

CHAPTER 1

Cable Television

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SEC. 9-1-1 GENERAL PROVISIONS -- CABLE TELEVISION.

Cable television systems within the City shall be permitted pursuant to contract(s) between the operator(s) and the City of Menasha; such contract(s) are adopted and incorporated herein by reference.

SEC. 9-1-2 STATEMENT OF INTENT AND PURPOSE.

The City intends, by the adoption of this Franchise, to bring about the continued development and operation of a System. Such a development can contribute significantly to meeting the communications needs and desires of many individuals, associations, and institutions.

SEC. 9-1-3 AWARD FEES AND FRANCHISING COSTS.

Grantee shall reimburse the City for all costs, including attorney's fees and publication fees, expended in the soliciting, processing, and awarding of the Franchise; provided, however, Grantee's obligation shall not exceed Ten Thousand Dollars and 00/100 (\$10,000.00). Payment shall be made by Grantee at the time of acceptance of this Franchise as set forth in Section 13.01 hereof.

SEC. 9-1-4 SHORT TITLE

This Ordinance shall be known and cited as the "City of Menasha Cable Television Franchise Ordinance." Within this document it shall also be referred to as "this Franchise" or "the Franchise."

SEC. 9-1-5 DEFINITIONS

For the purpose of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense and words in the future tense include the present tense, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- (a) Basic Service means that level of service regularly provided to all subscribers which includes the retransmission of local television broadcast signals and the access channels required herein.
- (b) Cable Mile means a mile of cable bearing strand.
- (c) Channel means a six (6) Megahertz (MHz) frequency band, which is capable of carrying either one standard video signal, a number of audio, digital or other non-video signals, or some combination of such signals.
- (d) City means City of Menasha, Wisconsin, a municipal corporation in the State of Wisconsin or its delegations. The Common Council is the authority of the City.
- (e) Completion of the System Rebuild means that the System will be rebuilt, as needed, and activated in accordance with Section 5.02 hereof. Specifically, all strand will be put up and all necessary cable lashed or buried; trenches refilled and landscaping replaced; amplifiers and power supplies installed and grounded; and all other necessary construction will be completed so that the System when rebuilt, will be capable of distributing a signal to any subscriber and ready for testing by the City pursuant to Section 7.01(d) hereof.
- (f) Converter means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber and by an appropriate channel selector also permits a subscriber to view all signals included in the service level delivered at designated converter dial locations.
- (g) Drop means the cable that connects the subscriber terminal at a point in the subscriber's home, designated by the subscriber, to the nearest feeder cable of the System.
- (h) Extension means a required increase in the trunk or feeder cable in order to facilitate installation of a drop.
- (i) Dwelling Unit means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as a residence by one or more individuals or families. The term Dwelling Unit is not limited to units occupied by persons as their usual place of residence and includes houses rented periodically or used only as seasonal homes.
- (j) FCC means the Federal Communications Commission or a designated representative.
- (k) Grantee means Warner Cable Communications Inc., its agents, employees, lawful successors, transferees or assignees.
- (l) Gross Revenues means the annual gross revenues of Grantee from all sources of operations of the System within the City including, but not limited to, Basic Service monthly fees, pay television fees, installation and re-connection fees. This term does not include any sales, excise or other taxes collected by Grantee on behalf of the state, city, or other governmental unit, or any local advertising revenues. Gross revenues shall not include subscriber or customer made debts which the Grantee is not able to collect. Revenues generated from per-program audio-visual signals shall not be included in the definition of Gross Revenues until August 1, 1989.
- (m) Installation means the act of connecting the System from the feeder cable to the subscriber terminal so that cable service may be received by the subscriber.
- (n) Pay Television means the delivery over the System of per-channel or per-program audio-visual signals to subscribers for a fee or charge, in addition to the charge for Basic Service.
- (o) Person means any corporation, partnership, proprietorship, or organization authorized to do business in the State of Wisconsin, or any natural person.
- (p) Public Property means any real property other than a Street owned by any governmental unit.
- (q) Street means the surface of and the space above and below any public street, public road,

public highway, public freeway, public lane, public path, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, or any public easement or right-of-way now or hereafter held by the City which shall, within its proper use and meaning in the sole opinion of the City, entitle Grantee the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a System.

- (r) Subscriber means any person or entity who subscribes to a service provided by Grantee by means of or in connection with the System whether or not a fee is paid for such service.
- (s) System means facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable television service which includes video programming and which is provided to multiple subscribers within the City, but such term does not include:
 - (1) A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
 - (2) A facility that serves only subscribers in one (1) or more multiple unit dwelling under common ownership, control or management, unless such facility or facilities uses any public right-of-way;
 - (3) A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Communications Policy Act of 1984, except that such facility shall be considered a System to the extent such facility is used in the transmission of video programming directly to subscribers; or
 - (4) Any facilities of any electric utility used solely for operating its electric utility systems.
- (t) System Rebuild means that process which will be commenced in November 1990, and will be completed year end 1991, which is more fully described in Section 9-1-7(b) hereof by which Grantee will undertake certain steps to provide a System with sixty (60) channel capacity and upper bandwidth of 450 MHz.
- (u) System Upgrade means that process which will make certain physical improvements to the System, more fully described in Section 9-1-7(a).
- (v) Normal Business Hours, as applied to the Grantee, shall mean those hours during which similar businesses locally are open to serve customers. In all cases, Normal Business Hours must include some evening hours at least one night per week, and/or some weekend hours.
- (w) Normal Operation Conditions shall mean those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and sever or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

SEC. 9-1-6 GRANT OF AUTHORITY AND GENERAL PROVISION

- (a) **GRANT OF FRANCHISE.** This Franchise is granted pursuant to the terms and conditions contained herein. Such terms and conditions shall be subordinate to all applicable provisions of state and federal laws, rules, and regulations.
- (b) **CRITERIA OF SELECTION.** The Grantee's technical ability, financial condition and legal qualifications were considered and approved by the City in full public proceedings and affording reasonable notice and a reasonable opportunity to be heard.
- (c) **AUTHORITY FOR USE OF STREETS.**
 - (1) For the purpose of operating and maintaining a System in the City, Grantee may erect, install, construct, repair, replace, relocate, reconstruct, and retain in, on, over, under, upon, across, and along the Streets within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of the System; provided, however, that all applicable permits are applied for and granted, all fees paid and all other City Codes and Ordinances are otherwise complied with.
 - (2) Grantee shall construct and maintain the System so as not to interfere with other uses of Streets. Grantee shall wherever possible make use of existing poles and other facilities available to Grantee. Grantee shall provide reasonable public notice to residents affected by proposed work; provided, however, Grantee shall make a good faith effort to individually notify affected residents where the proposed work is not on public property prior to commencement of that work.
 - (3) Notwithstanding the above grant to use Streets, no Street shall be used by Grantee if the City, in its sole opinion, determines that such use is inconsistent with the terms, conditions, or provisions by which such Street was created or dedicated, or presently used.
- (d) **FRANCHISE TERM.** This Franchise shall commence upon acceptance of this agreement and shall expire on December 31, 2001, unless renewed, revoked, or terminated sooner as herein provided.
- (e) **AREA COVERED.** This Franchise is granted for the territorial boundary of the City. In the event of annexation by the City, any new territory shall become part of the area covered.
- (f) **POLICE POWERS.** Grantee's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Grantee shall comply with all applicable laws and ordinances enacted by the City pursuant to that power.
- (g) **USE OF GRANTEE FACILITIES.** The City shall have the right to install and maintain, free of charge, within the underground pipes and conduits of Grantee, any wires and fixtures desired by the City to the extent that installation and maintenance does not interfere with existing and future operations of Grantee.
- (h) **WRITTEN NOTICE.** All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to the person designated below, or on the delivery date documented by the U. S. Postal Service, or express courier service, as follows:

If to the City: City of Menasha
140 Main Street
Menasha, WI 54952
Attn: City Clerk

If to the Grantee: Warner Cable Communications Inc.
304 High Avenue
P.O. Box 240
Oshkosh, WI 54901

Warner Cable Communications, Inc.
400 Metro Place N.
Dublin, OH 43017
Attn: Government Relations

Such addresses may be changed by either party upon notice to the other party given as provided in this section.

- (i) **FRANCHISE NON-EXCLUSIVE.** The Franchise granted herein is non-exclusive. The City specifically reserves the right to grant, at any time, additional franchises for a System in accordance with the state and federal law and on the same material terms and conditions as contained in this Franchise.

SEC. 9-1-7 DESIGN PROVISIONS.

- (a) **SYSTEM UPGRADE.** Grantee shall undertake an upgrading of the System; such upgrade to be performed in conjunction with the rebuild provided herein. This System upgrade shall, at a minimum, include the following:
- (1) A complete readout and inspection and electronic monitoring in order to identify areas and specific locations of defective cable, connectors, traps, and passive devices which may cause signal leakage.
 - (2) Upon identification of problems in accordance with paragraph (1) above, Grantee shall correct the deficiencies. Corrective measures will include, but not be limited to, repair, or replacement of all defective cable, replacement of defective connectors with state-of-the-art integral mandral-type connectors, and replacement of all defective drops, traps, and passive devices.
 - (3) A second complete readout of the System using electronic monitoring equipment to insure that all deficiencies have been corrected.
- (b) **SYSTEM REBUILD.** Grantee shall commence a rebuild of the system as needed, as provided in Sec. 9-1-5.
- (1) Minimum general design specifications shall be as follows:
 - a. The System will include all necessary electronic equipment, power supplies, connectors, and other parts, components, and equipment necessary to provide a complete and operational System with the frequency range of Fifty (50) to Four Hundred Fifty (450) MHz.
 - b. The System will be rated for continuous twenty-four (24) hour service in an environment of up to One Hundred (100%) percent humidity and of temperature extremes typical of the City.
 - c. The System will be designed not to interfere with radio and/or television

- reception of non-subscribers.
- d. All active circuitry in the equipment used shall be solid state and shall be equipped with electronic components for lightning and surge protection.
 - e. Lighting arresters will be installed on One Hundred Ten (110) VAC lines of AC power suppliers along with surge arresters and time delay relays on the Sixty (60) volt secondary.
 - f. Remote power supply for powering of electronic equipment will be so regulated that AC output voltage does not vary by more than plus or minus Two percent (2%) with an input voltage range of Ninety (90) to One Hundred Thirty (130) volts AC. The power location will not generate transients when energized that may prove harmful to the Systems equipment and components.
 - g. All outdoor equipment shall be housed in protective housings which offer full protection against local environmental conditions.
 - h. All equipment will be equipped with coaxial fittings of positive moisture protection and effective electrical connection. Trunk line amplifiers, bridging amplifiers and line extender amplifiers will be contained in a weatherproof housing capable of strand mounting.
 - i. The head-end shall be equipped with stand-by emergency generation capability.
- (2) Minimum specifications for the transportation system shall be as follows:
- a. The transportation system shall be single trunk, single feeder cable type.
 - b. The transportation system shall be capable of transmitting a minimum of Sixty (60) channels plus the complete FM band in the forward direction in the frequency band of Fifty (50) to Four Hundred Fifty (450) MHz.
 - c. All amplifiers shall be solid state equipment and designed to plug in Five (5) to Thirty (30) MHz reverse modules and filters.
 - d. All passive equipment shall have a passband from Five (5) to Four Hundred Fifty (450) MHz.
- (3) Minimum specifications for the subscriber system shall be as follows:
- a. There shall be no active equipment in underground vaults or apartment lock boxes unless conditions warrant and no other alternatives are feasible.
 - b. There shall be no more than two line extenders in a cascade as a general design practice.
- (4) Minimum specifications for subscriber System shall be as follows:
- a. All subscriber taps will be of the directional couplet type with either 1, 2, 4, or 8 outputs.
 - b. In the forward distribution system, at balanced temperature, a minimum level of Zero (0) dBmv shall be maintained at the back of the subscriber's television set at the input of the subscriber's converter.
 - c. Plant shall be designed for dedicated facilities to cause a tap to be located for each possible subscriber shown on subscriber maps at the time of System design. Additional taps will be handled on a field change work order following design approval.
 - d. Terminating resistors and weather proofing will be provided on all outputs of each subscriber tap.
 - e. The System will be designed to allow a directional coupler to be located at a point capable of supplying a signal to apartments, hospitals, institutions, multiple dwellings and nonstandard residential subscribers at Zero (0) dBmv

minimum at the back of the subscriber's television set or at the input of the subscriber's converter.

- (5) The coaxial cable used in the System will be the latest field-proven type suitable for local environmental conditions.

(c) **INSTITUTIONAL LOOP.**

- (1) Grantee shall continue to provide for control and use by the City a separate twelve channel broadband closed circuit transmission loop. The loop shall both originate and terminate at the present location and shall continue to serve the locations presently served. Grantee shall also provide service to Menasha Library and City Hall locations within thirty (30) days upon request of the City.
- (2) As a part of the System Rebuild Grantee shall upgrade the institutional loop to a Three Hundred (300) MHz mid-split, bi-directional system.
- (3) Grantee shall continue to maintain the return capabilities in order that programming can be originated at the current sites.

(d) **SERVICE AREA.**

- (1) Grantee shall continue to serve those areas of the City currently served as of March 15, 1987.
- (2) Grantee shall extend the System to unserved areas requiring an extension, within a reasonable period of time, when such areas achieve a density equivalent to thirty (30) Dwelling Units per aerial cable mile or Sixty (60) Dwelling Units per underground cable mile as measured from the nearest point of existing useable cable trunk.
- (3) Subscribers requiring a drop of One Hundred Fifty (150) feet or less shall be provided service upon payment of a standard installation fee. Installations requiring underground drops or aerial drops in excess of One Hundred Fifty (150) feet shall be considered non-standard installation to be charged at the excess cost of installation, beyond One Hundred Fifty (150) feet.
- (4) Service will be provided to any other residential or non-residential unit upon agreement of the property owner to pay the excess cost of the required extension and/or installation. For purposes of this section, excess cost shall be calculated as a prorated amount, based upon the number of dwelling units in the proposed extension area, compared to the density standard set forth in Sec. 9-1-7(d)(2).

(e) **PROVISIONS OF SERVICE.**

- (1) After service has been established by activating trunk and distribution cable for any area, Grantee shall provide service to any requesting subscriber within that area Thirty (30) days from the date of request.
- (2) Grantee shall inform the subscriber that it will install at a reasonable charge, a switching device so as to permit a subscriber to continue to utilize that subscriber's own television antenna as the subscriber determines.

(f) **TECHNICAL STANDARDS.**

- (1) For purposes of compliance with this agreement, Grantee shall, at all times, operate its system, at a minimum, in conformance with the technical specifications contained in the FCC regulations, or any applicable federal statute or administrative regulation which may supersede such rules. Grantee shall endeavor to operate its system in conformance with the standards set forth below:

Minimum Carrier to Noise	43.5 dB
Minimum Composite Triple Beat (CW)	
60 Channel Load	51.5 dB
Minimum Cross Mod Synchronous	
60 Channel Load	51.5 dB
Signal level at the back of the subscriber's television set or at converter input	0 dBmv (minimum)

- (2) In the event special testing after the System Rebuild reports that Grantee is not meeting the technical parameters set forth in paragraph One (1) above, Grantee shall report in writing to the City what corrective measures are being taken or why corrective measures are not necessary to meet FCC standards.
- (3) In no event shall the failure to meet the technical parameters set forth in paragraph One (1) above be grounds for the imposition of penalties or the revocation of this Franchise unless so allowed under state or federal law.

(g) **SPECIAL TESTING.**

- (1) At any time after commencement of service to subscribers, the City may require or may retain an independent third-party with industry recognized credentials to perform reasonable additional tests, full or partial repeat tests, different test procedures, or tests involving a specific subscriber's drop. 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.
- (2) The City shall endeavor to so arrange its requests for such special tests so as to minimize hardship or inconvenience to Grantee or to the subscriber.
- (3) Grantee shall bear all expenses incurred by the City as a result of special testing if such testing after the System Rebuild is completed finds the System not to be in compliance with those standards set forth by FCC in Section 9-1-7(f) unless the independent third-party reports that such non-compliance is due to reasons beyond the control of Grantee.
- (4) If such testing finds the System to be in compliance with those standards set forth by FCC in Section 9-1-7(f) after the System Rebuild is completed, or the noncompliance is due to reasons beyond the control of Grantee, then the City shall bear all expenses incurred by the City as a result of special testing.
- (5) Any special testing ordered by the City prior to the Completion of the System Rebuild shall be borne by the City unless the independent third-party reports ongoing fault on the part of Grantee, in which case Grantee shall bear the cost of the special testing.

SEC. 9-1-8 SERVICE PROVISIONS.

- (a) **BASIC SERVICES.** Grantee shall continue to offer programming services in the following categories:
 - (1) Local network broadcast.
 - (2) Local independent broadcast.
 - (3) Satellite news service.
 - (4) Satellite entertainment services.

- (5) Public broadcasting service.
- (6) Weather service.
- (7) Premium pay services.
- (8) Satellite sports service.
- (9) Children's programming.

All programming decisions shall be that of Grantee; provided however, Grantee shall maintain the category of services listed herein.

- (b) **EMERGENCY SERVICES.** Grantee shall provide the City with an emergency alert override system, accessible via telephone security code. Grantee shall, at its own expense, install, maintain, and make the system fully operational. This system shall be capable of overriding the audio on all channels of the subscriber System in order that the Winnebago County Emergency Government may deliver emergency messages.
- (c) **PUBLIC ACCESS.**
 - (1) The parties to this Franchise agree that, at the inception of this Franchise agreement, no public access channel shall be required. The parties further agree that, during the term of this Franchise, if the City, at its sole option, determines that a public access channel would serve the public interest, the Grantee, within three (3) months of written notification of said determination by the City, shall provide said public access channel. The election to mandate a public access channel may be made by the City at anytime during the term of this Franchise.
 - (2) In the event the City requires the public access channel above mentioned, the Grantee and the City jointly agree to establish rules for the administration of the designated public access channel. Notwithstanding anything to the contrary, Grantee shall not exercise any editorial control over any access channel.

SEC. 9-1-9 CONSTRUCTION PROVISIONS.

- (a) **CONSTRUCTION TIMETABLE.**
 - (1) The System Upgrade, as described in Section 9-1-7(a), shall be completed as provided in that section.
 - (2) Grantee shall give notice to the City at such time as Grantee has completed the System Rebuild. The notice that the System Rebuild has been completed shall include a description and reasonable detail of those improvements made as a result of the System Rebuild. The notice of completion of the System Rebuild shall include the results of the proof of performance tests conducted by the Grantee in accordance with the regulations of the Federal Communications Commission.
 - (3) Upon receipt of notice and any test results pursuant to paragraph two (2), the City may accept the notice and deem the rebuilding complete or determine, at its sole discretion, to pursue additional independent testing at the City's expense and by an independent third-party selected by the City. If the City pursues additional testing it shall have sixty (60) days from receipt of Grantee's notice to receive a written report from an independent third-party; provided, however, if the City fails to receive such a written report within the sixty (60) days the System rebuilding shall be deemed completed, unless the failure to receive such a report is due to unforeseen events, acts of God, or events beyond the reasonable control of the City.
 - (4) The completion of the System Rebuild shall be deemed to have taken place on:
 - (1) of the date specified in Grantee's notice of actual completion, subject to

- positive confirmation in the independent third party's report or;
- (2) if such report is not positive, on the date on which the independent third-party reports positive confirmation, whichever is later. In rendering such a report, the independent third-party shall report on the following:
 - a. All improvements contemplated by the System Rebuild have been made or otherwise satisfactorily resolved;
 - b. Test results at up to ten (10) widely separated subscriber drops and using the following tests:
 1. Signal level
 2. Hum
 3. Bandpass response of the System
 4. Carrier to noise of the System
 5. TASO picture quality of two (2) or better
 - c. Compliance with all applicable codes and standards.
 - (5) The cost of any independent third-party so retained by the City shall be the responsibility of the City if such testing finds the System is in compliance with those standards set forth in Section 9-1-7(f); provided, however, if such testing finds the System not to be in compliance with Section 9-1-7(f), then the costs of the City's independent third-party shall be the responsibility of Grantee unless the independent third-party reports that such noncompliance is due to reasons beyond the control of Grantee.
- (b) **CONSTRUCTION DELAY.** Grantee shall notify the City of any delay in the completion of the System Upgrade or the System Rebuild. The City may extend the scheduled completion date for delays which result from occurrence of unforeseen events or acts of God.
- (c) **REBUILD PROGRESS REPORTS.** Grantee shall furnish the City, upon request of the City, written reports, detailing the progress of the System Rebuild. Grantee shall provide any reasonable additional information which the City may desire as a part of such progress reports.
- (d) **CONSTRUCTION STANDARDS.**
- (1) All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970 and any amendments thereto as well as all state and local codes where applicable.
 - (2) All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the provisions of the National Electrical and Safety Code and National Electrical Code as amended.
 - (3) Antenna supporting structures (towers) shall be designed for the proper loading as specified in Electronics Industry Association's R.S. 3-22A Specifications.
 - (4) Antenna supporting structures (towers) shall be painted, lighted, erected, and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable state or local codes and regulations.
 - (5) All of Grantee's plant and equipment, including but not limited to the antenna site, headend and distribution system, towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures, and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained, and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with improvements the City may deem appropriate to make, or to interfere in any manner with the rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.

- (6) Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.
- (e) **CONSTRUCTION CODES AND PERMITS.**
- (1) Grantee shall obtain all necessary permits from the City before commencing any upgrading or rebuilding of the System, including the opening or disturbance of any Street, or private or public property within the City. Grantee shall strictly adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the System in the City.
- (2) The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of this Franchise and to make such tests as it shall find necessary to ensure compliance with the terms of the Franchise and applicable provisions of local, state, and federal law.
- (f) **REPAIR OF STREETS AND PROPERTY.** Any and all Streets or public property or private property which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, or reconstruction of the System shall be promptly repaired by Grantee, at its expense, and to condition as good as that prevailing prior to Grantee's construction.
- (g) **USE OF EXISTING POLES.** Grantee shall not erect, for any reason, any pole on or along any street in an existing aerial utility system without the advance written approval of the City (acting through its Electric and Water Commission--Menasha only) which approval shall not be unreasonably withheld.
- (h) **UNDERGROUNDING OF CABLE.** Cable shall be installed underground at Grantee's expense where both the existing telephone and electrical utilities are already underground. Previously installed aerial cable shall be placed underground in concert with other utilities when both the telephone and electrical utilities convert from aerial to underground construction. Grantee shall place cable underground in newly platted areas in concert with both the telephone and electrical utilities, unless this requirement is waived by the City.
- (i) **RESERVATION OF STREET RIGHTS.**
- (1) Nothing in this Franchise shall be construed to prevent the City from construction, maintaining, repairing, or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Street; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.
- (2) All such work shall be done, insofar as practicable in such manner as not to obstruct, injure, or prevent the free use and operation of the poles, wires, conduits, conductors, pipes, or appurtenances of Grantee.
- (3) If any such property of Grantee shall interfere with the construction or relocation, maintenance or repair of any Street or public improvement, whether it be construction, repair, maintenance, removal, or relocation of a sewer, public sidewalk, or watermain, Street or any other public improvement, thirty (30) days notice shall be given to Grantee by the City and all such poles, wires, conduits, or other appliances and facilities shall be removed or replaced by Grantee in such manner as shall be directed by the City so that the same shall not interfere with the said public work of the City, as determined by the City, and such removal or replacement shall be at the expense of Grantee herein.
- (j) **STREET VACATION OR ABANDONMENT.** In the event any Street or portion thereof used by Grantee shall be vacated by the City or the use thereof discontinued by Grantee, during the term of this Franchise, Grantee shall, at Grantee's expense, forthwith remove its

facilities therefrom unless specifically permitted by the owner to continue the same, and on the removal thereof restore, repair or reconstruct the Street area where such removal has occurred and place the Street area where such removal has occurred to a condition similar to that existing before such removal took place. In the event of failure, neglect or refusal of Grantee, after thirty (30) days notice by the City to remove the facilities or to repair, restore, reconstruct, improve or maintain such Street portion, the owner may do such work or cause it to be done, and the cost thereof as found and declared by the City shall be paid by Grantee as directed by the City and collection may be made by any available remedy.

- (k) **MOVEMENT OF FACILITIES.** In the event it is necessary temporarily to move or remove any of Grantee's wires, cables, poles, or other facilities placed pursuant to this Franchise, in order to lawfully move a large object, vehicle, building, or other structure over any Street of the City, upon two (2) weeks notice by the City to Grantee, Grantee shall move, at the expense of the person requesting the temporary removal, such of his facilities as maybe required to facilitate such movements. Any service disruption provisions of this Franchise shall not apply in the event that the removal of Grantee's wires, cables, poles, or other facilities results in temporary service disruptions.
- (l) **TRIMMING OF TREES.** Grantee shall have the authority to trim trees on public property and within utility easements at its own expense, as it may be necessary to protect its wires and facilities, consistent with all ordinances of the City. Trimming of trees on private property shall require prior affirmative written consent of the property owner.

SEC. 9-1-10 OPERATION AND MAINTENANCE

- (a) **OPEN BOOKS AND RECORDS.** The City shall have the right to inspect, or audit, upon twenty-four (24) hours written notice on a confidential basis, consistent with applicable law, at any time during normal business hours, all books, records, maps, plans, financial statements, service complaint records, performance tests results, record of requests for service and other like materials of Grantee which are reasonably necessary for the administration or enforcement of this Franchise. Such notice shall state the purpose of the inspection or audit and contain a description, to the best of the City's ability, of the books, records, and documents the City wants to inspect or audit.
- (b) **COMMUNICATIONS WITH REGULATORY AGENCIES.** Copies of all petitions, applications, communications, and reports submitted for the System by Grantee or on behalf of or relating to Grantee to the FCC, Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to the System authorized pursuant to this Franchise shall also be submitted upon request to the City. Copies of responses from the regulatory agencies to Grantee shall likewise be furnished to the City, upon request in an expeditious manner.
- (c) **ANNUAL REPORTS.** Within one hundred twenty (120) days of the end of its fiscal year, including the year in which the Franchise becomes effective, Grantee shall file with the City a legible copy of the following information regarding the System.
 - (1) A financial statement including a statement of income, operating expenses, balance sheets with a schedule of property, plant, and equipment, and a statement of sources and uses of funds prepared in accordance with generally accepted accounting principles and certified by a financial officer of Grantee.
 - (2) A summary of the previous year's activities in the development of the System, including, but not limited to, construction and services began or discontinued during the reported year.

- (3) A current copy of its subscriber service agreement.
 - (4) A summary of service repair complaints compiled from service work orders.
- (d) **PERIODIC INSPECTION.** Upon request of the City, the City and Grantee shall undertake an inspection of the System to ascertain the System performance at subscriber drops randomly selected by the City. In the absence of any City action taken to further exercise this right, the City and Grantee shall be subject to at least the procedures set forth below.
- (1) The City shall give written notice to Grantee of the City's intention to undertake an inspection of the System and the name of that person who will participate for the City representative shall be the Mayor or Council member designated by the Mayor. The person so designated need not be trained in cable television technology.
 - (2) Grantee shall, within ten (10) days of receipt of the City notice, select one person who will participate for Grantee and so notify the City. The person so designated need not be trained in cable television technology.
 - (3) The representatives of the City and Grantee shall, within ten (10) days of the selection of the Grantee representative, select a third representative who need not be trained in cable television technology.
 - (4) Within fifteen (15) days after the appointment of all representatives shall commence an inspection of the System in accordance with the following procedures:
 - a. The representatives shall commence the inspection of the System at the head-end by viewing all programmed channels and, by a decision of the majority, assign a rating of one (1) to five (5) for each channel of programming.
 - b. The representatives shall then view the System performance at ten (10) subscriber drops selected at random by the City. At least five (5) of these locations shall be at the far end of the System. The representative shall view each location and, by a decision of the majority, assign a rating of one (1) to five (5) for each channel of programming so viewed.
 - c. In assigning a rating for each channel of programming so viewed, the representative shall use the following scale:
 - 1 - Excellent picture, no visible impairment
 - 2 - Very good picture, small amount of impairment noticeable
 - 3 - Good Picture, degradation noticeable
 - 4 - Fair, degradation a problem
 - 5 - Poor picture, unusable
 - (5) The representative shall prepare and submit to the City and Grantee a written report of its findings and any appropriate recommendation.
 - (6) Upon request of the City, Grantee shall report to the City, at a regular or specially scheduled meeting of the City, what steps are being taken to correct deficiencies noted in the report or why corrective measures are not necessary. Notwithstanding anything to the contrary, the City may use the report submitted by the representatives as a basis for ordering special testing of the System pursuant to Section 9-1-7(g) hereof; however, the procedures specified in the Section, the results of those procedures and/or the report submitted by the representatives shall not be utilized by the City as a basis for Franchise noncompliance by the Grantee or as a basis for nonrenewal of the Franchise Agreement. If formalized testing shows noncompliance such information may be used as supporting documentation.

- (e) **ADDITIONAL REPORTS.** Grantee shall prepare and furnish to the City, at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions, or property, which are reasonably necessary for the administration and enforcement of this Franchise.
- (f) **SUBSCRIBER COMPLAINT PRACTICES.**
- (1) Grantee shall maintain an office within the City which shall be open during all usual business hours. Grantee shall have a publicly listed telephone number and be so operated as to receive subscriber complaints and requests on a twenty-four (24) hour-a-day, seven (7) days-a-week basis. For purposes of this agreement, the Grantee shall be deemed to be in compliance with the requirement to provide an office if the Grantee continues to provide the current toll-free number for telephone contact, local drop-off point for equipment, and local payment center.
 - (2) Grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible shall be preceded by notice and shall occur during periods of minimum use of the System. A written log available for public inspection shall be maintained for all service interruptions, except for those interruptions related to routine repair and maintenance activities.
 - (3) Subscribers requests for maintenance or repairs received prior to 12:00 (noon) Monday through Friday, shall be performed the same day.
 - (4) Subscribers requests for maintenance or repairs received after 12:00 (noon) shall be performed within twenty-four (24) hours of the request or by the end of the next business day unless the request involved an outage subject to paragraph (5).
 - (5) Grantee shall respond within twenty-four (24) hours, seven (7) days a week to any subscriber complaint reporting a complete outage of all channels on Basic Service, an outage of any Pay Television channel or the outage of one or more channels System Wide. Grantee shall exercise its best effort to respond to any outage within the same day.
 - (6) Maintenance personnel shall be on duty eight (8) hours a day, Monday through Friday. Maintenance personnel shall be on-call to respond to System outages, as described in paragraph (5) above, which may occur outside normal business hours.
 - (7) If Grantee fails to correct an outage of Basic Service or any Pay Television channel within twenty-four (24) hours, Grantee shall, upon request of the subscriber, credit 1/30th of the monthly charge to the subscribers for each twenty-four (24) hours or fraction thereof during which the subscriber was without service, except to the extent that restoration of service is prevented by strike, injunction or other cause beyond the control of Grantee.
 - (8) Requests for maintenance or repair of Grantee equipment shall be performed at no charge to the subscriber. If such maintenance or repair is required as a result of damage caused by the subscriber, Grantee may charge the subscriber according to its actual cost for time and material.
- (g) **SUBSCRIBER INFORMATION.** Grantee shall provide in plain language and in an easily readable format written comprehensive information to all subscribers. The information to be provided shall include, but not be limited to, the following:
- (1) The procedure for investigation and resolution of subscriber service complaints;
 - (2) Programming services and rates for such services;
 - (3) Billing practices;
 - (4) Service termination procedures;
 - (5) Converter/subscriber terminal equipment policy; and

(6) Refund policy.

Grantee shall provide a copy of any proposed subscriber information packet to the City for review and comment prior to the use of such an information packet.

(h) **SUBSCRIBER BILLING PRACTICES AND REFUND POLICIES.**

(1) Grantee shall notify each of its subscribers, in writing, of its billing practices. The notice shall describe Grantee's billing practices including, but not limited to, the following: frequency of billing, time periods upon which billing is based, advance billing practices, security deposit requirements, charges for late payments, or returned checks, payments required in order to avoid account delinquency, availability of credits for service outages, procedures to be followed to request service deletions including the notice period a subscriber must give to avoid liability for such services, and procedures to be followed in the event of a billing dispute.

(2) Prior to changing one of its billing practices, Grantee shall notify all affected subscribers of the change and include a description of the changed practice.

(3) The Subscriber bill shall contain the following information presented in plain language and format:

- a. Name of Grantee and telephone number;
- b. The period of time over which each chargeable service is billed including prorated periods as a result of establishment and termination of service;
- c. The date of which individually chargeable services were rendered;
- d. Each rate or charge levied;
- e. The amount of the bill for the current billing period separate from any balance due;
- f. Any applicable credits on the date which they were applied;
- g. The balance due;
- h. The date on which payment is due from the subscriber.

(4) The account of a subscriber shall not be considered delinquent until at least five (5) days have elapsed from the due date of the bill, which shall be a date certain and in no event a statement that the bill is due upon receipt, and payment has not been received by Grantee. Notwithstanding anything to the contrary, the account of a subscriber being billed bi-monthly shall not be considered delinquent if one-half (1/2) of the balance due is paid by the stated due date and the subscriber shall be billed for the second month of that period.

(5) There shall be no charge for termination or disconnection of any service. If any subscriber fails to pay a properly due monthly subscriber fee, or any other properly due fee or charge, Grantee may terminate the subscriber's service, provided, however, that such termination shall not be effectuated until after the later of:

- (1) thirty (30) days after the due date of said delinquent fee or charge; or,
- (2) ten (10) days after delivery to subscriber of written notice of the intent to terminate.

If a subscriber pays the delinquent fee or charge before expiration of the later of (1) or (2), Grantee shall not terminate. After termination, upon payment in full of the delinquent fee or charge and the payment of a re-connection charge, Grantee shall reinstate the subscriber's service.

(6) Refunds to subscribers shall be made or determined in the following manner:

- a. If Grantee fails, upon written request by a subscriber, to provide any service then being offered by Grantee, Grantee shall refund within thirty (30) days of a written request for refund by the subscriber, all deposits or advance charges paid for such service by said subscriber. This provision does not alter

Grantee's responsibility to subscribers under any separate contractual agreement or relieve Grantee of any other liability.

- b. If any subscriber terminates any monthly service because of the failure of Grantee to render the service in accordance with this Franchise, Grantee shall refund within thirty (30) days to such subscriber the pro-rated share of the charge paid by the subscriber for the services not received. This provision does not relieve Grantee of liability established in other provisions of this Franchise.
- (7) If any subscriber terminates, for any reason not set forth above, any monthly service prior to the end of a prepaid period longer than one month, a prorated portion of any prepaid subscriber service fee over one month using the number of unexpired prepaid days as a basis, shall be refunded to the subscriber within thirty (30) days by Grantee.
- (i) **NOTICE OF RATE CHANGE.** Prior to implementing any rate increase for Basic Service, Grantee shall give the following notice:
 - (1) At least thirty (30) days advance written notice to the City; and
 - (2) At least thirty (30) days advance written notice to subscribers of Basic Service.
- (j) **CONSUMER SERVICE STANDARDS.** Nothing in this Ordinance shall be construed to prevent or prohibit: (i) the Grantor and the Grantee from agreeing to exceed the customer service standards set forth herein; (ii) the Grantor from enforcing, through the franchise term, pre-existing customer service requirements that exceed the requirements set forth herein and are contained in the current Franchise Agreements; (iii) the establishment or enforcement of any State or municipal law or regulation concerning customer service or consumer protection that imposes customer service or consumer protection requirements that exceed, or address matters not addressed herein.

The Grantee shall maintain a local office to provide the necessary facilities, equipment and personnel to comply with the following consumer standards under normal conditions of operation. This requirement is met if the local office is within either the Cities of Menasha, Appleton, Neenah, Kaukauna, or the Villages of Kimberly, Little Chute or Combined Locks.

- (1) Service Standards. The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled Service Interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system. A written log or an equivalent stored in computer memory and capable of access and reproduction, shall be maintained for all Service Interruptions and requests for cable service as required by this Ordinance.
- (2) Telephone Lines. Local toll-free or collect call telephone line capacity shall be made available by grantee to customers 24 hours per day, seven days a week, including holidays. The Grantee shall use best efforts under Normal Operating conditions during Normal Business Hours to ensure that a minimum average of ninety percent (90%) of all callers (measured on a quarterly basis) for service will not be required to wait more than thirty (30) seconds before being connected to a trained customer service representative, and shall receive a business signal less than three percent (3%) of the time (measured on a quarterly basis). If the call needs to be transferred, the transfer time shall not exceed thirty (30) seconds. Inquiries received after normal business hours may be answered by a service or an automated response system, and such calls must be responded to by a trained company representative on the next business day.
- (3) Local Office. A business and service office conveniently located locally as described

above, open during Normal Business Hours, and adequately staffed to accept subscriber payments and respond to service requests and complaints.

- (4) Installation Staff. An installation staff shall install service to any subscriber located up to 125 feet from the existing distribution system within seven (7) days after receipt of a request. This Standard shall be met no less than ninety-five percent (95%) of the time, measured on a quart
- (5) Installation, Outages and Service Call Scheduling. Grantee shall schedule, either at a specific time, or, at maximum, within a specified four (4) hour time period, all appointments with subscribers for installation or service. Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If a Grantee representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer. These Standards shall be met no less than ninety-five (95%) percent of the time, measured on a quarterly basis.
- (6) Repair Standards. The Grantee shall maintain a repair force of technicians who, under Normal Operating conditions, are capable of responding to subscriber requests for service within the following time frames:
 - a. System Service Interruption. Under Normal Operation Conditions, within two (2) hours, including weekends, of receiving subscribers calls which by number identify a system Service Interruption of sound or picture on one (1) or more channels, affecting all the subscribers of the system or two percent (2%) thereof.
 - b. Isolated Service Interruption. Within twenty-four (24) hours, including weekends, of receiving requests for service identifying an isolated Service Interruption (less than 2 percent of subscribers) of sound or picture for one (1) or more channels. This Standard shall be met no less than ninety-five percent (95%) of the time, measured on a quarterly basis.
 - c. Inferior Reception Quality. Within forty-eight (48) hours, including weekends, of receiving a request for service identifying a problem concerning picture or sound quality.

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

- (7) Notification of Service Interruption to Municipal Administrator. The Grantee shall promptly notify the Municipal Administrator, in writing, or, if appropriate, by oral communication, of any significant interruption in the operation of the system. For the purposes of this section, a "significant interruption in the operation of the system" shall mean any interruption of sound or picture on one (1) or more channels a duration of at least one (1) hour to at least five (5) percent of the subscribers, or an interruption of sound or picture on at least one (1) or more channels initiated by the Grantee of at least four (4) hours to any single subscriber.
- (8) Subscriber Credit for Service Interruption. Upon notification by a subscriber or when otherwise aware, whichever is earlier, of a Service Interruption of subscriber's cable service, the following shall apply.

- a. For Service Interruptions of over four (4) hours and up to seven (7) days, the Grantee shall provide, at the subscriber's request, a credit of one-thirtieth (1/30) of one month's fees for affected services for each 24-hour period service is interrupted for four (4) or more hours for all affected subscribers.
- b. For interruptions of seven (7) days or more in one month, the Grantee shall provide, at the subscriber's request, a full month's credit for affected services for all affected subscribers.

SEC. 9-1-11 GENERAL FINANCIAL AND INSURANCE PROVISIONS.

(a) PAYMENT TO THE CITY.

- (1) Menasha. Grantee shall pay to the City an annual amount equal to five percent (5%) of its Gross Revenues. The foregoing payment shall be compensation for use of streets and other public property but not pole rentals which shall be paid to the Menasha Utilities.
- (2) In the event Grantee is prohibited by the state or federal law from paying a fee based on gross revenues or the City is prohibited by state or federal law from collection such a fee, then Grantee shall pay to the City, as a rental for use of streets and other public property, an amount equal to Seven Hundred Thirty-three Dollars (\$733.00) per cable mile of the System, including trunk and distribution cable, then installed, to be increased annually by an amount equal to the percentage increase in the U.S. Consumer Price Index - all items, issued by the Bureau of Labor Statistics of the U.S. Department of Labor, or its equivalent, for the greater metropolitan Milwaukee area, as determined by the City. Any amount so collected shall not exceed any maximum payment then allowed under federal or state law.
- (3) Payments due the City under this Section shall be computed at the end of each quarter year for that quarter year. Payments shall be due and payable for each quarter or a portion of a quarter year forty-five (45) days after the close of that quarter or a portion of a quarter year. Each payment shall be certified as true and correct by a financial officer of Grantee and accompanied by a brief report showing the basis for the computation together with such other relevant facts as may be required by the City.
- (4) No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the provisions of this Franchise. All amounts paid shall be subject to audit and re-computation by the City.
- (5) In the event any payment is not made on the due date, interest on the amount due shall accrue from such date at the prime commercial lending rate established by any bank in the City at the time the delinquency occurs.

(b) PERFORMANCE BOND.

- (1) Within thirty (30) days after the effective date of the Franchise agreement, Grantee shall furnish and file with the City a performance bond in the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00). The bond shall be conditioned upon the faithful performance of Grantee of all terms and conditions of the System Rebuild. Upon completion of the System Rebuild as determined by the City in accordance with Sec. 9-1-9(4), the requirement to maintain said bond referred to in (1), shall be extinguished.

- (2) Within thirty (30) days of the granting of this Franchise agreement, Grantee shall furnish and file with the City a surety bond in the sum of One Hundred Thousand Dollars (\$100,000.00). The bond shall be conditioned upon the faithful performance of all terms and conditions of this agreement.
- (3) The rights reserved by the City with respect to any bond or letter of credit are in addition to all other rights the City may have under the franchise or any other law.
- (4) Each bond shall be subject to approval of the City and shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be canceled without the consent of the City until sixty (60) days after receipt by the City by registered mail, return receipt requested, of a written notice of intent to cancel or not to renew."

(c) **SECURITY FUND.**

- (1) At the time this Franchise is accepted, Grantee shall deposit into a bank account, established by the City, and maintain on deposit through the term of this Franchise, the sum of Five Thousand Dollars (\$5,000.00) as a common security fund for the faithful performance by it of all the provisions of this Franchise and compliance with all orders, permits and directions of the City and the payment by Grantee of any claim liens, and taxes due the City which arise by reason of the construction, operation or maintenance of the System. Interest accrued on this deposit shall be paid to Grantee on an annual basis provided that all requirements of this Franchise have been complied with by the Grantee.
- (2) Provisions shall be made to permit the City to withdraw funds from the security fund. Grantee shall not use the security fund for other purposes and shall not assign, pledge or otherwise use this security fund as security for any purposes.
- (3) Within ten (10) days after notice to it that any amount has been withdrawn by the City from this security fund, Grantee shall deposit a sum of money sufficient to restore such security fund to the required amount.
- (4) If Grantee fails to pay to the City any taxes due and unpaid; or, fails to repay to the City, any damages, costs, or expenses which the City shall be compelled to pay by reason of any act or default of the Grantee in connection with this Franchise; or fails, after twenty (20) days' notice of such failure by the City to comply with any provision of the Franchise which the City reasonably determines can be remedied by an expenditure of the security, the City may then withdraw such funds from the security fund in accordance with those procedures set forth in Section 9-1-11(e) hereof.

(d) **PENALTIES FROM SECURITY FUND.** In addition to any other remedies provided herein, penalties for violations of this Franchise are set forth below. As a result of any acts or omissions by Grantee pursuant to the Franchise, the City may charge to and collect from the security fund the following penalties:

- (1) For failure to provide data, documents, reports, or information required by this Franchise or reasonably requested by the City, the Penalty shall be One Hundred Dollars (\$100.00) per day.
- (2) For failure to comply with any provisions of this Franchise, for which a penalty is not otherwise specifically provided, the penalty shall be One Hundred Dollars (\$100.00) per day.

(e) **PROCEDURE FOR IMPOSITION OF PENALTIES.**

- (1) Whenever the City finds that Grantee has violated one (1) or more terms, conditions or provisions of this Franchise, a written notice shall be given to Grantee informing it

of such violation or liability. The written notice shall describe in reasonable detail the specific violation so as to afford Grantee an opportunity to remedy the violation. Grantee shall have twenty (20) days, or such longer period of time as may be required under the circumstances, subsequent to receipt of the notice which to correct the violation before the City may resort to the security fund. Grantee may, within ten (10) days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee to the City shall specify with particularity the matters disputed by Grantee.

- a. The City shall hear Grantee's dispute at its next regularly or specially scheduled meeting of the Administration Committee. The City shall supplement the decision with written finding of fact.
 - b. If after hearing the dispute the claim is upheld by the City, Grantee shall have twenty (20) days from such a determination to remedy the violation or failure. At any time after that twenty (20) day period, the City may draw against the security fund all penalties due it.
- (2) The security fund deposited pursuant to this Section shall become the property of the City in the event that the Franchise is canceled by reason of the default of Grantee or revoked for cause. Grantee, 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.
 - (3) 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 this 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.

(f) **DAMAGE AND DEFENSE.**

- (1) Grantee shall indemnify and hold harmless the City for all damages and penalties, at all times during the term of this Franchise, as a result of Grantee's exercise of this Franchise. These damages and penalties shall include, but shall not be limited to, damages arising out of personal injury, property damage, copyright infringement, defamation, antitrust, errors and omission, theft, fire, and all other damages arising out of Grantee's exercise of this Franchise, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise.
- (2) In order for the City to assert its right to be indemnified and held harmless, the City must:
 - a. Promptly notify Grantee of any claim or legal proceeding which gives rise to such right.
 - b. Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of such claim or proceeding unless the City and Grantee shall have reasonably concluded, that Grantee cannot properly represent the City's interest because of the availability of different or additional legal defenses to the City, then the City shall have the right to select separate counsel to participate in the defense of such action on its behalf, at the expense of Grantee.
 - c. Fully cooperate in the defense of such claim and make available to Grantee all pertinent information under its control relating thereto but shall be entitled to be reimbursed for all costs and expenses incurred by the City.
- (3) All notices required under this Section 9-1-11(f) shall be given prior to the time by which the interests of the party to be notified will be materially prejudiced as a result of the failure to have received such notice. The failure to give such notice shall not

relieve any party of any liability which it may have.

- (g) **LIABILITY INSURANCE.**
- (1) Grantee shall maintain, throughout the term of the Franchise, liability insurance insuring Grantee and naming as a co-insured the City, its officers, boards, commissioners, agents, and employees, with regard to all damages mentioned in paragraph 1 of Section 9-1-11 hereof, in the minimum amounts of:
 - a. Three Hundred Thousand Dollars (\$300,000.00) for bodily injury or death to any one person;
 - b. One Million Dollars (\$1,000,000.00) for bodily injury or death resulting from any one accident;
 - c. One Million Dollars (\$1,000,000.00) for all other types of liability.
 - (2) At time of acceptance, Grantee shall furnish to the City satisfactory evidence that an insurance policy has been obtained. The insurance policy shall require that the City be notified thirty (30) days prior to any expiration or cancellation.
- (h) **CITY'S RIGHT TO REVOKE.** In addition to all other rights which the City has pursuant to law or equity, the City reserves the right to revoke, terminate or cancel by ordinance this Franchise, and all rights and privileges pertaining thereto, in the event that:
- (1) Grantee violates any material provision of this Franchise; or,
 - (2) Grantee practices any fraud upon the City or subscriber; or,
 - (3) Grantee becomes insolvent, unable, or unwilling to pay its debts, or is adjudged bankrupt; or,
 - (4) Grantee misrepresents a material fact in the application for negotiation of, or renegotiation of, or renewal of, the Franchise.
 - (5) The renewal or revocation of the Franchise or sale of the ownership of the System, shall be consistent with Sections 626 and 627 of the Cable Communication Policy Act.
- (i) **REVOCAION PROCEDURES.**
- (1) The City shall provide Grantee with a written notice of the cause for termination and its intention to terminate or revoke the Franchise and shall allow Grantee a minimum of thirty (30) days after service of the notice in which to correct the violation.
 - (2) Grantee shall be provided with an opportunity to be heard at a public hearing before the City prior to the termination of the Franchise. The City shall hear any persons interested therein, and shall determine, in its discretion, whether or not any failure, refusal or neglect by Grantee has occurred.
 - (3) Any revocation of this Franchise shall be by formal action of the City.
 - (4) If the City successfully revokes this Franchise, as provided in Section 9-1-11(i), the Grantee shall pay the City up to Ten Thousand Dollars (\$10,000,00) for the cost of such revocation.

SEC. 9-1-12 FORECLOSURE, RECEIVERSHIP, AND ABANDONMENT.

- (a) **FORECLOSURE.** Upon the foreclosure or other judicial sale of the System, Grantee shall notify the City of such fact and such notification shall be treated as a notification that a change in control of Grantee has taken place, and the provisions of this Franchise governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.
- (b) **RECEIVERSHIP.** The City shall have the right to cancel this Franchise subject to any applicable provisions of Wisconsin Law, including the Bankruptcy Act, one hundred twenty

(120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

- (1) Within one hundred twenty (120) days after his election or appointment, such receiver or trustee shall have the fully complied with all the provisions of this Franchise and remedied all defaults thereunder; and,
 - (2) Such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the Court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.
- (c) **ABANDONMENT.** Grantee may not abandon the System or any portion thereof without having first given three (3) months written notice to the City. Grantee may not abandon the System or any portion thereof without compensating the City for damages resulting from the abandonment.

SEC. 9-1-13 REMOVAL, TRANSFER, AND PURCHASE.

(a) REMOVAL AFTER REVOCATION OR EXPIRATION.

- (1) At the expiration of the term for which the Franchise is granted, or upon its revocation, as provided for, the City shall have the right to require Grantee to remove, at Grantee's expense, all or any portion of the System from all Streets and public property within the City. In so removing the System, Grantee shall refill and compact at its own expense, any excavation that shall be made and shall leave all Streets, public property and private property in as good a condition as that prevailing prior to Grantee's removal of the System, and without affecting altering, or disturbing in any way electric, telephone, or utility, cables, wires or attachments. The City shall have the right to inspect and approve the condition of such Streets and public property after removal. The security fund, insurance, indemnity and penalty provision of the Franchise shall remain in full force and effect during the entire term of removal.
- (2) If, in the sole discretion of the City, Grantee has failed to commence removal of the System, or such part thereof as was designated, within thirty (30) days after written notice of the City's demand for removal is given, or if Grantee has failed to complete such removal within one (1) year after written notice of the City's demand for removal is given, the City shall have the right to exercise one of the following options:
 - a. Declare all right, title, and interest to the System to be in the City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it; or
 - b. Declare the System abandoned and cause the System, or such part thereof as the City shall designate, to be removed at no cost to the City. The cost of said removal shall be recoverable from the security fund, indemnity and penalty section provided for in the Franchise, or from Grantee directly.

(b) SALE OR TRANSFER OF FRANCHISE.

- (1) This Franchise or the System hereunder shall not be sold, assigned, or transferred, either in whole or in part, or leased or sublet in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in

- any person without full compliance with the procedure set forth in this Section.
- (2) The provisions of this Section shall apply to the sale or transfer of all or a majority of Grantee's assets, merger (including any parent and its subsidiary corporation), consolidation, creation of a subsidiary corporation or sale or transfer of stock in Grantee so as to create a new controlling interest in the System. The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.
 - a. The parties to the sale or transfer shall make a written request to the City for its approval of a sale or transfer.
 - b. The City shall reply in writing within thirty (30) days of the request and shall indicate approval of the request.
 - (3) In reviewing a request for sale or transfer pursuant to paragraph (2)(a) above, the City may inquire into the technical, legal, and financial qualifications of the prospective controlling party, and Grantee shall assist the City in so inquiring. The City may condition and transfer upon such reasonable terms and conditions as it deems appropriate. In no event shall a transfer or assignment of ownership or control be approved without the transferee becoming a signatory to this Franchise Agreement.
 - (4) The requirements of this Section shall not apply when the sale or transfer of the System is to an entity which is under the same ultimate control as the Grantee.
- (c) At the expiration or revocation of this Franchise, the City may in a lawful manner, consistent with the Cable Communication Act of 1984, and upon the payment of fair market value as determined on the basis of the system as valued as a going concern, lawfully purchase the system of Grantee.

SEC. 9-1-14 MISCELLANEOUS PROVISIONS.

- (a) **CONTINUITY OF SERVICE MANDATORY.** Upon expiration or the termination of this Franchise, the City may require Grantee to continue to operate the System for an extended period of time, not to exceed six (6) months. Grantee shall, as trustee for its successor in interest, continue to operate the System under the terms and conditions of this Franchise. In the event Grantee does not so operate the System, the City may take such steps as it in its sole discretion, deems necessary to assure continued service to subscribers.
- (b) **FRANCHISE RENEWAL.** This Franchise may be renewed in accordance with the applicable state and federal law.
- (c) **EFFECT OF STATE AND LOCAL LAW.** If any term, condition or provision of this Franchise or the application thereof to any person or circumstances shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, or provision to persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions, and conditions hereof shall, in all other respects, continue to be effective and to be complied with.
- (d) **CAPTIONS.** The paragraph captions and headings in this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this Franchise.
- (e) **CALCULATION OF TIME.** Where the performance or doing of any act, duty, matter, payment, or thing is required hereunder and the period of time or duration for the performance or during thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday, or legal holiday, that day shall be omitted from the computation.
- (f) **CABLE THEFT.**
 - (1) It shall be unlawful for any person, without the expressed consent of Grantee to make any connection, extension, or division whether physically, acoustically, inductively, electronically or otherwise with or to any segment of the System for any purpose whatsoever.
 - (2) It shall be unlawful for any person to willfully interfere, tamper, remove, obstruct, or damage any part, segment or content of the System for any purpose whatsoever. This paragraph shall in no way impair or infringe upon rights presently enjoyed by utilities in the City.
 - (3) Any person who shall violate any of the provisions of this Section shall, upon conviction thereof, be punished by a forfeiture of not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00), and in default of payment thereof, by imprisonment in the County Jail for a period not to exceed sixty (60) days. Each day of violation shall constitute a separate offense. Violations of this section shall be referred to the District Attorney for prosecution pursuant to Wisconsin Law.
- (g) **FORCE MAJEURE.** If for any reason a force majeure, either party is unable in whole or in part to carry out its obligations under the terms of this Franchise Agreement, said parties shall not be deemed in violation or default of such agreement during the continuance of such inability to perform or comply with the terms of this Franchise Agreement. The term "force majeure" as used herein shall have the following meaning: strikes, acts of God, acts of public enemies, orders of any kind of the government of the United States of America or the State of Wisconsin, or the departments, agencies, political subdivisions, riots, landslides, lightning, earthquakes, fires, hurricanes, volcanic activity, storms, floods, washouts,

droughts, arrests, civil disturbances, explosions, partial or entire failure of utilities, inability to secure equipment, replacement parts, unique or nonrecurring events which temporarily affect Grantee's normal business operations, or any other cause or event not reasonably within the control of either party.