

Chapter 23

MARSHFIELD CABLE TELEVISION FRANCHISE ORDINANCE

- Sec. 23-01. Short title.
- Sec. 23-02. Definitions.
- Sec. 23-03. Rights and privileges of grantee.
- Sec. 23-04. Agreement and incorporation of application by reference.
- Sec. 23-05. Franchise territory.
- Sec. 23-06. Duration and acceptance of franchise.
- Sec. 23-07. Franchise renewal.
- Sec. 23-08. Police powers.
- Sec. 23-09. Cable television franchise required.
- Sec. 23-10. Use of grantee facilities.
- Sec. 23-11. Initial franchise costs.
- Sec. 23-12. Notices.
- Sec. 23-13. Bond.
- Sec. 23-14. Construction performance bond.
- Sec. 23-15. Liability and insurance.
- Sec. 23-16. Indemnification.
- Sec. 23-17. Rights of individuals.
- Sec. 23-18. Public notice.
- Sec. 23-19. Service availability and record request.
- Sec. 23-20. System construction.
- Sec. 23-21. Construction and technical standards.
- Sec. 23-22. Use of streets.
- Sec. 23-23. Operational standards.
- Sec. 23-24. Customer service standards.
- Sec. 23-25. Continuity of service mandatory.
- Sec. 23-26. Complaint procedure.
- Sec. 23-27. Grantee rules and regulations.
- Sec. 23-28. Franchise fee.
- Sec. 23-29. Transfer of ownership or control.
- Sec. 23-30. Availability of books and records.
- Sec. 23-31. Other petitions and applications.
- Sec. 23-32. Fiscal reports.
- Sec. 23-33. Removal of cable television system.
- Sec. 23-34. Required services and facilities.
- Sec. 23-35. Rules and regulations
- Sec. 23-36. Performance evaluation sessions.
- Sec. 23-37. Rate change procedures.
- Sec. 23-38. Forfeiture and termination.
- Sec. 23-39. Foreclosure.
- Sec. 23-40. Approval of transfer and right of acquisition by the city.
- Sec. 23-41. Receivership.
- Sec. 23-42. Compliance with state and federal laws.
- Sec. 23-43. Applicants' bid for initial franchise.

Sec. 23-44. Financial, contractual, shareholder and system disclosure for initial franchises.
Sec. 23-45. Damages
Sec. 23-46. Procedures.
Sec. 23-47. Force majeure.

Sec. 23-01. Short title.

This chapter shall be known and may be cited as the "Marshfield Cable Television Franchise Ordinance."

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-02. Definitions.

For the purpose of this chapter the following terms, phrases, words and their derivations shall have the meaning given in this section.

Basic service means all subscriber services provided by the grantee in one or more service tiers, which includes the delivery of local broadcast stations, and public, educational and government access channels. The term "basic service" does not include optional program and satellite service tiers, a la carte services, per channel, per program, or auxiliary services for which a separate charge is made. However, the grantee may include other satellite signals on the basic service tier.

Cable service means:

- (1) The transmission to subscribers of:
 - (a) Video programming, or
 - (b) Other programming services; and
- (2) Subscriber interaction, if any, that is required for the selection or use of such video programming or other programming services.

Cable system, system and cable television system mean 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 a community, but such term does not include:

- (a) A facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (b) A facility that serves subscribers without using any public right-of-way;
- (c) A facility of a common carrier which is subject, in whole or in part, to the provisions of title II of this act, except that such facility shall be considered a cable system other than for purposes of section 621(c) to the extent such facility is used in transmission of video programming directly to subscribers; or
- (d) Any facilities of any electric utility used solely for operating its electric utility system.

City means the City of Marshfield, Wisconsin.

Class IV channel means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable

communications system.

Control or controlling interest means actual working control or ownership of a system in whatever manner exercised. A rebuttable presumption of the existence of control or a controlling interest shall arise from the ownership, directly or indirectly, by any person or legal entity (except underwriters during the period in which they are offering securities to the public) of 40 percent or more of a cable system or the franchise under which the system is operated. A change in the control or controlling interest of a legal entity which has control or a controlling interest in a grantee shall constitute a change in the control or controlling interest of the system under the same criteria. Control or controlling interest as used in this chapter may be held simultaneously by more than one person or legal entity.

Converter means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by an appropriate channel selector also permits a subscriber to view more than 12 channels delivered by the system at designated converter dial locations.

Dwelling unit means any building or part of a building that is used as a home or residence.

FCC means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

Franchise means an initial authorization, or renewal thereof, issued by the city, as the franchising authority, to a grantee to construct or operate a cable system.

Franchise agreement means a contractual agreement entered into between the city and any grantee under this chapter that is enforceable by the city and by the grantee, and which sets forth the rights and obligations between the city and the grantee in connection with the franchise.

Grantee means a person or legal entity to whom or to which a franchise under this chapter is granted by the city, along with the lawful successors or assigns of such person or entity.

Gross revenues means all revenue collected by the grantee, arising from or attributable to the provision of cable service by the grantee within the city including, but not limited to: periodic fees charged subscribers for any basic, optional, premium, per-channel or per-program service; franchise fees; installation and reconnection fees; leased channel fees; converter rentals and/or sales; program guide revenues; late or administrative fees; upgrade, downgrade or other change-in-service fees; local advertising revenues; revenues from home shopping; revenues from the sale, exchange, use or cablecast of any programming developed on the system for community or institutional use; provided, however, that this shall not include any taxes on services furnished by the grantee herein imposed directly upon any subscriber or user by the state, local or other governmental unit and collected by the grantee on behalf of the governmental unit.

Initial service area means all areas in the city having a density of at least 30 dwelling units per street mile.

MARSHFIELD CABLE TELEVISION FRANCHISE ORDINANCE § 23-02

Installation means the connection of the system from feeder cable to a subscriber's terminal.

Local advertising revenues means local and regional advertising revenues derived from the sale of locally and regionally inserted advertising, except such advertising sold by or through the grantee's national representative firm.

May is permissive.

Monitoring means observing a communications signal, or the absence of a signal, where the observer is neither the subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever; provided monitoring shall not include systemwide, nonindividually addressed sweeps of the system for purposes of verifying system integrity, controlling return paths transmissions, or verification of billing for premium or other services.

Normal business hours as applied to the grantee means those hours during which similar businesses in the city are open to serve customers.

Normal operating conditions means those service conditions that are within the control of the grantee. Those conditions that are not within the control of the grantee include, but are not limited to: natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the grantee 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.

Person means any natural person or any association, firm, partnership, joint stock company, limited liability company, joint venture, corporation, or other legally recognized entity, private or public, whether for-profit or not-for-profit.

Shall is mandatory.

Service interruption means the loss of either picture or sound or both for a single subscriber or multiple subscribers.

Street means the surface of and all rights-of-way and the space above and below any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive or easement now or hereafter held by the city for the purpose of public travel and shall include other easements or rights-of-way as shall be now held or hereafter held by the city which shall, within their proper use and meaning entitle the grantee to the use thereof for the purposes of installing poles, wires, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a cable television system.

Subscriber means any person, firm, grantee, corporation or other legal entity, or association lawfully receiving any service provided by a grantee pursuant to this chapter.

User means a party utilizing a cable television system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt thereof in a subscriber capacity.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-03. Rights and privileges of grantee.

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

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-04. Agreement and incorporation of application by reference.

(1) Upon adoption of any franchise agreement and execution thereof by the grantee, the grantee agrees to be bound by all the terms and conditions contained in this chapter.

(2) Any grantee also agrees to provide all services specifically set forth in its application and to provide cable television service within the confines of the city; and by its acceptance of the franchise, the grantee specifically grants and agrees that its application is thereby incorporated by reference and made a part of the franchise.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-05. Franchise territory.

Any franchise is for the legally incorporated territorial limits of the city and for any area henceforth added thereto during the term of the franchise.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-06. Duration and acceptance of franchise.

Any franchise and the rights, privileges and authority granted under this chapter shall take effect and be in force from and after final city approval thereof, as provided by law, and shall continue in force and effect for a term of no longer than 15 years, provided that within 45 days after the date of final city approval of the franchise the grantee shall file with the city its unconditional acceptance of the franchise and promise to comply with and abide by all its provisions, terms and conditions. Such acceptance and promise shall be in writing duly executed. Such franchise shall be nonexclusive and revocable.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-07. Franchise renewal.

(1) Current federal procedures and standards pursuant to 47 USC 546, shall govern the renewal of any franchise awarded under this chapter.

(2) In the event that any or all of the applicable provisions of federal law are repealed or otherwise modified, the following relevant subsections shall apply:

- (a) At least 24 months prior to the expiration of the franchise, the grantee shall inform the city in writing of its intent to seek renewal of the franchise.
- (b) The grantee shall submit a proposal for renewal that demonstrates:
 - 1. That it has been and continues to be in substantial compliance with the terms, conditions, and limitations of this chapter and its franchise;
 - 2. That its system has been installed, constructed, maintained and operated in accordance with the FCC and this chapter and its franchise;
 - 3. That it has the legal, technical and financial qualifications to continue to maintain and operate its system; and
 - 4. That it has made a good faith effort to provide services and facilities which accommodate the demonstrated needs of the community, taking into account the cost of meeting such needs.
- (c) After giving public notice, the city shall proceed to determine whether the grantee has satisfactorily performed its obligations under the franchise. To determine satisfactory performance, the city shall consider technical developments and performance of the system, cost of services, and any other particular requirements set forth in this chapter. The city shall also consider the grantee's reports made to the city and to the FCC, and the city may require the grantee to make available specified records, documents, and information for this purpose, and may inquire specifically whether the grantee will supply services sufficient to meet future community needs and interest, taking into account the cost of meeting such needs.

Industry performance on a national basis shall also be considered. Provisions shall be made for public comment with adequate prior notice of at least ten days.

- (d) The grantee shall be entitled to the same due process rights included in 47 USC 546.
- (e) The city shall then prepare any amendments to this chapter that it believes necessary.
- (f) If the city finds the grantee's performance satisfactory, and finds the grantee's technical, legal, and financial abilities acceptable, and finds the grantee's renewal proposal meets the future cable-related needs of the city, taking into account the cost of meeting such needs, a new franchise shall be granted pursuant to this chapter as amended for a period to be determined.

- (g) If the grantee is determined by the city to have performed unsatisfactorily, new applicants may be sought and evaluated and a franchise award shall be made by the city according to franchising procedures adopted by the city.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-08. Police powers.

(1) In accepting a franchise, the grantee acknowledges that its rights thereunder are subject to the police power of the city to adopt and enforce general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the city pursuant to such power.

(2) Any conflict between the provisions of a franchise and any other current or future lawful exercise of the city's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction or applies exclusively to the grantee or cable television systems which contains provisions inconsistent with this chapter, shall prevail only if upon such exercise the city finds a danger to health, safety, property or general welfare or if such exercise is mandated by law.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-09. Cable television franchise required.

No cable television system shall be allowed to operate or to occupy or use the streets for system installation and maintenance purposes without a franchise.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-10. Use of grantee facilities.

The city shall have the right to install and maintain upon the poles of the grantee at a charge equal to the grantee's costs any wire or pole fixtures that do not unreasonably interfere with the cable television system operations, including future plans, of the grantee. The city shall indemnify and hold harmless the grantee from any claim that might arise due to or as a result of the city's use.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-11. Initial franchise costs.

Costs to be borne by a grantee shall include any requirements or charges incidental to the awarding or enforcing of its initial franchise, but shall not be limited to: all costs of publications of notices prior to any public meeting provided for pursuant to this chapter, and any costs not covered by application fees, incurred by the city in its study, preparation of proposal documents, evaluation of all applications, and examinations of the applicant's qualifications.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-12. Notices.

All notices from the grantee to the city pursuant to any franchise shall be to the city clerk. The grantee shall maintain with the city, throughout the term of the franchise, an address for service of notices by mail. The grantee shall maintain a central office to address any issues relating to operating under this cable television ordinance.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-13. Bond.

(1) Within 60 days after the award of an initial or renewal franchise, the grantee shall deposit with the city a bond in the amount of \$5,000.00 with the form to be established by the city. The form and content of such bond shall be approved by the city attorney. This instrument shall be used to ensure the faithful performance of the grantee of all provisions of this chapter, and to ensure compliance with all orders, permits and directions of any agency, commission, board, department, division, or office of the city having jurisdiction over its acts or defaults under this chapter, and to ensure the payment by the grantee of any claims, liens, and taxes due the city which arise by reason of the construction, operation or maintenance of the system.

(2) The bond shall be maintained at the amount established in subsection (1) of this section for the entire term of the franchise, even if amounts have to be withdrawn pursuant to this chapter.

(3) If the grantee fails to pay to the city any amounts owed under the franchise agreement, that is not on appeal to the court of proper jurisdiction, within the time fixed herein; or fails after 15 days' notice to pay to the city any taxes due and unpaid; or fails to repay the city within 15 days, any damages, costs or expenses which the city is compelled to pay by reason of any act or default of the grantee in connection with the franchise, or fails, after three days' notice of such failure by the city to comply with any provision of the franchise which the city reasonably determines can be remedied by demand on the bond, the city may immediately demand payment of the amount thereof, with interest and any penalties, from the bond. Upon such demand for payment, the city shall notify the grantee of the amount and date thereof.

(4) The rights reserved to the city with respect to the bond are in addition to all other rights of the city, whether reserved by the franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the city may have.

(5) The bond shall contain an endorsement agreeing that the bond may not be canceled by the surety nor the intention not to renew be stated by the surety until 30 days after receipt by the city, by registered mail, of a written notice of such intention to cancel or not to renew.

(6) In the event the city receives a 30-day notice from a surety, it shall have the right to demand payment from the bond unless the grantee provides appropriate assurance that a replacement bond will be presented before the expiration of the 30-day period. Assurance shall be determined by the city at its sole discretion. This section shall not apply if the city and grantee agree that a bond is no longer required or if the bond is, by agreement between the city and grantee, in the process of

being reduced.

(7) The city may, at any time during the term of the ordinance from which this chapter derives, waive the grantee's requirement to maintain a bond. The waiver of the requirement may be initiated by the city or may be requested by the grantee.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-14. Construction performance bond.

(1) Within 60 days after the award of an initial or renewal franchise, the grantee shall file with the city a performance bond in an amount equal to the estimated cost of restoration of all public rights-of-way to be disturbed or in an amount of not less than \$50,000.00, whichever is greater, which performance bond shall be in favor of the city. This bond shall be maintained throughout the construction period and until such time as determined by the city, unless otherwise specified in the franchise agreement, but for at least a minimum of one year after completion of the construction.

(2) If the grantee fails to comply with any law, ordinance or resolution governing the franchise, or fails to observe, fulfill and perform each term and condition of the franchise, as it relates to the conditions relative to the construction of the system, including the franchise agreement that is incorporated in this chapter by reference, there shall be recoverable jointly and severally, from the principal and surety of the bond, any damages or losses suffered by the city, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the grantee, plus a reasonable allowance for attorney's fees, including the city's legal staff, and costs, up to the full amount of the bond. This section shall be an additional remedy for any and all violations outlined in section 23-13 of this chapter.

(3) The city shall, upon completion of construction of the service area, waive the requirement of the grantee to maintain the bond. However, the city may require a performance bond to be posted by the grantee for any construction subsequent to the completion of the initial service areas, in a reasonable amount not to exceed \$50,000.00, and upon such terms as determined by the city.

(4) The bond shall contain an endorsement stating that the bond may not be canceled by the surety nor the intention not to renew be stated by the surety until 30 days after receipt by the city, by registered mail, of a written notice of such intent to cancel and not to renew.

(5) Upon receipt of a 30-day notice, and following a 30-day period to cure, this shall be construed as a default granting the city the right to demand payment on the bond.

(6) The city, at any time during the term of the ordinance from which this chapter derives, may waive the grantee's requirement to maintain a performance bond. The waiver of the requirement can be initiated by the city or the grantee.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-15. Liability and insurance.

(1) The grantee shall maintain and by its acceptance of the franchise specifically agrees that it will maintain throughout the term of the franchise, liability insurance insuring the city and the grantee in the minimum amount of:

- (a) For property damage to any one person, \$3,000,000.00;
- (b) For property damage from any one occurrence, \$3,000,000.00;
- (c) For personal injury to any one person, \$3,000,000.00; and
- (d) For personal injury from any one occurrence, \$3,000,000.00.

(2) The certificate of insurance obtained by the grantee in compliance with this section shall be filed and maintained with the city during the term of the franchise. The grantee shall immediately advise the city attorney of any litigation that may develop that would affect this insurance.

(3) Neither the provisions of this section nor any damages recovered by the city under this section, shall be construed to or limit the liability of the grantee under any franchise issued under this chapter.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-16. Indemnification.

(1) Disclaimer of liability. The city shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of the construction, maintenance, repair, use, operation, condition or dismantling of the grantee's cable television system or due to the act or omission of any person or legal entity other than the city or those persons or legal entities for which the city is legally liable as a matter of law.

(2) Indemnification. The grantee shall, at its sole cost and expense, indemnify and hold harmless the city, its respective officers, boards, departments, commissions and employees (referred to in this section as "indemnitees") from and against:

- (a) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or asserted against the indemnitees by reason of any act or omission of the grantee, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, corporation or other legal entity, which may arise out of or be in any way connected with the construction, installation, operation, maintenance or condition of the cable television system caused by the grantee, its subcontractors or agents or the grantee's failure to comply with any federal, state or local law.

- (b) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants) imposed upon indemnitees by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to the grantee, its contractors or subcontractors, for the installation, construction, operation or maintenance of the cable television system. Upon written request by the city, such claim or lien shall be discharged or bonded within 15 days following such request.
- (c) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or asserted against the indemnitees by reason of any financing or securities offering by the grantee or its affiliates for violations of the common law or any laws, statutes or regulations of the State of Wisconsin or of the United States, including those of the Federal Securities and Exchange Commission, whether by the grantee or otherwise; excluding therefrom, however, claims which are based upon and arise out of information supplied by the city to the grantee in writing and included in the offering materials with the express written approval of the city prior to the offering.

(3) Assumption of risk. The grantee undertakes and assumes for its officers, directors, agents, contractors and subcontractors and employees all risk of dangerous conditions, if any, on or about any city-owned or -controlled property, including public rights-of-way, and the grantee hereby agrees to indemnify and hold harmless the indemnitees against and from any claim asserted or liability imposed upon the indemnitees for personal injury or property damage to any person arising out of the installation, operation, maintenance or condition of the cable television system or the grantee's failure to comply with any federal, state or local law.

(4) Defense of indemnitees. In the event any action or proceeding shall be brought against any or all of the indemnitees by reason of any matter for which the indemnitees are indemnified under this section, the grantee shall, upon notice from any of the indemnitees, at the grantee's sole cost and expense, defend the same; provided further, however, that the grantee shall not admit liability in any such matter on behalf of the indemnitees without the written consent of the city attorney or the city attorney's designee.

(5) Notice, cooperation and expenses. The city shall give the grantee reasonably prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. Nothing herein shall be deemed to prevent the city from cooperating with the grantee and participating in the defense of any litigation by the city's own counsel at the city's own expense. No recovery by the city of any sum under the bond shall be any limitation upon the liability of the grantee to the city under the terms of this section, except that any sum so received by the city shall be deducted from any recovery which the city might have against the grantee under the terms of this section.

(6) Nonwaiver of statutory limits. Nothing in this chapter is intended to express or imply a waiver by the city of statutory provisions, privileges or immunities of any kind or nature as set forth in § 893.80 et seq. Wis. Stats., including the limits of liability of the city.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-17. Rights of individuals.

(1) The grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, income, sex, marital status, sexual preference or age. The grantee shall comply at all times with all other applicable federal, state and local laws and regulations and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this chapter by reference.

(2) The grantee shall strictly adhere to the equal employment opportunity requirements of the Federal Communications Commission and of state and local governments, and as amended from time to time.

(3) The grantee shall, at all times, comply with the privacy requirements of state and federal law.

(4) The grantee is required to make all services available to all residential dwellings throughout the service area located in areas having a density of at least 30 dwelling units per street mile.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-18. Public notice.

Minimum public notice of any public meeting relating to the franchise shall be governed by the provisions of the state Open Meetings Law, and shall be on at least one channel of the grantee's system between the hours of 7:00 p.m. and 9:00 p.m., for five consecutive days prior to the meeting.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-19. Service availability and record request.

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

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-20. System construction.

(1) New construction timetable. The timetable for new construction shall be as follows:

- (a) Within two years from the date of the award of an initial franchise, the grantee must make cable television service available to every dwelling unit within the initial service area.

1. The grantee must make cable television service available to at least 20 percent of the dwelling units within the initial service area within six months from the date of the award of the franchise.
 2. The grantee must make cable television service available to at least 50 percent of the dwelling units within the initial service area within one year from the date of the award of the franchise.
- (b) The grantee, in its application, may propose a timetable of construction which will make cable television service available in the initial service area sooner than the minimum requirements in subsection (1)(a) of this section, in which case the schedule will be made part of the franchise agreement, and will be binding upon the grantee.
- (c) Any delay beyond the terms of this timetable, unless specifically approved by the city, will be considered a violation of this chapter for which the provisions of either section 23-38 or 23-45 of this chapter shall apply, as determined by the city.
- (d) In special circumstances the city may waive 100-percent completion within the two-year timeframe, provided substantial completion is accomplished within the allotted timeframe, substantial completion to be not less than 95 percent. Justification for less than 100 percent must be submitted subject to the approval of the city.
- (2) Line extensions. Construction of line extensions shall be in accordance with the following:
- (a) In areas of the franchise territory not included in the initial service areas, a grantee shall be required to extend its system pursuant to the following requirements:
1. No customer shall be refused service arbitrarily. The grantee is hereby authorized to extend the cable system as necessary within the city upon obtaining utility permits from the city engineer prior to any line extensions or other utility improvements within the public right-of-way. To expedite the process of extending the cable system into a new subdivision, the property owner or developer or his designee shall forward to the grantee a copy of the approved subdivision plat. Subject to the density requirements, the grantee shall commence the design and construction process upon receipt of the approved subdivision plat. Upon notification from the owner or developer that the first home in the project has been approved for a building permit, the grantee shall have a maximum of three months, weather permitting, to complete the construction/activation process within the applicable project phase.
 2. The grantee shall extend and make cable television service available to every dwelling unit in all unserved, developing areas having at least 30 dwelling units per street mile, as measured from the existing system from which service can be provided.
 3. The grantee shall extend and make cable television service available to any isolated resident outside the initial service area requesting connection at the standard connection charge, if the connection to the isolated resident would require no more than a standard 150-foot drop line.

MARSHFIELD CABLE TELEVISION FRANCHISE ORDINANCE § 23-21

- (b) Early extension. In areas not meeting the requirements for mandatory extension of service, the grantee shall provide, upon the request of a potential subscriber desiring service, an estimate of the grantee's costs required to extend service to the subscriber. The grantee shall then extend service upon request of the potential subscriber. The grantee may require advance payment or assurance of payment satisfactory to the grantee. In the event the area reaches the density required for mandatory extension within two years, such payments shall be refunded to the subscriber upon request.
- (c) (c) New development undergrounding. In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give the grantee reasonable notice of the particular date when the grantee shall begin installation of conduit, pedestals and/or vaults, and laterals. Costs of trenching and easements required to bring service to the development shall be borne by the grantee, the developer and/or the property owner. The grantee shall make arrangements with other utility installers as necessary to share underground trenches when applicable.

(3) A grantee may propose a line extension policy that will result in serving more residents of the city than as required in this section, in which case the grantee's policy will be incorporated into the franchise agreement and will be binding on the grantee.

(4) The violation of this section following a 30-day period to cure shall be considered a breach of the terms of this chapter, for which the provisions of either section 23-38 or 23-45 of this chapter shall apply, as determined by the city.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-21. Construction and technical standards.

(1) Compliance with construction and technical standards. The grantee shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements, and FCC technical standards. In addition, the grantee shall provide the city, upon request, a written report of the results of the grantee's annual proof of performance tests conducted pursuant to Federal Communications Commission standards and requirements.

(2) Additional specifications. Additional specifications shall be as follows:

- (a) Construction, installation and maintenance of the cable television system shall be performed in an orderly and workmanlike manner. All construction must also conform to all City of Marshfield policies and permit requirements. The grantee must provide erosion control, backfilling and compaction, and restoration to meet City of Marshfield specifications. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel, and bundled with due respect for engineering considerations.

- (b) The grantee shall at all times comply with the applicable:
 - 1. National Electrical Safety Code (National Bureau of Standards);
 - 2. National Electrical Code (National Bureau of Fire Underwriters);
 - 3. Applicable FCC or other federal, state and local regulations.
- (c) In any event, the system shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the grantee may have equipment located.
- (d) Any antenna structure used in the system shall comply with construction, marking, and lighting of antenna structures, required by the United States Department of Transportation.
- (e) All working facilities and conditions used during construction, installation and maintenance of the cable television system shall comply with the standards of the Occupational Safety and Health Administration.
- (f) Radio frequency (RF) leakage shall be checked at reception locations for emergency radio services to prove no interference signal combinations are possible. Antenna structure shall also comply with FAA requirements on height restrictions around the Marshfield Municipal Airport. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception in the normal flight patterns. FCC rules and regulations shall govern.
- (g) The grantee shall maintain equipment capable of providing standby power for headend, transportation and trunk amplifiers for a minimum of two hours.
- (h) In all areas of the city where all cables, wires and other like facilities of public utilities are placed underground, the grantee shall place its cables, wires and other like facilities underground. When all public utilities relocate their facilities from pole to underground, the cable operator must concurrently do so.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-22. Use of streets.

(1) Interference with persons and improvements. The grantee's system, poles, wires and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons or interfere with the rights or reasonable health, safety or welfare of property owners who adjoin any of the streets and public ways, or interfere with any improvements the city may make, or hinder or obstruct the free use of the streets, alleys, bridges, easements or public property. The grantee shall secure a permit from the city engineer for any improvements constructed in the public right-of-way in accordance with ss. 13-33 and 14-03 of this Code.

MARSHFIELD CABLE TELEVISION FRANCHISE ORDINANCE § 23-22

(2) Restoration to prior condition. In case of any disturbance of pavement, sidewalk, landscaping, driveway or other surfacing, the grantee shall, at its own cost and expense and in a manner approved by the city engineer, replace and restore all paving, sidewalk, driveway, landscaping, and streets or alleys, including any subbase which was disturbed, in as good condition as before the work was commenced and in accordance with standards for such work set by the city engineer. After 30 days, if restoration measures are not performed to the reasonable satisfaction of the city engineer, the city may undertake remedial restoration activities, such activities to be performed at the grantee's cost.

(3) Erection, removal and common uses of poles. Erection, removal and common uses of poles shall be in accordance with the following:

- (a) No poles or other wire-holding structures shall be erected by the grantee without prior approval of the city with regard to location, height, types, and any other pertinent aspect. However, no location of any pole or wire-holding structure of the grantee shall be a vested interest and such poles or structures shall be removed or modified by the grantee at its own expense whenever the city determines that the public health, safety or welfare would be enhanced thereby.
- (b) Each grantee shall use existing poles whenever possible and shall not construct or install any new, different or additional poles in the streets until the grantee obtains the city's written approval. The franchise does not include any license or permit required for attaching devices to poles owned by others, whether such poles are owned by the city or a private entity, nor does the franchise relieve the grantee of any obligation to obtain pole use agreements from any person, including the city, who maintains poles in the streets, whenever it is necessary for the grantee to use such person's poles.
- (c) Where the city desires to make use of the poles or other wire-holding structures of the grantee and the use will not unduly interfere with the grantee's operations, the city may require the grantee to permit such use for reasonable consideration and terms.

(4) Relocation of facilities. If at any time during the period of the franchise the city shall lawfully elect to alter, or change the grade of any street, alley or other public ways or alter or change the location or width of any street and/or any municipal underground facilities, the grantee, upon reasonable notice by the city, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

(5) Cooperation with building movers. The grantee shall, at the request of any person holding a building moving permit issued by the city, temporarily raise or lower its wires to permit the moving of buildings. Expenses of such temporary removal, raising or lowering of wires shall be paid by the person making the request, and the grantee shall have the authority to require such payment in advance. The grantee shall be given at least ten days' advance notice to arrange for such temporary wire changes.

(6) Tree trimming. The grantee shall not remove any tree or trim any portion of any tree within any public street as defined in section 23-02 of this chapter without the prior consent of the city, except in an emergency situation. The grantee shall provide notice to any affected residents at the

same time that the grantee applies to the city for consent to perform tree trimming. The city shall have the right to do the trimming requested by the grantee at the cost of the grantee. Regardless of who performs the work requested by the grantee, the grantee shall be responsible, shall defend and hold city harmless from any and all damages to any tree as a result of the grantee's trimming, or to the property surrounding any tree, whether such tree is trimmed or removed.

(7) Road cuts. The grantee 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 grantee shall utilize trenchless or subsurface methods for the laying of cable or wires.

(8) One-call system. The grantee or its designee shall contact the one-call system, in accordance with § 182.0175 Wis. Stats. before commencing any construction. The grantee acknowledges that private sanitary sewer, water and stormwater laterals are not part of the one-call system and will take necessary measures to have these located by the owner. The grantee shall be responsible for all damaged laterals and shall repair the laterals at its own expense.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-23. Operational standards.

(1) The grantee shall maintain all parts of the system in good condition throughout the entire franchise period.

(2) Upon the reasonable request for service by any person located within the franchise territory, the grantee shall, within 30 days, furnish the requested service to such person within terms of the line extension policy. A request for service shall be unreasonable for the purpose of this subsection if no distribution line capable of servicing that person's block has been installed.

(3) Temporary service drops shall be provided as follows:

- (a) The grantee shall put forth every effort to bury temporary drops within 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.
- (b) The grantee shall provide reports to the city, upon request, on the number of drops pending.

(4) The grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use.

(5) The grantee shall not allow its cable or other operations to interfere with television reception of subscribers or persons not served by the grantee, nor shall the system interfere with, obstruct or hinder in any manner the operation of the various utilities serving the customers within the

MARSHFIELD CABLE TELEVISION FRANCHISE ORDINANCE § 23-24

confines of the city, nor shall other utilities interfere with the grantee's system.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-24. Customer service standards.

(1) Nothing in this chapter 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 chapter or that address matters not addressed in this chapter.

(2) The grantee shall maintain a local or toll-free telephone access line which is available to its subscribers and shall have knowledgeable, qualified representatives available to respond to customer telephone inquiries regarding repairs 24 hours per day, seven days per week.

(3) Under normal operating conditions, telephone answer time, including wait time and the time required to transfer the call, shall not exceed 30 seconds. This standard shall be met no less than 90 percent of the time as measured on a quarterly basis.

(4) Under normal operating conditions, the customer will receive a busy signal less than three percent of the total time that the office is open for business.

(5) A centrally located customer service center will be open for walk-in customer transactions a minimum of eight hours per day Monday through Friday, unless there is a need to modify those hours because of the location or customers served. The grantee and city by mutual consent shall establish supplemental hours on weekdays and weekends as fit the needs of the community.

(6) Under normal operating conditions, each of the following standards will be met no less than 95 percent of the time as measured on an annual basis:

- (a) Standard installations will be performed within seven business days after an order has been placed. A standard installation is one that is within 150 feet of the existing system.
- (b) Excluding those situations that are beyond its control, the grantee will respond to any service interruption promptly and in no event later than 24 hours from the time of initial notification. All other regular service requests will be responded to within 36 hours during the normal workweek for that system. The appointment window alternatives for installations, service calls and other installation activities will be: "morning" or "afternoon"; not to exceed a four-hour "window" during normal business hours for the system, or at a time that is mutually acceptable. The grantee shall schedule supplemental hours during which appointments can be scheduled based on the needs of the community. If at any time an installer or technician is running late, an attempt to contact the customer will be made and the appointment rescheduled as necessary at a time that is convenient to the customer.

(7) Subscriber credit for outages. Upon service interruption of a subscriber's cable service, the following shall apply:

- (a) For service interruptions of more than four hours and up to four days, the grantee shall provide, at the subscriber's request, a credit of 1/30 of one month's fees for affected services for each 24-hour period service is interrupted for four or more hours for any subscriber, with the exception of subscribers disconnected because of nonpayment or excessive signal leakage.
 - (b) For interruptions of seven days or more in one month, the grantee shall provide, at the subscriber's request, a full month's credit for affected services for all affected subscribers.
- (8) The grantee shall provide written information for each of the following areas at the time of installation and at any future time upon the request of the customer:
- (a) Product and services offered.
 - (b) Prices and service options.
 - (c) Installation and service policies.
 - (d) How to use the cable television services.
- (9) Bills will be clear, concise and understandable, with all charges for cable services itemized.
- (10) Credits will be issued promptly, but no later than the customer's next billing cycle following the resolution of the request and the return of the equipment by the grantee, if service has been terminated.
- (11) The grantee shall notify customers a minimum of 30 days in advance of any rate or channel change.
- (12) The grantee shall maintain and operate its network in accordance with the rules and regulations incorporated in this chapter or as may be promulgated by the Federal Communications Commission, the United States Congress, or the State of Wisconsin.
- (13) The grantee shall continue, through the term of the franchise, to maintain the technical standards and quality of service set forth in this chapter. Should the city find, by resolution, that the grantee has failed to maintain these technical standards and quality of service, and should it, by resolution, specifically enumerate improvements to be made, the grantee shall make such improvements. Failure to make such improvements within three months of such resolution will constitute a breach of a condition for which penalties contained in section 23-45 of this chapter are applicable.
- (14) The grantee shall keep a monthly service log that indicates the nature of each service complaint received in the last 24 months, the date and time each complaint was received, the disposition of each complaint, and the time and date thereof. This log shall be made available for periodic inspection by the city.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-25. Continuity of service mandatory.

(1) It shall be the right of all subscribers to continue receiving service as long as their financial and other obligations to the grantee are honored. If the grantee elects to overbuild, rebuild, modify or sell the system, or the city gives notice of intent to terminate or fails to renew the franchise, the grantee shall act so as to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances.

(2) If there is a change of franchise, or if a new operator acquires the system, the grantee shall cooperate with the city, new franchisee or new operator to maintain continuity of service to all subscribers.

(3) If the grantee fails to operate the system for seven 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 grantee 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 grantee, the grantee shall reimburse the city for all reasonable costs or damages in excess of revenues from the system received by the city that are the result of the grantee's failure to perform.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-26. Complaint procedure.

(1) The council or its designee has primary responsibility for the continuing administration of the franchise and implementation of complaint procedures.

(2) During the terms of the franchise and any renewal thereof, the grantee shall maintain a central office, designated by the grantee, for the purpose of receiving and resolving all complaints regarding the 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 grantee 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.

(3) As subscribers are connected or reconnected to the system, the grantee shall, by appropriate means, such as a 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 agent to whom such inquiries or complaints are to be addressed.

(4) 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 grantee to test, analyze and report on the performance of the system. The grantee shall fully cooperate with the city in performing such testing and shall prepare results and a report, if requested, within 30 days after notice. Such report shall include the following information:

- (a) The nature of the complaint or problem that precipitated the special tests;
- (b) The system components tested;
- (c) The equipment used and procedures employed in testing;
- (d) The method, if any, in which such complaint or problem was resolved;
- (e) Any other information pertinent to the tests and analyses which may be required.

(5) The city may require that tests be supervised, at the grantee'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.

(6) The city's rights under this section shall be limited to requiring tests, analyses 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.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-27. Grantee rules and regulations.

The grantee shall have the authority to 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 ensure uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions of this chapter or applicable state and federal laws, rules and regulations.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-28. Franchise fee.

(1) A grantee shall pay to the city a franchise fee in the amount of five percent of the grantee's gross revenues.

(2) The franchise fee payment shall be in addition to any other tax or payment owed to the city by the grantee and shall not be construed as payment in lieu of municipal property taxes or other state, county or local taxes.

(3) The franchise fee and any other costs or penalties assessed shall be payable quarterly on a calendar-year basis to the city within 45 days of the end of each quarter. The grantee shall also file a complete and accurate verified statement of all gross revenues as previously defined within 45 days of the end of each quarter.

(4) The city shall have the right to inspect the grantee's income records and to audit and recompute any amounts determined to be payable under this chapter; provided, however, that such

MARSHFIELD CABLE TELEVISION FRANCHISE ORDINANCE § 23-29

audit shall take place within 60 months following the close of each of the grantee's fiscal years that is the subject of the audit. Any additional amount due the city as a result of an audit shall be paid within 30 days following written notice to the grantee by the city, which shall include a copy of the audit report.

(5) If any franchise fee payment or recomputed amount, cost or penalty, is not made on or before the applicable dates heretofore specified, interest shall be charged from such date at an annual rate of 12 percent. The grantee shall reimburse the city for any additional expenses and costs incurred by the city by reason of the delinquent payment, including, but not limited to, attorney's fees, consultant fees and audit fees.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001; Ord. No. 965, § 1, 12-17-2002)

Sec. 23-29. Transfer of ownership or control.

(1) A franchise shall not be assigned or transferred, either in whole or in part, or leased or sublet in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person without the prior written consent of the city. The grantee may, however, transfer or assign the franchise to a wholly owned subsidiary of the grantee and such subsidiary may transfer or assign the franchise back to the grantee without such consent, providing that such assignment is without any release of liability of the grantee. Any proposed assignee must show legal, technical and financial responsibility as determined by the city and must agree to comply with all provisions of the franchise. The city shall have 120 days to act upon any request for approval of a sale or transfer submitted in writing that contains or is accompanied by all such information as is required in accordance with FCC regulations and by the city. The city shall be deemed to have consented to a proposed transfer or assignment if its refusal to consent (including the reasons therefor) is not communicated in writing to the grantee within 120 days following receipt of written notice together with all necessary information as to the effect of the proposed transfer or assignment upon the public, unless the requesting party and the city agree to an extension of time. The city shall not unreasonably withhold consent to a proposed transfer.

(2) The grantee shall promptly notify the city of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the grantee. The term "control" as used in this subsection is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of 40 percent of the voting shares of the grantee. Every change, transfer or acquisition of control of the grantee shall make the franchise subject to cancellation unless and until the city shall have consented thereto, which consent shall not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the city may inquire into the legal, technical, financial and other qualifications of the prospective controlling party, and the grantee shall assist the city in such inquiry.

(3) The consent or approval of the city to any transfer of the grantee shall not constitute a waiver or release of the rights of the city in and to the streets, and any transfer shall by its terms, be expressly subordinate to the terms and conditions of the franchise.

(4) In the absence of extraordinary circumstances, the city shall not be required to approve any transfer or assignment of a new franchise prior to substantial completion of construction of the proposed system.

(5) In no event shall a transfer of ownership or control be approved without the successors in interest agreeing in writing to abide by the terms and conditions of the franchise agreement.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-30. Availability of books and records.

(1) The grantee shall fully cooperate in making available at reasonable times, and the city shall have the right to inspect at the grantee'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 grantee 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 the grantee and the city:

- (a) A yearly review and resolution or progress report submitted by the grantee to the city;
- (b) Periodic preventive 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;

(3) Periodic construction update reports including, where appropriate, the submission of strand maps.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-31. Other petitions and applications.

Copies of all petitions, applications, communications and reports submitted by the grantee to the Federal Communications Commission, to the Securities and Exchange Commission, or to any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to the franchise or received from such agencies, shall be provided to the city upon request.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-32. Fiscal reports.

The grantee shall file annually with the city no later than 120 days after the end of the grantee's fiscal year, a copy of a gross revenues statement certified by an officer of the grantee.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-33. Removal of cable television system.

At the expiration of the term for which the franchise is granted or when any renewal is denied, or upon its termination as provided in this chapter, the grantee shall forthwith, upon written notice by the city, remove at its own expense all aerial portions of the cable television system from all streets and public property within the city within six months. If the grantee fails to do so within six months, the city may perform the work at the grantee's expense. Upon such notice of removal, a bond shall be furnished by the grantee in an amount sufficient to cover this expense.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-34. Required services and facilities.

- (1) The cable television system shall have a minimum channel capacity of 87 channels.
- (2) Such system shall maintain a plant having the technical capacity for two-way communications.
- (3) The grantee shall provide the following:
 - (a) At least one specially designated channel for use by local education authorities;
 - (b) At least two specially designated channels for local public access programming and local governmental uses;
 - (c) If required by the franchise agreement, an institutional network (I-Net) of cable, optical, electrical or electronic equipment, including cable television systems, used for the purpose of transmitting two-way video signals interconnecting designated entities to be determined by the city. The cost of such network will be borne by the city as negotiated between the grantee and the city. Such network may be provided as needed by utilizing capacity on the system.
 - (d) 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 subsections (3)(a)—(c) of this section. Financial and technical support and replacement and maintenance of equipment of this facility shall be separately incorporated into the franchise by agreement.
- (4) The grantee shall incorporate into its cable television system the capacity to permit the city, in times of emergency, to override by remote control the audio, video and/or text of all channels

simultaneously, which the grantee may lawfully override. The grantee shall provide emergency broadcast capacity pursuant to FCC rules. The grantee shall cooperate with the city in the use and operation of the emergency alert override system.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-35. Rules and regulations

(1) In addition to the inherent powers of the city to regulate and control any cable television franchise, and those powers expressly reserved by the city, or agreed to and provided for in this chapter, the right and power is hereby reserved by the city to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers and furtherance of the terms and conditions of the franchise; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions of this chapter or applicable state and federal laws, rules and regulations and do not appreciably increase the burdens or appreciably impair the rights of the grantee under the franchise agreement.

(2) The city may also adopt such regulations at the request of grantee upon application.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-36. Performance evaluation sessions.

(1) Performance evaluation sessions may be held at any time during the term of the franchise at the request of either the city or the grantee. All such evaluation sessions shall be open to the public.

(2) Topics which may be discussed at any scheduled or special evaluation session may include, but are not limited to: service rate structures; franchise fees, penalties, free or discounted services; application of new technologies; system performance; services provided; programming offered; customer complaints; privacy; amendments to this chapter; judicial and FCC rulings; line extension policies; and grantee or city rules. The city acknowledges that, pursuant to federal law, it does not have jurisdiction nor enforcement rights over all the standards and services mentioned above in this subsection, including programming and the application of all new technologies under a cable television franchise. Nothing in this subsection shall be construed as requiring the renegotiation of the cable franchise agreement.

(3) Members of the general public may add topics either by working through the negotiating parties or by presenting a petition. If such a petition bears the valid signatures of 50 or more residents of the city, the proposed topic shall be added to the list of topics to be discussed at the evaluation session.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-37. Rate change procedures.

Pursuant to the Cable Television Consumer Protection and Competition Act of 1992, if the city is currently certified to regulate the basic service rates charged by the grantee, it may, under these rules, require the grantee to obtain approval from the city for a rate increase for any change to the rates for basic service. Should federal or state law permit further rate regulation beyond basic service, the city may, if certified, assume such rate regulation and adopt appropriate procedures for such regulation.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-38. Forfeiture and termination.

(1) Pursuant to section 23-46 of this chapter, in addition to all other rights and powers retained by the city under this chapter or otherwise, the city reserves the right to forfeit and terminate the franchise and all rights and privileges of the grantee under this chapter in the event of a substantial breach of its terms and conditions following the required 30-day period to cure. A substantial breach by the grantee shall include, but shall not be limited to the following:

- (a) Violation of any material provision of the franchise or any material rule, order, regulation or determination of the city made pursuant to the franchise;
- (b) Attempt to evade any material provision of the franchise or to practice any fraud or deceit upon the city or its subscribers or customers;
- (c) Failure to begin or complete system construction or system extension as provided under section 23-20 of this chapter;
- (d) Failure to provide the services promised in the grantee's initial application as incorporated in this chapter by section 23-04 of this chapter;
- (e) Failure to restore service after 168 consecutive hours of interrupted service, except when approval of such interruption is obtained from the city; or
- (f) Material misrepresentation of fact in the application for or negotiation of the franchise.

(2) The foregoing in subsection (1) of this section shall not constitute a major breach if the violation occurs but is without fault of the grantee or occurs as a result of circumstances beyond its control. The grantee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

(3) The city may make a written demand that the grantee comply with any such provision, rule, order or determination under or pursuant to the franchise. If the violation by the grantee continues for a period of 30 days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the city may place the issue of termination of the franchise before the council. The city shall cause to be served upon the grantee, at least 20 days prior to the date of such meeting, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and the issues which the council is to consider.

(4) The council shall hear and consider the issues and shall hear any person interested therein and shall determine in its discretion whether or not any violation by the grantee has occurred.

(5) If the council determines that the violation by the grantee was the fault of the grantee and within its control, the council may, by resolution, declare that the franchise of the grantee shall be forfeited and terminated unless there is compliance within such period as the council may fix, such period to not be less than 30 days; provided, however, that no opportunity for compliance need be granted for fraud or material misrepresentation.

(6) The issue of forfeiture and termination shall automatically be placed upon the council agenda at the expiration of the time set by it for compliance. The council may then terminate the franchise forthwith upon finding that the grantee has failed to achieve compliance or it may further extend the period, at its discretion.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-39. Foreclosure.

Upon the foreclosure or other judicial sale of all or a substantial part of the system, or upon the termination of any lease covering all or a substantial part of the system, the grantee shall notify the city of such fact, and such notification shall be treated as a notification that a change in control of the grantee has taken place, and the provisions of the franchise governing the consent of the city to such change in control of the grantee shall apply.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-40. Approval of transfer and right of acquisition by the city.

Federal regulations as per 47 USC 537 shall apply to approval of transfer issues and the right of acquisition by the city.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-41. Receivership.

The city shall have the right to cancel a franchise 120 days after the appointment of a receiver or trustee to take over and conduct the business of the grantee, unless such receivership or trusteeship shall have been vacated prior to the expiration of 120 days, or unless:

(1) Within 120 days after his/her election or appointment, such receiver or trustee shall have fully complied with all the provisions of this chapter and remedied all defaults under this chapter; and

(2) Such receiver or trustee, within the 120 days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this chapter and the franchise granted to the grantee.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-42. Compliance with state and federal laws.

(1) Notwithstanding any other provisions of the franchise to the contrary, the grantee shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof; provided, however, if any such state or federal law or regulation shall require the grantee to perform any service, or shall permit the grantee to perform any service, or shall prohibit the grantee from performing any service, in conflict with the terms of the franchise or of any law or regulation of the city, then as soon as possible following knowledge thereof, the grantee shall notify the city of the point of conflict believed to exist between such regulation or law and the laws or regulations of the city or the franchise.

(2) If the city determines that a material provision of this chapter is affected by any subsequent action of the state or federal government, the city and the grantee shall negotiate to modify any of the provisions in this chapter to such reasonable extent as may be necessary to carry out the full intent and purpose of this chapter.

(3) If any section, sentence, paragraph, term, or provision of this chapter is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision of this chapter, all of which will remain in full force and effect for the term of the franchise, or any renewal thereof.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-43. Applicants' bid for initial franchise.

(1) All bids received by the city from the applicants for an initial franchise will become the sole property of the city.

(2) The city reserves the right to reject any and all bids and waive informalities and/or technicalities where the best interest of the city may be served.

(3) All questions regarding the meaning or intent of this chapter or application documents shall be submitted to the city in writing. Replies will be issued by addenda mailed or delivered to all parties recorded by the city as having received the application documents. The city reserves the right to make extensions of time for receiving bids as it deems necessary. Questions received less than 14 days prior to the date for the opening of bids will not be answered. Only replies to questions by written addenda will be binding. All bids must contain an acknowledgment of receipt of all addenda.

(4) Bids must be sealed and submitted at the time and place indicated in the application documents for the public opening. Bids may be modified at any time prior to the opening of the bids, provided that any modifications must be duly executed in the manner that the applicant's bid must be executed. No bid shall be opened or inspected before the public opening.

(5) Before submitting a bid, each applicant must:

- (a) Examine the ordinance from which this chapter derives and the application documents thoroughly;
- (b) Familiarize himself/herself with local conditions that may in any manner affect performance under the franchise;
- (c) Familiarize himself/herself with federal, state and local laws, ordinances, rules and regulations affecting performance under the franchise; and
- (d) Carefully correlate the bid with the requirements of the ordinance from which this chapter derives and the application documents.

(6) The city may make such investigations as it deems necessary to determine the ability of an applicant to perform under the franchise, and the applicant shall furnish to the city all such information and data for this purpose as the city may request. The city reserves the right to reject any bid 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 and to complete the work contemplated therein. Conditional bids will not be accepted.

(7) All bids received shall be placed in a secure depository approved by the city and shall not be opened nor inspected prior to the public opening.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-44. Financial, contractual, shareholder and system disclosure for initial franchises.

(1) No initial franchise will be granted to any applicant unless all requirements and demands of the city regarding financial, contractual, shareholder and system disclosure have been met.

(2) Applicants, including all shareholders and parties with any interest in the applicant, shall fully disclose all agreements and undertakings, whether written or oral, or implied with any person, firm, group, association or corporation with respect to the franchise and the proposed cable television system. The grantee of a franchise shall disclose all other contracts to the city as the contracts are made. This section shall include, but not be limited to, any agreements between local applicants and national companies.

(3) Applicants, including all shareholders and parties with any interest in the applicant, shall submit all requested information as provided by the terms of this chapter or the application documents, which are incorporated in this chapter by reference. The requested information must be complete and verified as true by the applicant.

(4) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose the numbers of shares of stock, and the holders thereof, and shall include the amount of consideration for each share of stock and the nature of the consideration.

MARSHFIELD CABLE TELEVISION FRANCHISE ORDINANCE § 23-45

(5) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose any information required by the application documents regarding other cable systems in which they hold an interest of any nature, including, but not limited to, the following:

- (a) Locations of all other franchises and the dates of award for each location;
- (b) Estimated construction costs and estimated completion dates for each system;
- (c) Estimated number of miles of construction and number of miles completed in each system as of the date of this application; and
- (d) Date for completion of construction as promised in the application for each system.

(6) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose any information required by the application documents regarding pending applications for other cable systems, including, but not limited to, the following:

- (a) Location of other franchise applications and date of application for each system;
- (b) Estimated dates of franchise awards;
- (c) Estimated number of miles of construction; and
- (d) Estimated construction costs.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-45. Damages

For the violation of any of the following provisions of this chapter, damages shall be chargeable to the letter of credit or corporate guarantee 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 \$250.00 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 23-20 of this chapter upon order of the city: \$250.00 per day, per violation, for each day that such failure occurs or continues up to a maximum of \$1,000.00;

(2) Failure to obtain or file evidence of required insurance, construction bond, performance bond, or other required financial security: \$250.00 per day, per violation, for each day such failure occurs or continues up to a maximum of \$1,000.00;

(3) Failure to provide access to data, documents, records, or reports to the city as required by sections 23-19 and 23-29—23-32 of this chapter: \$250.00 per day, per violation, for each day such failure occurs or continues up to a maximum of \$1,000.00;

(4) Failure to comply with applicable construction, operation, or maintenance standards: \$250.00 per day, per violation up to a maximum of \$1,000.00;

(5) Failure to comply with a rate decision or refund order: \$500.00 per day, per violation, for each day such a violation occurs or continues up to a maximum of \$1,000.00;

(6) Any violations for noncompliance with the customer service standards of sections 23-23—23-25 of this chapter: the grantee shall pay \$250.00 per day for each day, or part thereof, that such noncompliance continues up to a maximum of \$1,000.00;

(7) Any other violations of a franchise agreement to be determined by the grantor in a public hearing but not specifically noted in this section shall not exceed \$250.00 per day, per violation up to a maximum of \$1,000.00.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-46. Procedures.

(1) Whenever the city believes that the grantee has violated one or more terms, conditions or provisions of the franchise, and wishes to impose penalties, a written notice shall be given to the grantee informing it of such alleged violation or liability. The written notice shall describe in reasonable detail the specific violation so as to afford the grantee an opportunity to remedy the violation. The grantee shall have 30 days subsequent to receipt of the notice in which to correct the violation before the city may impose penalties unless the violation is of such a nature so as to require more than 30 days and the grantee proceeds diligently within the 30 days to correct the violation. In any case where the violation is not cured within 30 days of notice from the city, or such other time as the grantee and the city may mutually agree to, the city may proceed to impose liquidated damages.

(2) The grantee may, within ten days of receipt of notice, notify the city that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by the grantee to the city shall specify with particularity the matters disputed by the grantee and shall stay the running of the 30-day cure period pending council decision as required below. The council shall hear the grantee's dispute. The grantee must be given at least five days' notice of the hearing. At the hearing, the grantee shall be entitled to the right to present evidence and the right to be represented by counsel. After the hearing, the city shall provide the grantee a copy of its action, along with supporting documents. In the event the city upholds the finding of a violation, the grantee shall have 15 days subsequent, or such other time period as the grantee and the city mutually agree, to correct the violation.

(3) The rights reserved to the city under this section are in addition to all other rights of the city whether reserved by this chapter or authorized by law or equity, and no action, proceeding or exercise of a right with respect to penalties shall affect any other right the city may have.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)

Sec. 23-47. Force majeure.

The grantee shall not be held in default under, or in noncompliance with, the provisions of the franchise, nor suffer any enforcement or penalty relating to noncompliance or default including termination, cancellation or revocation of the franchise, where such noncompliance or alleged defaults occurred or were caused by strike; riot; war; earthquake, flood, tidal wave, severe weather conditions or other catastrophic act of nature; labor disputes; inability to obtain necessary contract labor or materials; governmental, administrative or judicial order or regulation; or other event that is reasonably beyond the grantee's ability to anticipate and control and that makes performance impossible.

(Ord. No. 928, § 1(23.01)—1(23.47), 6-12-2001)