

CITY OF MADISON, WISCONSIN

A SUBSTITUTE ORDINANCE \_\_\_\_\_

PRESENTED October 17, 2005  
REFERRED Common Council  
Organizational Committee  
RULES SUSPENSION \_\_\_\_\_  
PUBLIC HEARING \_\_\_\_\_

Amending, creating and repealing various sections of the Madison General Ordinances to correct inconsistencies and improper references in the Madison General Ordinances, constituting the 2006 City Attorney Revisor's Ordinance.

EXHIBIT R

Drafted by: Michael May  
City Attorney

Date: October 25, 2005

SPONSORS: Common Council (Request of  
City Attorney)

DRAFTER'S ANALYSIS: This ordinance creates an Exhibit R, constituting the City Attorney's Revisor's ordinance for 2006. It is introduced under the authority of the City Attorney pursuant to secs. 2.05(6)3 and 9 and 3.15(1), MGO. It is intended to correct inconsistencies and errors in the Madison General Ordinances. In particular, this ordinance:

1. Moves a section barring certain meetings on the date of local elections from an emergency management section to the section on committee meetings.
2. Corrects a reference for the bond of the Comptroller.
3. Makes a series of changes necessitated by the hiring of a Director of Public Health for Madison and Dane County and a Director of the Department of Civil Rights.
4. Repeals the Agricultural Use Value Penalty ordinance, which is now enforced by the County pursuant to state law.
5. Corrects a reference to state law in the health code.
6. Repeals the old Broadband Telecommunications Franchise Ordinance which has been replaced by a new ordinance.
7. Repeals several outdated sections in Chapter 3.
8. Makes a technical correction in Section 10.18.

This substitute makes an additional correction to the health code, updating language to comply with a recent ADA mandate.

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The Common Council of the City of Madison do hereby ordain as follows:

1. Subsection (8) entitled "No Meetings Election Day" of Section 3.02 entitled "Continuity of Government" is hereby repealed and recreated as Subdivision (j) entitled "No Meetings Election Day" of Subsection (4) entitled "Officers, Minutes, and Rules of Procedures" of Section 3.27 entitled "Qualifications--City Officers, Members Of Commissions, And Employees" of the Madison General Ordinances to read as follows:

"(j) No Meetings Election Day. No committee, board or commission created by the Madison General Ordinances shall meet on any general or primary election day at which local city offices or positions are decided."

2. Section 3.06 entitled "Board of Education" of the Madison General Ordinances is hereby repealed.

3. Section 3.24 entitled "Madison Commission for Youth" of the Madison General Ordinances is hereby repealed.

**Approved as to form:**

4. Section 3.25 entitled "Alcoholism Information and Referral Center" of the Madison General Ordinances is hereby repealed.

5. Subsection (2) of Section 3.28 entitled "Bonds to be Filed by City Officers" of the Madison General Ordinances is amended to read as follows:

"(2) Chief of Police: Ten thousand dollars (\$10,000.00). (For the amount of bond of the City Comptroller see Section ~~3.77(2)~~ 4.01(2).)"

6. Subdivision (x) of Subsection (1) of Section 3.35 entitled "Civil Service System" of the Madison General Ordinances is amended to read as follows:

"(x) Director of Public Health for Madison and Dane County.  
~~This subdivision shall become effective upon the retirement of the present Director of Public Health, Karl Mohr.~~"

7. Subdivision (kk) of Subsection (1) of Section 3.35 entitled "Civil Service System" of the Madison General Ordinances is created to read as follows:

"(kk) Director of the Department of Civil Rights."

8. Subdivision (d) of Subsection (4) entitled "Standard Hours Per Week, Per Day" of Section 3.36 entitled "Absence Of Employees From Duty" of the Madison General Ordinances is amended to read as follows:

"(d) ~~Department and division heads and other e~~Employees occupying positions included in Compensation Group 21, as hereinafter designated in Secs. 3.38(1)(g), (i)2., (j)3. and (k)3.b., shall be accorded the privilege of exclusion from the requirements of the aforesaid standards."

9. Subdivision (b) entitled "Positions" of Subsection (6) entitled "Compensation of Managerial Employees" of Section 3.38 entitled "Compensation Plan" of the Madison General Ordinances is amended by adding or amending therein the following:

"Civil Rights, Director of Department of"

"Public Health for Madison and Dane County, Director of"

10. Section 3.66 entitled "Wayne Morse Memorial Forum" of the Madison General Ordinances is hereby repealed.

11. Subsection (3) entitled "Agriculture Use Value Penalty" of Section 4.07 entitled "Time for Payment of Taxes; Interest; Penalty" of the Madison General Ordinances is hereby repealed.

12. Section 7.06 entitled "Contagious Diseases" of the Madison General Ordinances is amended to read as follows:

**"7.06 CONTAGIOUS DISEASES.**

- (1) Duty of Director of Public Health. It shall be the duty of the Director of Public Health upon the appearance of any communicable disease, as defined in ~~Section 143.04 chapter 252~~ of the revised statutes of Wisconsin, within the limits of the City, to investigate immediately all the circumstances, and to promptly take such measures for the prevention, suppression and control of any such disease as he deems needful and proper. The Director of Public Health shall cause to be quarantined and placarded any house or building within the City wherein there exists, or where there shall have recently existed a communicable disease, and to continue such quarantine for such reasonable length of time as may prevent the spread of disease.
- (2) Persons Quarantined Not to Leave Premises. No person, whether afflicted with any communicable disease as defined in ~~Section 143.04 chapter 252~~ of the Wisconsin Statutes, or not, shall visit or depart from any premises which shall have been quarantined by the Director of Public Health until given permission by such Director of Public Health. Any person who shall violate the provisions of this subsection shall be subject to a fine of not less than five dollars (\$5) nor more than five hundred dollars (\$500).

- (3) Physicians to Report Existence of Communicable Diseases. A physician knowing or having reason to know that a person treated or visited by him has a communicable disease, or having such disease, has died, shall report the same to the Director of Public Health. Any physician who shall refuse or neglect to give such notice for a period of twenty-four (24) hours shall be subject to a fine of not less than five dollars (\$5) nor more than twenty-five dollars (\$25) for each day of such refusal or neglect after the expiration of said twenty-four (24) hours.
- (4) Removal of Persons Afflicted With Communicable Diseases. The Director of Public Health, Health Inspectors and the Chief of Police and each of them is authorized to remove or cause to be removed, when so instructed by the Director of Public Health, any person afflicted with any dangerous communicable disease to the Communicable Disease Unit located at the Madison General Hospital, or such place as may be deemed expedient; and they shall, under the direction of the Director of Public Health, destroy any furniture, clothing, or other property which may cause the spreading of such disease, or cause it to be removed or disinfected."

13. Subdivision (o) entitled "Storage, Display and Serving of Food and Drink" of Subsection (6) entitled "Sanitation Requirements for Restaurants" of Section 7.08 entitled "Regulations Governing Eating and Drinking Establishments" of the Madison General Ordinances is amended to read as follows:

"(o) Storage, Display and Serving of Food and Drink. All food and drink shall be so stored, displayed, and served as to be protected from dust, flies, vermin, depredation and pollution by rodents, unnecessary handling, droplet infection, overhead leakage, and other contamination. No birds or animals shall be allowed in any area used for the conduct of eating and drinking establishment operations except ~~guide dogs accompanying blind persons~~ service animals may be permitted in dining areas. Necessary measures in compliance with current practices approved by the Director of Public Health for the elimination of insects and rodents shall be taken."

14. Subparagraph c. of Paragraph 1. entitled "Prohibited Yard Waste and Brush Disposal" of Subdivision (d) entitled "Yard Waste" of Subsection (7) entitled "Separation of Solid Waste Required" of Section 10.18 entitled "Collection of Refuse and Recycling of Waste" of the Madison General Ordinances is amended to read as follows:

"c. Deposit yard waste or brush in or upon any public street, water, or grounds in the City of Madison."

15. Chapter 36 entitled "Broadband Telecommunications Franchise Enabling Ordinance" of the Madison General Ordinances is hereby repealed.

16. Chapter 36A entitled "Broadband Telecommunications Franchise Enabling Ordinance" of the Madison General Ordinances is hereby renumbered to Chapter 36.

EDITOR'S NOTE:

1. Section 3.06 currently reads as follows:

**"3.06 BOARD OF EDUCATION.** The Board of Education shall consist of seven (7) members elected at large from the City of Madison. The members of such Board shall be divided as nearly equal as may be into three (3) classes. One (1) class of three (3) members shall be elected for one (1) year, one (1) class of two (2) members for two (2) years and those on the remaining class for three (3) years. After the first election the members shall each be elected for three (3) years. Such members shall be elected at the annual Spring election held in the City of Madison and the names of the candidates for each office may be printed upon the same ballot as other City officers."

2. Section 3.24 currently reads as follows:

**3.24 MADISON YOUTH COMMISSION.**

- (1) There is hereby created for the City of Madison a committee to be known as the Madison Youth Commission.
- (2) Appointment; Terms. The Madison Youth Commission shall consist of nine (9) members appointed by the Mayor and confirmed by the Common Council. One (1) shall be a member of the Common Council appointed for a one (1) year term. Five (5) shall be youths and three (3) shall be adults. Four (4) of these shall be appointed for two (2) year terms; and, initially, four (4) of these shall be appointed for one (1) year terms. Thereafter, each appointee shall serve for two (2) years. A majority of the Commission shall be women and ethnic minorities. Representation on the Commission shall always include a parent of a

day care child and an elementary child; a student in a nonpublic, nonsectarian school; and a youth who has been institutionally placed.

- (3) The Youth Commission shall be representative of children and youth, and shall have initial responsibility for developing a City-wide advocacy system. The Commission shall review and recommend on all resolutions, ordinances and allocations concerning children and youth.
- (4) The Commission shall play a vigorous role in helping identify the needs of Madison's youth by collecting and evaluating data and holding public hearings.
- (5) The Commission shall play a vigorous role in helping community agencies implement programs to meet the needs of Madison's youth; this shall include seeking public and private funds.
- (6) The Commission shall undertake a review of all City ordinances affecting the youth of Madison.
- (7) The Commission shall review the tracking of students based on sex, race and economic class.

- (8) The Commission shall review the High School Bill of Rights and make recommendation toward its effective and full application.
- (9) The Commission shall advocate freedom of choice in education and make recommendations on Madison Public Schools and State of Wisconsin fiscal responsibilities.
- (10) The Commission shall coordinate relationships between various City agencies interested in youth welfare.
- (11) The Commission shall review and recommend on developing the procedural rights of youth.
- (12) The Commission shall review and make recommendation on the status of recreational facilities and events for youth such as concerts, parks, sports, etc.
- (13) The Commission shall hold at least four (4) public hearings each year and shall hold regularly scheduled monthly meetings."

3. Section 3.25 currently reads as follows:

**"3.25 ALCOHOLISM INFORMATION AND REFERRAL CENTER.**

- (1) There shall be operated by the City of Madison a facility for disseminating information on alcoholism which shall be known as the Alcoholism Information and Referral Center and which shall be under the supervision of a Commission on Alcoholism as constituted under Subsection (2) of this ordinance.
- (2) The Madison-Dane County Commission on Alcoholism shall include not more than three (3) members of the Dane County Board, appointed by its Committee on Committees; and eight (8) members appointed by the Mayor (four (4) each year, and subject to the approval by the Common Council; one (1) each representing the Common Council, management, labor, Alcoholics Anonymous, the medical profession, social work, the Community Welfare Council, and the clergy). Appointments by the Mayor shall not be limited to residents of the City of Madison, and their terms shall be two (2) years each, commencing on the third Tuesday in April.
- (3) The Commission on Alcoholism shall be responsible for providing and carrying out a program to increase public understanding of alcoholism, its nature and treatment and to arrange for medication and/or hospitalization and to collect information on community methods of treatment and disposition of the hospitalized acute alcoholic.

Said Commission shall maintain an office for the purpose of carrying out its duties which office shall be under the active management and supervision of an executive secretary who shall be appointed by the Mayor, subject to confirmation by the Common Council and hold office under civil service. The Commission shall arrange for medical assistance as necessary, office space, clerical help, equipment, supplies and materials necessary to carry out and maintain the program of the Alcoholism and Referral Center. The said Commission shall make recommendations to the Common Council of the City of Madison concerning such measures, contracts and appropriations as shall be necessary to carry out its program."

4. Section 3.66 currently reads as follows:

**"3.66 WAYNE MORSE MEMORIAL FORUM.**

- (1) There is created the Wayne Morse Memorial Forum to be held annually to stimulate public discussion of controversial issues.
- (2) A committee of nine (9) Madison citizens shall annually seek two (2) public speakers to participate in this Forum.

Eight (8) of the members shall be citizens representing a cross section of the Madison community. The ninth shall be an alderman. All members shall be appointed by the Mayor and shall serve for one (1) year."

5. Section 4.07(3) currently reads as follows:

"(3) Agricultural Use-Value Penalty. In accordance with the provisions of Section 74.48, Wisconsin Statutes, the procedure for the billing and payment of the statutory penalty for converting to another use agricultural land valued under Section 70.32(2r), Wisconsin Statutes, shall be administered by the City Assessor and City Treasurer as follows:

- (a) If a person who owns land that has been valued for agricultural use changes the use so that the land is no longer valued for agricultural use, that owner shall pay to the City Treasurer a penalty equal to the difference between the property taxes that would have been levied on the land if the land had been assessed at full market value and the property taxes levied on the land for the last two (2) years that the land has been valued for agricultural use.

- (b) The City Assessor shall compute said penalty based upon the assessments for the said last two years, if available, or, in the absence of market value assessments, upon the best market value information available as determined by the City Assessor. The City Assessor shall send a bill to the owner responsible for payment of the said penalty which bill shall be paid to the City Treasurer on or before thirty (30) days from the date of billing.
- (c) Any billing for payment of the penalty under this subsection which is not paid to the City Treasurer on or before thirty (30) days from the date of billing is subject to an interest charge of one percent per month or fraction of a month.
- (d) Upon request, the City Assessor shall provide any owner of land valued for agricultural use who is considering or proposing a change in use with information regarding the penalty to be imposed hereunder as a result of such change of use. The City Assessor is authorized to enter into an agreement with said owner to arrange for prompt payment of the penalty upon the change from agricultural use, consistent with the terms of this subsection."

6. Chapter 36 currently reads as follows:

**"36.01 SHORT TITLE.**

This ordinance shall be known and may be cited as the "Broadband Telecommunications Franchise Enabling Ordinance".

**36.02 DEFINITIONS.**

For the purpose of this ordinance the following terms, phrases and words and their derivations shall have the meaning specified herein. When not inconsistent with the context, words used in the present tense include the future and words in the singular number include words in the plural number.

Additional Service shall mean a subscriber service provided by the Grantee for which a special charge is made based on program or service content, time or spectrum space usage.

A.C. - abbreviation for alternating current.

Annual Gross Subscriber Revenues shall mean all revenues received by the Grantee, its affiliates or subsidiaries from and in connection with the operation of the Broadband Telecommunications Network in the City of Madison, and shall include revenues from all sources including without limitation revenues from advertising, channel leasing, data transmission and per program charges, in addition to the subscribers' regular monthly payments. The franchise fee shall be applied against only that revenue actually received by Grantee.

AGC (Automatic Gain Control) - an electronic circuit which automatically increases or decreases, within its design range, the gain of an amplifier in order to maintain a stable or fixed output level. Sometimes called AL or AVC.

ASC (Automatic Slope or Tilt Control) - an electronic circuit or thermal device that compensates for changes in cable or amplifier characteristics caused by temperature variations.

Basic Service shall mean all subscriber services provided by the Grantee, including the delivery of broadcast signals and programming originated over the cable system, covered by the regular monthly charge paid by all subscribers.

Broadband Telecommunications Network shall mean any network of cables, optical, electrical, or electronic equipment, including cable television systems, used for the purpose of transmission of electrical impulses of television, radio and other intelligences, either analog or digital for sale or use by the inhabitants of the City.

BTN Channel Capacity - the highest total number of cable television channels on which television signals from separate sources may be delivered downstream simultaneously to every subscriber in the network. The network may have additional channel capacity for specialized or discrete purposes, but the technical performance specified shall not be materially degraded thereby.

Cable Television Channel - a frequency band 6 MHz in width within which a standard television broadcast signal is delivered by cable to a subscriber terminal (except that Class III & IV cable television channels as defined by the FCC may be either wider or narrower than this standard).

Channel Frequency Response - within a cable television channel, the relationship as Measured at a subscriber terminal between amplitude and frequency of a constant-amplitude input signal at all specified frequencies within each channel.

City shall mean the City of Madison, its officers and employees unless otherwise specifically designated, the area within the territorial city limits of the City as defined and mapped in Chapter 15 (Aldermanic Districts and Wards) of the Madison General Ordinances, and such territory presently outside the City limits over which the City may assume jurisdiction or control by virtue of annexation.

Class I Cable Television Channel - a signaling path provided by a cable television system to relay to subscriber terminals television broadcast programs that are received off-the-air or are obtained by microwave or by direct connection to a television broadcast station.

Class II Cable Television Channel - a signaling path provided by a cable television system to deliver to subscriber terminals television signals that are intended for reception by a television broadcast receiver without the use of an auxiliary decoding device and which signals are not involved in a broadcast transmission path.

Class III Cable Television Channel - a signaling path provided by a cable television system to deliver to subscriber terminals signals that are intended for reception by equipment other than a television broadcast receiver or by a television broadcast receiver only when used with auxiliary decoding equipment.

Class IV Cable Television Channel - a signaling path provided by a cable television system to transmit signals of any type from a subscriber terminal to another point in the cable television system.

Commence Operation. Operation will be considered to have commenced when sufficient distribution facilities have been installed so as to permit the offering of "full network services" to at least twenty-five percent (25%) of the dwelling units located within the designated "service area".

Council shall mean the Common Council of the City of Madison and any legally appointed or elected successor or agency.

Data Grade shall mean coded transmissions primarily digital in nature.

db - the level in the network expressed in db's above or below a power corresponding to a root mean square voltage of one millivolt across seventy-five (75) ohms

Discrete Cable Television Channel - a signaling path provided by a cable television system to transmit signals of any type to specified subscriber terminals within the cable television system.

Downstream - the direction of transmission over the BTN from the "head end" or "hub" to a subscriber's terminal.

Dual Cable System shall mean a Broadband Telecommunications Network design technology that includes the total duplication of all trunk cables, distribution cables, and may include the total duplication of the associated electronic equipment when the transmission of more than the twelve (12) standard VHF channels of television information is required for delivery to subscribers without the use of a TV set converter.

FCC shall mean the Federal Communications Commission and any legally appointed or elected successor.

Franchise Payment shall include all charges imposed for a franchise whether the object be regulation, revenue or one-time reimbursement of costs incurred by the City in the award of this franchise.

Full Network Service shall mean all "basic services" and "additional services" offered by the Grantee.

Grantee means all persons including, but not limited to, subsidiaries, parents, or affiliate companies, associations or organizations having any rights, powers, privileges, duties, liabilities or obligations, under this ordinance, and under the franchise ordinance, collectively called the "Franchise", and also includes all persons having or claiming any title to or interest in the system, whether by reason of the franchise itself directly or by interest in a subsidiary, parent, or affiliate company, association or organization or by any subcontract, transfer, assignment, management agreement, or operating agreement, or an approved assignment or transfer resulting from a foreclosure of a mortgage security agreement, or whether otherwise arising or created.

Head End shall mean the land, electronic processing equipment, antennas, tower, building and other appurtenances normally associated with and located at the starting point of a Broadband Telecommunications Network, excluding the studio.

Hub Configuration - a BTN design technology wherein all transmission paths either originate or terminate at a central location within the community.

Local Distribution Center shall mean a facility within the community remote from but connected to the "hub" which distributes signals from the "hub" to a specified area in the Broadband Telecommunications Network.

Local Distribution System - that portion of the network that originates from a "local distribution center" as opposed to the "hub".

May is permissive.

Network Noise - that combination of undesired and fluctuating disturbances within a cable television channel, exclusive of undesired signals of discrete frequency which degrade the reproduction of the desired signal and which are due to modulation processes, thermal effects and other noise-producing effects, not including hum. Network noise is specified in terms of its rms voltage or its mean power level as measured in a 4 MHz band above the lower channel boundary of a Broadband Telecommunications Network.

Physical Mile of Plant shall mean messenger strand as measured from pole to pole without taking into consideration sag or downguys, and for buried plant, actual trench feet.

Reasonable Notice shall mean the provision of notice of contemplated action delivered at least forty-eight (48) hours prior to such action.

R.M.S. Root-Mean-Square - the effective value of an alternating current waveform which would be numerically equal in energy to a constant direct current.

Sale shall include any sale, exchange, barter or offer for sale.

Service Area - that geographical area within the incorporated limits of the City.

Shadow Cable shall mean a condition of an additional cable without duplicated electronic equipment and without additional distribution cable required to activate and place it into service.

Shall and Must - each is mandatory.

State shall mean the State of Wisconsin.

Street shall include all streets, roadways, highways, avenues, lanes, alleys, courts, places, squares, curbs, sidewalks, easements, rights-of-way or other public ways in the City which have been or may hereafter be dedicated and open to public use, or such other public property so designated by law.

Studio shall mean the land, electronic processing equipment, towers, building, cameras, lights and other appurtenances normally associated with and located at the Grantee's local origination and/or public access points of a Broadband Telecommunications Network, excluding the head end.

Subscriber shall mean any person, firm, company, corporation or association receiving either "basic service" or "additional service" from the Grantee under the schedule charges filed with and approved by the City.

Subscriber Terminal - the Broadband Telecommunications Network's 75 ohm cable terminal to which the subscriber's equipment is connected. Separate terminals may be provided for delivery of cable television signals, FM broadcast, or other signals of differing classifications.

Substantially Completed - operation will be considered substantially completed when sufficient distribution facilities have been installed so as to permit the offering of "full network service" to at least ninety percent (90%) of the dwelling units in the service area to which access is legally and reasonably available.

Terminal Isolation - at any subscriber terminal, the attenuation between that terminal and any other subscriber terminal in that network.

Upstream - the direction of transmission over the BTN from a subscriber terminal to the network's "head end" or "hub".

Video Grade shall mean transmission primarily analog in nature including the picture phase of a television broadcast.

Visual Signal Level - the rms voltage produced by the visual signal during the transmission of synchronizing pulses.

### **36.03 BROADBAND TELECOMMUNICATIONS REGULATORY BOARD ESTABLISHED.**

(1) Broadband Telecommunications Regulatory Board Established.

There is established a Broadband Telecommunications Regulatory Board, composed of seven (7) citizens, appointed by the Mayor, subject to the approval of the Common Council, for a term of three (3) years; except the first appointees shall be appointed two (2) for a term of one (1) year; two (2) for a term of two (2) years; and three (3) for a term of three (3) years; and thereafter each for a term of three (3) years. The Director of Broadband Telecommunications shall serve as a nonvoting member of the Regulatory Board. It is recommended that a majority of the members be subscribers to the system at the time of their appointment.

At least two (2) weeks before any citizens are appointed to the Broadband Telecommunications Regulatory Board, written applications from interested citizens who are willing and able to serve on said Board shall be accepted. The Mayor shall consider the applications submitted by citizens as well as other citizens as may come to the attention of the Mayor as being qualified and every effort shall be made to make said Board as broadly representative of the citizens of Madison as possible.

(2) Powers and Duties of the Regulatory Board. The duties of the Regulatory Board, in addition to those set forth in Section 36.13, shall be as follows:

- (a) Resolving disputes or disagreements between subscribers and the Grantee after investigation should the subscriber and the Grantee not first be able to resolve their dispute or disagreement, based on the report and recommendations of the Director of Broadband Telecommunications.
- (b) Reviewing and auditing reports submitted to the City as required by Section 36.08 and Section 36.14, and such other correspondence as submitted to the City concerning the operation of the Broadband Telecommunications Network so as to insure that the necessary reports are completed and fulfilled pursuant to the terms of the ordinance.
- (c) Work with the public and the media to assure that all records, rules and charges pertinent to the Broadband Telecommunications Network in the City of Madison are made available for inspection at reasonable hours upon reasonable notice.
- (d) Confer with the Grantee and advise on the interconnection of the City's cable system with other cable and communication systems.
- (e) Solicit, review and provide recommendations to the Common Council for selection of applicants for franchise under the provisions of Sections 36.10 and 36.11.
- (f) Initiate inquiries, receive requests for review of rates charged by the Grantee, and provide recommendation on such actions to the Common Council.



- (g) Establish and administer sanctions as authorized by the Common Council to insure compliance with this ordinance.
- (h) Such other duties as the Common Council may assign to the Broadband Telecommunications Regulatory Board.
- (i) Accept and review applications for grants from the funds paid by Grantee for innovative use of access channels. The Regulatory Board shall seek the advice of the Program Advisory Council prior to allocating said funds.

The findings of the Board shall be final, subject to written appeal to the Common Council. The decision of the Common Council shall be final.

- (3) The Board shall adopt such rules and regulations as are necessary to insure that due notice is given to all parties concerning any hearing on any complaints to said Board and the hearings are held promptly in accordance with reasonable notice to all parties. The Board shall also have such powers to include the election of its own officers.

#### **36.04 CABLE TELEVISION PROGRAM ADVISORY COUNCIL ESTABLISHED.**

- (1) Establishment of Cable Television Program Advisory Council.

There is established a Cable Television Program Advisory Council consisting of fifteen (15) persons with three (3) members each representing the public, educational and governmental users and six (6) persons chosen at large to be representative of the community; all fifteen (15) to be appointed by the Mayor subject to the approval of the Common Council. The first appointments shall be five (5) for a one (1) year term; five (5) for a two (2) year term and five (5) for a three (3) year term; and thereafter all appointments shall be for three (3) year terms. It is recommended that each group of five (5) initial appointments be representative of the four categories described three (3) from the users and two (2) persons at large.

At least two (2) weeks before any persons are appointed to the Cable Television Program Advisory Council, written applications from interested persons who are willing and able to serve on said Council shall be requested. Such applications shall clearly indicate the category that a person would be representing. In making recommendations for said Board, the Mayor shall consider the applications submitted by persons as well as such other persons as may come to the attention of the Mayor as being qualified.

- (2) Advisory Council Duties. The Cable Television Program Advisory Council shall perform the following functions:
  - (a) To make recommendations to the Grantee of the Broadband Telecommunications Network and to the educational and governmental users of the educational and governmental access channels.
  - (b) To insure that the Grantee makes the public access channel available to all residents of the City on a nondiscriminatory basis.
  - (c) To assure that the operation of the public access channel be free of program censorship and control.
  - (d) To perform such other duties and functions relative to the public access channel as may be appropriate.
  - (e) To make recommendations to the Grantee on the procedural aspects of the public access channel.
- (3) Advisory Council Rules and Procedures. The Advisory Council shall have the authority to submit proposed rules and regulations for the conduct of its business to the Mayor and Council for approval, and upon approval, shall have the right to hold hearings and make recommendations to the Grantee of the Broadband Telecommunications Network and to the educational and governmental communities on the coordination of the educational and government access channels. All such actions shall only be advisory.

#### **36.05 OFFICE OF BROADBAND TELECOMMUNICATIONS ESTABLISHED.**

- (1) Establishment of Broadband Telecommunications Office. There is hereby created an office of Broadband Telecommunications within the office of the City Comptroller for the purpose of exercising the City's continuing regulatory jurisdiction over any franchise granted by the City of Madison for the operation of a Broadband Telecommunications Network. (Am. by Ord. 9192, 5-14-87)
- (2) Director of Broadband Telecommunications. The Office of Broadband Telecommunications shall be managed and directed by a Director of Broadband Telecommunications who shall be appointed by the Mayor, subject to the approval of the Common Council, and s/he shall hold this office under civil service.

- (3) Responsibilities of the Director. The Director of Broadband Telecommunications shall be charged with the responsibilities of representing the City of Madison in the following matters:
- (a) Receive and investigate such complaints, disputes or disagreements as may be directed or referred to the City of Madison, between subscribers and Grantees of a Broadband Telecommunications Network and other distribution systems interconnected with the Broadband Telecommunications Network, not first able to resolve their differences.
  - (b) Report his recommendations upon complaints, disputes or disagreements after investigation, to the Broadband Telecommunications Regulatory Board for the issuance of finding.
  - (c) Review and audit reports, records, communications and Grantee regulations submitted to the City of Madison and conducting such inspections of the system as may be necessary in support of such review as provided for in the City of Madison Broadband Telecommunications Franchise Enabling Ordinance.
  - (d) The Director shall work with the public and the media to assure that all tariffs, rates, charges and rules pertinent to the operation of the Broadband Telecommunications Network in the City of Madison are made available for inspection by the public at reasonable hours and upon reasonable request.
  - (e) The Director shall confer and coordinate with the Grantee on the interconnections of the City's Broadband Telecommunications Network with other similar networks.
  - (f) The Director shall be a nonvoting member of the Broadband Telecommunications Regulatory Board.
  - (g) Such other duties, including administration services as the Common Council and Regulatory Board may assign to the Office of Broadband Telecommunications and are necessary to facilitate the functions of the Office of Broadband Telecommunications and the Broadband Telecommunications Regulatory Board.\
  - (h) The Director shall facilitate the operation of the Program Advisory Council.
- (4) Relationship to City Departments. All departments of the City government shall cooperate with the Director of Broadband Telecommunications to the end that he may discharge his duties and responsibilities as contemplated by this ordinance. Departments are directed to cooperate fully with the Director of Broadband Telecommunications in this purpose.
- (a) All City departments shall make available all such information pertaining to the Broadband Telecommunications Network as may be required by the Director of Broadband Telecommunications.
  - (b) The Director of Broadband Telecommunications shall keep the City department heads informed on matters pertaining to the Broadband Telecommunications Network which affect their operation.
  - (c) The City Attorney or his designated assistant shall provide legal counsel to the Director of Broadband Telecommunications.

### **36.06 THE BROADBAND TELECOMMUNICATIONS FRANCHISE.**

- (1) Franchise Required. No person, firm, company, corporation or association shall construct, install, maintain or operate within any public street in the City, or within any other public property of the City, any equipment or facilities for the distribution of television signals or radio signals or other intelligences either analog or digital over a Broadband Telecommunications Network to any subscriber unless a franchise authorizing the use of the streets or properties or areas has first been obtained pursuant to the provisions of this ordinance, and unless such franchise is in full force and effect.
- (2) Review of Qualifications. Specific permission to operate a Broadband Telecommunications Network under the provisions of this ordinance may be granted by the Common Council of the City to any Grantee after a review of the legal, character, financial, technical qualifications and the adequacy and feasibility of the Grantee's constructions arrangements and after the Common Council has approved the Grantee's qualifications as a part of a public proceeding affording due process.
- (3) Duration of Franchise. At which time Grantee executes a contract with the City committing to an expansion of the system to thirty-five (35) channels, the franchise term shall be extended so as to provide a remaining term of thirteen (13) years. At which time Grantee has substantially completed the rebuild and expansion of the system beyond thirty-five (35) to at least fifty-four (54) channels, the franchise term shall be further extended to provide a remaining term of fifteen (15) years. Grantee may request and the Common Council shall consider an additional five (5) year extension to a total remaining term of twenty (20) years if a longer period of amortization or period of time is necessary to recover the costs of expansion beyond thirty-five (35) to at least fifty-four (54) channels. In the event Grantee is able to expand the channel capacity of the system beyond thirty-five to at least fifty-four

- (54) channels without building a separate or new cable system, the extension of the remaining term of the franchise shall be limited to thirteen (13) years upon substantially completing the expansion.
- (4) Quinquennial Franchise Review.
- (a) On or about the fifth and tenth anniversaries of the effective date of the franchise, the City will schedule a public meeting or meetings with the Grantee to review the franchise performance, plans and prospects. The City may require the Grantee to make available specified records, documents, and information for this purpose, and may inquire in particular whether the Grantee is supplying a level and variety of services equivalent to those being generally offered at that time in the industry in comparable market situations.
  - (b) The City shall first confer with the Grantee regarding modifications in the franchise which might impose additional obligations on the Grantee, and the Grantee may in turn seek to negotiate relaxations in any requirements previously imposed on it which are subsequently shown to be impractical.
  - (c) Within thirty (30) days of the conclusions of such negotiations, the City may direct the Grantee to show cause why specified terms and conditions should not be incorporated into the franchise and the Grantee may similarly file with the City a written request that specified obligations of its franchise be removed or relaxed. Implementation of such requests shall correspond as nearly as possible with the procedures set forth in Section 36.13(3). The Council will order changes in the franchised rights and obligations of the Grantee only if it finds from all available evidence that such changes will not impair the economic viability of the system or degrade the attractiveness of the system's service to present and potential subscribers.
- (5) Review of Franchise Prior to Expiration.
- (a) Public Meeting to be Scheduled. At least six (6) months prior to the expiration of the franchise, the City shall schedule a public meeting or meetings with the Grantee to review the performance of Grantee, including the results of the previous franchise reviews. The City may require the Grantee to make available specified records, documents and information for this purpose, and may inquire in particular whether the Grantee is supplying a level and variety of services equivalent to those being generally offered at that time in the industry in comparable market situations.
  - (b) Determination on Reissue. The City shall, within thirty (30) days of the conclusion of such meetings, provide a determination as to franchises will be reissued. In making said decision the City shall consider the technical, financial and programming performance of the franchise holder and specifically with relation to any and all applications, promises or agreements made or entered into by the franchise holder and its performance of said applications, promises and agreements. In the event the City determines not to reissue the franchise or franchises for reasons other than a material breach of the franchise or for causes unrelated to the performance thereunder, it shall be so stated for purposes of Section 36.12(3).  
The City shall establish public proceedings leading to a final decision and such public proceedings shall include but not be limited to a public hearing providing opportunity for the public and applicant(s) for the reissued franchise to appear.
- (6) Nothing contained herein shall prohibit the City and the Grantee from engaging in a continuous review of the performance of Grantee, compliance with its ordinance and a review of the state of the art.

### **36.07 SIGNIFICANCE OF FRANCHISE.**

- (1) Franchise Nonexclusive. Any franchise granted hereunder by the City of Madison shall not be exclusive and the City reserves the right to grant a similar franchise to any person, firm, company, corporation or association at any time.
- (2) Franchise Amendable. The scope of any franchise granted hereunder shall be deemed amendable from time to time to allow the Grantee to innovate and implement new services and developments; provided, however, that no such services or developments be implemented without the expressed prior approval of the Common Council.
- (3) Privileges Must be Specified. No privilege or exemption shall be inferred from the granting of any franchise unless it is specifically prescribed. Nothing in this ordinance shall be deemed to require the granting of a franchise when in the opinion of the Council it would not be in the public interest to do so.
- (4) Authority Granted. Any franchise granted hereunder shall give to the Grantee the right and privilege to construct, erect, operate, modify and maintain, in, upon, along, above, over and under streets, as defined in Section 36.02 herein, which have been or may hereafter be dedicated and open to public use in the City, towers, antennas, poles, cables, electronic equipment, and other network

- appurtenances necessary for the operation of a Broadband Telecommunications Network in the City; subject to the requirements of Section 36.28 of this ordinance.
- (5) Consent Prior to Transfer of Franchise. Any franchise granted hereunder shall be a privilege to be held for the benefit of the public by the Grantee. Said franchise cannot in any event, be sold, transferred, leased, assigned or disposed of in whole or part, either by forced or voluntary sale, merger, consolidation, mortgage, trust, receivership or any other means without the prior consent of the City expressed by a Council resolution and then only under such conditions as the Council may establish. Such consent shall not be withheld by the City without showing of cause.
  - (6) Consent Prior to Change of Control. Prior approval of the Common Council shall be required where ownership or control of more than five percent (5%) of the voting stock of Grantee is acquired by a person or group of persons acting in concert, none of whom already owns or controls five percent (5%) or more of such right of control, singly or collectively. Transfer from a subsidiary to a parent corporation or vice-versa shall not be considered a change of control. Prior approval of the Common Council shall also be required for all changes in ownership or control by a person or group of persons acting in concert, who already own or control five percent (5%) or more of such right of control, singly or collectively.
  - (7) Mortgage or Pledge of Network. Nothing in this ordinance shall be deemed to prohibit the mortgage or the pledge of the network or any part thereof. However, any such mortgage or pledge shall be subject to and subordinate to the right of the City under this franchise or applicable laws.
  - (8) Previous Rights Abandoned. A franchise granted hereunder shall be in lieu of any and all other rights, privileges, powers, immunities, and authorities owned, possessed, controlled, or exercisable by a Grantee or any successor pertaining to the construction, operation, or maintenance of a cable communications system in the City. The acceptance of a franchise shall operate, as between Grantee and the City, as an abandonment of any and all of such rights, privileges, powers, immunities, and authorities within the City. All construction, operation and maintenance by the Grantee of any cable system in the City shall be under the franchise and not under any other right, privilege, power, immunity, or authority.
  - (9) Subject to Other Regulatory Agencies Rules and Regulations. The Grantee shall at all times during the life of any franchise granted hereunder be subject to all lawful exercise of the police power by the City and other duly authorized regulatory State and Federal bodies and shall comply with any and all ordinances which the City has adopted or shall adopt applying to the public generally and to other Grantees.
  - (10) Compliance to Laws, Rules and Regulations. In the event any valid law, rule or regulation of any governing authority or agency having jurisdiction, including but not limited to, the Federal Communications Commission, contravenes the provisions of this ordinance subsequent to its adoption; then the provisions hereof shall be superseded by any such valid law, rule or regulation to the extent that the provisions hereof are in conflict and contrary to any such law, rule or regulation.
  - (11) Pole Use Agreements Required. Any franchise granted hereunder shall not relieve the Grantee of any obligation involved in obtaining pole- or conduit-use agreements from the gas, electric and the telephone companies, or others maintaining poles or conduits in the streets of the City, whenever the Grantee finds it necessary to make use of said poles or conduits.
  - (12) No Right of Property. Anything contained herein to the contrary notwithstanding, the award of any franchise hereunder shall not impart to the Grantee any right of property in or on City-owned property.
  - (13) Franchise Binding. Anything contained herein to the contrary notwithstanding, all provisions of this ordinance and any franchise granted hereto shall be binding upon the Grantee, its successors, lessees, or assignees.

#### **36.08 OPERATION OF FRANCHISE.**

- (1) Operations to be in Accordance With Rules. The Grantee shall maintain and operate its Broadband Telecommunications Network in accordance with the rules and regulations of the Federal Communications Commission, the State of Wisconsin and/or the City as are incorporated herein or may be promulgated.
- (2) Interruption of Service; Notification. The Grantee, whenever it is necessary to interrupt service over the Broadband Telecommunications Network for the purpose of network maintenance, alteration or repair, shall do so at such time as will cause the least amount of inconvenience to the subscribers, and unless such interruption is unforeseen and immediately necessary, the Grantee shall give reasonable notice thereof to the affected subscribers.

- (3) Studios, Office and Phone for Complaints. The Grantee shall maintain an office, production studio, and public access production facilities within the City limits which shall be open during all normal business hours, have a listed local telephone number, and be so operated that complaints and requests for repairs or adjustments may be received at any time.
- (4) Service Records Maintained. The Grantee shall at all times make and keep at an office maintained by the Grantee in the City of Madison, a list of all complaints and interruptions or degradation of service received or experienced during the term of franchise. The records maintained above shall also include complaint response time and service restoral period and shall be continuously open to inspection, examination or audit by any duly authorized representative of the City.
- (5) 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 reasonable and necessary to enable the Grantee to exercise its rights and perform its obligations under this ordinance and any franchise granted hereunder.
  - (a) Rules to be in Conformance With Other Regulations. None of such rules, regulations, terms and conditions promulgated under Subsection (5) above shall be in conflict with the provisions hereof or the laws of the State, or the Rules and Regulations of the Federal Communications Commission, or any rules and regulations promulgated by the City in the exercise of their regulatory authority granted hereunder.
  - (b) All Rules to be Filed With City. Two (2) copies of all rules, regulations, terms and conditions promulgated under Subsection (5) above, together with any amendments, additions or deletions thereto, shall be kept currently on file with the City Clerk and another copy thereof shall be maintained for public inspection during normal business hours at Grantee's office in the City; no such rules, regulations, terms, conditions, or amendments, additions or deletions thereto shall take effect unless and until so filed and maintained.
- (6) Subscribers' Antennas. The Grantee shall not require the removal, or offer to remove or provide any inducements for removal of any potential or existing subscriber's antenna as a condition of provision of service.
- (7) Sale or Service of Television Receivers. Neither the Grantee during the period of the franchise nor any of its affiliated, subsidiary, parent organizations, officers or directors or stockholders holding five percent (5%) or more of outstanding stock of the Grantee, shall within the corporate limits of the City or within ten (10) miles in any direction, directly or indirectly, engage in the retail sale, renting, leasing, or repairing of radio or television receivers or their appurtenances, nor shall they require any subscriber to utilize the services of any specific television/radio service business for the repair or maintenance of the subscriber's receivers, either radio or television.
- (8) Antenna Switch. The Grantee, upon request from any subscriber, shall install at a reasonable charge therefore, a switching device so as to permit a subscriber to continue to utilize his own television antenna as he chooses.

#### **36.09 RIGHTS RESERVED TO THE CITY.**

- (1) Right of Amendment Reserved to City. The City may from time to time, add to, modify or delete provisions of this ordinance as it shall deem necessary in the exercise of its regulatory powers provided that such additions or revisions are reasonable and do not place an undue financial burden on the Grantee. Such additions or revisions shall be made only after a public hearing for which the Grantee shall have received written notice at least thirty (30) days prior to such hearing.
- (2) No Impairment of City's Rights. Nothing herein shall be deemed or construed to impair or affect, in any way to any extent, the right of the City to acquire the property of the Grantee through the exercise of the right of eminent domain, at a fair and just value, which shall not include any amount for the franchise itself or for any of the rights or privileges granted, and nothing shall be construed to contract away or to modify or abridge, either for a term or in perpetuity, the City's right to eminent domain.
- (3) Grantee Agrees to City's Rights. The City reserves every right and power which is required to be reserved or provided by an ordinance of the City, and the Grantee by its acceptance of the franchise, agrees to be bound thereby and to comply with any action or requirements of the City in its exercise of such rights or powers which have been or will be enacted or established.
- (4) City's Right of Intervention. The City shall have the right to intervene and the Grantee specifically agrees by its acceptance of the franchise not to oppose such intervention by the City in any suit or proceeding to which the Grantee is a party.
- (5) Powers of the City. Neither the granting of any franchise nor any provision governing the franchise shall constitute a waiver or bar to the exercise of any governmental right or power of the City.

- (6) City's Transfer of Functions. Any right or power in, or duty imposed upon any elected official, officer, employee, department, or board of the City shall be subject to transfer by the City to any other elected official, officer, employee, department or board.
- (7) City's Right of Inspection. The City reserves the right during the life of any franchise granted hereunder, to inspect and supervise all construction or installation work performed subject to the provisions of this ordinance and to perform network measurements to insure compliance with the terms of the ordinance.
- (8) City's Right of Acquisition. Upon expiration of the term of the franchise, or revocation, or other termination as provided by law, or upon receipt of application for approval of an assignment of the franchise or upon change of de facto control, the City shall have a right to purchase the Broadband Telecommunications Network as set forth in Section 36.12(3) herein.
- (9) City's Right of Network Installation. The City reserves the right during the life of any franchise granted hereunder, to install and maintain free of charge upon or in the poles and conduits of the Grantee any wire and pole fixtures necessary for municipal networks on the condition that such installation and maintenance thereof does not interfere with the operation of the Grantee.

### **36.10 APPLICATIONS FOR FRANCHISE.**

Applications for a franchise hereunder shall be filed with the City Clerk or his appointee, in accordance with the filing instructions promulgated by the City and shall contain the following written information and provisions:

- (1) Proposal Bond and Filing Fee. Provision of the Proposal Bond as required in Section 36.17(1) and payment of a nonrefundable filing fee to the City of two hundred fifty dollars (\$250) which sum shall be due and payable concurrently with the request for application information.
- (2) Name and Address of Applicant. The name and business address of the applicant, date of application and signature of applicant or appropriate corporate officer(s).
- (3) Description of Proposed Operation. A general description of the applicant's proposed operation, including but not limited to: business hours; operating staff; maintenance procedures beyond those required in the ordinance; management and marketing staff complement and procedures; and, if available, the rules of operation for public access.
- (4) Signal Carriage. A statement of the television and radio services to be provided, including both off-the-air and locally originated signals.
- (5) Special Services. A statement setting forth a description of the automated services proposed as well as a description of the production facilities to be made available by the Grantee for the public, municipal, and educational channels required to be made available by the provisions of this ordinance and the Federal Communications Commission.
- (6) Programming Assistance. A statement establishing any additional funding, facilities, equipment, or personnel beyond those required elsewhere to be designated to effect and promote local programming development. It is understood that the foregoing will be available without charge to all on a fair and nondiscriminatory basis and may be used by the Grantee as well. Such funding and services will be contingent upon a special showing, where required, that the proposed uses are consistent with the regulatory program of the FCC.
- (7) Schedule of Charges. A statement of the applicant's proposed Schedule of Charges as set forth by the provision of Section 36.18 hereunder.
- (8) Corporate Organization. A statement detailing the corporate organization of the applicant, if any, including the names and addresses of its officers and directors and the number of shares held by each officer and director.
- (9) Stockholders. A statement identifying the number of authorized and outstanding shares of applicant's stock including a current list of the names and current addresses of its shareholders holding five percent (5%) or more of applicant's outstanding stock.
- (10) Intra-Company Relationships. A statement describing all intra-company relationships of the applicant, including parent, subsidiary or affiliated companies.
- (11) Agreements and Understandings. A statement setting forth all agreements and understandings, whether written or oral, existing between the applicant and any other person, firm, group or corporation with respect to any franchise awarded hereunder and the conduct of the operation thereof existing at the time of proposal submittal.
- (12) Financial Statement. If applicant is a corporation, audited financial statements for the two (2) previous fiscal years. If applicant is a partnership, copies of the "U. S. Partnership Return of Income" (IRS Form 1065) for the two (2) previous fiscal years. If applicant is a sole proprietorship, copies of the "U.S. Individual Income Tax Return" (IRS Form 1040) for the two (2) previous fiscal years.

- (13) Financial Projection. A ten (10) year operations proforma which shall include the initial and continuing plant investment, annual profit and loss statements detailing income and expenses, annual balance sheets, and annual levels of subscriber penetration. Costs and revenues anticipated for voluntary services shall, if presented, be incorporated in the proforma as required in this ordinance, but shall be separately identified in the proforma.
- (14) Financial Support. Suitable written evidence from a recognized financing institution, addressed both to the applicant and to the City, advising that the applicant's financial ability and planned operation have been analyzed by the institution and that the financing institution is prepared to make the required funds available to applicant if it is awarded a franchise. If the planned operation is to be internally financed, a board resolution shall be supplied authorizing the obtainment and expenditure of such funds as are required to construct, install and operate the Broadband Telecommunications Network contemplated hereunder.
- (15) Technical Description. A technical description of the type of system proposed by the applicant, including but not limited to, system configuration (i.e. hub, dual cable), system capacity, two-way capability.
- (16) Technical Statement. A statement from the applicant's senior technical staff member or consultant advising that he has reviewed the Network Description, the Network Technical Standards, Performance Measurements, Channels to be Provided, Service Standards, Construction Standards and Conditions of Street Occupancy as set forth in or required by Sections 36.22, 36.23, 36.24, 36.25, 36.26, 36.27, and 36.28, respectively, hereunder and that the applicant's planned network and operations thereof will meet all the requirements set forth therein.
- (17) Existing Franchises. A statement of existing franchises held by the applicant indicating when the franchises were issued and when the systems were constructed and the present state(s) of the system(s) in each respective governmental unit, together with the name and address and phone number of a responsible governmental official knowledgeable of the applicant.
- (18) Convictions. A statement as to whether the applicant or any of its officers or directors or holders of five percent (5%) or more of its voting stock has in the past ten (10) years been convicted of or has charges pending for any crime other than a routine traffic offense and the disposition of each such case.
- (19) Operating Experience. A statement detailing the prior cable television experience of the applicant including that of the applicant's officers, management and staff to be associated with the proposed operation.
- (20) Franchise Renewal Information. If an application is for renewal of a franchise, the proposal must include, in addition to the information required in Subsections (1) through (18) above:
  - (a) A summary of the technical, financial and programming history of the network since the granting of the original franchise.
  - (b) A statement and timetable that outlines all proposed changes, expansion or improvements in the system as to services, programming or technical specifications during the forthcoming five (5) year review period.
- (21) Additional Requirements. The application for franchise shall respond specifically, and in sequence, to Subsections (1) through (19) of this section and shall be bound separately from any additional information proffered by the applicant. Twenty-five (25) copies of the application shall be supplied to the City. Supplementary, additional or other information that the applicant deems reasonable for consideration may be submitted at the same time as its application, but must be separately bound and submitted in the above number of copies. The City may, at its discretion, consider such additional information as part of the application.
- (22) Supplementation to Applications. The City reserves the right to require such supplementary, additional or other information that the City deems reasonably necessary for its determinations. Such modifications, deletions, additions or amendments to the application shall be considered only if specifically requested by the City.

#### **36.11 ACCEPTANCE AND EFFECTIVE DATE OF FRANCHISE.**

- (1) Franchise Acceptance Procedures. Any franchise awarded hereunder and the rights, privileges and authority granted thereby shall take effect and be in force from and after the thirtieth (30th) day following the award thereof, provided that within thirty (30) days from the day of such award the Grantee shall file with the City the following:
  - (a) A notarized statement by the Grantee of unconditional acceptance of the franchise and
  - (b) A certificate of insurance as set forth in Section 36.16(6) herein and
  - (c) A performance bond in the penal sum of one million dollars (\$1,000,000) as set forth in Section 36.17(2) herein and

- (d) Reimbursement to the City for the costs of publication of this ordinance.
- (e) Written notification of the Grantee's location and address for mail and official notifications from the City.
- (2) Forfeiture of Proposal Bond. Should the Grantee fail to comply with Subsection (1) above it shall acquire no rights, privileges or authority under this ordinance whatever, and the amount of the Proposal Bond or certified check in lieu thereof, submitted with its application shall be forfeited in full to the City as liquidated damages.
- (3) Grantee to Have no Recourse. The Grantee shall have no recourse whatsoever against the City for any loss, cost, expense or damage arising out of any provision or requirement of this ordinance or its regulation or from the City's exercise of its authority to grant additional franchises hereunder. This shall not include negligent acts of the City, its agents or employees which are performed outside the regulatory or franchise awarding authority hereunder.
- (4) Acceptance of Power and Authority of City. The Grantee expressly acknowledges that in accepting any franchise awarded hereunder, it has relied upon its own investigation and understanding of the power and authority of the City to grant this franchise.
- (5) Inducements Not Offered. The Grantee by acceptance of any franchise awarded hereunder acknowledges that it has not been induced to enter into this franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of the City concerning any term or condition of this franchise that is not included in this ordinance.
- (6) Grantee Accepts Terms of Franchise. The Grantee acknowledges by the acceptance of this ordinance and the franchise ordinance that it has carefully read its terms and conditions and it is willing to and does accept all the obligations of such terms and conditions and further agrees that it will not, prior to substantial completion of the system, set up as against the City the claim that any provision of this ordinance as adopted, and any franchise granted hereunder is unreasonable, arbitrary, invalid or void.
- (7) Incorporation of Proposals. The Grantee, by the acceptance of any franchise awarded hereunder or extensions of the franchise, agrees that the matters contained in the Grantee's application for franchise and any subsequent application or proposal for an extension of said franchise, and as stated in all presentations, except as inconsistent with the FCC Rules and Regulations, law or ordinance, shall be incorporated into the franchise as though set out verbatim.

### **36.12 TERMINATION OF FRANCHISE.**

- (1) Grounds for Revocation. The City reserves the right to revoke any franchise and rescind all rights and privileges associated with the franchise in the following circumstances:
  - (a) If the Grantee should default in the performance of any of its obligations under the franchise, and fails to cure the default within thirty (30) days after receipt of written notice of the default from the City.
  - (b) If the Grantee should fail to provide or maintain in full force and effect, the performance bond and liability and indemnification coverages as required in Sections 36.17 and 36.16, respectively.
  - (c) If a petition is filed by or against the Grantee under the Bankruptcy Act, or any other insolvency or creditors' rights law, State or Federal, and the Grantee shall fail to have it dismissed.
  - (d) If a receiver, trustee or liquidator of the Grantee is applied for or appointed for all or part of its assets.
  - (e) If the Grantee makes an assignment for the benefit of creditors.
  - (f) If the Grantee should violate any orders or ruling of any regulatory body having jurisdiction over the Grantee unless the Grantee is lawfully contesting the legality or applicability of such order or ruling.
  - (g) If the Grantee fails to receive the necessary FCC or State certification unless such cause is directly attributable to an action or condition imposed by the City.
- (2) Procedure Prior to Revocation. Upon the occurrences of any of the events enumerated in Subsection (1) of this section, the Common Council may, after hearing, upon thirty (30) days written notice to the Grantee citing the reasons alleged to constitute cause for revocation, set a reasonable time in which the Grantee must remedy the cause. If, during the thirty (30) day period, the cause shall be cured to the satisfaction of the City, the City may declare the notice to be null and void. If the Grantee fails to remedy the cause within the time specified, the Council may revoke the franchise. In any event, before a franchise may be terminated, the Grantee must be provided with an opportunity to be heard before the Common Council.



- (3) Purchase of System by City. If the City determines not to reissue the franchise for reasons other than a material breach of the franchise or reasons unrelated to the performance of the franchise holder or upon receipt of an application for assignment of the franchise, or upon change of de facto control, the Grantee shall first offer the Broadband Telecommunications Network for sale to the City at a fair and just market value, which value shall include the fair market value of the system as a going concern including the franchise itself and the rights and privileges granted by the City.
- When a franchise is revoked pursuant to this section or expires and is not renewed because of a material breach of the franchise, the Grantee shall first offer the Broadband Telecommunications Network for sale to the City at a fair and just market value, which value shall not include any value for the franchise itself or for any of the rights or privileges granted by the City.
- In the event the determination of fair market value cannot be negotiated or determined, said value shall be determined by an impartial arbitration procedure pursuant to Chapter 298, Wisconsin Statutes, wherein the Grantee and the City shall each choose an arbitrator and the arbitrators chosen shall choose the third and the valuation determined by said arbitrators shall be considered the fair market value at which the system will be offered to the City. The determination of the value of the system shall be decreased by the amount of any damages sustained by the City in connection with revocation or expiration, including without limitation, payment made by the City to another person or entity to operate the Broadband Telecommunications Network for a temporary period after revocation. The cost of the arbitration procedure shall be shared equally by the City and Grantee.
- The City shall have ninety (90) days to exercise the right of first refusal to purchase the Network, said ninety (90) days commencing on the day the fair market value of the system is determined either through negotiation or the arbitration procedure. If the City does not exercise its option to purchase, and the Network is not sold to another operation who has obtained a franchise from the City in a reasonable period of time, the Grantee, upon request by the City, shall promptly remove all its plant, structures and equipment; provided, however, that in the event the City determines not to exercise its right of first refusal it shall not unreasonably refuse to renew or grant a cable television franchise during a reasonable interim period. While transfer of the system and franchise is being negotiated, arranged or ordered the Grantee may be required to continue service to the public unless for reasons beyond the control of the Grantee said operation will be economically unfeasible to the Grantee.
- (4) Restoration of Property. In removing its plant, structures and equipment, the Grantee shall refill at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to the company's removal of its equipment and appliances, without affecting the electric or telephone cables, wires, or attachments. The City shall inspect and approve the condition of the public ways and public places and cables, wires, attachments and poles after removal. Liability insurance and indemnity provided in Section 36.16 and the performance bond in Section 36.17 shall continue in full force and effect during the period of removal.
- (5) Restoration by City, Reimbursement of Costs. In the event of a failure by the Grantee to complete any work required by Subsection (4) above or any work required by City law or ordinance within the time established and to the satisfaction of the City, the City may cause such work to be done and the Grantee shall reimburse the City the costs thereof within thirty (30) days after receipt of an itemized list of such costs or the City may recover such costs as provided in Section 36.17(2).
- (6) Lesser Sanctions. Nothing shall prohibit the City, in its rules and regulations, from imposing lesser sanctions or censures than revocation for violations of provisions of this ordinance including the shortening of the franchise period for substantial and repeated violations.
- (7) Expiration; Extended Operation. Upon the expiration of a franchise, the City may, by resolution, on its own motion or request of the Grantee, require the Grantee to operate the franchise for an extended period of time not to exceed six (6) months from the date of any such resolution. All provisions of the franchise shall continue to apply to operations during an extension period. The City shall serve written notice at the Grantee's business office of intent to extend under this section at least thirty (30) days prior to expiration of the original franchise or any extensions thereof.

### **36.13 REGULATORY JURISDICTION AND PROCEDURES.**

- (1) Continuing Regulatory Jurisdiction. The City shall have continuing regulatory jurisdiction and supervision over the operation of any franchise granted hereunder and may from time to time adopt such reasonable rules and regulations as it may deem necessary for the conduct of the business contemplated thereunder.
- (2) Broadband Telecommunications Regulatory Board. The continuing regulatory jurisdiction of the City shall be exercised by a City department and/or agency and/or through a Broadband Telecommunications Regulatory Board, that the City may establish. The Board, department or agency

established or appointed to exercise the City's continuing regulatory jurisdiction shall have the following responsibilities and duties and such other responsibilities and duties that the Common Council may assign to it:

- (a) Resolving disputes or disagreements between subscribers and the Grantee after investigation should the subscriber and the Grantee not first be able to resolve their dispute or disagreement. Said decisions or findings may be appealed, as set forth in Section 36.13(3).
  - (b) Reviewing and auditing all reports and filings submitted to the City as required hereunder and such other correspondence as may be submitted to the City concerning the operation of the Broadband Telecommunications Network. Review the rules and regulations set by the Grantee under the provisions of Section 36.08 herein.
  - (c) Assuring that all tariffs, rates and rules pertinent to the operation of the Broadband Telecommunications Network in the City of Madison are made available for inspection by the public at reasonable hours and upon reasonable request.
  - (d) Conferring and coordinating with the Grantee on the interconnection of the City's Broadband Telecommunications Network with other similar networks.
  - (e) Reviewing rates and recommending any rate changes to the Common Council as provided in Section 36.18 of this ordinance.
  - (f) Allocating funds it deems necessary to assist production and programming on the public access channels.
- (3) Regulatory Procedures.
- (a) The Broadband Telecommunications Regulatory Board shall first consider any inquiry or proceeding requiring Common Council action to be taken in regard to the Broadband Telecommunications Network or franchise, whether upon application or request by the Grantee or any other party or on its own motion and shall submit such consideration, together with the Board's recommendation, to the Common Council within sixty (60) days of the receipt of such request unless such time shall be extended by agreement between the Board and the requesting party. Any action by the Common Council on any Board recommendation shall be taken only after thirty (30) days notice of said proposed action, inquiry, or proceeding is published in the official newspaper having general circulation and a copy of said notice is served upon the Grantee. The Grantee shall have an opportunity to respond at the hearing and/or in writing. Members of the public shall have an opportunity to respond or comment in writing on the proposed action and appear at said proceeding or hearing, however, such hearing or proceeding shall be set no later than ninety (90) days after notice to the Grantee and the Common Council shall act upon this proceeding within one hundred eighty (180) days of the notice of hearing unless such time is extended by agreement between the City and the Grantee.
  - (b) The public notice required by this section shall state clearly the action or proposed action to be taken, the time provided for response, including response by the public, the person or persons in authority to whom such responses shall be addressed and such other procedures as may be specified by the Common Council. If a hearing is to be held, the public notice shall give the date, location and time of such hearing. The Grantee is a necessary party to any hearing conducted in regard to its operation.
- (4) Failure to Enforce Provisions. The Grantee shall not be excused from complying with any of the terms and conditions of the franchise by any failure of the City upon one or more occasions to insist upon or to seek compliance with any such terms or conditions.
- (5) Contravention of Provisions. The cost of any successful litigation incurred by the City to enforce provisions of this ordinance or of the franchise ordinance, or in relation to a franchise shall be reimbursed to the City by the Grantee. Such costs shall include filing fees, costs of depositions, discovery, and expert witnesses, all other expenses of suit, and a reasonable attorney's fee.

#### **36.14 REPORTS AND RECORDS OF THE GRANTEE.**

- (1) Annual Financial Reports Required. The Grantee shall file annually with the City Clerk not later than three (3) months after the end of his fiscal year during which he accepted a franchise hereunder and within three (3) months after the end of each subsequent fiscal year, two (2) copies of:
  - (a) The report to his stockholders;
  - (b) An income statement identifying revenues, expenses and income applicable to his operations under said franchise during the fiscal year or fraction thereof and;

- (c) A listing of his properties devoted to network operations together with an itemization of his investment in each of such properties on the basis of original cost, less depreciation. These reports shall include a balance sheet, listing of substantial liabilities and financing arrangements and such other reasonable information as the City may request, and shall be certified by a Certified Public Accountant.
- (2) Annual Facilities Report Required. The Grantee shall file annually with the City Clerk not later than three (3) months after the end of his fiscal year during which he accepted a franchise hereunder and within three (3) months after the end of each subsequent fiscal year, two (2) copies of a total facilities report setting forth the total physical miles of plant installed or in operation during the fiscal year and a map showing the location of same.
- (3) Annual Service Record Report Required. The Grantee shall, if requested by the City, file annually with the City Clerk not later than three (3) months after the end of his fiscal year during which he accepted a franchise hereunder and within three (3) months after the end of each subsequent fiscal year, two (2) copies of a list of all trouble complaints and network "downtime" received or experienced during the fiscal year. All such submitted data shall also include complaint disposition and response time. For the purposes of this provision, certified copies of a "complaint" logbook reflecting all such incidents will suffice. Also, if requested by the City, uncertified additions to the annual complaint log shall be supplied in two (2) copies to the City at intervals of not more than ninety (90) days following the filing of the annual report.
- (4) Annual Measurements Report Required. The Grantee shall file annually with the City Clerk not later than three (3) months after the end of his fiscal year during which he accepted a franchise hereunder and within three (3) months after the end of each subsequent fiscal year two (2) copies of a report on the network's technical measurements, as set forth in Section 36.24 herein.
- (5) Annual Operations Reports Required. The Grantee shall file annually with the City Clerk not later than three (3) months after the end of his fiscal year during which he accepted a franchise hereunder and within three (3) months after the end of each subsequent fiscal year two (2) copies of the following supplemental information:
  - (a) If a nonpublic corporation, a list of all current shareholders and bondholders both of record or beneficial. If a public corporation, a list of all shareholders who individually or as a concerted group hold five percent (5%) or more of the voting stock of the corporation.
  - (b) A current list of all Grantee's officers and directors including addresses and telephone numbers.
  - (c) Copies of all pertinent agreements or contracts, including pole-use agreements, entered into by the Grantee during the fiscal year in the conduct of its business under a franchise granted hereunder.
  - (d) The names and both business and residential addresses and phone numbers of the Broadband Telecommunications Network resident manager and engineer.
  - (e) Two (2) copies of all types of subscriber agreements. Copies of individual subscribers' agreements are not to be filed with the City.
  - (f) Copies of all rules and regulations promulgated by the Grantee during the fiscal year in the conduct of his business in accordance with the provisions of Section 36.08 hereunder.
  - (g) A copy of the annual report(s) of the parent firm(s) which own an interest of more than five percent (5%) or more of the voting stock of the Grantee; and such other annual report(s) of subsidiaries or divisions of the parent firm(s) as the City deems necessary.
- (6) Application for Certificate of Compliance. The Grantee shall give formal notice to the City that it is seeking a Certificate of Compliance from the Federal Communications Commission. Within five (5) calendar days upon filing such a request with the Federal Communications Commission, the Grantee shall file two (2) copies of its application for certification with the City Clerk.
- (7) Public Availability of Reports. Such reports as required under this ordinance must be available to the public in the office of the City Clerk, during normal business hours. Subscribers shall be notified of the availability of such reports in ways approved by the Broadband Telecommunications Regulatory Board.
- (8) Correspondence. The Grantee shall simultaneously file with the City Clerk a copy of each petition, application and communications transmitted by the Grantee to, or received by the Grantee from, any Federal, State or other regulatory commissions or agencies having competent jurisdiction to regulate and pertaining to the operations of any Broadband Telecommunications Network authorized hereunder.

- (9) City's Access to Records.
  - (a) The City reserves the right during the life of any franchise granted hereunder to have access at all normal business hours and upon the giving of reasonable notice, to the Grantee's contracts, engineering plans, accounting, financial data, and service records relating to the property and the operations of the Grantee and to all other records required to be kept hereunder. Nothing contained herein shall prevent the Grantee from enjoining the City from reviewing documents relating to proprietary interests not related to its operation under this ordinance in the City's regulatory program.
  - (b) Records of subscriber lists and statistical data not otherwise required by this ordinance shall be made available only upon a ruling by a judge of competent jurisdiction that such records are material to the City's regulatory program.
- (10) Subscriber Agreement. The form of Grantee's agreements with its subscribers shall be subject to the approval of the Common Council and two (2) copies of all types of agreements used by the Grantee shall be filed and maintained with the City Clerk.

### **36.15 FRANCHISE PAYMENT.**

- (1) Filing Fee. Applicants for a franchise hereunder shall pay a nonrefundable filing fee to the City of two hundred fifty dollars (\$250) which sum shall be due and payable concurrently with the request for the proposal information.
- (2) Franchising Compensation. Grantees of a franchise hereunder shall provide an initial payment to the City in an amount equal to the direct costs of granting the franchise not to exceed ten thousand dollars (\$10,000), which sum shall be due and payable concurrently with the Grantee's awarding process.
- (3) Annual Franchise Payment. Grantees of a franchise hereunder shall pay to the City an annual fee in an amount equal to following percentages of "annual gross revenues", as defined in Section 36.02 herein, in lieu of all other City permits and fees, to be utilized by the City to offset its regulatory and administrative costs hereunder. This payment shall be in addition to any other payments 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. The percentages shall be as follows: 4% of gross revenues for the years 1983-1985, 4.5% of gross revenues for the years 1986-1988, and 5% of gross revenues from 1989 to termination of franchise. (Am. by Ord. 7991, 4-26-83)
- (4) Method of Computation; Interest.
  - (a) Sales taxes or other taxes levied directly on a per-subscription basis and collected by the Grantee shall be deducted from the local annual gross subscriber revenues before computation of sums due the City is made. Payments due the City under the provisions of Subsection (3) above shall be computed annually as of December 31 for the preceding year and shall be paid simultaneously with the filing of annual reports required in Section 36.14 at the office of the City Clerk during his regular business hours. The payment period shall commence as of the effective date of the franchise. The City shall be furnished a statement with each payment, by a Certified Public Accountant, reflecting the total amounts of annual gross subscriber revenues, and the above charges, deductions and computations, for the annual payment period covered by the payment.
  - (b) In the event that any payment is not made as required, interest on the amount due, as determined from the annual gross subscriber revenues as computed by a Certified Public Accountant, shall accrue from the date of the required submittal at an annual rate of twelve percent (12%). The percentages designated in this section may be amended no more than once each year by the Common Council, consistent with increased costs for municipal facilities and supervision and applicable rules of other regulatory agencies.
- (5) Rights of Recomputation. No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee under this ordinance or for the performance of any other obligation of the Grantee.

### **36.16 LIABILITY AND INDEMNIFICATION.**

- (1) Indemnification of Franchise. It shall be expressly understood and agreed by and between the City and any Grantee hereunder that the Grantee shall save the City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim or demand which the City may legally be required to pay as a result of the enactment of this ordinance and the award of a franchise thereunder, except as such suit, judgment, execution, claim or demand may arise from the process or action of selection of a Grantee or Grantees for award of a franchise as provided herein.

- (2) Indemnification of City in Franchise Operation. It shall be expressly understood and agreed by and between the City and any Grantee hereunder that the Grantee shall save the City and its agents and employees harmless from and against all claims, damages, losses, and expenses, including attorney's fees sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever arising out of but not limited to copyright infringements and all other damages arising out of the installation, operation or maintenance of the Broadband Telecommunications Network authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this ordinance and any franchise granted hereunder. This provision shall not apply to acts of the City, its agents or employees.
- (3) Reimbursement of Costs. The Grantee shall pay and by her/his acceptance of any franchise granted hereunder agrees that it will pay all expenses incurred by the City in defending itself with regard to all damages and penalties mentioned in Subsections (1) and (2) above, except as such expenses may arise from the process (as above). These expenses shall include all out-of-pocket expenses, such as consultants or attorney fees, and shall also include the reasonable value of any services rendered by the City Attorney or her/his staff or any other employee of the City.
- (4) Public Liability Insurance. The Grantee shall maintain and by his acceptance of any franchise granted hereunder agrees that he will maintain throughout the term of the franchise, any extensions thereto, or as required in Section 36.12(4) herein, a general comprehensive liability insurance policy naming as the additional insured the City, its officers, boards, commissions, agents and employees, in a company approved by the City Risk Manager and in a form satisfactory to the City Risk Manager, protecting the City and all persons against liability for loss or damage for personal injury, death or property damage, occasioned by the operations of Grantee under any franchise granted hereunder, in the amounts of:
  - (a) One million dollars (\$1,000,000) for personal injury or death resulting from any one occurrence, and
  - (b) Five hundred thousand dollars (\$500,000) for property damage resulting from any one occurrence.
- (5) Notice of Cancellation or Reduction of Coverage. The insurance policies mentioned above shall contain an endorsement stating that the policies are extended to cover the liability assumed by the Grantee under the terms of this ordinance and shall contain the following endorsement:

It is hereby understood and agreed that this policy may not be cancelled nor the amount of coverage thereof reduced until thirty (30) days after receipt by the City Risk Manager by registered mail of two (2) copies of a written notice of such intent to cancel or reduce the coverage.
- (6) Evidence of Insurance Filed With City Risk Manager. All policies of insurance or certified copies thereof and written evidence of payment of required premiums, shall be filed and maintained with the City Risk Manager during the term of any franchise granted hereunder, or any renewal thereof.
- (7) No Waiver of Performance Bond. Neither the provisions of this ordinance nor any insurance accepted by the City pursuant hereto, nor any damages recovered by the City thereunder, shall be construed to excuse performance by the Grantee or limit the liability of the Grantee under any franchise issued hereunder or for damages, either to the full amount of the bond or otherwise.

### **36.17 BONDS.**

- (1) Proposal Bond. Each applicant for a franchise hereunder shall submit a proposal bond in a form acceptable to the City Risk Manager or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the City in an amount of twenty-five thousand dollars (\$25,000).
- (2) (R. by Ord. 8332, 5-11-84)
- (3) Forfeit of Proposal Bond. Should the applicant fail or refuse to accept a franchise hereunder or fail or refuse to furnish the Performance Bond as set forth herein within thirty (30) days after written notification of the award of a franchise by the City, said applicant will be considered to have abandoned its proposal and the City shall enforce the proposal bond in accordance with its terms or retain the proceeds of the certified check.
- (4) Return of Proposal Bond. Proposal Bonds or certified checks received in lieu thereof from applicants whose proposals are not accepted by the City shall be returned to the applicant as soon as the proposal is rejected.
- (5) Bond Evidence to be Filed With City. Two (2) copies of all bonds or certified copies thereof and written evidence of payment of required premium, shall be filed and maintained with the City Risk Manager during the term of any franchise granted hereunder, or any renewal thereof.

**36.18 FEES, RATES AND CHARGES.**

- (1) The Grantee shall be permitted to, without Common Council approval, increase basic subscriber service rates one time in each twelve (12) month period utilizing the following three-part cumulative formula:
  - (a) A percentage increase equal to 55% of the Gross National Product services deflator rate as published in the U. S. Publication "Economic Indicators" (aka "Implicit Price Deflators for Gross National Product [1972=100], Personal Consumption Expenditures-Services") will be permitted.
  - (b) If average annual interest rates paid by Grantee are from 8%, a 1-1/2% annual increase in the basic rate in addition to that prescribed in (a) above is authorized. If average annual rates paid by Grantee are in excess of 16%, a 1-3/4% annual basic rate increase in addition to that prescribed in (a) above is authorized. If average annual interest rates paid by Grantee are from 0 to 8%, no additional increase reflective of interest rates is authorized. If Grantee debt is less than \$2,500,000.00, no additional rate increase based on interest rates is allowed.
  - (c) The actual dollar increase expressed as a percentage over a twelve (12) month period in programming costs times 10% will determine a third addition to the allowable increase without Common Council approval. The initial twelve (12) month period shall be for the year 1982. The category of programming costs shall be agreed upon by the City and Grantee.

Thus, under this formula, the allowable rate adjustment will be computed as follows:

**EXAMPLE: ALLOWABLE RATE ADJUSTMENTS**

1.	If Services Deflator Rate = 5% then permitted increase = 2.75%	2.75
2.	If Average Annual Interest Rate Paid by Grantee = 14% then permitted increase = 1.5%	1.50
3.	If Programming Expenses increase by 10% over base period, then permitted increase = 1%	1.00
	<b>TOTAL PERMITTED INCREASE FOR YEAR = 5.25%</b>	<b>5.25%</b>

Notwithstanding the above formula, no increase in excess of 7% per annum will be permitted without Common Council approval, except in the event that Grantee elects to increase rates less in any given year than the permitted annual increase for that year, in which case the difference (measured in actual cents rather than percentage) between the permitted annual increase and that actually exercised by Grantee may be added to the permitted increase in subsequent years. This discretionary rate allowance adjustment shall be suspended when 80% of the potential subscribers in the City of Madison have subscribed to the basic cable television service as it exists on January 1, 1983. The rate adjustment provision shall not take effect until twelve (12) months subsequent to the date of this contract. The City shall not have the power or authority to decrease any of Grantee's rates including the basic subscriber rates during the term of the franchise or extensions thereof. In the event an alternative fee structure, such as a universal-type service is offered, the City shall have the authority to approve the rates for the respective tiers (exclusive of pay or premium services), provided however, that the City's regulation of said rates shall not result in an anticipated deduction of the total revenues then being received by Grantee for the basic subscriber services. The rate adjustment provision shall then apply to the new tier structure.

- (2) Charges for Services. Except as provided in paragraph (1) above of this Section, all the following charges for services shall be subject to Common Council approval, in accordance with the schedule of charges contained in the Grantee's application for franchise, which schedule is incorporated herein by reference, and any modifications to such schedule that may result from a review requested by the City on its own motion or at the request of the Grantee. The charges shall be in accordance with the requirements set forth in Subdivisions (a) through (c) of this subsection.
  - (a) Basic Services Charges. The Grantee may make a charge to subscribers, private or commercial, for installation and connection and reconnection to its Broadband Telecommunications Network and a fixed monthly charge for "basic service" within the meaning of Section 36.02 of this ordinance.
  - (b) Buried Service Charge. In the event that a subscriber requests a buried service drop to his residence, the Grantee shall bury such drop upon the payment of such fee(s) that have been approved by the Common Council.

- (c) Unusual Connections Charges. The Grantee may make a charge to subscribers for installation and connection to its network in addition to those charges set forth in Subdivision (a) above, where unusual circumstances exist, such as remote or relatively inaccessible subscriber locations, or for an antenna switching device.
- (3) Notification of Charges. The Grantee may establish charges for its services not specified in Subsection (1) above, however, all such charges, including but not limited to additional service, leased channel, discrete channel, production and advertising rates, and the charge to all users of the access channels for reasonable production and origination costs, shall be made public and two (2) copies of the schedule of charges, as originally established and thereafter modified, shall be filed with the City Clerk.
- (4) All Rates to be Fair and Reasonable. All charges set by the Grantee for services shall be fair and reasonable and calculated to offset all necessary costs for provision of the service, including a fair rate of return on its investment devoted thereto under efficient and economical management.
  - (a) No Considerations Beyond Schedule. The Grantee shall receive no consideration whatsoever for or in connection with a service to its subscribers other than what may have been filed with and/or approved by the City in accordance with this section.
  - (b) Deposits on Advance Payments to be Approved. The Grantee shall receive no deposit, advance payment or penalty from any subscriber or potential subscriber other than those established in the schedule of charges previously filed with and/or approved by the Common Council.
  - (c) Purchase of Convertor or Switch. In the event that a set convertor or coaxial switch or other appurtenant device is required to permit subscribers to receive "full network service", the Grantee shall give the subscriber the option of purchasing the convertor at a reasonable cost at the time of initial installation thereof, or of purchasing said convertor switch or other appurtenant device at the then prevailing local installment plan interest rate. The Grantee hereby agrees to allow the subscriber to provide a convertor, switch, or other appurtenant device at its subscriber terminal, provided that such device meets with the approval of the Grantee. Such approval shall not be withheld if it is shown that such device does not interfere with the operation of the Broadband Telecommunications Network. If the subscriber elects not to purchase or provide said convertor, switch or other appurtenant device, the Grantee may make an additional charge for the rental of such convertor, switch or other appurtenant device providing that the additional charge is in accordance with the schedule of charges contained in the Grantee's application for a franchise hereunder or hereafter filed with and approved by the City.
  - (d) Subscriber Refunds. If any subscriber of the Grantee of less than thirty (30) days terminates service due to:
    - 1. Grantee's failure to render service to such subscriber of a type and quality provided for herein;
    - 2. If service to a subscriber is terminated by the Grantee without good cause; or
    - 3. If the Grantee ceases to operate the Broadband Telecommunications Network authorized herein for any reason except termination or expiration of a franchise granted hereunder;the Grantee shall refund to such subscriber an amount equal to the installation and connection charge paid by such subscriber in accordance with the then existing schedule of charges. Under the terms of this subsection the Grantee shall not be required to refund the monthly charge except as he may express a willingness to do so.
  - (e) Transfer Within Service Area. The Grantee, in the event a valid subscriber shall transfer his residence within the service area of the Grantee, shall reconnect such subscriber's new residence without imposition of the installation charge. The Grantee of a franchise awarded hereunder, in the event a nonsubscriber transfers his residence into a vacated premises previously connected or prewired to the network, may charge such nonsubscriber all applicable fees as set forth in this section herein if such nonsubscriber requests connection to the network.
- (5) Acceptance of City's Authority to Regulate Rates. The Grantee shall agree, and by its acceptance of a franchise, specifically agrees to be subject to the City, or other regulatory bodies, having competent jurisdiction to fix just, reasonable and compensatory rates.

- (6) Rates Subject to Other Regulations. The Grantee in submitting its request for approval of initial rates or any subsequent rates shall do so for all services to be performed to or for subscribers described in Subsection (1). If FCC Rules and Regulations, or any other applicable laws or regulations, shall subsequently determine that the City of Madison has jurisdiction over other services or service to be offered or performed, said rates shall be subject to approval by the City at that time.
- (7) Reduction of Fees. If during the term of any franchise or renewal thereof granted hereunder the Grantee receives refunds, or if the cost of operation to the Grantee is reduced as a result of an order of any regulatory body having competent jurisdiction; the Grantee shall pass on to its subscribers on a prorated basis any such savings or reduced costs on a basis to be determined by the Common Council.
- (8) Rate Change Procedures.
  - (a) Freeze on Initial Rates. The Grantee shall not file an application for an increase in fees, rates or charges until twenty-four (24) months have expired from the time the Grantee has been determined to have commenced operation or from date franchise is granted, whichever is later, except to seek relief from the imposition of any Federal, State or local taxes, copyright or other legally imposed fees not contemplated in the original rate determinations.
  - (b) Limitation on Application for Increase in Rates. The Grantee shall not file more than one (1) application for an increase in fees, rates or charges during any calendar year except to seek relief from the imposition of Federal, State or local taxes, copyrights or other legally imposed fees not contemplated in the most recent rate determination.
  - (c) Review of Rates. Except as provided in paragraph (1) of this Section, the Broadband Telecommunications Regulatory Board may review the Grantee's schedule of fees, rates or charges upon application by the Grantee as herein provided, or at any time on its own motion. The Regulatory Board shall submit such schedule and any contemplated modifications thereof, together with its recommendations, to the Common Council. The Common Council may increase such fees, rates or charges by a resolution adopted for the purpose, and no change in the Grantee's schedule of fees, rates or charges shall be effective without the prior action of the Regulatory Board and the Common Council as expressed in such a resolution. The City shall not have the power or authority to decrease Grantee's basic subscriber rates during the term of the franchise or extensions thereof. No such resolution shall be adopted without prior public notice and opportunity for all interested members of the public, including the Grantee, to be heard, subject to the procedures set forth in Section 36.13(3) hereof. No change in rates shall take effect until thirty (30) days after the approval of the rates by the Common Council. (Am. by Ord. 7991, 4-26-83)
  - (d) Documentation of Request for Increase. Any increase requests, in addition to other factors described in this section, shall be supported by a showing of increased costs for the existing services or proposed services, and shall be filed in two (2) copies with the City Clerk. If a Grantee requests a change, it shall present in detail in writing the statistical basis, in addition to other requirements as set out in this section, for the proposed fee change at least ninety (90) days prior to the proposed effective date.
  - (e) Records to be Made Available. In addition, for the purpose of determining the reasonableness of Grantee fees, rates, or charges, all such information, in accordance with the provisions of Section 36.14(8), shall be made available to the City.
  - (f) Notification of Changes in Regulatory Fees. The Grantee shall provide written notification to the Common Council of any changes received in regulatory fees payable by it to any other agency having regulatory jurisdiction over the Grantee.
- (9) Subscriber Rates in Conformity with 1992 Cable Regulatory Act. Effective upon certification by the Federal Communications Commission, the City of Madison shall regulate the subscriber rates of the Grantee consistent with and in conformity with the 1992 Cable Regulatory Act and the regulations promulgated pursuant thereto. In the event of conflict between this section and the Act, the Act and Regulations shall take precedence over the provisions of this section.

### **36.19 EDUCATION AND GOVERNMENTAL CONNECTION TO THE BROADBAND COMMUNICATIONS NETWORK.**

The Grantee shall provide upon request within the City one connection and monthly service for "basic service" to such public, parochial and nonprofit private schools, City buildings and agency locations as the City may hereafter designate, provided that such designated locations are within three hundred (300) feet of any network cable route. The rates for this installation and monthly service shall be designated by the Grantee in its proposal. The Grantee may charge for any excess footage on the basis of time and material for any such locations beyond the three hundred (300) foot limitation if such connection is designated by the City. The City



reserves the right at its expense to extend service to as many areas within such schools, buildings and agencies as it deems desirable without payment of any additional fee to Grantee. All such extensions, however, shall be accomplished in such a way so as not to interfere with the operation of the Broadband Telecommunications Network.

### **36.20 EXTENSION OF NETWORK.**

(1) Network Extension Across City Boundaries. Before any subscriber located in a community other than the City of Madison is allowed to connect to the Broadband Telecommunications Network, the Grantee shall be capable of furnishing service to a “substantially completed” system for Madison residents unless a waiver of this section has been granted by the Common Council of Madison. A written waiver request must be made thirty (30) days before, requesting an appearance before the Common Council. Such waiver request shall clearly state the potential impact of such occurrence on the operations and finances of the Grantee, the costs of such an extension and who is to bear such costs, and any anticipated interconnection with such institutions, as defined in Section 36.19, within the area to be served by such network extension.

If permission is granted by other jurisdictions the Grantee shall be required to extend the network or cooperate with other Grantees in those jurisdictions to provide service to institutions listed in Section 36.22 of this ordinance.

(2) Extension of Network Within City Boundaries.

(a) Conditions of Required Extension. The Grantee shall at its expense extend its Broadband Telecommunications Network so as to provide full network service to all residents of:

1. Newly annexed areas of the City not then served by a Broadband Telecommunications Network, or
2. New housing areas developed within the City limits, or
3. Any resident dwelling within the City limits and three hundred (300) feet of existing network.

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

### **36.21 TIME FOR PERFORMANCE.**

(1) Permit Application. It is hereby deemed in the public interest that the system be extended as rapidly as possible to all citizens within the City. Within ninety (90) days of the effective date of a franchise granted hereunder, the Grantee shall file with the appropriate authorities and utilities all initial papers and applications necessary to comply with the terms of this ordinance, including the application for franchise and any additions or amendments thereto and shall thereafter diligently pursue all such applications. After the Grantee has diligently pursued the acquisition of necessary pole attachment contracts, or other necessary easements, and where such necessary contracts have not been executed or easements obtained after a reasonable period of time as determined by the City, the City may at its discretion, provide assistance to insure the extension of the system to all citizens.

(2) Commencement of Construction. Within one hundred eighty (180) days of the effective date of FCC certification, the Grantee shall initiate construction and installation of the Broadband Telecommunications Network. Such construction and installation shall be pursued with reasonable diligence.

(3) Commencement of Operation. Within twenty-four (24) months of the effective date of FCC certification, the Grantee shall “commence operation” within the meaning set forth in Section 36.02 of this ordinance.

(4) Substantial Completion of Construction. With thirty-six (36) months of the effective date of FCC certification, the Grantee shall have “substantially completed” construction of the “service area” within the meaning set forth in Section 36.02 of this ordinance.

(5) Provision of Basic Service. Within sixty (60) months of the effective date of FCC certification, the Grantee shall have placed in use sufficient distribution facilities so as to offer basic service to one hundred percent (100%) of the dwelling units in the service area, to which access is legally and reasonably available.

- (6) Delays and Extension of Time. The City may in its discretion extend the time for Grantee, acting in good faith, to perform any act required hereunder. The time for performance shall be extended or excused, as the case may be, for any period during which Grantee demonstrates to the satisfaction of the Common Council that Grantee is being subjected to delay or interruption due to any of the following circumstances if reasonably beyond its control:
- (a) Necessary utility rearrangements, pole change-outs or obtainment of easement rights
  - (b) Governmental or regulatory restrictions
  - (c) Labor strikes
  - (d) Lock outs
  - (e) War
  - (f) National emergencies
  - (g) Fire
  - (h) Acts of God.

**36.22 NETWORK DESCRIPTION.**

- (1) System Bandwidth Capability. The Grantee shall install a “dual cable network”, each cable having a minimum initial forward bandwidth capability from 50 to 300 MHz and a minimum reverse bandwidth capability of 5 to 30 MHz. Whenever a reverse or feedback circuit is routed from a subscriber’s premises, it shall be connected so as to permit subscriber notification and subscriber controlled deactivation. At the option of the Grantee, the second cable may be a “shadow cable”. As total bi-directional capacity is of a great deal of interest to the City, applicants for a franchise hereunder may propose greater channel capacities and more sophisticated two way capabilities than the minimums set forth herein. However, such proposal shall describe the particular community needs to be served thereby and shall detail, as part of the financial projection and support required in Section 36.10(13), the associated costs and revenues. Within four (4) years from the date of the execution of the contract committing Grantee to construct a thirty-five (35) channel capacity system, the City and Grantee shall choose an independent cable television consultant who will be retained to perform a comprehensive study of cable television in the City of Madison for purposes of issuing a recommendation as to the economic, technological and public service feasibility of expansion of the cable television system beyond thirty-five (35) channels to at least fifty-four (54) channels. The assumptions and criteria to be used to determine economic feasibility shall be developed as a cooperative effort between the City and Grantee. In case of disagreement the consultant shall reflect both points of view and will justify the assumptions and criteria it uses to make its determination of feasibility. Grantee shall pay the expenses and costs of the consultant. The consultant shall, in addition to its conclusions regarding the economic and technological feasibility of expansion to fifty-four (54) channels, consider, review and report on the economic and technological feasibility of the then existing state of the art such as the possibility of further expansion of the cable system beyond fifty-four (54) channels, the construction of a closed loop, and the introduction of new services including two-way interactive audio and/or video capabilities. The consultant shall be required to file its report within six (6) months of being retained.

If the consultant recommends that further expansion of the system and/or the introduction of new services at that time is feasible and Grantee does not initiate expansion of the system including whatever additional services the consultant concludes are feasible within eighteen (18) months of receiving the consultant’s report and substantially complete such construction and introduction of new services within eighteen (18) months of initiation, no further basic rate increases will be permitted without Common Council approval and the rate adjustment provision will be suspended until such time as the expansion is undertaken. In the event the consultant recommends that further expansion and/or new services is not feasible, then the terms of Chapter 36 will continue in effect, provided however, that two (2) years from the date on which the consultant’s report is received, the feasibility of expansion shall again be evaluated by a consultant chosen by the City and Grantee and paid for by Grantee. Regardless of what the consultant recommends at that time as to channel expansion, if expansion beyond thirty-five (35) channels to at least fifty-four (54) channels is not commenced and in the event new services are recommended by the consultant as feasible, if the introduction of such new services is not commenced within twelve (12) months and is not substantially completed within eighteen (18) months of receiving the consultant’s report, the rate adjustment provision shall be suspended and there shall be no further rate increases for basic service except with Common Council approval. If prior to the initial consultant’s study or in the event the first and/or second study concludes that the expansion is not economically or technologically feasible, Grantee voluntarily expands the system to at least a fifty-four (54) channel capacity with two-way interactive audio, the amendments to this chapter shall continue in full force and effect, including the franchise duration of Section 36.06(3) and the rate adjustment provision of Section 36.18(1) herein.

- (2) System Configuration. The Grantee shall design and construct the network in a “hub configuration” with a minimum of four (4) “local distribution centers” and “local distribution system” served in this manner shall be capable of offering “full network service” to all its subscribers.
- (3) Public Service and Education Discrete Carriage Capacity. The Grantee shall design and construct the network so as to provide within the system bandwidth capability specified in Subsection (1) above, a minimum of seven (7) “downstream” and five (5) “upstream” “discrete cable television channels”, meeting all applicable specifications set forth for the Broadband Telecommunications Network in Sections 36.21, 36.23 and 36.24 herein. The Grantee shall describe the public and educational services to be provided thereby and shall describe the particular community needs to be served thereby and shall detail, as part of the financial projection and support required in Section 36.10(13), the associated costs and revenues. The Grantee shall, if requested by the City, conduct a technical and economic feasibility study of the interconnection, for discrete carriage capability, of the “local distribution systems”. The study shall be presented to the City, and in the event that the study shows such interconnection to be feasible, the Grantee shall, if so instructed by the City, accomplish said interconnection. In the event that the study indicates technical feasibility only, the City may elect, but at its sole discretion, to arrange for compensation to be paid to the Grantee, in an amount sufficient to assure an economic “break even” by the Grantee and so order the interconnection. In the event that the study fails to show technical feasibility the Grantee shall have no further responsibility for accomplishing said interconnection until such time as improvements in technology permit such interconnection.

These discrete carriage capabilities shall be provided, in addition to the requirements of Section 36.19, to such locations as are herein or may be designated by the City:

- (a) The University of Wisconsin, Madison
- (b) City-County Building, three locations, one being the Council Chambers
- (c) All public, parochial and nonprofit private schools
- (d) The main branch of the public library
- (e) The main office of the Board of Education and
- (f) Grantee’s television facility for program insertion into the total communications network.

Each of the locations above designated shall be interconnected with each other location as they may be established in a common “local distribution system”.

### **36.23 NETWORK TECHNICAL REQUIREMENTS.**

- (1) General Requirements. Each Broadband Telecommunications Network must be so designed, installed and operated as to meet the following general requirements:
  - (a) Capable of continuous twenty-four (24) hour daily operation;
  - (b) Capable of operating over an outdoor temperature range of -40 degrees Fahrenheit to +140 degrees Fahrenheit without catastrophic failure or irreversible performance changes over variations in supply voltages from 105 to 130 volts AC;
  - (c) Capable of meeting all specifications set forth herein over an outdoor temperature range of -10 degrees Fahrenheit to +100 degrees Fahrenheit over variations in supply voltages from 105 to 130 volts AC;
  - (d) Operated in such a manner as to avoid causing interference with reception of off-the-air signals by nonsubscribers to the cable system;
  - (e) Designed, installed and operated so as to comply with all applicable rules and regulations promulgated by the Federal Communications Commission;
  - (f) Designed, installed and operated so as to assure the delivery to all subscribers of standard color and monochrome signals on the FCC-designated Class I cable television channels without noticeable picture degradation or visible evidence of color distortion or other forms of interference directly attributable to the performance of the Broadband Telecommunications Network.
- (2) Class I Channel Performance Requirements. The following requirements apply to system performance on the FCC-designated Class I cable television channels as measured at any subscriber terminal with a matched termination:
  - (a) The signal level as measured at the visual carrier frequency for each cable television channel shall not be less than 1,000 UV (microvolts) across a 75 ohm terminating impedance. The aural carrier level shall be maintained between 13 and 17 decibels below its associated visual carrier level.

- (b) The visual carrier signal level on each television channel shall be maintained within:
  - 1. Twelve (12) decibels above its minimum value; and
  - 2. Three (3) decibels of the signal level of any visual carrier within six (6) MHz nominal frequency separation; and
  - 3. Twelve (12) decibels of the visual carrier signal level on any other cable television channel.
- (c) Broadband Telecommunications Network frequency response as measured at any subscriber terminal shall not vary by more than + two (2) db over the six (6) MHz bandwidth of any VHF television channel or corresponding portion of the FM or midband frequency spectrums.
- (d) The corrected ratio of visual signal level to system noise shall not be less than forty-two (42) decibels. This requirement is applicable only to the following signals:
  - 1. Each off-air signal carried by a Broadband Telecommunications Network serving subscribers within the Grade B contour for that signal; or
  - 2. Each off-air signal which is first picked up within its Grade B contour; or
  - 3. Each off-air signal which is received by the cable system via microwave or other similar form of transmission.
- (e) Cross-modulation as measured at any visual carrier frequency from the cable system input to any subscriber terminal shall not exceed -48 db (as defined by NCTA Standard 002.0267) measured at approximately +70 degrees Fahrenheit.
- (f) The ratio of visual carrier signal level to the RMS amplitude of any coherent disturbances such as intermodulation products, system generated or induced co-channel signals or discrete frequency interfering signals shall not be less than forty-six (46) decibels except for officially assigned offset carriers for which it shall not be less than thirty-six (36) decibels.
- (g) The terminal isolation between subscribers shall not be less than twenty (20) decibels except that the isolation between multi-terminals of one subscriber shall not be less than eighteen (18) decibels.
- (h) The hum modulation as measured over the usable frequency bandwidth from Broadband Telecommunications Network input to any subscriber terminal shall not exceed three percent (3%). The percent of hum modulation is defined as the ratio expressed in percent of the average level of the detected signal to one-half (1/2) the indicated peak AC hum.
- (i) Radiation from a cable television system shall be in accordance with the limits set forth in Part 76, Section 76.605(a)(12) of the FCC Rules and Regulations.
- (3) Standards Modified Where Necessary. Notwithstanding the fact that the network may be in compliance with all the standards set forth herein, the City may require a higher level of performance in any area to resolve signal quality or interference problems.
- (4) Specifications for Additional Channels to be Submitted. Proposed specifications for FCC designated Class II, III, and IV channels shall be submitted by the Grantee to and approved by the City as the use of these channels is implemented.
- (5) Interconnection With Redistribution Systems. A Grantee shall not interconnect with any distribution or redistribution system that does not meet or exceed the technical standards of any system operated under this ordinance.

#### **36.24 PERFORMANCE MEASUREMENTS.**

- (1) General Requirements. Test procedures used in verification of the performance criteria set forth herein shall be in accordance with good engineering practice. The test procedures specified in Subsection (2) of this section are designed as a guide and should be made under conditions which reflect system performance during normal system operations. As there is more than one technically acceptable method for performing many of the measurements, the technique and equipment utilized in each case if different from those set forth below shall be fully described in the annual certificate filed with the City.
- (2) Measurements Procedures. All measurements shall be made from the "head end" of the Broadband Telecommunications Network to at least three (3) subscriber locations in each "local distribution system", at least two (2) of which shall be "worst case" locations (system extremities). Measurements shall be made at 75 ohms with the loss of the set transformer indicated where applicable for each test location. The measurements are to be made as follows:
  - (a) Network frequency response measurements may be made with a calibrated signal generator, variable attenuator and a frequency selective voltmeter (if an accurately calibrated field strength meter is used for the measurements, its date of calibration shall be indicated on the technical measurement certificate filed with the City). All television signals except for ALC, AGC, or ASC pilot carriers may be disconnected during this test. With all automatic gain control amplifiers in the section under test set to their normal operating mode, the signal

generator shall be connected to the input of the Broadband Telecommunications Network and set for a CW signal at the desired frequency and at the level normally present at that frequency and location. With the meter and variable attenuator connected in series to the subscriber terminal under test, the signal level shall be measured and recorded. Measurement shall then be made in a similar manner for all video carrier frequencies on the network at the levels normally carried on the network.

- (b) Network signal-to-noise measurements may be made in accordance with NCTA Standard 005.0669 or with a calibrated signal generator and frequency selective voltmeter connected as described in Subdivision (a) above. The signal generator shall be tuned, in turn, to the visual carrier frequency of each FCC-designated Class I cable television channel and the signal level at the subscriber terminal recorded. The meter should then be tuned to a frequency 2.5 MHz above the visual carrier frequency of each channel described above and with the signal generator disabled, the indicated noise level recorded and corrected by an appropriate factor representing the ratio of 4 MHz to the noise bandwidth of the frequency selective voltmeter.
  - (c) The network cross-modulation measurement shall be performed in accordance with NCTA Standard 002.0267.
  - (d) The amplitude of the discrete frequency interferences within a cable television channel may be determined with a frequency selective voltmeter, calibrated for adequate accuracy.
  - (e) The terminal isolation between any two subscriber terminals may be measured by applying a signal of predetermined amplitude from a signal generator to one terminal in the reverse direction and measuring the amplitude of that signal at the other terminal with a frequency selective voltmeter.
  - (f) The system hum modulation may be measured at each visual carrier frequency on the system using a calibrated signal generator, a detector and an oscilloscope. The signal generator shall be connected, and the level and frequency set at a predetermined mode with all other channels set at their normal levels. With the detector and oscilloscope connected to the subscriber terminal, the average level of the detected signal and the peak-to-peak AC hum will be indicated on the oscilloscope. The percent of hum modulation for this purpose is defined as the ratio, expressed in percent, of the average level of the detected signal to one-half (1/2) the indicated peak-to-peak AC hum.
  - (g) Radiation measurements shall be made in accordance with the procedures established in Part 76, Section 76.609(b)(1) - (b)(5) of the FCC Rules and Regulations.
- (3) Additional Tests and Inspection. The City reserves the right to:
- (a) Require additional tests at specific terminal locations and
  - (b) Conduct its own inspections of the Broadband Telecommunications Network on its own motion at any time during normal business hours with reasonable advance notice.
- (4) Report of Measurements Combined. To the extent that the report of measurements as required above may be combined with any reports of measurements required by the FCC or other regulatory agencies, the City shall accept such combined reports, provided that all standards and measurements herein or hereafter established by the City are satisfied.

### 36.25 CHANNELS TO BE PROVIDED.

- (1) Public Access Channel. The Grantee shall provide at least one dedicated, noncommercial public access channel, associated production equipment and necessary staff production assistance to be made available for the first five (5) minutes of live production to the public at no charge on a first come first served nondiscriminatory basis. Hours of availability for use of such channel shall be specified in the application for franchise. As the total number of public access channels is of a great deal of interest to the City, applicants for a franchise hereunder may propose a greater number of such channels than the minimum set forth herein. However, such proposal shall describe the particular community needs anticipated to be served thereby and shall detail, as part of the financial projection and support required in Section 36.10(13), the associate costs and revenues. The Grantee shall regularly make information available to the public on the availability of the access channels.
- (2) Education and Government Access Channels. The Grantee shall in addition to Subsection (1) above provide two (2) additional channels, one for educational use and one for governmental use. For the first five (5) years from the date these channels are made available there shall be no charge made to their users by the Grantee, and thereafter at no charge unless specifically prohibited by FCC Regulations or, if not permitted, in accordance with the schedule of charges filed and maintained with the City Clerk and approved by the Common Council. As both educational and municipal channel availability and the free use of associated production equipment is of a great deal of interest to the City, applicants for a franchise hereunder may indicate a greater number of dedicated channels or free

usage for this purpose than the minimums set forth, however such proposal shall describe the particular community needs anticipated to be served thereby and shall detail, as part of the financial projection and support required in Section 36.10(13), the associate costs and revenues. If the FCC fails to approve said additional dedicated channels, or usage, such failure shall not be construed to eliminate the provisions herein requiring the filing with the City of rates for lease of said channels for municipal and educational purposes.

- (3) Production Costs on Access Channels. The Grantee shall not be responsible for the production costs of programs prepared for transmission [other than for brief live studio presentations not exceeding five (5) minutes] over the channels as set forth in Subsection (1) above other than as the Grantee may elect to do so. A schedule of rates for production and origination charges shall be filed with the City Clerk.
- (4) Television Broadcast Signal Carriage. The Grantee shall carry those television broadcast signals which are in accordance with Part 76, Section 76.63 of the FCC Rules and Regulations. The provision of additional television broadcast signals as provided for in Part 76, Section 76.63(a) shall also be required. The City is also interested in at least one additional television station broadcasting predominately in a non-English language.
- (5) FM Signal Carriage. In addition to the television signals set forth in Subsection (4) above the Grantee shall carry as a minimum the FM radio stations whose normal broadcast ranges fall within the City limits. If the Grantee elects to carry any AM station, all AM stations licensed to cities within Dane County must therefore be carried. The Broadband Telecommunications Regulatory Board may waive the requirement that all AM stations be carried if the Grantee elects to carry noncommercial AM stations only. (Am. by Ord. 7196, 1-15-81)
- (6) Time and Weather Programming. The Grantee shall provide time and weather programming.
- (7) Local Origination Channel. The Grantee shall provide at least one channel fully devoted to local origination programming. The Grantee shall, in determining the use of this channel, consider any recommendations of the Cable Television Program Advisory Council.
- (8) Emergency Alert Override. The Grantee shall incorporate into its facilities the capability for an emergency override audio alert whereby a designee of the City, in times of crisis, may introduce an audio message on all Broadband Telecommunications Network appropriate channels simultaneously. The Grantee shall provide, in a location to be designated by the City, all equipment necessary for use of the emergency alert system.

#### **36.26 SERVICE STANDARDS.**

- (1) Service Response and Rebate. The Grantee shall provide "same day service" response, seven (7) days a week for all complaints and requests for repairs or adjustments received prior to 2:00 p.m. each day. In no event shall the response time for calls received subsequent to 2:00 p.m. exceed twenty-seven (27) hours. Upon failing to correct total loss of customer service within twenty-seven (27) hours, the Grantee shall credit one-thirtieth (1/30) of the monthly charge for "basic service" to each subscriber for each twenty-four (24) hours following report of loss of service to the Grantee.
- (2) Service Interruptions and Notification. The Grantee, whenever it is necessary to interrupt service over the Broadband Telecommunications Network for the purpose of network maintenance, alteration or repair, shall do so at such time as will cause the least amount of inconvenience to his subscribers, and unless such interruption is unforeseen and immediately necessary, he shall give reasonable notice thereof to the affected subscribers.
- (3) Upgrading of Facilities, Equipment and Service. The Grantee shall upgrade its facilities, equipment and service as subscribers' demands dictate so that its network is as advanced as the current state of technology with field-proven equipment will allow.

#### **36.27 CONSTRUCTION STANDARDS.**

- (1) Compliance With Safety Codes. All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970 and any amendments thereto as well as all State and local codes where applicable.
- (2) Compliance With Electrical Codes. All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the applicable sections of the current edition of the National Electric Safety Code and all State and local codes where applicable.
- (3) Antennas and Towers. Antenna supporting structures (towers) shall be designed for the proper loading zone as specified in Electronics Industry Association's R.S.-22A Specifications.

- (4) Compliance With Aviation Requirements. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aeronautical Agency, the State Aeronautics Board governing the erection and operation of supporting structures or television towers, and all other applicable local or State codes and regulations.

### **36.28 CONDITIONS OF STREET OCCUPANCY.**

- (1) Approval of Proposed Construction. A Grantee shall first obtain the approval of the City prior to commencing construction on the streets, alleys, public grounds or places of the City. Applications for approval of construction shall be in a form provided by the City.
- (2) Excavation Permits. A Grantee shall not open or disturb the surface of any street, sidewalk, driveway, or public place for any purpose without first having obtained a permit to do so in the manner provided by ordinance.
- (3) Changes Required by Public Improvements. A Grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of the Grantee when required by the City by reason of traffic conditions, public safety, street vacation, street construction, change or establishment of street grade, installation of sewers, drains, water pipes, City-owned power or signal lines, and tracts or any other type of structure or improvement by public agencies.
- (4) Use of Existing Poles or Conduits. Nothing in this ordinance or any franchise granted hereunder, shall authorize the Grantee to erect and maintain in the City, new poles where existing poles are servicing the area. The Grantee shall require permission from the City before erecting any new poles, underground conduit or appurtenances where none exist at the time the Grantee seeks to install his network.
- (5) Facilities not to be Hazardous or Interfere. All wires, conduits, cables and other property and facilities of the Grantee shall be so located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic and travel upon the streets and public places of the City. The Grantee shall keep and maintain all its property in good condition, order and repair. The City reserves the right hereunder to inspect and examine at any reasonable time and upon reasonable notice the property owned or used, in part or in whole by the Grantee. The Grantee shall keep accurate maps and records of all its facilities and furnish copies of such maps and records as requested by the City under Section 36.14 herein. A Grantee shall not place poles or other equipment where they will interfere with the rights or reasonable convenience of adjoining property owners, or with any gas, electric, or telephone fixtures or with any water hydrants or mains. All poles or other fixtures placed in a street shall be placed in the right-of-way between the roadway and the property, as specified by the City.
- (6) Method of Installation. All wires, cables, amplifiers and other property shall be constructed and installed in an orderly and workmanlike manner. All cables and wires shall be installed parallel with existing telephone and electric wires whenever possible. Multiple cable configurations shall be arranged in parallel and bundled, with due respect for engineering and safety considerations. All installations shall be underground in those areas of the City where public utilities providing either telephone or electric service are underground at the time of installation. In areas where both telephone and electric utility facilities are aboveground at the time of installation, the Grantee may install its service aboveground provided that at such time as those facilities are required to be placed underground by the City or are placed underground, the Grantee shall likewise place its services underground without additional cost to the City or to the residents of the City other than as may be granted under the provisions of Section 36.18.
- (7) Protection of Facilities. Nothing contained in this section shall relieve any person, company or corporation from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing any work connected with grading, regrading, or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.
- (8) Notice of City Improvements. The City shall give the Grantee reasonable notice of plans for street improvements where paving or resurfacing of a permanent nature is involved. The notice shall contain the nature and character of the improvements, the streets upon which the improvements are to be made, the extent of the improvements and the work schedule for the project. The notice shall give the Grantee sufficient time to make any additions, alterations, or repairs to its facilities as it deems necessary in advance of the actual commencement of the work, so as to permit the Grantee to maintain continuity of service.
- (9) Requests for Removal or Change. The Grantee shall, on the request of any person holding a building moving permit, temporarily raise or lower its wires to permit the moving of said building. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the

same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than ten (10) working days notice of any move contemplated to arrange for temporary wire changes.

- (10) Authority to Trim Trees. The Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and other public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the company. All trimming is to be done under the supervision and direction of the City after the explicit, prior written notification and approval of the City and the expense of the Grantee. The Grantee may contract for such services, however, any firm or individual so retained shall receive City approval prior to commencing such activity.
- (11) Restoration or Reimbursement. In the event of disturbance of any street or private property by the Grantee, it shall, at its own expense and in a manner approved by the City and the owner, replace and restore such street or private property in as good a condition as before the work causing such disturbance was done. In the event the Grantee fails to perform such replacement or restoration the City or the owner shall have the right to do so at the sole expense of the Grantee. Payment to the City or owner for such replacement or restoration shall be immediate, upon demand, by the Grantee. All requests for replacement or restoring of such streets or private property as may have been disturbed must be in writing to the Grantee.
- (12) Office and Records in City. The Grantee shall at all times make and keep at an office maintained by the Grantee in the City, full and complete plans and records showing the exact location of all Broadband Telecommunications Network equipment installed or in use in the streets and other public places of the City. The Grantee shall furnish the City a current map or set of maps, drawn to scale, showing all Broadband Telecommunications Network equipment installed and in place in streets and other public places of the City.
- (13) Emergency Removal of Plant. If, at any time, in case of fire or disaster in the City, it shall become necessary in the reasonable judgment of the City to cut or move any of the wires, cables, amplifiers, appliances, or appurtenances thereto of the Grantee, such cutting or moving may be done and any repairs rendered necessary thereby shall be made by the Grantee, at its sole expense provided that such repairs are not necessitated by negligent act of the City, in which case, cost for repairs shall be borne by the City.
- (14) Alternate Routing of Plant. In the event continued use of a street is denied to the Grantee by the City for any reason, the Grantee will make every reasonable effort to provide service over alternate routes.

### **36.29 INTERCONNECTION.**

- (1) No Prohibition of Interconnection. Nothing in this ordinance shall be construed so as to prohibit the Grantee from interconnecting its network with other similar contiguous networks either in the City or in other municipalities, counties or states except as the provisions of Section 36.20 apply. However, any revenues derived therefrom shall be equitably allocated in the calculation of "annual gross subscriber revenues" as set forth in Section 36.15 herein.
- (2) Study Required for Interconnection. The Grantee shall, if requested by the City, conduct a technical and economic feasibility study of any interconnection requested by the City. The study shall be presented to the City, and in the event that the study shows such interconnection to be feasible, the Grantee shall, if so instructed by the City, accomplish said interconnection. In the event that the study indicates technical feasibility only, the City may elect, but at its sole discretion, to arrange for compensation to be paid to the Grantee, in amount sufficient to assure an economic "break even" by the Grantee and so order the interconnection. In the event that the study fails to show technical feasibility the Grantee shall have no further responsibility for accomplishing said interconnection until such time as improvements in technology permit such interconnection.

### **36.30 UNAUTHORIZED CONNECTIONS OR MODIFICATIONS.**

- (1) Unauthorized Connections Prohibited. It shall be unlawful for any firm, person, group, company, corporation or governmental body or agency, without the expressed consent of the Grantee, to make or possess any connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of a franchised Broadband Telecommunications Network for any purpose whatsoever, except as provided in Sec. 36.19 herein.
- (2) Removal or Destruction Prohibited. It shall be unlawful for any firm, person, group, company, corporation, or government body or agency to willfully interfere, tamper, remove, obstruct or damage any part, segment or content of a franchised Broadband Telecommunications Network for any purpose whatsoever.



- (3) Penalty. Any firm, person, group, company, corporation, or governmental body or agency convicted of a violation of this section shall for each offense, forfeit a sum of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) together with costs of such prosecution.

**36.31 PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED.**

- (1) Affirmative Action Program. The Grantee shall establish an Affirmative Action Program which shall be a positive program designed to ensure that a good faith effort will be made to employ applicants from all segments of the community regardless of race, color, marital status, religion, age, handicap or national origin. The Affirmative Action Program shall be prepared pursuant to the guidelines established by the Affirmative Action Ordinance, Section 3.58 of the Madison General Ordinances. The Grantee shall establish and maintain a nondiscriminatory policy program providing that no individual shall be discriminated against with respect to compensation, terms, conditions, or other privileges of employment because of race, color, marital status, religion, sex, national origin, handicap or age. The Grantee shall establish an Affirmative Action Program to be placed on file with the City prior to the commencement of construction.
- (2) Services to be Equally Available. The Grantee shall not refuse cable television service to any person or organization who requests such service for lawful purpose, nor shall a company refuse any person or organization the right to cablecast pursuant to provisions of this ordinance. The company shall not, as to rates, charges, service facilities, rules, regulations or in any other respect, make or grant any unreasonable preference or advantage, nor subject any person to any prejudice or disadvantage. The company shall take affirmative steps to disseminate the information concerning the availability of its services to all minority and female groups and other under-represented groups. This provision shall not be deemed to prohibit promotional campaigns to stimulate subscription to the system or other legitimate uses thereof; nor shall it be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classifications shall be entitled, provided such schedules have been filed with and approved by the City as provided in Section 36.18.
- (3) Fairness of Accessibility. The entire system of the Grantee shall be operated in a manner consistent with the principle of fairness and equal accessibility of its facilities, equipment, channels, studios, and other services to all citizens, businesses, public agencies, or other entities having a legitimate use for the system; and no one shall be arbitrarily excluded from its use; allocation of use of said facilities shall be made according to the rules or decisions or regulatory agencies affecting the same, and where such rules or decisions are not effective to resolve a dispute between conflicting users or potential users, the matter shall be submitted for resolution by the Broadband Telecommunications Network Regulatory Board.

**36.32 SUBSCRIBER PRIVACY.**

- (1) Use of Data From Subscriber. A Grantee, City or any person shall not, in addition to the requirements of Section 36.22(1), initiate or use any form, procedure or device for procuring information or data from cable subscribers' terminals by use of the cable system, without prior written valid authorization from each subscriber so affected. Valid authorization shall mean written approval from the subscriber for a period of time not to exceed one (1) year and shall not have been obtained from the subscriber as a condition of service. Further, it shall be unlawful for a Grantee, without such authorization, to activate and/or utilize any "Class IV Cable Television Channel" in any manner from the subscribers' premises. In any case the subscriber shall retain the right to deactivate his terminal.
- (2) Subscriber Data. The City, or a Grantee, or any person shall not, without prior written valid authorization from each subscriber so affected, provide any data identifying or designating subscribers. Any data so authorized will be made available to the authorizing subscriber in understandable fashion.
- (3) Subscriber Agreements. Any agreement or contract such as is necessary for Section 36.32(1) and (2) above shall not be part of any other contract or agreement and shall not be a condition of subscribing to the system.

**36.33 ORDINANCES REPEALED.**

Should any other ordinance or part thereof be in conflict with the provisions of this ordinance, this ordinance shall prevail insofar as it applies to a Broadband Telecommunications franchise. In addition, this ordinance shall not operate to supersede Section 10.055 of the Madison General Ordinances and the franchise granted thereunder until such time that franchise is terminated.

**36.34 PUBLICATION COSTS.**

The Grantee shall assume the cost of publication of the franchise ordinance as such publication is required by law. A bill for the publication costs shall be presented to the Grantee by the City upon the Grantee's filing of acceptance and shall be paid at that time.

**36.35 SEPARABILITY.**

If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase or word shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof."