

CHAPTER 24. CITY OF MONDOVI CABLE COMMUNICATIONS

SECTION 24.01 SHORT TITLE

This ordinance shall be known as the “City of Mondovi Cable Communications Ordinance”.

SECTION 24.02 PURPOSES

The purpose of this Ordinance is to:

- (1) Protec the public health, safety, and welfare;
- (2) Provide for the granting of one or more franchises to permit the use of City streets and other public ways for cable communication systems;
- (3) Provide for the regulation by the City of the erection, construction, reconstruction, installation, operation, maintenance, dismantling, testing, repair and use of such systems in, upon, along, across, above, over and under or in any manner connect with the streets or other public ways within the City, as it now or in the future may exist;
- (4) Provide for the payment to fees and other valuable consideration to the City for the use of City streets and redo the public ways by such systems and to compensate the City for costs associated with such use;
- (5) Provide for the development of cable communication systems as a means to improve communications between and among and to otherwise serve the present and future needs of the citizens, government, and private and public institutions, organization and enterprises of the City and surrounding communities; and
- (6) Provide remedies and prescribe penalties for violations of this ordinance and any franchise agreements executed pursuant to his ordinance.

SECTION 24.03 CONFLICTING PROVISIONS

- (1) This Ordinance is adopted pursuant to the authority of the City under the Constitution and Statues of the State of Wisconsin and the United States of America, including but not limited to the Cable Communications Policy Act of 1984 (47 U.S.C. sec 521 et seq.) and 66.082 of the Wis. Stats. Where any provision of this Ordinance conflicts with any provision of state or federal law, this Ordinance shall control to the full extent permitted by law.
- (2) In the case of an express conflict or any ambiguity between a provision in this Ordinance and either a provision in a Franchise Agreement executed pursuant to this Ordinance or a provision in a Franchise Proposal that is incorporated by reference into such Franchise Agreement, this Ordinance shall control.

SECTION 24.04 DEFINITIONS

- (1) When not inconsistent with the context, words used in the present tense include the future tense, words used in the plural number include the singular number, and words used in the singular number include the plural number.
- (2) For the purpose of this Ordinance, the following terms, phrases and words and their derivations have the meanings given herein, unless the context clearly indicated another meaning is intended:
 - (a) City; The City of Mondovi, County of Buffalo, State of Wisconsin, in its present incorporated form or in any later recognized, consolidated, enlarged or reincorporated form.
 - (b) Cable System; Coaxial cables, wave guides, or other conductors and equipment for providing video and audio service by cable or through its facilities as herein contemplated, and including closed-circuit special event programs and educational television.
 - (c) Control or Controlling Interest; Actual working control or ownership of the cable system in whatever manner exercised. A rebuttable presumption of the existence of control or a controlling interest shall rise from the beneficial ownership, directly or indirectly, by any person, group of persons acting in concert (except underwriters during the period in which they are offering securities to the public) or entity of 5% or more of the Mondovi Cable system or the Franchise under which the cable system is operated. A change in the control or controlling interest of a parent or a grantee shall constitute a change in the control or controlling interest of the Mondovi cable system under the same criteria. Control or controlling interest as used herein may be held simultaneously by more than one person, group of persons or entities.
 - (d) Council; the present governing body of the City and any future body constituting the legislative body of the City.
 - (e) Franchise; an authorization issued by the City of Mondovi to construct and operate a Cable System.
 - (f) Grantee; Any entity including a corporation, joint venture, association, partnership or individual to whom or which a Franchise under this Ordinance is granted or lawfully transferred under this Ordinance.
 - (g) Gross Revenues; all revenues actually received by the Grantee, including revenues received from its affiliates or subsidiaries, from subscribers in connection with the operation of the cable system in the city, including: basic subscriber service fees, pay channel service fees, installation and reconnection fees, converter and remote control rentals, and any other billable subscriber services except those excluded herein. The term does not include advertising revenues, leased channel fees, and enhanced telecommunication services revenues, studio rentals, production equipment rentals or any taxes on service provided by a Grantee and imposed directly upon any subscriber or user by the state, City, or other governmental unit and collected by a Grantee on behalf of said unit.
 - (h) Street or Public Way; The surface of and space above and below any public street, road, highway, freeway, lane, alley, court, sidewalk, parkway or drive, now or

hereafter existing is such within the City. A Franchise granted under this Ordinance shall be deemed to confer only such rights to use property in the City as the City may have the right and power to grant in such agreements.

(i) Subscriber; Any person or entity lawfully receiving for any purpose the service of a Grantee herein.

(3) Any word, phrase or term defined in s. 522 of the Cable Communication Act of 1984 but not defined in this section shall have the meaning set forth in s. 522 of the Cable Communications Act of 1984.

SECTION 24.05 FRANCHISE TERRITORY

A Franchise granted under this Ordinance is for the present territorial limits of the City of Mondovi, unless otherwise granted by the Council. Any area henceforth added to the City during the term of the Franchise shall become part of the Franchise territory. For any area within the Franchise territory not served under the Franchise, service under the Franchise must be offered when household density reach 30 homes per mile.

SECTION 24.06 GRANT OF FRANCHISE

(1) This Ordinance allows the City to grant to a Franchise Grantee a license to install, maintain and operate a cable system for a term of 15 years, provided that the Grantee conforms to the conditions, limitations and requirements of this ordinance. No portion of a Franchise or any right granted thereunder may be separated or transferred, except as provided in Section 8.

(2) The Council will use its discretion and judgment to determine if the granting of one or more Franchises under this Ordinance will serve the public's needs and protect the public's health, safety and welfare. If the Council grants more than one Franchise for the provision of cable television service to any part of the City, all terms of this Ordinance shall apply equally to all Grantees.

(3) No provision of this Ordinance shall be deemed or construed to require the Council to grant any such Franchise.

(4) A Franchise granted under this Ordinance shall not take the place of any other license or permit legally required of a Grantee, unless expressly provided in a Franchise Agreement made pursuant to this ordinance.

SECTION 24.07 DESCRIPTION OF SYSTEM

A Grantee shall, as part of the acceptance of a Franchise, file with the City a general description of the Cable System including the technical characteristics, channel capacity, channel carriage and location of the distribution plant. The Grantee shall update such description as substantial changes occur.

SECTION 24.08 FRANCHISE ACCEPTANCE

- (1) To accept a Franchise granted under this Ordinance, a Grantee must file written notice of acceptance with the City Clerk within 30 days of the offer of the Franchise being made by the Council.
- (2) Such written notice shall include a certification that the Grantee:
 - (a) Will comply with this Ordinance, any Franchise Agreements made pursuant to this Ordinance, and all applicable city, county, state and federal regulations in regard to the construction, operation and maintenance of a cable system;
 - (b) Accepts the Franchise relying on its own investigation and understanding of the power and authority of the City to grant the Franchise and the terms and conditions thereof;
 - (c) Acknowledges that it has not been induced to enter into the Franchise by any understanding or promise or by other statement, whether written or verbal, by or on behalf of the City or by any other third person concerning any term or condition of the Franchise or Ordinance not expressed herein;
 - (d) Shall have no recourse whatsoever against the City for any loss, cost, expense or damage arising out of any provision or requirement of a Franchise or the enforcement thereof, or for the failure of the City to have authority to grant any or all parts of the Franchise; and
 - (e) Will not at any time set up against the City in a claim for proceeding any condition nor term of the Franchise or Ordinance as unreasonable, arbitrary or void, or that the City had no power or authority to make any such term or condition, but shall accept the validity of the terms and conditions of the Franchise and Ordinance in their entirety.
 - (f) Notwithstanding section 8 (b) (1-5), the Grantee neither waives nay constitutional rights it may have, nor shall it be precluded from enforcing its constitutional rights; in addition in the event of any change in federal or state law, the Grantee may enforce whatever benefits or rights are accorded under subsequent changes in federal or state law.

SECTION 24.09 TRANSFER OF FRANCHISE

- (1) A franchise granted hereunder, or control or controlling interest of it, shall not be sold, assigned, or transferred in any manner, nor shall the title, either legal or equitable, or any right, interest or property or assets relating to a Franchise or system, pass to or vest in any person or entity without he written permission of the Council. This section shall not apply to the granting of a security or mortgage interest in Grantee's assets by the Grantee to a financing institution for purposes of financing either the construction, maintenance, or operation of the Cable System.
- (2) A grantee wishing to sell control of or a controlling interest in a Mondovi Franchise or system shall make a written request to the City Council for such approval. The City shall rule on the transfer request within 60 days of receiving such request unless the City requests information pursuant to section 9 (c), in which case the City shall rule within 90 days of receiving the transfer request.

- (3) Upon receipt of such a request, the City may require the Grantee or any other party involved in the transfer to provide such information as is necessary to evaluate the transfer.
- (4) The City shall not unreasonably refuse to approve the transfer. The conditions the City may attach to the transfer approval may include, but are not limited to: reimbursement for expenses incurred in evaluating the transfer request; remedy of any existing or historical violations of such ordinances or the Franchise agreement; payment of all fees and penalties owed by the Grantee at the time of transfer approval; and a guarantee by the prospective new Grantee to abide by any and all ordinances, agreements and conditions placed upon the Franchise and system by the City and existing Grantee, unless mutually removed by the City and Grantee.
- (5) When the City approves the transfer under this section, the new Grantee shall file an acceptance of the Franchise as specified in Section 8.

SECTION 24.10 FRANCHISE TERM AND RENEWAL

- (1) A Franchise granted pursuant to this ordinance shall be effective for a period of 15 years from the date of acceptance.
- (2) The City may decide to renew a Franchise granted under this Ordinance if the Grantee files a written request of such a renewal. The City may use the written request as a signal to update this Ordinance and reevaluate the community needs served by the Grantee.
- (3) To the extent applicable, Section 546 of the Cable Communications Policy Act of 1984 shall govern the procedures and standards for renewal of any Franchise procedures and standards for renewal of any Franchise awarded pursuant to this Ordinance.
- (4) To the extent that Section 546 of the Cable Communications Act of 1984 is not applicable, the City in its sole discretion and judgement shall have the right to grant, deny or conditionally grant renewal of a Franchise, provided, however, that the City may not unreasonably refuse to renew the Franchise. The conditions the City may place on its approval shall include, but are not limited to: reimbursement for legitimate expenses incurred in evaluating the request for renewal, updating the Ordinance and surveying the community cable needs; remedy of historical or existing violations of the Franchise or Ordinance; payment of all fees and penalties owed by the Grantee at the time of the renewal; and acceptance of any updated Ordinance or Franchise agreement.
- (5) Unless otherwise agreed upon, any amended cable Ordinance or provision thereunder adopted before the Franchise renewal shall take effect at the Franchise renewal.
- (6) When the City approves Franchise renewal, the Grantee shall accept the renewed Franchise under the procedures set out in Section 8.

SECTION 24.11 REVOCATION AND EXPIRATION

- (1) The City shall have the right to revoke a Franchise in the event that the Grantee defaults in the performance of its material obligations under the Franchise in which case the Council shall, after hearing, upon 30 days written notice to the Grantee citing the reasons alleged to constitute cause for revocation, set a reasonable time in which the Grantee must remedy the cause. If, during such period, the cause shall be cured to the satisfaction of the City, the City shall declare the notice to be null and void. If the Grantee fails to remedy the cause within the time specified, the Council may revoke the Franchise. In any event, before the Franchise may be revoked, the Grantee must be provided with an opportunity to be heard at hearing affording due process. It is the spirit and intent of this provision that the Grantee be given an opportunity to remedy all alleged defaults.
- (2) Should a Grantee's Franchise be revoked or expire and there is no judicial or administrative review of the revocation or expiration taking place, the Grantee shall begin to remove, within 90 days of revocation or expiration, all property owned by the Grantee and replaced on a public right-of-way unless permitted by the City to abandon said property to a purchaser. Such removal shall be completed in a timely fashion.
- (3) In the event that a Franchise has been revoked or has expired and not been renewed for cause, the City shall have the option, to the extent then permitted by law, to purchase the tangible assets of the Grantee's cable television system previously governed by the Franchise at its fair market value, to assign such rights to purchase, or to require removal of all Grantee's property located within the public ways of the City at the Grantee's expense. Such an option must be exercised within 90 days from the date of the revocation or expiration of the Franchise, the entry of a final judgement by a court reviewing the question of the revocation expiration, or the entry of a final order upon appeal of the same, whichever is later.

SECTION 24.12 CITY RIGHTS

- (1) The City may amend this Ordinance and a Franchise granted hereunder to incorporate amendments to federal and state law which are applicable to Grantee's Cable System. Any provision herein, in conflict with or preempted by federal or state law shall be superseded.
- (2) The City reserves the right to further amend this ordinance, or adopt additional Ordinances, if it finds it necessary to protect the public health, safety and welfare. Such amendments and new Ordinances shall be reasonable and not be in conflict with the rights granted in this ordinance or with federal or state law.
- (3) In the event that the Federal government cedes any power vested in the Federal government at the time a Franchise is granted under this Ordinance, the City reserves the right to exercise that power.

- (4) The City may inspect all construction or installation work during such construction or installation, or any time after completion thereof, in order to insure compliance with the provisions of this Ordinance and all other governing Ordinances.
- (5) A Grantee shall provide free basic service to the City Building.
- (6) A Grantee shall provide free basic service to any and all schools, whether private, public or parochial, within the Franchise territory. The Grantee may charge usual installation costs and an initial annual maintenance fee of \$250.00 for the high school and \$75.00 for the parochial grade school. The maintenance fee may be increased but not greater than the cost of living as defined by the Department of Labor.

SECTION 24.13 GRANTEE RULES

A Grantee may promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under the Franchise and to assure uninterrupted service to all its subscribers. However, such rules, regulations, terms and conditions shall not be in conflict with the provisions of this Ordinance, other City Ordinances or the laws of the State.

SECTION 24.14 TECHNICAL PERFORMANCE

- (1) The Cable systems shall be operated to comply with all guidelines and standards set by the FCC for signal quality and leakage. The City reserves the right to test the system and independently measure the signal quality. The system shall comply at all times with the National Electrical Code of the National Fire Protection Association.
- (2) A Grantee shall at all times keep its cables and other appurtenances used for transmitting signals shielded in such a manner that there will be no interference with signals received by electronic equipment not connected to the Grantee's service.

SECTION 24.15 CONDITIONS ON STREET OCUPANCY

- (1) All transmission and distribution structures, lines and equipment erected by a Grantee within the City shall be so located as not to cause interference with the proper use of streets, alleys and other public ways and places, and not to cause interference with the rights or reasonable convince of property owners who adjoin any of the streets, alleys or other public ways and places.
- (2) The Grantee shall give notice to the City Clerk of any contemplated disturbances of pavement, sidewalk, driveway or other surfacing, and shall, at its own cost and expense and in a manner approved by the City Clerk, replace and restore all pavement, sidewalk, driveway or other surface of any street or alley disturbed in as good condition as before such work commenced. The Grantee shall otherwise comply with City Ordinances relating to street openings.

- (3) If, at any time during a Franchise, the City shall elect to alter or change the location or grade of any street, alley or other public way, the Grantee, upon reasonable notice by the City, which shall provide Grantee an opportunity to be heard, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense. If any construction by the Grantee is in violation of the provisions of subsection A, the Grantee shall likewise, upon reasonable notice by the City, which shall provide Grantee an opportunity to be heard, remove, relay and relocate its property in such a manner as to remedy such violation at its own expense.
- (4) The Grantee shall not place poles or other fixtures where the same will interfere with any gas, electric, telephone or other fixture, water hydrant or main. All such poles or other fixtures placed in any street shall be placed between the outer edge of a sidewalk and the curb line, and those placed in alleys shall be placed close to the line of the lot abutting on such alley in such a manner as not to interfere with the usual travel on the streets, alleys and public ways. However, nothing in this chapter shall prohibit the use of the Grantee of existing public utility poles where practical, providing mutually satisfactory rental agreements can be entered into.
- (5) A Grantee shall, on the request of any person holding a building permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expenses of such temporary raising or lowering of the wires shall be paid by the person requesting the same, and the Grantee may require such payment in advance. The Grantee shall be given at least 72 hours advance notice to arrange for such temporary wire changes.
- (6) The Grantee, to the same extent that the City has such authority, may trim trees that overhang streets, alleys, sidewalks and public places other City so as to prevent the branches of such trees from coming in contact with the wires of and cables of the Grantee.

SECTION 24.16 WORK PERFORMED BY OTHERS

- (1) Grantee shall give prior notice to the City specifying the name and address of any entity, other than the Grantee, which performs construction services costing excess of \$25,000.00 pursuant to the Franchise, provided, however, that all provisions of the Franchise remain the responsibility of the Grantee.
- (2) All provisions of a Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of the Franchise.
- (3) Nothing in this section shall be construed as allowing the transfer of any rights or responsibilities of the Grantee without City approval.

SECTION 24.17 INDEMNITY

- (1) The Grantee shall defend and save the City and its agents and employees harmless from all claims, damages, losses, and expenses, including attorney's fees, sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever arising out of:
 - (a) The enactment of this Ordinance and granting of a Franchise thereunder, except such claims as may arise from the City's selection of a Grantee to be awarded a Franchise pursuant to this Ordinance.
 - (b) The installation, operation or maintenance of the cable system except for acts of the City, its agents or employees.
- (2) The City shall notify the Grantee within 10 days after the presentation of any claim or demand, either by suit or otherwise, made against the City on the rounds set forth in this section.
- (3) The Grantee shall furnish to the City, before any Franchise becomes effective, satisfactory evidence in writing that the Grantee has in force and will maintain in force during the term of the Franchise public liability insurance.
- (4) A Grantee shall maintain throughout the term of the Franchise a general comprehensive liability insurance policy naming as additional insured the City, its officers, boards, commissions, agents and employees, in a company approved by the City Council and in a form satisfactory to the City Attorney. The policy shall protect the City and its agencies and employees against liability for loss of damage for personal injury, death or property damage occasioned by the operation of a Grantee under any Franchise granted hereunder, in the amounts of:
 - (a) \$2,000,000.00 for bodily injury or death to any one person with the limit however of \$2,000,000.00 for bodily injury or death resulting from any one accident; and
 - (b) \$2,000,000.00 for property damage resulting from one accident. The City shall be named as an additional insured under such insurance and a copy of the current in-force policy shall be deposited with the City Clerk.

SECTION 24.18 BOND

During the initial construction of a Cable System, or any major reconstruction thereof, the Grantee shall file with the City a performance bond in the amount of \$50,000.00. The bond shall be released when the Grantee certifies to the City that the construction is complete, and the City accepts such certification as proven.

SECTION 24.19 FRANCHISE FEE

- (1) As compensation for permission to use the streets and public ways of the City for the construction operation, maintenance, modification, and reconstruction of a Cable System, and for the City's costs in establishing a regulatory program for a Grantee, the Grantee shall pay the City an annual franchise fee. The franchise fee shall be paid no later than March 31 of each year and shall be an amount equal to 1% of the Grantee's Gross Revenues in the previous calendar year.

- (2) Upon transfer of the Franchise, as governed under section 9, or upon no less than 60 days' notice to Grantee, the City may increase the fee within the limits provided by law, provided, however, that the effective day of the increase shall be the first day of the year subsequent to the end of the 60 day notice.
- (3) No later than March 31st of each year, the Grantee shall present to the City a report of the Mondovi system's gross revenues for the previous calendar year. In addition, the report must contain a current listing of each officer, director, and manager of the Cable System and each person or entity holding control or controlling interest in the Grantee (any discrepancy between the previous year's franchise fee paid and the amount verified in the annual report shall be reflected in the annual payment).
- (4) No acceptance of any payment by the Grantee to the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a Franchise fee or for the performance of any other obligation of the Grantee.

SECTION 24.20 RATES CHARGED BY THE GRANTEE

- (1) Before any service is sold to any customer, the Grantee shall file with the City Clerk its schedule of rates for installation and monthly service charges, together with a statement of the rights and obligations of subscribers.
- (2) Subsequent additions or amendments to rates and service charges shall be filed with the City Clerk.
- (3) In the event that any Federal or State law or regulation is at any time after the effective date of this Ordinance changed, modified, interpreted, amended, repealed or invalidated so as to allow for the City's regulation of rates paid by cable subscribers, the Grantee shall not increase its rates without further permission from the City.

SECTION 24.21 OPEN BOOKS AND RECORDS

- (1) The City shall have the right to inspect, upon notice, during normal business hours all maps, plans, service complaint logs, performance test results, and records of requests for service and other like materials of the Grantee that relate to the operation of the Franchise. The City, its officers and its agents shall keep such information confidential to the extent permitted by law.
- (2) The City may retain an independent certified public accountant, at the City's expense, to conduct an audit of those records of the Grantee which pertain to the Mondovi Gross Revenues, for the purpose of calculating the franchise fee paid to the City. Such audit shall be limited to those records necessary for verifying the accuracy of the franchise fee and the certified public accountant shall disclose only that information necessary to inform the City of the accuracy of the payment. In the event that any federal or State Law

or regulation is at any time after the effective date of this Ordinance changed, modified, interpreted, amended, repealed or invalidated so as to allow for the City's regulation of rates paid by cable subscribers, the scope of the audit may be broadened for the purposes of rate regulation.

SECTION 24.22 SUBSCRIBER RIGHTS

- (1) No monitoring of any terminal connected to the system shall take place without, on each occasion, specific written authorization by the user of the terminal in question.
- (2) A Grantee shall not, except as required by governmental action, provide any data concerning specific subscribers or users or their use of subscriber services without first securing written authorization from the subscribers or users.
- (3) Subscribers and users shall retain the right to deactivate their terminals, but shall continue to be responsible for charges until the Grantee is notified to terminate service.
- (4) A Grantee shall be required to maintain a place within the City where subscribers may make payments during standard business hours.
- (5) The Grantee shall provide subscribers with a local or toll-free line, either staff or with answering capabilities, which shall be available to subscribers 24 hours a day.
- (6) The Grantee shall answer service requests within 24 hours, excluding weekends and holidays. Problems should be rectified within 48 hours or, in case of a dispute, in fewer than 30 days. Customers shall be able to request from the Grantee that a service visit occur during a four-hour block in either the morning or the afternoon.
- (7) Upon interruption of a subscriber's cable service for a period exceeding 48 hours, except for acts of God or with express permission of the City, Grantee shall rebate the subscriber that portion of the monthly service charge equal to that portion of the month for which service is interrupted.

SECTION 24.23 PUBLIC, EDUCATIONAL, AND GOVERNMENTAL CHANNEL

- (1) The Grantee shall provide a full-time public, educational and governmental access channel.
- (2) The City shall have sole authority and responsibility for the administration of the public, education, and governmental access channel, unless it delegates such authority and responsibility.
- (3) The Grantee shall not be responsible for the production costs of programming of the public, educational and governmental channel.

SECTION 24.24 SEVERABILITY

Should any word, phrase, clause, sentence, paragraph or portion of this ordinance and or a Franchise thereunder be declared to be invalid by a court of competent jurisdiction, such adjudication shall not affect the validity of this Ordinance and or the Franchise as a whole, but shall only affect the portion thereof declared to be invalid; and the City Council hereby expressly states and declared that it would nonetheless have passed this Ordinance and or granted the Franchise had it known that any such word, phrase, clause, sentence, paragraph or portion of said Ordinance and or Franchise was invalid.

SECTION 24.25 FORECLOSURE; CONDEMNATION; RECEIVERSHIP

Upon the occurrence of any event that may lead to the foreclosure, condemnation or receivership of any part of the Mondovi Cable System, the Grantee shall immediately provide written notification to the City.

SECTION 24.26 NONENFORCEMENT BY THE CITY

The Grantee shall not be relieved of any obligation by reason of any failure of the City to enforce prompt compliance with any provision of this Ordinance, a Franchise or a Franchise Agreement.

SECTION 24.27 GENERAL RIGHTS AND REMEDIES

All rights and remedies given to the City under this ordinance, a Franchise and a Franchise Agreement shall be in addition to and cumulative with each other and with any and all other rights or remedies, existing or implied, nor or hereafter available to the City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically provided or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City in its sole judgement and discretion, and the exercise of one or more right or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy nor shall any such delay or omission be construed to be a waiver of or acquiescence to any default. The exercise of any such right or remedy by the City shall not release the Grantee from its obligations or any liability under this Ordinance, a Franchise or a Franchise Agreement.

SECTION 24.28 EFFECTIVE DATE

This Ordinance shall take effect and be enforced from and after May 23, 1989.

SECTION 24.29 RIGHTS AND PRIVILEGES OF GRANTEE

Any franchise granting by the City pursuant to Wis. Stats. section 66.0419 shall grant to the Grantee the right and privilege to erect, construct, operate and maintain in, upon, along, across, above, over and under the streets now in existence and as may be created or established during the term of the Franchise, any poles, wires, cable, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation of a Cable System.

SECTION 24.30 AGREEMENT AND INCORPORATION OF APPLICATION BY REFERENCE

- (1) Upon adoption of any Franchise Agreement and execution thereof by the Grantee, the Grantee agrees to be bound by all the terms and conditions contained herein.
- (2) Any Grantee also agrees to provide all services specifically set forth in its application and to provide cable television service within the confines of the City; and by its acceptance of the Franchise, the Grantee specifically grants and agrees that its application is thereby incorporated by reference and made a part of the Franchise.

SECTION 24.31 FRANCHISE RENEWAL

- (1) Current federal procedures and standards pursuant to 47 U.S.C. ss. 546, shall govern the renewal of any Franchise awarded under this Ordinance.
- (2) In the event that any or all of the applicable provisions of federal law are repealed or otherwise modified, the following relevant section(s) shall apply:
 - (a) At least 24 months prior the expiration of the Franchise, the Grantee shall inform the City in writing of its intent to seek renewal of the Franchise.
 - (b) The Grantee shall submit a proposal for renewal that demonstrates:
 - (i) That it has been and continues to be in substantial compliance with the terms, conditions and limitations of this Ordinance and its Franchise;
 - (ii) That its system has been installed, constructed, maintained and operated in accordance with the FCC and this Ordinance and its Franchise;
 - (iii) That it has the legal, technical and financial qualifications to continue to maintain and operate its System, and
 - (iv) That it has made a good faith effort to provide services and facilities which accommodate the demonstrated needs of the community, taking into account the cost of meeting such needs.
 - (c) After giving public notice, the City shall proceed to determine whether the Grantee has satisfactorily performed its obligations under the Franchise. TO determine satisfactory performance, the City shall consider technical developments and performance of the System, cost of service, and any other particular requirements set forth in this Ordinance. The City shall also consider the Grantee's reports made to the City and to the FCC, and the City may require the Grantee to make available specified records, documents and information for this purpose, and may enquire specifically whether the Grantee will supply service sufficient to meet future community needs and interest, taking into account the cost of meeting such needs. Industry performance on a national basis shall also be considered. Provisions shall be made for public comment with adequate prior notice of at least 10 days.
 - (d) Grantee shall be entitled to the same due process rights included in Section 626 [47 U.S.C. ss. 546].
 - (e) The City shall then prepare any amendments to this Ordinance that it believes necessary.

- (f) If the City finds the Grantee's performance satisfactory and finds the Grantee's technical, legal, and financial abilities acceptable and finds the Grantee's renewal proposal meets the future cable-related needs of the City, taking into account the cost of meeting such needs, a new Franchise shall be granted pursuant to this Ordinance as amended for a period to be determined.
- (g) If the Grantee is determined by the City to have performed unsatisfactorily, new applicants may be sought and evaluated and a Franchise award shall be made by the City according to franchising procedures adopted by the City.

SECTION 24.32 POLICE POWERS

- (1) In accepting a Franchise, the Grantee acknowledges that its rights thereunder are subject to the police power of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinance enacted by the City pursuant to such power.
- (2) Any conflict between the provisions of a Franchise and any other current or future lawful exercise of the City's police power shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction or applies exclusively to the Grantee or cable television systems which contains provisions inconsistent with this Ordinance, shall prevail only if upon such exercise the City finds a danger to health, safety, property, or general welfare or if such exercise is mandated by law.

SECTION 24.33 NOTICES

All notices from the Grantee to the City pursuant to any Franchise shall be to the City Clerk. The Grantee shall maintain with the City, throughout the term of the Franchise, an address for service of notices by mail. The Grantee shall maintain a central office to address any issues relating to operating this cable television Ordinance.

SECTION 24.34 NON-WAIVER OF STATUTORY LIMITS

Nothing in this Ordinance is intended to express or imply a waiver by the City of statutory provisions, privileges or immunities of any kind or nature as set forth in Wis. Stats. sec. 893.80, et. seq., including the limits of liability of the City.

SECTION 24.35 RIGHTS OF INDIVIDUALS

- (1) The Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, income, sex, marital status, sexual preference or age. The Grantee shall comply at all times with all other applicable federal, state, and local laws and regulations and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this Ordinance by reference.
- (2) The Grantee shall strictly adhere to the equal employment opportunity requirements of the Federal Communications Commission and of state and local governments, and as amended from time to time.

- (3) The Grantee shall, at all times, comply with the privacy requirements of state and federal law.
- (4) The Grantee is required to make all service available to all residential dwellings throughout the service area located in areas having a density of at least 30 dwelling units per street mile.

SECTION 24.36 SERVICE AVAILABILITY AND RECORD REQUEST

The Grantee shall provide cable television service throughout the entire Franchise area pursuant to the provision of the Franchise and shall keep a record for at least 3 years of all requests for service received by the Grantee. This record shall be available for public inspection at the local office of the Grantee during regular office hours.