

CHAPTER 23

CABLE COMMUNICATIONS ORDINANCE

23.01 **DEFINITIONS.** In this chapter, unless the context clearly requires a different meaning, the following terms, phrases, words, and their derivations shall have the following meanings:

(1) **"APPLICABLE LAWS"** means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority.

(2) **"APPLICANT"** means a Person, as defined in this section, who submits a Proposal to provide Cable Service to the City.

(3) **"BASIC SERVICE"** means any service tier, which includes the retransmission of local television broadcast signals.

(4) **"CABLE ACT"** means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984) (codified at 47 U.S.C. §§521-611 [1982 & Supp. V 1987]) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385 and the Cable Communications Act of 1996, Pub. L. No. 104-458 and as the same may, from time to time, be amended.

(5) **"CABLE CHANNEL"** means a frequency band capable of carrying at least one (1) standard color video signal; but the use of a channel is not limited to carrying a video signal.

(6) **"CABLE OPERATOR"** means any Person or group of Persons (A) who provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable Systems, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System.

(7) **"CABLE LIAISON"** means the Person designated by the City for purposes prescribed under this chapter.

(8) **"CABLE SERVICE"** means (A) the one-way transmission to Subscribers of (i) video programming, or (ii) other programming service, and (B) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(9) **"CABLE SYSTEM" OR "SYSTEM"** means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the City of Cornell. The term "Cable System" shall not include (A) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (B) a facility that serves Subscribers without using any public Rights-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of 47 U.S.C.A. subchapter V, except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video System certified by the FCC; or (E) any facilities of any electric utility used solely for operating its electric utility system.

(10) **"COMMON COUNCIL"** means the governing body of the City of Cornell, Wisconsin.

(11) **"CITY ADMINISTRATOR"** means the duly appointed City Administrator, or designee of the Common Council if the City does not have an Administrator.

(12) **"CITY PROPERTY"** means and includes all real property owned by the City, other than Rights-of-Way, and all property held in a proprietary capacity by the City, which is not subject to licensing as provided in this chapter.

(13) **"CONVERTER"** means an electronic device and any associated channel selector, which converts signals to a format, which permits a Subscriber to receive the signals transmitted via the Cable System.

(14) **"FCC"** means the Federal Communications Commission or any legally designated successor.

(15) **"FRANCHISEE"** means a Person who, in accordance with the provisions of this chapter, executes a Franchise Agreement with the City for the nonexclusive privilege to erect, construct, operate, maintain, or dismantle a Cable System in the City.

(16) **"GROSS REVENUES"** means all revenue derived from the operation of the Cable System to provide Cable Services by (A) the Franchisee; (B) any Cable Operator of the Cable System; or (C) only to the extent necessary to prevent evasion, their affiliates, subsidiaries, parent and any Person in which the Franchisee has a financial interest, that are not Cable Operators but that are performing the normal functions and responsibilities of a Cable Operator. This definition is intended to be read to reach as broadly as possible to encompass all revenues, subject to only to the limitations imposed by federal law. "Gross Revenues" shall include, by way of example but not limitation, the following:

- (A) Basic Service monthly fees;
- (B) Optional service monthly fees;
- (C) Installation and reconnection fees;
- (D) Leased channel fees;

- (E) Fees charged for late payment of bills;
- (F) Converter rentals;
- (G) Production equipment and Personnel fees;
- (H) Advertising revenues;
- (I) The sale, exchange or cablecast of any programming developed on or for community service channels or institutional Users;
- (J) All recoveries of bad debts previously written off and revenues from the sale or assignment of bad debts; and
- (K) Revenue received from cable modem service.

This sum shall be the basis for computing the fee imposed pursuant to Section 23.27. Gross Revenues shall not include any taxes on services furnished by Franchisee which are imposed upon any Subscriber or User by the state, the City or other governmental unit and collected by Franchisee on behalf of said governmental unit (a franchise fee is not such a tax).

- (17) **"MPU RATES"** means those Subscriber and User rates, fees, and charges for Cable Services and products that are applied to or imposed upon multiple-family dwelling units.
- (18) **"MINORITY"** shall mean citizens or lawful permanent residents of the United States, defined for the purposes of this article to include Asian, Black, Hispanic and Native American men and women. Bona fide Minority group memberships shall be established on the basis of the individual's claim that he or she is a Minority and is so regarded by that particular Minority community.
- (19) **"NORMAL BUSINESS HOURS"** shall be a minimum of fifty (50) hours Monday through Friday, and four (4) hours on Saturday.
- (20) **"NORMAL OPERATING CONDITIONS"** include those service conditions, which are within the control of the Franchisee. These include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System. Conditions which are not within the control of the Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe weather out of the ordinary for the area.
- (21) **"PERSON"** includes any individual, partnership, association, corporation, legal entity, or organization of any kind. Whenever used in any clause prescribing a penalty, the term "Person" as applied to partnerships or associations includes partners or members thereof, and if applied to corporations, the officers thereof. "Person" shall not include a municipal corporation unless otherwise indicated.

(22) **"PROPOSAL"** means an Applicant's formal written response to the City's request for Proposals or any other application to provide Cable Services submitted to the City pursuant to this Chapter.

(23) **"PUBLIC, EDUCATIONAL OR GOVERNMENT" or "PEG"** use means the use of the Cable System by members of the public, educational institutions and representatives of governments to transmit information to Subscribers generally or to specific recipients via channels designated for such use in a Franchise Agreement over Franchisee-provided channels.

(24) **"RIGHTS-OF-WAY"**. The term "Rights-of-Way" refers to the City Rights-of-Way, alleys, roads, easements, and other City-owned property primarily dedicated to, designed for or actually and customarily used for vehicular or pedestrian travel or any easement the Franchisee is authorized to use by federal law. The term shall not include City-owned real estate utilized primarily for any purpose other than vehicular or pedestrian travel. This exclusion includes without limitation, parking, and ingress/egress areas appurtenant to such other use.

(25) **"SERVICE INTERRUPTION"** means the loss of picture or sound on one or more channels. The definition of Service Interruption affects the timing of when the Franchisee must respond to a service problem.

(26) **"SUBSCRIBER" or "CUSTOMER"** means a municipal corporation or Person who lawfully receives any signal or service provided or distributed by a Cable System Franchisee.

(27) **"TAP"** means the device to which the Subscriber Drop connects to the System.

(28) **"TWO-WAY CAPABILITY"** means the ability to receive and transmit signals from a Subscriber terminal to other points in the System.

(29) **"USER"** means a municipal corporation or Person utilizing PEG channels, including all related facilities for purposes of production and/or transmission of electronic or other signals as opposed to utilization solely as a Subscriber.

(30) **"VALID AUTHORIZATION"** shall mean an authorization valid under federal or state law.

(31) **"VALUATION"** as referred to in this chapter shall be determined by audit of System assets pursuant to generally accepted auditing principles. Procedures for Valuation may be specified in a Franchise Agreement.

23.02 FINDINGS AND PURPOSE.

(1) The Common Council finds that the City's Rights-of-Way, public ways and public places constitute valuable public property.

(A) Having been acquired and maintained by the City over many years at taxpayer expense;

(B) Being capable of providing Rights-of-Way uniquely valuable to private companies for providing Cable Services;

(C) Constituting public investments for which the taxpayers are entitled to a fair monetary return on the City's past and future investment in the City's infrastructure; and

(D) Comprising significant assets, which should be managed fairly and appropriately to enhance the public safety and economy.

(2) For the reasons expressed in subsection (1), this chapter is intended to:

(A) Regulate the erection, construction, reconstruction, installation, operation, maintenance, dismantling, testing, repair and use of the Cable System in, upon, along, across, above, over or under or in any manner connected with the Rights-of-Way, public ways or public places within the jurisdiction of the City, as now or in the future may exist;

(B) Provide for the payment of certain fees and other valuable considerations to the City to regulate the construction and operation, use and development of the Cable System within the City;

(C) Provide conditions under which the Cable System will serve present and future needs of government, public institutions, commercial enterprises, lawful public and private organizations, and the citizens and general public of the City;

(D) Provide remedies and prescribe penalties for violations of this chapter;

(E) Permit and manage reasonable access to the public ways of the City for cable purposes on a competitively neutral basis;

(F) Conserve the limited physical capacity of the Rights-of-Way held in the public trust by the City;

(G) Assure that the City's current and ongoing costs of granting and regulating private access to and use of the Rights-of-Way are fully paid by the Persons seeking such access and causing such costs;

(H) Secure fair and reasonable compensation to the City and the residents of the City for permitting private use of the Rights-of-Way;

(I) Assure that all cable companies providing facilities or services within the

City comply with the ordinances, rules, and regulations of the City;

(J) Assure that the City can continue to fairly and responsibly protect the public health, safety, and welfare;

(K) Enable the City to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition, and technological development.

23.03 FRANCHISE AGREEMENT.

(1) **ISSUANCE OF FRANCHISES SUBJECT TO AGREEMENT.** Within thirty (30) days after written notification of the award of a franchise by the City, a selected Applicant shall execute a Franchise Agreement which shall set forth the terms and provisions of the franchise. If such Franchise Agreement is not executed within such thirty (30) day period, the franchise award may be declared void by the City.

(2) **RELATIONSHIP OF FRANCHISE AND FRANCHISE AGREEMENT TO LAWS.** Each franchise issued by the City is subject to its Franchise Agreement and Applicable Law, including this chapter. Each Franchisee shall exercise all rights granted to it in accordance with its Franchise Agreement, this chapter, and all Applicable Law.

(3) **NATURE OF FRANCHISE AGREEMENTS.** Each Franchise Agreement is a contract, subject to the City's exercise of its police and other powers. A Franchise Agreement shall not confer any rights upon the Franchisee or limitations upon the City other than as expressly provided therein. Subject to the exercise of the City's police and other powers, in the case of any conflict between the express terms of a Franchise Agreement and the express terms of this chapter, the Franchise Agreement shall govern. A Franchisee, by entering into a Franchise Agreement, shall not waive its rights to challenge the lawfulness of any particular enactment after the date the franchise is issued, including the right to challenge a particular enactment as an unconstitutional impairment of contractual rights.

23.04 POLICY OF INNOVATION. Recognizing the fluid and expanding state of the development of communications technology and uses, it is the policy of the City to strongly encourage experimentation and innovation in the development of Cable System technology uses, services, programming and techniques that will be of general benefit to the community; provided that all such experiments and innovations shall be subject to the rules of the FCC and any other federal, state and City laws and regulations.

23.05 TIME IS OF THE ESSENCE. Whenever this chapter or the Franchise Agreement sets forth any time for any act to be performed by the Franchisee, such time shall be deemed of the essence. The Franchisee's failure to perform within the time allotted shall, in all cases, be sufficient grounds for the City to invoke the remedies available under the terms and conditions of this chapter and the Franchise Agreement.

23.06 FRANCHISE REQUIRED.

(1) **FRANCHISE REQUIRED.** No Person shall construct, install, maintain or operate a Cable System within, along or under any Rights-of-Way in the City, or any other public property in the City, unless a franchise has first been granted by the Common Council pursuant to the provisions of this chapter, and unless the Franchise Agreement is in full force and effect.

(2) **FRANCHISE NONEXCLUSIVE.** Any franchise granted pursuant to this chapter by the City shall not be exclusive, and the City specifically reserves the right to grant other franchises to any Persons at any time if the City determines that it is in the public interest to do so.

(3) **FRANCHISE BINDING.** All provisions of this chapter and any Franchise Agreement shall be binding upon the Franchisee, its successors, lessees, or assignees.

23.07 GRANT OF AUTHORITY.

(1) **LENGTH OF FRANCHISE.** Any Franchise Agreement granted by the City pursuant to this chapter shall commence upon the date specified in the Franchise Agreement by the Franchisee and the City and shall be for a period specified by the Franchise Agreement. All Franchise Agreements shall be subject to periodic review by the City to evaluate whether the Cable System's technology is meeting the community's needs and interests. In no event shall any Franchise Agreement exceed a term of fifteen (15) years, subject to the conditions and restrictions as provided in this chapter. A Franchise Agreement may be renewed pursuant to the provisions of this chapter and federal law. No privilege of exemption shall be inferred from the granting of any Franchise Agreement unless it is specifically prescribed.

(2) **NO RIGHT OF PROPERTY.** The granting of any franchise pursuant to this chapter shall be a privilege and shall not impart to the Franchisee any right of property in any City Rights-of-Way or other City property.

23.08 LOCAL REGULATORY FRAMEWORK. CONTINUING REGULATORY

JURISDICTION. The Common Council shall have continuing regulatory jurisdiction and supervision over the operation of any franchise granted pursuant to this chapter. The daily administrative, supervisory and enforcement responsibilities of the provisions of this chapter and the Franchise Agreement shall be delegated and entrusted to the City Administrator, or such other person appointed by the Common Council to perform the function of City Administrator under this Ordinance.

(1) **CITY ADMINISTRATOR RESPONSIBILITIES.** The City Administrator shall have the following responsibilities and authority:

(A) Interpret and administer the provisions of this chapter and the Franchise Agreement;

(B) Represent the City in all matters pertaining to the implementation of the provisions of this chapter and the Franchise Agreement;

(C) Resolve disputes or disagreements between Subscribers, Users, potential Subscribers and Users, and the Franchisee as to matters involving an interpretation of this chapter, the Franchise Agreement, or other matter subject to the City's jurisdiction, but only in the event that such parties are unable first to resolve their dispute; provided that nothing in this section is meant to waive any rights a Franchisee may have to appeal the City's resolution of a dispute;

(D) Review and audit reports and other documents submitted to the City as required by this chapter or other law, so as to ensure that the necessary reports are completed and fulfilled pursuant to the terms of this chapter;

(E) Assure that all records, rules and charges pertinent to the System are made available for inspection at reasonable hours upon reasonable notice consistent with the Franchise Agreement and Applicable Law;

(F) Confer with Franchisees, assist in the coordination among Franchisees, and enforce requirements under Applicable Law and Franchise Agreements for interconnections among Cable Systems and other Systems;

(G) Consistent with this chapter, establish and administer sanctions as authorized by the Common Council to ensure compliance with this chapter;

(H) Advise the Common Council on matters, which may constitute grounds for termination or revocation of the Franchise Agreement in accordance with this chapter and a franchise;

(I) Advise the Common Council on proposed transfers of the System;

(J) Consistent with this chapter and to the extent permissible under Applicable Laws, promulgate regulations regarding the construction, reconstruction, operation, maintenance, dismantling, testing, or use of the System as necessary;

(K) Ensure that the Franchisee makes any public access channel available to all Subscribers of the City on a nondiscriminatory basis; and

(L) Ensure that the operation of any public access channel is free of program censorship and control to the extent permitted by law;

(M) Perform any other duties assigned under the provisions of this chapter or other legislation which may hereafter be enacted by the Common Council or such other related duties as the Common Council may direct.

23.09

GEOGRAPHIC COVERAGE OF THE SYSTEM.

(1) **ANNEXATION.** The rights and privileges awarded pursuant to this Franchise shall relate to and cover the entire present territorial limits of City and any area annexed thereto during the term of the Franchise. In the event City annexes additional territory during the term of this Franchise, Franchisee shall provide cable television service within such areas with due diligence after notification from City to do so consistent with the line extension criteria contained in this Section 23.09(2); provided that if another Cable System is offering Cable Service in any such annexed area, Franchisee shall not be required to provide cable television service within any such area.

(2) **LINE EXTENSION.** A Franchisee shall construct and operate its Cable System so as to provide service to all parts of its franchise area as provided in the Franchise Agreement and having a density of at least twenty (20) residential dwelling units per street half-mile of System. In addition, all areas, which reach such density at any time during the franchise term, shall be provided service upon reaching the minimum density. Subject to the above-described minimum density, any residential dwelling unit located within one hundred and fifty (150) feet of the nearest Tap on a Franchisee's System shall be connected to the Cable System at no charge other than the standard installation charge. The Franchisee shall, upon request by any potential Subscriber residing in the City beyond the one hundred and fifty-(150) foot limit, extend service to such Subscriber, provided that the Subscriber shall pay the net additional extension costs. All measurements shall be made in a manner most favorable to the Person requesting service.

(A) Where the density is less than that specified in subsection (2), the Franchisee shall inform Persons requesting service of the possibility of paying for installation of a line extension and shall offer to provide them with a free written estimate of the cost, which shall be provided within fifteen (15) working days of such a request. The charge for installation or extension for each Person requesting service shall not exceed a pro rata share of the actual cost of extending the service. If, for example, the density in an area were three (3) residential units per half mile, Franchisee would pay one-fifth ($1/5^{\text{th}}$) of the costs of the extension and Persons agreeing to take service would pay the remaining four-fifths ($4/5^{\text{ths}}$).

(B) Any residential dwelling unit located within one hundred fifty (150) feet of the closer of the nearest Tap on a Franchisee's System shall be connected to the Cable System at no charge other than the standard installation charge (plus extension charges, if any, that would apply under subsection (2)).

(C) Under Normal Operating Conditions, if Franchisee cannot perform installations within the times specified in applicable Customer standards, the Subscriber may request and is entitled to receive a credit equal to the charge for a standard installation or the applicable promotional rate in effect. For any installation that is not a free installation or a standard installation, the Franchisee shall provide the Subscriber with a written estimate of all charges within seven (7) days of a request by the Subscriber. Failure to comply shall subject Franchisee to appropriate enforcement actions. This section does not apply to the introduction of new products and services when Franchisee is utilizing a phased introduction.

(D) In all cases where new developments and subdivisions are to be constructed to be served in whole or in part by underground power and telephone utilities, the owner or developer of such areas shall provide reasonable notice to the trenches, backfill and specifications of all necessary substructures in order that the Franchisee may install all necessary electronic cable facilities

(E) Subject to the other provisions of this section, Cable Service shall be made available upon request to all individual residential dwellings, multiple-unit residential dwellings, condominiums, cooperative buildings, townhouses, institutions, organizations, businesses, and all other structures within the designated franchise area.

(F) Nothing in this section shall prohibit a Person from requiring that Cable System facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning, appearance and value of premises or the convenience and safety of Persons and property.

(G) Nothing in this section shall prohibit a Person from requiring the Franchisee to agree to indemnify or compensate the owner for damages or from liability for damages caused by the installation, operation, maintenance or removal of System facilities by the Franchisee.

23.10 CONDITIONS OF RIGHTS-OF-WAY OCCUPANCY.

(1) **WRITTEN APPROVAL.** A Franchisee shall first obtain the written approval of the Street Superintendent prior to commencing construction within the Rights-of-Way and public places of the City. Approval shall be in accordance with relevant state and local laws and regulations, which approval shall not be unreasonably withheld. Except in cases of a bona fide emergency preventing such notice, the Franchisee shall notify the City at least ten (10) days prior to the commencement of any construction in any Rights-of-Way. The Franchisee shall not open or disturb the surface of any Rights-of-Way or public place for any purpose without first having obtained a permit to do so in the manner provided by law. All excavation shall conform to City ordinances and regulations and shall be coordinated with other utility excavation or construction so as to minimize disruption to the public.

(2) USE OF EXISTING POLES OR CONDUITS.

(A) The Franchisee shall utilize existing poles, conduits and other facilities whenever commercially reasonable and shall not construct or install any new, different or additional poles, conduits or other facilities on public property until the written approval of the City is obtained. No location or any pole or wire-holding structure of the Franchisee on public property shall be a vested interest, and such poles or structures shall be removed or modified by the Franchisee at its own expense whenever the City determines that the public health, welfare or safety requires removal or modification.

(B) The facilities of the Franchisee shall be installed underground in those areas of the City where existing telephone and electric services are both underground at the time of construction by the Franchisee. In areas where either telephone or electric utility facilities are installed aurally at the time of System

construction, the Franchisee may install its facilities aerially; however, at such time as the existing aerial facilities are placed underground, the Franchisee shall likewise place its facilities underground at sole cost to the Franchisee.

(3) MINIMUM INTERFERENCE. All transmission and distribution structures, lines and equipment erected by the Franchisee shall be located so as to cause minimum interference with the unencumbered use of Rights-of-Way and other public places and minimum interference with the rights and reasonable convenience of property owners who adjoin any of the Rights-of-Way and public places.

(4) DISTURBANCE OR DAMAGE.

(A) In case of disturbance or damage caused by the Franchisee to any Rights-of-Way or public place, the Franchisee shall, at its own cost and expense and in the manner approved by the City, replace and restore such Rights-of-Way or public place in as good condition as before the work performed by the Franchisee which caused such disturbance or damage.

(B) Road Cuts. The Franchisee shall not use road cuts for the laying of cable or wires without the prior approval of the City. In the absence of such approval, the Franchisee shall utilize auguring.

(5) RELOCATION.

(A) At any time during the period of the franchise, the Franchisee shall, at its own expense, protect, support, relocate, remove or temporarily disconnect any of its property when, in the opinion of the City, (i) the same is required by reason of traffic conditions, public safety, Rights-of-Way vacation, Rights-of-Way construction, alteration to or establishment of any Rights-of-Way or any facility within the Rights-of-Way, sidewalk, or other public place, parks or cemetery projects, or other public project of the City, including but not limited to, installation of sewers, drains, waterlines, power lines, traffic signal lines or transportation facilities; or (ii) a City project or activity makes disconnection, removal, or relocation necessary for the City. Except in the cases of an emergency, the City shall notify the Franchisee at least seventy-two (72) hours before the Franchisee has to take such action.

(B) The Franchisee shall, on request of any Person holding a permit under Cornell ordinances, to move a building, temporarily raise or lower its wires to permit the movement of the building. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and the Franchisee shall have the authority to require such payment in advance. The Franchisee shall be given not less than five-(5) days advance notice to arrange such temporary wire alterations.

(6) EMERGENCY. Whenever, in case of fire or other emergency, it becomes necessary, in the judgment of the City Administrator, police chief, fire chief, or their delegates, to remove or damage any of the Franchisee's facilities, no charge shall be made by the Franchisee against the City for restoration, repair or damages unless such restoration, repair or damages result from negligence by the City or its agents.

(7) TREE TRIMMING. The Franchisee shall have the authority to trim trees on public Rights-of-Way at its own expense as may be necessary to protect its wires and facilities, subject to supervision and direction by the City. Trimming of trees on private property shall require consent of the property owner. Any trimming of trees by the Franchisee in the Rights-of-Way and public ways shall be subject to such regulation as the City Administrator or other authorized official may establish to protect the public health, safety, and convenience. Nothing herein shall be construed to limit Franchisee's authority to trim trees in the case of an emergency.

(8) PROTECTION OF FACILITIES. Nothing contained in this section shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid damaging the Franchisee's facilities while performing any work connected with grading, regrading or changing the line of any rights-of-way or public place or the construction or reconstruction of any sewer or water system.

(9) INSTALLATION RECORDS. Each Franchisee shall keep accurate installation records of the location of all facilities in the Rights-of-Way and public ways and furnish such records to the City upon request. A Franchisee shall cooperate with the City to furnish such information in an electronic mapping format compatible with the then-current City electronic mapping format. Upon completion of new or relocation construction of underground facilities in the Rights-of-Way and public ways, the Franchisee shall provide the City with installation records in an electronic format showing the location of the underground and above ground facilities. This will not require the Franchisee to disclose design characteristics.

(10) LOCATING FACILITIES.

(A) If, during the design process for public improvements the City discovers that facilities of the Franchisee present a potential conflict with the proposed construction of such public improvements, the Franchisee shall either: (a) locate and, if necessary, expose its facilities in conflict or (b) use a location service under contract with the City to locate or expose its facilities. Each Franchisee is obligated to furnish the location information in a timely manner, but in no case longer than thirty (30) days.

(B) The City reserves the prior and superior right to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade, widen, realign, and maintain any Rights-of-Way and public ways, aerial, surface, or subsurface improvement, including but not limited to water mains, traffic control conduits, sanitary or storm sewers, subways, tunnels, bridges, viaducts, or any other public construction within the Rights-of-Way.

(11) CITY'S RIGHTS. When the City uses its prior superior right to the Rights-of-Way and public ways, the Franchisee shall move its property that is located in the Rights-of-Way and public ways, at its own cost, to such a location as the City directs. Notwithstanding the foregoing, in the event the public project is paid for totally or in part by non-public funds, then the Franchisee's costs of moving its property shall be borne by the source of the non-public funds in the same ratio as the non-public funds bear to the total project costs.

(12) FACILITIES IN CONFLICT. If, during the course of a City project, the City determines Franchisee's facilities are in conflict with the project, the following shall apply:

(A) Prior to Notice to Proceed to Contractor: The Franchisee shall, within a reasonable time, but in no event exceeding three (3) months, remove or relocate the conflicting facility. This time period shall begin running upon receipt by the Franchisee of written notice from the City. However, if both the City and the Franchisee agree, the time period may be extended based on the requirements of the project.

(B) Subsequent to City Notice to Proceed to Contractor: The City and the Franchisee shall immediately begin the coordination necessary to remove or relocate the facility. Removal or relocation shall begin no later than seventy-two (72) hours, if practicable, after written notification from the City to the Franchisee of the conflict.

(13) PERMITS.

(A) The Franchisee agrees to obtain a permit as required by the City prior to removing, abandoning, relocating, or reconstructing any portion of its facilities. Notwithstanding the foregoing, the City understands and acknowledges there may be instances when the Franchisee is required to make repairs, in compliance with federal or state laws, that are of an emergency nature. In the event of such an emergency, the Franchisee shall provide such notice as is practicable to the City prior to such repairs and shall obtain the necessary permits in a reasonable time after notification to the City.

(B) Reimbursement paid through the permitting process is separate, and in addition to, any other fees included in the franchise. The Franchisee, at the time of or prior to submitting construction plans, shall provide the City with a description of the type of service to be provided by the Franchisee in sufficient detail for the City to determine compliance with the franchise and Applicable Law.

(C) The City may issue reasonable, competitively neutral policy guidelines to all Franchisees to establish procedures for determining how to control issuance of engineering permits to multiple Franchisees for the use of the same Rights-of-Way for their facilities. The affected Franchisees shall cooperate with the City in establishing such policy and comply with the procedures established by the City Administrator to coordinate the issuance of multiple engineering permits in the same Rights-of-Way segments.

(14) RESTORATION. If, in the installation, use or maintenance of its facilities, the Franchisee damages or disturbs the surface or subsurface of any Rights-of-Way or public ways or public property or the public improvement located thereon, therein, or thereunder, the Franchisee shall promptly, at its own expense, and in a manner acceptable to the City, restore, repair or replace the property thereon, therein or thereafter, in as good a condition as before such damage or disturbance. If such restoration, repair or replacement is not completed within a reasonable time, or such repair or replacement does not meet the City's reasonable standards, the City shall have the right to perform the necessary restoration, repair, or replacement, either through its own forces or through a hired contractor after giving Franchisee thirty (30) days prior written notice and an opportunity to cure and Franchisee fails to cure, and the Franchisee agrees to reimburse the City for its expenses in so doing within thirty (30) days after its receipt of the City's invoice therefor.

(15) RELOCATION DELAYS.

(A) If, after prior written notice to Franchisee, Franchisee's relocation effort so delays construction of a public project causing the City to be liable for delay damages, the Franchisee shall reimburse the City for those damages attributable to the delay created by the Franchisee. In the event the Franchisee should dispute the amount of damages attributable to the Franchisee, the matter shall be referred to the Street Superintendent for a decision. In the event that Franchisee disagrees with the decision of the Street Superintendent, the matter shall be submitted to the City Administrator for determination, whose decision shall be final and binding upon Franchisee as a matter of City review, provided that nothing herein waives any right of appeal to the courts.

(B) In the event the City becomes aware of a potential delay involving the relocation of Franchisee's facilities, the City shall promptly notify the Franchisee of this potential delay.

(16) INTERFERENCE WITH CITY FACILITIES. The installation, use and maintenance of the Franchisee's facilities within the Rights-of-Way and public ways authorized herein shall be in such a manner as not to interfere with the City's placement, construction, use and maintenance of its Rights-of-Way and public ways, Rights-of-Way lighting, water pipes, drains, sewers, traffic signal systems or other City Systems that have been or may be installed, maintained, used or authorized by the City.

(17) INTERFERENCE WITH UTILITY FACILITIES. The Franchisee agrees not to install, maintain or use any of its facilities in such a manner as to damage or interfere with any existing facilities of any municipal or non-municipal utility located within the Rights-of-Way and public ways of the City and agrees to relocate its facilities, if necessary, to accommodate another facility relocation. Nothing in this section is meant to limit any rights a Franchisee may have under Applicable Law to be compensated for the cost of relocating its facilities from the non-municipal utility that is requesting the relocation.

(18) CO-LOCATION. To maximize public and employee safety, to minimize visual clutter of aerial plant, and to minimize the amount of trenching and excavation in and along the City Rights-of-Way and sidewalks for underground plant, Franchisee shall make every commercially reasonable effort to co-locate compatible facilities within the Rights-of-Way subject to the engineering requirements of the owners of utility poles and other facilities.

(19) USE OF FRANCHISEE FACILITIES. The City shall have the right to install and maintain upon the poles of the Franchisee any wire or pole fixtures that do not unreasonably interfere with the Cable Television System operations, including future plans of the Franchisee. The City shall indemnify and hold harmless the Franchisee from any claim that might arise due to or as a result of the City's use.

23.11 USE, RENTAL OR LEASE OF UTILITY POLES AND FACILITIES. Each Franchisee assumes all responsibility for gaining permission from any electric, gas or telephone utility in the City, including City owned utilities for the use, rental or lease of poles, underground conduits and other structures and facilities for the purpose of extending, carrying or laying the Franchisee's wires, cables, electronic conductors and other facilities and appurtenances necessary or desirable in conjunction with the establishment and operation of the Cable System. The City of Cornell currently operates an Electric Utility, which has aerial and underground transmission lines. A Pole Lease or Agreement with such Utility shall be required. Requirements and considerations for such Lease shall be separate from this Ordinance.

23.12 CABLE SYSTEM DESIGN. It is the intent of the City that the Cable System provide the broadest range of services possible. The requirements stated in this section are intended only as minimum specifications for the Cable System and final determination of Cable System design for Franchisees shall be made through the initial licensing or renewal process. The City may increase or otherwise alter the requirements in a request for Proposals for a franchise. Applicants for a franchise are strongly encouraged to offer the City, through the Proposal process, the broadest range of services, facilities, equipment, technical assistance, and other related considerations as are technologically and economically feasible. Neither the specifications of the minimums in subsections (1) through (7) nor the final terms of a Franchise Agreement shall be interpreted to waive any rights or obligations of the Franchisee or the City under 47 U.S.C. §546 or successor statute.

(1) CHANNEL CAPABILITY. The Franchisee shall construct, at a minimum, a System that provides a minimum capability of 560 MHz and that is designed in a way so that it can deliver the channels in a manner reasonably responsive to Customer demand. The System shall be designed so that the number of channels may be increased as supply and demand for additional channel utilization exceeds the number initially activated and so that the capability of the Cable System on a rebuild or update of the system may be increased without substantial reconstruction of the Cable System.

(2) SYSTEM CONFIGURATION. The Franchisee shall design and construct the System in such a manner as to provide maximum utilization flexibility for both Subscribers and Users.

(3) STANDBY POWER. The Franchisee shall maintain in constant readiness equipment capable of providing standby power for the Cable System, consistent with sound engineering practices and compatible with the Franchisee's System design. At a minimum, the Franchisee shall maintain equipment capable of providing standby power for headend, transportation, and trunk amplifiers for a minimum of two (2) hours.

(A) Such equipment shall be constructed so as to revert automatically to a standby mode when alternating current power returns.

(B) Franchisee shall comply with all utility and other safety regulations to prevent the standby power supply from powering a "dead" utility line so as to prevent injury to any Person.

(4) TWO-WAY CAPABILITY. Maximum two-way interactive service capability as reasonably justified in light of the needs and interests of the community and the costs thereof, considering project advances in technology, shall be designed into the System at the time of any rebuild.

(5) REQUIRED SERVICES AND FACILITIES.

(A) The Cable Television System shall have a minimum capacity of 560 megahertz of bandwidth.

(B) The Franchisee shall provide upon request of the City, the following:

(1) At least one (1) specially-designated channel for use by local education authorities;

(2) At least one (1) specially designated channel for local governmental uses;

(3) Provided, however, these uses may be combined on one or more channels until such time as additional channels become necessary in the opinion of the City. Studios and associated production equipment will be located in a mutually agreed upon site to meet the need for educational and local governmental access as noted in (1) and (2). Financial and technical support and replacement and maintenance of equipment of this facility shall be separately incorporated into the Franchise by agreement.

(C) When required by Federal Law, the Franchisee shall incorporate into its Cable Television System the capacity to permit the City, in time of emergency, to override by remote control the audio, video and/or text of all channels simultaneously, which the Franchisee may lawfully override. The Franchisee shall provide emergency broadcast capacity pursuant to FCC rules. The Franchisee shall cooperate with the City in the use and operation of the emergency alert override system.

(6) PUBLIC USE CONNECTIONS. At a minimum, the Franchisee shall offer to provide, without charge, one (1) Drop and one (1) outlet of Basic Cable Service and Cable Programming Service to the ground block of each public, private and parochial school, nonprofit college and university and each fire station, police station, public library branch, City neighborhood community centers, (excluding public spaces in such community centers) and such other facilities used primarily for municipal purposes which are within three hundred (300) feet of the existing System as may be designated by the City. A Franchise Agreement may specify the particular conditions under which the outlets will be provided.

(7) RECEPTION. The Cable System shall be capable of and shall produce a picture, which meets all applicable FCC technical standards. This requires that equipment be installed at the headend to allow the Franchisee to receive or cablecast signals in substantially the form received, without substantial alteration or deterioration (for example, the headend should include equipment that will transmit color video signals received at the headend in color). Equipment shall be installed so that all closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed captioned signal is provided consistent with FCC standards. Equipment shall be installed so

that all local signals received in stereo or with secondary audio tracks (broadcast and PEG) are retransmitted in those same formats.

23.13 PRIVACY.

(1) **VALID AUTHORIZATION OF SUBSCRIBER.** The Franchisee shall strictly observe and protect the rights of privacy and property rights of Subscribers and Users at all times. Individual Subscriber preferences of any kind, viewing habits, political, social or economic philosophies, beliefs, creeds, religions or names, addresses or telephone numbers shall not be revealed to any Person, governmental unit, police department or investigating agency unless upon the authority of a court of law or pursuant to prior voluntary Valid Authorization of the Subscriber, which shall not be required as a condition of receiving service.

(A) Neither the Franchisee nor any other Person shall initiate in any form the discovery of any information on or about a Subscriber's premises without prior Valid Authorization from the Subscriber potentially affected.

(B) A Subscriber may at any time revoke any authorization previously made, by delivering to the Franchisee in writing by mail or otherwise, his/her decision to so revoke. Any such revocation shall be effective upon receipt by the Franchisee.

(2) **RELEASE OF SUBSCRIBER INFORMATION.** The Franchisee may release the number of its Subscribers but only as a total number or as a percentage of the potential Subscribers throughout the City. When indicating the number of Subscribers viewing a particular channel at a particular time, the Franchisee may indicate only the total number of Subscribers viewing during the relevant time and the percentage of all Subscribers which they represent, but never the identity of a particular Subscriber. The Franchisee may maintain such information as is necessary to bill Subscribers for the purchase of any Cable System service.

(3) SUBSCRIBER MONITORING.

(A) No monitoring of any Subscriber terminal shall take place without specific prior Valid Authorization by the User of the terminal in question; provided that the Franchisee may conduct System wide or individually addressed "sweeps" for the purpose of verifying System integrity. In no event shall aural or visual monitoring of any kind take place without a clear indication to the Subscriber that such monitoring is taking place. The Franchisee shall not initiate a Subscriber response mechanism without the City Administrator making a finding that the System can operate effectively and yet give absolute protection against any invasion of privacy.

(B) The Franchisee shall not tabulate any test results, nor permit the use of the System for such tabulation, which would reveal the commercial product preferences or opinions of Subscribers, members of their families or their invitees, Franchisees or employees without prior Valid Authorization of the Subscriber.

(4) **PRIVACY VIOLATIONS.** Each compilation, publication, tabulation, or other dissemination of each piece of information made or permitted to be made in violation of this section shall be considered a separate violation.

23.14 CONSTRUCTION AND TECHNICAL STANDARDS.

(1) COMPLIANCE WITH CONSTRUCTION CODES.

(A) Construction practices of Franchisees shall be in accordance with all applicable provisions of the Occupational Safety and Health Act of 1970 and any amendments thereto as well as all Applicable Laws, rules and regulations of the state and the City, including but not limited to requirements of the City in regard to various electrical wiring necessary to the operation of City functions, including but not limited to traffic-control signalization, right-of-way lighting, fire lines and emergency communications lines.

(B) All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the applicable provisions of the current editions of the National Electrical Safety Code as published by the Institute of Electrical and Electronics Engineers, the National Electrical Code of the National Fire Protection Association, and all state and local codes where applicable.

(C) Antenna-supporting structures such as towers shall be painted, lighted, erected, and maintained in accordance with all applicable laws, rules, and regulations of the federal government, state, and the City.

(2) PERFORMANCE STANDARDS. The System shall be installed, maintained, and operated in accordance with the highest accepted standards of the industry. The Franchisee shall design and construct the System so as to meet the following standards:

(A) The Cable System shall be capable of continuous twenty-four (24) hour daily operation without severe material degradation of signal except during extremely inclement weather, and immediately following extraordinary storms which adversely affect utility services or which damage major System components.

(B) The Cable System should be capable of operating over an outdoor temperature range of -25° F to + 135° F and over variation in supply voltages from 105 to 130 volts AC without catastrophic failure or irreversible performance changes.

(3) TECHNICAL STANDARDS. Except as otherwise provided in federal law, each Cable System shall be designed, installed and operated so as to comply with all applicable technical standards, codes, and regulations as promulgated by the FCC and other federal, state and local authorities. In this regard, 47 C.F.R. §76.60, relating to technical standards (including but not limited to performance monitoring and measurements), shall apply in full and is hereby incorporated herein by this reference, except as preempted by federal law. All other applicable state or City laws, rules or regulations relating to technical standards and operation of the System as may be enacted or promulgated from time to time shall apply and govern the installation and operation of the System to the extent such laws, rules or regulations are not preempted by federal regulation.

23.15 CUSTOMER SERVICE STANDARDS.**(1) OFFICE AND PHONE SERVICE.**

(A) The Franchisee shall have a locally listed telephone number or toll-free access line and be so operated that complaints and requests for repairs or adjustments may be received twenty-four (24) hours per day, each day of the year. Franchisee's Personnel, at a minimum, be able to provide immediate billing information, provide for equipment pick-up and drop-off, and provide written Customer service information.

(B) Trained company representatives shall be available to respond to telephone inquiries from 7:00 a.m. to 8:00 p.m. Monday through Saturday. Between 8:00 p.m. and 7:00 a.m. Monday through Saturday, the access line may be answered by a service or an automated response System, including an answering machine. Inquiries received by Franchisee's answering service or automated response System shall be responded to by a trained company representative on the next business day.

(C) Under Normal Operating Conditions, telephone answer time by a Customer representative, including wait time, shall not exceed thirty (30) seconds from when the connection is made. If the call is required to be transferred, transfer time shall not exceed thirty (30) seconds. Callers shall receive a busy signal less than three percent (3%) of the time. Calls shall be lost or abandoned less than three percent (3%) of the time. The Franchisee shall comply with the standards established in this paragraph no less than ninety percent (90%) of the time, measured on a quarterly basis.

(D) Customer service center and bill payment locations shall be open at least during Normal Business Hours and shall be conveniently located. A Franchisee may use an agent such as a bank or other business to receive bill payment from cable Customers during and outside of Normal Business Hours. The account of a Customer who remits payment at any authorized bill payment location shall be credited by Franchisee no later than the beginning of the second business day after remittance. Bill payment locations shall contain a written notice informing Subscribers when their account will be credited.

(E) Franchisee shall notify the City Administrator as promptly as possible, whenever there is a total interruption of telephone service, which affects Franchisee's Subscriber service phone lines.

(F) Failure to meet the standards contained in this section shall subject Franchisee to appropriate enforcement actions.

(2) NOTIFICATION REQUIREMENTS.

(A) The Franchisee shall provide written information relating to the material described in subparagraphs (1) through (8) of this paragraph at the time of installation of service, at least annually to all Subscribers, and at any time upon request of a Subscriber or potential Subscriber. A current version of the information shall be provided to the City upon request, and automatically whenever the material provided to Subscribers or potential Subscribers changes. The notice provided shall provide information specific to Cornell;

provided that nothing contained in this paragraph shall prevent the Franchisee from complying with this section by sending a national notice and a separate notice that provides detail concerning local procedures, so long as the two are consistent and contain the information required by this paragraph.

(1) Products and services offered;

(2) Prices and options for programming services and conditions of subscription to programming and other services. In order that Subscribers are fully apprised of the charges they may incur, Franchisee shall note that advertised rates are subject to additional taxes and fees;

(3) Installation and service maintenance policies, including, when applicable, information regarding the Subscriber's home wiring rights and information describing ownership of internal wiring during the period service is provided;

(4) Instructions on how to use the Cable Service;

(5) Channel positions of programming carried on the System;

(6) Billing and complaint procedures, including address and telephone number of the City's cable office;

(7) The address and telephone number of the Franchisee's office to which complaints may be reported;

(8) Subscribers' rights to obtain refunds or credits from the Franchisee and the steps that must be taken to obtain the refunds and credits.

(B) At any time a Subscriber's services are changed due to action by Franchisee, Franchisee shall send the following notice:

(1) Products and services offered;

(2) Prices and options for programming services and conditions of subscription to programming and other services. In order that Subscribers are fully apprised of the charges they may incur, Franchisee shall note that advertised rates are subject to additional taxes and fees;

(3) Channel positions of programming carried on the System;

(4) Subscribers' rights to downgrade their Cable Service or to disconnect from the Cable System.

(C) Customers will be notified of any changes in rates, programming services, or channel positions as soon as possible in writing unless otherwise expressly provided by federal law. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Franchisee.

(D) The City shall be notified of any change in rates, programming services, channel position or policy at least thirty (30) days in advance of such change by letter delivered to the City Administrator, which shall include a copy of the Subscriber notice, except where such notification is impossible because the change is beyond the control of Franchisee or any affiliate, in which case the notice must be given as quickly as possible.

(E) Notice to Subscribers must be reasonable.

(F) Every notice of termination of service shall include all of the following information:

(1) the name and address of the Subscriber whose account is delinquent;

(2) current account balance;

(3) the date by which payment is required in order to avoid termination of service; and

(4) the telephone number of a representative of Franchisee who can provide additional information and handle complaints or initiate an investigation concerning the service and charges in question.

(G) The following special notice procedures shall apply:

(1) At any time a Person subscribes to any service, the Person must be specifically informed whether there will be a charge to drop the service;

(2) If there is any charge for terminating a promotional or free product or service, the charge must be disclosed in writing prior to connection of the service or provision of the product; and

(3) At the time Franchisee completes an installation, Franchisee shall provide the Person with information regarding refunds or credits if offered by Franchisee. Franchisee shall annually inform its Subscribers of refunds or credits, if offered by Franchisee, if the Franchisee's personnel miss an installation or service call appointment without the consent of the Subscriber.

(3) **SERVICE CALLS AND RESPONSE TIME.** Under Normal Operating Conditions, each of the following standards shall be met no less than ninety-five percent (95%) of the time, as measured on a quarterly basis:

(A) Installations to locations that are located within one hundred twenty-five (125) feet of the existing distribution System shall be performed within seven (7) business days after an order has been placed. Installations to locations that are located more than one hundred twenty-five (125) feet away from, but within three hundred (300) feet of the existing distribution System shall be performed within fourteen (14) days after an order has been placed.

(B) Where a request for service can be satisfied without a service call, the

request shall be satisfied within three (3) business days from the date of request.

(C) For installations to locations that are more than three hundred (300) feet from the existing distribution System, service shall be provided on a mutually acceptable schedule. Nothing in this section permits a Franchisee to charge for extending service in an area where the Franchisee is required to provide service pursuant to Section 23.09. Installations on new construction entitled to service under a Franchise Agreement or this ordinance shall be completed within ninety (90) days of the date of occupancy, subject to weather conditions and equipment availability.

(D) The "appointment window" for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four- (4) hour time block during Normal Business Hours. The Franchisee may schedule service calls and other installation activities outside of Normal Business Hours for the express convenience of the Customer.

(E) Franchisee may not cancel an appointment with a Person after the close of business on the business day prior to the scheduled appointment without the Person's consent.

(F) If the Franchisee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time, which is convenient for the Customer.

(G) Under Normal Operating Conditions, if Franchisee does not arrive for installations or service calls by appointment within the scheduled appointment window the Person may request within thirty (30) days of the missed appointment and is entitled to receive a Twenty Dollar (\$20.00) credit for missed service call appointments or a free installation for missed installation appointments.

(H) Excluding conditions beyond the control of the Franchisee, the Franchisee shall begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the Service Interruption becomes known to the Franchisee. The Franchisee must begin actions to correct other service problems the next business day after notification of the service problem. Merely acknowledging the existence of the problem does not satisfy this requirement.

(I) Service interruptions shall be corrected within thirty-six (36) hours of the time that the interruption becomes known to the Franchisee unless such correction is precluded by circumstances beyond the reasonable control of Franchisee.

(J) Problems with Cable Service other than Service Interruptions shall be corrected within ninety-six (96) hours of the time that the problems become known to the Franchisee.

(K) Temporary Service Drops.

(1) The Franchisee shall put forth every effort to bury temporary drops

within twenty-five (25) days after placement. Any delays for any other reason than listed will be communicated to the City. The following delays will be found understandable and within the course of doing business: weather, ground conditions, street bores, System redesign requirements and any other unusual obstacle, such as obstructive landscaping that is created by the customer.

(2) The Franchisee shall provide reports to the City, upon request on the number of drops pending.

(L) **Subscriber Credit for Outages.** Upon Service Interruption of a Subscriber's Cable Service, the following shall apply:

(1) For Service Interruptions of more than four (4) hours and up to four (4) days, the Franchisee shall provide, at the Subscriber's request, a credit of one-thirtieth (1/30th) of one month's fees for affected services for each twenty-four (24) hour period service is interrupted for four (4) or more hours for any Subscriber, with the exception of Subscribers disconnected because of nonpayment or excessive signal leakage.

(2) For interruptions of seven (7) days or more in one month, the Franchisee shall provide, at the Subscriber's request, a full month's credit for affected services for all affected Subscribers.

(4) **DISCONNECT CHARGES; TIME FOR DISCONNECTION.** No Franchisee shall impose a disconnect charge upon any Subscriber who terminates Cable Service. For purposes of billing, a request for disconnection shall be effective immediately upon the Subscriber's oral or written request to the Franchisee, and the Subscriber shall not be billed for any service provided after the request, and shall be entitled to a refund of any prepaid amount that applies to the period after the date of the request. In the case of special promotions, a Subscriber shall not be entitled to a refund of prepayment amounts if the Subscriber was fully and clearly informed prior to taking the service that prepaid amounts would not be returned. Nothing prevents a Franchisee from establishing reasonable charges to disconnect the service of Persons who fail to pay their bills or from imposing reasonable downgrade charges consistent with Applicable Laws.

(5) **REFUNDS, CREDITS AND REBATES.** Franchisee shall at all times comply with each and every requirement of ATCP 123.02, 123.04 and 123.10 as may be amended, Wisconsin Administrative Code.

(6) **BILLS AND BILLING DISPUTES.**

(A) Bills of the Franchisee shall be clear, concise, and understandable. Bills shall be fully itemized, with itemizations showing, but not limited to, basic and premium service charges and equipment charges. Bills shall also clearly delineate all activity during the billing period, including optional charges, rebates and credits. In case of a billing dispute, the Franchisee shall respond to a written complaint made by a Subscriber within thirty (30) days. If Franchisee chooses to itemize on its bills as a separate line item franchise fees and/or other governmentally imposed fees, such fees shall be shown in accordance with Applicable Law concerning Franchisee's ability to itemize such fees.

(B) Refund checks or rebates shall be issued promptly, but no later than either (i) the Customer's next billing cycle following resolution of the matter resulting in the refund, or thirty (30) days, whichever is earlier, or (ii) a return of equipment supplied by the Cable Operator, if any, if service is terminated. Credits for service shall be issued no later than the Customer's next billing cycle following the determination that a credit is warranted.

(C) A specific due date at least ten (10) business days from the date of mailing shall be indicated on every Subscriber bill. Such requirement applies only to active accounts in good standing, and shall not apply to accounts pending disconnection for prior delinquencies. A late charge or other fee for late payment may not be imposed earlier than the later of (i) twenty-three (23) days after the bill is mailed; or (ii) the twentieth (20th) day of the month in which the service for which payment is sought is rendered. For purposes of determining whether a fee may be imposed, the bill shall be deemed paid on the date Franchisee receives payment, and it is Franchisee's responsibility to ensure that its posting and crediting practices will not result in assessment of improper fees and charges upon Subscribers.

(D) Subscriber bills from Franchisee shall include the name, address, and telephone number of the Cable Liaison. The Cable Liaison shall provide such name, address and telephone number to Franchisee on an annual basis by January 1, or as needed.

(E) Franchisee shall forward all regulatory billing inserts affecting rates, policies and procedures and copies of all other mailings required by law or under the franchise to Subscribers to the City Administrator fifteen (15) days prior to the time they are provided to Subscribers. Copies of notices to Subscribers must be forwarded to the City Administrator to determine compliance pursuant to Applicable Law.

(F) It is the Franchisee's obligation to pick up any equipment upon termination of any service if Franchisee initially delivered the equipment to the Subscriber. Any charges imposed for pick-up of such equipment shall not exceed the charge for delivering the equipment, assuming the Customer honors the equipment pick-up appointment agreed to with the company.

(7) COMPLAINTS. If a complaint to a Franchisee cannot be resolved to a Customer's satisfaction, the City may consider individual cases brought to its attention and may seek that information necessary to investigate the dispute and to exercise any authority the City may have to resolve the dispute.

(8) COMPLAINT PROCEDURE

(A) The City Administrator, or designee, upon receiving complaints about Cable Service shall keep a log of complaints received by telephone. The log shall include the date made, the name and address of the Person lodging the complaint, the subject of the complaint and the action taken. The City Administrator shall provide a copy of the complaint log to the Franchisee as frequently as once per month, or less frequently, if the number of complaints is low.

(B) The City Administrator or the Common Council's designee has primary responsibility for the continuing administration of the Franchise and implementation of complaint procedures.

(C) During the terms of the Franchise and any renewal thereof, the Franchisee shall maintain a central office, designated by the Franchisee, for the purpose of receiving and resolving all complaints regarding quality of service, equipment malfunctions, and similar matters. The office must be reachable by a local and/or toll-free telephone call to receive complaints regarding quality of service, equipment functions, and similar matters. The Franchisee will make good faith efforts to arrange for one or more payment locations in a central location where customers may pay bills or drop off equipment.

(D) As Subscribers are connected or reconnected to the System, the Franchisee shall, by appropriate means, such as card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are addressed.

(E) When there have been similar complaints made, or where there exists other evidence, which, in the judgment of the City, casts doubt on the reliability or quality of cable service, the City shall have the right and authority to require the Franchisee to test, analyze and report on the performance of the System. The Franchisee shall fully cooperate with the City in performing such testing and shall prepare results and a report, if requested, within thirty (30) days after notice. Such report shall include the following information:

- (1)** The nature of the complaint or problem that precipitated the special tests;
- (2)** The System component(s) tested;
- (3)** The equipment used and procedures employed in testing;
- (4)** The method, if any, in which such complaint or problem was resolved;
- (5)** Any other information pertinent to the tests and analysis which may be required.

(F) The City may require that tests be supervised, as the Franchisee's expense unless results are found to be in compliance by an independent professional engineer or equivalent of the City's choice. The engineer shall sign all records of special tests and forward to the City such records with a report interpreting the results of the tests and recommending actions to be taken.

(G) The City's rights under this section shall be limited to requiring tests, analysis and reports covering specific subjects and characteristics based on complaints or other evidence when and under such circumstances as the City has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard cable service.

(9) DISCONNECTION OR DENIAL OF SERVICE.

(A) Franchisee shall not terminate residential service for nonpayment of a delinquent account unless Franchisee provides initial written notice of the delinquency and impending disconnection at least ten (10) days prior to the proposed termination. The notice shall be mailed, postage prepaid, to the Subscriber to whom the service is billed. This notice shall not be sent until fifteen (15) days after the delinquent date of the bill. The disconnect notice may be included as part of a mailing containing a billing statement so long as the disconnect notice is prominently.

(B) Franchisee shall terminate service only on days when a representative of Franchisee will be available to the Subscriber either in Person or by telephone. Service terminated without good cause shall be restored without charge for the service restoration. "Good cause" includes, but is not limited to, failure to pay, payment by check for which there are insufficient funds, or theft of service.

(C) Subject to provisions of the Franchise Agreement, Franchisee shall furnish and maintain services to each Person in the franchise area who makes a request to receive any programming service. Nothing in these standards shall limit the right of Franchisee to deny service to any household or individual which has a negative credit or service history with Franchisee, which may include nonpayment of bills or theft or damage to Franchisee's equipment, or who has threatened or assaulted employees of Franchisee in the course of their cause, which shall be documented; provided, however, that in the event Service is denied, Franchisee will give notice to the Subscriber of the reason for denial.

(10) REFUNDS, AND CREDITS.

(A) Refund checks shall be issued within thirty (30) days following the resolution of the event-giving rise to the refund. In addition to a refund, if Franchisee fails to mail a check for a refund to any Subscriber disconnecting service with an outstanding credit of Three Dollars (\$3.00) or more within thirty (30) days of the date service is ended, and the Subscriber has returned all Franchisee-owned equipment, the Subscriber shall receive from Franchisee a Ten Dollar (\$10.00) penalty payment, in addition to the total refund due. Failure to comply with the Ten Dollar (\$10.00) penalty provision shall be grounds for appropriate enforcement actions by the City. Refunds shall be provided to Subscribers with outstanding credits of less than Three Dollars (\$3.00) upon request by the Subscriber.

(11) RATES, FEES, AND CHARGES

(A) Franchisee shall not, except to the extent permitted by law, impose any fee or charge on any Subscriber for service calls to said Subscriber's premises to perform any repair or maintenance work related to Franchisee-installed equipment necessary to receive service.

(B) Franchisee shall be entitled to recover a reasonable fee for all checks returned due to insufficient funds.

(12) EMPLOYEE AND VEHICLE IDENTIFICATION. All Personnel and service vehicles of Franchisee or its subcontractors contacting Subscribers or potential Subscribers outside the office of Franchisee or performing any work within the City Rights-of-Way shall be clearly identified as associated with Franchisee through visible uniform insignia, photo identification devices, or signs affixed to the vehicle.

(13) RIGHTS RESERVED BY CITY. City reserves the right to establish additional, reasonable Subscriber service standards from time to time, as may be necessary.

(14) Nothing in this ordinance shall be construed to prohibit the enforcement of any federal, state or local law or regulation concerning customer service or consumer protection that imposes customer service standards or consumer protection requirements that exceed the customer service standards set out in this ordinance or that address matters not addressed in this ordinance.

(15) CONTINUITY OF SERVICE MANDATORY.

(A) It shall be the right of all Subscribers to continue receiving services as long as their financial and other obligations to the Franchisee are honored. If the Franchisee elects to over build, rebuild, modify or sell the System, or the City gives notice of intent to terminate or fails to renew the Franchise, the Franchisee shall act so as to ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances.

(B) If there is a change in the Franchise, or if a new operator acquires the System, the Franchisee shall cooperate with the City, new Franchisee, or new operator to maintain continuity of service to all Subscribers.

(C) If the Franchisee fails to operate the System for seven (7) consecutive days without prior approval of the City or without just cause, the City may, at its option, operate the System or designate an operator until such time as the Franchisee restores service under conditions acceptable to the City or a permanent operator is selected. If the City is required to fulfill this obligation for the Franchisee, the Franchisee shall reimburse the City for all reasonable costs or damages in excess of revenues from the System received by the City that are a result of the Franchisee's failure to perform.

23.16 RATES

(1) REGULATION. The City may regulate rates for Cable Services and products except to the extent prohibited by state and federal law.

(2) RATE FILINGS. Each Franchisee shall file with the City an up-to-date rate schedule of all Subscriber and User rates, fees and charges for all Cable Services and products provided, which schedule shall be on file in the office of the Cable Liaison at all times. All Franchisees shall at all times comply with the geographically uniform rate structure regulations of the FCC at 4 C.F.R. §76.984.

(3) **NONDISCRIMINATION.** The Cable System shall be operated in a manner consistent with the principles of fairness and equal accessibility of facilities, equipment, channels, studios and other services to all residents, businesses, public agencies and other entities having a legitimate use for the Cable System and no Person shall be arbitrarily excluded from its use. The Franchisee shall not discriminate in the assessment, levy, charge, imposition or collection of rates, fees or charges on the basis of race, color, religion, ancestry, sex, age, physical disability which includes but is not limited to, HIV/AIDS, national origin, sexual or affectional preference or marital status.

(4) **PROMOTIONAL CAMPAIGNS.** Nothing in this chapter shall prohibit the reduction or waiving of charges by Franchisee in conjunction with promotional campaigns for the purpose of attracting Subscribers or Users, so long as the promotion is bona fide, temporary, and available to all similarly situated Persons throughout the City.

(5) **EXPERIMENTAL SERVICES.** Franchisee may request in writing and the City may grant, temporary authority to Franchisees for periods not to exceed twenty-four (24) months to offer specifically identified services, packages and combinations of services to selected groups of Subscribers at terms and conditions not generally available to all Subscribers. The City may refuse to grant this waiver unless it is persuaded upon sufficient showing by Franchisee that the temporary authority will be used solely to offer services on an experimental or test market basis, and that the services will either be withdrawn at the conclusion of the test or will be made generally available to all Subscribers in a uniform, consistent and nondiscriminatory manner.

23.17 REPORTS.

(1) **ANNUAL REPORTS.** Upon request, on or before March 31 of each year during the term of the Franchise Agreement, the Franchisee shall submit a written report to the City within ninety (90) days of the request. The report shall be submitted in accordance with mutually agreed upon forms prepared by the City after providing a period for notice and comment on the forms. Until such forms are prepared after notice and opportunity for comment, the annual reports shall be prepared in accordance with the general business practices of a Franchisee and shall contain at least the following information regarding the previous calendar year:

(A) A summary of activities in the development of the System, including but not limited to services begun or discontinued, total number of Subscribers, homes passed, all per the provisions of this chapter and the Franchise Agreement.

(B) A list of all complaints received and System downtime experienced during the reporting period. All such submitted data shall include complaint disposition and response time.

(C) A summary by category of complaints, identifying the number and nature of complaints and their dispositions.

(D) A fully audited revenue report, or revenue report acknowledged as correct by Franchisee's chief financial officer or his/her agent.

(E) A list of officers and members of the board of directors of the Franchisee and its parents.

(F) A list of stockholders holding five percent (5%) or more of the voting stock of the Franchisee or its parents.

(G) A copy of the Franchisee's annual report and those of its parents and subsidiaries provided said report is prepared in the normal course of business by Franchisee and/or its parents and subsidiaries.

(H) A copy of the Franchisee's annual report provided said report is prepared in the normal course of business by Franchisee.

(I) A full schedule of all Subscriber and User rates, fees, and charges for all Cable Services provided.

(J) A copy of Subscriber and User agreements used by the Franchisee; provided that, when it provides the information required by H and I above, a Franchisee need not include proprietary MDU Rates and agreements.

(K) A copy of updated maps depicting the location of all cable plant to standard scale and with appropriate tick marks as mutually agreed. These maps shall be accompanied by a digital copy in a mutually agreed upon format and medium. The maps shall depict the location of plant as built.

(L) Availability of Books.

(1) The Franchisee shall fully cooperate in making available at reasonable times, and the City shall have the right to inspect at the Franchisee's office, upon reasonable notice and where reasonably necessary for the enforcement of the Franchise, books, records, maps, plans and other like materials of the Franchisee applicable to the Cable Television System, at any time during normal business hours.

(2) Unless prohibited by law, rule or regulation, the following records and/or reports are to be made available to the City upon request, but no more frequently than on an annual basis if so mutually agreed upon by Franchisee and the City:

a. a yearly review and resolution or progress report submitted by the Franchisee to the City;

b. periodic preventative maintenance reports;

c. copies of FCC Form 395-A (or successor form) or any supplemental forms related to equal opportunity or fair contracting policies;

d. Subscriber inquiry/complaint resolution data (but not including names or addresses) and the right to review documentation concerning these inquiries and/or complaints periodically;

e. periodic construction update reports including, where appropriate, the submission of strand maps.

(2) **ANNUAL SURVEYS.** In addition to providing such other information as may be requested above, the Franchisee shall, upon request, at least once every three (3) years provide an opinion survey which identifies Subscriber programming preference in the City.

(3) **RESERVED FOR FUTURE USE.**

(4) **REPORTS TO OTHERS.** The Franchisee shall file promptly with the City a copy of any document the Franchisee files with the FCC, the Securities and Exchange Commission, or any other regulatory agency with jurisdiction pertaining to the System. To the extent that such documents contain, to the satisfaction of the City Administrator, the information required by other reports hereunder, the City Administrator may suspend the requirements to file such other reports with the City so as to avoid duplication and unnecessary cost. Alternatively, a Franchisee may comply with this section by providing the City with a list and short description of the documents it files with such agencies, and providing copies of the documents upon request. Such list shall be kept current.

(5) **MATERIAL MISREPRESENTATIONS.** Any material misrepresentation made by the Franchisee in any report required by this section shall subject the Franchisee to the penalty provisions of this chapter and shall subject the Franchisee to all remedies available to the City by law.

(6) **ACCESS TO BOOKS AND RECORDS.** The City may inspect and copy books and records of the Franchisee that are reasonably necessary to the enforcement of any provision of this ordinance, the franchise agreement; to the conduct of performance evaluation sessions; or to the exercise of any authority that the City may have under the same or any other provision of Applicable Law. Without limiting the foregoing, a Franchisee shall provide the City access to complaint data to enable the City to fully investigate Subscriber complaints. Books and records shall be produced to the City for inspection at the Franchisee's regional office or at such other mutually agreed upon location within the City. Provided, however, that nothing in this chapter shall be read to require the Franchisee to violate any provision of federal or state law relating to Customer privacy. Information requested shall be made available for inspection within fourteen (14) business days of a request therefor, which period shall be subject to extension for good cause shown where no harm will result to the public interest from the delay.

23.18 PERFORMANCE EVALUATIONS SESSIONS. To provide for technological advances in the state of the art of cable communications, to promote the maximum degree of flexibility and utilization of the Cable System, to evaluate the Franchisee's performance and compliance with the provisions of this chapter and the Franchise Agreement, and to evaluate the performance of every Franchisee to ensure that the quality of every Franchisee's service continues to reasonably meet the needs of the community, the City and each Franchisee shall comply with the following review procedures:

(1) PROCEDURE.

(A) The City may commence a regularly scheduled review session any time after the second anniversary date of the execution of a Franchise Agreement and subsequently every two (2) years thereafter. All review sessions shall be open to the public, notice of date, time, location, and agenda shall be given by the City by publication at least once in a newspaper of Citywide general circulation at least one (1) week prior to each session.

(B) The City may hold special review sessions at any time on specific issues relevant to the System. All such review sessions shall be open to the public and shall be advertised, if possible, as provided in paragraph 1 (A) of this section. Either the City or the Franchisee may select additional topics for discussion at any regular or special review session. The review session will be held with the Common Council or such Committee body or Commission it shall so designate.

(C) The City may provide for the taking of written minutes and a recording of all review sessions held.

(2) TOPICS. Topics for discussion and review at the regular review sessions shall include but shall not be limited to the following: Rate structure, free or discounted services, application of new technologies, System performance, services provided, programming, Subscriber complaints, User complaints, rights of privacy, construction progress, community service channel implementation and utilization, amendments to this chapter, undergrounding process and developments in the law.

23.19 RENEWAL, REVOCATION, VIOLATION OR FORFEITURE OF FRANCHISE.

(1) RENEWAL. The procedure for considering renewal of the Franchise Agreement shall be as provided by federal law.

(2) PROCEDURE FOR VIOLATIONS AND REVOCATION. In the event City believes that Franchisee has breached or violated any material provision of this Ordinance

or a Franchise granted hereunder, City may act in accordance with the following procedures:

(A) City may notify Franchisee of the alleged violation or breach, stating with specificity the nature of the alleged violation or breach, and demand that Franchisee cure the same within a reasonable time, which shall not be less than thirty (30) days in the case of an alleged failure of the Franchisee to pay any sum or other amount due the City under this Ordinance or the Franchisee's Franchise and thirty (30) days in all other cases. Franchisee may within fifteen (15) days of receipt of such notice, submit a written response to City challenging said alleged violation. City shall hear Franchisee's challenge within thirty (30) days and render a final decision within thirty (30) days thereafter.

(B) If Franchisee: a) does not challenge the alleged violation or breach, or b) fails to cure the alleged violation or breach within the time prescribed, the City shall provide Franchisee with written notice of not less than ten (10) days of a public hearing to be held before the Common Council. Said notice shall specify the violations or breaches alleged to

have occurred. At the public hearing, the Common Council shall hear and consider relevant evidence and thereafter render findings and its decision.

(C) In the event the Common Council finds that a material violation or breach exists and that Franchisee has not cured the same in a satisfactory manner or has not diligently commenced to cure of such violation or breach after notice thereof from the City and is not diligently proceeding to fully cure such violation or breach, the Common Council may impose penalties or damages from any security fund or performance bond required in a Franchise Agreement or may terminate Franchisee's Franchise.

(D) If the City chooses to terminate Franchisee's Franchise, the following additional procedure shall be followed:

(1) After holding the public hearing, the City shall provide Franchisee with written notice of the City's intention to terminate the Franchise and specify in detail the reason or cause for the proposed termination. The City shall allow Franchisee a minimum of thirty (30) days subsequent to receipt of the notice in which to cure the default.

(2) Franchisee shall be provided with an opportunity to be heard at a regular or special meeting of City prior to any final decision of City to terminate Franchisee's Franchise.

(3) In the event that City determines to terminate Franchisee's Franchise, the Franchisee shall have an opportunity to appeal said decision in accordance with all Applicable Laws.

(4) If a valid appeal is filed, the Franchise shall remain in full force and affect while said appeal is pending, unless the term of the Franchise sooner expires.

(3) EFFECT OF TERMINATION OR FORFEITURE. Upon termination or forfeiture of a franchise, whether by action of the City as provided above or otherwise, the Franchisee shall be obligated to cease operating the Cable System for the purposes authorized by the franchise.

(4) REMEDIES CUMULATIVE. All remedies under this chapter and any Franchise Agreement are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment of damages or penalties shall not relieve a Franchisee of its obligations to comply with this chapter and its Franchise Agreement. Remedies may be used singly or in combination. In addition, the City may exercise any rights it has at law or equity. Recovery by the City of any amounts under the performance bond, the security fund or letter of credit or otherwise, shall not limit a Franchisee's duty to indemnify the City in any way, nor shall such recovery relieve a Franchisee of its obligations under this chapter or a Franchise Agreement, limit the amounts owed to the City, or in any respect prevent the City from exercising any other right or remedy it may have. Nothing contained in this chapter shall be read to authorize the double-recovery of damages.

(5) RIGHT TO REQUIRE DISMANTLING; RESTORATION. In the event that the City exercises its option to require the Franchisee to dismantle the Cable System, the Franchisee shall, in an expeditious manner, at its own expense and at the direction of the City, restore any property, public or private, to the condition in which it existed prior to the erection or construction of the Cable System, including any improvements made to such property subsequent to the construction of the Cable System. The option to require removal of the Cable System shall not apply to any Franchisee which holds valid state or federal authorization to provide telecommunications services and said Cable System is being used to provide such telecommunications services.

23.20 CONTINUITY OF SERVICE. The Franchisee shall provide continuous service for the entire term of the Franchise Agreement to all Subscribers and Users in return for payment of the established rates, fees, and charges. If for any reason the franchise becomes void, the Franchisee shall continue to operate the Cable System in a normal and orderly manner consistent with federal law until an orderly and lawful change of operation is effectuated. This period of operation shall not exceed sixty (60) days from the date of occurrence or the date on any appeals of the same are finally concluded, whichever is later. During such interim period, the Franchisee shall not make any material, administrative, or operational changes that would tend to degrade the quality of service.

23.21 APPROVAL OF TRANSFER AND RIGHT OF ACQUISITION BY THE CITY. Federal regulations as per 47 U.S.C. §537 shall apply to approval of transfer issues and the right of acquisition by the City.

23.22 FORECLOSURE AND RECEIVERSHIP.

(1) FORECLOSURE. In the case of a foreclosure or other judicial sale or termination of lease of the plant, property or equipment of the Franchisee, or any substantial part thereof, or any rights under the franchise agreement, the Franchisee shall serve written notice upon the City of any such event; and the City may serve written notice of termination upon the Franchisee and the successful bidder at such sale, in which event the franchise and the franchise agreement and all rights and privileges of the Franchisee thereunder shall cease and terminate thirty (30) days after service of such notice, unless:

(A) Common Council has approved the transfer of ownership of the franchise, in accordance with all pertinent provisions of Section 23.23 of this Ordinance; and

(B) Such successful bidder shall have covenanted and agreed with the City, in writing in a form approved by the City attorney, to assume and be bound by all the terms and conditions of this chapter and the franchise agreement.

(2) RECEIVERSHIP. The franchise shall terminate one hundred twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of the Franchisee, whether in receivership, reorganization, bankruptcy or other related action or proceeding.

(3) FAILURE TO COMPLY. Failure to comply with the provisions of paragraph

(1) of this section shall be deemed an unauthorized transfer pursuant to the provisions of Section 23.23 of this Ordinance.

23.23 TRANSFERS AND ASSIGNMENTS. The procedures for transfers and assignments of the Franchise Agreement will conform to the requirements as set forth in federal law and applicable FCC regulations and will include the following requirements:

(1) TRANSFER RIGHTS. The Franchisee shall not sell, transfer, assign, exchange or release, or permit the sale, transfer, assignment, exchange or release ten percent (10%) ownership of the System, nor shall Franchisee sell, transfer, assign, exchange, or release, or permit the sale, transfer, assignment, exchange, or release of the rights in the Franchise Agreement to a Person (hereinafter "proposed transferee"), without the prior written authorization of the Common Council. A transfer of ownership is presumed to occur if forty percent (40%) or more of the ownership interest in a Cable System is transferred. Specifically reserve the right to deny, restrict or condition authorization to transfer upon the criteria stated in this section and any other lawful criteria the Common Council determine to be necessary in the public interest.

(2) REQUIRED INFORMATION. The Franchisee shall provide the following information to the City:

(A) All information and forms required under federal law or the equivalent of such forms if no longer required by federal law;

(B) Any contracts or other documents that constitute the proposed transaction and all documents, schedules, exhibits, or the like referred to therein and necessary to understand the terms thereof (confidential trade, business, pricing or marketing, information, or information not otherwise publicly available may be redacted);

(C) Any shareholder reports or filings with the Securities and Exchange Commission that discuss the transaction;

(3) CITY REVIEW. Once the required information has been provided, the transfer application shall be subject to review by the City and any approval shall be subject to the City's determination that:

(A) The proposed transferee has the qualifications to construct, operate, and repair the System proposed in conformity with Applicable Law;

(B) The proposed transferee will comply with and agree to be bound by the existing Franchise Agreement.

(4) APPROVAL. Any approval will also be subject to a determination by the City that:

(A) Transferee is legally, technically and financially qualified;

(B) Transferee will agree to be bound by all the conditions of the franchise and to assume all the obligations of its predecessor;

(C) Any outstanding compliance and compensation issues will be resolved or preserved to the satisfaction of the City; and

(D) The proposed transferee and the current Franchisee have provided all required information so that the City may act on the application.

(5) **ACCEPTANCE.** Any proposed transferee shall execute an agreement, in such form as acceptable to the City attorney, that it will assume and be bound The Common Council by all of the provisions, terms and conditions of this chapter, the Franchise Agreement.

(6) **UNAUTHORIZED TRANSFER.**

(A) The occurrence of an unauthorized transfer or assignment may, at the option of the City, provide the City with cause to terminate the Franchise Agreement consistent with Section 23.19 herein provided, however, Franchisee shall have the right to appeal any such determination by City and shall continue to operate the System during the pendency of any appeal.

(B) From and after any occurrence constituting an unauthorized transfer or assignment, the putative transferee shall not make, execute or enter into any deed, deed of trust, mortgage, contract, conditional sales contract or any loan, lease, pledge, security agreement, sale, pole agreement or any other agreement or hypothecation concerning any System facilities or property, whether real or Personal, without the written approval of the City, provided, however, this paragraph shall be suspended during the pendency of any appeal.

(7) **COLLATERAL.** Nothing in this section shall be deemed to prohibit the use of the Franchisee's property as collateral for security in regard to financing. However, any such financing arrangements shall be subject to all provisions of this chapter and the Franchise Agreement. In no case may any Person, including the institution holding the System as collateral, succeed to the ownership or control of the System or the franchise without the prior approval of the City.

(8) **PROPRIETARY INFORMATION.** Nothing in this section shall be read to prohibit Franchisee from providing information subject to the protections for proprietary information under this Ordinance or a Franchise Agreement.

23.24 **SUBSCRIBER ANTENNAS.** The Franchisee shall not require the removal of any potential or existing Subscriber antennas as a condition for provision of service.

23.25 **INDEMNIFICATION AND DISPUTES REGARDING ISSUANCE OF FRANCHISE.**

(1) **INDEMNIFICATION.** The Franchisee shall indemnify, save harmless and defend the City, the Common Council, appointed boards and commissions, officers and employees, individually and collectively from all fines, liens, suits, claims, demands, actions, costs of litigation, attorneys' fees, judgments or liability of any kind (including but not limited to libel, slander, invasion of privacy, unauthorized use of any trademark, trade name or service mark, copyright infringement, injury, death or damage to Person or property) arising out of or in any way connected with the installation, construction, operation, maintenance or condition of the System. The Franchisee shall assume all risks in the operation of the System and shall be

solely responsible and answerable for any and all accidents or injuries to Persons or property arising out of Franchisee's performance of the Franchise Agreement. The City shall give the Franchisee timely written notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the indemnity of this Section, where the Franchisee is not a party thereto.

(2) DISPUTES REGARDING ISSUANCE OF FRANCHISE:

(A) Franchisee shall indemnify save harmless and defend the City, its Common Council, appointed boards and commissions, officers and employees, individually and collectively from all fines, liens, suits, claims, demands, actions, costs of litigation, attorneys' fees, judgments or liability of any kind arising from the defense of any litigation brought by third parties challenging the right of the City to issue a franchise to Franchisee under state law. The City shall give the Franchisee timely written notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the indemnity of this Section, where the Franchisee is not a party thereto.

(B) Franchisee shall assume the risk of, and shall relinquish any claim against the City in connection with any final, non-appealable determination by a court of competent jurisdiction that the City lacked the current statutory authority to issue the franchise.

23.26 BONDING.

(1) PERFORMANCE BOND. Within thirty (30) days after written notification of the award of a franchise by the City for an initial franchisee or renewal franchise, the Franchisee shall file with the City a performance bond for the benefit of the City at least in the amount of Twenty-five Thousand Dollars (\$25,000) to be effective upon the execution of the Franchise Agreement and conditioned that in the event that the Franchisee fails to comply with any provision of this chapter, the Franchise Agreement or other law applicable to the franchise, then there shall be recoverable jointly and severally from the principals and surety any and all damages or costs suffered or incurred by the City, including but not limited to attorney's fees and costs of any action or proceeding, and including the full amount of any compensation, indemnification, cost of removal or abandonment of any property or other costs due and owing the City up to the full principal amount of such bond. The performance bond shall be maintained in full as a continuing obligation during the entire term of the Franchise Agreement and thereafter until the Franchisee has satisfied in full any and all obligations to the City which arise out of or pertain to this chapter and the Franchise Agreement. The performance bond shall be issued by a surety company authorized to do business in the state and shall be in a form approved by the City attorney.

(A) The performance bond shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be canceled by the surety nor the intention not to renew be stated by the surety until sixty (60) days after receipt by the City of Cornell, by registered mail, of written notice of such intent to cancel or not to renew."

(B) None of the provisions of this section or Section 23.26(3) ("Security Fund"), nor any damages recovered by the City thereunder, shall be construed to excuse the faithful performance or limit the liability of the Franchisee.

(C) The City, at any time during the term of this ordinance, may waive Franchisee's requirement to maintain a performance bond. The waiver of the requirement can be initiated by the City.

(D) None of the provisions of this section or Section 23.26(3) ("Security Fund"), nor any damages recovered by the City thereunder, shall be construed to excuse the faithful performance or limit the liability of the Franchisee.

(2) RETURN OF PERFORMANCE BOND. Upon application to the City, the Franchisee shall be entitled to the return of the performance bond at the expiration of the Franchise Agreement, or any renewal thereof provided there is then no outstanding default or moneys due the City by the Franchisee; provided that, nothing herein shall be read to excuse a Franchisee from its obligation to have a performance bond during the renewal term.

(3) SECURITY FUND. Whether an initial franchise or renewal franchise:

(A) Amount. Within thirty (30) days after written notification of the award of a franchise by the City (unless waived by the City), the Franchisee shall deposit with the City Administrator of the City, and maintain on deposit throughout the term of the Franchise Agreement, a security fund in the sum of Five Thousand Dollars (\$5,000) in cash as security for the faithful performance by the Franchisee of all provisions of this chapter and the Franchise Agreement and compliance with all orders, permits and directions of any agency or department of the City having jurisdiction over the Franchisee's operations. In lieu of the cash deposit, a Franchisee may provide an irrevocable and unconditional Five Thousand Dollar (\$5,000) letter of credit with a local financial institution acceptable to the City, in a form acceptable to the City attorney. The term "security fund" in this section means the letter of credit and the cash deposit.

(1) Withdrawal of Funds. Within fifteen (15) days after written notice to the Franchisee by the City that the City has withdrawn any amount from the security fund, the Franchisee shall deposit or pay to the finance director a sum of money sufficient to restore such security fund to the original amount of Five Thousand Dollars (\$5,000), or, in the case of a letter of credit, restore the letter of credit to its full amount.

(2) The security fund, including any interest that may have accrued, shall become the property of the City in the event that a Franchise Agreement is terminated by the City by reason of a violation of this chapter or breach of the Franchise Agreement pursuant to the provisions of Section 23.19.

(B) Return of Security Fund. Upon application to the City, the Franchisee shall be entitled to the return of all moneys remaining in the cash security fund, including accrued interest, at the expiration of the Franchise Agreement or any renewal thereof, provided there is then no outstanding default or moneys owing on the part of the Franchisee to the City; and further provided that nothing herein shall be read to excuse a Franchisee from its obligation to have a security fund during any renewal term.

(C) Rights Reserved. The rights reserved to the City with respect to the security fund are in addition to all other rights of the City, whether reserved by this chapter or authorized by law, and no action, proceeding or exercise of a right with respect to such

security fund shall affect any other right the City may have.

23.27 FRANCHISE FEE.

(1) **AMOUNT.** In addition to any other consideration supporting the award of a franchise by the City, including but not limited to the granting of the privilege to utilize the Rights-of-Way of the City pursuant to this chapter for the purpose of providing Cable Service, and the Franchise Agreement to construct and operate the System unless otherwise specified in the Franchise Agreement, the Franchisee shall, at the option of the City, and commencing ninety (90) days following notice to Franchisee of the City's election to collect the fee, the Franchisee agrees to pay to the City the annual franchise fee as required by the Ordinance. Such franchise fee shall be five percent (5%) of the Franchisee's annual gross revenues or such other maximum amount as allowed by Law. In the event that a change in either State or Federal Law would allow the City to increase the franchise fee above five percent (5%) of the Franchisee's gross revenues, the Franchisee shall not be liable for such increase until the City shall give the Franchisee written notice of such change in Law.

(2) **PAYMENT OF FRANCHISE FEE.** Payments due the City under this section shall be computed quarterly, for the proceeding calendar quarter. Each quarterly payment shall be due and payable no later than forty-five (45) days after the applicable computation date. Each payment shall be accompanied by a financial statement showing in detail the Gross Revenues of the Franchisee relating to the relevant calendar quarter as well as any other report required by Section 23.17.

(3) **ACCORD AND SATISFACTION.** No acceptance of any payment of franchise fees shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums due and payable. The City or its designate, upon the giving of reasonable advance notice, shall have a right to audit, during the Normal Business Hours of Franchisee, all financial records of Franchisee reasonably necessary to the determination of whether Gross Revenues and franchise fees have been accurately computed and paid. In the event an audit results in additional moneys owed the City, interest shall be charged at the rate of one percent (1 %) per month on the unpaid balance. If Franchisee claims that a particular item of revenue is not included within the scope of the term "Gross Revenues," relevant records of the Franchisee shall be provided to the City in support of its claim of non-inclusion without prejudice to any claim the Franchisee may have that a franchise fee is not owed on such revenue. A Franchisee may withhold revenue records for items that it claims are not "Gross Revenues" so long as the Franchisee (i) provides a certified statement describing the nature of the revenues contained in the records withheld and (ii) agrees, in its Franchise Agreement, to pay all costs, including attorney fees, that the City incurs should the City seek production of the records and the contested items are determined to constitute "Gross Revenues." Each Franchisee shall be required, in accordance with the terms of its franchise, to pay for any audit where the audit shows the Franchisee underpaid the franchise fee due to the City by five percent (5%) or more.

(4) **NOT FRANCHISE FEES.** The payment required pursuant to this section shall be in addition to and not in lieu of 1) any other tax, fee or assessment of general applicability (including any such tax, fee or assignment imposed on both utilities and Cable Operators or

their services but not including a tax, fee, or assessment which is unduly discriminatory against Cable Operator or cable Subscribers); 2) capital costs which may be required by a Franchise to be incurred by the Franchisee for PEG access facilities; and requirements; or 3) charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, indemnification penalties, or liquidated damages.

23.28 RIGHTS RESERVED TO THE CITY.

(1) CITY'S RIGHTS. Without limitation upon the rights which the City might otherwise have, every franchise issued shall be deemed to expressly reserve to the City the following rights, powers and authorities, whether expressly set forth in the franchise or not:

(A) To exercise its governmental powers now or hereafter to the full extent that such powers may be vested in or granted to the City.

(B) To determine any question of fact relating to the meaning, terms, obligations, or other aspects of this chapter and the Franchise Agreement, subject to applicable judicial review.

(C) To inspect all construction or installation work performed by the Franchisee, and to supervise all construction in the public Rights-of-Way or on other City property.

(2) EMINENT DOMAIN. Nothing in this chapter shall be deemed or construed to impair or affect the right of the City to exercise its power of eminent domain to acquire the property of the Franchisee for just compensation.

(3) USE OF POLES. The City reserves the right, during the term of the Franchise Agreement, to install and utilize, upon the poles owned or jointly owned by the Franchisee, any wire or pole fixtures required for municipal purposes, without pole attachment cost to the City so long as any make-ready or other preparation cost is borne by the City and such installation and utilization does not unduly interfere with the operation of the System. Such rights shall also accrue to the City of Cornell Utilities, including the Electric Utility.

23.29 EQUAL EMPLOYMENT OPPORTUNITY.

(1) NONDISCRIMINATION. A Franchisee shall not deny service, access, or otherwise discriminate against Subscribers, Users, or any resident of the City. In this regard, each Franchisee shall comply with the human relation's provisions of this Ordinance incorporated herein by this reference. The Franchisee shall strictly adhere to the equal employment opportunity requirements of the FCC. The Franchisee shall comply at all times with all other applicable federal, state and City laws, rules and regulations, and all executive and administrative orders relating to nondiscrimination.

(2) EQUAL OPPORTUNITY.

(A) A Franchisee shall define the responsibility of each level of management to ensure positive applications of the policy of equal opportunity, making all reasonable efforts

to assure employment at the higher and mid-management levels for Minority Persons. The Franchisee shall conduct a continuing review of employment structures and employment practices and adopt positive recruitment policies, on-the-job training, job design and other measures needed to assure genuine equality of opportunity.

(B) Each Franchisee shall abide by the following general employment practices:

(1) Recruiting through schools and colleges with high Minority enrollments.

(2) Maintaining systematic contacts with media advocacy groups, Minority and human relations organizations, leaders, spokespersons and other appropriate recruitment sources within the City to make it known that qualified Minority Persons sensitive to the needs of the Minority community are being sought for consideration whenever the Franchisee prepares to hire employees so as to assure nondiscrimination in selection for employment.

(3) Instructing Personally those on the Franchisee's staff who makes hiring decisions that Applicants for all jobs are to be considered without discrimination in accordance with the provisions of this section.

(4) Making all reasonable efforts to avoid the use of selection techniques or tests that have the effect of discriminating against Minority Persons.

23.30 SELECTION OF FRANCHISE.

(1) SUBMISSION OF PROPOSAL.

(A) Any Person submitting a Proposal for a franchise shall provide all information required by this chapter and all other information as may be solicited in the City's request for Proposals or as otherwise required by the City. Any misrepresentation, failure, neglect, or refusal to provide any required information may at the option of the City render a Proposal invalid and result in the Proposal being given no consideration. The requested information shall be complete and verified as true by the Applicant. Every Proposal shall be submitted as an offer, so that the City may incorporate the Proposal into a Franchise Agreement by reference and may condition the award of any franchise upon the incorporation of the Proposal into the Franchise Agreement.

(B) All Proposals received by the City from the Applicants shall become the sole property of the City.

(C) The City reserves the right to reject any and all Proposals and to waive all informalities where the best interest of the City may be served.

(D) Before submitting a Proposal, each Applicant shall be solely responsible for and shall: (a) examine this chapter and the request for Proposal documents thoroughly; (b) be familiar with local conditions that may in any manner affect performance under the franchise, including but not limited to relevant demographics, topographies, pole attachment

policies of appropriate utility authorities, undergrounding, and Subscriber and User desires; (c) be familiar with federal, state and local laws, ordinances, rules and regulations affecting performance under the franchise; and (d) carefully correlate all observations with the requirements of this chapter and the request for Proposals documents.

(E) The City may make such investigations as it deems necessary to determine the ability of the Applicant to perform under the Franchise Agreement, and the Applicant shall furnish to the City all information for such purpose as the City may request. The City reserves the right to reject any Proposal if the evidence submitted by or investigation of such Applicant fails to satisfy the City that such Applicant is properly qualified to carry out the obligations of the Franchise Agreement, comply with the provisions of this chapter, or to satisfactorily construct and operate the System. Conditional Proposals shall not be accepted.

(2) **PROPOSAL EVALUATION.** The Common Council shall approve or disapprove the Application, and it shall make a written record supporting its decision. In evaluating an application for a franchise, the City may consider the following factors:

(A) The extent to which the Applicant has substantially complied with the Applicable Law;

(B) Whether the quality of the Applicant's service, including signal quality, response to Customer complaints, billing practices and the like has been reasonable in light of the needs and interests of the communities served;

(C) Whether the Applicant has the financial, technical, and legal qualifications to hold a cable franchise, which qualifications require that the Applicant can be relied upon to perform as promised and in accordance with Applicable Law;

(D) Whether the application satisfies requirements established by the City under this chapter or in a Request For Proposals ("RFP") or is otherwise reasonable to meet the future cable-related needs and interests of the community, taking into account the cost of meeting such needs and interests;

(E) Whether, to the extent not required as part of this chapter, the Applicant will provide adequate public, educational, and governmental use capacity, facilities, or financial support thereof;

(F) Whether issuance of a franchise is in the public interest considering the immediate and future effect on the public Rights-of-Way and private property that would be used by the Cable System, including the extent to which installation or maintenance as planned would require replacement of property or involve disruption of property, public services, or use of the public Rights-of-Way; and the comparative superiority or inferiority of competing applications; and

(3) **ISSUANCE OF A FRANCHISE.**

(A) If the City finds that it is in the public interest to issue a franchise considering the factors set forth in this section, the City may, by ordinance or resolution, adopt

a Franchise Agreement setting forth the terms and conditions of the franchise, which franchise shall become effective upon satisfaction of conditions precedent to effectiveness, and when signed and accepted by the Applicant. If the City denies a franchise, it shall issue a written explanation of the denial, which may be in any appropriate form. Without limiting its authority to deny an application for a franchise, the City specifically reserves the right to reject any application that is incomplete or fails to respond to an RFP. Nothing in this chapter shall be construed in any way to limit the discretion and legislative authority of the Common Council in making decisions relative to the granting, denial, or renewal of a franchise.

(B) Notwithstanding the provisions of this chapter, to the extent required by federal law, requests for cable franchise renewal under the Cable Act shall be received and reviewed in a manner consistent with 47 U.S.C. §546, or successor statute, and every provision of this chapter shall be interpreted in a manner consistent therewith.

(4) APPLICATION FEES.

(A) Notwithstanding any other requirement of this chapter, each Applicant for an initial, renewal, or transfer of franchise shall furnish with its Proposal a nonrefundable filing fee in the amount of Five Thousand Dollars (\$5,000) by certified or cashiers check made payable to the City of Cornell. No Proposal for a franchise shall be considered without receipt of such check.

(B) All checks received shall be deposited to an account of the City and shall serve to recover all expenses incurred by the City in the preparation and granting of the franchise, the execution of the Franchise Agreement and regulation of the Franchisee pursuant to this chapter. Such expenses shall include but not be limited to any and all publication costs, attorney's fees, consultant's expenses and the reasonable value of services performed by the City's employees, agents or contractors.

(C) In the event that expenses exceed the total amount of filing fees collected from the applicants, the Applicant awarded the franchise shall pay to the City (pro rata in the event more than one [1] Applicant is awarded a franchise) the excess amount, not to exceed Seven Thousand Five Hundred Dollars (\$7,500) within sixty (60) days of demand by the City.

(5) DECISION FINAL. The decision of the Common Council concerning Franchisee selection shall be final.

23.31 THEFT OF SERVICE AND TAMPERING.

(1) It shall be unlawful for any Person, without the express consent of the Franchisee, to make any connection or attachment, extension or division, whether physically, acoustically, inductively, electronically or otherwise with or to any segment of the Cable System for the purpose of receiving or redistributing service where the Person has not paid for it. Nothing in this section shall be read to prohibit a Subscriber to Cable Service to lawfully utilize Subscriber-owned equipment in the enjoyment of such service.

(2) Any person violating this section shall forfeit not less than Fifty Dollars (\$50) or

more than Two Hundred and Fifty Dollars (\$250) per occurrence. Each continuing day of the occurrence shall constitute a separate violation, up to a maximum of Five Thousand Dollars (\$5,000).

23.32 PENALTIES.

(1) All penalties and remedies shall be cumulative, and the imposition of one penalty or remedy shall not prevent the imposition of any other penalty or remedy provided for.

(2) **FORFEITURE.** Any person violating this ordinance shall forfeit an amount not greater than Two Hundred and Fifty Dollars (\$250) per occurrence. Each continuing date of the occurrence shall be considered a separate violation.

23.33 DAMAGES. For the violation of any of the following provisions of this ordinance, damages shall be chargeable to the letter of credit or "Security Fund" in lieu of bond as follows, and the City may determine the amount of the forfeiture for other violations that are not specified in a sum not to exceed Two Hundred and Fifty Dollars (\$250) for each violation, with each day constituting a separate violation:

(1) Failure to furnish, maintain, or offer all cable services to any potential Subscriber within the City pursuant to Section 23.09(2) herein upon order of the City: Two Hundred and Fifty Dollars (\$250) per day, per violation, for each date that such failure occurs or continues up to a maximum of One Thousand Dollars (\$1,000);

(2) Failure to obtain or file evidence of required insurance, construction bond, performance bond, or other required financial security: Two Hundred and Fifty Dollars (\$250) per day, per violation, for each day such failure occurs or continues up to a maximum of One Thousand Dollars (\$1,000);

(3) Failure to provide access to data, documents, records, or reports to the City as required by sections 23.10(9), 23.17(6) and 23.17(1)(L): Two Hundred and Fifty Dollars (\$250) per day, per violation, for each day such failure occurs or continues up to a maximum of One Thousand Dollars (\$1,000);

(4) Failure to comply with applicable construction, operation, or maintenance standards: Two Hundred and Fifty Dollars (\$250) per day, per violation up to a maximum of One Thousand Dollars (\$1,000);

(5) Failure to comply with a rate decision or refund order: Five Hundred Dollars (\$500) per day, per violation, for each day such a violation occurs or continues up to a maximum of One Thousand Dollars (\$1,000);

(6) Any violations for non-compliance with the customer service standards of Section 23.15 and other portions of this Ordinance, the Franchisee shall pay Two Hundred and Fifty Dollars (\$250) per day for each day, or part thereof, that such noncompliance continues up to a maximum of One Thousand Dollars (\$1,000);

(7) Any other violations of a Franchise Agreement to be determined by the Franchisee in a public hearing but not specifically noted in this section shall not exceed Two Hundred and Fifty Dollars (\$250) per day, per violation up to a maximum of One Thousand Dollars (\$1,000).

23.32.1 SEVERABILITY. If any provision, section, paragraph, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity of the remaining portions of this chapter. It is the intent of the City in adopting this chapter that no portion or provision thereof shall become inoperative or fail by reason of any invalidity or unconstitutionality of any other portion or provision, and to this end all provisions of this chapter are declared to be several.