

## CHAPTER 27

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### CABLE TELEVISION FRANCHISE

**27.01 Purpose.** The City of Manitowoc finds that the development of cable television systems can potentially be of great benefit to the citizens of the City of Manitowoc. Cable technology is changing rapidly and cable is expected to play an essential role as part of the City's basic infrastructure. Cable television systems extensively make use of scarce and valuable public rights-of-way in a manner different from the manner in which the general public uses such rights-of-way, and in a manner reserved primarily for those who provide services to the public as public utilities. The grant of a franchise has the effect of giving the holder extensive economic benefits and creates the potential that the holder will be in a position to abuse its public trust. Because of this, the City finds that public convenience, safety and general welfare can best be served by establishing regulatory powers vested in the City or such persons or bodies as the City so designates to protect the public and ensure that any franchise granted is operated in the public interest. In light of the foregoing, the following goals, among others, underlie the provisions set forth in this ordinance:

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(a) Cable services should be available to as many City of Manitowoc residents as possible.

(b) A cable system should be capable of accommodating both the present and reasonably foreseeable future cable-related needs of the community.

(c) A cable system should be constructed and maintained during a franchise term so that changes in technology may be integrated into existing system facilities.

(d) A cable system should be responsive to the needs and interests of the local community.

(e) A cable system should be designed and constructed so that it may conveniently and economically be used by public institutions as a telecommunications and information highway for pursuing public purposes.

**27.03 Definitions.** For purposes of this Ordinance, the following terms, phrases, words and abbreviations shall have the meanings as provided in this section. Terms not defined in this section shall have the same meaning as in the Cable Act or in FCC regulations, and if not defined there, shall have their ordinary and common meaning. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

(a) "Affiliate" means a person which owns or controls, is owned or controlled by, or is under common ownership or control with a Franchisee.

(b) "Basic Service" means any cable service tier which includes the retransmission of local television broadcast signals.

(c) "Cable Act" means the Cable Communications Policy Act of 1984, 47 U.S.C. §§521 et seq., as amended.

(d) "Cable Ordinance" or "Ordinance" shall mean Chapter 27 of the City of Manitowoc Municipal Code, as it may be amended.

(e) "Cable Service" means (1) the one-way transmission to Subscribers of video programming or other programming service, and (2) Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

(f) "Cable System" or "System" means a facility consisting of a set of closed transmission paths and associated signal

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generation, reception, and control equipment or other communications equipment that is used by a Franchisee to provide Cable Service or any other service now or hereafter authorized. The term includes a Cable System as a whole, or any part of a Cable System, including but not limited to any electronic devices, poles, guys, converters, remote controls, wires and other appliances and property necessary or appurtenant to the operation of a Cable System. Cable System does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations, (2) a facility that serves only Subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility or facilities use any Street, (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, except that

such facility shall be considered a Cable System to the extent such facility is used in the transmission of video programming, whether on a common carrier or non-common carrier basis, directly to Subscribers, or (4) any facilities of any electric utility used solely for operating its electric utility systems. A reference to a Cable System refers to any part thereof, including, without limitation, converters.

(g) "City" shall mean the City of Manitowoc, Wisconsin, a municipal corporation.

(h) "FCC" means Federal Communications Commission, or successor governmental entity thereto.

(i) "Franchise" means the right granted by the City through a Franchise Agreement to a Franchisee, subject to the provisions of this Cable Ordinance, to construct, maintain and operate a Cable System under, on and over Streets within the Franchise Area for the purposes set forth herein. The term does not include any license or permit that may be required by applicable laws or regulations for the privilege of transacting and carrying on a business within the City, for disturbing the Street, for using municipally-owned poles or conduits, or for engaging in any other activity related to the construction, operation or repair of the Cable System, such as tree-trimming.

(j) "Franchise Area" shall mean the corporate boundaries of the City, as altered from time to time.

(k) "Franchisee" shall mean a Person to whom a Franchise is granted hereunder.

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(l) "Franchise Agreement" or "Agreement" means the contract between the City and a Franchisee and any amendments, exhibits or appendices hereto.

(m) "Grantee" shall mean a person to whom a franchise fee is granted hereunder.

(n) "Gross Revenues" shall mean all cash, credits, property of any kind or nature or other consideration derived directly or indirectly from or attributable to the operation of the Cable System in the City of Manitowoc to provide Cable Services. The term includes all revenues derived by the Grantee, its subsidiaries, or any other person, firm, partnership or corporation in which the Grantee has a financial interest or which has a financial interest in the Grantee arising from or attributable to operation of the Cable System in the City to provide Cable Services. The term includes but is not limited to:

- (1) Revenue from all charges for Cable Services provided to Subscribers or others, including late fees, downgrading charges and all similar charges;
- (2) Revenue to the Cable System in whatever form received from advertising of any kind appearing on the Cable System;
- (3) Revenue from all charges for leased access or use of studios or other facilities;
- (4) Revenue from all charges for the installation, connection and reinstatement of equipment;
- (5) Revenue from the sale, exchange or cablecast of any programming for any use;
- (6) Revenue from the sale of the cable Grantee's Subscriber list;
- (7) Revenue to the Cable System from home shopping channels on the Cable System; or
- (8) Any other revenues derived from operation of the Cable System to provide Cable Services.

Gross revenues shall not include uncollected billings. Gross Revenues shall not include (i) any taxes on services furnished by Grantee which are imposed upon any subscriber or user (as opposed to Grantee) by the State, County, City or other government unit and

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which the Grantee is required to collect; (ii) programming revenues of any Affiliate of Grantee whose programming is carried on the System where such revenues are paid to said Affiliate by the Grantee and recovered by the Grantee through charges to subscribers that are included in Gross Revenues; and (iii) revenues of any Affiliates from the sale of merchandise, including subscriptions to periodicals, as a result of or due to advertising on the System, so long as reasonable and customary advertising revenues or home shopping revenues are imputed to the Grantee and included in Gross Revenues.

(o) "Laws and Regulations" shall mean state, local or federal ordinances, resolutions, codes, regulations and all other legislative and administrative actions as the same may exist or be hereafter amended.

(p) "Public Right of Way" shall have the same meaning as Street.

(q) "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

(r) "Street" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including but not limited to, public easement, dedicated strip, or any other public rights-of-way now or hereafter held by the City and dedicated for compatible uses that, consistent with the terms, conditions and provisions pursuant to which the same was created or dedicated, properly may be used by Franchisee for the purpose of operating its Cable System.

(s) "Subscriber" means a person or user of the Cable System who lawfully receives Cable Services or other service from the Franchisee.

#### **27.05 Grant of Franchise.**

(1) **Grant Authority.** The City may grant one or more cable television Franchises, and each such Franchise shall be awarded in accordance with and subject to the provisions of this Cable Ordinance. The Cable Ordinance may be amended from time to time, and in no event shall the Ordinance be considered a contract between the City and any Franchisee such that the City would be prohibited from amending any provision of the Cable Ordinance.

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(2) **Franchise Required.** No person, other than the City of Manitowoc or any of its subunits, including Manitowoc Public Utilities, may construct or operate a Cable System without a Franchise granted by the City, and no such person may be granted a Franchise without having entered into a Franchise Agreement with the City pursuant to the Ordinance.

#### **(3) Franchise Characteristics.**

(a) **Rights and Privileges.** A Franchise granted pursuant to this Ordinance grants to the Franchisee a nonexclusive franchise to construct, operate and repair in, upon, along, across, above and over Streets in the City a Cable System for the purpose of providing Cable Service, all subject to the terms and conditions of this Ordinance and the Franchise Agreement. A Franchise does not expressly or implicitly authorize the Franchisee to provide service to, or install a Cable System on private property without owner consent (except for use of compatible easements pursuant to 47 U.S.C. § 541(a)(2)), or use publicly or privately owned conduits without a separate agreement with the owner.

(b) **Term.** The term of a Franchise may not exceed ten (10) years. A franchise may be extended for an additional five (5) years up to a total of fifteen (15) years upon recommendation of the Cable Television Commission and the recommendation of the Public Utilities and Licensing Committee.

**(c) Nonexclusivity.** Any Franchise granted hereunder is nonexclusive and will not explicitly or implicitly preclude the issuance of any other Franchises to operate Cable Systems within the City, affect the City's right to authorize the use of public rights-of-way by other persons to operate Cable Systems or for other purposes as the City deems appropriate, or affect the City's right itself to construct, operate or maintain a Cable System with or without a Franchise.

**(d) Franchise Agreement.** Once a Franchise Agreement has been accepted and executed by the City and a Franchisee, such Franchise Agreement shall constitute a contract between the Franchisee and the City. The terms, conditions and provisions of such Franchise Agreement, subject to this Ordinance and all other duly enacted and applicable laws, ordinances and regulations shall define the rights and obligations of the Franchisee and the City related to the Franchise. Any violation of any Franchise Agreement shall be deemed a violation of this Ordinance.

**(4) Other Laws.** All rights and privileges granted herein are subject to the police powers of the City and its rights under applicable laws and regulations to regulate the Franchisee and the

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construction, operation, or maintenance of its Cable System, including but not limited to, the right to adopt and enforce additional ordinances and regulations as the City shall find necessary in the exercise of its police powers; the right to adopt and enforce applicable zoning, building and permitting and safety codes; and any right the City has to adopt and enforce laws and regulations including cable television consumer protection laws and service standards pursuant to the Cable Act.

**(5) Interpretation.** The provisions of this Ordinance and any Franchise Agreement will be liberally construed in order to effectuate their purposes and objectives, and to promote the public interest. Except as to matters which are governed solely by federal law or regulation, the Franchise Agreement will be governed by and construed in accordance with the laws of the State of Wisconsin.

**(6) Right of Condemnation Reserved.** Nothing in this Ordinance or any Franchise Agreement shall limit any right pursuant to applicable law which the City may have to acquire any property of the Franchisee.

**(7) Acts at Franchisee's Expense.** Any act that a Franchisee is or may be required to perform under this Ordinance, any Franchise Agreement, or any applicable law or regulation shall be performed at the Franchisee's expense, unless expressly provided to the contrary in this Ordinance, the Franchise Agreement, or applicable law.

**(8) Operation of a Cable System Without a Franchise.** Any

Person who occupies Public Rights-of-Way for the purpose of operating or constructing a Cable System and who does not hold a valid Franchise from the City shall be subject to all provisions of this Ordinance, including but not limited to its provisions regarding construction and technical standards and Franchise fees. In its discretion, the City at any time may require such Person to enter into a Franchise Agreement within thirty (30) days of receipt of a written notice by the City that a Franchise Agreement is required; require such Person to remove its property and restore the area to a condition satisfactory to the City within such time period; remove the property itself and restore the area to a satisfactory condition and charge the Person the costs therefor; and/or take any other action it is entitled to take under applicable law, including filing for and seeking damages under trespass. In no event shall a Franchise be created unless it is issued by action of the City and subject to a Franchise Agreement.

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**27.07 Applications for Grant, Renewal, or Modification of Franchises.**

**(1) Written Application.**

(a) A written application shall be filed with the City for 1. grant of an initial Franchise; 2. renewal of a Franchise under 47 U.S.C. § 546 (a)-(g); or 3. modification of a Franchise Agreement pursuant to this Ordinance or a Franchise Agreement. An applicant shall demonstrate in its application compliance with all requirements of this Ordinance and all applicable laws.

(b) To be acceptable for filing, a signed original of the application shall be submitted together with twelve (12) copies. The application must be accompanied by the required application filing fee as set forth in § 27.07(6), conform to any applicable request for proposals, and contain all required information. All applications shall include the names and addresses of Persons authorized to act on behalf of the applicant with respect to the application.

(c) All applications accepted for filing shall be made available by the City for public inspection.

**(2) Application for Grant of a Franchise, Other Than a Cable Act Renewal Franchise.**

(a) A Person may apply for a Franchise by submitting a request for issuance of a Request for Proposals ("RFP") and requesting an evaluation of its application pursuant to § 27.07 (2)(d). Upon receipt of a request for an RFP, the City shall commence a proceeding to identify the future cable-related needs and interests of the community and, upon completion of that proceeding, shall promptly issue an RFP and proposed Franchise

Agreement, which shall be provided to the Person requesting its issuance. The applicant shall respond within the time directed by the City, providing the information and material set forth in § 27.07 (4). The procedures, instructions, and requirements set forth in the RFP shall be followed by each applicant as if set forth and required herein. The City or its designee may seek additional information from any applicant and establish deadlines for the submission of such information.

(b) Notwithstanding the provisions of (a), a Person may apply for an initial Franchise by submitting an unsolicited application containing the information required in § 27.07(4) and requesting an evaluation of that application pursuant to (c). Prior to evaluating that application, the City may conduct such

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investigations as are necessary to determine whether the application satisfies the standards set forth in (c) and may seek additional applications.

(c) In evaluating an application for a Franchise, the City shall consider, among other things, the following factors:

1. Whether the applicant has the financial, technical and legal qualifications to provide Cable Service.
2. Whether the application satisfies any minimum requirements established by the City and is otherwise reasonable to meet the future cable-related needs and interests of the community, taking into account the cost of meeting such needs and interests.
3. Whether, to the extent not considered as part of 2., the applicant will provide adequate Public, Educational, and Governmental Access Channel capacity, facilities, or financial support.
4. Whether issuance of a Franchise is warranted in the public interest considering the immediate and future effect on the Streets and private property that would be used by the Cable System, including the extent to which installation or maintenance as planned would require replacement of property or involve disruption of property, public services, or use of the Streets; the effect of granting a Franchise on the cable-related needs and interests of the community; and the comparative superiority or inferiority of competing applications.
5. Whether the applicant or an Affiliate of the applicant owns or controls any other Cable System in the City, or whether grant of the application may eliminate or reduce competition in the delivery of Cable Service in the City.

(d) If the City finds that it is in the public interest to issue a Franchise considering the factors set forth above, and subject to the applicant's entry into an appropriate Franchise Agreement, it shall issue a Franchise. If the City denies a Franchise, it will issue a written decision explaining why the Franchise was denied. Prior to deciding whether or not to issue a Franchise, the City may hold one or more public hearings or implement other procedures under which comments from the public on an application may be received. The City also may grant or deny a request for a Franchise based on its review of an application

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without further proceedings and may reject any application that is incomplete or fails to respond to an RFP. This Ordinance is not intended and shall not be interpreted to grant any applicant or existing Franchisee standing to challenge the issuance of a Franchise to another.

**(3) Application for Grant of a Cable Act Renewal Franchise.** Applications for renewal under the Cable Act shall be received and reviewed in a manner consistent with Section 626 of the Cable Act, 47 U.S.C. § 546 under procedures established by the Common Council.

**(4) Contents of Applications.** An RFP for the grant of a Franchise, including for a renewal Franchise under 47 U.S.C. § 546(c), shall require, and any application submitted (other than an application submitted pursuant to 47 U.S.C. §546(h)) shall contain, at a minimum, the following information:

**(a)** Name and address of the applicant and identification of the ownership and control of the applicant, including: all Persons with five (5) percent or more ownership interest in the applicant and its Affiliates; the Persons who control the applicant and its Affiliates; all officers and directors of the applicant and its Affiliates; and any other business affiliation and Cable System ownership interest of each named Person.

**(b)** A demonstration of the applicant's technical ability to construct and/or operate the proposed Cable System, including identification of key personnel.

**(c)** A demonstration of the applicant's legal qualifications to construct and/or operate the proposed Cable System, including but not limited to a demonstration that the applicant meets the following criteria:

1. The applicant must not have submitted an application for an initial or renewal Franchise to the City under subsection (2) or an application for renewal under subsection (3) above, which was finally denied pursuant to the procedures set forth in those sections on the ground that the applicant failed to propose a System meeting the cable-related needs and interests of the community, or as to which any challenges to such final licensing decision were finally resolved adversely to the

applicant, within three (3) years preceding the submission of the application.

2. The applicant must not have had any cable television Franchise validly revoked by any licensing authority and any appeal finally resolved adverse to the applicant's

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interests within three (3) years preceding the submission of the application.

3. The applicant must have the necessary authority under Wisconsin law to operate a Cable System.

4. The applicant shall not be issued a Franchise if it may not hold the Franchise as a matter of federal law. An applicant must have, or show that it is qualified to obtain, the necessary federal licenses or waivers required to operate the System proposed.

5. The applicant shall not be issued a Franchise if, at any time during the ten (10) years preceding the submission of the application, the applicant was convicted of any act or omission of such character that the applicant cannot be relied upon to deal truthfully with the City and the Subscribers of the Cable System, or to substantially comply with its lawful obligations under applicable law, including obligations under consumer protection laws and laws prohibiting anticompetitive acts, fraud, racketeering, or other similar conduct.

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

7. The applicant shall not be issued a Franchise if an elected official of the City holds a controlling interest in the applicant or an Affiliate of the applicant.

Notwithstanding the foregoing, the City shall provide an opportunity to an applicant to show that it would be inappropriate to deny it a Franchise under § 27.07 (4)(c)2. or 5., by virtue of the particular circumstances surrounding the matter and the steps taken by the applicant to cure all harms flowing therefrom and prevent their recurrence, the lack of involvement of the applicant's principals, or the remoteness of the matter from the operation of cable television Systems.

(d) A statement prepared by a certified public accountant regarding the applicant's financial ability to complete the construction and operation of the Cable System proposes.

(e) A description of the applicant's prior experience in Cable System ownership, construction, and operation, and

identification of communities in which the applicant or any of its principals have, or have had, a cable Franchise or Franchise or any

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interest therein, provided that, an applicant that holds a Franchise for the City and is seeking renewal of that Franchise need only provide this information for other communities where its Franchise was scheduled to expire in the two (2) calendar years prior to and after its application was submitted.

(f) Identification of the area of the City to be served by the proposed Cable System, including a description of the proposed Franchise Area's boundaries.

(g) A detailed description of the physical facilities proposed, including channel capacity, technical design, performance characteristics, headend, and access facilities.

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

(i) The proposed or existing rate structure, including projected charges for each Service Tier, installation, converters, and other equipment or services.

(j) A demonstration of how the applicant will reasonably meet the future cable-related needs and interests of the community, including descriptions of how the applicant will meet the needs described in any recent community needs assessment conducted by or for the City, and how the applicant will provide adequate Public, Educational, and Governmental Access Channel capacity, facilities, or financial support to meet the community's needs and interests.

(k) Pro forma financial projections for the proposed Franchise term, including a statement of projected income, and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules.

(l) If the applicant proposes to provide Cable Service to an area already served by an existing cable Franchise, the identification of the area where the overbuild would occur, the potential Subscriber density in the area that would encompass the overbuild, and the ability of the Public Rights-of-Way and other property that would be used by the applicant to accommodate an additional System.

(m) Any other information as may be reasonably necessary to demonstrate compliance with the requirements of this Ordinance.

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(n) Information that the City may request of the applicant that is relevant to the City's consideration of the application.

(o) An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, acknowledging the enforceability of application commitments, and certifying that the application meets all federal and state law requirements.

**(5) Application for Modification of a Franchise.** An application for modification of a Franchise Agreement shall include, at minimum, the following information:

(a) The specific modification requested;

(b) The justification for the requested modification, including the impact of the requested modification on Subscribers and others, and the financial impact on the applicant if the modification is approved or disapproved, demonstrated through, inter alia, submission of financial pro formas;

(c) A statement whether the modification is sought pursuant to Section 625 of the Cable Act, 47 U.S.C. § 545, and, if so, a demonstration that the requested modification meets the standards set forth in 47 U.S.C. § 545;

(d) Any other information that the applicant believes is necessary for the City to make an informed determination on the application for modification; and

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

**(6) Filing Fees.** To be acceptable for filing, an application submitted after the effective date of this Ordinance shall be accompanied by a filing fee in the following amount to cover costs incidental to the awarding or enforcement of the Franchise, as appropriate:

(a) For an initial Franchise:

1. A request for issuance of an RFP: \$ 5,000
2. A response to an RFP or an unsolicited application: \$25,000

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(b) For renewal or an extension

of a Franchise: \$30,000

(c) For modification of a Franchise Agreement: \$ 5,000

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

**27.09 Use of Public and Private Property.**

**(1) Public Right of Way Installation.**

(a) **Generally.** The Franchisee's Cable System shall only be installed on existing pole facilities that Franchisee may use under a valid pole attachment agreement or order of the City, on the property of a Subscriber, in compatible easements that Franchisee is entitled to use, under or over the Streets of the City or on the property of the Franchisee. Installation of new poles in the Streets is forbidden without the prior written consent of the City.

(b) **No Vested Rights Created.** A Franchisee's placement of its Cable System pursuant to its Franchise shall not be deemed to give that Franchisee a property or other interest in any particular location within the Streets, or a preference over any other entity authorized to use such property. The City reserves the right in its reasonable discretion to designate where a Cable System is to be placed within the Streets.

(c) **Underground and Aerial Construction.** In all areas of the City where the cable or wire distribution facilities of the local exchange carrier and the electric company are installed, or are to be installed, underground the Franchisee shall install its Cable System underground. Without limitation, where telephone and electric distribution drops are required to be located underground, cable drops shall be underground.

In all areas of the City where the distribution lines of the local exchange carrier and the electric utility were aerially

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placed at the time of construction of the cable system, if such lines are subsequently relocated underground, the Franchisee shall, at that same time, relocate its Cable System underground, provided that, if the Subscriber requests it, and if consistent with applicable laws and regulations, the Franchisee need not relocate

drops to the home underground.

**(2) Subscriber Property Installation.**

**(a) Permission Required.** No cable, line, wire, amplifier, converter or other piece of equipment owned or controlled by the Franchisee shall be installed on private property by the Franchisee without first securing the permission of the owner or tenant in possession of such property or the written permission of the holder of any easement for utility lines or similar purposes, except as expressly authorized by federal law. Except in emergency situations, the Franchisee may not enter onto private property for the purpose of installing, repairing or replacing equipment without giving advance notice, and may not enter into a home or multiple dwelling unit for those purposes without an appointment with the occupant of the property. The provisions of this subsection represent permission requirements by the City. These requirements are not meant in any way to replace any property rights of owners or occupants to restrict access to their own property.

**(b) Subscriber Right to Install.** A Subscriber may install its own internal wiring, or contract to have wiring installed, and the Franchisee must use that wire unless the installation does not meet applicable FCC standards or applicable safety codes.

**(c) Consultation with Subscriber.** The Franchisee shall consult with the Subscriber and the landowner with regard to point of entry of the drop connection to the structure and shall consult with the Subscriber or landowner before such point of entry is made. It shall follow any instructions received unless it is not possible to do so in accordance with applicable safety codes.

**(d) Consultation on Internal Wiring.** The Franchisee shall likewise consult with the Subscriber and landowner and follow the instructions received with respect to internal wiring installed by the Franchisee. In any event, internal cable runs shall be made as unobtrusively as possible.

**(e) Terms of Extension of Service.** The Franchisee shall extend service upon request without charging any fee beyond then-prevailing installation charges except that:

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1. In cases where service has been extended on the street past a residence or business, but the drop from the nearest point on the Cable System from which service could be provided to the home exceeds 150 feet, the Franchisee may require the Subscriber to pay the difference between the cost of labor and materials required to install a 150 foot drop to that home and the actual cost of labor and materials required to install the drop to that home.

2. Where drop connections could be aerial, the Franchisee shall place the drops underground at the Subscriber's request, if the Subscriber agrees to pay the actual difference in labor and materials between the cost of installing an underground drop instead of an aerial drop.

**(3) No Hindrance to Public Works.** Without limiting the City's rights under any other provision herein, it is specifically agreed that the rights and privileges granted hereby shall not be in preference or hindrance to the right of the City, or other authority having jurisdiction, to change or alter the grade, to sell or vacate any Street or other Public Property; to construct, operate or maintain or move any building, line, pipe, conduit, ditch, sewer, playground or other public improvement, work, utility, structure, system or facility; or to protect public health and safety and property.

**(4) Relocation of Facilities.** Without limiting the rights of the City or the rights of others under (1) and (2), the following rules shall govern:

**(a) For Government.** The Franchisee shall remove, relay and relocate its Cable System at its own expense whenever the City or any authorized governmental body, including Manitowoc Public Utilities so requires, including for reasons of traffic conditions; public health and safety and protection of property; or because the City or authorized governmental body elects to change or alter the grade, or sell or vacate any Street or Public Property; to construct, operate, repair or move any building, line, wire, cable, pipe, conduit, ditch, sewer, playground or other public improvement, work, utility, structure, system or facility; which change, alteration, sale, vacation, movement, construction, operation or repair will be aided by removal, relaying or relocation of the Franchisee's Cable System. The Franchisee shall be given written notice requesting the removal, relaying or relocation of its Cable System as soon as practicable, but at least twenty (20) days in advance of the date removal, relaying or relocation of the Cable System must be completed.

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**(b) For Other Users of Rights of Way.** If any removal, relaying or relocation is required to accommodate the movement, construction, operation or repair of the facilities of another person that is authorized to occupy the streets, Franchisee shall remove, relocate or relay its cable system within twenty (20) days after receiving written notice from such person that such removal, relocation or relaying is required. The reasonable cost of Franchisee compliance with respect to any such request shall borne by the person requesting such compliance and the Franchisee may require payment in advance.

**(c) For Third Parties.** The Franchisee shall, upon the request of any Person holding a building moving permit issued by

the City, temporarily raise, lower, relay, relocate or remove its wires, cables and other facilities to accommodate the moving of the building. The reasonable cost of such temporary raising or lowering, relaying, relocation or removal of the Franchisee's facilities shall be paid by the Person requesting the same, and the Franchisee shall have the authority to establish the reasonable cost of such changes and require such payment in advance. The Franchisee shall temporarily move its System as required under this Section if required payments are made and the Franchisee is given at least seven (7) days advance written notice to arrange for such temporary changes.

**(d) Removal or Relocation in Event of Emergency.** In event of emergency, or where Franchisee's Cable System creates or is contributing to an imminent danger to health, safety or property, City may remove, relocate or relay that Cable System without prior notice. Any costs related to such activity shall be borne by Franchisee.

**(5) Duty to Protect Public and Private Property.**

**(a) Generally.** Franchisee shall construct, operate and maintain its System with due care for the safety and integrity of persons and property, and shall use appropriate safety devices, warning signs, barricades and lights to prevent harm to persons or property. It is the duty of Franchisee to protect, at its expense, public and private property from damage caused by the construction, operation and repair of its Cable System, and to promptly repair damage caused by the construction, operation and repair of its Cable System. Unaesthetic or poor workmanship shall be considered "damage". Property damaged shall be repaired to a condition at least as good as existed before the damage occurred within ten (10) days of the damage. The Franchisee shall at all times comply with the requirements of 47 U.S.C. 541(a)(2)(A)-(C).

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**(b) Duty to Notify.** The Franchisee shall notify any person whose property is damaged by the Franchisee within four (4) hours of the time the damage is discovered. If the Franchisee is unable to make personal contact within four (4) hours, the Franchisee may provide notice by placing a door hanger on the property. At a minimum, this section requires the Franchisee to place a prominent notice in a prominent place on the damaged property, and to make diligent efforts to contact the property owner or resident by phone or in person.

**(6) Failure to Move, Replace or Restore.** If the Franchisee fails to remove, relay or relocate its Cable System as required or within the time period specified in (4); or if the Franchisee fails to restore, repair or replace Public Streets or Public Property as required and within the time period specified in (5); the City may perform the work or hire someone to perform the work, and the Franchisee shall compensate the City for all reasonable expenses it incurs. In the event the Franchisee fails to restore, replace or repair private property as required and within the time period

specified by (5), the owner may perform the work itself or hire someone to perform the work, and the Franchisee shall compensate the owner for all reasonable expenses incurred. If the Franchisee fails to protect or restore Streets or public property as required by the Franchise, the City may do so, and the Franchisee shall compensate the City for all reasonable expenses incurred thereby. The Franchisee shall pay expenses incurred by the City or property owner within thirty (30) days of receipt of an itemized account of such expenses.

**(7) Contractors.** All Franchisee's contractors or subcontractors shall be properly qualified and licensed, and each contractor or subcontractor shall have the same obligations with respect to its work as Franchisee would have under its Franchise and applicable laws and regulations if the work were performed by the Franchisee. The Franchisee shall be responsible for training and testing, if necessary, the knowledge of all contractors and subcontractors (including installers). The Franchisee is also responsible for ensuring that the work of its contractors and subcontractors is performed consistent with its Franchise and applicable laws and regulations, shall be fully responsible for all acts or omissions of its contractors or subcontractors and shall be responsible for supervising and promptly correcting acts or omissions by any of its contractors or subcontractors.

**(8) Identification.** The Franchisee shall ensure that all of its vehicles, employees, agents and contractors are clearly identified to the general public as being associated with the Franchisee. Any employee, agent or contractor of the Franchisee must present a picture identification before entering a

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Subscriber's home.

**(9) Excavation.** All excavation shall be performed so as to create the least convenience to public, and in accordance with permits issued by the City. The City shall have the right to supervise all excavation.

**(10) Tree Trimming.** The Franchisee shall be responsible for the trimming of any trees required by the location of its wires. The Franchisee shall not, however, remove any tree or trim any portion, either above, at or below ground level, of any tree within any street, highway or other public right-of-way without the prior consent of the City's Parks and Recreation Department. The City shall have the right at its option to do the trimming requested by the Franchisee at the cost of the Franchisee, or to require the Franchisee to do the same. Regardless of who performs the work requested by the Franchisee, the Franchisee shall be responsible for and shall defend and hold the City harmless for any and all damages done to any tree as a result of any trimming, or to the land surrounding any tree, whether such tree is trimmed or removed. The requirements herein shall be in addition to any consents the Franchisee is required to obtain under the Wisconsin Statutes or

any other authority.

### **27.11 Technical and Construction Requirements.**

(1) **Generally.** The construction, operation and repair of Franchisee's Cable System shall be performed in a safe, thorough and reliable manner using equipment of good and durable quality. The construction, operation and repair of the Cable System shall be performed by experienced personnel familiar with their responsibilities under this Ordinance, the Franchise Agreement, applicable laws, construction standards and safety codes. The Franchisee shall at all times have sufficient, trained personnel on site in the Franchise Area to satisfy all its obligations under its Franchise, including Customer Service Standards, and applicable laws and regulations. In addition to all other obligations, Franchisee must repair or cure as soon as possible any defect with its System where such defect presents a hazard or danger to the public or Subscribers.

(2) **Codes and Industry Standards.** Franchisee shall construct, operate and maintain its System in accordance with all applicable laws and regulations, including but not limited to, federal, state and local building, zoning and other land use, and safety laws, codes and regulations now in effect or hereafter adopted. Without limiting the foregoing, the City, after consultation with the Franchisee, may direct the Franchisee to

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follow standards for construction, operation or repair of the Cable System as required to ensure that work continues to be performed in an orderly and workmanlike manner, or to reflect changes in standards which may occur over the term of a Franchise. In any event, the construction, operation and repair of the Franchisee's Cable System shall at all times be in accordance with the requirements of the:

- (a) National Electrical Code;
- (b) National Electrical Safety Code
- (c) Rules and Regulations of the Federal Communication Commission, Parts 76 and 78.
- (d) Obstruction Marking and Lighting, AC 70/7460-IE-Federal Aviation Administration.
- (e) OSHA Safety and Health Standards.
- (f) NCTA Standards of Good Engineering Practices, NCTA 008-0477 EIA Standard RS-222C "Structural Standards for Steel Towers and Antenna Supporting Structures."

### **(3) Technical Standards.**

The Franchisee shall strive to attain the best possible technical performance for the system. At a minimum, throughout the term of the Franchise, the Cable System shall meet or exceed the technical standards set forth in 47 C.F.R. §76.601 and under applicable state law, as the same may be amended from time to time. The City may enforce those standards, whether they are required or advisory. In addition, the City may regulate technical standards for the Cable System to the extent it may do so consistent with federal and state law or regulation.

**(4) Maintenance Policies.**

(a) Subject to other provisions of this section; the Franchisee shall promulgate and adhere to a preventive maintenance policy directed toward maximizing the reliability (mean-time-between malfunctions) and maintainability (mean-time-to-repair) of the Cable System.

(b) The Franchisee shall perform scheduled maintenance so as to minimize the extent of any interruption of service and so that such interruption occurs, if possible, at the time of lowest television use. Except in emergency situations, service may only

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be interrupted after a minimum of forty-eight (48) hours advance notice to Subscribers and the City of the anticipated service interruption, provided, however, that planned maintenance which is not expected to require more than two hours interruption of service and which occurs between the hours of midnight and 6:00 a.m. shall not require such notice, except to institutional users (including schools), which must receive at least oral notice the last business day before the planned interruption. The institutional users may designate a person or office to receive notice.

(c) In the course of maintaining its Cable System, the Franchisee shall use replacement components of good and durable quality, with characteristics better than or equal to the replaced equipment and that at least satisfy all federal, state and local requirements.

(d) The Franchisee shall identify and provide the telephone number for a senior employee or employees whom the City can contact whenever the business office is closed.

(e) The City shall have the right to inspect the Cable System and Franchisee's equipment used in the construction, operation or maintenance of that System at any time upon reasonable notice.

**(5) Picture Quality.** The Cable System shall deliver to the Subscriber's terminal a signal that is capable of producing a black-and-white or color picture without visual material degradation.

**(6) Interference with Reception.** The Cable System shall

transmit or distribute signals without causing objectionable cross-modulation in the cables or interfacing with other electrical or electronic networks or with the reception of other television or radio receivers in the area not connected to the network.

**(7) Inspection.** The City shall have the right to inspect the Cable System and Franchisee's equipment used in the construction, operation or maintenance of that System at any time upon reasonable notice.

**(8) Submission of Plans for System Upgrade.** Before the Franchisee upgrades its Cable System, or changes out any component across the Cable System, it shall submit a plan to the City for its review at least 90 days before the upgrade or change-out is to commence. The plan, at a minimum shall describe:

**(a)** The nature of the upgrade or change-out; the expected duration of the work; why it is being done and the alternatives

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considered; the manner of performance of the work, including any back-up or contingency plans, the potentially beneficial and negative effects of the upgrade or change-out on the City, the public, and subscribers; the steps taken to minimize public and subscriber inconvenience; the effect of the upgrade or change-out on the services offered or which can be offered by the Franchisee; whether the upgrade or change-out may affect the way in which subscribers can use consumer electronic equipment, and whether it will require subscribers to use additional or replacement equipment.

**(b)** A plan for notifying subscribers of the upgrade or change-out that at a minimum satisfies the requirements of applicable laws and regulations and Customer Service Standards in the Franchise Agreement;

**(c)** A precise description of the changes that will be made to the Cable System, including a description of the equipment that will be installed and replaced;

**(d)** A timetable for the upgrade or change-out, showing the date the project is to commence, the date it is scheduled to end, and the work that will be completed at six-month intervals over the project term;

**(e)** A map showing the portions of the Cable System that will be affected, if less than the entire Cable System will be affected; and

**(f)** For a system upgrade, design maps and tree trunk maps for the upgrade.

**(9) Completion of Plans for Upgrade or Change-out.** The Franchisee shall follow the plan submitted to the City, except as

it may be amended in response to any comments by the City, and except for such minor variations as may be typical to avoid violation of applicable laws and regulations. Upon completion of the upgrade or change-out, the City reserves the right to require the Franchisee to commission an engineering study (the engineer to be approved by the City) to determine whether the Cable System operates in accordance with the plan and applicable technical standards.

**(10) Location of Physical Facilities.**

**(a) Franchisee's System.** The Franchisee shall furnish to the City a map describing the location of all of the physical elements comprising the Cable System, including, but not limited

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to, antennae or other electromagnetic wave receivers, head-end and sub-head-end, trunk and feeder cable runs, studio and business office. All such elements and facilities within the Franchise Area shall be delineated on a street map of the City. The map shall be updated whenever portions of the Cable System are relocated. Upon request, the Franchisee promptly shall locate any of its facilities for the City, any person authorized to occupy the streets, or any other person.

**(b) No Guarantee of Accuracy of Maps.** The City does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing structures. In Public Streets, where necessary, the location shall be verified by excavation.

**27.13 System Facilities, Equipment, and Services.** In addition to satisfying such requirements as may be established through the application process, every Cable System shall be subject to the following conditions, except as prohibited by federal law:

**(1) Provision of Service.** Unless standards are otherwise specified in a Franchise Agreement, after Cable Service has been established by activating trunk distribution cable for an area specified in a Franchise Agreement, a Franchisee shall provide Cable Service to any household or commercial establishment requesting Cable Service within that area, including each multiple dwelling unit in that area, except for multiple dwelling units to which it cannot legally obtain access. Service must be provided within time limits specified in applicable customer service standards.

**(2) Technical Standards.**

**(a)** Any Cable System within the City shall meet or exceed the technical standards set forth in 47 C.F.R. § 76.601 and any other applicable technical standards, including any such standards as hereafter may be amended or adopted by the City in a manner consistent with federal law.

(b) A Franchisee shall not design, install or operate its facilities in a manner that will interfere with the signals of any broadcast station, the facilities of any public utility, the Cable System of another Franchisee, or individual or master antennae used for receiving television or other broadcast signals.

(3) **Proof of Performance Tests.** At the times specified in a Franchise Agreement or as required by FCC rules, a Franchisee shall perform proof of performance tests, and such other tests as may be specified in a Franchise Agreement, designed to demonstrate

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compliance with this Section, the Franchise Agreement, and FCC requirements. The Franchisee shall provide the proof of performance test results promptly to the City upon request. The Franchisee shall provide the City ten (10) days' advance written notice when a proof of performance or other required test is scheduled so that the city may have an observer present. The City shall have the right to inspect the Cable System during and after its construction to ensure compliance with this Section, the Franchise Agreement, FCC regulations and other applicable provisions of local, state and federal law, and may require the Franchisee to perform additional tests based on the City's investigation of Cable Stems performance or on Subscriber Complaints.

**27.15 Operation and Reporting Provisions.**

(1) **Open Books and Records.** The City shall have the right to inspect and copy at any time during normal business hours at the Cable System office located in the City or at such location as the City may designate, all books, receipts, maps, plans, financial statements, contracts, service complaint logs, performance test results, records of requests for service, computer records, codes, programs and discs or other storage media and other like material which the City deems appropriate in order to monitor compliance with the terms of this Ordinance, a Franchise Agreement, or applicable law. The Franchise Agreement shall specify the Franchisee's responsibility for producing its records and those held by its Affiliates and others.

(2) **Reports Required.** A Franchisee shall file reports with the City as the City may reasonably require in order to enforce its rights and the rights of the public under this Cable Ordinance or the Franchise Agreement, and to otherwise ensure that the Franchisee is complying with applicable law. Each Franchise Agreement shall specify the minimum reports a Franchisee must provide.

(3) **Records Required.** A Franchisee shall maintain such records as the City may reasonably require in order to enforce its rights and the rights of the public under this Cable Ordinance or the Franchise Agreement, and to otherwise ensure that the Franchisee is complying with applicable law. Each Franchise Agreement shall specify the minimum records a Franchisee must

maintain.

**(4) Performance Evaluation.**

(a) The City may, at its discretion, hold scheduled performance evaluation sessions for a Franchisee. All such

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evaluation sessions shall be open to the public.

(b) All evaluation sessions shall be announced in a newspaper of general circulation.

(c) Topics that may be discussed at any scheduled or special evaluation session may include, but are not limited to, system performance and construction, Franchisee compliance with this Ordinance and a Franchise Agreement, customer service and complaint response, Subscriber privacy, services provided, programming offered, service rate structures, if applicable, Franchise fees, penalties, free or discounted services, applications of new technologies, judicial and FCC filings, and line extensions.

(d) During the review and evaluation by the City, a Franchisee shall fully cooperate with the City and shall provide such information and documents as the City may need to reasonably perform its review.

**(5) Retention of Records; Relation to Privacy Rights.** Each Franchisee shall take all steps required, if any, to ensure that it is able to provide the City all information which must be provided or may be requested under this Ordinance or a Franchise Agreement, including by providing appropriate Subscriber privacy notices. Nothing in this Section shall be read to require a Franchisee to violate 47 U.S.C. § 551. Each Franchisee shall be responsible for blacking out any data that federal law prevents it from providing to the City. Records shall be kept for at least five (5) years.

**27.17 Cable Television Commission.**

**(1) Creation.** The Mayor, subject to the approval of the Common Council, shall appoint members to a commission to be known as the Cable Television Commission. The Mayor and the Chairman of the Public Utilities and Licensing Committee of the Common Council shall be ex officio members of the Commission. The Commission shall consist of six (6) additional members who shall serve for 4 year terms.

**(2) Duties.** The duties and responsibilities of the Cable Television Commission shall include, but not be limited to, the following:

(a) Advise the Council on matters pertaining to any Franchisee's compliance with the terms of its Franchise Agreement,

this ordinance and the need for any amendments to this ordinance.

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(b) Resolve disagreements among a Franchisee, subscribers, and any public or private users of cable facilities, providing that any decision of the Cable Television Commission shall be appealable to the Common Council.

(c) Advise the Council on the regulation of rates in accordance with the terms of this ordinance.

(d) Perform any other functions relating to the cable television system which the Common Council shall deem appropriate.

(3) **Meetings.** The Cable Television Commission shall meet at such times as it deems appropriate. All meetings shall be open to the public as required by the terms of Chapter 19 of the Wisconsin Statutes. Minutes of all meetings shall be presented to the City Clerk for referral to the Common Council.

**27.19 Regulations.** In addition to the inherent powers of the City to regulate and control this franchise ordinance, and those powers expressly reserved by the City, or agreed to and provided for herein, the right and power is hereby reserved by the City to promulgate such additional reasonable regulations as it shall find necessary in the exercise of its lawful power and in furtherance of the terms and conditions of this ordinance.

**27.21 Consumer Protection Provisions.** Each Franchise Agreement shall specify the customer service standards that a Franchisee must meet or exceed, but additional or different standards may be adopted by the City and if the such adoption and standards are consistent with federal law, a Franchisee must comply with those standards. Each Franchisee must at least satisfy any applicable state or federal customer service standards, as if the same were fully set forth herein.

**27.23 Rate Regulation.**

**(1) Local Regulatory Framework.**

(a) The City may regulate all rates and charges except to the extent it is prohibited from doing so by law, and no rate or charge may be imposed or increased without the prior approval of the City except such rates and charges that the City is prohibited from regulating. Subject to the foregoing, any change made without prior approval is an illegal change, and a Franchisee is prohibited from requesting or requiring a Subscriber to pay an illegal rate as a condition of providing service.

(b) All rates that are subject to regulation by the City must be reasonable. The City may adopt such regulations,

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procedures, and standards as it deems necessary to implement rate regulation and may regulate rates by amendment to this Ordinance, by a separate resolution or ordinance, by amendment to a Franchise Agreement, or in any other lawful manner.

**(2) Rate Changes.**

**(a)** At least thirty (30) days prior to implementing any changes in rate or charge levels, service terms or conditions, or services, a Franchisee shall provide the City with written notice describing any such changes it plans to make and the proposed effective dates for the changes. At least thirty (30) days prior to implementing any changes in rate or charge levels, service terms or conditions, or services, a Franchisee must provide each affected Subscriber notice, describing the changes it plans to make and the proposed effective dates for the changes.

**(b)** In addition to the required notice, before it alters services or service terms or conditions, a Franchisee must provide a reasonably simple and clear written notice explaining the substance and full effect of the alteration, including the effect on rates and service options and the effect of the change on the use of other consumer electronic equipment. Such written notice shall be provided to the City at least thirty (30) days, and to Subscribers at least thirty (30) days, before the change.

**(c)** Any change made without the required notice shall be of no force or effect, and a Franchisee shall be obligated to refund any increased amount collected without the required notice, and to restore service to the prior existing status, at least until the required notice is provided. This subsection shall not be interpreted to limit the City's right to exercise its rate regulation authority under (1), the availability of remedies under applicable laws or regulations, or rights under the customer service standards set forth in §27.17.

**27.25 Performance Evaluation Sessions.**

**(1) Request for and Notice of Sessions.** At any time during the term of a Franchise, the City or the Franchisee may request that a public performance evaluation session be held. Following such request, a time and date shall be set for the session. Notice of the session shall be published in the local newspaper as a Class 3 legal notice. The Franchisee shall also notify its subscribers of any such performance evaluation session by announcement on at least two channels of its system between the hours of 7:00 P.M. and 9:00 P.M. for five (5) consecutive days preceding the scheduled session.

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**(2) Subject Matter.** The subject matter which may be discussed at any scheduled or special evaluation session may include, but not be limited to, the following: service rate

structures; franchise fee; penalties; free or discounted services; application of new technologies; system performance; services provided; programming offered; customer complaints; privacy; amendments to this ordinance; judicial and F.C.C. rulings; line extension policies; and any Franchisee or City rules. Members of the general public may add topics by working through the Franchisee or the Cable Television Commission.

**(3) Franchisee Cooperation.** During a review and evaluation by the Cable Television Commission on any issue, a Franchisee shall fully cooperate with the City and shall provide such information and documents as the City may request to reasonably perform the review. If at any time during its review, the City determines that reasonable evidence exists of inadequate cable television system performance, it may require a Franchisee to perform tests and analyses directed toward such suspected inadequacies at the Franchisee's own expense. The Franchisee shall fully cooperate with the City in performing such testing and shall prepare the results and a report, if requested, within thirty (30) days after notice. Such report shall include the following information:

**(a)** The nature of the complaint or problem which precipitated the special tests;

**(b)** What system component was tested;

**(c)** The equipment used and the procedures employed in testing;

**(d)** The method, if any, in which such complaint or problem was resolved; and

**(e)** Any other information pertinent to said tests and analyses which may be required.

The City may require that the tests be supervised, at a Franchisee's expense, by a professional engineer not on the permanent staff of the Franchisee, or other qualified person. Such person shall sign all reports of special tests and forward to the Cable Television Commission such records with a report interpreting the results of the tests and recommending any action to be taken.

#### **27.27 Franchise Fee.**

**(1) Finding.** The City finds that Public Rights-of-Way of the City to be used by a Franchisee for the operation of a Cable

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System are valuable public property acquired and maintained by the City at expense to the taxpayers. The City further finds that the grant of a Franchise to use Public Rights-of-way is a valuable property right without which a Franchisee would be required to invest substantial capital.

**(2) Payment to the City.**

(a) As compensation for use of the Public Rights-of-Way, a Franchisee shall pay the City a Franchise fee in an amount up to the greater of five (5) percent of its Gross Revenues, or the maximum amount permitted under state and federal law. Every Franchise Agreement shall specify the percentage a Franchisee is initially required to pay as a percentage of gross revenues, but if the maximum amount permitted under state and federal law increases, the Franchisee shall, simultaneously with the effective date of any change in any law or, if later, the effective date of any regulation required to implement the law at the option of the City, increase the Franchise fee to the maximum allowed by that law. The Franchise Agreement may specify the maximum amount that the City can require the Franchisee to pay as a franchise fee if federal law does not specify a maximum amount; in such a case, subject to any limits in the Franchise Agreement, the City may specify the amount that it will collect by Ordinance and, in that event, the Franchisee shall begin paying the increased fee from the effective date of the Ordinance.

**(3) Not a Tax or in Lieu of Any Other Tax or Fee.**

(a) Payment of the Franchise fee shall not be considered in the nature of a tax.

(b) The Franchise fee is in addition to all other taxes and payments that a Franchisee may be required to pay under any federal, state or local law and to any other tax, fee, or assessment imposed by utilities and cable operators for use of their services, facilities, or equipment, except to the extent that such fees, taxes, or assessments must be treated as a Franchise fee under Section 642 of the Cable Act, 47 U.S.C. § 522.

**(4) Payments.**

(a) The Franchise fee and any other costs assessed by the City against a Franchisee shall be paid quarterly to the City and shall commence as of the effective date of a Franchise. The City shall be furnished at the time of each payment with a statement certified by the Franchisee's chief financial officer or an independent certified public accountant reflecting the total amount of monthly Gross Revenues for the payment period. Quarterly

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payments shall be made to the City no later than forty-five (45) days following the end of each calendar quarter. An annual statement of Gross Revenues shall be furnished to the City by an independent, certified public accountant. The Franchisee shall provide an annual complete audit statement for each calendar year within ninety (90) days from the end of that calendar year.

(b) In the event any Franchise fee payment or recomputation amount is not made on or before the date specified herein, the Franchisee shall pay additional compensation and interest charges computed from such due date, at a rate of 1% per

month.

**(5) No Accord or Satisfaction.** No acceptance of any payment by the City shall be construed as a release or an accord and satisfaction of any claim the City may have for further or additional sums payable as a Franchise fee under this Ordinance or for the performance of any other obligation of a Franchisee.

**(6) Audit.**

**(a)** The City shall have the right to inspect and copy records and the rights to audit and to recompute any amounts determined to be payable under this Ordinance, whether the records are held by the Franchisee, an Affiliate, or any other entity that collects or receives funds related to the Franchisee's operation in the City, including, by way of illustration and not limitation, any entity that sells advertising on the Franchisee's behalf. The Franchisee shall be responsible for providing the records to the City, regardless of which entity possesses or has control of the records. Records relating to Franchisee's gross revenues shall be maintained for at least six (6) years. The City's audit expenses shall be borne by the City unless the audit discloses an underpayment of \$500 or more, in which case the costs of the audit shall be borne by the Franchisee as a cost incidental to the enforcement of that Franchisee's Franchise. Any additional amounts due to the City as a result of the audit shall be paid within thirty (30) days following written notice to the Franchisee by the City of the underpayment, which notice shall include a copy of the audit report.

**(b)** A Franchisee shall maintain its fiscal and financial records and have all relevant fiscal and financial records maintained by others on its behalf in such a manner as to enable the City to determine the cost of assets of the Franchisee which are used in providing services within the City and to determine Gross Revenues.

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**27.29 Indemnification and Insurance.**

**(1) Indemnification.** The Franchisee shall protect, defend, indemnify and hold free and harmless the City and its officers, employees, committees, boards, commissions and other governmental subunits, advisors and agents, from and against any and all liability, losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character (referred to collectively below as "claims") in connection with or arising directly or indirectly out of the issuance and administration of a Franchise, or the Franchisee's enjoyment or exercise of the same. By way of illustration and not limitation, this would include claims arising out of acts or omissions in constructing, operating or repairing

the Cable System by the Franchisee or any entity for whose acts or omissions the Franchisee may be liable, without regard to whether the act or omission giving rise to the indemnity was required, allowed, or prohibited by a Franchise or applicable law, and claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to a Franchise. Without limiting the generality of the foregoing, any and all such claims relating to personal injury, death, damage to property, defects in material or workmanship, actual or alleged infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in this indemnity. The Franchisee shall investigate, handle, respond to, provide defense for and defend any such claims, etc., at its sole expense and shall bear all other costs and expenses related thereto, even if the Franchisee believes the claim is groundless, false or fraudulent. Provided, further, that the duty to indemnify includes, but is not limited to, the duty to pay the reasonable expenses incurred by the City, its officers, agents and employees, in defending themselves, including but not limited to all out-of-pocket expenses, and, if Franchisee or the City determines that the interests of the Franchisee and the City conflict, attorneys fees for outside counsel, and the reasonable value of any services rendered by the City's attorney or any legal assistants, or by any employees of the City in defending the matter.

**(2) Insurance.**

**(a) Insurance Required.** The Franchisee shall purchase and maintain during the full term of a Franchise and any extensions

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and renewals thereof, such insurance as will protect it and the City from any claims which may arise directly or indirectly or result from the issuance of a Franchise or the enjoyment or exercise of the same, including, by way of illustration and not limitation, claims that may result from the construction, operation or repair of the Cable System, whether such construction, operation or repair is performed by the Franchisee or by anyone for whose acts the Franchisee may be liable. The insurance shall, at a minimum, include the following:

1. Workers compensation, including liability benefits and any other legally required employee benefits, shall be supplied in statutory amounts.

2. General Liability Insurance, including Motor Vehicle, shall be supplied in the following amounts:

Personal injury or death: \$5,000,000 per person  
Property damage: \$2,000,000 per occurrence  
Umbrella liability: \$5,000,000

Cablecaster's liability: \$1,000,000 per occurrence

The umbrella liability shall include coverage of worker's compensation, commercial or comprehensive general liability, coverage for claims arising under the laws of copyright, defamation, invasion of privacy, obscenity and other, similar laws relating to the production, publication and retransmission of information.

**(b) Endorsements in Favor of Municipalities.**

1. The City shall be named as an additional insured on all policies maintained pursuant to the Franchise, except Worker's Compensation Insurance;
2. The Franchisee's liability insurance policies shall include an endorsement that recognizes that insurance policies cover the Franchisee's duty to indemnify in accordance with Section 12(a) of this Agreement.
3. The Franchisee's insurance policies shall contain an endorsement stating:

It is understood and agreed that this policy may not be canceled nor the amount of coverage reduced, nor the coverages materially modified in a manner that decreases coverages until 30 days after receipt by each of the Clerk of the City of Manitowoc, by certified mail, of a written notice of intent to cancel, reduce

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or modify the coverage.

**(c) Evidence of Insurance.** The Franchisee shall furnish to the City certificates of insurance acceptable to the City which shall show that the policies include all the coverages and the endorsements specified above. The certificates shall be provided within 30 days of the date a Franchise Agreement is signed, and new certificates shall be provided annually on December 31 of each year, or any time the insurance carrier or policies are changed. Failure to maintain insurance as required herein, or to furnish certificates of insurance shall constitute a material and substantial violation of any Franchise Agreement. Upon request, the Franchisee shall provide the City complete copies of the insurance policies (including any riders or addenda thereto).

**(d) Approval.** All insurance coverage shall be subject to approval of the City as to the issuing Company and the form of the policies and certificates of insurance, which approval will not be unreasonably withheld.

**(e) Other Policies.** The Franchisee, in addition to all other insurance requirements herein, shall procure and maintain insurance in the type and amount as may be required in any license, permit, or agreement obtained in connection with the construction, operation or repair of its Cable System and which is necessary to

complete any construction, operation or repair (e.g., Highway Permit, Railroad Crossing Agreement, Corps of Engineer Permit) regardless of who secured the franchise, permit or agreement.

(f) **Additional Insurance.** The City may require the Franchisee to provide additional coverages or increase the insurance amounts from time to time as it deems appropriate to reflect inflation and increased risks to the City.

### **27.31 Performance Security.**

(1) **Security Provided.** To secure the faithful performance of all Franchise Agreement obligations, compliance with all orders, permits and directions of any agency of the City having jurisdiction over its acts or defaults under a Franchise, the payment by the Franchisee of any claims, liens, fees, forfeitures, payments, assessments or taxes due the City under a Franchise Agreement or otherwise, or which arise by reason of the construction, operation, maintenance or repair of the Cable System and the payment of any damages, penalties, fees and costs incurred by the City with respect to the same, including reasonable legal expenses incurred in enforcing a Franchise Agreement, the Franchisee shall provide the City with the following security:

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(a) **Security Fund.** On or before commencement of a Franchise term the Franchisee shall deposit with the City the sum of \$10,000.00. The City shall deposit these funds in an interest bearing account (the "security fund") payable in whole or in part, to the City upon demand. Interest on the security fund as accrued, shall become a part of the security fund.

(b) **Performance Bond.** On or before commencement of a Franchise term, the Franchisee shall post with the City a Performance Bond in the amount of \$100,000.00. The form of Performance Bond shall be subject to approval as to content and form by the City Attorney. Among other provisions, the Performance Bond must provide:

1. That the City may recover on the Performance Bond upon the City's certification that the Franchisee is in substantial default of its Franchise Agreement or this Ordinance and the amounts recoverable under the Performance Bond shall be recoverable jointly and severally from the Franchisee and the Surety;

2. That the total amount of the Performance Bond shall be forfeited in favor of the City in the event the Franchisee abandons the Cable System at any time during the term of its Franchise or any extension thereto; or the Franchisee attempts to transfer or transfers the Franchise without the prior express written consent of the City.

3. Any Performance Bond submitted hereunder shall contain the following endorsement:

"This Performance Bond may not be canceled, allowed to lapse or the amount thereof reduced until at least thirty (30) days after receipt by the City of Manitowoc City Clerk, by certified mail, of a written notice from the issuer of the Performance Bond of its intent to cancel the Performance Bond, to allow it to lapse or to reduce the amount of the Performance Bond."

A Letter of Credit may be substituted for the Performance Bond upon mutual agreement of the parties.

**(c) Construction Performance Bond.** In the event a Cable System is further upgraded, removed, relocated or otherwise undergoes any reconfiguration or other change involving work costing more than \$100,000 during a Franchise term, the City may require the Franchisee to provide a performance bond in a form and with a Company acceptable to the City to secure the faithful

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performance of such work, and to protect the City from any damages or expense arising out of the work, or the breach of any promise to perform it. The performance bond shall be in an amount equal to ten percent (10%) of the estimated total cost of the work, and in a form satisfactory to the City. Any construction performance bond required hereunder shall contain the following endorsement:

"This bond may not be canceled, or allowed to lapse, or the amount of the bond reduced until 30 days after receipt by each of the respective Clerks of the City of Manitowoc, by certified mail, of a written notice from the issuer of the bond of its intent to cancel the bond, to allow it to lapse, or to reduce the amount of the bond."

Failure to maintain the performance bonds required herein shall constitute a violation of this Ordinance.

**(2) Use of Funds.** If the Franchisee fails to make timely payment to the City or its designee or designees of any amount due as a result of a Franchise; or fails to make timely payment to the City or its designee of any liquidated damages or penalties due under a Franchise Agreement or applicable law; or fails to make timely payment to the City of any taxes due; or fails to compensate the City within twenty (20) days of written notification that such compensation is due, for any damages, costs or expense the City suffers or incurs by reason of any act or omission of the Franchisee in connection with a Franchise Agreement or applicable law or regulations, or the enforcement of the same; or fails, after twenty (20) days notice to comply with any provision of a Franchise Agreement or applicable law or regulations which the City reasonably determines can be remedied by an expenditure of the security; the City may withdraw the amount thereof, with interest

and any penalties, and without further notice to Franchisee, from the Security Fund and from the surety under any Performance Bond.

**(3) Notification.** Within three (3) days of withdrawal from the Security Fund the City shall mail written notification of the amount, date and purpose of such withdrawal to the Franchisee.

**(4) Inadequate Fund Balance.** If at the time of withdrawal from the Security Fund by the City, the amounts available are insufficient to provide the total payment toward which the withdrawal is directed, the balance of such payment shall continue as an obligation of the Franchisee to the City, until paid.

**(5) Replenishment.** No later than thirty (30) days after mailing of notification the Franchisee by certified mail, return receipt requested, of a withdrawal pursuant to (2) above, the

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Franchisee shall deliver to the City for deposit in the Security Fund an amount equal to the amount so withdrawn. Failure to make timely delivery of such amount to the City shall constitute a violation of this Ordinance.

**(6) Disposition.** Upon termination of a Franchise under conditions other than those stipulating forfeiture of the Security Fund, the balance then remaining in the Security Fund shall be withdrawn by the City and paid to the Franchisee within ninety (90) days of such termination, provided that there is then no outstanding default on the part of the Franchisee.

**(7) Failure to Provide or Maintain Security.** Failure to provide or maintain the security required under this Section shall constitute a violation of this Ordinance.

#### **27.33 Foreclosure, Receivership.**

**(1) Foreclosure.** Upon the foreclosure or other judicial sale of all or a substantial part of a cable television system, or upon the termination of any lease covering all or a substantial part of a cable television system, a Franchisee shall notify the City of such fact, and such notification shall be taken as a notification that a change in control of the Franchisee has taken place, and the provisions of this Ordinance governing the consent of the City Council to such change in control of the Franchisee shall apply.

**(2) Receivership.** The City Council shall have the right to cancel any Franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of a Franchise, 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:

(a) Within one hundred twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this ordinance and remedied all defaults thereunder; and

(b) 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 the Franchise granted to the Franchisee and this Ordinance. Such agreement shall not jeopardize any other rights the City may have under this ordinance.

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### 27.35 Transfers.

(1) **Franchisee Ownership.** Except as otherwise provided in a Franchise or applicable laws and regulations, the Franchisee shall at all times during the term of a Franchise and any extensions thereto or renewals thereof, be the full and complete owner of, or have complete possessory rights to, all facilities and property, real and personal, of the Cable System.

(2) **Transactions Involving Facilities.** The Franchisee shall not enter into any transaction concerning the ownership of the facilities and property, real or personal, of a Cable System or any portion thereof, unless consummation of such transaction is subject to any required approval by the City hereunder. Any approval may be conditioned as required to protect the rights of the City or the public interest.

(3) **Limitation.** The restrictions on transfer of ownership of the facilities and property of the cable system shall not apply to disposition of worn-out or obsolete facilities or personal property in the normal course of constructing, operating, maintaining and repairing the system, provided such facilities and property are removed and replaced with facilities and property that at least perform the same functions, with at least the same reliability and quality as the facilities and property being disposed of.

(4) **Other Transfers.** A Franchise may not be assigned or transferred, in whole or part, or leased or sublet, mortgaged or pledged in trust by any means, without prior written notice to the City, in accordance with (6), and the prior written approval of the City upon its good faith determination that the transaction proposed by the Franchisee will not be adverse to the interests of the City under a Franchise or this Ordinance or otherwise contrary to the public interest. Any approval may be conditioned as required to protect the rights of the City or the public interest.

(5) **What Constitutes A Transfer.** A change of control or ownership of Franchisee or Affiliate that is involved in the operation or management of the Cable System shall be considered a transfer of a Franchise. The term "control" includes actual

working control in whatever manner exercised. A transfer shall be deemed to have occurred whenever one entity or a group acting in concert acquire, directly or indirectly, a twenty (20%) percent or greater ownership interest in a Franchisee. A transfer shall also be presumed to have occurred in the case of a partnership, if a general partner is changed, eliminated or added.

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**(6) Notice of Transfer.** The Franchisee and the proposed transferee jointly must notify the City in writing of any sale or transfer subject to approval under this Section 27.35. At the time the notice is submitted, the Franchisee and proposed transferee shall complete any application provided by the City requesting approval of the transfer and shall submit information required under applicable laws and regulations, including information requested by the City relating to the matters for consideration set forth in (7). The Franchisee and transferee must cooperate to provide documents and respond to requests for information by the City regarding the proposed transaction and its potential effects. The notice and information required must be provided at least one hundred twenty (120) days before the proposed transaction is scheduled to close.

**(7) Matters for Consideration.** In determining whether a proposed transaction is adverse to the interests of the City under a Franchise or otherwise contrary to the public interest, the City may examine the financial, technical, legal or other qualifications of the transferee, whether the transferee agrees to accept and to be bound by related amendments, ordinances, and resolutions then lawfully in effect; whether the transferee agrees to accept and be bound by each and every term of a Franchise; whether the transferee agrees to accept and to be bound by related amendments, ordinances, and resolutions then lawfully in effect; whether the transferee agrees to assume all liability and responsibility for acts and omissions of Franchisee, known and unknown, and to correct any defects in performance; whether the transferee agrees that the transfer will not allow it to exercise any rights which could not have been exercised by the transferor, had it continued to hold a Franchise; the effect of the transaction on the terms, conditions and quality of the services provided to Subscribers; the effect of the transaction on any rights of the City or Subscribers under applicable law; the effect of the transfer on competition for the provision of cable services or other communications services within the Franchise Area; and any other matter which the City is legally entitled or required to consider.

**(8) Prohibited Transfers.** Notwithstanding anything herein to the contrary, the City reserves the right to prohibit any requested transfer if the proposed transferee has any ownership or control of any other cable system in the City, or in circumstances in which the City determines that the acquisition of the cable system by the transferee may eliminate or reduce competition in the

delivery of cable service in the City of Manitowoc.

(9) **Securing Debt.** Notwithstanding the foregoing, pledges in trust or mortgages of the assets of the system to secure the

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construction, operation or repair of the Cable System may be made without the City's prior consent; except that no such arrangement may be made which would in any respect under any condition prevent the Franchisee or any successor from complying with a Franchise and applicable laws and regulations, nor may any such arrangement permit a third party to succeed to the interest of a Franchisee, or to own or control a Cable System without the prior consent of the City.

(10) **Public Hearing; Time for Consideration.** Deliberations on a request for assignment or transfer of a Franchise shall include a notice and a hearing affording the public opportunity for full participation. Unless the parties agree to some other date, the City must adopt a Resolution denying, approving or approving a transaction proposed subject to conditions within one hundred twenty (120) days of the date the Franchisee and transferee submit all the information reasonably required to be submitted by (6). If the City does not so act, the request for approval of the transaction shall be deemed granted.

(11) **Concurrence in Approval.** At such time as the City may approve a proposed assignment or transfer of a Franchise, such approval shall be contingent upon the concurrence of the Federal or State regulatory agencies having jurisdiction, if such concurrence is then required by law.

(12) **Effect of Unlawful Transfer.** Any transaction requiring prior approval that is made in violation of this section shall make a Franchise subject to termination by the City.

(13) **Costs.** The City, as a condition of approval of a transaction, may require the transferee to bear the City's reasonable costs associated with the review of any transfer request.

**27.37 Effect of Termination; Continuity of Service.**

(1) **When Terminated.** A Franchisee's Franchise terminates as provided in this Ordinance or the Franchise Agreement.

(2) **Removal of System Upon Termination.** Within twelve (12) months of the termination of a Franchise, the Franchisee shall remove its Cable System from all Streets and property occupied pursuant to its Franchise, unless the City notifies the Franchisee that it intends to exercise its purchase option under §27.37 (6). At the option of the City, any portions of the Cable System that are not removed within that twelve (12)-month period shall become the property of the City. Franchisee shall not abandon its cable

system or any portion thereof at any time without the City's prior written consent.

**(3) Continuity of Service.** It is the right of all subscribers in a Franchisee's Franchise Area to receive all available services from the Franchisee as long as their financial and other obligations to the Franchisee are satisfied.

**(4) Duty to Assure Continuity of Service.** A Franchisee shall ensure that all subscribers receive continuous uninterrupted service in accordance with this Section 27.37. At the City's request, a Franchisee shall operate its system for a temporary period (the "Transition Period") following the termination, sale or transfer of its Franchise as necessary to maintain service to subscribers; and shall cooperate with the City to assure an orderly transition from it to another Franchisee or cable operator. The Transition Period shall be no longer than the reasonable period required to select under another Franchisee or operator and build a replacement system, if necessary, and shall not be longer than six (6) months, unless extended by the City for good cause. During the Transition Period, the Franchisee will continue to be obligated to comply with the terms and conditions of this Agreement and applicable laws and regulations.

**(5) Failure to Operate.**

**(a) Effect of Failure.** If a Franchisee abandons its system during its Franchise term, or fails to operate its system in accordance with this Section 27.37 during any Transition Period, the City, at its option, may operate the Cable System or designate another entity to operate the Cable System temporarily until the Franchisee restores service under conditions acceptable to the City or until the Franchise is revoked and a new Franchisee or operator selected by the City is providing service; or obtain an injunction requiring the Franchisee to continue operations. If the City is required to operate or designate another entity to operate the Cable System, the Franchisee shall reimburse the City or its designee for all reasonable costs and damages incurred that are in excess of the revenues from the Cable System.

**(b) Injunctive Relief Shall Be Granted.** The parties agree that the City is entitled to injunctive relief under this Section 27.37 if:

1. A Franchisee fails to provide Cable Service in accordance with its Franchise over a substantial portion of the Franchise Area for 96 consecutive hours, unless the City authorizes a longer interruption of service; or

2. A Franchisee, for any period, willfully and without cause refuses to provide Cable Service in accordance with its Franchise over a substantial portion of the Franchise Area.

**(6) Option to Purchase.**

**(a) When Exercisable.** In the event a Franchise is canceled, revoked or not renewed, the City shall have the option to purchase the cable system.

**(b) How Exercisable.** If the City intends to exercise the purchase option, it must so notify the Franchisee in writing no later than sixty (60) days after the cancellation, revocation or nonrenewal of the Franchise. If the City notifies the Franchisee it intends to exercise this option, the parties shall promptly enter into negotiations to establish terms and conditions of the sale consistent with general industry practices, except that the price for the Cable System shall be determined in accordance with (c) and (d).

**(c) Purchase Price Upon Expiration.** In the event of purchase by the City at the end of a Franchise term provided for in a Franchise Agreement, the purchase price shall be the fair market value, determined on the basis of the cable system valued as a going concern, but with no value allocated to the Franchise itself.

**(d) Purchase Price on Termination for Cause.** In the event of purchase by the City upon revocation for cause, cancellation of the Franchise or if the Franchise is voided, the purchase price shall be an "equitable price" as that term is used in Section 627(b) of the Cable Act, 47 U.S.C. §547(b).

**27.39 Rights of Individuals Protected.**

**(1) Discriminatory Practices Prohibited.**

**(a)** A Franchisee shall not deny service, deny access, or otherwise discriminate against Subscribers, programmers or residents of the City on the basis of race, color, religion, national origin, sex or age.

**(b)** A Franchisee shall not discriminate among Persons or take any retaliatory action against a Person because of that Person's exercise of any right it may have under federal, state, or local law, nor may the Franchisee require a Person to waive such rights as a condition of taking service.

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**(c)** A Franchisee shall not deny access or levy different rates and charges on any group of potential residential cable Subscribers because of the income of the residents of the local area in which such group resides.

(d) Except to the extent the City may not enforce such a requirement, a Franchisee is prohibited from discriminating in its rates or charges or from granting undue preferences to any Subscriber, potential Subscriber, or group of Subscribers or potential Subscribers; provided, however, that a Franchisee may offer temporary, bona fide promotional discounts in order to attract or maintain Subscribers, so long as such discounts are offered on a non-discriminatory basis to similar classes of Subscribers throughout the City; and a Franchisee may offer discounts for the elderly, the handicapped, or the economically disadvantaged, and such other discounts as it is expressly entitled to provide under federal law, if such discounts are applied in a uniform and consistent manner. A Franchisee shall comply at all times with all applicable federal, state, and City laws, and all executive and administrative orders relating to non-discrimination.

(2) **Equal Employment Opportunity.** A Franchisee shall not refuse to employ, discharge from employment, or discriminate against any Person in compensation or in terms, conditions, or privileges of employment because of race, color, religion, national origin, sex, or age. A Franchisee shall comply with all federal, state, and local laws and regulations governing equal employment opportunities.

(3) **Subscriber Privacy.**

(a) A Franchisee shall at all times protect the privacy of all Subscribers pursuant to the provisions of Section 631 of the Cable Act, 47 U.S.C. § 551. A Franchisee shall not condition Subscriber service on the Subscriber's grant of permission to disclose information which, pursuant to federal or state law, cannot be disclosed without the Subscriber's explicit consent.

(b) Neither a Franchisee nor its agents or employees shall, without the prior and specific written authorization of the Subscriber involved, sell or otherwise make available for commercial purposes the names, addresses, or telephone numbers of any Subscriber or Subscribers, or any information that identifies the individual viewing habits of any Subscriber or Subscribers.

**27.41 Miscellaneous Provisions.**

(1) **Compliance With Laws.** A Franchisee shall comply with all applicable federal, state, and local laws and regulations as

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they become effective, unless otherwise stated.

(2) **Force Majeure.** A Franchisee shall not be deemed in default with provisions of its Franchise where performance was rendered impossible by war or riots, civil disturbances, floods, or other natural catastrophes beyond the Franchisee's control, and a Franchise shall not be revoked or a Franchisee penalized for such noncompliance, provided that the Franchisee takes immediate and

diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its Franchise without unduly endangering the health, safety, and integrity of the Franchisee's employees or property, or the health, safety, and integrity of the public, Public Rights-of-Way, public property, or private property.

**(3) Connections to System; Use of Antennae.**

(a) Subscribers shall have the right to attach devices to a Franchisee's System to allow them to transmit signals or services for which they have paid to VCR's, receivers, and other terminals. Subscribers also shall have the right to use their own remote control devices, converters, and other similar equipment to receive signals for which they have paid, and a Franchisee shall provide information to consumers which will allow them to adjust such devices so that they may be used with the Franchisee's System.

(b) A Franchisee shall not, as a condition of providing service, require a Subscriber or potential Subscriber to remove any existing antenna, or disconnect an antenna except at the express direction of the Subscriber or potential Subscriber, or prohibit or discourage a Subscriber from installing an antenna switch, provided that such equipment and installations are consistent with applicable codes.

**(4) Calculation of Time.** Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of duration time.

**(5) Severability.** If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by

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the City and shall thereafter be binding on the Franchisee and the City.

**(6) Captions.** The captions and heading of this Ordinance are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Ordinance.

**27.43 Violations.** Violation of any provision of the Ordinance shall be subject to a forfeiture of not more than \$2,000.00. Each day of violation shall be considered a separate offense.

In addition, violation of any material provision of this Ordinance shall subject a Franchise to revocation under the revocation procedure set forth in the Franchise Agreement.