business hours.

2. NO RECOURSE AGAINST THE CITY. A franchisee shall have no recourse whatsoever against the city or its officials, boards, commissions, agents or employes for any loss, costs, expense or damage arising out of any provision or requirements of the franchise or because of the enforcement of the franchise.

3. NON-ENFORCEMENT BY THE CITY. A franchisee shall not be relieved of its obligation to comply with any of the provisions of its franchise by reason of any failure of the city to enforce prompt compliance.

4. OBSCENITY LAWS AND REGULATIONS. a. Compliance with all laws and regulations.

a-1. Franchisee and all users of the cable system shall comply with all federal, state and local laws regarding obscenity.

a-2. No person shall by means of a cable television system, knowingly distribute by wire or cable to subscribers any obscene material.

a-3. "Material" in this subsection means any visual material shown on a cable television system, whether or not accompanied by a soundtrack or any sound recording played on a cable television system.

a-4. "Obscene material" in this subsection shall have the meaning ascribed to it in s. 106-7. If the Wisconsin legislature, subsequent to the passage of this subsection, enacts a statute regarding obscenity in which the term "obscene material" is defined, that definition shall control its meaning under this subsection.

b. Forfeiture. Any person who shall violate any of the provisions of this subsection shall, upon conviction, forfeit not more than \$500, together with the costs of prosecution, or in default of payment, may be imprisoned for a period not to exceed 20 days.

c. Revocation. If the franchisee transmits obscene programming which it has produced or acquired by sale, lease or otherwise, the franchisee's action shall be deemed a material violation hereof and shall subject the franchisee to franchise revocation pursuant to this chapter.

5. ENFORCEMENT. a. Legal Process. By virtue of the trust relationship created by a franchise agreement between the city and franchisee, and if it becomes necessary for the city to enforce the franchise agreement by legal process, and if judgment is rendered in favor of the city and against the franchisee because of cable broadcasting any obscene exhibition, the franchisee shall bear, and be liable for all costs of investigation, litigation, and appeal in such action, including attorneys' fees, staff assistance costs, witness fees and costs, copy and printing costs and court costs.

b. Appeals. In the event judgment is entered against the franchisee, the franchisee shall forthwith deposit the amount of such fees and costs with the city treasurer as are determined to be reasonable by the court, and thereupon the city shall hold such funds in escrow pending the outcome of any appeals.

6. POLICY ON EDUCATIONAL OPPORTUNITIES. Each franchisee shall cooperate with the city with the goal of placing qualified and qualifiable candidates into job openings created by the growth of the cable industry. In addition, it is the intent of the city that the franchisee establish a scholarship fund that will provide scholarships and grants to applicants residing in the city of Milwaukee wishing to complete an education in journalism and mass communications. Scholarships for undergraduate and graduate level pursuits will be provided by a franchisee, in accordance with the terms of its franchise agreement, to students lacking the necessary funds to complete such schooling.

99-17. Assignment of Powers and Duties. Any duty, power, obligation or responsibility which was assigned to the former position of the director of the office of telecommunications or to the office of telecommunications under a franchise granted under this chapter prior to the effective date of this chapter is assigned to the city clerk or the city clerk's office, as the case may be.

APPROVED AS TO FORM

Legislative Reference Bureau

Date: \_\_\_\_\_

IT IS OUR OPINION THAT THE ORDINANCE  
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: \_\_\_\_\_

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