

CHAPTER 28

CABLE COMMUNICATIONS

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28.01 Short title. This Ordinance shall be known as the "City of Wisconsin Dells Cable Communications Ordinance".

28.02 Purposes. The purposes of this ordinance 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 and with regulation;

(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; and

(6) Provide remedies and prescribe penalties for violations of this Ordinance and any Franchise Agreements executed pursuant to this Ordinance.

28.03 Conflicting Provisions. This Ordinance is adopted pursuant to the authority of the City under the Constitutions and Statutes 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. 521 ff.) as amended and 66.082 of the Wisconsin Statutes. 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.

28.04 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 Ordinance, the following terms, phrases and words and their derivations have the meanings given herein, unless it is clearly stated that another meaning is intended. Words not defined herein shall be given the meaning set forth in the Cable communications Policy Act of 1984, 47 U.S.C. section 521 et sec., as amended, and, if not defined herein, shall be given their common and ordinary meaning.

(a) CITY. The City of Wisconsin Dells, Counties of Columbia, Adams and Sauk, 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 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.

(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 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 40 percent or more of the Wisconsin Dells 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 Wisconsin Dells 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 City Council of the City or any future body constituting the legislative body of the City.

(e) FRANCHISE. An authorization issued by the City 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.

(g) GROSS REVENUES. Any revenue derived directly or indirectly by a Grantee, from or in connection with the operation of a Wisconsin Dells cable system including, but not limited to, basic subscriber service fees, pay channel service fees, installation and reconnection fees, any extra set charges, home shopping channels, pay-per-view, 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 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 as 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 cable system services of a Grantee herein.

28.05 Franchise Territory.

(1) A Franchise granted under this Ordinance is for the present territorial limits of the City of Wisconsin Dells, 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 within nine months. Grantee shall not discriminate in provision of or charges for service on the basis of geographical location, race, religion, national origin, age or gender of the subscriber.

(2) The Grantee shall at its expense extend its Cable System as to provide full network service to all residents of:

(a) newly annexed areas of the City not then served by a cable system; or

(b) new housing areas developed within the city limits; or

(c) any resident dwelling within the city limits and within three hundred (300) feet of the existing network.

(3) The grantee shall file with the City Clerk two (2) copies of its extension policy for potential subscribers dwelling beyond three hundred (300) feet from the nearest point of the existing network but within city limits. Such policy must be approved by the City and the Grantee shall not make, or refuse to make, any extension except as permitted by this approved policy.

28.06 Grant of Franchise.

(1) This Ordinance allows the City of Wisconsin Dells 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 Ordinance. No portion of a Franchise or any right granted thereunder may be separated or transferred, except as provided in Sec. 28.09.

(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.

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

(5) On a periodic basis, not to exceed yearly, the City may schedule a public meeting or meetings with the Grantee to review the Franchise and technical 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.

(6) In the event the City enters into a Franchise, permit, license, authorization or other agreement of any kind with any other person or entity other than the Grantee to enter into the City's streets or public ways for the purpose of constructing or operating a cable system or providing cable service to any part of the service area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair advantage over another and to provide all parties equal protection under the law. This paragraph shall not apply to City ownership or operation of a Cable System.

28.07 Description of a System.

(1) The minimum capacity for a cable system in Wisconsin Dells shall be 450 MHz with at least 50 downstream channels, to be available upon completion of the system upgrade or by April 4, 1995, whichever is sooner.

(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. Grantee shall provide this information to the City in a timely manner.

28.08 Franchise Acceptance.

(1) To accept a Franchise granted under this Ordinance, 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 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) By accepting the Franchise, Grantee: (a) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (b) agrees it will not oppose intervention by the City in any proceeding affecting the Wisconsin Dells system; (c) accepts and agrees to each and every provision contained herein; and (d) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and agrees it will not raise any claim or defense to the contrary.

28.09 Transfer of Franchise.

(1) Grantee shall give the City at least ninety (90) days advanced written notice of the Grantee's intention to transfer ownership of control of a cable television system. During the term of a franchise agreement, a Grantee may not transfer ownership or control of a cable television system without the approval of the City. The City may not withhold approval of an ownership transfer or a transfer of control without good cause. If a hearing is necessary to determine if a transfer may have an adverse effect, the City may schedule a hearing to take place within forty-five (45) days after the date on which the City receives notice and all supporting documentation. If the City withholds approval of an ownership transfer or a transfer of control, the City shall state its objections to the transfer within sixty (60) days after the date on which the City receives notice and all supporting documentation. Under this paragraph, a transfer of control is deemed to occur if forty (40) percent or more of the ownership interest in a cable television system is transferred.

(2) If ten (10) percent or more of the ownership interest in a cable television system is transferred, the Grantee shall inform the city that authorized its franchise of the transfer in writing within thirty (30) days after the date of the transfer.

(3) A Grantee wishing to transfer control or a controlling interest in a Wisconsin Dells cable franchise or system shall make a written request to the City Council for such approval.

(4) Upon the receipt of any request contemplated in subsection (1) of this section, the City may require the Grantee or any other party involved in the transfer to provide such information as is reasonably necessary to evaluate the transfer.

(5) When the City approves a transfer under this section, the new Grantee shall indicate acceptance of the Franchise as specified in Section 28.08, including the filing of all necessary bonds, funds, proofs of insurance and certifications.

28.10 Franchise Term and Renewal.

(1) A Franchise granted pursuant to this Ordinance 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) To the extent applicable, Section 546 of the Cable Communications Policy Act of 1984, as amended, shall govern the procedures and standards for renewal of any Franchise awarded pursuant to this Ordinance.

(3) When the City approves a Franchise renewal, the Grantee shall accept the renewed Franchise under the procedures set out in Section 28.08.

28.11 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 Ordinance, a Franchise or an applicable Franchise Agreement;

(b) attempts to evade or violate any provision of this Ordinance, 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 Ordinance that provides for revocation as a remedy; or

(f) is subject to foreclosure, condemnation or receivership of any part of the Wisconsin Dells 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 forth in this Ordinance.

(2) The City shall notify Grantee of the alleged violation which may warrant termination, which notice shall:

(a) describe the specific alleged violation;

(b) direct Grantee to correct or to show cause why alleged violation should not be corrected; and

(c) state the time for response which shall be no less than thirty (30) days from the date the grantee is sent notice.

(3) Within the time designated, Grantee must:

(a) cure the violation or (in the event the violation cannot be completely cured within the time period specified) take reasonable steps to begin to cure, and submit a written response to City, identifying the specific steps taken; or

(b) contest the assertion of noncompliance, describing all facts relevant to the claim, supported by affidavits and documents. No further opportunity to cure is required before the City exercises its rights under the Franchise.

(4) If Grantee contests the City's assertion of non-compliance, or fails to completely cure the default, the City shall schedule a hearing to review the default. The City shall be caused to be served upon such Grantee, at least seven days prior to the date of such hearing, a written notice of the City's intent to review, the potential remedies sought, and the time and place of the meeting, notice of which shall be published as a Class One notice under Chapter 985 at least seven (7) days before such meeting in a newspaper of general circulation within the City. The City shall hear any person interested therein, and shall specifically provide Grantee an opportunity to be heard, and shall determine whether or not any failure, refusal or neglect by the Grantee was with just cause.

(5) If the City shall determine such failure, refusal or neglect by the Grantee was without just cause, then the City may take any actions it is permitted to take under this Franchise or applicable law. Such actions may be taken immediately upon completion of the

hearing contemplated by this section or at such time or after such additional proceedings as the City may specify.

(6) Except where precluded by court order, pending litigation or any appeal to any regulatory body or court having jurisdiction over the Grantee shall not excuse the Grantee from the performance of its obligations under this Ordinance or the Franchise.

(7) For purposes of this section, and subject to force majeure, the system shall be deemed abandoned if, during any period this Franchise is in effect, Grantee fails to provide services over the system for ninety-six (96) consecutive hours without prior consent of the City.

(8) Without limiting any rights of the City or Grantee under other provisions of federal, state or local law:

(a) If renewal of the Franchise is denied, the City shall have an option to acquire ownership of the system or require Grantee to transfer ownership to another person. Any such acquisition or transfer shall be at 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.

(b) If the Franchise is revoked for cause, the City shall have an option to acquire ownership of the cable system or require Grantee to transfer ownership to another person. Any such acquisition or transfer shall be at an equitable price, as that term is used in 47 U.S.C. Sec. 547 (b).

(9) In the event that a Franchise has been revoked or has not been renewed, the Grantee shall remove all of its overhead equipment and cables, and shall leave any equipment or cables which are located underground undisturbed.

28.12 City Rights.

(1) The rights of the City and Grantee under this ordinance and Franchise Agreement granted hereunder shall be subject to applicable law, federal, state and local.

(2) The City reserves its rights under its lawful police powers to protect the public health, safety and welfare, and nothing in this Franchise shall be read to limit these rights. The City, among other things, does not waive requirements of various codes and ordinances, and resolutions, including zoning codes, codes regarding building permits and fees, or time or manner of construction. Any fees or charges paid, so long as generally applicable and not unreasonably discriminatory, shall be paid in addition to the franchise fee required under this Franchise.

(3) 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 Ordinance, and the City's use shall not interfere with the Grantee's use.

(4) 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 Ordinance and all other governing Ordinances.

(5) The Grantee shall provide without charge, one (1) outlet of Basic Service to all City office building(s), fire station(s), library(s), police station(s) and public school building(s) that are passed by its Cable System. The outlets of Basic Cable Service shall not be used to distribute or sell Cable Service in or throughout such buildings; nor shall such outlets be located in common or public areas open to the public. Users of such outlets shall hold Grantee harmless from any and all liability or claims arising out of their use of such outlets, including but not limited to, those arising from copyright liability. Notwithstanding anything to the contrary set forth in this section, the Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said buildings or premises exceeds one hundred fifty (150) cable feet, unless it is technically feasible and so long as it will not adversely affect the operation, financial condition or market condition of the Cable System to do so, or unless the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of one hundred fifty (150) cable feet. In the event that additional outlets of Basic Cable Service are provided to such buildings, the building owner shall pay the usual installation fees associated therewith, including, but not limited to, labor and materials. Upon request of Grantee, the building owner may be required to pay the service fees associated with the provision of Basic Cable Service and the additional outlets relating thereto.

28.13 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.

28.14 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) 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 ordinance, the City may choose to exercise its authority at its own discretion.

28.15 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 City 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 City, 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 inches below the surface unless a greater minimum is required by applicable regulation.

(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 subsection (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 ten (10) days advance notice to arrange for such temporary wire changes.

(6) The Grantee, after obtaining permission from the City in each instance may, at its own expense and under City supervision, 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.

(7) Wherever and whenever both the electric and telephone utilities are underground at a particular location, involving new construction, Grantee's facilities must be located underground.

28.16 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 which shall not be unreasonably withheld.

28.17 Indemnity

(1) A Grantee shall maintain in full force and effect, at its own cost and expense, during the term of a franchise, comprehensive general liability insurance with products/completed operations liability, personal injury liability, broad form property damage, and contractual liability endorsements with a reputable insurance company, licensed to do business in the State of Wisconsin and with not less than an "A rating" by the A. M. Best Company in an amount of not less than \$1,000,000.00 combined bodily injury and property damage. Grantee shall provide a certificate of insurance designating the City and its officers, agents and employees as additional insureds. Such insurance shall be non-cancelable except upon 30 days prior written notice to the City.

(2) The Grantee agrees to indemnify, save and hold harmless, and defend the City, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of Grantee's construction, operation or maintenance of its Cable System, including, but not limited to, reasonable attorney's fees and costs. The City shall give the Grantee written notice of its obligation to indemnify the City under this section. If the City determines that it is necessary to employ separate counsel, the costs for such separate counsel shall be the responsibility of the City.

(3) The City reserves the unilateral right to revise the levels of insurance required under this section to reflect conditions on or about the fifth and tenth anniversaries of the effective date of a franchise granted under this Ordinance. Such increases in the level of insurance shall be reasonable and shall be accompanied by supporting documentation which provides a basis for the requested increases.

28.18 Bond, Security Fund, and Restoration 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 \$50,000.00. 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.

(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 \$5,000.00 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 ten days after notice to it that any amount has been withdrawn by the City from the security fund pursuant to this ordinance, the Grantee shall deposit money sufficient to restore such security fund to the required amount.

(3) 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 \$2,000.00 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 thirty (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.

28.19 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 \$500.00 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 may assess the amounts specified in this subsection for any of the following performance failures by the Grantee:

(a) Failure to furnish, maintain, or offer all cable services to any potential subscriber within the City upon order of the Grantor: Fifty dollars (\$50.00) per day, per violation, for each day that such failure occurs or continues;

(b) Failure to obtain or file evidence of required insurance, construction bond, performance bond, or other required financial security: Two hundred dollars (\$200.00) per day, per violation, for each day such failure occurs or continues;

(c) Failure to provide access to data, documents, records, or reports to the Grantor as required: One hundred dollars (\$100.00) per day, per violation, for each day such failure occurs or continues;

(d) Failure to comply with applicable construction, operation, or maintenance standards: Three hundred dollars (\$300.00) per day, per violation, for each day such failure occurs or continues.

(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.

28.20 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 and administering 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 day's written

notice by the City informing the Grantee of the requirement of such high amount. If the federal law subsequently permits a higher percentage of gross revenues than five (5) percent for the franchise fee, the City in its sole discretion may increase the franchise fee consistent with federal law, provided, however, that grantee shall have to right to pass said increase to its subscribers to be shown as a line item on the subscriber's bill.

(2) The Franchise fee shall be paid on a semiannual basis according to the following schedule: revenues for January through June shall be reflected in an August 15th payment; revenues for July through December shall be reflected in a February 15th payment. Any late franchise fee payment shall be subject to interest charges at the rate of one percent per month for the overdue balance.

(3) Before April 1 of 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. 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 Grantees 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) In the event that any payment is not made as required, interest on the amount due, as determined by the annual gross subscriber revenues as computed by a Certified Public Accountant, shall accrue from the date of the required submittal at a annual rate of 18 percent. The percentages designated in this section may be amended not more than once each year by the City Council, consistent with increased costs for municipal facilities and supervision and applicable rules of other regulatory agencies.

(5) 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.

28.21 Rates Charged by the Grantee

(1) Rates charged by a Grantee for service under a Franchise granted under this Ordinance shall be fair and reasonable. At the time any service is sold to any customer, the Grantee shall tender to the subscriber 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 60 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 30 days before the same become effective.

(3) The City shall, as may be authorized pursuant to federal and state law, including but not limited to, the Cable Act as amended and FCC Rules and Regulations, have the option to regulate the rates and charges associated with the provision of any cable service, according to the following provisions:

(a) Between January 1 and February 28 of each year, the City may determine whether it will assume rate regulation authority. If the City takes no action to assume rate regulation authority, then rates may be changed by the grantee by filing with the City a schedule of new rates and by notifying its subscribers prior to the rate change;

(b) If the City assumes rate regulation, then, for the remainder of that calendar year, rates may be changed subject to the following provisions:

(1) Upon a written request by the Grantee to increase the rate, the City shall have sixty (60) days within which to render a decision approving or disapproving the rate increase. If such decision is not rendered by a majority vote of the governing body of the City within sixty (60) days of the original request, such request will be deemed approved.

(2) It will not be necessary for the Grantee to seek approval of the City to increase basic service rates to the extent that the rate for basic cable service is not increased more than one time in any 12-month period by an amount not to exceed the average annualized change in the Consumer Price Index (CPI) North Central States/Size Class D - Non-Metro Urban Areas - ALL URBAN CONSUMERS - ALL ITEMS - STANDARD REFERENCE BASE PERIOD 1982 - 1984 = 100, published by the U. S. Department of Labor, Bureau of Labor Statistics. For the purposes of measuring changes in said index, the base period shall be the index in effect on January 1, 1993.

(3) Notice of any rate increase made pursuant to paragraph (b) of this subsection shall be filed with the City Clerk thirty (30) or more days prior to the implementation of the rate increase together with all supporting data to justify such an increase.

(4) By herein accepting authority to regulate rates, the City is not waiving any other rights it may have now or in the future, but, rather, specifically reserves such rights as may

be provided by applicable federal or state law. Grantee also reserves such rights as it may have now or in the future under applicable federal or state law.

(5) 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.

28.22 Open Books and Records

(1) A Grantee shall manage all of its operations in accordance with the policy of 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 at Grantee's Wisconsin Dells office all books, records, maps, plans, financial records, revenue statements, service complaint logs, performance test results, record of request for service for at least the previous two years and other like materials of the Grantee reasonably necessary to the enforcement of the Franchise.

(2) A Grantee shall be obligated to provide such financial information to the City as reasonably necessary for the City to exercise rate regulatory authority pursuant to the Cable Act as amended and FCC rules and regulations.

(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.

28.23 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 two-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) 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 two minutes in all cases. Less than three percent of callers to the Grantee shall receive a busy signal.

(5) 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 four-hour block in either the morning or the afternoon.

(6) 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 seven days, the Grantee upon request by subscriber shall provide a credit of one-thirtieth of one month's fees for affected services for each 24-hour period for all affected subscribers.

(b) For interruptions of seven days or more in one month the Grantee shall, upon request by subscriber, provide a full month's credit for affected services for all affected subscribers.

(7) Once a cable system is in place, all normal service installations must be made within seven 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.

28.24 Public, Educational and Governmental Channels

(1) The Grantee shall provide, at the discretion of the City, at least four full-time public, educational and governmental access channels and associated production equipment.

(2) The City shall have sole authority and responsibility for the administration of the four public, educational and governmental access channels, unless it delegates such authority and responsibility. The City shall prescribe: (1) rules and procedures under which the cable operator is permitted to use such channel capacity for the provision of other services if such channel capacity is not being used for the purposes designated, and (2) rules and procedures under which such permitted use shall cease. Nothing herein shall be construed to require the Grantee to indemnify the City, its officers, boards committees, commissions, employees or others against claims, expenses or liability arising from any program carried on any channel designated for public, educational or governmental use, or any other channel obtained under mandatory access provisions or under similar arrangements required by federal, state or local law.

(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 closed-loop system or equivalent service capable of transmission to all educational and public buildings on a channel not normally received by cable subscribers. In the event other similar municipal or educational facilities become operational during the life of a cable franchise, the Grantee shall extend the closed-loop system to include that facility as well.

28.25 Leased Access Commercial Channels. The Grantee shall have channels for leased access available at a reasonable price in accordance with the Cable Communications Policy Act of 1984 (47 U.S.C. 532) as amended and with FCC rules and regulations. The Grantee shall provide the leased access commercial channels with all technological capabilities reasonably necessary for the operation of the channel.

28.26 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. The City shall hold the Grantee, its employees, officers and assigns harmless from any claims arising out of the emergency use of its facilities by the City, including, but not limited to, reasonable attorney's fees and costs.

28.27 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.

28.28 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, now or hereafter available to the City, at law or in equity, and such 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 except as provided by applicable federal or state law. 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.

28.29 Severability. Should any word, phrase, clause, sentence, paragraph or portion of this Ordinance and or a Franchise thereunder be declared to be invalid by the 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 declares 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 were invalid.

CHAPTER 28 REVISIONS

Chapter 28 recreated by A-327 05-27-93