

ARTICLE I. IN GENERAL

Secs. 26-1--26-20. Reserved.

ARTICLE II. ~~CABLE TELEVISION FRANCHISE~~* CABLE TELEVISION AND PEG CHANNELS

***Editor's note:** Ord. No. 6-96, adopted April 16, 1996, added §§ 26-1--26-24 in their entirety. To keep in consistency with the Code, §§ 26-1--26-24 have been redesignated as §§ 26-21--26-44 and included herein as set out.

~~Sec. 26-21. Renewal created.~~

~~There is hereby created a renewal franchise for the construction and operation of a cable television system within the city. Such renewal franchise shall constitute a contract between the city and the grantee thereof, which franchise contract shall be as follows.~~

~~(Ord. No. 6-96, pt. 1, 4-16-96)~~

Sec. 26-221. ~~Definitions.~~

As used in this article the following words have the meaning indicated:

Additional service means any communication service other than basic cable service provided on the system by grantee.

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Basic cable service or *basic service* means the level of service offered by grantee (on a primary outlet) that includes all television, broadcast stations (other than satellite superstations) plus all public, educational and governmental access channels.

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~~*Cable system* or *CATV system* or *system* means a system of antennas, cables, wires, lines, fiber optic cables, towers, waveguides or other conductors, converters, equipment or facilities, used for distributing video programming to subscribers, and/or producing, receiving, amplifying, storing, processing, or distributing audio, video, digital or other forms of electrical signals to, from and between subscribers and other users. has the meaning given in 47 USC 522(7).~~

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Wis. Stat. § 66.0420(2)(f).

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Channel means a band of frequencies six megahertz wide capable of carrying one standard NTSC video signal or its high definition or digital equivalent. More than one video signal may be carried in the bandwidth by means of compression technology. Channels may be used for nonvideo digital purposes.

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City means the City of Racine, Wisconsin.

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Common council means the ~~e~~Common ~~e~~Council of ~~the city~~Racine.

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FCC means the Federal Communications Commission of the United States.

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Franchise Fee means a fee paid by a video service provider equal to the percentage of the video service provider's gross receipts that is specified in 26-29 of this code.

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~~Grantee means TCI of Racine, Inc., a Wisconsin Corporation and its lawful and permitted successors, assigns and transferees.~~

Gross receipts means all revenues ~~derived~~ received by and paid to a video service provider by subscribers residing within a municipality for video service, or received from advertisers, including all of the following: ~~directly or indirectly from the operation or use of all or part of the cable television system in its provision of cable television service franchised pursuant to this article by the grantee, its affiliates, subsidiaries, and including, but not limited to, revenue from regular subscriber service fees, auxiliary service fees, installation and reconnection fees, leased channel fees, converter rentals, studio rental, production equipment and personnel fees, and advertising revenues; provided, however, that this shall not include any taxes or fees 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 said governmental unit, or bad debts. Gross receipts, for the purpose of this franchise agreement, shall not include any revenues received by grantee from any telephony services, common carrier services regulated by the authority of the state, or other noncable television services provided by the grantee, recurring charges doe video service; event-based charges for video service, including pay-per-view and video-on-demand charges; rental of set top boxes and other video service equipment; service charges related to the provision of video service, including activation, installation, repair, and maintenance charges; administrative charges related to the provision of video service, including service order and service termination charges; revenues received from the provision of home shopping or similar programming; all revenue, except for refunds, rebates, and discounts, derived by the video service provider for advertising over its video service network to subscribers within a municipality—if such revenue is derived under regional or national compensation contract or arrangement between the video service provider and one or more advertisers or advertising representatives, the amount of revenue derived for a municipality shall be determined by multiplying the total revenue derived under the contract or arrangement by the percentage resulting from dividing the number of regional or national subscribers that potentially receive the advertising under the contract or arrangement. It does not include the following: discounts, refunds, and other price adjustments that reduce the amount of compensation received by a video service provider; uncollectable fees, except that any uncollectable fees that are written off as bad debt but subsequently collected shall be included as gross receipts in the period collected, less the expenses of collection; late payment charges; amounts billed to video service subscribers to recover taxes, fees, surcharges or assessments of general applicability or otherwise collected by a video service provider from video service subscribers for pass through to any federal, state, or local government agency, including video service provider fees and regulatory fees paid to the FCC under 47 USC 159; revenue from the sale of capital assets or surplus equipment not used by the purchaser to receive video service from the seller of those assets or surplus equipment; charges that are aggregated or bundled with~~

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amounts that are included in gross receipts, including, but not limited to any revenues received by a video service provider or its affiliates for telecommunications services, information services, or the provision of directory or Internet advertising, including yellow pages, white pages, banner advertisement, and electric publishing, if a video service provider can reasonably identify such charges on books and records kept in the regular course of business or by other reasonable means; reimbursement by programs of marketing costs actually incurred by a video service provider.

PEG channel means a channel designated for public, educational, or governmental use.

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Subscriber means any person or entity who legally subscribes to a service provided by grantee by means of the system; video programming provided by a multi-channel video service provider. Wis. Stat. § 134.43(1g)(c).

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Video Service Provider means any multichannel video service provider granted a franchise by the State of Wisconsin under Wis. Stat. § 66.0420.

(Ord. No. 6-96, pt. 1, 4-16-96)

~~Sec. 26-23. Commission created; duties and responsibilities.~~

~~(a) — Creation. A cable television commission is hereby created, consisting of nine members. Two members shall be members of the common council and shall hold their term for one year; of the remaining members there shall be one representative of each of the following: organized labor, education, business, industry, churches and two representatives from the general public. The mayor shall appoint the commissioners subject to confirmation by the common council. Other than the members of the common council, the term of each member shall be three years. The commission shall receive assistance and administrative services through the human resources department.~~

~~(b) — Duties and responsibilities. The general duties of the cable television commission shall be as follows:~~

- ~~(1) — To review the public usage of the publicly available cable facilities and offer proposals for expansion of public service aspects of the system within the confines of the system's franchise obligations.~~
- ~~(2) — To receive complaints from subscribers regarding service and technical problems, to investigate complaints, to act as mediator with the cable operator in efforts to resolve the complaints and to report to the city and the common council as to unresolved complaints.~~
- ~~(3) — To provide periodic reports to the city and the common council as to franchisee's compliance with franchise obligations.~~

- (4) ~~To draw on city staff for advice and, when authorized by the common council, to retain outside expert technical assistance, the cost of which shall be borne out of the franchise fees of funds specially appropriated by the common council.~~
- (5) ~~To develop a plan for maximum community involvement and utilization of the public, educational and governmental channels. The plan will include regulations governing the operation and ensuring noncommercial usage by residents of the community and procedures for prohibition of obscene material and, to the extent permitted by law, indecent programming.~~
- (6) ~~To review and comment on the mayor's proposed annual cable communications operations budget prior to it being adopted by the common council.~~
- (7) ~~Grantee shall have full right of due process in the event of any recommendations for penalty or reduction in franchise benefits. Consideration of expansion of franchise obligations may be negotiated between the city and the grantee. Grantee shall be entitled to present evidence of the financial and technical impact on its operations and on subscriber rates.~~

(Ord. No. 6 96, pt. 1, 4 16 96; Ord. No. 4 04, pt. 1, 2 3 04; Ord. No. 36 04, pt. 1, 11 16 04; Ord. No. 08 08, pt. 5, 6 3 08)

Sec 26-23. - MIS Duties and Responsibilities.

(a) Direction, Duties and Responsibilities

The MIS Department shall be charged with the overall direction and control of the governmental PEG channel and shall have the authority to create the written policies deemed necessary to effectively manage said channel.

(b) The MIS Department shall coordinate activities with the public and educational PEG channel providers.

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Sec. 26-224. - Privileges granted. Notice bBefore Pproviding Vvideo Sservice.

~~City hereby awards to grantee a nonexclusive franchise and privilege to construct, operate and maintain in, upon, along, across, above, over and under the streets, alleys, public ways, public places, and easements dedicated for use compatible with cable system operation, and all extensions thereof and additions thereto, in the city, poles, wires, cable underground conduits, and other television conductors and fixtures necessary for the operation and maintenance in the city of a CATV system, which shall be effective as provided herein and shall remain in effect until December 31, 2019.~~

~~In the event the city enters into a franchise permit, or other agreement with any other person or entity to provide cable television service, the provisions thereof shall be reasonably comparable to those contained in the incumbent franchise agreement, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law. Provided, however, that the reasonably comparable provisions shall apply to a franchise or agreement that is city wide.~~

- ~~(1) — Conditions on street use — Utilization of existing facilities. Where feasible to do so, grantee will endeavor to obtain rights to use poles and conduits belonging to other franchise holders within the city. Approval of the assignment of such rights to grantee by such other franchise holders and such commission is hereby expressly given by city, it being the intention of city that grantee will utilize existing public utility poles and conduits where feasible. All poles and conduits installed within the city shall be made available for attachment or use by grantee, at just and reasonable rates applied to public utilities under the formula presently established in 47 U.S.C. § 224 even if the pole owner is not subject to pole attachment regulation. If such poles or facilities are not made so available, grantee may erect its own poles upon application to city.~~
- ~~(2) — All transmission and distribution structures, lines and equipment erected by grantee within the city shall be located so as not to interfere with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places, and not to interfere with existing public utility installations. In all areas of the city where the cables, wires or other like facilities of all public utilities are placed underground, grantee shall place its cables, wires or other like facilities underground to the maximum extent technology and economic feasibility permit.~~

No later than ten (10) business days before providing video service in the City a video service provider shall provide notice to the department of financial institutions and the City.

Sec. 26-23. Provision of Video Service and Access To and Use of Public Rights-of-Way and City Services.

- (a) Video service providers shall register with the City Clerk
- (b) At the time that an applicant under Wis. Stat. § 66.0420(3)(d), or a video service provider submits a notification regarding a modification to an application under Wis. Stat. § 66.0420(3)(j), to the department of financial institutions, the applicant or video service provider shall serve a copy of the application or notification to the City. No later than ten (10) business days after the receipt of any such application, the City shall notify the applicant in writing of the number of PEG channels required and percentage of revenue required as franchise fees.
- (c) Video service providers shall pay the actual cost of maintaining, supporting, protecting, or moving company equipment during work in City rights-of-way.
- (d) Video service providers shall pay the actual cost of inspecting company job sites and restoration projects.
- (e) Video service providers shall pay the actual cost and provide all necessary information to obtain a company permit and coordinate scheduling to conduct highway, street, and right-of-way work.
- (f) Prior to the erection by grantee of poles or other wireholding structures, grantee shall secure city approval with regard to the location, height, type and other pertinent aspects of such facilities, such approval not to be unreasonably withheld.

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(g) Video service providers shall pay the actual cost of undertaking restoration work inadequately performed by their company after providing notice and the opportunity to correct the work.

~~(3)(h)~~ Grantee Video service providers shall not place poles, conduits or other fixtures above or below ground where the same will unreasonably interfere with any gas, electric or telephone fixtures, water hydrant or other utility, and all such poles, conduits or other fixtures placed in any street shall be so placed so as to comply with all requirements of ~~the ec~~City, provided, however, that this section shall not act to restrict grantee's lawful use of appropriate easements and easements (public or private) dedicated or used for compatible uses.

~~(4)(i)~~ Grantee Video service providers shall at all times employ reasonable care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public. Grantee Video Service providers shall, within ten days after receipt of notice thereof, notify city of any injury to person or damage to property caused by or claimed to have been caused by the system.

~~(5)(j)~~ If grantee- a video service provider disturbs any pavement, sidewalk, driveway or other surface or any other property, it shall, at its own expense and in the manner provided by city, replace and restore all such paving, sidewalk, driveway or other surface of any street or alley thus disturbed and return any and all property to its like condition immediately prior to being disturbed.

(k) If at any time during the period of the franchise, city shall lawfully elect to alter or change the grade or location of any street, alley or other public way, grantee shall, upon reasonable notice by city, remove, relay and relocate its poles, wires, cable, underground conduits, manholes and other fixtures at its own expense, and in each instance comply with city requirements.

~~(6)(l)~~ Grantee Video service providers shall have the authority to trim any trees upon and overhanging the streets, alleys, sidewalks and public places of the city so as to prevent the branches of such trees from coming into contact with grantee's wires and cables.

~~(7)(m)~~

~~(8)(n) Grantee shall not place poles, conduits or other fixtures above or below ground where the same will unreasonably interfere with any gas, electric or telephone fixtures, water hydrant or other utility, and all such poles, conduits or other fixtures placed in any street shall be so placed so as to comply with all requirements of city, provided, however, that this section shall not act to restrict grantee's lawful use of appropriate easements and easements (public or private) dedicated or used for compatible uses.~~

~~(9)(o) Grantee shall at all times employ reasonable care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public. Grantee shall, within ten~~

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~~days after receipt of notice thereof, notify city of any injury to person or damage to property caused by or claimed to have been caused by the system.~~

(10)(p) On request of any person holding a moving permit issued by the eCity, grantee a video service provider shall temporarily move its wires or fixtures to permit the moving of buildings or other objects, the expense of such temporary removal to be paid in advance by the person requesting such removal. Grantee A video service provider shall be given not less than 72 hours advance notice to arrange for such temporary changes.

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~~(11)(q) Grantee shall have the authority to trim any trees upon and overhanging the streets, alleys, sidewalks and public places of the city so as to prevent the branches of such trees from coming into contact with grantee's wires and cables.~~

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a. (9) Prior to the erection by grantee of poles or other wireholding structures, grantee shall secure city approval with regard to the location, height, type and other pertinent aspects of such facilities, such approval not to be unreasonably withheld.

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~~(Ord. No. 6-96, pt. 1, 4-16-96)~~

Sec. 26-245. - Extension of service. Municipal dDuties fFor Peg-PEG Cchannels.

~~Grantee shall serve any area within the city where the housing density is 30 housing units or more per mile of contiguous cable plant. Areas annexed to the city which meet the density standard shall be served within one year from the date of annexation unless to do so is technically or economically unfeasible.~~

~~(Ord. No. 6-96, pt. 1, 4-16-96)~~

The City shall do all of the following for all PEG channels:

- (a) Ensure that all content and programming that the City provides or arranges to provide for transmission on the PEG channel is submitted to the video service provider in a manner and form that is capable of being accepted ad transmitted by the video service network without changing the content or transmission signal and that is compatible with the technology or protocol, including Internet protocol television, utilized by the video service provider to deliver video service
- (b) Make the content and programming that the City provides or arranges to provide for transmission on a PEG channel available in a nondiscriminatory manner to all video service providers that provide video service in the City.

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Sec. 26-25.6. - Type and capacity of equipment and standard of service.

Grantee Video service providers shall engineer, install, maintain, operate and equip the CATV cable system herein provided so as to meet the technical standards of the FCC.

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(Ord. No. 6-96, pt. 1, 4-16-96)

Sec. 26-267. -Subscriber rates.

In accordance with the Cable Television Consumer Protection and Competition Act of 1992, city shall have the option, upon proper notice to grantee, including an opportunity for grantee to comment upon any proposed regulations, to regulate basic cable rates and equipment as expressly provided in FCC regulations. City shall also have the option, upon compliance with all lawful procedures, to rescind its regulation of rates.

(Ord. No. 6-96, pt. 1, 4-16-96)

Sec. 26-278. - Service.

- (a) Two PEG channels shall be designated for use by the city and/or public schools located within the service area pursuant to the provisions of the Cable Act, Section 611 (47 USC 531) for the purpose of providing video programs and such channels shall be provided by the grantee without charge for usage.
- (b) Grantee shall provide an audio alert system to all subscribers. ~~The City and grantee agree video service provider shall to meet to~~ establish procedures which would enable the chief of police or his agent to immediately transmit audio information on all activated channels to subscribers during an emergency. In the event of use of this alert system, ~~the ecCity~~ shall hold harmless and indemnify ~~grantee the video service provider~~ from any damages or penalties arising out of any acts or omissions of ~~the ecCity~~, its employees, agents or officers resulting from such use, notwithstanding any other provisions of this article.
- (c) ~~At the option of the subscriber, grantee shall provide a device capable of locking out any premium programming video and audio signals. The video service provider shall comply with all standards specified in 47 CFR 76.309(c).~~
- (d) ~~Grantee~~ The video service provider shall agrees to provide one free drop, with no monthly service charge for basic service to city hall, city hall annex, fire and police stations (including community policing substations), public library, the department of public works street maintenance division and equipment maintenance division, and to all public and parochial primary and secondary schools located within the city. Such free drops shall be within ~~425 200~~ feet of existing cable plant; otherwise, ~~the user agrees to ecCity shall~~ pay for additional footage at current per foot rates at the time of the extensions. The outlets of basic service shall not be used to distribute or sell services in or throughout the buildings. The ~~ecCity~~ shall take reasonable precautions to prevent any use of ~~grantee's the video service provider's~~ cable system in any manner that results in the inappropriate use thereof or any loss or damage to the cable system. The ~~ecCity~~ agrees that it will only use cable drops for the distribution of grantee's cable services.
- (e) Grantee Video service providers shall maintain a competent staff of employees sufficient to provide adequate and prompt service to its subscribers. Except where an

emergency requires a more expedited procedure, grantee may interrupt service for the purpose of repairing or upgrading the system only during periods of minimum use.

Wis. Stat. § 66.0420(5)(d) (Ord. No. 6-96, pt. 1, 4-16-96)

Sec. 26-289. Compensation to city.

- (a) (1) ~~Grantee, in consideration of the privilege granted under the franchise for the operation of a cable television system within city's public ways, and the expense of regulation pursuant to the franchise incurred by city, shall pay to city a sum. Any video service provider operating within the City shall pay the city a franchise fee equal to four percent of the annual gross receipts received by grantee the video service provider for the distribution of cable television signals on the CATV cable system within the eCity. Grantee agrees to increase the franchise fee not more than one percent in each subsequent year until the current maximum of five percent is reached. Said fee may be subject to negotiation upon agreement by both parties at such time as applicable laws and regulations permit. Provided, further, grantee shall be entitled to recover from subscribers and users any increase in the franchise fee adopted by city pursuant to this section; alternatively, grantee shall be required to reflect the decrease in costs associated with any reduction in the franchise fee adopted by city.~~
- (2) ~~The franchise fee shall be payable twice a year in semiannual payments. Said payment dates shall be the 30th day of June and the 31st day of December of each year, and each semiannual payment shall be made within 60 days thereafter. The franchise fee shall be payable on a quarterly calendar basis. The video service provider shall remit the fee to the municipality no later than 45 days after the end of each quarter. The grantee video service provider shall keep complete records of accounts showing dates and payments received. GranteeThe video service provider shall also file a gross receipts exam report prepared by a certified public accountant employed by one of the top ten accounting firms utilized by the grantee for its corporate accounting, clearly showing the yearly total, gross receipts as applicable to city. Failure of grantee to tender franchise fee payments at the time required will result in interest accruing at a rate of 1 1/2 percent per month from said due date. Where the video service provider fails to tender franchise payments, the City and provider shall complete good faith settlements discussions where such discussions do not lead to settlement, all following litigation shall be conducted as litigation following compromise negotiations under Wis. Stat. § 904.08.~~
- (b) In the event ~~this franchise is terminated or forfeited, grantee~~ a video service provider terminates its franchise, it shall immediately submit to city a statement showing the gross receipts of grantee for the time elapsed since the last period for which grantee has paid to city the required percentage of such gross annual receipts, and ~~grantee the video service provider~~ shall pay to city not later than 30 days following the termination or cessation of the franchise, the applicable percentage of such gross receipts.

- (c) Upon reasonable ~~notice written request~~, ~~the eCity~~ shall have the right to inspect ~~grantee's a video service provider's~~ records showing its gross receipts for cable services ~~for the purpose of ensuring proper and accurate payment of a franchise fee~~, and the right of audit and recomputation of any and all amounts paid under this ~~franchise section~~ shall be accorded to ~~the eCity~~. The period of limitation for recovery of any franchise fee payable hereunder shall be ~~five four~~ years from the date ~~on which payment by the grantee is due of the end of the calendar quarter to which the disputed amount relates~~. No acceptance of any payment by city shall be construed as a release of or an accord or satisfaction of any claim city might have for further or additional sums payable under the terms of this article or for any other performance or obligation of grantee hereunder. All information obtained from ~~grantee the video service provider~~ under this section shall be maintained by the city in confidence, to the extent permitted by law, regulation or municipal code.

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(Ord. No. 6-96, pt. 1, 4-16-96)

Sec. 26-2930. Indemnification, insurance and bond.

- (a) (1) Indemnity. ~~Grantee Video service providers~~ shall at its sole cost and expense fully indemnify, defend, and save harmless ~~eCity~~, its officers, common council, commissions, employees and agents against any and all claims, suits, actions, liabilities, and judgments for damage arising from grantee's operations under this franchise. These damages or penalties shall include but shall not be limited to damages arising out of copyright infringement and all other damages arising out of the installation, operation, or maintenance of the ~~CATV cable~~ system authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by this franchise. City agrees to waive such indemnification for the use of ~~public, educational and governmental PEG~~ channels as provided in section 26-28(a).
- (2) ~~Grantee's Video service provider's~~ indemnity of city shall be subject to the following:
- a. City agrees that it will give ~~grantee a video service provider~~ timely notice of the assertion of any claim or the institution of any action, suit or proceeding.
 - b. City shall permit ~~grantee a video service provider~~ the right to assume the complete defense and settlement of the matter. City may be separately represented by counsel at its own expense.
 - c. Where ~~grantee a video service provider~~ has assumed the defense, ~~the eCity~~ shall cause its officers, officials, employees, agents and representatives to cooperate fully in the defense and to make all records available to grantee as deemed necessary to the defense by grantee or its representatives.
 - d. Where ~~grantee a video service provider~~ has assumed the defense, ~~the eCity~~ shall not compromise or settle the claim without the express prior written permission of grantee or its representatives.

Comment [TR1]: I cannot find anything in Act 42 about this, but there is also nothing stating that we cannot do it. It also does not state anything about an actual franchise agreement with the provider, so it might be ok. This stuff also is similar to normal immunity anyway. But I need Rob to look at it and make sure.

- (3) In the event a video service provider grantee does not assume defense of the City in the matter, grantee the video service provider shall pay and by its acceptance of this franchise specifically agrees that it will pay all reasonable expenses incurred by city in defending itself with regard to all damages and penalties mentioned above. These expenses shall include but not be limited to all out-of-pocket expenses such as reasonable attorneys' fees.
- (b) Insurance. At all times during the term of this franchise, grantee video service providers shall obtain, pay all premiums for and file with the city clerk a certificate of insurance for the following:
- (1) A commercial comprehensive liability insurance policy indemnifying, defending and saving harmless city, its officers, common council, boards, commissions, agents and employees from any and all claims by any person on account of injury to or death of a person or persons occasioned by the operations of grantee the video service provider under this franchise herein granted or alleged to have been so caused or occurred with a liability of \$1,000,000.00 per person for injury or death of one or more persons in any one occurrence.
 - (2) Property damage insurance, indemnifying, defending, and saving harmless city, its officers, common council, boards, commissions, agents, and employees from and against all claims by any person for property damage occasioned by the operation of grantee the video service provider under the franchise herein granted or provider or alleged to have been so caused or occurred with a minimum liability of \$1,000,000.00 for property damage to any one or more persons in any one occurrence.
 - (3) Copyright infringement insurance against all claims of any person for copyright infringement occasioned by the operation of grantee under the franchise herein granted- the video service provider or alleged to have been so caused or occurred with a minimum coverage of \$250,000.00 for the infringement of the copyrights.
- (c) All the foregoing insurance contracts shall be issued and maintained by companies authorized to do business in the State of Wisconsin and acceptable to city and said contracts shall provide written notice to both city and grantee at least 30 days prior to any cancellation.

(Ord. No. 6-96, pt. 1, 4-16-96)

~~Sec. 26-31. Franchise renewal.~~

~~Any franchise renewal shall be conducted consistent and in accordance with the procedures and provisions of the Cable Act, Section 626 as they existed on the effective date of this agreement.~~

~~(Ord. No. 6-96, pt. 1, 4-16-96)~~

~~Sec. 26-302. Filings of communications with regulatory agencies.~~

Copies of all petitions, applications and communications submitted by [grantee the video service provider](#) to the FCC or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting [CATV cable](#) system operations authorized pursuant to this franchise contract, may also be submitted to city, either simultaneously or promptly thereafter.

(Ord. No. 6-96, pt. 1, 4-16-96)

Sec. 26-313. ~~Filing of plats, maps and records.~~

Grantee shall, upon request, file with the city clerk a true and correct copy of maps and plats of existing and proposed installations and those maps and plats shall be updated upon request.

(Ord. No. 6-96, pt. 1, 4-16-96)

Sec. 26-324. ~~Theft of service.~~

- (a) The provisions of Wis. Stats. §§ 943.46 and 943.47, and the provisions of Section 633 of the Cable Communications Policy Act of 1984, exclusive of any provisions thereof relating to the penalty to be imposed or the punishment for violation of said statute, are adopted and hereby made a part of this section by reference. A violation of any such provision shall be a violation of this section, punishable by a forfeiture of not less than \$50.00 nor more than \$1,000.00.
- (b) A forfeiture for violation of this section may be paid at the Racine Police Department in the amount of \$125.00 plus costs upon a stipulated plea of no contest.

~~(c) Within six months of the effective date of this franchise, city and grantee shall mutually negotiate policies and procedures for the enforcement of this section.~~

(Ord. No. 6-96, pt. 1, 4-16-96)

Sec. 26-335. Landlord/tenant relations.

- (a) (1) Protection of property permitted. Nothing in this section shall prohibit an owner of a multiple unit residential dwelling [control/management of a mobile home park or association or board of directors of a condominium](#) from requiring that construction of cable television system facilities conform to building codes and local construction regulations. [However, such an owner may not prevent a video service provider from providing video service to a subscriber who is resident of the multiunit dwelling, mobile home park, or condominium or interfere with a video service to a subscriber who is a resident of such abode.](#)
- (2) Before installation, a video service provider shall consult with the owner or manager of a multiunit dwelling or with the association or board of directors of a condominium to establish the points of attachment to the building or method of

wiring. A video service provider shall install facilities to provide video service in a safe and orderly manner and in a manner designated to minimize adverse effects to the aesthetics of the multiunit dwelling or condominium facilities installed to provide video service may not impair public safety, damage fire protection systems or impair fire-restrictive construction, or components of a multi-unit dwelling or condominium.

(b) ~~(b)~~—(1) Risks assumed by grantee video service provider. Nothing in this section shall prohibit a person from requiring a grantee to agree to indemnify the owner, his agents or representatives, for damages or from liability for damages caused by the installation, operation, maintenance or removal of cable television facilities.

(2) A video service provider is responsible for any repairs to a building required because of the construction, installation, disconnection, or servicing of facilities to provide video service.

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(c) [Use of wiring exclusively for grantee the video service provider.] Interior wiring of grantee the video service provider shall remain grantee's the video service provider's and is not to be used by other than grantee the video service provider.

(Ord. No. 6-96, pt. 1, 4-16-96)

Sec. 26-346. - Protection of privacy.

The provisions of Wis. Stats. § 134.43, exclusive of any provisions thereof relating to the penalty to be imposed or the punishment for violation of said provision, are hereby adopted and made a part of this section by reference. A violation of any such provision shall be a violation of this section.

(Ord. No. 6-96, pt. 1, 4-16-96)

Sec. 26-357. - Remedies.

- (a) ~~Notice. Nonperformance or violation by grantee of any term or provision of this franchise shall constitute a default. In such event, city shall send a written default notice by certified mail, return receipt requested, and grantee shall have 60 days from the receipt of said notice to correct or remedy the default or submit a plan for correction of any matters that cannot by their nature be corrected within 60 days. If grantee corrects or remedies the alleged default within the 60-day period or if the city accepts the plan for correction, then no default will have been deemed to have occurred. Grantee may, within 15 days of receiving such notice, notify city that there is a dispute as to whether a violation has, in fact, occurred. Such notice by grantee to city shall specify the matters disputed by grantee. City shall hear grantee's dispute at the next regularly scheduled cable television commission meeting. At such meeting grantee shall be permitted to present oral or written evidence on its behalf and to cross-examine the evidence presented by others. If city subsequently determines in a~~

~~written decision based upon and with reference to the evidence presented that a violation or nonperformance has occurred, then grantee shall have thirty days from the date of grantor's written decision to cure or present a plan to cure any violations which by their nature are not curable within 30 days.~~

~~(b) Default. If grantee fails to disprove or correct the violation within the time period specified or, in the case of a violation which cannot be timely corrected for which grantee has timely submitted a satisfactory plan, if grantee fails to implement the plan, then city may declare grantee in default, which declaration must be in writing. In the event that city declares grantee in default, city shall have the right to institute legal proceedings to collect damages from the date of declaration of default, or to exercise any other rights and remedies afforded city in law or equity, provided however, that city may institute revocation proceedings against grantee only after declaration of default. Grantee shall have the right to appeal a declaration of default to a court of competent jurisdiction.~~

~~(c) [Violations and forfeitures.] Persons, whether natural or artificial, or commercial entities who violate the following provisions of this article shall, upon conviction, be subject to a forfeiture not to exceed \$1,000.00 for each offense:~~

~~(1) Violation of subscriber's privacy as set forth in section 26 36.~~

~~(2) Any person interfering with the provision of cable communications service as described in section 26 35(a), (b) and (c).~~

(a) In the case of a dispute between the City and a video service provider, the City and the video service provider shall engage in good faith settlement discussions. For the purposes of all litigation, these negotiations shall be treated as compromise negotiations under Wis. Stat. 904.08. Wis. Stat. § 66.0420(7)(e)

(b) Where the dispute is not settled in good faith settlement discussions, all disputes involving the payment of franchise fees shall be commenced within four (4) years following the end of the calendar quarter to which the disputed amount relates, unless the parties agree in writing otherwise. Wis. Stat. § 66.0420(7)(e)

(c) Where the dispute is not settled in good faith settlement discussions, all disputes involving issues other than payment of franchise fees shall be commenced within the normal statutory limitations specified in the Wisconsin Statutes.

(Ord. No. 6-96, pt. 1, 4-16-96)

Sec. 26-368. - Rights of intervention.

Grantee The video service provider agrees not to oppose intervention by city in any suit or proceeding to which grantee a video service provider is a party.

(Ord. No. 6-96, pt. 1, 4-16-96)

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Comment [TR2]: I have changed the language to be correct. However, I don't think we actually need this anymore because we do not have a direct franchise with the provider. If that is the case, the section needs to be removed.

~~Sec. 26-39. Force majeure.~~

~~Prevention or delay of any performance under this franchise due to circumstances beyond the foreseeable control of grantee, or acts of God, or failure to secure reasonable pole lease agreements, shall not be deemed noncompliance with or a violation of this franchise.~~

~~(Ord. No. 6-96, pt. 1, 4-16-96)~~

Sec. 26-~~37~~40. - Conflicting laws, rules or regulations.

(a) ~~Grantee~~ The video service provider shall, at all times during the life of its franchise it provides service within the ~~c~~City, be subject to all lawful exercise of the police power by the ~~e~~City and to such reasonable regulation not inconsistent with the contractual terms hereof as city shall hereafter provide, and grantee shall fully comply with all applicable laws, rules, and regulations now in effect or hereinafter adopted by the FCC, city and state. However, in the event of a conflict, to the extent applicable, the terms of this ~~negotiated agreement~~ chapter shall prevail.

(b) In the event the laws of the United States or the State of Wisconsin, or rules and regulations of any agency of the United States or the State of Wisconsin, whether presently in existence or hereinafter enacted or set in force, are in conflict with any provision(s) or portions of this article, those provision(s), or portions thereof, of this chapter which are in conflict therewith shall be deemed amended so as to comply with said laws, rules, and/or regulations.

(Ord. No. 6-96, pt. 1, 4-16-96)

~~Sec. 26-41. Removal of facilities.~~

~~At the end of the term of this contract or upon its termination prior to the end of its specified term, grantee, upon the request of city and at grantee's expense, shall remove its facilities from all public property. Where removal of underground facilities would be impracticable, grantee may, upon notice to the city, abandon its facilities.~~

~~(Ord. No. 6-96, pt. 1, 4-16-96)~~

~~Sec. 26-42. Advertisement.~~

~~This franchise shall be advertised according to law.~~

~~(Ord. No. 6-96, pt. 1, 4-16-96)~~

Sec. 26-~~38~~43. - Severability.

If any provision portion of ~~the contract or franchise or the particular application thereof~~ this chapter shall be invalid, the remaining provisions hereof and their application shall not be affected thereby.

(Ord. No. 6-96, pt. 1, 4-16-96)

Sec. 26-~~39~~44. -Provisions.

Any portion of the municipal code in conflict herewith to the extent of such conflict is hereby repealed.

(Ord. No. 6-96, pt. 1, 4-16-96)