

CHAPTER 23
Cable Franchise Ordinance
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CHAPTER 23
Cable Franchise Ordinance

23.01.000 SHORT TITLE. This ordinance shall be known, and may be cited as the “Port Washington Cable Franchise Ordinance.

23.02.000 REQUIREMENT OF A FRANCHISE. No individual, partnership, corporation or association shall install, maintain or operate a Cable Communication System, or solicit subscriptions for the same, without first having applied for and obtained a franchise from the City in accordance with this Section: and any failure to secure such a franchise prior to the commencement of operations or the soliciting of any subscription from any subscriber for such service shall be deemed a violation of this Section and shall subject the violator to the penalties prescribed.

23.03.000 DEFINITIONS. For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

1. “Applicant” shall mean any individual, partnership, corporation or association which shall have filed a written application for a franchise under this Section as herein provided.
2. “City” means the City of Port Washington, Wisconsin, or any duly appointed designate thereof, including, but not limited to, the cable review committee and the Common Council.
3. “Common Council” or “Council” means the present governing body of the City or any successors to the legislative powers of said body, or any duly appointed designate thereof.
4. “Cable Review Committee” means the cable review committee or Port Washington Common Council, established under Section 13.1 of this Ordinance, or any duly appointed designate thereof.
5. “Cable system” “cable communication system”, or “CATV system” means a system, located within the City of Port Washington only, of antennas, coaxial cables, wires, wave guides, or other conductors, electronic equipment or facilities designed, constructed or used for the production of television signals, interception and receipt of television or radio signals directly or indirectly off the air, and the distribution or transmission of such signals and other communications services by means of cable or other similar devices to subscribers.
6. “Subscribers” means any person or entity receiving for any purpose the cable service of the Grantee.
7. “Person” means any person, firm, partnership, association, corporation, company or organization of any kind.
8. “Grantee” shall mean any applicant receiving the grant of any franchise hereunder and shall include any lawful successor to the interest of a Grantee when consent to such succession has been granted by the Council.

9. "Gross receipts" means total receipts of the Grantee of money or its equivalent which the Grantee has received for providing basic service to its subscribers; provided that installation charges actually paid by subscribers and received by the Grantee shall be excluded from gross receipts in determining payments due to the City.
10. "Channels" means a group of frequencies in the electro-magnetic spectrum capable of carrying an audio-visual or an audio-visual television signal. Each channel is a block of frequencies containing 6 MHz bandwidth.
11. "Converter" means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber to view all signals delivered at designated dial locations.
12. "Basic service" means the simultaneous delivery by the Grantee to television receivers, of those broadcast and non-broadcast television channels which are required to be provided by 23.07.020 A, B, C, D, E and F of this ordinance.
13. "Additional service" means service provided by the Grantee other than a basic service.
14. "Franchise" means the right, privilege and authority granted by this Ordinance to construct, maintain and operate through use of public streets of the City.
15. "Street" means any street, alley or other public right-of-way in the City.
16. "User" means a person utilizing a channel for purposes of production or transmission of material, as contrasted with receipts thereof, in a subscriber capacity.
17. "The Grantee's system" or "the system" or "the cable system" or "the CATV system" means the CATV system constructed or operated by a Grantee pursuant to a franchise granted hereunder.
18. "Access channels" means the channels which the Grantee is required to provide by 23.07.020 C, D, E and F of this Ordinance.
19. "Public access channel" means that channel which the Grantee is required to provide by 23.07.020 C of this ordinance.
20. "Educational access channel" means that channel which the Grantee is required to provide by 23.07.020 D of this Ordinance.
21. "Municipal access channel" or "government access channel" means that channel which the Grantee is required to provide by 23.07.020 E of this Ordinance.
22. "Leased access channel" means that channel which the Grantee is required to provide by 23.07.020 F of this Ordinance.
23. "FCC" means the Federal Communications Commission.
24. "To monitor" means to observe a one-way or two-way communications signal without the express prior consent of the subscriber receiving or sending said communication signal, whether said signal is observed by visual or electronic means, for any purpose whatsoever.
25. "Grantee's proposal" means and encompasses the document entitled "An Application for the Construction and Operation of a Cable Television System to Serve the City of Port Washington, submitted to the office of the City Clerk of Port Washington."

23.04.000 USE OF CITY STREETS.

23.04.010 Grant of Authority.

- A. There is hereby granted by the City to any successful applicant the right, privilege and franchise to construct, operate and maintain a CATV system in the streets of the City for a period of fifteen (15) years, subject to the rights, obligations, conditions and restrictions as hereinafter provided.
- B. The right to use and occupy said streets for the purposes herein set forth shall not be exclusive and the City reserves the right to grant a similar use of said streets to any person at any time during the period of this franchise.
- C. This Ordinance and the franchise awarded pursuant to the terms of this Ordinance shall relate to and cover the entire present territorial limits of the City and any area hereafter annexed thereto during the term of the franchise. The Grantee agrees to and shall install and furnish CATV service to all residents of the City, including all residents in any territory subsequently annexed to the City, pursuant to the terms of Section 13.3(1)(f) of this Ordinance.

23.04.020 Expiration of the Grant.

- A. Two years prior to the expiration of the franchise granted hereunder, the City and Grantee shall meet to review the development and operation of Grantee. Within sixty (60) days thereof, the City shall extend to Grantee an option to renew this franchise upon the same conditions if the Grantee has been in substantial compliance with the following (not eliminating by such enumeration other factors deemed proper for consideration by the City):
 - 1. Performance pursuant to obligations under this ordinance.
 - 2. Reaction to and implementation of new developments in cable television technology and the furnishing of such developments to subscribers.
 - 3. Reasonableness of charges made by Grantee to subscribers.
- B. In the event City agrees that Grantee has substantially complied with the conditions set forth above, Grantee shall extend the franchise for an additional period of fifteen (15) years.
- C. In the event City determines that Grantee has not substantially complied, Grantee may submit such decision to arbitration within 60 days pursuant to rules and conditions of the American Arbitration Association. Such decision shall be binding upon both parties.
- D. Upon the expiration of a franchise, the City shall have the right to purchase the Grantee's cable system. Should the City decide to purchase said cable system, it shall do so at a price not to exceed its then fair value. In determining the fair value of the system, the original cost of all tangible and intangible property, as well as the salvage value, the book value, the replacement cost, cash flow, and other factors may be considered. Under no circumstances shall any valuation be made for "good will" or for any right or privilege granted by a franchise.

Payment for the cable system shall be tendered to the Grantee within 120 days after the City has exercised its right in this case.

- E. In the event that the City elects to purchase said cable system, or the franchise to operate said cable system is awarded to a new Grantee, upon expiration of this franchise the Grantee shall sell the system to the City or to the new Grantee, whichever is applicable. The price for such sale shall be the fair value of the system, as defined in 23.07.020 D.
- F. In order to assure necessary or required investment in the system during the later years of the permit, and provided that all terms and provisions of this Ordinance are followed by the Grantee throughout the term of this Ordinance, and as feasible, the City shall make all reasonable efforts to assist the Grantee in finding a buyer for its cable system upon expiration of this franchise in the case that this franchise is not extended or renewed for the current Grantee.

23.04.030 Conditions Regarding Street Use.

- A. All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be located so as not to interfere with the proper use of streets, alleys, and other public ways and places, and to cause minimum interferences with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places, and not to interfere with existing public utility installations. All installations shall be underground in those areas of the City where either of the public utilities providing telephone or electric service are underground at the time of installation. In areas where both telephone and electric utility distribution facilities are above ground at the time of installation the Grantee may install its facilities above ground; but in such case the Grantee, to the maximum extent possible and subject to approval by the affected public utility, shall place its facilities on the poles of said public utilities. If, subsequently, said telephone or electric utility facilities go underground, the facilities of the Grantee of any facilities or installations of a telephone or electric utility and the conditions of said uses shall be determined by negotiations between the Grantee and said utility.
- B. In case of any disturbance of pavements, sidewalk, driveway, or other surfacing, the Grantee shall, at its own expense, and in the manner provided by the City replace and restore all paving, sidewalk, driveway, or other surface of any street or alley disturbed.
- C. If at any time during the period of the franchise the City shall lawfully elect to alter or change the grade or location of any street, alley or other public way, the Grantee shall, upon reasonable notice by the City, remove, rely and relocate its poles, wires, cables, and underground fixtures at its own expense, and in each instance comply with the requirements of the City.
- D. The Grantee shall not place poles, conduits, wires or other facilities above or below ground where the same will interfere with or endanger any gas, electric or telephone facilities, water hydrant or other utility, nor shall the Grantee place poles, conduits, wires or other facilities above or below ground where the same will interfere with or endanger any gas, electric or telephone facilities, water

hydrant or other utility, nor shall the Grantee place poles, conduits, wires or other facilities above or below ground in a manner which results in the public utility facility violating any applicable safety statute, ordinance or administrative.

- E. The grantee shall, on request of any person holding a moving permit issued by the City, temporarily move its wires or fixtures to permit the moving of buildings, the expense of such temporary removal to be paid by the person requesting the same, and the Grantee shall be given not less than seventy-two (72) hours advance notice to arrange for such temporary changes.
- F. The Grantee shall have the authority to trim any trees upon and overhanging the streets, alley, sidewalks and 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 Grantee, except that at the options of the City, such trimming may be done by it, or under its supervision and direction, at the expense and liability of the Grantee.

23.04.040 Removal of Equipment.

- A. Following the Grantee's commencement of service through and over its CATV system, the Grantee, upon request of the Council, shall, following a public hearing held pursuant to 23.13.010 B, number 2 of this Ordinance, promptly remove from the public streets where its properties are located all or any part of the facilities so located when one or more of the following enumerated conditions occur:
 - 1. The Grantee ceased to provide a substantial amount of the services required in this Ordinance for a continuous period of six months.
 - 2. The Grantee fails to construct said system as provided herein.
 - 3. The franchise expires, or is revoked pursuant to notice, as provided herein.
- B. Provided that the Grantee shall be entitled to receive notices in writing from the City delivered to the local office of the Grantee setting forth one or more of the occurrences hereinabove enumerated.

23.04.050 Joint Use by City and Utilities.

- A. The Grantee may be required by the City to permit joint use of its property and appurtenances located in the streets, alleys, or other public ways of the City, by other utilities insofar as such joint use may be reasonably practicable and upon payment of reasonable rental therefore; provided that in the absence of agreement regarding such joint use, the cable review committee shall provide for arbitration of the terms and conditions of such joint use and the compensation to be paid therefrom, which award shall be final.
- B. The City shall have the right, during the term of this franchise, to install and maintain free of charge upon the property of the Grantee its own equipment, including, but not limited to, a police alarm system, on the condition that such equipment does not unreasonably interfere with the CATV operations of the Grantee.

23.05.000 INITIAL SYSTEM INSTALLATION SCHEDULE.

23.05.010 Obligations of the Grantee.

- A. A Grantee shall, within thirty (30) days from the granting of a franchise, make application to the Federal Communications Commission for a certificate of compliance for the establishment of a cable television system in the City and, if necessary, for the utilization of a microwave facility to import permissible signals, and the Grantee shall prosecute such application diligently and faithfully in order that necessary approvals can be obtained in the shortest possible time. The City reserves the right to intervene in said application for a certificate of compliance, and the Grantee shall pay all expenses incurred by the City in connection with the submission and defense of an application for a certificate of compliance filed with the FCC by the Grantee.
- B. The Grantee shall, within thirty (30) days from the granting of a franchise begin negotiations with utility companies for facility lease agreements.
- C. Prior to the commencement of construction and prior to receipt of final approvals from the Federal Communications Commission for establishment of the system, the Grantee shall conduct the necessary engineering studies so that the construction can commence immediately upon final approval of the Federal Communications Commission.
- D. The Grantee shall, within sixty (60) days from the granting of a franchise begin preliminary engineering of the pole line route and electronic layouts, begin negotiations for common carrier microwave contracts, and initiate engineering surveys for the receiving site and building locations of the Grantee's CATV system.
- E. The Grantee shall commence construction of the cable television system no later than thirty (30) days after the execution of pole attachment agreements and receipt of final approval from the Federal Communications Commission to establish a cable television system and utilized a microwave facility to import permissible signals.
- F. There shall be significant construction for the first year and a substantial percentage extension of energized trunk cable for each ensuing year. The Grantee shall extend energized trunk cable to 25% of the franchise area per year for its first four (4) years of operation as a minimum standard. If possible, the Grantee shall complete construction of the system within the City within twenty-four (24) months after construction commences. Once energized cable has been extended to 25% of the franchise area, the Grantee shall commence providing basic service to subscribers residing in said 25% of the franchise area. The Grantee shall provide basic service to other portions of the franchise area as soon as feasible after the laying of energized trunk cable in any of said other portions.
- G. Within six (6) months from the grant of permission by the Federal Communications Commission, the Grantee shall submit to the cable review committee an installation plan for the entire City, indicating the date on which the Grantee expects the installation of the CATV system to be completed and available for service to subscribers in the various areas of the City.

- H. The Grantee shall furnish the cable review committee with progress reports indicating in detail the area of construction of the CATV system. Such periodic reports shall be furnished at six (6) month intervals, with the first report to be made three months after the construction commencement date.
- I. The requirements established in 23.05.010 A through H above area maximums, and the Grantee may at any time proceed at a rate speedier than required by said subsections.
- J. All portions of the Grantee's proposal dealing with the Grantee's construction and installation timetable shall be controlling when in conflict with or when more stringent than the requirements established in 23.0-5.010 A through H above.

23.05.020 Right of Inspection.

The cable review committee shall have the right to inspect all construction or installation work performed pursuant to the provisions of this Ordinance.

23.06.000 FINANCIAL CONSIDERATIONS.

23.06.010 Franchise Payments.

- A. The Grantee shall pay to the City for the use of the streets and other facilities of the City in the operation of the CATV system and for the municipal supervision thereof a fee in the amount of 3% of the annual gross receipts of the Grantee. The Grantee shall file with the cable review committee within thirty (30) days after the expiration of each half year ending on January 1 and July 1, during the period this franchise shall be in force, a financial statement showing in detail the annual gross receipts of the Grantee during the preceding semi-annual period. It shall be the duty of the Grantee to pay to the City at the time of filing such statement the franchise fee prescribed. The Grantee shall also file within ninety (90) days following the conclusion of each fiscal year of the Grantee an annual report prepared and audited by an Independent Certified Public Accountant, showing the yearly total gross receipts and payments to the City and any further relevant financial information in regard to the company as may be required by the cable review committee.
- B. In the event a franchise should be terminated or forfeited prior to the end of the basic fifteen year term, the Grantee, shall within thirty (30) days submit to the cable review committee a financial statement prepared as before required, showing the gross receipts of the Grantee for the time elapsed since the last period for which the Grantee has paid to the City the required percentage of gross annual receipts, and the Grantee shall pay to the City not later than thirty (30) days following the termination of the franchise, a like percentage of such gross receipts.
- C. In the event that any payment is not made on or before the applicable date fixed in 23.06.010 A and B hereof, interest in such payments shall apply from such date at the yearly rate of 12% plus cost of collection.

- D. Pursuant to 23.13.010 D of this Ordinance, the cable review committee shall have the right to inspect the Grantee's records showing the gross receipts from which its franchise payments are computed. The right of audit and re-computation of any and all amounts paid under this franchise shall be always accorded to the cable review committee. No acceptance of any payments by the City shall be construed as a release of or an accord or satisfaction of any claim the City might have for further or additional sums payable under the terms this Ordinance or for any other performance or obligation of the Grantee hereunder.
- E. Payments of compensation made by the Grantee to the City pursuant to the provisions of this Ordinance shall not be considered in the nature of a tax but shall be in addition to any and all taxes which are now or hereafter required to be paid by any law of the United States, the State of Wisconsin or the City.

23.06.020 Payments to Support the Municipal Access Channel and Public Access Channel.

- A. In the event the FCC hereafter approves of fees for Municipal Access Channels and Public Access Channels, franchise fees shall be charged to franchisee upon such terms as may be agreed upon or, in the event of failure to do so, upon such terms and in such amount as may be determined upon submission to the American Arbitration Association.
- B. Fees obtained by the City shall be used solely to finance the operation of such channels.

23.06.030 Insurance and Indemnity.

- A. At all times during the term of the franchise, the Grantee shall obtain, pay all premiums for and file with the cable review committee at least ten (10) days before construction of the system commences a certificate of insurance or other proof evidencing the payment of premiums for the following:
 - 1. A general comprehensive public liability insurance policy indemnifying, defending and saving harmless the City, its officers, boards, committees, commissions, agents, or employees, from any and all claims by any person whatsoever on account of injury to or death of a person or persons occasioned by the operations of the Grantee under the franchise herein granted or alleged to have been so caused or occurred with a minimum liability of \$1,000,000 for bodily injury or death of any one or more persons in any one occurrence. Said policies are to include personal injury coverage.
 - 2. Property damage insurance indemnifying, defending and saving harmless the City, its officers, boards, committees, commissions, agents and employees from and against all claims by any person whatsoever for property damage occasioned by the operation of the Grantee under the franchise herein granted or alleged to have been so caused or occurred with a minimum liability of \$500,000 for property damage in any one occurrence.

- B. All of the foregoing insurance contracts shall be in a form satisfactory to the City Attorney, shall be accepted by companies authorized to do business in the State of Wisconsin acceptable to the City Attorney. Said insurance contracts shall require 30 days written notice of any cancellation to both the City and the Grantee.
- C. The Grantee shall also, at its sole cost and expense, fully indemnify, defend and hold harmless the City, its officers, boards, committees, commissions and employees against any and all claims, suits, actions, liability and judgments for damages (including but not limited to expenses for reasonable legal fees and disbursements and liabilities assumed by the City in connection therewith):
 - 1. Arising out of any claim for invasions of the right of privacy, for defamation of any person, firm or corporation, or for the violation or infringement of any copyright, trademark, trade name, service mark or patent or of any other right of any person, firm or corporation (excluding claims arising out of or relating to City programming); and
 - 2. Arising out of the Grantee's failure to comply with the provisions of any Federal, State, or local statute, ordinance or regulation applicable to the Grantee in its business hereunder.
- D. The foregoing indemnity is conditioned upon the following: The City shall give the Grantee prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section. Nothing herein shall be deemed to prevent the City from cooperating with the Grantee and participating in the defense of any litigation by its own counsel at its sole cost and expense.

23.06.040 Surety Bond.

- A. The Grantee shall maintain, and by its acceptance of a franchise, specifically agrees that it will maintain throughout the term of this franchise, a faithful performance bond running to the City, with a good and sufficient surety approved by the City in the sum of \$50,000 conditioned that the Grantee shall well and truly observe, fulfill and perform each term and condition of this franchise and of the Grantee's proposal and that in case of any breach, the City shall be entitled to recover from the principal and sureties thereof the amount of all damages including all costs and attorney's fees incurred by the City approximately resulting from the failure of the Grantee to well and faithfully observe and perform any and all of the provisions of this franchise.
- B. No recovery by the City of any sum by reason of the bond required herein shall be any limitation upon the liability of the Grantee to the City, except that any sum received by the City by reason of the bond required herein shall be deducted from any recovery which the City might have against the Grantee.

23.06.050 Acceptance of this Ordinance.

- A. This Ordinance and its terms and provisions shall be accepted by the Grantee by written instrument executed and acknowledged by it as a deed is required to be, and filed with the City Clerk within twenty (20) days after the award of a franchise. Such written instrument shall state and express the acceptance of this Ordinance and its terms, conditions and provisions; and said Grantee shall agree in said instrument to abide by, to observe and perform same, and declare that statements and recitals herein are correct and that it has made and does make this agreement, statements and admissions in this Ordinance recited to have been or to be made.

23.07.000 SERVICES TO BE PROVIDED.

23.07.010 General Requirements.

- A. The Grantee shall install, maintain and operate its system in accordance with the highest standards of the art of cable communications and in accordance with any Code of Conduct which has been adopted or shall be adopted by the National Cable Television Association.
- B. The Grantee shall render efficient service in accordance with such rules and regulations as have been promulgated and will be promulgated by the Federal Communications Commission and other federal and state regulatory agencies.
- C. The Grantee shall provide a uniform, strong signal, free from distortion and interference, and shall not interrupt services unless absolutely necessary.
- D. The Grantee shall provide cable television services which are identical to those services which the Grantee described in the Grantee's proposal; provided, that said Grantee shall not have to provide any proposed services which have been disapproved by the Federal Communications Commission; provided further that the Grantee shall, upon petitioning the Federal Communications Commission for a certificate of compliance, request that said Grantee be allowed to provide all of those services which said Grantee has formally proposed to the City.
- E. Except where specifically stated otherwise in this Ordinance, the Grantee shall arrange to provide all feasible services requested by potential users of said services, including the Council. If no rate has been established for a particular service, a rate may be established pursuant to Section 9 of this Ordinance; provided that if the cable review committee finds that fairness and equity require that said service be provided free of charge, the cable review committee may require that said service be provided free of charge.
- F. It shall be the right of all subscribers to receive all available services insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify, or sell the system, or the City revokes or fails to renew this permit, or the City elects to purchase the system, the Grantee shall do everything in its power to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances. In the event of purchase by the City, or a change of Grantee, the current Grantee shall cooperate with the City, or with a representative appointed by the City to operate the system for a temporary period, in maintaining continuity of service to all subscribers.

23.07.020 Channel Allocations.

A. Off the Air Programming:

1. The Grantee shall carry the signals of the following television stations:
 - (i) WTMJ-TV, Milwaukee, Wisconsin, Channel 4;
 - (ii) WITI-TV, Milwaukee, Wisconsin, Channel 6;
 - (iii) WISN-TV, Milwaukee, Wisconsin, Channel 12;
 - (iv) WVTM, Milwaukee, Wisconsin, Channel 18;
 - (v) WMVS, Milwaukee, Wisconsin, Channel 10;
 - (vi) WMVT, Milwaukee, Wisconsin, Channel 36;and all other Milwaukee, Wisconsin, television stations hereinafter in operation.
2. The Grantee shall carry the signals of other TV stations pursuant to the present and future regulations of the FCC.
3. The Grantee shall provide radio channels which may be received on conventional FM receivers, connected to the Grantee's cable system.
4. Such additional channels, signals, programs and production equipment as the Grantee may include in his proposal for obtaining the franchise.

B. Local Origination: The Grantee shall devote at least one channel to locally originated programming pursuant to the regulations of the FCC. The Grantee shall also submit a plan, subject to the approval of the cable review committee, stating the proposed number of channels which will be provided for additional services including channels to be devoted to locally originated programs. Said plan shall contain an estimate of the total number of broadcast hours per week per channel which the Grantee proposes to devote to local programming, the types of local programs it proposes to originate, and a provision that the Grantee shall submit to both the cable review committee and CACPW each year a proposed programming schedule for locally originated channels.

C. Public Access Channel:

1. Upon inauguration of the cable system's subscriber service, the Grantee shall provide one fully operational channel, as a non-commercial public access channel available to the public on a first-come, non-discriminatory basis. Production facilities on this channel shall be made available without cost for live studio presentations of five (5) minutes or less. If such presentation exceeds five (5) minutes, fees for the use of the public access channel shall be limited to production costs attributed solely to personnel and equipment utilized in live studio presentations. This channel shall also be made available on a first-come, non-discriminatory basis, without fee, to the public for cable-casting of programs prepared on video tape or film for presentation. The Grantee shall provide, at no cost to the public access users, equipment and personnel for cable-casting one-half (1/2) and one (1) inch color video tape and sixteen millimeter (16mm) sound movie film.

2. Within twelve (12) months, after the date of granting a franchise, the Grantee shall complete a set of rules for the use of the public access channel which shall be promptly forwarded to the cable review committee and to the FCC. The rules shall be prepared, to the greatest extent possible, in cooperation with the CACPW. The rules shall, at a minimum, provide for:
 - (i) access on a first-come, first-served, non-discriminatory basis for all residents of the City;
 - (ii) prohibition of advertising for commercial or political purposes, as defined by the FCC;
 - (iii) prohibition of any presentation or lottery information, or obscene or indecent material; provided that in said rules the definition of obscene or indecent material shall conform to any such definition contained in any Ordinance of the City which is currently in effect or which is subsequently passed by the Council;
 - (iv) public inspection of the log of requests for access time, which shall be retained for the duration of this franchise;
 - (v) procedure by which individuals or groups who violate any rule may be prevented from further access to the channel; and
 - (vi) free use of such reasonable amounts of channel time, negotiated equipment, negotiated technical support as are provided for in this franchise and in the Grantee's proposal.

- D. Educational Access Channel: Upon the inauguration of the cable system's subscriber service the Grantee shall provide one fully operational channel for educational use without charge.
- E. Municipal Access Channel: Upon inauguration of the cable system subscriber service, the Grantee shall provide one fully operational channel for government use without charge.
- F. Leased Access Channel: Said cable system shall provide at least one channel which is reserved for leasing purposes. When not in use, said channel is to be used as an additional public access, education, or government channel, if the demand for such an additional channel exists.
- G. Whenever all public channels or all educational access channels or all government access channels are in use during the eighty percent (80%) of the weekdays (Monday through Friday) for eighty percent (80%) of the time during any consecutive three-hour period for six (6) consecutive weeks, the Grantee shall make an additional channel of like type available within six (6) months. The Grantee may make a one-time charge for time and materials for this service. Such additional channel shall be operated on the same basis and in accordance with the same rule at all other access channels.

23.07.030 Programming Facilities.

- A. The Grantee shall provide one full color mobile unit for local origination purposes.

- B. The Grantee shall provide a studio with two black and white cameras for users of the public access channel.
- C. The Grantee shall, upon the request of the Common Council, provide the necessary equipment for transmitting a signal from City Hall.
- D. The Grantee shall make its local origination studio mobile unit facilities, including color cameras and other equipment, available for use by those persons and organizations utilizing the public access, educational and government channels on the Grantee's cable system, subject to reasonable rules and regulations established by the cable review committee pursuant to 23.13.010 B, number 6 of this Ordinance.
- E. The Grantee shall provide all reasonable technical and programming assistance to all parties programming on the Grantee's cable system.
- F. The Grantee shall make all reasonable efforts to encourage the use of its non-broadcast channels.

23.07.040 Emergency or Disaster. In the event of an emergency or disaster, the Grantee shall, upon request of the Mayor or his duly authorized representatives, make available its facilities to the City at no charge for emergency use during the period of such emergency or disaster and shall provide such personnel as necessary to properly operate under the circumstances.

23.07.050 Customer Service.

- A. The Grantee shall maintain an office in the City in a location convenient to the public which shall be open during all usual business hours, have a listed telephone, and be so operated that complaints and request for repairs or adjustments may be received at any time.
- B. The Grantee shall respond to all service calls and complaints, and shall correct malfunctions in its equipment as promptly as possible. The Grantee shall respond to requests for service within 24 hours after its receptions of said requests. If the Grantee does not respond to a request within said 24 hours, the Grantee shall refund 1/30 of its monthly charge to a subscriber for each 24 hours or fraction thereof following a request for service, except to the extent that the Grantee is prevented from responding to said request for service by strike, injunction or other cause beyond the control of the Grantee.
- C. The Grantee shall comply with the method for settling consumer complaints established pursuant to 23.13.010 B, number 3, of this Ordinance.
- D. The Grantee shall not engage in the business of selling, servicing, installing, or leasing televisions or radio receivers, converters or antennae.

23.08.000 TECHNICAL CONFIGURATION AND CAPACITY.

- A. The cable system shall be engineered, installed, maintained, operated and equipped so as to at all times meet the technical standards which are the current "state of the art" of the cable communications industry. The Grantee shall also at all times meet the technical standards established by the FCC, including

- specifications for frequency levels, channel frequency response, terminal isolation, and system radiation, and all other standards which the FCC may set.
- B. The cable system shall be engineered and equipped so as to possess an initial capacity of thirty (30) channels. The system shall also be capable of providing, if need and market demand so require, sixty (60) channels without having to lay additional cable.
 - C. The facilities used by the Grantee, including studio, mobile and local origination programming equipment, shall be capable of producing and distributing color TV signals, and when the signals the Grantee distributes are received in color, they shall be distributed in color unless technically unfeasible.
 - D. The cable system shall be engineered and installed with the capacity for two-way communications in accordance with the regulations of the Federal Communications Commission now in effect or which may be promulgated.
 - E. The cable system shall utilize a dual trunk with a "mid-band split", providing a frequency range of 54 to 200 MHz in the main trunk and of 168 to 300 MHz in the second trunk.
 - F. The Grantee shall utilize microwave distribution systems where necessary to fulfill all of the representations made to the City in the Grantee's proposal.
 - G. The converters utilized in the cable system shall be capable of delivering thirty-six (36) television channels or such lesser number as the City may agree to.
 - H. At the option of any individual subscriber, the Grantee shall install a switching device upon said subscriber's television receiver whereby said subscriber may disconnect his television receiver from the Grantee's cable system in order to receive over-the-air television signals. The price of this device to said subscriber shall be the cost of said device to the Grantee, or less at the options of the Grantee, and the Grantee shall not charge the subscriber any fee for the installation of said device. The Grantee shall make all reasonable efforts to obtain said devices at the lowest possible cost to him.
 - I. At the option of any individual subscriber, the Grantee shall provide a device which allows said individual subscriber to utilize a key to disconnect those channels providing additional services to the subscriber, such as pay-TV channels. The price of said device shall be the cost of said device to the Grantee, or less at the option of the Grantee, and the Grantee shall not charge the subscriber any fee for the installation of said device. The Grantee shall make all reasonable efforts to obtain said devices at the lowest possible cost to him.

23.09.000 RATES.

23.09.010 Rate Schedule.

- A. The rates charged to subscribers shall be fair and reasonable. Said rates shall also be nondiscriminatory, except as provided in 23.09.010 B, C, D, E and F below.
- B. Initial Rate Schedule:
 - 1. The Grantee shall be permitted to charge rates not exceeding those set forth in their application. No charge for disconnection will be permitted at any time.

- C. The Grantee shall provide, without charge, one outlet to each municipally owned building, fire station, police station, library, public and parochial school, and institution of higher learning that is passed by its cable. If more than one outlet is required at any of said locations, the Grantee shall install same at the cost of time and materials only, and in no event will there be a monthly service charge at said locations.
- D. Rates for all other services to be provided over the CATV system by the Grantee shall be as set forth in the Grantee's proposal.
- E. If the Grantee desires to provide new services not set forth in the Grantee's proposal, the rates for such services shall be approved pursuant to 23.09.020 of this Ordinance.
- F. Nothing herein shall be construed to prohibit the reduction or waiving of charges in conjunction with promotional campaigns for the purpose of attracting subscribers, nor shall this provision be interpreted to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any subscriber or programmer included within a particular classification approved by the cable review committee and the Council pursuant to 23.09.020 of this Ordinance.
- G. Nothing in 23.09.010 A above shall prohibit special rates for large institutions, motels, multiple-family dwelling units, or any other type of dwelling or buildings; provided that said special rates are approved by the cable review committee and the Council, pursuant to Section 9.2 of this Ordinance.
- H. The rates established in 23.09.010 B and D above shall not be subject to increase through the first three years following commencement of service.

23.09.020 Rate Supervision.

- A. The Grantee may decrease the rates to subscribers at any time. All rate increases above maximum previously approved, advance charges for additional services and converters, classified rate schedules, and special rates for certain dwellings or buildings shall not go into effect until approved by both the cable review committee and Council, pursuant to 23.09.020 B and C below.
- B. The cable review committee shall approve rates, pursuant to 23.09.020, only after a public hearing has been held on the rate change in question. Said public hearing shall be announced by written notice published in a newspaper of general circulation at least ten (10) days before the date of the hearing. At said public hearing, the Grantee must make such showing as the cable review committee requires to substantiate the necessity for the rate change in question.
- C. Once the cable review committee has approved a rate change, the Council shall either approve said rate change or fail to do the same through the use of a resolution.
- D. The cable review committee reserves the right to review and approve rates for new services. If fairness and equity require that a new service be provided free of charge, the cable review committee may require that said service be provided free of charge.

23.09.030 Advance Charges.

- A. The Grantee may require subscribers to pay for each month of basic service and FM service in advance at the beginning of each month. No other advance payment or deposit of any kind shall be required by the Grantee for basic subscriber service. No deposit or advance payment of any kind shall be charged for the provision of any converter without prior approval of the cable review committee and Council. Additional advance payments may be made available, as an option, by the Grantee to subscribers. Nothing in this provision shall be construed to prohibit charges for initial installation and reconnection.
- B. The Grantee may make available or require advance charges or deposits for various additional services, provided that the cable review committee and the Council shall have authorized such charges or deposits, pursuant to 23.09.020 of this Ordinance.

23.09.040 Termination of Service.

- A. If any subscriber fails to pay a properly due monthly subscriber fee, or any other properly due fee or charge, the Grantee may disconnect the subscriber's service outlet. Such disconnection shall not be effected until sixty (60) days after the due date of said delinquent fee or charge, or until ten (10) days after adequate written notice of the intent to disconnect has been delivered to the subscriber in question. After disconnection, upon payment of the delinquent fee or charge and the payment of a reconnection charge, the Grantee shall promptly reinstate the subscriber's cable service.
- B. Upon termination of service to any subscriber, the Grantee shall promptly remove all of its facilities and equipment from the premises of such subscriber upon his written request. The service will be disconnected at the poles if above ground or at the connection box if underground so that such disconnection shall be outside rather than inside the home. For multiple family dwellings such disconnection shall be made in the basement or other appropriate service area outside the living area itself. Any such removal shall be at no cost to the subscriber.

23.09.050 Refunds to Subscribers and Programmers.

- A. If the Grantee fails to provide any material service requested by a subscriber or programmer, the Grantee shall, after adequate notification and being afforded the opportunity to provide the service, promptly refund all deposits or advance charges paid for the service in question by said subscriber or programmer.
- B. B. If any subscriber terminates any monthly service during the first twelve (12) months of said service because of the failure of the Grantee to render the service in accordance with the standards set forth in this franchise, the Grantee shall refund to such subscriber an amount equal to the installation or reconnection charges paid by the subscriber multiplied by the fraction of the twelve (12) month period for which the subscriber will not be receiving service.

- C. The Grantee shall make refunds to subscriber pursuant to 23.07.050 B of this Ordinance.

23.10.000 PROTECTION OF INDIVIDUAL RIGHTS.

23.10.010 Discriminatory Practices Prohibited. The Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, programmers, or general citizens on the basis of race, color, religion, national origin, creed or sex. Nothing in this provision shall be construed to prohibit the reduction of waiving of charges in conjunction with promotional campaigns for the purpose of attracting subscribers, nor shall this provision be interpreted to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any subscriber or programmer included within a particular classification shall be entitled.

23.10.020 Employment Practices of the Grantee. In the carrying out of the construction, maintenance and operation of its CATV system, the Grantee will not discriminate against any employee or applicant because of race, creed, color, religion, sex, or national origin. The Grantee shall strictly adhere to the equal employment opportunity requirements of the FCC, as expressed in Section 76.13 (2)(8) and 76.311 of Chapter 1 Title 47 of the Code of Federal Regulations. The Grantee shall comply at all times with all other applicable Federal, State, City, and County laws, and all executive and administrative orders relating to non-discrimination in employment. The Grantee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex, religion or national origin. Such action shall include, but not be limited to the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Grantee shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. The Grantee shall in all solicitations or advertisements for employees placed by or on behalf of the Grantee, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, religion or national origin. The Grantee will incorporate the foregoing requirements of this paragraph in all of its contracts for work relative to construction, maintenance and operation of the CATV system, other than contracts for standard commercial supplies or raw materials, and will require all of its contractors for such work to incorporate such requirements in all subcontracts for such work.

23.10.030 Cable Monitoring. Neither the Grantee, nor any governmental bureau, department, unit, agency or entity, at the federal, state, county or local level, nor any other person or entity, shall monitor, or arrange for the monitoring of, any cable, line, signal input device, or subscriber outlet or receiver for any purpose whatsoever.

23.10.040 Right of Privacy.

- A. The Grantee shall not transmit any signal to or from any dwelling or any other building without the express authorization of the owner of said dwelling or other building; provided that where said owner has leased said dwelling or other building or a portion thereof, said express authorization shall be obtained from the lessee and not from the owner.
- B. Nothing in this section shall diminish any rights of residents of dwelling or other buildings protected by 23.10.050 of this Ordinance.

23.10.050 Rights of Residents.

- A. An owner or operator of an apartment building, condominium, nursing home, or any other rental facility may not interfere with or charge a fee for the installation of cable facilities for the use of a lessee of said property or premises, except that such owner or operator may require:
 - 1. Installation to conform to reasonable conditions necessary to protect the safety, appearance and functioning of the premises;
 - 2. The Grantee, occupant or tenant to pay for the installation, operation or removal of such facilities; or
 - 3. The Grantee, occupant or tenant to agree to indemnify the owner or operator for any damages caused by the installation, operation or removal of such facilities.
- B. It shall be unlawful for the Grantee to reimburse or offer to reimburse any person, or for any person to demand or receive reimbursement from the Grantee, for the placement upon the premises of such person of Grantee's facilities necessary to connect such person's premises to the distribution lines of Grantee to provide CATV service to said premises.
- C. A landlord may not discriminate in the amount of rent charged to tenants or occupants who receive cable services and to those who do not.
- D. The Grantee may not take actions which would diminish or interfere with the privilege of any tenant or owner occupant of any such building to use or avail himself of master or individual antenna equipment.

23.10.060 Sale of Subscriber Lists Prohibited. The Grantee shall not sell, or otherwise make available, lists of the names and addresses of its subscribers, or any list which identifies, by name, subscriber viewing habits, to any person, agency, or entity, for any purpose whatsoever.

23.11.000 RIGHTS RESERVED TO THE CITY.

- A. The right is hereby reserved to the City to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police powers; provided, that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted.

- B. Nothing in this Ordinance shall limit the right of the City to acquire the cable system of the Grantee through the exercise of eminent domain, condemnation proceedings or otherwise.
- C. Nothing contained in this ordinance shall be construed to limit or in any other way impair the powers and authorities of the City of Port Washington, except as expressly stated in this Ordinance.

23.12.000 PROTECTIONS AFFORDED THE GRANTEE.

23.12.010 Tampering With Cable Equipment. A person who willfully or maliciously damages, or causes to be damaged, any wire, cable, conduit, apparatus, or equipment of the Grantee, or who commits any act with intent to cause damage to any wire, cable, conduit, apparatus or equipment of the Grantee, or who taps, tampers with, or connects any wire or device to a wire, cable, conduit or equipment of the Grantee with intent to obtain a signal or impulse therefrom without authorization of the Grantee, shall be subject to a forfeiture of not more than \$200.00 as determined by the court and shall be liable in a civil action for three times the actual amount of damages sustained thereby, but this section shall not prevent a public utility from removing, disconnecting or otherwise rendering, inoperable any of Grantee's apparatus or equipment attached or in any way connected to such public utility's facilities, if done for reasonable cause.

23.12.020 Liability of the Grantee in Libel Action. The Grantee of its agents shall not, in an action for slander or for publishing a libel, be held liable in damages for or on account of any defamatory matter uttered, telecast, cablecast, or published over the facilities of the Grantee by any person whose utterance, telecast, cablecast, or publication is not, under the provision of any law of the United States or any regulation, ruling or order of the Federal Communications Commission, subject to censorship or control by the Grantee.

23.13.000 SUPERVISION OF THE GRANTEE.

23.13.010 Cable Review Committee.

- A. The Cable Review Committee shall consist of three aldermen and two citizen members. For elected officials appointed to the Board, the term of office shall be one year commencing at the regular meeting on the third Tuesday in April. For non-elected officials, the term of office shall be three years commencing at the regular meeting on the third Tuesday in April. Commencing with April of 1994, one citizen member shall be appointed for two years; and one citizen member appointed for three years. Thereafter, all appointments of non-elected officials shall be for three years. All appointments to the Committee shall be made by the Mayor; citizen member appointments shall be subject to confirmation by Council.
- B. The cable review committee shall perform the following functions:
 - 1. The cable review committee shall perform all tasks necessary to insure that the terms of this Ordinance and the terms of the Grantee's proposal are carried out.

2. The cable review committee shall conduct all public hearings required by this Ordinance. Notice of all such public hearings shall be published in a newspaper of general circulation at least ten (10) days prior to the public hearing. Written notice of all public hearings shall also be mailed to the Grantee at least fifteen (15) days prior to the public hearing. Following a public hearing, the cable review committee shall draft a summary of said hearing, which will include any grants of approval or recommendations of the cable review committee regarding the subject matter of the hearing for submissions to the Council.
3. Within twelve months of the date of enactment of this Ordinance, the cable review committee shall devise a system for handling and settling consumer complaints; provided that said system for handling and settling complaints shall not unreasonably burden the Grantee and shall conform to 23.07.050 B of this Ordinance.
4. The cable review committee shall examine the need for amendments to the Ordinance and shall approve and recommend to the Council any amendments which the cable review committee deems desirable. Before approving an amendment and recommending an amendment to the Council, the cable review committee shall hold a public hearing on the amendment, pursuant to number 2 above. Said amendment shall come into force only upon approval of both a majority of the cable review committee and the Council.
5. The cable review committee shall study the ways in which the government of Port Washington may utilize the municipal access channel provided by the Grantee. The cable review committee shall possess the power of overall supervision of the municipal access channel, shall establish regulations and guidelines for the utilization of this channel by governmental entities, and shall promote the use of this channel by governmental entities. To achieve these ends, the cable review committee shall recommend the manner of utilization of the fee established in 23.06.020 of this Ordinance. The manner of utilization of said fee shall be subject to the approval of the Finance Committee and the Council itself.
6. Within twelve months of the date of enactment of this Ordinance, the cable review committee shall promulgate a set of rules which will supervise the sharing of equipment by the Grantee, pursuant to 23.07.030 of this Ordinance, between users of the public access channel, municipal access channel, educational access channel and leased access channel; provided that said set of rules shall not create procedures which unduly interfere with the activities of the Grantee.
7. Within twelve months after the date of final adoption of this Ordinance, the cable review committee shall complete a set of rules for the use of the educational channel and the sharing of equipment provided by the Grantee between educational users on the Grantee's cable system. The rules shall be prepared, to the greatest extent possible, in cooperation with the Grantee, the CACPW and all educational authorities within the City.
8. If grounds for revocation of this franchise exist, the cable review committee shall explore the desirability of penalties and sanctions not

amounting to revocations, shall discuss said penalties and sanction to the Council, pursuant to 23.13.030 E of this Ordinance.

9. The cable review committee may intervene in the Grantee's application to the FCC for a certificate of compliance, pursuant to 23.05.010 A of this Ordinance, if the cable review committee deems such intervention to be advisable.
 10. The cable review committee shall oversee the construction of the Grantee's cable system to ensure technical compliance with the requirements placed on the Grantee by the Grantee's proposal and by this Ordinance, and to insure compliance within the time schedule established in 23.05.000 of this Ordinance.
 11. The cable review committee shall conduct hearings upon proposed rate increases and shall approve or disapprove of said proposed rate increases, pursuant to 23.09.000 B of this Ordinance.
- C. The cable review committee shall make recommendations to the Council regarding the hiring of any consultants, counselors, staff or other personnel functions. The actual hiring of any personnel shall be subject to the approval of the Council.
 - D. The cable review committee shall have the right to inspect books and records of the Grantee which the Grantee is required to keep, pursuant to 23.13.020 of this Ordinance.
 - E. In addition to the specific rights of inspection contained in this Ordinance, the cable review committee shall also have the right to make such inspections as it shall find necessary to insure compliance with the terms of this Ordinance and other pertinent provisions of law.
 - F. The cable review committee shall work with departments of the City government, as circumstances require.
 - G. The cable review committee shall provide general supervision over the public access channel on the Grantee's cable system. Specifically, the cable review committee shall:
 - (i) Ensure that the public access channel is made available to all residents of the City, on a non-discriminatory, first-come, first-served basis;
 - (ii) Ensure that the public access channel is free of all control over program contents, except for that control over program content need to insure conformity with the operational rules established by the Grantee pursuant to 23.07.020 C, number 2 of this Ordinance.
 - (iii) Manage all financial and budget matters pertaining to the public access channel;
 - (iv) Make suggestions to the Grantee and aid the Grantee in devising, promulgating and administering all rules and regulations, and procedures pertaining to the use and scheduling of the public access channel;

- (v) Aid the Grantee in preparing such regular or special reports concerning the public access channel that are required or desirable;
 - (vi) Promulgate rules for the non-discriminatory sharing of any cameras and other equipment, purchased by the cable review committee or access channel users pursuant to 23.13.050 C, number 4 of this Ordinance.
 - (vii) Inform the citizenry of Port Washington regarding the existence, purpose, utilization possibilities, and rules of the public access channel, in order to facilitate the widespread use of the public access channel;
 - (viii) Conduct laboratories and clinics, in order to teach program production techniques to users of the public access channel; and
 - (ix) Generally promote the use of the public access channel by a multiplicity of users.
2. The cable review committee shall examine the programming offered of the Grantee's cable system and the Grantee shall periodically meet the cable review committee to discuss said programming. Said meetings shall be held at least once every three months, and at such meetings the cable review committee may make suggestions about programming to the Grantee. These suggestions shall in no way compel any action on the part of the Grantee.
 3. The cable review committee shall receive and administer the payment made by the Grantee pursuant to 23.06.030 of this Ordinance. This payment may be utilized by the cable review committee to employ all staff and personnel who may be needed to aid the cable review committee in performing its functions, and to make all purchases of materials, equipment and services that are needed by the cable review committee to perform its functions, including, but not limited to, cameras and other equipment to be utilized by access channel users. Said payment may also be utilized by the cable review committee in any other manner consistent with the terms of this Ordinance; provided that said payment shall not be utilized to pay for or subsidize the purchase of any item, for which a fee is charged by the Grantee, on the public access channel by any user or group of users of the public access channel.
 4. The cable review committee may develop additional sources of revenue, such as grants, fund-raising activities, and the like.
 5. The cable review committee may perform all other functions consistent with the above as may be appropriate.
- H. The City Clerk shall keep on file all applications, proposals, or other documents which have been or will be submitted to the City by persons requesting the franchise to operate a CATV system in the City.

23.13.020 Book and Records of the Grantee.

- A. The Grantee shall file with the Board of Public Works accurate copies of maps and/or plats of the location and character of all existing and proposed installation over, upon, or under the streets. These maps and plats shall conform to the requirements of the Board of Public Works, shall be kept continuously up-to-date, and shall be filed at least quarterly.
- B. The Grantee shall continually keep on file with the cable review committee a current list of its shareholders, holding 5% or more of the outstanding stock, and officers, with their current addresses. These lists must also be included in the annual reports of the Grantee required in 23.06.010 A of this ordinance.
- C. All books and records of the Grantee concerning its operations within the City, including but not limited to all income tax returns and financial records of the Grantee, shall be made available for inspection and audit by the cable review committee or its designate within thirty (30) days after any request for such inspection or audit shall be made.
- D. The Grantee shall keep and main all records required by the FCC. Copies of said records and all other rules, regulations, terms and conditions established by the Grantee for the conduct of his business shall be filed with the cable review committee and at the local office of the Grantee.
- E. Copies of all petitions, applications and communications submitted by the Grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matter affecting cable operation shall also be submitted simultaneously to the City by filing the same with the cable review committee.
- F. The Grantee shall maintain records of those subscriber complaints and requests for service which it has received, the time of such reception, and the time at which it responded to said subscriber complaints and requests for service. Every two months, copies of said records shall be submitted to the cable review committee. The Grantee shall also keep a copy of said records at its local office.
- G. The Grantee shall keep and maintain a complete record of all persons or groups requesting time on its access channels. Said record shall be made available for public inspection and a copy of said record shall be submitted to the cable review committee.
- H. All records required by this 23.13.020 shall be kept on file by the Grantee for the duration of this franchise.

23.13.030 Revocation of This Franchise.

- A. In addition to all other rights and powers pertaining to the City by virtue of this Ordinance or otherwise, the City reserves the right to revoke, terminate and cancel the franchise and all rights and privileges of the Grantee hereunder in the event that:
 - 1. The Grantee violates any material provision of this Ordinance, any material provision of the Grantee's proposal, or any rule, order or

determination of the City made pursuant to this Ordinance, except where such violation, other than of number 2 below, is without fault or through excusable neglect; or

2. The Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt; or
3. A receiver or trustee has, at least one hundred and twenty (120) days beforehand been appointed to take over and conduct the business of the Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless:

- (i) Within one hundred and twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Ordinance and remedied all defaults thereunder; and

- (ii) Such receiver or trustee, within said one hundred and twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Ordinance; or

4. There has been a change in the control of the Grantee requiring the consent of the cable review committee and Council, pursuant to 23.13.040 of this Ordinance, and such consent has been denied or not given; or
5. The Grantee attempts to evade any of the material provisions of this Ordinance or practices any fraud or deceit upon the City; or
6. The Grantee fails to have service available to ninety percent (90%) of the residential structures in all areas of the City where there are at least fifty (50) residential structures per line mile within four (40 years after receipt of authorization from all required governmental agencies and acceptable pole attachment agreements have been obtained by the Grantee; provided that this period may be extended by the cable review committee if the Grantee is diligently pursuing such authorization and pole attachment agreements and the delay is not caused by any fault of the Grantee or results from strikes, natural disaster or other occurrences over which the Grantee would have no control.
7. The Grantee intentionally violates or permits the violation of 23.10.030, 23.10.040 or 23.10.060 of this Ordinance.
8. The Grantee intentionally violates or permits the violation of 23.13.020 C of this Ordinance.

- B. Such revocation, termination and cancellation shall occur only after a public hearing has been conducted by the cable review committee pursuant to 23.13.010 B, number 2 of this Ordinance. If as a result of said public hearing, the cable review committee approves and recommends revocation, termination and cancellation, the Council may put such revocation, termination and cancellation

into effect by ordinance duly adopted after thirty (30) days' notice to the Grantee. Such revocation, termination, and cancellation shall in no way affect any of the City's rights under this Ordinance or any provision of law. In the event that such revocation, termination and cancellation depends upon a finding of fact, such finding of fact, as made by the cable review committee or the Council shall be conclusive; provided, however, that under this Section, the Grantee must be provided with an opportunity to be heard before the Council as well as before the cable review committee.

- C. In the event that the City revokes, terminates and cancels this permit, pursuant to appropriate provisions of this Ordinance, the City shall have the right to purchase the Grantee's cable system at a price not to exceed its then book value (that is, original cost of property less accumulated depreciation). The book value shall be determined by the City in accordance with generally accepted appraisal and accounting principles. Under no circumstances shall any valuation be made for "good will" or any right or privilege granted by this Ordinance. After purchasing the Grantee's cable system, the City shall have the right to sell said cable system to another operator if the City so chooses.
- D. Whenever this franchise shall set forth any time for any act to be performed by or on behalf of the Grantee, such time shall be deemed of the essence and any failure of the Grantee to perform within time allotted shall always be sufficient grounds for the City to revoke this franchise.
- E. If grounds for the revocation of this franchise exist, the Council may, upon the recommendation of the cable review committee, pass a resolution imposing any penalty or sanction, not amounting to revocation, upon the Grantee; provided that said penalty or sanction not amounting to revocation, is agreed upon by both the Grantee and the cable review committee. If no agreement is reached between the Grantee and the cable review committee, the City shall decide whether or not to revoke the Grantee's franchise.

23.13.040 Restrictions Against Assignment.

- A. This franchise shall not be assigned or transferred either in whole or in part or leased, sublet or mortgaged in any manner, nor shall title thereto either legal or equitable, or any right, interest, or property therein, pass to or vest in any person either by the act of the Grantee or by operation of law without the express consent of the cable review committee and the Council. The granting, giving or waiving of any one or more of such consents shall not render unnecessary any subsequent consent or consents.
- B. The Grantee shall promptly notify the cable review committee of any actual or proposed change in, or transfer, or acquisition by, any other party of control of the Grantee. Within sixty (60) days after receiving said notice, the cable review committee shall hold a public hearing on this matter and within ninety (90) days shall make its recommendations to the Council on this matter. For the purpose of determining whether it will consent to such change, transfer, or acquisition of control, the cable review committee may inquire into the qualifications of the prospective controlling party, and the Grantee shall assist the cable review committee in any such inquiry.

- C. Every change, transfer or acquisition of control of the Grantee with respect to which the consent of the cable review committee and Council is required, pursuant to 23.13.040 A above, shall make this franchise subject to revocation unless and until the cable review committee and Council shall have consented thereto. In the event that the cable review committee or Council denies consent, and such change, transfer, or acquisition of control has been effected, the City may revoke this permit unless control of the Grantee is restored to its status prior to the change, or to a status acceptable to the cable review committee and Council.
- D. Upon the foreclosure or other judicial sale of all or a substantial part of the Grantee's cable system, or upon the termination of any lease covering all or a substantial part of said system, the Grantee shall notify the cable review committee of such fact, and such notification shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of 23.13.040 A, B, and C above shall apply.
- E. The consent or approval of the Board to any assignment, lease, transfer, sublease or mortgage of this franchise shall not constitute a waiver or release of the rights of the City in and to the streets.
- F. Nothing in this Section shall be deemed to prohibit a mortgage or pledge of the cable system equipment or any part thereof or a leasing by the Grantee from another person of said cable system equipment or part thereof for financing purposes or otherwise. Any such mortgage, pledge or lease shall be subject and subordinate to the rights of the City under this contract or applicable law.

23.14.000 INTENDED SCOPE OF THIS ORDINANCE.

23.14.010 Compliance with Local, State and Federal Law.

- A. The Grantee shall construct, operate and maintain the CATV system subject to the supervision of all of the authorities of the City who have jurisdiction in such matters and in strict compliance with all laws, ordinances, and department rules and regulations.
- B. If at any time the powers of the Common Council or any agency or official of the City are transferred by law to any other board, authority, agency or official, this board, authority, agency or official shall have the power, rights and duties previously vested under this Ordinance or by law in the Council or any agency or official of the City.
- C. Notwithstanding any other provisions of this franchise, the Grantee shall at all times comply with all laws and regulations of the state and federal government of any administrative agency thereof; provided, however, if any such state or federal law or regulation shall require the Grantee to perform any service or shall permit the Grantee to perform any service in conflict with the terms of this Ordinance or of any law or regulation of the City, then as soon as possible following knowledge thereof, the Grantee shall notify the cable review committee of conflict believed to exist between such regulation or law and the laws or regulation of the City or this Ordinance. If the cable review committee determines that a material provision of this Ordinance is affected by such

subsequent action, the cable review committee and the Council shall have the right to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this Ordinance.

23.14.020 Failure of City to Enforce This Franchise, No Waiver of the Terms Thereof. The Grantee shall not be excused from complying with any of the terms and conditions of this franchise by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

23.14.030 Captions. The captions to sections throughout this Ordinance are intended solely to facilitate reading and reference to the sections and provisions of this Ordinance. Such captions shall not affect the meaning or interpretation of this Ordinance.

23.14.040 Severability. If any provision of this Ordinance or the application of such provision to any circumstance is held invalid for any reason whatsoever, the remainder of this Ordinance or the application of the provision to other circumstances shall not be affected thereby.

23.15.000 LIMITATIONS ON THE GRANTEE'S RECOURSE.

- A. Except as expressly provided in this franchise, the Grantee herein shall have no recourse whatsoever against the City for any loss, cost, or expense or damage arising out of the provisions or requirements of this Ordinance or because of the enforcement thereof by the City.
- B. The Grantee expressly acknowledges that upon accepting this franchise, it did so replying upon its own investigation and understanding of the power and authority of the City to grant this franchise. By the acceptance of this franchise the Grantee agrees that it will not at any time set up against the City in any claim or proceeding any condition or term of this franchise as unreasonable, arbitrary or void or that the City had not power or authority to make such term or condition of this franchise in their entirety.
- C. The Grantee by acceptance of this franchise 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 or by any other third person concerning any term or condition of this franchise not expressed herein.
- D. The Grantee further acknowledges by acceptance of this franchise that it has carefully read the terms and conditions hereof and is willing to and does accept all reasonable risks of the meaning of such terms and conditions and agrees that in the event of any ambiguity thereon or in the event of any other dispute over the meaning thereof, the same shall be construed strictly against the Grantee and in favor of the City.

23.16.000 APPLICATION AND GRANTING.

- A. The application for a franchise shall be submitted to the cable review committee in writing, and shall contain the following:

1. For individuals: The applicant's name, address, occupation and principal place of business.
2. For partnerships: The applicant partnership's name, business and principal place of business; along with the names and addresses, occupations and principal place of business of each of the partners.
3. For corporations (or associations): The applicant corporation's name, principal business and principal place of business; the state of incorporation; the names and addresses of the officers and directors; the name and address of its registered agent; the number of shareholders, including the names and residence of shareholders holding, controlling, or having a beneficial interest in more than ten (10) percent of the outstanding shares, identifying their interest, along with a statement indicating any intention on change of said interests during the term of the franchise. If the corporation is a foreign corporation, a certificate of authority to transact business in this state shall accompany the application.
4. A statement as to any other Cable Communication Systems owned or operated by or in which the applicant has any interest.
5. A detailed explanation of the nature, extent and scope of operation of the proposed system (including any present legal, financial, technical or other qualifying matter which may relate to the inability of the applicant to perform the proposed system).
6. A complete, sworn financial statement of the applicant.
7. The estimated cost of installing the system.
8. The method of financing the system.
9. A listing of channels which the applicant will provide and the type of program or service to be provided on each channel.
10. A schedule of the applicant's rates for installation, monthly service charges and any other charges to subscribers, together with a proposed rental or service agreement with subscribers which details the rights and obligation of subscribers to the system. The schedule of proposed rates shall also indicate whether or not a charge will be made to a subscriber for the removal of service.
11. A list of equipment to be used in the total system together with specifications therefore. The applicant will agree that the cable review committee may require a review of adequacy of equipment by a third-party qualified consultant whose fee shall be paid by the applicant.
12. The estimated construction schedule.
13. A statement that the applicant will abide by and conform to all of the provisions of this section and amendments thereto, and that the applicant will pay at the time required any franchise fees herein prescribed.
14. Such additional detailed information which the cable review committee may require.
15. An application fee of \$500.00 shall accompany the application. Said application fee shall be non-refundable.

B. The Common Council may grant a franchise upon the following conditions:

1. The Council may grant a non-exclusive franchise to an applicant, thereafter referred to as Grantee, for a period of fifteen (15) years from the date the franchise is awarded for the right and privilege to install, operate and maintain a system in the City under the restrictions and conditions of this Ordinance. Prior to the granting of said franchise, the Council shall consider all applications at a public hearing with prior notice of the hearing having been given to all applicants. No property right in this franchise shall vest in the Grantee, and such franchise shall not be construed to create any right beyond that set forth in this Ordinance.
2. An application approval fee of \$500.00 shall be paid by the Grantee to the City within ten (10) days after the granting of the franchise to the Grantee.

23.17.000 INCORPORATION OF THE GRANTEE'S PROPOSAL. All representations made by the Grantee in the Grantee's proposal shall be required to be performed or provided by the Grantee, and any failure by the Grantee to perform any act or provide any service or equipment proposed in the Grantee's proposal shall be a violation of this Ordinance.

23.18.000 VARIANCE IN PROPOSALS. In any event of variance between the proposal of the applicant where such proposal is determined of more benefit to the City of Port Washington, and acceptance of such proposal is conclusively determined to by such termination, then the proposal of the applicant shall be binding. Nothing contained in this Ordinance shall prohibit the Common Council from making such determination as to the applicants for a franchise which they shall deem most beneficial to the City.