CHAPTER 22
CABLE COMMUNICATIONS ORDINANCE
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22.01 **SHORT TITLE.** This chapter shall be known as the "City of Fond du Lac Cable Communications Ordinance."

22.02 **PURPOSES.** The purposes of this chapter are to:

(1) Protect 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 connected with the streets or other public ways within the City as it now or in the future may exist.

(4) Provide for the payment of fees and other valuable considerations to the City for the use of City streets and other public ways by such systems as well as 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, organizations and enterprises of the City and surrounding communities.

(6) Provide remedies and prescribe penalties for violations of this chapter and any franchise agreements executed pursuant to this chapter.

22.03 **CONFLICTING PROVISIONS.** (1) This chapter is adopted pursuant to the authority of the City under the Constitutions and Statutes of Wisconsin and the United States including, but not limited to, the Cable Communications Policy Act of 1984 (47 U.S.C. 521 ff.) and ƐƐ66.082, Wis. Stats. Where any provision of this chapter conflicts with any provision of State or federal law, this chapter 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 chapter and either a provision in a franchise agreement executed pursuant to this chapter or a provision in a franchise proposal that is incorporated by reference into such franchise agreement, this chapter shall control.

22.04 **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 purposes of this chapter, the following terms, phrases and words and their derivations have the meanings given herein, unless it is clearly stated that another meaning is intended.

Cable System. Coaxial cables, wave guides or other conductors and equipment for transmitting video, audio and data services by cable or through its facilities as herein contemplated and including closed circuit special event programs and educational television.

City. The City of Fond du Lac, County of Fond du Lac, State of Wisconsin, in its present incorporated form or in any later recognized, consolidated, enlarged or reincorporated form.

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 arise 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 49% or more of the City cable system or the franchise under which the system is operated. A change in the control or controlling interest of a parent of a grantee shall constitute a change in the control or controlling interest of the City 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.

Council. The present City Council or any future body constituting the legislative body of the City.

Franchise. An authorization issued by the City to construct and operate a cable system.

Grantee. Any entity, including a corporation, joint venture, association, partnership or individual, to whom or which a franchise under this chapter is granted or lawfully transferred.

Gross Revenues. Any revenue derived directly or indirectly by a grantee, its affiliates, subsidiaries, parents and any persons or entities in which a grantee has a financial interest of 5% or more from or in connection with the operation of a City cable system including, but not limited to, basic subscriber service fees, pay channel service fees, installation and reconnection fees, leased channel fees, converter and remote control rentals, enhanced telecommunication services, studio rentals, production equipment rentals and advertising revenues. The term does not include any taxes on services 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 the unit.

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 as such within the City. A franchise granted under this chapter 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.

Subscriber. Any person or entity lawfully receiving for any purpose the cable system services of a grantee herein.

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

22.05 **FRANCHISE TERRITORY.** A franchise granted under this chapter is for the present territorial limits of the City, unless otherwise granted by the Council. Any area later 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 within 90 days, weather permitting, when household density reaches the equivalent of 20 households per mile.

22.06 **GRANT OF FRANCHISE.** (1) This chapter allows the City to grant a franchise to install, maintain and operate a cable system for a term of up to 15 years, provided that the grantee conforms to the conditions, limitations and requirements of this chapter. No portion of a franchise or any right granted thereunder may be separated or transferred, except as provided in ∋22.09.

(2) The Council will use its discretion and judgment to determine if the granting of one or more franchises under this chapter will serve the public's needs and protect the public's health, safety and welfare.

(3) No provision of this chapter shall be deemed or construed to require the Council to grant a franchise.

(4) A franchise granted under this chapter 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 chapter.

(5) On or about the 5th and 10th anniversaries of the effective date of a franchise granted under this chapter, the City may schedule a public meeting or meetings with the grantee to review the franchise performance, plans and prospects. The City may require the grantee to make available specified information to determine if the grantee is supplying a level and variety of services equivalent to those being generally offered in comparable markets.

22.07 **DESCRIPTION OF A SYSTEM.** (1) The minimum capacity for a cable system in the City shall be 50 channels.

(2) A grantee shall as part of the acceptance of a franchise provide the City with a written description of the cable system within the City, including technical characteristics, channel capacity, channel carriage and a strand map. The grantee shall provide the City with an updated description as substantial changes in the system are made.

22.08 **FRANCHISE ACCEPTANCE.** (1) To accept a franchise granted under this chapter, a grantee must file any required bonds, funds and proof of insurance, as well as written notice of acceptance with the City Clerk within 45 days of the offer of the franchise being made by the City Council.

(2) Such written notice shall include a certification that the grantee:

(a) Will comply with this chapter, any franchise agreements made pursuant to this chapter 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.

(e) Agrees that in the event of any ambiguity in an ordinance, franchise or franchise agreement or any dispute over the meaning of any terms or conditions thereof, the same shall be construed against the grantee and in favor of the City.

(f) Will not at any time set up against the City in a claim for proceeding any condition or term of the franchise or this chapter 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 this chapter in their entirety.

(3) Grantees of a franchise granted or transferred under this chapter shall at the time of acceptance of the franchise provide an initial payment to the City in the amount of the City's cost of granting or, in the case of a transfer, transferring the franchise. The amount of such payment shall be considered as reimbursement for administrative costs incurred before the granting or transferring of the franchise.

22.09 **TRANSFER OF FRANCHISE.** (1) Forty-nine percent or more of the ownership of 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 or interest relating to a franchise or system pass to or vest in any person or entity without the written permission of the Council, which approval shall not be unreasonably withheld. The grantee shall provide written notification to the City before transferring ownership of at least 10%, but less than 49% of a franchise. This section shall not apply to the granting of a security or mortgage interest in the grantee's assets by the grantee to a financing institution for the purpose of financing either the grantee to a financing institution for the purpose of financing either the construction, maintenance or operation of the cable system. This section shall also not apply to the grantee's transfer or assignment of its rights and obligations to any subsidiary or to any partnership of which the grantee is the controlling managing partner.

(2) A grantee wishing to transfer control of or a controlling interest in a City cable franchise or system shall make a written request to the City Council for approval.

(3) Upon receipt of any request contemplated in sub. (1), 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 may approve the transfer, deny the transfer with cause or conditionally approve the transfer, provided that the City shall not unreasonably refuse to approve the transfer or condition the transfer upon unreasonable conditions. The conditions the City may attach to the transfer approval may include, but are not limited to, reimbursement for reasonable and necessary expenses incurred in evaluating the transfer request; remedy of any existing or historical violations of City 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 a transfer under this section, the new grantee shall indicate acceptance of the franchise as specified in ∋22.08, including the filing of all necessary bonds, funds, proofs of insurance and certifications.

22.10 **FRANCHISE TERM AND RENEWAL.** (1) A franchise granted pursuant to this chapter shall be effective for a period of up to 15 years. The City may grant a franchise for a shorter term if the Council deems it in the best interest of the City to do so.

(2) The City may decide to renew a franchise granted under this chapter if the grantee files a written request of such a renewal. The City may use the written request as a signal to update this chapter and reevaluate the community needs served by the grantee.

(3) To the extent applicable, ∋546 of the Cable Communications Policy Act of 1984 shall govern the procedures and standards for renewal of any franchise awarded pursuant to this chapter.

(4) To the extent that ∋546 of the Cable Communications Act of 1984 is not applicable, the City in its sole discretion and judgment shall have the right to grant, deny or conditionally grant renewal of a franchise, provided that the City shall not unreasonably refuse to renew the franchise or unreasonably condition the renewal. The conditions the City may place on its approval shall include, but are not limited to, reimbursement for reasonable expenses incurred in evaluating the request for renewal, updating this chapter and surveying community cable needs provided, however, that this section shall not preclude an agreement by the City and grantee to share in the costs incurred in evaluating a request for renewal; remedy of historical or existing violations of the franchise or this chapter; 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 a franchise renewal, the grantee shall accept the renewed franchise under the procedures set out in ∋22.08.

22.11 **REVOCATION AND EXPIRATION.** (1) The City shall have the right to revoke a franchise in the event that the grantee:

(a) Violates any material provision of this chapter, a franchise or an applicable franchise agreement.

(b) Attempts to evade or violate any provision of this chapter, a franchise or an applicable franchise agreement.

(c) Practices any deceit or fraud upon the City or any subscriber.

(d) Performs any act or fails to cure any event that requires the approval or consent of the City without securing such approval or consent.

(e) Triggers any provision in this chapter that provides for revocation as a remedy.

(2) If the Council chooses to revoke a franchise, the Council shall provide the grantee with written notice of its intent and describing the reasons constituting cause for revocation. The grantee shall have at least 30 days or longer if the Council agrees to remedy the cause. If the grantee fails to remedy the cause to the satisfaction of the Council during this period, the Council may, after public hearing at which the grantee is provided an opportunity to be heard, revoke the franchise.

(3) Should a 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 placed on a public right-of-way, unless permitted by the City to abandon the property to a purchaser.

(4) In the event that a franchise has been revoked or has not been renewed, 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 judgment by a court reviewing the question of the revocation or expiration or the entry of a final order upon appeal of the same, whichever is later.

22.12 **CITY RIGHTS.** (1) The City may amend this chapter and a franchise granted hereunder to incorporate amendments to federal law which are applicable to the grantee's cable system. Any provision herein in conflict with or preempted by federal law shall be superseded.

(2) The City reserves the right to further amend this chapter 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 substantial conflict with the rights granted in this chapter 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 chapter, the City reserves the right to exercise that power.

(4) During the term of a franchise and within the City limits, the City may, where aerial construction exists, maintain free-of-charge upon any poles owned by the grantee wire and pole fixtures necessary for a police and fire alarm system. Such wires and fixtures shall be constructed and maintained to the satisfaction of the grantee in accordance with standards set out in this chapter.

(5) The City may inspect all construction or installation work during such construction or installation or at any time after completion thereof in order to insure compliance with the provisions of this chapter and all other governing ordinances.

(6) A grantee shall provide free basic service consisting of one outlet to any and all existing public buildings, public libraries, fire stations and schools, whether private, public or parochial, within the franchise territory. Additional outlets shall be provided at the grantee's cost for time and materials. In the event of the addition of a new building eligible for service under this section during the life of the franchise, the grantee shall provide such service as soon as it is reasonably accessible from the grantee's distribution plant.

22.13 **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 chapter, other City ordinances or the laws of the State.

22.14 **TECHNICAL PERFORMANCE.** (1) The cable system shall be operated to comply with or exceed 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 at all times comply with or exceed standards set by 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 electronic equipment not connected to the grantee's service.

(3) The City reserves the right to adopt and enforce technical standards to the extent allowed by federal law. If such City authority is expanded during the duration of a franchise granted under this chapter, the City may choose to exercise its authority at its own discretion.

22.15 **CONDITIONS ON STREET OCCUPANCY.** (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 convenience of

property owners who adjoin any of the streets, alleys or other public ways and places.

(2) The grantee shall obtain permission from the Director of Public Works before stringing cable or commencing disturbance of pavement, sidewalk, driveway or other surfacing and shall, at its own cost and expense and in a manner approved by the Director of Public Works, 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 comply with all City ordinances relating to street openings and utility facility placement and operation. In all installations of underground cable, such cable shall be buried a minimum of 12" below the surface, unless a greater minimum is required by applicable regulations.

(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, 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 sub. (1), the grantee shall likewise, upon reasonable notice by the City, 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 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. Nothing in this chapter shall prohibit the use by 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 moving 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 48 hours advance notice to arrange for such temporary wire changes.

(6) The grantee, after obtaining permission from the City in each instance, may trim trees that overhang streets, alleys, sidewalks and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the grantee.

22.16 **WORK PERFORMED BY OTHERS.** (1) A grantee shall give prior notice to the City specifying the names and addresses of any entity, other than the grantee, that performs construction services in excess of $10,000 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.

22.17 **INDEMNITY.** (1) The grantee shall defend and save the City and its agents and employees harmless from all claims, damages, losses and expenses, including consultant and 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 chapter 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 chapter.

(b) The installation, operation or maintenance of the cable system, except for acts of the City, its agents or employees, unless such acts are at the request of and under the direction or supervision of the grantee.

(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 part of the grantee.

(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 and in a form satisfactory to the City Attorney. The policy shall protect the City and its agencies and employees against liability for loss or damage for personal injury, death or property damage occasioned by the operations of grantee under any franchise granted hereunder in the amounts of $1,000,000 for bodily injury or death to any one person with the limit, however, of $10,000,000 for bodily injury or death resulting from any one accident and $1,000,000 for property damage resulting from any one accident. The City reserves the unilateral right to revise the levels of insurance required under this section to reflect conditions on or about the 5th and 10th anniversaries of the effective date of a franchise granted under this chapter. 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 Administrator.

22.18 **BOND AND SECURITY FUND.** (1) During the initial construction of a cable system or any major reconstruction or upgrading thereof, the Grantee shall file with the City a performance bond in the amount of $50,000. 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.

(2) At the time a franchise is accepted, the grantee shall deposit into an account established by the City and maintain on deposit through the term of the franchise the amount of $5,000 as a security fund for the faithful performance of the grantee of all terms and conditions of the franchise. Interest accrued on this deposit shall be paid to the grantee on an annual basis. Provision shall be made to permit the City the sole authority to withdraw funds from the security fund. The grantee shall not use the security fund for other purposes and shall not assign, pledge or otherwise use this security fund for any purpose. Within 10 days after notice to it that any amount has been withdrawn by the City from the security fund pursuant to this chapter, the grantee shall deposit money sufficient to restore such security fund to the required amount.

22.19 **REMEDY OF GRANTEE VIOLATION.** (1) In the event of any violation by a grantee, its vendor, lessee or successor of the provisions of a franchise or any material portion or portions thereof or the failure promptly to perform any of the provisions thereof, the City may, after prior written notice is given to the grantee and the grantee has had 30 days from the notice to cure the violation, cause the grantee to be fined up to $100 a day from the security fund for each day after written notice is provided until proper correction is made. If the grantee cures the violation within 30 days after notice under this section, the City may not levy such fine.

(2) The City also reserves the right to forfeit the franchise and cancel all rights hereunder.

(3) A grantee is not responsible for failure to provide adequate service when that failure is caused by acts of God, strikes, governmental or military action or other conditions beyond its control, including the lack of materials or parts, providing that those materials and parts have been diligently pursued by the grantee.

22.20 **FRANCHISE FEE AND ANNUAL REPORT.** (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 to the City an annual amount equal to 5% of the grantee's annual gross revenues or, if higher, that amount allowed under federal law following 90 days written notice by the City informing the grantee of the requirement of such higher amount.

(2) The franchise fee shall be paid on a semi-annual basis according to the following schedule:

(a) Revenues for January through June shall be reflected in an August 15 payment.

(b) Revenues for July through December shall be reflected in a February 15 payment.

(3) Each year the grantee shall present to the City a report of system finances for the previous calendar year, which shall include gross revenues from all sources, operating expenses, net income and an end of year balance sheet.

In addition, the report must contain a summary by type of customer complaints received during the previous year as well as their resolutions; a summary of material physical changes in the cable system and changes in services offered in the past year; any rate or fee changes; 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; and a summary of the grantee's plans for the cable system in the coming year. Any discrepancy between the previous year's franchise fee paid and the amount verified in the annual report shall be paid within 30 days of the verification of the discrepancy.

(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.

22.21 **RATES CHARGED BY THE GRANTEE.** (1) Rates charged by a grantee for service under a franchise granted under this chapter shall be fair and reasonable. 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, service charges and rights and obligations statements shall likewise be filed with the City Clerk at least 21 days before the same become effective. The grantee must also provide subscribers to the cable system with written notification of any such additions or amendments at least 14 days before the same become effective.

(3) In the event that any federal or State law or regulation is at any time after the effective date of this chapter changed, modified, interpreted, amended, repealed or invalidated so as to allow for the City's regulation of rates paid by cable subscribers, the City shall at its option regulate such rates.

(4) To the extent allowed by State and federal law, nothing in this section shall prevent the grantee from applying a surcharge or late payment penalty to subscriber bills to reflect delinquent balances due the grantee.

22.22 **OPEN BOOKS AND RECORDS.** (1) A grantee shall manage all of its operations in accordance with the policy of totally open books and records in respect to the City. The authorized officers and agents of the City shall have the right to inspect,

upon at least 24 hours notice during normal business hours, all books, records, maps, plans, income tax returns, financial statements, service complaint logs, performance test results, record of request for service for at least the previous 5 years and other like materials of the grantee that relate to the operation of the franchise.

(2) A grantee shall at its own expense prepare and furnish to the City at the times and in the form prescribed by the City such reasonable reports with respect to its operation, affairs, transactions and property as the City deems necessary.

(3) The City may order an audit of the grantee's records, which may be conducted by a City employee or by an independent entity.

22.23 **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 and written notice to the City. Written permission shall not be required for the conducting of system-wide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing, nor shall it prevent the introduction of additional services agreed upon, such as 2-way communications and security systems.

(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, except in compliance with the Cable Communications Policy Act of 1984.

(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. The subscriber shall not be charged any fee for the cancellation or downgrading of cable service.

(4) A grantee shall be required to maintain a local office within the City. During standard business working hours, the grantee's office must be open and able to accept payments, exchange or accept return of converters, schedule and conduct service or technician calls and answer subscriber inquiries. A grantee must at all times provide at least one location within the franchise territory where subscribers may drop off payments without postage.

(5) The grantee shall provide subscribers with a local or toll-free line, either staffed or with answering capabilities, which shall be available to subscribers 24 hours a day. Under normal conditions, telephones must be answered within 30 seconds. Subscribers should reach a customer service representative within 2 minutes in all cases. Less that 3% of callers to the grantee shall receive a busy signal.

(6) The grantee shall answer subscribers' service requests within 24 hours, including weekends and holidays. Problems should be rectified within 48 hours or, in case of a dispute, in fewer than 10 days. Customers shall be able to schedule with the

grantee that a service visit occur during a 4 hour block in either the morning or the afternoon.

(7) Upon interruption of subscriber's cable service, except for acts of God or with express prior permission of the City, the following shall apply:

(a) For interruptions of over 24 hours and up to 7 days, the grantee shall provide a credit of 1/30 of one month's fees for affected services for each 24 hour period for all affected subscribers.

(b) For interruptions of 7 days or more in one month, the grantee shall provide a full month's credit for affected services for all affected subscribers.

(8) Once a cable system is in place, all normal service installations must be made within 7 business days. Upon initial installation and at least once annually, each subscriber shall receive written notice of all services available, rates for such services and all grantee policies affecting customer services.

22.24 **PUBLIC, EDUCATIONAL AND GOVERNMENTAL CHANNELS.** (1) The grantee shall provide at least 4 shared access channels; one channel for shared governmental and locally originated programming and 3 channels for shared educational and locally originated programming.

(2) The grantee shall have sole authority and responsibility for the administration of the shared access channels, except that programming produced by or on behalf of the City shall take precedence over all other programming on the shared governmental and local programming channel.

(3) The grantee shall provide at least the minimum equipment necessary to perform good quality playback of prerecorded programming and to make it possible to record programs at remote locations with battery operated portable equipment. Grantee shall also provide at least the minimum equipment and technical assistance for programming produced on behalf of the City.

(4) The grantee shall provide either a closed loop system or equivalent service capable of transmission to all educational buildings on a channel not normally received by cable subscribers. The following buildings, if attached to the cable system, shall be capable of both sending and receiving signals on this loop: University of Wisconsin Center-Fond du Lac, Marian College, Moraine Park Technical Institute, Goodrich High School, Winnebago Lutheran Academy, Woodworth, Sabish and Theisen Junior High Schools, the Fond du Lac Board of Education office and the Fond du Lac Public Library. In the event other similar educational facilities become operational during the life of a cable franchise, the grantee shall extend the closed loop system to include those facilities as well.

22.25 **EMERGENCY ALERT OVERRIDE SYSTEM.** The grantee shall incorporate into its cable system the capability for a temporary emergency override whereby a designee of the City in times of emergencies may introduce a message on all channels in the system simultaneously. The grantee shall provide and maintain all equipment necessary for the use of this capability, which shall be capable of being invoked either directly from a location chosen by the City or by a telephone line, provided acceptable security for the override can be accomplished.

22.26 **RESTORATION FUND.** On or before the effective date of the franchise, grantee shall establish a restoration fund by depositing with a financial institution approved by the City the sum of $2,000 in cash as security for the performance of all system construction and restoration to the City's satisfaction and to compensate the City for the cost of any construction or restoration work the City must perform itself as a consequence of grantee's failure to so perform. Before withdrawing any sum from the restoration fund, the City must provide the grantee with 30 days notice of the problem. If the grantee restores the problem to the homeowner's satisfaction within the 30 days, the City may not withdraw such sum. The restoration fund shall be separate and apart from the security fund. The restoration fund shall be maintained at grantee's sole expense until the completion of construction of the system as certified by the City. Provision shall be made to permit the City to withdraw funds from the restoration fund to cover the City's costs for materials, labor and management of such work, including the time of the City staff and City Attorney. Grantee shall not use the restoration fund for any other purpose. Within 30 days after notice to grantee that any amount has been withdrawn by the City, grantee shall restore the restoration fund to the required amount. Interest on the amount in the restoration fund shall accrue to the benefit of grantee and shall be paid to grantee at the closing of the restoration fund or at such earlier time as the City may in its sole judgment and discretion determine.

22.27 **UNAUTHORIZED CONNECTIONS AND MODIFICATIONS.** (1) No firm, person, group, company, corporation or governmental body or agency, without the expressed consent of the grantee, shall make or possess or assist in making or possessing any connection, extension or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the system.

(2) No firm, person, group, company, corporation or governmental body or agency shall willfully interfere, tamper, remove, obstruct or damage or assist thereof any part or segment of the system for any purpose whatsoever.

(3) Any firm, person, group, company, corporation or governmental body or agency found guilty of violating this section may be subject to a forfeiture of not less than $50 and the costs of the action or more than $500 and the costs of the action for each and every subsequent offense. Each continuing day of the violation shall be considered a separate offense.

22.28 **FORECLOSURE; CONDEMNATION; RECEIVERSHIP.** Upon the occurrence of any event that may lead to the foreclosure, condemnation or receivership of any part of the City cable system, the grantee shall immediately provide written notification to the City. Such notification shall be notice of cause for revocation of the franchise and the City may revoke the franchise under procedures set in this chapter.

22.29 **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 chapter, a franchise or a franchise agreement.

22.30 **GENERAL RIGHTS AND REMEDIES.** All rights and remedies given to the City under this chapter, 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, now 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 judgment and discretion and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy 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 chapter, a franchise or a franchise agreement.

22.31 **WAIVER OR EXEMPTION.** The City reserves the right to waive provisions of this chapter or exempt a grantee from meeting provisions of this chapter if the City determines such waiver or exemption is in the public interest.

22.32 **SEVERABILITY.** Should any word, phrase, clause, sentence, paragraph or portion of this chapter or a franchise thereunder be declared to be invalid by a court of competent jurisdiction, such adjudication shall not affect the validity of this chapter 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 declares that it would nonetheless have passed this chapter or granted the franchise had it known that any such word, phrase, clause, sentence, paragraph or portion of this chapter or franchise were invalid.

22.35 **PENALTY.** Except as otherwise provided herein, any person found in violation of any provision of this chapter or any order, rule or regulation made hereunder shall be subject to a penalty as provided in ∋25.04 of this Code of Ordinances.