

# CHAPTER 21 – CABLE COMMUNICATIONS SYSTEM

## **21.01 (DEFINITIONS)**

For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.

(1) "BASIC CABLE SERVICE" means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b) (7).

(2) "CITY" means the City of Prairie Du Chien, a municipal corporation, in the State of Wisconsin, acting by and through its City Council, or its lawfully appointed designee.

(3) "CITY COUNCIL" means the governing body of the City of Prairie Du Chien, Wisconsin.

(4) "CABLE PROGRAMMING SERVICE" means any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than:

(1) Video programming carried on the Basic Service Tier;

(2) Video programming offered on a pay-per-channel or pay-per-program basis; or

(3) A combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service: consists of commonly-identified video programming; and is not bundled with any regulated tier of service. Cable Programming Service as defined herein shall not be inconsistent with the definition as set forth in 47 U.S.C. § 543(1) (2) (1993) and 47 C.F.R. 76.901(b) (1993).

(5) "CABLE SERVICE" OR "SERVICE" means the one-way transmission to subscribers of video programming, or other programming service, and subscriber interaction if any, which is required for the selection of such video programming or other programming service.

(6) "CABLE TELEVISION SYSTEM" OR "SYSTEM" OR "CABLE 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 a community, 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 subscribers without using the public rights of way.

(3) A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201-206 except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541) to the extent 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.

(4) An open video system that complies the Section 653 of the Cable Act; or

(5) Any facilities of any electrical utility used solely for operating its electrical utility system.

(7) "CLASS IV CABLE CHANNEL" means a signaling path provided by a Cable System to transmit signals of any type from a Subscriber terminal to another point in the System.

(8) "CONVERTER" means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the service.

(9) "DROP" means the cable that connects the ground block on the Subscriber's residence or institution to the nearest feeder cable of the System.

(10) "FCC" means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

- (11) "FRANCHISE" means an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to 47 U.S.C. § 546) issued by a franchising authority, whether such authorization designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system.
- (12) "GRANTEE" is Mediacom Wisconsin, LLC., its lawful successors, transferees or assignees.
- (13) "INSTALLATION" means the connection of the System from feeder cable to the point of connection, including Standard Installations and custom installations.
- (14) "LOCKOUT DEVICE" means an optional mechanical or electrical accessory to Subscriber's terminal which inhibits the viewing of a certain program, certain channel, or certain channels provided by way of the Cable Communication System.
- (15) "NORMAL OPERATING CONDITIONS" means those service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of 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 System.
- (16) "PAY TELEVISION" means the delivery over the System of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or Cable Programming Services.
- (17) "PERSON" is any person, firm, partnership, association, corporation, company, or other legal entity.
- (18) "RIGHT-OF-WAY" OR "RIGHTS-OF-WAY" means the area on, below, or above any real property in City in which the City has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area, or real property owned by or under the control of City, including other dedicated Rights-of-Way for travel purposes and utility easements.
- (19) "STANDARD INSTALLATION" means any residential installation that can be completed using a Drop of 150 feet or less.
- (20) "SUBSCRIBER" means any Person who lawfully receives service via the System. In the case of multiple office buildings or multiple dwelling units, the "Subscriber" means the lessee, tenant or occupant.

### **21.02 (GRANT OF AUTHORITY)**

- (1) FRANCHISE REQUIRED. It shall be unlawful for any Person to construct, operate or maintain a Cable Communications System in City unless such Person or the Person for whom such action is being taken shall have first obtained and shall currently hold a valid Franchise Ordinance. It shall also be unlawful for any Person to provide Cable Television Service in City unless such Person shall have first obtained and shall currently hold a valid Franchise Ordinance. All Cable Communications Franchises granted by City shall contain the same substantive terms and conditions.
- (2) GRANT OF FRANCHISE. This Franchise is granted pursuant to the terms and conditions contained herein. Grantee shall comply with all provisions of its Proposal, which is expressly incorporated herein by reference. Failure of Grantee to provide a System as described in its Proposal, or meet obligations and comply with all provisions therein, shall be deemed a violation of this Franchise.
- (3) GRANT OF NONEXCLUSIVE AUTHORITY.
- (a) The Grantee shall have the right and privilege, subject to the permitting and other lawful requirements of City ordinance, rule or procedure, to construct, erect, and maintain, in, upon, along, across, above, over and under the Rights-of-Way in City a Cable System and shall have the right and privilege to provide Cable Service and data service, including Internet access and related services. The System constructed and maintained by Grantee or its agents shall not

interfere with other uses of the Rights-of-Way. Grantee shall make use of existing poles and other above and below facilities available to Grantee to the extent it is technically and economically feasible to do so.

(b) Notwithstanding the above grant to use Rights-of-Way, no Right-of-Way shall be used by Grantee if City determines that such use is inconsistent with the terms, conditions, or provisions by which such Right-of-Way was created or dedicated, or with the present use of the Right-of-Way.

(c) This Franchise shall be nonexclusive, and City reserves the right to grant a use of said Rights-of-Way to any Person at any time during the period of this Franchise for the provision of Cable Service. The terms and conditions of any such grant of use of the Rights-of-Way shall be, when taken as a whole and taking into account the planned usage of the Rights-of-Way, no less burdensome or more beneficial than those imposed upon Grantee pursuant to this Franchise.

(4) LEASE OR ASSIGNMENT PROHIBITED. Except for commercial leased access as required by federal law, no Person may lease Grantee's System for the purpose of providing Service until and unless such Person shall have first obtained and shall currently hold a valid Franchise or other lawful authorization containing substantially similar burdens and obligations to this Franchise. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 9.5. Subject to restrictions on transfer and change of control in Section 9.5, Grantee may lease capacity on its Cable System for non-cable services, including, without limitation, private network services for business customers.

(5) FRANCHISE TERM. This Franchise shall be in effect for a period of fifteen (15) years from the date of acceptance by Grantee, unless sooner renewed, revoked or terminated as herein provided.

(6) PREVIOUS FRANCHISES. Upon acceptance by Grantee as required by Section 13 herein, this Franchise shall supersede and replace any previous Ordinance granting a Franchise to Grantee.

(7) COMPLIANCE WITH APPLICABLE LAWS, RESOLUTIONS AND ORDINANCES. The terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of the System in City. However, the Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power, statutory rights, local ordinance-making authority, and eminent domain rights of City. In the event any City ordinance or regulation which addresses usage of the Rights-of Way adds to, modifies, amends, or otherwise differently addresses issues addressed in Section 3 of this Franchise, Grantee shall comply with such ordinance or regulation of general applicability, regardless of which requirement was first adopted except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.

(8) RULES OF GRANTEE. The Grantee 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 said Grantee to exercise its rights and perform its obligations under this Franchise and to assure uninterrupted service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with provisions hereto, the rules of the FCC, the laws of the State of Wisconsin, City, or any other body having lawful jurisdiction.

(9) TERRITORIAL AREA INVOLVED. This Franchise is granted for the corporate boundaries of City, as it exists from time to time. In the event of annexation by City, or as development occurs, any new territory shall become part of the territory for which this Franchise is granted provided, however, that Grantee shall not be required to extend service beyond its present System boundaries unless there is a density equivalent of 30 homes per cable mile. Access to cable service shall not be denied to any group of potential residential cable Subscribers because of the income of the residents of the area in which such group resides. Grantee shall be given a reasonable period of time to construct and activate cable plant to service annexed or newly developed areas.

(10) 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 any officer of Grantee or City's Administrator of this Franchise or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to City: Prairie Du Chien City Administrator, Prairie Du Chien City Hall, 214 East Blackhawk Avenue, PO Box 324, Prairie Du Chien, WI 53821

If to Grantee: Mediacom Wisconsin LLC, Regional Manager, 1504 2nd Street Southeast, Waseca, MN 56093

With Copies to: Mediacom Communications Corporation Legal Department, 100 Crystal Run Road, Middletown, NY 10941

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

### **21.03 (CONSTRUCTION STANDARDS)**

#### **(1) REGISTRATION, PERMITS AND CONSTRUCTION CODES.**

(a) Grantee shall strictly adhere to all state and local laws and building and zoning codes currently or hereafter applicable to location, construction, installation, operation or maintenance of the System in City and give due consideration at all times to the aesthetics of the property.

(b) Failure to obtain permits or comply with permit requirements shall be grounds for revocation of this Franchise, or any lesser sanctions provided herein or in any other applicable law.

(2) REPAIR OF RIGHTS-OF-WAY AND PROPERTY. Any and all Rights-of-Way, or public or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, expansion, extension or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to the same condition as that prevailing prior to Grantee's work, as determined by City in the case of Streets and other public property, which approval shall not be unreasonably withheld. If Grantee shall fail to promptly perform the restoration required herein, after written request of City and reasonable opportunity to satisfy that request. City shall have the right to put the Rights-of-Way, public, or private property back into good condition. In the event City determines that Grantee is responsible for such disturbance or damage. Grantee shall be obligated to fully reimburse City for such restoration.

#### **(3) CONDITIONS ON RIGHT-OF-WAY USE.**

(a) Nothing in this Franchise shall be construed to prevent City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Right-of-Way; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

(b) All System transmission and distribution structures, lines and equipment erected by the Grantee within City shall be located so as not to obstruct or interfere with the use of Rights-of-Way except for normal and reasonable obstruction and interference which might occur during construction and to cause minimum interference with the rights of property owners who abut any of said Rights-of- Way and not to interfere with existing public utility installations.

(c) If at any time during the period of this Franchise City shall elect to alter or change the grade or location of any Right-of-Way, the Grantee shall, at its own expense, upon reasonable notice by City, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System, and in each instance comply with the reasonable and lawful standards and specifications of City.

(d) The Grantee shall not place poles, conduits, or other fixtures of System above or below ground where the same will interfere with any gas, electric, telephone, water or other utility fixtures and all such poles, conduits, or other fixtures placed in any Right-of-Way shall be so placed as to comply with all reasonable and lawful requirements of City.

(e) The Grantee shall, upon request of any Person holding a moving permit issued by City, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same, and the Grantee shall be given not less than ten (10) days advance written notice to arrange for such temporary changes.

(f) The Grantee shall have the authority to trim any trees upon and overhanging the Rights-of-Way of City so as to prevent the branches of such trees from coming in contact with the wires and cables or other facilities of the Grantee.

(g) Grantee shall use its best efforts to give reasonable prior notice to any adjacent private property owners who will be negatively affected or impacted by Grantee's work in the Rights-of-Way.

(4) **INSTALLATION OF FACILITIES.** No poles, conduits, amplifier boxes, pedestal mounted terminal boxes, similar structures, or other wire-holding structures shall be erected or installed by the Grantee without required permit of City.

(5) **SAFETY REQUIREMENTS.**

(a) The Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injuries.

(b) The Grantee shall install and maintain its System and other equipment in accordance with City's codes and the requirements of the National Electric Safety Code and all other applicable FCC, state and local regulations, and in such manner that they will not interfere with City communications technology related to health, safety and welfare of the residents.

(c) All Cable System structures, lines, equipment and connections in, over, under and upon the Rights-of-Way of City, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of City or any Person.

## **21.04 (DESIGN PROVISIONS)**

(1) **SYSTEM MAINTENANCE AND OPERATION.**

(a) Grantee shall operate and maintain the System providing service and interrupt service only for good cause. Such interruption, to the extent feasible, shall be preceded by notice in accordance with Section 2.10 and shall occur during periods of minimum use of the System.

(b) All final programming decisions remain the discretion of Grantee in accordance with the Proposal, provided that Grantee notifies City and Subscribers in writing thirty (30) days prior to any channel additions, deletions, or realignments, and further subject to Grantee's signal carriage obligations hereunder and pursuant to 47 U.S.C. § 531-536, and further subject to City's rights pursuant to 47 U.S.C. § 545.

(2) **TECHNICAL STANDARDS.** The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76.601 to 76.617, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference.

(3) **SPECIAL TESTING.**

(a) The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise. In addition, the City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints regarding such construction or installation work or pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or

other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. The City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing.

(b) Before ordering such tests. Grantee shall be afforded thirty (30) days following receipt of written notice to investigate and, if necessary, correct problems or complaints upon which tests were ordered. The City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations that are the focus of concern. If, after such meetings and inspections. City wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted by a qualified engineer selected by City and Grantee, and Grantee shall cooperate in such testing. City will pay for costs of such testing unless the results of such testing indicate Grantee is not in compliance with FCC regulations, in which case cost of such testing will be paid for by Grantee.

(4) FCC REPORTS. Upon request of the City, the results of any tests required to be filed by Grantee with the FCC shall also be filed with the City or its designee.

(5) NONVOICE RETURN CAPABILITY. Grantee is required to use cable and associated electronics having the technical capacity for nonvoice return communications.

(6) LOCKOUT DEVICE. Upon the request of a Subscriber, Grantee shall provide by sale or lease a Lockout Device.

## **21.05 (SERVICE PROVISIONS)**

### **(1) REGULATION OF SERVICE RATES.**

(a) The City may regulate rates for the provision of Cable Service, equipment, or any other communications service provided over the System to the extent allowed under federal or state law(s). City reserves the right to regulate rates for any future services to the extent permitted by law.

(b) Grantee shall give City and Subscribers written notice of any change in a rate or charge at least thirty (30) days prior to the effective date of the change in accordance with 47 CFR 76.964. Grantee shall not be required to provide advance notice for changes relating to franchise fees, access charges or any franchise related costs consistent with federal law. Bills must be clear, concise, and understandable, with itemization of all charges.

(2) NON-STANDARD INSTALLATIONS. Grantee shall install and provide Cable Service to any Person requesting other than a Standard Installation. In such case. Grantee may charge for the incremental increase in material and labor costs incurred beyond the Standard Installation.

(3) SALES PROCEDURES. Grantee shall not exercise deceptive sales procedures when marketing any of its services within City. Grantee shall have the right to market door-to-door during reasonable hours consistent with local ordinances and regulation.

### **(4) SUBSCRIBER INQUIRY AND COMPLAINT PROCEDURES.**

(a) Grantee shall have a publicly listed toll-free telephone number which shall be operated so as to receive Subscriber complaints and requests on a twenty-four (24) hour-a-day, seven (7) days-a-week. During Normal Business Hours, trained representatives of Grantee shall be available to respond to Subscriber inquiries.

(b) Grantee shall maintain adequate numbers of telephone lines and personnel to respond in a timely manner to schedule service calls and answer Subscriber complaints or inquiries in a manner consistent with regulations adopted by the FCC and City where applicable and lawful. Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under Normal Operating Conditions,

measured on a quarterly basis. Under Normal Operating Conditions, the customer will receive a busy signal less than three (3) percent of the time. Grantee shall respond to written complaints with copy to City or its designee within thirty (30) days.

(c) Subject to Grantee's obligations pursuant to law regarding privacy of certain information. Grantee shall prepare and maintain written records of all complaints received from City and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the office of Grantee. Grantee shall provide City with a written summary of such complaints and their resolution upon request of City. As to Subscriber complaints. Grantee shall comply with FCC record-keeping regulations, and make the results of such record-keeping available to City upon request.

(d) Subscriber requests for repairs shall be performed to the extent possible within thirty-six (36) hours of the request unless conditions beyond the control of Grantee prevent such performance. Grantee may schedule appointments for Installations and other service call either at a specific time or, at a maximum, during a four hour time block during Normal Business Hours. Grantee may also schedule service calls outside Normal Business Hours for the convenience of customers. Grantee shall use its best efforts to not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If the installer or technician is late and will not meet the specified appointment time, he/she must use his/her best efforts to contact the customer and reschedule the appointment at the sole convenience of the customer. Service call appointments must be met in a manner consistent with FCC standards.

(5) SUBSCRIBER CONTRACTS. The length and terms of any Subscriber contract(s) shall be available for public inspection during normal business hours, and available upon request to the City.

(6) REFUND POLICY. In the event a Subscriber establishes or terminates service and receives less than a full month's service. Grantee shall prorate the monthly rate on the basis of the number of days in the period for which service was rendered to the number of days in the billing. In addition, in the event that an outage of service occurs for a total period of more than twenty-four (24) hours, a Subscriber shall, upon request, be credited pro rata for such outage.

(7) LATE FEES. Grantee may assess additional fees for late payment in accordance with Grantee's standard late fee policy and applicable law, but in no case shall Grantee require payment of a late fee until thirty (30) days after the date of the invoice.

#### **21.06 (ACCESS CHANNEL(S) PROVISIONS)**

##### **(1) PUBLIC, EDUCATIONAL AND GOVERNMENT ACCESS.**

(a) City or its designee is hereby designated to operate, administer, promote, and manage access (public, education, and government programming) (hereinafter "PEG access") programming on the Cable System.

(b) Grantee shall provide one (1) channel for the duration of the term of this Franchise for the use by the City or its designee for public, educational and government access programming.

(c) City shall retain title to all equipment and Grantee shall have no obligation for any ongoing repairs or replacement of equipment or facilities used for PEG access programming.

(2) CHARGES FOR USE. Channel time and playback of prerecorded programming on the PEG access and community program channel(s) must be provided without charge to City and the public.

(3) ACCESS RULES. City, or its designee, shall implement rules for use of any access channel(s).

(4) STATE AND FEDERAL LAW COMPLIANCE. Satisfaction of the requirements of this Section 6 satisfies any and all of Grantee's state and federal law requirements of Grantee with respect to PEG access.

(5) TECHNICAL ASSISTANCE. Grantee shall at all times cooperate with City in providing technical assistance desired by City regarding PEG access programming.

## **21.07 (OPERATION AND ADMINISTRATION PROVISIONS)**

- (1) **ADMINISTRATION OF FRANCHISE.** The City or other designee shall have continuing regulator jurisdiction and supervision over the System and the Grantee's operation under the Franchise. The City, or its designee, may issue such reasonable rules and regulations concerning the construction, operation and maintenance of the System as are consistent with the provisions of the Franchise and law.
- (2) **DELEGATED-AUTHORITY.** The City may appoint a citizen advisory body or may delegate to any other body or Person authority to administer the Franchise and to monitor the performance of the Grantee pursuant to the Franchise. Grantee shall cooperate with any such delegates of City.
- (3) **FRANCHISE FEE.**
- (a) Grantee shall, upon acceptance of this Franchise, make payment to the City in the amount of Five-Thousand Dollars (\$5,000.00). Such payment shall constitute payment in full for the period dating from the date of Acceptance of this Agreement by Grantee to December 31, 2002.
  - (b) In addition. Grantee shall, on or before January 31, 2003, make payment in the amount of Thirty-Thousand Dollars (\$30,000.00). Such payment shall constitute payment in full for the period of January 1, 2003 to December 31, 2009.
  - (c) Beginning on December 31, 2010, and for each year thereafter during the term of this Agreement, Grantee shall make an annual franchise fee payment to the City in the amount of Three-Thousand Five-Hundred Dollars (\$3,500.00).
- (4) **ACCESS TO RECORDS.** The City shall have the right to inspect, upon reasonable notice and during normal business hours, or require Grantee to provide within a reasonable time copies of any records maintained by Grantee which relate to System operations including specifically Grantee's accounting and financial records.

## **21.08 (INSURANCE PROVISIONS)**

### **(1) INDEMNIFICATION OF CITY.**

- (a) City, its officers, boards, committees, commissions, elected officials, employees and agents shall not be liable for any loss or damage to any real or personal property of any Person, or for any injury to or death of any Person, arising out of or in connection with Grantee's construction, operation, maintenance, repair or removal of the System or as to any other action of Grantee with respect to this Franchise.
- (b) Grantee shall indemnify, defend, and hold harmless City, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the City's exercise, administration, or enforcement of the Franchise, except because of City's own programming.
- (c) Nothing in this Franchise relieves a Person, except City, from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regarding, or changing the line of a Right-of-Way or public place or with the construction or reconstruction of a sewer or water system.
- (d) In order for City to assert its rights to be indemnified, defended, and held harmless. City must with respect to each claim:
  - 1. Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right;
  - 2. Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
  - 3. Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to paragraph two (2) above.

### **(2) INSURANCE.**

(a) As a part of the indemnification provided in Section 8.1, but without limiting the foregoing. Grantee shall file with City at the time of its acceptance of this Franchise, and at all times thereafter maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including broadcaster's/cable caster's liability and contractual liability coverage, in protection of the Grantee, and the City, its officers, elected officials, boards, commissions, agents and employees for any and all damages and penalties which may arise as a result of this Franchise. The policy or policies shall name the City as an additional insured, and in their capacity as such. City officers, elected officials boards, commissions, agents and employees.

(b) The policies of insurance shall be in the sum of not less than \$300,000.00 for personal injury or death of any one Person, and \$1,000,000.00 for personal injury or death of two or more Persons in any one occurrence, \$300,000.00 for property damage to any one person and \$1,000,000.00 for property damage resulting from any one act or occurrence.

(c) The policy or policies of insurance shall be maintained by Grantee in full force and effect during the entire term of the Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of Grantee or for other reasons, except after sixty (60) days advance written notice have been provided to City.

## **21.09 (SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE)**

### **(1) CITY'S RIGHT TO REVOKE.**

(a) In addition to all other rights which City has pursuant to law or equity. City reserves the right to commence proceedings to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if it is determined by City that:

1. Grantee has violated material provisions(s) of this Franchise; or
2. Grantee has attempted to evade any of the provisions of the Franchise; or
3. Grantee has practiced fraud or deceit upon City.

(b) City may revoke this Franchise without the hearing required by 9.2(b) herein if Grantee is adjudged a bankrupt.

### **(2) PROCEDURES FOR REVOCATION.**

(a) City shall provide Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee sixty (60) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise. In the notice required herein. City shall provide Grantee with the basis of the revocation.

(b) Grantee shall be provided the right to a public hearing affording due process before the City Council prior to the effective date of revocation, which public hearing shall follow the sixty (60) day notice provided in subparagraph (a) above. City shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.

(c) Only after the public hearing and upon written notice of the determination by City to revoke the Franchise may Grantee appeal said decision with an appropriate state or federal court or agency.

(d) During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the Franchise would endanger the health, safety and welfare of any person or the public.

(e) Upon satisfactory correction of the violation upon which said notice was given as determined in the City's sole discretion, the initial notice shall become void.

(3) ABANDONMENT OF SERVICE. Grantee may not abandon the System or any portion thereof without having first given three (3) months written notice to City. Grantee may not abandon the

system or any portion thereof without compensating City for damages resulting from the abandonment, including all costs incident to removal of the System.

**(4) REMOVAL AFTER ABANDONMENT, TERMINATION OR FORFEITURE.**

- (a) In the event of termination or forfeiture of the Franchise or abandonment of the System, City shall have the right to require Grantee to remove all or any portion of the System from all Rights-of-Way and public property within City.
- (b) If Grantee has failed to commence removal of System, or such part thereof as was designated by City, within ninety (90) days after written notice of City's demand for removal is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of City's demand for removal is given, City shall have the right to declare all right, title, and interest to the System to be in 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.

**(5) SALE OR TRANSFER OF FRANCHISE.**

- (a) No sale or transfer of the Franchise, or sale, transfer, or fundamental corporate change of or in Grantee which includes the sale of a controlling interest in the Grantee's assets, a merger including the merger of a subsidiary and parent entity, consolidation, or the creation of a subsidiary or affiliate entity, shall take place until a written request has been filed with City requesting approval of the sale, transfer, or corporate change and such approval has been granted or deemed granted, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and/or assets to secure an indebtedness.
- (b) City shall have such time as is permitted by state and federal law in which to review a transfer request.
- (c) In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to subparagraph (a) or (b) of this Section be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations hereunder, and assuming all other rights and obligations of the transferor to the City including, but not limited to, any adequate guarantees or other security instruments provided by the transferor.
- (d) In the event of any proposed sale, transfer, or assignment pursuant to subparagraph (a) or (b) of this Section, City shall have the right of first refusal of any bona fide offer to purchase the System. Bona fide offer, as used in this Section, means an offer received by the Grantee which it intends to accept subject to City's rights under this Section. This written offer must be conveyed to City along with the Grantee's written acceptance of the offer contingent upon the rights of City provided for in this Section.
- (e) City shall be deemed to have waived its right to purchase the System pursuant to this Section only in the following circumstances:
  - 1. If City does not indicate to Grantee in writing, within thirty (30) days of receipt of written notice of a proposed sale, transfer, corporate change, its intention to exercise its right of purchase; or
  - 2. It approves the assignment or sale of the Franchise as provided within this Section.

**21.10 (PROTECTION OF INDIVIDUAL RIGHTS)**

**(1) DISCRIMINATORY PRACTICES PROHIBITED.** Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, sex, age, status as to public assistance, affectional preference, or disability. Grantee shall comply at all times with all other applicable federal, state, and city laws, and all executive and administrative orders relating to nondiscrimination.

**(2) SUBSCRIBER PRIVACY.**

- (a) No signals including signals of a Class IV Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the

express written permission of the Subscriber. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of Class IV Channel activity planned for the purpose of monitoring individual viewing patterns or practices.

(b) No lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee or its agents for Grantee's service business and also to the Subscriber subject of that information, unless Grantee has received specific written authorization from the Subscriber to make such data available. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

(c) Written permission from the Subscriber shall not be required for the conducting of System wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in subparagraph (b) of this Section.

### **21.11 (UNAUTHORIZED CONNECTIONS AND MODIFICATIONS)**

(1) **UNAUTHORIZED CONNECTIONS OR MODIFICATIONS PROHIBITED.** It shall be unlawful for any firm, Person, group, company, corporation, or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any unauthorized connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System or receive services of the System without Grantee's authorization.

(2) **REMOVAL OR DESTRUCTION PROHIBITED.** It shall be unlawful for any firm, Person, group, company, or corporation to willfully interfere, tamper, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any purpose whatsoever.

(3) **PENALTY.** Any firm Person, group, company, or corporation found guilty of violating this section may be fined not less than Twenty Dollars (\$20.00) and the costs of the action nor more than Five Hundred Dollars (\$500.00) and the costs of the action for each and every subsequent offense. Each continuing day of the violation shall be considered a separate occurrence.

### **21.12 (MISCELLANEOUS PROVISIONS)**

(1) **FRANCHISE RENEWAL.** Any renewal of this Franchise shall be performed in accordance with applicable federal, state and local laws and regulations.

(2) **AMENDMENT OF FRANCHISE ORDINANCE.** Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made at any time if the City and Grantee agree that such an amendment will be in the public interest or that such an amendment is required due to changes in federal, state or local laws. City shall act pursuant to local law pertaining to the ordinance amendment process.

(3) **COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS.**

(a) If any federal or state law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City shall conform to state laws and rules regarding cable communications not later than one year after they become effective, unless

otherwise stated, and conform to federal laws and regulations regarding cable as they become effective.

(b) If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance 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 complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and City.

(4) **NONENFORCEMENT BY CITY.** Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of City to enforce prompt compliance. Any such written waiver by City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.

(5) **RIGHTS CUMULATIVE.** All rights and remedies given to City by this Franchise or retained by City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

(6) **GRANTEE ACKNOWLEDGMENT OF VALIDITY OF FRANCHISE.** Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes City has the power to make the terms and conditions contained in this Franchise.

(7) **FORCE MAJEURE.** In the event Grantee's performance of any of the terms, conditions, obligations or requirements of this Agreement is prevented or impaired due to any cause beyond its reasonable control, such inability to perform shall be deemed to be excused for the period of such inability and no penalties or sanctions shall be imposed as a result thereof.

### **21.13 (PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS)**

(1) **PUBLICATION, EFFECTIVE DATE.** This Franchise shall be published in accordance with applicable local and Wisconsin law. The Effective Date of this Franchise shall be the date of acceptance by Grantee in accordance with the provisions of Section 13.2.

(2) **ACCEPTANCE.**

(a) Grantee shall accept this Franchise within sixty (60) days of its enactment by the City Council, unless the time for acceptance is extended by City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes provided, however, this Franchise shall not be effective until all City ordinance adoption procedures are complied with and all applicable timelines have run for the adoption of a City ordinance. In the event acceptance does not take place, or should all ordinance adoption procedures and timelines not be completed, this Franchise and any and all rights granted hereunder to Grantee shall be null and void.

(b) Upon acceptance of this Franchise, Grantee and City shall be bound by all the terms and conditions contained herein.

(c) Grantee shall accept this Franchise in the following Manner:

1. This Franchise will be properly executed and acknowledged by Grantee and delivered to City.

2. With its acceptance. Grantee shall also deliver any documents and certificates required herein that have not previously been delivered.