

## Chapter 6

### FRANCHISES

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**6.01 Public Utility Section of Wisconsin Statutes Adopted.** The provisions of Wis. Stats. §196.54 and §196.58 so far as applicable, are hereby adopted by reference thereto.

**6.02 Permits Required.** No person shall operate, manage or control any plant, or equipment or part of any such production, transmission, delivery or furnishing of heat, light, water or power, either directly or indirectly to or for the public until such person or corporation shall have first obtained permission therefor from the village board and shall receive from the State of Wisconsin all necessary certificates or permits to engage in said business.

**6.03 Procedure.** Any person or corporation applying for a permit as required by section 6.02 of this chapter shall present a petition therefor to the board and if the same shall be approved by a majority vote of the board, then a permit shall be granted by the village in the form of an ordinance, which shall determine the quality and character of each kind of product or service to be furnished or rendered by any public utility, and all of the terms and conditions upon which such public utility may be permitted to occupy the streets, highways or other public places within the municipality and shall contain such other provisions as shall be deemed necessary by the board.

**6.04 Poles and Wire Supporting Apparatus.**

(1) No poles or other apparatus for the support of wires for telephone or telegraph purposes, shall hereafter be placed or erected upon any public street or highway in the village.

(2) No poles or apparatus for the support of wires for telephone or telegraph purposes shall hereafter be placed or erected in any of the lanes, alleys or public grounds of said village, unless the person or corporation so desirous of placing or erecting the same shall make application therefor, by petition in writing to the village board designating in such petition the particular place or places where such poles or apparatus are to be placed or erected and the general course in which said wires thereon shall run, nor until such request made in said petition shall, by resolution, be duly granted by said board.

(3) Any excavation or displacing of any part of the sidewalk, lanes, alleys or streets, for the purpose of laying any conduit or for the purpose by any such person or corporation shall be done only upon permission being first received from the board as provided by Sec. 10.04 of this code.

**6.05 Existing Franchises.** Except as provided in section 6.01 of this code and in Wis. Stats. §196.58 of the 1977 Wisconsin Statutes, nothing contained in this chapter shall affect in any way and right theretofore granted to any public service corporation, for the distribution of gas, electricity or water, within the corporate limits of said village, except that all renewals or extensions of said franchises shall be subject to the provisions of this chapter.

### **6.06 Cable Television**

(1) **SHORT TITLE.** This section shall be known as the "Village of North Fond du Lac Cable Communications Code.

(2) **PURPOSES.** The purpose of this code is to:

(a) Protect the public health, safety and welfare:

(b) Provide for the granting of one or more franchises to permit the use of village streets and other public ways for cable communication systems;

(c) Provide for the regulation by the village of the erection, construction, reconstruction, installation, operation, maintenance, dismantling, testing, repair and use of such systems in, upon, along, across, above, over and under or in any manner connected with the streets or other public ways within the Village, as it now or in the future may exist;

(d) Provide for the payment of fees and other valuable considerations to the village for the use of village streets and other public ways by such systems as well as to compensate the village for costs associated with such use;

(e) Provide for the development of cable communication systems as a means to improve communications between and among, and to otherwise serve the present and future needs of, the citizens, government and private and public institutions, organizations and enterprises of the village and surrounding communities; and

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

(3) **CONFLICTING PROVISIONS.**

(a) This section is adopted pursuant to the authority of the village under the constitutions and statutes of the State of Wisconsin and the United States of America, including but not limited to the Cable Communications Policy Act of 1984 (47 U.S.C. 521 ff.) and Wis. Stat. §66.0419. Where any provision of this section conflicts with any provision of state or federal law, this section shall control to the full extent permitted by law.

(b) In the case of an express conflict or any ambiguity between a provision in this section and either a provision in a franchise agreement executed pursuant to this section or a provision in a franchise proposal that is incorporated by reference into such franchise agreement, this section shall control.

(4) **DEFINITIONS.**

(a) When not inconsistent with the context, words used in the present tense include the future tense, words used in the plural number include the singular number, and words used in the singular number include the plural number.

(b) For the purposes of this section the following terms, phrases and words and their derivations have the meanings given herein, unless it is clearly stated that another meaning is intended. 1. VILLAGE. The Village of North Fond du Lac, County of Fond du Lac, State of Wisconsin, in its present incorporated form or in any later recognized, consolidated, enlarged or reincorporated form.

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

3. CONTROL or CONTROLLING INTEREST. Actual working control or ownership of the cable system in whatever manner exercised. A rebuttal presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or indirectly, by any person, group of persons acting in concert (except underwriters during the period in which they are offering securities to the public) or entity of 49 percent or more of the North Fond du Lac cable system or the franchise under which the system is operated. A change in the control or controlling interest of a parent of a grantee shall constitute a change in the control or controlling interest of the North Fond du Lac cable system under the same criteria. Control or controlling interest as used herein may be held simultaneously by more than one person, group of persons or entities.

4. BOARD. The present village board or any future body constituting the legislative body of the village.

5. FRANCHISE. An authorization issued by the village to construct and operate a cable system.

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

7. GROSS REVENUES. Any revenue derived directly or indirectly by a grantee, its affiliates, subsidiaries, parents and any persons or entities in which a grantee has a financial interest of five percent or more, from or in connection with the operation of a village cable system including, but not limited to, basic subscriber service fees, pay channel service fees, installation and reconnection fees, leased channel fees, converter and remote control rentals, enhanced telecommunication services, studio rentals and production equipment rentals. The term does not include any taxes on services provided by a grantee and imposed directly upon any subscriber or user by the state, village or other governmental unit and collected by a grantee on behalf of said unit.

8. STREET or PUBLIC WAY. The surface of and space above and below any public street, road, highway, freeway, lane, alley, court, sidewalk, parkway or drive, now or hereafter existing as such within the village. A franchise granted under this code shall be deemed to confer only such rights to use property in the village as the village may have the right and power to grant in such agreements.

9. SUBSCRIBER. Any person or entity lawfully receiving for any purpose the cable system

services of a grantee herein.

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

(5) **FRANCHISE TERRITORY.** A franchise granted under this section is for the present territorial limits of the village, unless otherwise granted by the board. Any area henceforth added to the village during the term of the franchise shall become part of the franchise territory. For any area within the franchise territory not served under the franchise, service under the franchise must be offered within one year, weather permitting, when household density reaches the equivalent of 20 households per mile from existing cable plant.

(6) **GRANT OF FRANCHISE.**

(a) This code allows the village to grant a franchise to install, maintain and operate a cable system for a term of up to 15 years, provided that the grantee conforms to the conditions, limitations and requirements of this section. No portion of a franchise or any right granted thereunder may be separated or transferred, except as provided in subsection nine (9).

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

(c) No provision of this section shall be deemed or construed to require the board to grant a franchise.

(d) A franchise granted under this section shall not take the place of any other license or permit legally required of a grantee, unless expressly provided in a franchise agreement made pursuant to this section.

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

(7) **DESCRIPTION OF A SYSTEM.**

(a) The minimum capacity for a cable system in the village shall be 50 channels.

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

(8) **FRANCHISE ACCEPTANCE.** To accept a franchise granted under this section a grantee must file any required bonds, funds and proof of insurance, as well as written notice of acceptance with the clerk within 45 days of the offer of the franchise being made by the board.

(b) Such written notice shall include a certification that the grantee: 1. Will comply with this section, any franchise agreements made pursuant to this section, and all applicable city, county, state and federal regulations in regard to the construction, operation and maintenance of a cable system;

2. Accepts the franchise relying on its own investigation and understanding of the power and

authority of the village to grant the franchise and the terms and conditions thereof;

3. Acknowledges that it has not been induced to enter into the franchise by any understanding or promise or by other statement, whether written or verbal, by or on behalf of the village or by any other third person concerning any term or condition of the franchise or code not expressed herein;

4. Shall have no recourse whatsoever against the village for any loss, cost, expense or damage arising out of any provision or requirement of a franchise or the enforcement thereof, or for the failure of the village to have authority to grant any or all parts of the franchise;

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

6. Will not at any time set up against the village in a claim for proceeding any condition or term of the franchise or code as unreasonable, arbitrary or void, or that the village had no power or authority to make any such term or condition, but shall accept the validity of the terms and conditions of the franchise and code in their entirety.

(c) Grantees of a franchise granted or transferred under this section shall, at the time of acceptance of the franchise, provide an initial payment to the village in the amount of the village's cost of granting or, in the case of a transfer, transferring the franchise. The amount of such payment shall be considered as reimbursement for administrative costs incurred before the granting or transferring of the franchise, and shall not be considered a part of the franchise fee.

**(9) TRANSFER OF FRANCHISE.**

(a) Forty-nine percent (49%) or more of the ownership of a franchise granted hereunder, or control or controlling interest of it, shall not be sold, assigned or transferred in any manner, nor shall the title, either legal or equitable, or any right or interest relating to a franchise or system, pass to or vest in any person or entity without the written permission of the board, which approval shall not be unreasonably withheld. The grantee shall provide written notification to the village before transferring ownership of at least 10% but less than 49% of a franchise. This section shall not apply to the granting of a security or mortgage interest in the grantee's assets by the grantee to a financing institution for the purpose of financing either the construction, maintenance or operation of the cable system. This section shall also not apply to the grantee's transfer or assignment of its rights and obligations to any subsidiary or to any partnership of which the grantee is the controlling managing partner.

(b) A grantee wishing to transfer control of or a controlling interest in a village cable franchise or system shall make a written request to the board for such approval.

(c) Upon receipt of any request contemplated in subsection (a) of this subsection, the village may require the grantee or any other party involved in the transfer to provide such information as is necessary to evaluate the transfer.

(d) The village may approve the transfer, deny the transfer with cause, or conditionally approve the transfer, provided that the village shall not unreasonably refuse to approve the transfer upon unreasonable conditions. The conditions the village may attach to the transfer approval may include, but are not limited to: reimbursement for reasonable and necessary expenses incurred in evaluating the transfer request; remedy of any existing or historical

violations of village codes or the franchise agreement; payment of all fees and penalties owed by the grantee at the time of transfer approval; and a guarantee by the prospective new grantee to abide by any and all codes, agreements and conditions placed upon the franchise and system by the village and existing grantee, unless mutually removed by the village and grantee.

(e) When the village approves a transfer under this section, the new grantee shall indicate acceptance of the franchise as specified in subsection 8, including the filing of all necessary bonds, funds, proofs of insurance and certifications.

**(10) FRANCHISE TERM AND RENEWAL.**

(a) A franchise granted pursuant to this section shall be effective for a period of up to 15 years. The village may grant a franchise for a shorter term if the board deems it in the best interest of the village to do so.

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

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

(d) To the extent that Section 546 of the Cable Communications Act of 1984 is not applicable, the village in its sole discretion and judgment shall have the right to grant, deny or conditionally grant renewal of a franchise, provided that the village shall not unreasonably refuse to renew the franchise or unreasonably condition the renewal. The conditions the village may place on its approval shall include, but are not limited to: reimbursement for reasonable expenses incurred in evaluating the request for renewal, updating the code and surveying community cable needs, provided, however, that this section shall not preclude an agreement by the village and grantee to share in the costs incurred in evaluating a request for renewal; remedy of historical or existing violations of the franchise or code payment of all fees and penalties owed by the grantee at the time of the renewal; and acceptance of any updated code or franchise agreement.

(e) Unless otherwise agreed upon, any amended cable ordinance or provision thereunder adopted before the franchise renewal shall take effect at the franchise renewal.

(f) When the village approves a franchise renewal, the grantee shall accept the renewed franchise under the procedures set out in subsection 8.

**(11) REVOCATION AND EXPIRATION.**

(a) The village shall have the right to revoke a franchise in the event that the grantee:

1. violates any material provision of this section, a franchise or an applicable franchise agreement;
2. attempts to evade or violate any provision of this code, franchise or an applicable franchise agreement;
3. practices any deceit or fraud upon the village or any subscriber;
4. performs any act or fails to cure any event that requires the approval or consent of the village without securing such approval or consent; or
5. triggers any provision in this section that provides for revocation as a remedy.

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

(c) Should a franchise be revoked or expire and there is no judicial or administrative review of the revocation or expiration taking place, the grantee shall begin to remove, within 90 days of revocation or expiration, all property owned by the grantee and placed on a public right-of-way unless permitted by the village to abandon said property to a purchaser.

(d) In the event that a franchise has been revoked or has not been renewed, the village shall have the option, to the extent then permitted by law, to purchase the tangible assets of the grantee's cable television system previously governed by the franchise at its fair market value, to assign such rights to purchase, or to require removal of all grantee's property located within the public ways of the village at the grantee's expense. Such an option must be exercised within 90 days from the date of the revocation or expiration of the franchise, the entry of a final judgment by a court reviewing the question of the revocation or expiration, or the entry of a final order upon appeal of the same, whichever is later.

**(12) VILLAGE RIGHTS.**

(a) The village may amend this section and a franchise granted hereunder to incorporate amendments to federal law which are applicable to the grantee's cable system. Any provision herein in conflict with or pre-empted by federal law shall be superseded.

(b) The village reserves the right to further amend this section or adopt additional codes, if it finds it necessary to protect the public health, safety and welfare. Such amendments and new codes shall be reasonable and not be in substantial conflict with the rights granted in this section or with federal or state law.

(c) In the event that the federal government cedes any power vested in the federal government at the time a franchise is granted under this section, the village reserves the right to exercise that power.

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

(e) The village may inspect all construction or installation work during such construction or installation, or at any time after completion thereof, in order to insure compliance with the provisions of this section and all other governing codes.

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

reasonably accessible from the grantee's distribution plant.

**(13) GRANTEE RULES.** A grantee may promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the grantee to exercise its rights and perform its obligations under the franchise and to assure uninterrupted service to all its subscribers. However, such rules, regulations, terms and conditions shall not be in conflict with the provisions of this section, other village codes or the laws of the state.

**(14) TECHNICAL PERFORMANCE.**

(a) The cable system shall be operated to comply with or exceed all guidelines and standards set by the FCC for signal quality and leakage. The village reserves the right to test the system and independently measure the signal quality. The system shall at all times comply with or exceed standards set by the National Electrical Code of the National Fire Protection Association.

(b) A grantee shall at all times keep its cables and other appurtenances used for transmitting signals shielded in such a manner that there will be no interference with electronic equipment not connected to the grantee's service.

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

**(15) CONDITIONS ON STREET OCCUPANCY.**

(a) All transmission and distribution structures, lines and equipment erected by a grantee within the village shall be so located as not to cause interference with the proper use of streets, alleys and other public ways and places, and not to cause interference with the rights or reasonable convenience of property owners who adjoin any of the streets, alleys or other public ways and places.

(b) The grantee shall obtain permission from the village before stringing cable or commencing disturbance of pavement, sidewalk, driveway or other surfacing, and shall, at its own cost and expense and in a manner approved by the village, replace and restore all pavement, sidewalk, driveway or other surface of any street or alley disturbed in as good condition as before such work commenced. The grantee shall comply with all village codes relating to street openings and utility facility placement and operation.

(c) If, at any time during a franchise, the village shall elect to alter or change the location or grade of any street, alley or other public way, the grantee, upon reasonable notice by the village, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense. If any construction by the grantee is in violation of the provisions of subsection (a), the grantee shall likewise, upon reasonable notice by the village, remove, relay and relocate its property in such a manner as to remedy such violation at its own expense.

(d) The grantee shall not place poles or other fixtures where the same will interfere with any gas, electric, telephone or other fixture, water hydrant or main. All such poles or other fixtures placed in any street shall be placed between the outer edge of sidewalk and the curb line, and those placed in alleys shall be placed close to the line of the lot abutting on such alley in such a

manner as not to interfere with the usual travel on the streets, alleys and public ways. Nothing in this chapter shall prohibit the use by the grantee of existing public utility poles where practical, providing mutually satisfactory rental agreements can be entered into.

(e) A grantee shall, on the request of any person holding a building-moving permit issued by the village, temporarily raise or lower its wires to permit the moving of buildings. The expenses of such temporary raising or lowering of the wires shall be paid by the person requesting the same, and the grantee may require such payment in advance. The grantee shall be given at least 48 hours advance notice to arrange for such temporary wire changes.

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

**(16) WORK PERFORMED BY OTHERS.**

(a) A grantee shall give prior notice to the village specifying the names and addresses of any entity, other than the grantee, that performs construction services in excess of \$10,000 pursuant to the franchise, provided, however, that all provisions of the franchise remain the responsibility of the grantee.

(b) All provisions of a franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of the franchise.

(c) Nothing in this section shall be construed as allowing the transfer of any rights or responsibilities of the grantee without village approval.

**(17) INDEMNITY.**

(a) The grantee shall defend, indemnify, protect and save the village and its agents and employees harmless from all claims, damages, losses and expenses, including consultant and attorney's fees, sustained by the village on account of any suit, judgment, execution, claim or demand whatsoever arising out of:

1. The enactment of this section and granting of a franchise thereunder, except such claims as may arise from the village's selection of a grantee to be awarded a franchise pursuant to this section.

2. The installation, operation or maintenance of the cable system except for acts of the village, its agents or employees, unless said acts are at the request of and under the direction or supervision of the grantee.

(b) The village shall notify the grantee within 10 days after the presentation of any claim or demand, either by suit or otherwise, made against the village on the part of the grantee.

(c) The grantee shall furnish to the village, before any franchise becomes effective, satisfactory evidence in writing that the grantee has in force and will maintain in force during the term of the franchise public liability insurance.

(d) A grantee shall maintain throughout the term of the franchise a general comprehensive liability insurance policy naming as additional insured the village, its officers, boards, commissions, agents and employees, in a company approved by and in a form satisfactory to the village attorney. The policy shall protect the village and its agencies and employees against liability for loss or damage for personal injury, death or property damage occasioned by the operations of grantee under any franchise granted hereunder, in the amounts of:

1. \$1,000,000.00 for bodily injury or death to any one person with the limit however of \$10,000,000.00 for bodily injury or death resulting from any one accident, and
2. \$1,000,000.00 for property damage resulting from any one accident. The village reserves the unilateral right to revise the levels of insurance required under this section to reflect conditions on or about the fifth and tenth anniversaries of the effective date of a franchise granted under this section. The village shall be named as an additional insured under such insurance and a copy of the current in-force policy shall be deposited with the village administrator.

**(18) BOND AND SECURITY FUND.**

(a) During the initial construction of a cable system, or any major reconstruction or upgrading thereof, the grantee shall file with the village a performance bond in the amount of \$15,000.00. The bond shall be released when the grantee certifies to the village that the construction is complete, and the village accepts such certification as proven.

(b) At the time a franchise is accepted, the grantee shall deposit into an account established by the village and maintain on deposit through the term of the franchise the amount of \$2,000.00 as a security fund for the faithful performance of the grantee of all terms and conditions of the franchise. Interest accrued on this deposit shall be paid to the grantee on an annual basis. Provision shall be made to permit the village the sole authority to withdraw funds from the security fund. The grantee shall not use the security fund for other purposes and shall not assign, pledge or otherwise use this security fund for any purpose. Within ten days after notice to it that any amount has been withdrawn by the village from the security fund pursuant to this code, the grantee shall deposit money sufficient to restore such security fund to the required amount.

**(19) REMEDY OF GRANTEE VIOLATION.** (a) In the event of any violation by a grantee, its vendor, lessee or successor of the provisions of a franchise or any material portion or portions thereof, or the failure promptly to perform any of the provisions thereof, the village may, after prior written notice is given to the grantee and the grantee has had 30 days from the notice to cure the violation, cause the grantee to be fined up to \$100.00 a day from the security fund for each day after written notice is provided until proper correction is made. If the grantee cures the violation within 30 days after notice under this section, the village may not levy such fine and the notice shall be void.

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

**(20) FRANCHISE FEE AND ANNUAL REPORT.**

(a) As compensation for permission to use the streets and public ways of the village for the construction, operation, maintenance, modification, and reconstruction of a cable system, and for the village's costs in establishing a regulatory program for a grantee, the grantee shall pay to the village an annual amount equal to 5% of the grantee's annual gross revenues in the village or, if higher, that amount allowed under federal law following 90 days written notice by the village informing the grantee of the requirement of such higher amount.

(b) The franchise fee shall be paid on a semi-annual basis according to the following schedule: revenues for January through June shall be reflected in an August 15th payment;

revenues for July through December shall be reflected in a February 15th payment. Any late franchise fee payments shall be subject to interest charges at the rate of one percent per month for the overdue balance.

(c) Each year, the grantee shall present to the village a report of system finances for the previous calendar year, which shall include gross revenues from all sources. Upon request of the village, the grantee shall also provide a report of its operating expenses, net income and an end-of-year balance sheet. In addition, the requested report must contain a summary, by type, of customer complaints received during the previous year as well as their resolutions; a summary of material physical changes in the cable system and changes in services offered in the past year; any rate or fee changes; a current listing of each officer, director, and manager of the cable system, and each person or entity holding control or controlling interest in the grantee; and a summary of the grantee's plans for the cable system in the coming year. Any discrepancy between the previous year's franchise fee paid and the amount verified in the annual report shall be paid within 30 days of the verification of the discrepancy.

(d) No acceptance of any payment by the grantee to the village shall be construed as a release or as an accord and satisfaction of any claim the village may have for further or additional sums payable as a franchise fee or for the performance of any other obligation of the grantee.

**(21) RATES CHARGED BY THE GRANTEE.** (a) Rates charged by a grantee for service under a franchise granted under this section shall be fair and reasonable. Before any service is sold to any customer, the grantee shall file with the clerk its schedule of rates for installation and monthly service charges, together with a statement of the rights and obligations of subscribers.

(b) Subsequent increases in rates, or service charges or changes to rights and obligation statements shall likewise be filed with the clerk at least 21 days before the same become effective. The grantee must also provide subscribers to the cable system with written notification of any such increases at least 14 days before the same become effective.

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

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

**(22) OPEN BOOKS AND RECORDS.**

(a) A grantee shall manage all of its operations in accordance with the policy of totally open books and records in respect to the village. The authorized officers and agents of the village shall have the right to inspect, upon at least 24 hours notice, during normal business hours all books, records, maps, plans, income tax returns, financial statements, service complaint logs, performance test results, record of request for service for at least the previous five years and other like materials of the grantee that relate to the operation of the franchise.

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

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

**(23) SUBSCRIBER RIGHTS.**

(a) No monitoring of any terminal connected to the system shall take place without, on each occasion, specific written authorization by the user of the terminal in question and written notice to the village. Written permission shall not be required for the conducting of system wide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing, nor shall it prevent the introduction of additional services agreed upon, such as two-way communications and security systems.

(b) A grantee shall not, except as required by governmental action, provide any data concerning specific subscribers or users or their use of subscriber services except in compliance with the Cable Communications Policy Act of 1984.

(c) Subscribers and users shall retain the right to deactivate their terminals, but shall continue to be responsible for charges until the grantee is notified to terminate service. The subscriber shall not be charged any fee for the cancellation or downgrading of cable service.

(d) During standard business working hours, the grantee's office must be open and able to accept payments; exchange or accept return of converters; schedule and conduct service or technician calls; and answer subscriber inquiries.

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

(f) The grantee shall answer subscribers' service requests within 24 hours, including weekends and holidays. Problems should be rectified within 48 hours or, in case of a dispute, in fewer than 10 days. Customers shall be able to schedule with the grantee that a service visit occur during a four-hour block in either the morning or the afternoon.

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

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

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

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

**(24) PUBLIC, EDUCATIONAL AND GOVERNMENTAL CHANNELS.**

(a) The grantee shall provide at least one access channel, which may be shared for public, educational and governmental programming.

(b) The grantee shall have sole authority and responsibility for the administration of the

shared access channel.

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

(d) If the village and grantee agree that the amount of local access programming warrants a second access channel, the grantee shall have 90 days to provide such a channel. Administration of the second access channel shall be under the same terms as set for the first access channel.

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

**(26) UNAUTHORIZED CONNECTIONS AND MODIFICATIONS.**

(a) It shall be unlawful for any firm, person, group, company, corporation or governmental body or agency, without the express consent of the grantee, to make or possess, or to assist in making or possessing, any connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the system.

(b) It shall be unlawful for any firm, person, group, company, corporation or governmental body or agency to willfully interfere, tamper, remove, obstruct or damage, or assist thereof, any part or segment of the System for any purpose whatsoever.

(c) Any firm, person, group, company, corporation or governmental body or agency found guilty of violating this section may be fined not less than \$50.00 and the costs of the action or more than \$500.00 and the costs of the action for each and every subsequent offense. Each continuing day of the violation shall be considered a separate offense.

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

**(28) NONENFORCEMENT BY THE VILLAGE.** The grantee shall not be relieved of any obligation by reason of any failure of the village to enforce prompt compliance with any provision of this section, a franchise or a franchise agreement.

**(29) GENERAL RIGHTS AND REMEDIES.** All rights and remedies given to the village under this section, a franchise and a franchise agreement shall be in addition to and cumulative with each other and with any and all other rights or remedies, existing or implied, now or hereafter available to the village, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically provided or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the

village in its sole judgment and discretion, and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy nor shall any such delay or omission be construed to be a waiver of or acquiescence to any default. The exercise of any such right or remedy by the village shall not release the grantee from its obligations or any liability under this section, a franchise or a franchise agreement.

**(30) WAIVER OR EXEMPTION.** The village reserves the right to waive provisions of this section, or exempt a grantee from meeting provisions of this section, if the village determines such waiver or exemption is in the public interest.

**(31) SEVERABILITY.** Should any word, phrase, clause, sentence, paragraph or portion of this section and or a franchise thereunder be declared to be invalid by a court of competent jurisdiction, such adjudication shall not affect the validity of

this section and or the franchise as a whole, but shall only affect the portion thereof declared to be invalid; and the board hereby expressly states and declares that it would nonetheless have passed this code and or granted the franchise had it known that any such word, phrase, clause, sentence, paragraph or portion of said code and or franchise were invalid.

**6.25 Penalty.** In addition to penalties provided by Wisconsin State Statutes or other provisions of this code, any person who shall violate any provision of this chapter or regulations made hereunder, shall be subject to the maximum penalty prescribed by statute and/or by section 24.05 of this code.