

CHAPTER XXVI
KENOSHA CABLE TELEVISION
FRANCHISE ORDINANCE

26.01 SHORT TITLE

This Chapter shall be known and may be cited as the "Kenosha Cable Television Franchise Ordinance", hereinafter "Ordinance".

26.02 DEFINITIONS AND INTERPRETATION

A. Specific Terms, Phrases and Words. For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. In the event of a conflict between terms defined in this Ordinance and any subsequent Franchise Agreement, the definition in the Franchise Agreement shall control.

1. "Basic Cable Service" means the tier of Service which, at a minimum, includes all signals of domestic television broadcast stations provided to any Subscriber (except the signal secondarily transmitted by satellite carrier beyond the local Service area of such station, regardless of how such signal is ultimately received by the Cable System) any public, educational, and governmental programming required by the Franchise to be carried on the basic tier, and any additional video programming signals or services added to the basic tier by the Grantee. (Definition taken from FCC Regulations at 47 CFR, Section 76.901(a).)

2. "Cable Administrator" means the Mayor and designees of the Mayor.

3. "Cable Service" or "Service" means: (a.) the one-way transmission to Subscribers of (1.) video programming; or, (2.) other programming services; and, (b.) Subscriber interaction, if any, which is required for the selection, or use, of such video programming or other programming service. (Definition taken from FCC Regulations at 47 U.S.C. §522(6)).

4. "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the City, but such term does not include:

a. A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;

b. A facility that serves Subscribers without using any public Right-of-Ways;

c. A facility of a common carrier which is subject, in whole or in part, to the provisions of Subchapter II of 47 U.S.C. Subchapter V, except that such facility shall be considered a Cable System to

the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand Services;

d. An open video system certified by the FCC; or,

e. Any facilities of any electric utility used solely for operating its electric utility system. (Definition taken from FCC Regulations at 47 U.S.C. §522(7)).

5. "Cable System Appurtenances" means any poles, structures, wire, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other fixtures which constitute the Cable System.

6. "Channel" means a portion of the electromagnetic frequency spectrum, which is used in a Cable System and which is capable of delivering a television Channel, as defined by Federal Law. (Definition taken from FCC Regulations at 47 C.F.R. §765 (4)).

7. "City" means the City of Kenosha, Wisconsin, and includes its subunits.

8. "Date of Acceptance" means the date of last execution of the Franchise Agreement following approval by the Common Council.

9. "Effective Date of Franchise" means a date specified in a Franchise Agreement which is the commencement date of the Franchise Term.

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

11. "Franchise" means a Franchise granted by City pursuant to Section 66.082, Wisconsin Statutes, for the purpose of providing Cable Service within the Franchise Area.

12. "Franchise Agreement" means a contract between City and a Grantee providing for a Franchise to provide Cable Service and operate a Cable System.

13. "Franchise Area" means the territorial limits of City on the Effective Date of Franchise and any area subsequently annexed or attached during the term of the Franchise.

14. "Grantee" means a Person to whom a Franchise under this Ordinance is granted by City Common Council, along with the lawful successors or assigns.

15. "Initial Franchise" means a Franchise to provide Cable Service to and operate a Cable System issued to a Grantee where the Grantee (or any predecessor) has not previously been granted a Franchise by the City.

16. "Institutional Network" means a dedicated network (sometimes separate, sometimes integrated with the general Subscriber network) for use by institutions such as schools, hospitals, government and nonprofit agencies, and business.]

17. "Law(s)" means laws, rules and regulations

as they exist at the time of adoption of this Ordinance, and as they may exist in the future, including lawful executive and administrative orders issued pursuant thereto.

18. "May" means permissive.

19. "PEG Access" shall mean public, educational and governmental access.

20. "Person" shall mean any individual, partnership, association, corporation, legal entity or organization of any kind. "Person" shall not include a municipal corporation unless otherwise indicated.

21. "Renewal Franchise" means a Franchise obtained from City pursuant to the procedure outlined in 47 U.S.C. §546 and any other relevant local, State or Federal Laws.

22. "Right-of-Way" means the area of a Street reserved for a public travel or other public purpose, including the Street, lawn park area and sidewalk.

23. "Shall" means mandatory.

24. "Street" means the surface of and all Right-of-Ways and the space above and below any public Street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive or easement now or hereafter held by the City for the purpose of public travel, which shall, within their proper purpose and meaning, entitle the Grantee to the use thereof for the purposes of installing Cable System Appurtenances as may be necessary and pertinent to a Cable System.

25. "Subscriber" shall mean any Person (including City, County and Educational Institutions) lawfully receiving Basic Cable Service and/or any additional Cable Service from Grantee.

B. Interpretation.

1. Whenever a position title is referenced in this Ordinance, the term shall include authorized designees.

2. Whenever a position title is referenced in this Ordinance, and the position or title is abolished, consolidated or changed, the successor shall have authority to act under this Ordinance and the Franchise.

3. Whenever a governmental body or subunit is referenced in this Ordinance, and the body or subunit is abolished, consolidated or changed, the successor body shall have authority to act under this Ordinance and the Franchise.

4. Whenever a definition has its basis in Federal or State Law, and such definition is changed, the change shall be incorporated in this Ordinance by reference.

26.03 FRANCHISE REQUIRED FOR CABLE SYSTEM/SERVICE

No Person shall operate a Cable System or provide Cable Service within City or use the Streets

of City for Cable System construction, installation, operation and maintenance purposes, without first obtaining a Franchise from City Common Council and entering into a Franchise Agreement as provided for under this Ordinance.

26.04 FRANCHISE AWARD

Upon award of any Franchise by City Common Council and execution of a Franchise Agreement, Grantee shall be bound, for the Franchise Term by all terms and conditions of this Ordinance and the Franchise Agreement, and shall provide Cable Services and operate a Cable System and perform related undertakings of any nature specifically set forth in the Franchise Agreement, within the geographical limits of the Franchise Area. The Franchise Agreement may incorporate therein by reference all or part of any proposal of Grantee and this Ordinance.

26.05 RIGHT AND PRIVILEGE OF GRANTEE IN STREETS

Any Franchise awarded by City Common Council pursuant to Section 66.082, Wisconsin Statutes, and this Ordinance, shall be for the sole purpose of providing Cable Service and operating a Cable System. A Grantee awarded a Franchise, upon execution of a Franchise Agreement, and in accordance with procedures established therein, shall have the right and privilege to erect, construct, operate and maintain in, upon, and along, across, above, over and under any Streets, within the Franchise Area, any Cable System Appurtenances necessary or useful for the operation and maintenance of a Cable System and provision of Cable Service.

26.06 FRANCHISE APPLICABILITY AND ADMINISTRATION

A Franchise is applicable to the Franchise Area in accordance with the terms and conditions of a Franchise Agreement. Cable Administrator shall, except where another Person or body is designated, administer the Franchise on behalf of City.

26.07 FRANCHISE AGREEMENT AND TERM OF FRANCHISE

The Franchise and the rights, privileges and authority granted thereunder shall take effect on the Effective Date of Franchise Agreement and be in force and effect as set forth in a duly and properly executed Franchise Agreement, and shall continue in force and effect for a term specified in the Franchise Agreement, but for a term of no longer than twenty (20) years. The Franchise Agreement shall be in

writing and duly executed by authorized officers of City and Grantee sworn to before a Notary Public or other officer authorized by Wisconsin Law to administer oaths.

26.08 INITIAL FRANCHISE

A. Request For Proposals. Cable Administrator may develop a written request for proposals for an Initial Franchise which shall include a procedure for submission and review. Any Person seeking an Initial Franchise shall submit a sealed proposal at the time and place indicated in the request for proposals for a public opening. Proposals may be modified through additional submissions at any time prior to the opening, provided that any modifications must be duly executed in the same manner as the original proposal. No proposal shall be opened or inspected before the public opening. All proposals received by City for an Initial Franchise are the sole property of City and may not be withdrawn. City reserves the right to extend the time for receiving proposals.

B. City Rights. City reserves the right to reject any and all proposals and waive informalities and/or technicalities in any proposal or in the proposal process.

C. Interpretation. Questions regarding the meaning or intent of this Ordinance or the request for proposals may be submitted to Cable Administrator in writing. Replies will be mailed or delivered to all parties recorded by City as having received proposals. Questions received less than fourteen (14) days prior to the date for the opening of proposals may not be answered. Only timely, written replies to questions will be binding on City. Proposers must acknowledge receipt of all written responses to questions.

D. Before submitting a proposal, each proposer must:

1. Thoroughly examine this Ordinance and the request for proposals;
2. Familiarize themselves with local conditions that may in any manner affect performance under the Franchise;
3. Familiarize themselves with Federal, State and local Laws affecting performance under the Franchise; and,
4. Carefully prepare the proposal to meet the requirements of this Ordinance and the request for proposals.

E. City Review. City may make such investigations as it deems necessary to determine the ability of the proposer to perform under the

Franchise, and the proposer shall furnish to City all such information and data for this purpose as City may request. City reserves the right to reject any proposal if the information and data submitted by proposer, or investigation of City, reveals that such proposer is not properly qualified to carry out the obligations of the Franchise and to complete the work contemplated therein in a timely manner. Conditional proposals will not be accepted.

F. Franchise Awards. An Initial Franchise shall be awarded by the Common Council of City following review by such subunits and professional consultants as City deems appropriate.

26.09 FRANCHISE RENEWAL PROCESS

The Franchise renewal process shall be held in accordance with applicable Federal Law. Should the Federal renewal process be eliminated or significantly modified, City Common Council reserves all rights to determine the Franchise renewal process to the extent it is not controlled by Federal or State Law.

26.10 POLICE POWERS

A. General and Zoning Ordinances. The rights conferred upon a Grantee through a Franchise shall be subject to the police power of City to adopt and enforce such General and Zoning Ordinances as are necessary to protect the public health, safety and welfare; and Grantee shall comply with all applicable General and Zoning Ordinances enacted by City, from time to time during the Franchise.

B. New Cable Regulations. The right and power is hereby reserved by City to amend this Ordinance, from time to time during the term of the Franchise, to promulgate such additional regulations of a Franchise as it shall find necessary in the exercise of its lawful powers; provided such amendments and additional regulations are not in conflict with the provisions of the Franchise Agreement or Federal or State Law.

26.11 USE OF GRANTEE FACILITIES BY CITY

The Franchise Agreement may set forth procedures by which City may use the facilities of Grantee.

26.12 COSTS OF AWARDING FRANCHISE

Grantee shall bear all costs and expenses of City awarding the Initial Franchise, and reimburse City therefore within thirty (30) days of the Date of Acceptance of the Franchise. The payments made pursuant to this Section shall not be deemed to be "Franchise Fees" within the meaning of Section 622

of the Cable Act (47 U.S.C. Section 542) and such payments shall not be deemed to be: (1) "payments-in-kind" or involuntary payments chargeable against compensation to be paid to City by Grantee; or, (2) "external costs" under the regulations of the FCC.

26.13 NOTICES UNDER FRANCHISE AGREEMENT

A Franchise Agreement shall set forth the procedures for all notices from Grantee to City or from the Grantee to the City.

26.14 IRREVOCABLE LETTER OF CREDIT/CASH SECURITY DEPOSIT

A Franchise Agreement shall require a Performance Bond, Irrevocable Letter of Credit or cash security deposit to be used to insure the faithful performance of Grantee of all provisions of the Franchise Agreement and this Ordinance, and compliance with all orders, permits and directions of any subunit, department, or office of City having jurisdiction over the Franchise.

The rights reserved to City with respect to the Irrevocable Letter of Credit or cash security deposit are in addition to all other rights of City, whether authorized by this Ordinance, the Franchise Agreement or otherwise authorized by Law or equity, and no action, proceeding or exercise of a right with respect to such Irrevocable Letter of Credit or cash security deposit shall affect or waive any other legal or equitable right City may have.

26.15 CONSTRUCTION ASSURANCE

Within thirty (30) days after the Date of Acceptance of the Franchise requiring construction, reconstruction or improvement of a Cable System, Grantee shall file with City a Construction Assurance in a form approved by the City Attorney and in the amount determined by the Franchise Agreement. This assurance shall be maintained throughout the construction period and for such additional time as may be determined by the Franchise Agreement.

If Grantee fails to well and truly observe, fulfill and perform each term and condition of the Franchise, as it relates to the conditions relative to the construction, reconstruction or improvement of the Cable System, there shall be recoverable any damages or loss suffered by City as a result thereof, including the full amount of any compensation, indemnification, or cost of removal of any abandoned property of Grantee, plus a reasonable allowance for attorneys' fees, including City's legal staff, and other enforcement costs. This provision shall not be limited by any other remedy provided for in this Ordinance or

the Franchise Agreement.

26.16 LIABILITY INSURANCE REQUIRED

A Franchise Agreement shall require that a Grantee maintain throughout the term of the Franchise, general and automobile liability insurance insuring Grantee, with City being an additional insured, in such minimum amounts as may be required in the Franchise Agreement.

Certificates of Insurance shall be obtained by the Grantee annually during the term of the Franchise, indicating uninterrupted compliance with this Section, and filed with the City Clerk/Treasurer.

The provisions of this Section shall not be construed as to limit the liability of the Grantee under any Franchise issued hereunder.

The insurance policies required herein shall be issued by insurance companies licensed to do business within the State of Wisconsin, and provide thirty (30) days advance, written notice of any cancellation, termination or modification to both the City Clerk/Treasurer and Grantee. Grantee shall, in the event of any such notice, obtain, pay all premiums for, and file with the City Clerk/Treasurer a Certificate of Insurance as evidence of the issuance of replacement insurance policies within the notice period so as to provide for uninterrupted insurance coverage.

26.17 INDEMNITY AND HOLD HARMLESS

A. A Franchise Agreement shall contain provisions requiring that a Grantee shall, at its sole cost and expense, indemnify and hold harmless City, its subunits, the Kenosha Community Television Commission and their officers and employees (hereinafter "Indemnities").

B. Nonwaiver of Statutory Limits. Nothing contained in this Ordinance is intended to express or imply a waiver of the statutory notice and claim provisions or liability limits, of any kind or nature, as set forth in Federal or State Law.

26.18 DISCLAIMER OF LIABILITY

City, in awarding a Franchise under this Ordinance, does not assume any liability for injury or damage occurring to any Person or property from any cause whatsoever arising out of the construction, installation, improvement, maintenance, repair, use, operation, condition or dismantling of Grantee's Cable System or due to the act or omission of any Person other than those Persons for which City is liable as a matter of Law.

26.19 COMPLIANCE WITH LAW

A. General. Grantee, in constructing, installing, improving, maintaining, repairing, using, operating or dismantling a Cable System and providing Cable Service under this Ordinance and the Franchise Agreement, shall comply with all applicable Federal, State and local Laws.

B. Nondiscrimination. Grantee, in providing Cable Service and operating a Cable System, under this Ordinance and the Franchise Agreement, shall not discriminate against any Person based upon a classification protected by Federal, State or local Law.

C. Privacy. Grantee, in providing Cable Service and operating a Cable System, shall comply with any privacy requirements imposed by Federal, State or local Law and the Franchise Agreement.

D. Notice and Resolution of Conflict. Should any Federal, State or local Law requiring Grantee to perform any Service, or permitting Grantee to perform any Service, or prohibiting Grantee from performing any Service, be in conflict with the terms of the Franchise Agreement or should there be a conflict in any such Laws, then as soon as possible following knowledge thereof, Grantee and/or City shall notify the other of the conflict believed to exist.

Should City or Grantee determine that any such conflict exists, City and Grantee shall negotiate in good faith to modify any such provisions to the extent necessary to carry out the full intent and purpose of this Ordinance and the Franchise Agreement.

26.20 CABLE SERVICE AVAILABILITY

Grantee shall make available and provide Cable Service throughout the Franchise Area, as required by the Franchise Agreement. No Person shall arbitrarily be denied Cable Service.

26.21 CABLE SYSTEM CONSTRUCTION AND EXTENSION POLICY

A. Initial Franchise and Renewal Franchise Cable System Construction Timetable. Grantee shall construct a Cable System for an Initial Franchise and Renewal Franchise within the Franchise Area in accordance with a schedule determined in a Franchise Agreement.

B. Cable System Extensions To Newly Developing Areas. Grantee shall extend its Cable System to newly developing and unserved areas of the Franchise Area pursuant to provisions set forth in

a Franchise Agreement.

C Franchise Agreement Provisions. The Franchise Agreement may provide for Cable System construction, installation, and extension which exceeds those standards set forth in this Ordinance.

26.22 CONSTRUCTION AND TECHNICAL PERFORMANCE STANDARDS

A. Construction and Technical Performance Standards. Grantee shall construct, improve, install, operate and maintain its Cable System in a manner consistent with all applicable Federal, State and local construction and technical performance standards as more fully set forth in a Franchise Agreement.

B. Cable System Construction, Improvement, Installation and Maintenance. Construction, improvement, installation and maintenance of the Cable System shall be performed in accordance with the Franchise Agreement.

C. Cable System Design. Cable System initial design, upgrade, functionality, and Channel capacity shall meet the minimum specifications, requirements, and standards set forth in a Franchise Agreement. Nothing contained herein shall prohibit City from increasing these minimum specifications, requirements and standards through a request for proposal process or Franchise Agreement negotiation or renegotiation process. This provision does not waive any right or obligations of City or a Grantee under 47 U.S.C. §546.

D. Programming. A Grantee shall include in its Cable Service a broad range of programming.

26.23 USE OF STREETS

Grantee shall use City Streets, where required, for its Cable System, in accordance with the terms and conditions for such usage as are set forth in the Franchise Agreement.

26.24 OPERATIONAL STANDARDS

A Franchise Agreement shall set forth the operational standards, including minimum customer service standards, to be met by a Grantee.

26.25 CONTINUITY OF CABLE SERVICE

A. Subscribers' Right. It shall be the right of all Subscribers to receive continuous and uninterrupted Cable Service where their financial and other obligations to Grantee are met. If Grantee elects to overbuild, rebuild, modify or sell the Cable System, or City gives notice of intent to terminate the

Franchise or fails to renew the Franchise, Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances.

B. Transfer of Franchise Ownership or Control. If there is a change of Franchise ownership or control, Grantee shall cooperate with City, and new Grantee or operator in maintaining continuous and uninterrupted Cable Service to all Subscribers.

C. Failure To Provide Continuous Service. Should Grantee fail to operate the Cable System for seven (7) consecutive days without prior approval of Cable Administrator or without just cause, City may, at its option, operate the Cable System or designate an operator until such time as Grantee restores Cable Service under conditions acceptable to City. Should City be required to fulfill this obligation for Grantee, then Grantee shall reimburse City for all reasonable costs, expenses in excess of revenues from the operation of the Cable System received by City, and damages that are the result of Grantee's failure to perform.

26.26 CABLE SERVICE COMPLAINT PROCEDURE

A Franchise Agreement shall set forth provisions to enable the City to monitor the performance of a Grantee, including a provision allowing the City to have tests conducted of the Cable System.

26.27 GRANTEE RULES AND REGULATIONS

Grantee shall have the authority to promulgate such written rules and regulations governing the conduct of its business as shall be reasonably necessary to enable Grantee to exercise its rights and perform its obligations under the Franchise, and to assure continuous and uninterrupted Cable Service to its Subscribers; provided, however, that such rules and regulations shall not be in conflict with this Ordinance or the Franchise Agreement.

26.28 FRANCHISE FEE AND PEG ACCESS CHARGES AND COSTS

A Franchise Agreement shall set forth the Franchise Fee and PEG Access charge obligations of the Grantee include the time and manner of payment, the City's right to audit the Grantee's records to insure proper payment, interest payable to the City in the event of late payment by the Grantee and the City's rights in the event of a termination of the Franchise Agreement.

26.29 TRANSFER OF OWNERSHIP OR CONTROL

The procedures for transfers and assignments of

the Franchise, including a change of control in the Grantee, will conform to the requirements as set forth in Federal Law, and the Franchise Agreement.

26.30 BOOKS, RECORDS AND REPORTS OF GRANTEE

A Franchise Agreement shall specify the City's right to inspect the books and records of the Grantee and describe such reports as may be required of the Grantee.

26.31 CITY PROGRAMMING, SERVICE TO SCHOOLS AND GOVERNMENT BUILDINGS, AND PEG ACCESS

A. City Programming. Nothing contained in this Ordinance or the Franchise Agreement shall prohibit City from producing, directing or televising programs or messages of a public service nature.

B. Service To Schools And Government Buildings. Grantee shall provide Service to schools and government buildings as specified in a Franchise Agreement.

C. Institutional Network (I- Net) Service To Schools. Grantee shall provide an Institutional Network (I-Net) as may be specified in a Franchise Agreement.

D. PEG Access. Grantee shall provide PEG Access as specified in a Franchise Agreement.

E. PEG Access Facilities. Grantee shall provide PEG Access Facilities specified in a Franchise Agreement.

26.32 PERFORMANCE EVALUATION SESSIONS

The Franchise Agreement shall set forth any performance evaluation sessions (including procedures for notices of the evaluation sessions and topics to be discussed) that may be required of the Grantee.

26.33 RATE CHANGE PROCEDURES

A Franchise Agreement shall set forth the procedures for rate changes by the Grantee.

26.34 FINANCIAL, CONTRACTUAL, SHAREHOLDER AND SYSTEM DISCLOSURE

A. General Disclosure. No Initial Franchise will be granted to any proposer unless all requirements and demands of City regarding financial, contractual, shareholder and System disclosure have been met.

Proposers, including all shareholders and parties with any interest in the proposer, shall fully disclose to City all agreements and undertakings, whether written or oral, or implied with any Person respecting the Franchise and the proposed Cable System. Proposer shall also disclose any other contracts with City. This Section shall be interpreted to include, but not be limited to, any agreements between local applicants and national companies.

Proposers, including all shareholders and parties with any interest in the proposer, shall submit all requested information to City as provided by the terms of this Ordinance or the proposal documents, or otherwise requested. The requested information must be complete and verified as true by the proposer.

Proposers, including all shareholders and parties with any interest in the proposer, shall disclose to City the numbers of shares of stock, and the holders thereof, and shall include the amount of consideration for each share of stock and the nature of the consideration.

B. Disclosure of Other Cable Systems.

Proposers, including all shareholders and Persons with any interest in the proposer, shall disclose to City any information required by the request for proposal documents or otherwise requested by City regarding other Cable Systems in which they hold an interest of any nature, including, but not limited to, the following:

1. Locations of all other Franchises and the dates of award for each location;
2. Estimated dates of other Franchise awards;
3. Estimated number of miles and number of miles completed in each Cable System as of the date of the proposal; and,
4. Date for completion of construction as promised in the application for each Cable System.

C. Disclosure of Other Cable System Applications. Proposals, including all shareholders and Persons with any interest in the proposer, shall disclose to City any information required by the request for proposal documents or otherwise requested by City regarding pending applications for other Cable Systems, including, but not limited to, the following:

1. Location of other Franchise applications and date of application for each Cable System;
2. Estimated dates of other Franchise awards;
3. Estimated number of miles of construction relevant to other Franchise sought; and,
4. Estimated construction costs of other Franchise sought.

26.35 FORECLOSURE AND RECEIVERSHIP

The Franchise Agreement shall specify procedures in the event of a foreclosure or receivership.

26.36 RIGHT OF ACQUISITION BY THE CITY

A Franchise Agreement shall specify the rights of the City to acquire the Cable System.

26.37 TERMINATION OF FRANCHISE FOR SUBSTANTIAL BREACH

A. Termination of Franchise. A Franchise Agreement shall provide that in addition to all other rights and powers retained by City under this Ordinance, a Franchise Agreement, or otherwise under existing Law, the City reserves the right to terminate the Franchise. The Franchise Agreement shall set forth the grounds upon which a Franchise may be terminated and the procedures for any such termination.

B. Affect of Termination. Upon termination of a Franchise, whether by action of City as provided above, or expiration and nonrenewal of the Franchise, Grantee shall be obligated to cease using the Cable System for the purposes authorized by the Franchise.

C. Remedies Cumulative. All remedies under this Ordinance, and any Franchise Agreement, are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment of liquidated damages or penalties relieve a Grantee of its obligations to comply with this Ordinance or the Franchise Agreement. Remedies may be used singly or in combination. In addition, City may exercise any rights it has at Law or equity. Recovery by City of any amounts under insurance, the Performance Bond, the security fund, or the Irrevocable Letter of Credit, or otherwise, does not limit Grantee's duty to indemnify City in any way; nor shall such recovery relieve a Grantee of its obligations under a Franchise, limit the amounts owed to City, or in any respect prevent City from exercising any other right or remedy it may have. Nothing herein shall be read to authorize the double recovery of damages.

D. Right to Require Dismantling. In the event that City exercises its option to require Grantee to dismantle the Cable System, Grantee shall, in an expeditious manner, at its own cost and expense, and at the discretion of City, restore any property, public or private, to the condition in which it existed prior to the erection or construction of the Cable

System, including any improvements made by any Person to such property subsequent to the construction of the Cable System.

26.38 REMOVAL OF CABLE SYSTEM INFRASTRUCTURE

At the expiration (and denial of renewal and exhaustion of all appeals) or termination of the Franchise, Grantee shall forthwith, upon request by Cable Administrator, remove at its own cost and expense, all designated portions of the Cable System from all Streets and public property within the City. If Grantee fails to do so, City may perform the work at Grantee's cost and expense.

26.39 THEFT OF CABLE SERVICE

Section 943.46, Wisconsin Statutes, entitled "Theft of Cable Television Service", is incorporated into this Ordinance by reference and made a part hereof as if fully set forth herein, and as otherwise incorporated under **Section 11.052** of the Code of General Ordinances for the City of Kenosha.

26.40 LIQUIDATED DAMAGES

A Franchise Agreement shall set forth a schedule of liquidated damages in the event of a breach by the Grantee and the procedure to be followed by the City in the event liquidated damages are to be collected.

26.41 PENALTIES

Any Person who operates a Cable System or provides Cable Service or installs Cable System Appurtenances without a Franchise shall be in violation of this Ordinance, and shall upon conviction pay a forfeiture not to exceed One Thousand (\$1,000.00) Dollars, together with the costs of prosecution, and in default of such payment shall be committed to the County Jail for a period not to exceed ninety (90) days. Each day of violation shall be a separate offense.