

CHAPTER 91C. CABLE TELEVISION

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STATEMENT OF INTENT AND PURPOSE

The City intends, by the adoption of this Franchise, to bring about the renewal of a Cable System, and the continued operation of it. Such a renewal can contribute significantly to the communications needs and desires of the residents and citizens of the City and the public generally. Further, City may achieve better utilization and improvement of public services and enhanced economic development with the renewal and operation of a Cable System.

FINDINGS

In the review of the request for renewal by Grantee and negotiations related thereto, and as a result of a public hearing, the City Council makes the following findings:

1. The Franchise granted to Grantee by the City complies with the existing applicable Minnesota Statutes, federal laws and regulations; and
2. The Franchise granted to Grantee is nonexclusive.

SECTION 1 SHORT TITLE AND DEFINITIONS

1. Short Title. This Franchise shall be known and cited as the Cable Television Franchise Ordinance.
2. Definitions. For purposes of this Franchise, the following terms, phrases, words and their derivations shall have the meaning given herein. Words used in the present tense include the future, in the plural number include the singular number, and words in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in this section. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.
 - (a) “Access Channels” means any channel or portion of a Channel utilized for public, educational or governmental programming.
 - (b) “Affiliate” shall mean any Person controlling, controlled by or under common control of Grantee.
 - (c) “Applicable Laws” means any and all local, state or federal law, statute, charter, ordinance, regulation, code, franchise, permit, judgment or decree.

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(d) “Basic Cable Service” means any service tier which includes the lawful retransmission of local television broadcast signals. Basic Cable Service shall be the definition set forth in 47 U.S.C. § 522(3).

(e) “Cable Act” means the Cable Communications Act of 1984 as amended, 47 U.S.C. §521 et. seq.

(f) “Cable Service” or “Service” means:

(1) The one-way transmission to Subscribers of (i) Video Programming, or (ii) Other Programming Service, and

(2) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service.

Cable Service as defined herein shall be the definition set forth in 47 U.S.C. § 522(6).

(g) “Cable System” or “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 a community, but such term does not include:

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

(2) a facility that serves Subscribers without using any public right-of-way;

(3) a facility of common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) 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;

(4) an open video system that complies with 47 U.S.C. § 573; or

(5) any facilities of any electric utility used solely for operating its electric utility system.

Cable System as defined herein shall be the definition set forth in 47 U.S.C.

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§ 522(7).

- (h) “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 the FCC. Channel as defined herein shall be the definition set forth in 47 U.S.C. § 522(4). Grantee represents that as of the Effective Date Grantee offers an all-digital Cable System and does not allocate six (6) MHz per Channel.
- (i) “City” means the City of Rochester, a municipal corporation, in the State of Minnesota.
- (j) “City Code” means the Municipal Code of Rochester, Minnesota.
- (k) “City Council” means the City Council of Rochester, Minnesota.
- (l) “Class IV Cable Communications Channel” means a signaling path provided by a Cable System to transmit signals of any type from a Subscriber terminal to another point in the System.
- (m) “Converter” means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber.
- (n) “Day” unless otherwise specified shall mean a calendar Day.
- (o) “Drop” means the cable that connects the ground block on the Subscriber’s residence to the nearest terminal on the distribution cable of the System.
- (p) “Effective Date” shall mean February 1, 2016.
- (q) “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- (r) “Franchise” shall mean the right granted by this Ordinance and the regulatory and contractual relationship established thereby.
- (s) “Franchise Area” means the entire geographic area within the City as it is now constituted or may in the future be constituted.
- (t) “Franchise Fee” shall be the definition set forth in 47 U.S.C. §542(g).
- (u) “GAAP” means generally accepted accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging

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Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”).

(v) “Grantee” is CC VIII Operating, LLC, a Delaware limited liability company, its lawful successors, transferees or assignees.

(w) “Gross Revenues” means any and all revenues derived by the Grantee from the operation of the Cable System to provide Cable Services in the City. Gross Revenues shall not include any tax, fee or assessment of general applicability. A Franchise Fee is not such a tax, fee or assessment. Gross Revenues shall not include: PEG Fees; tower rent; bad debt written off by Grantee in the normal course of its business, provided, however, that bad debt recoveries shall be included in Gross Revenue upon collection; or Subscriber deposits. The City acknowledges and accepts that Grantee shall maintain its books and records in accordance with GAAP.

Where Grantee bundles, integrates, ties, or combines Cable Service with other services in a bundled package for which Subscribers pay a single fee, Gross Revenues for such bundled, integrated, or tied combination of services shall be determined based on a pro rata allocation among the services offered unless such allocation methodology is directly in conflict with GAAP, in which case Grantee shall allocate bundled revenues in accordance with GAAP. Grantee shall not use bundled package offerings as a means of evading the payment of Franchise Fees or PEG Fees.

(x) “Installation” means the connection of the System from distribution cable to the point of connection, including Standard Installations and custom Installations.

(y) “Minnesota Cable Communications Act” means the provisions of Minnesota law governing the requirements for a cable television franchise as set forth in Minn. Stat. § 238, et. seq., as amended.

(z) “Normal Business Hours” means those hours during which most similar businesses in City are open to serve customers. In all cases, “Normal Business Hours” must include some evening hours, at least one (1) night per week and/or some weekend hours. Normal Business Hours as defined herein shall be the definition set forth in 47 C.F.R. §76.309(d).

(aa) “Normal Operating Conditions” means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather

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conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System. Normal Operating Conditions as defined herein shall be the definition set forth in 47 C.F.R. §76.309(d).

(bb) “Other Programming Service” means information that a cable operator makes available to all Subscribers generally. Other Programming Services as defined herein shall be the definition set forth in 47 U.S.C. § 522(14).

(cc) “PEG” means public, educational and governmental.

(dd) “Person” means any person, firm, partnership, limited liability entity or partnership, association, corporation, company, or other legal entity.

(ee) “Service Interruption” means the loss of picture or sound on one (1) or more Channels. Service Interruption as defined herein shall be the definition set forth in 47 C.F.R. §76.309(d).

(ff) “Standard Installation” means any residential Installation which can be completed using a Drop of one hundred twenty-five (125) feet.

(gg) “State” means the State of Minnesota.

(hh) “Street” means any public way, highway, street, avenue, boulevard, alley, or other public thoroughfare dedicated or commonly used for utility purposes, including general or utility easements in which the City has the right and authority to authorize, regulate or permit the location of facilities other than those of the City. “Street” shall not include any real or personal City property that is not specifically described in the previous sentence and shall not include City buildings, fixtures, and other structures or improvements, regardless of whether they are situated in the public right-of-way.

(ii) “Subscriber” means a member of the general public who receives broadcast programming distributed by a cable television system and does not further distribute it. Subscriber as defined herein shall be the definition set forth in 47 C.F.R. § 76.5 (ee).

(jj) “Video Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station. Video Programming as defined herein shall be the definition set forth in 47 U.S.C. § 522(20).

(kk) “Wireline MVPD” means a multichannel video programming distributor that utilizes the Streets to install cable or fiber and is engaged in the business of making available for purchase, by Subscribers, multiple channels of Video Programming in the City.

SECTION 2 GRANT OF AUTHORITY AND GENERAL PROVISIONS

1. Franchise Required. The City shall, to the extent permitted by Applicable Law, require a franchise for any Person to offer Cable Service in the City.
2. Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein.
3. Grant of Nonexclusive Authority. This grant is non-exclusive and, subject to the provisions of Minnesota Statutes, Section 238.08, Subdivision 1(b), the City reserves the right to grant a similar use of said Streets to any other qualified Person at any time during the period of this Franchise, provided, however, that any additional cable franchise granted shall comply with Minnesota Statutes, Section 238.08 and any other applicable state and federal level playing field requirements.
 - (a) The City specifically reserves the right to grant, at any time, such additional franchises for a Cable System as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Grantee other than as described herein.
 - (b) If any other Wireline MVPD enters into any agreement with the City to provide multichannel video programming or its equivalent to residents in the City, the City, upon written request of the Grantee, shall permit the Grantee to construct and/or operate its Cable System and provide multichannel video programming or its equivalent to Subscribers in the City under the substantially similar material terms and conditions, as determined in City’s reasonable discretion, as applicable to the new Wireline MVPD. Within ninety (90) Days after the Grantee submits a written request to the City, the Grantee and the City shall enter into an agreement or other appropriate authorization (if necessary) containing substantially similar material terms and conditions, as determined in City’s reasonable discretion, as are applicable to the new Wireline MVPD.
 - (c) The City shall comply with Minn. Stat. Chapter 238 and all Applicable laws related to the City’s provision of Cable Services over a Cable System.

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- (d) The City hereby authorizes Grantee to occupy or use the Streets subject to: 1) the provisions of this Franchise to provide Cable Services within the City; and 2) all lawful and nondiscriminatory provisions of the City Code, as may be amended periodically. Nothing in this Franchise shall be construed to prohibit the Grantee from providing services other than Cable Services as permitted by Applicable Law. The City hereby reserves all of its rights to regulate such other services to the extent not prohibited by Applicable Law and no provision herein shall be construed to limit or give up any regulatory right of the City. The Cable System constructed and maintained by Grantee or its agents shall not interfere with other uses of Streets.
- (e) This Franchise is a contract and the terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of the Cable System in City. In the event of a conflict between the City Code and this Franchise, the express provisions of this Franchise shall govern.
- (f) Notwithstanding anything in Section 2.3(b) herein to the contrary, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendments to the City Code, ordinances or any regulation of City, except in the lawful exercise of City's police power. Grantee reserves all rights it may have to challenge any modifications to the City Code whether arising in contract or at law. The City reserves all of its rights and defenses to such challenges whether arising in contract or at law.
- (g) Nothing in this Franchise shall (A) abrogate the right of the City to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances promulgated by the City, or (C) be construed as a waiver or release of the rights of the City in and to the Streets.
- (h) This Franchise complies with the Minnesota franchise standards set forth in Minnesota Statutes, Section 238.084.
4. Franchise Term. The term of this Franchise shall be for a period of five (5) years from the date of acceptance by Grantee, unless renewed, revoked or terminated sooner as herein provided ("Term"). Nothing herein shall serve to waive Grantee's right to renewal of the Franchise under Applicable Law.
5. Previous Franchises. Upon acceptance of this Franchise by Grantee as required in Section 13.2 herein, this Franchise shall supersede and replace any previous Franchise and Regulatory Ordinance granting a franchise to Grantee to own,

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operate and maintain a Cable System within the City. Franchise Ordinance No. _____ is hereby repealed.

6. Rules of Grantee. The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligation under this Franchise and to assure uninterrupted service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with provisions hereto, the City Code or Applicable Law.
7. Territorial Area Involved and Line Extension. This Franchise is granted for the Franchise Area. The Grantee shall make Cable Service distributed over the Cable System available to every residence within the Franchise Area where there is a minimum density of at least thirty (30) residences per linear strand mile of cable as measured from Grantee's closest trunk line or distribution cable that is actively delivering Cable Service as of the date of such request for service. If such residence is located within one hundred twenty-five (125) feet of Grantee's feeder cable, the Cable Service will be provided at Grantee's published rate for Standard Installations. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Franchise Area where another operator is providing Cable Service. Cable Service offered to Subscribers pursuant to this Franchise shall be conditioned upon Grantee having legal access to any such Subscriber's dwelling unit or other units wherein such Cable Service is provided. Nothing herein shall be construed to limit the Grantee's ability to offer or provide bulk rate discounts or promotions.
8. Written Notice. All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of Grantee or City's Administrator of this Franchise or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to City:	City of Rochester 201 4 th Street SE, Room 266 Rochester, MN 55904 ATTN: City Administrator
If to Grantee:	CC VIII Operating, LLC c/o Charter Communications ATTN: Vice President of Legal Operations 12405 Powerscourt Drive St. Louis, MO 63131

Such addresses may be changed by either party upon notice to the other party given as provided in this section.

SECTION 3 OPERATION IN STREETS AND RIGHTS-OF-WAY

1. Use of Streets. Grantee may, subject to the terms of this Franchise, erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the Streets within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System to provide Cable Services within the City. Without limiting the foregoing, Grantee expressly agrees that it will construct, operate and maintain its Cable System in compliance with, and subject to, the requirements of the City Code, including by way of example and not limitation, those requirements governing the placement of Grantee's Cable System; and with other applicable City Codes, and will obtain and maintain all permits and bonds required by the City Code in addition to those required in this Franchise. Grantee shall not perform any work in the Streets, including the opening or disturbance of any Street, or private or public property within City, unless Grantee has secured the necessary permits from City or other governmental authority as required in the City Code or Applicable Law.
2. Non-Interference. Grantee shall exert its best efforts to construct and maintain a Cable System so as not to interfere with other use of Streets. Grantee shall, where commercially reasonable in the case of above ground lines, make use of existing poles and other facilities available to Grantee. When residents receiving underground service or who will be receiving underground service will be affected by proposed construction or alteration, Grantee shall provide such notice as set forth in the permit or in City Code of the same to such affected residents.
3. Consistency with Designated Use. Notwithstanding the above grant to use Streets, no Street shall be used by Grantee if the City, in its sole opinion, determines that such use is inconsistent with the terms, conditions or provisions by which such Street was created or dedicated, or presently used under Applicable Laws.
4. Work on Private Property. All work perform on private property shall comply with Applicable Law.

SECTION 4 CONSTRUCTION STANDARDS

1. Grantee's Facilities and Equipment-Undergrounding. In those areas of the City where transmission or distribution facilities of all the utilities providing telephone and electric power service are underground, the Grantee likewise shall construct, operate and maintain its transmission and distribution facilities therein underground in accordance with the requirements of the City Code.
 - (a) Grantee shall be granted access to any easements granted to a utility, municipal utility or utility district within the Franchise Area.
 - (b) In those areas of the City where Grantee's cables are located on above-ground transmission or distribution facilities of the utility providing telephone or electric power service, and in the event that the facilities of both such utilities subsequently are placed underground, then the Grantee likewise shall construct, operate and maintain its transmission and distribution facilities underground.
 - (c) Grantee's equipment, such as pedestals, amplifiers and power supplies shall be placed as permitted under the requirements of the City Code. Certain of Grantee's equipment, such as pedestals, amplifiers and power supplies, which normally are placed above ground, may continue to remain in above-ground closures to the extent permitted by the City Code if existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe.
2. Annexation. Upon the annexation of any additional land area by the City, the annexed area shall become part of the Franchise Area. Upon the annexation of any additional land area by the City, the annexed area shall be subject to all the terms of this Franchise upon sixty (60) Days of written notification by the City to Grantee. Such notice shall include a list of addresses if available to the City. In the event another cable operator is already serving the annexed area, Grantee shall have the option but not the obligation to extend its Cable System to the newly annexed area. A cable operator whose Cable System passes homes in an annexed area shall not extend its Cable System beyond those homes which it passes at the time the annexation occurs unless it otherwise obtains a franchise from the City.
3. Conditions on Street Use.
 - (a) Nothing in this Franchise shall be construed to prevent City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Street; constructing, laying

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down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

(b) All System transmission and distribution structures, lines and equipment erected by the Grantee within City shall be located consistent with nondiscriminatory City Code provisions.

(c) Relocation for the City. The Grantee shall, upon receipt of reasonable advance written notice, to be not less than ten (10) Days, protect, support, temporarily disconnect, relocate, or remove any property of Grantee when lawfully required by the City pursuant to its police powers. Grantee shall be responsible for any costs associated with these obligations to the same extent other users of the City Streets are responsible for the costs related to the relocation of their facilities.

(d) Relocation for a Third Party. The Grantee shall, on the request of any Person holding a lawful permit issued by the City, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as necessary any property of the Grantee, provided that the expense of such is paid by any such Person benefiting from the relocation and the Grantee is give reasonable advance written notice to prepare for such changes. The Grantee may require such payment in advance. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation and no less than one hundred twenty (120) Days for a permanent relocation.

(e) If state or federal law requires the City to provide reimbursement of funds to Grantee for mandatory relocation, the City shall comply with all Applicable Laws.

(f) Grantee shall at all times maintain strand maps on file with the City and comply with the mapping requirements of Chapter 25 of the City Code.

(g) Upon written request, the City shall also have the additional right to review, subject to the confidentiality protections provided in Section 8.4 herein, Grantee's entire system maps at a mutually agreed upon location within the City.

(h) Tree Trimming. Grantee shall have the authority to trim trees, in accordance with the City Code.

4. Safety Requirement. The Grantee shall install and maintain its System wires, cables, fixtures and other equipment in accordance with the applicable requirements of the National Electric Safety Code and all Applicable Laws.

5. Multiple Dwelling Unit (“MDU”) Installations. Grantee shall comply with Applicable Law in installing and maintaining equipment and wiring serving residents of MDUs.

SECTION 5 DESIGN PROVISIONS

1. System Design.
 - (a) Grantee and City hereby acknowledge that the System currently utilizes 750 MHz equipment which is capable of delivering at least eighty (80) Channels of programming.
 - (b) Grantee shall comply with federal law regarding notice to City and Subscribers prior to any Channel additions, deletions, or realignments.
2. Notice of Planned System-wide Service Interruptions. The Grantee shall notify the City prior to any planned Service Interruptions for maintenance, construction upgrades or other purposes that are planned to last longer than twenty-four (24) hours. Such Service Interruption, to the extent reasonable, shall occur during periods of minimum use of the System.
3. Technical Standards. The technical standards used in the operation of the Cable System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference.
4. Special Testing. City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. The City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing. Before ordering such tests, Grantee shall be afforded thirty (30) Days to correct problems or complaints upon which tests were ordered. The City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, City wishes to commence special tests and the thirty (30) Days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted by a qualified engineer mutually selected by City and Grantee based on a mutually agreed upon scope of work. If the unresolved complaint is

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found to have been caused by Grantee's failure to comply with FCC technical specifications or the National Electric Safety Code, the Grantee shall reimburse the City for the documented out of pocket costs of such testing up to a maximum of maximum of Ten Thousand and No/100 Dollars (\$10,000.00). Nothing in this Section 5.4 shall waive the City's right to enforce Grantee's compliance with the requirements of the City Code.

5. FCC Reports. The results of tests required to be filed by Grantee with the FCC shall also be copied to City within ten (10) Days of the conduct of the date of the test.
6. EAS/Emergency Use by City.
 - (a) At all times during the term of this Franchise, the Grantee shall provide and maintain an Emergency Alert System (EAS) consistent with Applicable Law and regulation including 47 C.F.R., Part 11 and the Minnesota Emergency Alert System Statewide Plan.
 - (b) City shall have authority to test the EAS, consistent with Applicable Law, no more frequently than once per month and during a time between 12:00 a.m. and 5:00 a.m. and if the EAS fails to perform Grantee shall immediately make all repairs, at Grantee's sole cost, and shall retest the EAS to demonstrate compliance. City shall provide notice to the Grantee at least ten (10) Days prior to any such testing.
7. Parental Control Lock. Grantee shall provide for sale or lease to Subscribers, upon request, a parental control locking device or digital code that permits inhibiting the video and audio portions of any Channels offered by Grantee.

SECTION 6 SERVICES PROVISIONS

1. Rate Regulation. The City reserves the right to regulate rates for Basic Cable Service and any other services offered over the Cable System, to the extent permitted Applicable Laws.
 - (a) In exercising its jurisdiction to regulate any such rates, City will adhere to regulations adopted by the FCC at 47 C.F.R. § 76.900 et seq. as amended from time to time.
 - (b) A list of Grantee's current Subscriber rates and charges shall be maintained on file with City and shall be available for public inspection. Grantee shall give City

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and Subscribers written notice of any change in a rate or charge no less than thirty (30) Days prior to the date of the change.

2. Leased Channel Service. Grantee shall offer leased channel service on reasonable terms and conditions and in accordance with Applicable Laws.
3. Service to Public Buildings.
 - (a) The Grantee shall provide Basic Cable Service to a single Drop, with one (1) Converter (if necessary) to one (1) outlet, free of charge, at each elementary and secondary school building and public library building that currently receives complimentary Cable Service as of the Effective Date of this Franchise listed in Exhibit A-1 attached hereto, on the school's or library's request on a voluntary basis for as long as Grantee participates in the industry supported Cable in the Classroom program. Grantee shall provide sixty (60) Days advance written notice to the City, schools and library prior to discontinuing the provision of complimentary service under this Section 6.3.
 - (b) As of the Effective Date, Grantee shall continue to provide, free of charge, Basic Cable Service, excluding Converters, to one (1) Drop, to all of the sites listed on Exhibit A-2 attached hereto. In the event Grantee implements charges for Basic Cable Service in Apple Valley and Duluth, Minnesota, only then shall Grantee, following ninety (90) Days advance written notice to City, initiate charges to the City for Basic Cable Service.
4. Sales Procedures. Grantee shall comply with Minnesota Statutes, Section 325D.43-48 prohibiting deceptive sales procedures when marketing its Cable Services within City. Grantee shall have the right to market its Cable Services door-to-door during reasonable hours consistent with local ordinances and regulation.
5. Grantee Identification. Grantee shall provide all customer service technicians and all other Grantee employees, subcontractors and agents entering private property with appropriate picture identification so that Grantee employees may be easily identified by the property owners and Subscribers.
6. Customer Service Provisions.
 - (a) Customer Service Standards. The Grantee shall comply with the standards and requirements for customer service set forth in Exhibit B throughout the term of this Franchise.

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- (b) **Subscriber Contracts.** Grantee shall, written upon request, provide the City with any standard form residential Subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall file with the City a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. The length and terms of any standard form Subscriber contract(s) shall be available for public inspection during Normal Business Hours. A list of Grantee's current Subscriber rates and charges for Cable Service, specifically including Basic Cable Service, shall be maintained on file with City and shall be available for public inspection. For purposes of this section, the availability of this information on Grantee's web site shall constitute compliance.
- (c) **Refund Policy.** In the event a Subscriber establishes or terminates service and receives less than a full month's service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which service was rendered to the number of days in the billing. If a Subscriber's Cable Service is interrupted or discontinued, without cause, for twenty-four (24) or more consecutive hours, the Grantee shall, upon request by the Subscriber, credit such Subscriber pro rata for such interruption. For this purpose, every month will be assumed to have thirty (30) Days.
- (d) **Late Fees.** Grantee shall comply with all Applicable Laws with respect to any assessment, charge, cost, fee or sum, however characterized, that the Grantee imposes upon a Subscriber for late payment of a bill. The City reserves the right to enforce Grantee's compliance with all Applicable Laws to the maximum extent legally permissible.
7. **Disputes.** All Subscribers and members of the general public may direct complaints, regarding Grantee's Service or performance to the City Administrator of the City or the City Administrator's designee, which may be a board or commission of the City.
8. **Subscriber Privacy.** To the extent required by Minnesota Statutes, Section 238.084, Subdivision 1(s) Grantee shall comply with the following:
- (a) No signals including signals of a Class IV Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. The request for permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such

permission. The permission shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

(b) No information or data obtained by monitoring transmission of a signal from a Subscriber terminal, including but not limited to lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee or its agents for Grantee's business use, and also to the Subscriber subject of that information, unless Grantee has received specific written permission from the Subscriber to make such data available.

(c) Written permission from the Subscriber shall not be required for the conducting of system wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in subparagraph (b) of this section.

SECTION 7 PUBLIC ACCESS PROVISIONS

1. Public, Educational and Government Access.

(a) City or its designee is hereby designated to operate, administer, promote, and manage the PEG programming to the Cable System established pursuant to this Section 7.

(b) Grantee shall continue to dedicate five (5) Channels for PEG access use. Use of the PEG Channels shall be determined in City's sole discretion and Grantee shall have no responsibility for the content, operations or use of the PEG Channels other than as specified herein.

(c) City may not request additional Channel capacity beyond the five (5) Channels for PEG use except in accordance with Applicable Laws.

(d) The Grantee and the City shall cooperate to ensure that the quality of the PEG Channels meets FCC technical standards including those applicable to the carriage of PEG Channels; provided however, that the Grantee is not responsible for the production quality of PEG programming.

(e) In accordance with Section 611 (d) of the Cable Act, the City shall prescribe (1) rules and procedures under which the Grantee is permitted to use the five (5) PEG Channels for the provision of other services if such channel capacity is not

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being used for the purposes designated, and (2) rules and procedures under which such permitted use shall cease.

(f) Grantee shall continue to provide, free of charge, the existing fiber paths in place as of the Effective Date from the City's Government Center located at 201 Fourth Street S.E. ("City Government Center") and from Rochester Community and Technical College to Grantee's head end facility to facilitate PEG origination/return capacity in the City. If Grantee commences charging for the transport of PEG programming in Apple Valley and Duluth, Minnesota, Grantee shall provide ninety (90) Days prior written notice to City and shall meet with City in good faith to work toward mutual agreement regarding the terms and conditions of any on-going PEG transport.

(g) City may at any time elect to originate the public Access Channel from the City Government Center and will be responsible for any equipment on City's side of the demarcation point (the demarcation point to be mutually determined by the parties) required to transmit the public Access Channel to Grantee's headend; Grantee represents that the existing fiber path from the City Government Center to Grantee's headend will accommodate the transmission of the public Access Channel free of charge. In the event the Grantee is required to relocate the connection point from Rochester Community and Technical College ("Relocation"), Grantee shall provide a written estimate to the City of the cost of such Relocation and, if approved in writing by the City, Grantee shall complete the Relocation at the expense of the City. The City may use the proceeds of the PEG Fee to pay for the Relocation. The City shall also have the option to construct such connection point and avoid any required payment to Grantee.

2. Digital and HD PEG Carriage Requirements.

(a) Grantee shall provide, free of charge, the PEG Access Channels in a standard digital ("SD") format on the Basic Cable Service tier or the lowest tier of service offered by Grantee. For so long as applicable under Minnesota Statutes, Section 238.084, Subdivision 1(bb), the VHF spectrum must be used for at least one (1) of the PEG Channels required in this Section 7.2. Nothing herein precludes the Grantee from charging for any equipment needed for Basic Cable Service.

(b) On or after January 1, 2017 the City may provide a written request to Grantee that one (1) SD PEG Channel be converted to a high definition ("HD") Channel. Grantee shall have ninety (90) Days from the date of receipt of the City's request to implement the HD PEG Access Channel. The City shall send notice of such request on or before September 30, 2016 to trigger the activation of the HD Channel effective January 1, 2017.

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(c) The HD PEG Access Channel provided under this section will replace one (1) PEG Access Channel described in Section 7.2(b) of this Franchise, and will not be deemed as a requirement to carry an additional PEG Access Channel. The City shall only be responsible for the production costs associated with the provision of an HD Channel, any and all costs associated with any modification of the PEG Access Channels or signals, after the PEG Access Channels/signals leave the City's currently designated playback facility shall be provided free of charge by Grantee. However, the Grantee shall have the right to offset from the PEG Fee its reasonable actual costs for capital equipment which Grantee is required to purchase to facilitate the distribution of the PEG Access Channels upstream to Grantee's headend.

(d) The City acknowledges that receipt of an HD format Channel may require Subscribers to buy or lease special equipment, or pay additional HD charges applicable to all HD services provided by Grantee. A Subscriber to the Basic Cable Service tier only who has Grantee's HD capable set-top box will be able to receive the HD PEG Access Channel on that outlet without any additional cost.

(e) At such time as the Grantee provides ninety percent (90%) or more of its programming on the Cable System in an HD format, the City and Grantee shall establish mutually acceptable terms and conditions for providing one (1) additional PEG Access Channel in only HD format and as such the City will no longer provide that PEG Access Channel in a standard definition (SD) format. The City shall only be responsible for the production costs associated with the provisions of an HD Channel, any and all costs associated with any modification of the PEG Access Channels or signals, after the PEG Access Channels/signals leave the City's currently designated playback facility shall be provided free of charge by Grantee. However, the Grantee shall have the right to offset from the PEG Fee its reasonable actual costs for capital equipment which Grantee is required to purchase to facilitate the distribution of the PEG Access Channels upstream to Grantee's headend.

3. Access Channel Locations.

(a) Grantee shall make reasonable efforts to coordinate the cablecasting of PEG programming on the Cable System on the same Channel designations as such programming is currently cablecast (Channels 180, 181, 187, 188, and 189); and to locate the PEG Access Channels in the Channel neighborhood within reasonable proximity to a CSPAN channel offered by Grantee in the City in Grantee's reasonable discretion. In no event shall any PEG Access Channel

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reallocations be made prior to sixty (60) Days written notice to the City by Grantee, except for circumstances beyond Grantee's reasonable control.

(b) Grantee represents and agrees that the PEG Access Channels shall be encrypted in compliance with FCC's encryption order *In the Matter of Basic Tier Encryption MB Docket No. 11-169, Report and Order adopted October 10, 2012*.

(c) Grantee shall provide City and all Subscribers with at least sixty (60) Days prior written notice of any relocation of any public or educational Access Channel to a different Channel number. In the event any PEG Access Channel(s) is relocated, Grantee shall, in advance of the relocation, inform Subscribers of the new Channel location through bill messages and/or bill inserts, and shall list the new location on the on-air program guide. The parties acknowledge that Grantee contracts with a third party or parties to provide on-screen and on-line program listings. It shall be the responsibility of the City, or its designee, to provide such detailed program information to the third-party entity or entities that produce such listings for Grantee in accordance with each such entity's normal format and scheduling requirements and at the City's cost.

4. PEG Technical Quality.

(a) The placement of PEG Access Channels on the System shall not subject the PEG Access Channels to more interference or ingress than the primary signals of local broadcast stations that are delivered using similar transmission technology in City.

(b) The Grantee will provide all SD PEG Access Channels to Subscribers at reasonably equivalent visual and audio quality to that in which the Grantee delivers the SD CSPAN channel, or its future equivalent. The Grantee will provide all HD PEG Access Channels, if any, to Subscribers at reasonably equivalent visual and audio quality to that in which the Grantee delivers the HD CSPAN channel, or its future equivalent.

(c) There shall be no significant deterioration in a PEG Access Channel's signal caused by Grantee from the point of origination upstream to the point of reception downstream on the Cable System; provided, however, this subsection shall not apply to the conversion of PEG Access Channel signals to a different technical format, such as when City delivers a PEG signal in HD and Grantee converts such signal to SD for cablecasting, unless Grantee has agreed to carry the PEG Access Channel(s) in HD pursuant to Section 7.2 herein.

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(d) Upon request, throughout the term of the Franchise, Grantee shall provide updated contact information for a local technical representative with local knowledge of the City's PEG operations, who shall be available to the City for consultation on technical matters as the need may arise. This technical representative shall be accessed through a direct telephone number available to the City (as opposed to a general public number). The Grantee shall not impose any fees or charges to the City for this technical consultation. If such consultation is insufficient to diagnose the matter in question, within twenty-four (24) hours of a written request from City to the Grantee identifying a technical problem with a PEG Access Channel signal and requesting assistance, Grantee will provide, free of charge to City, diagnostic services to determine whether or not a problem with a PEG signal is the result of matters for which Grantee is responsible) and if so, Grantee will take prompt corrective action, free of charge to City, subject to the limitations on Grantee's responsibilities outlined in Section 7.1 herein. If the problem persists and there is a reasonable dispute about the cause, then the parties shall meet with engineering representation from Grantee and the City in order to mutually determine the course of action to remedy the problem. Nothing herein shall be construed to obligate Grantee to correct problems or take any other action caused by City's signal, City's network or internal wiring, City's equipment, PEG access program content or other issues within City's reasonable control.

(e) Grantee shall comply with Applicable Law regarding the carriage of PEG Access Channels.

5. Promotion of PEG Access Channels. To the extent permitted by Grantee's billing process and solely for the purpose of promoting the PEG Access Channels, Grantee shall allow the City to place bill stuffers in Grantee's Subscriber statements at a cost to the City not to exceed Grantee's cost, no more frequently than once per year upon the written request of the City and at such times that the placement of such materials would not materially and adversely affect Grantee's cost for the production and mailing of such statements.
6. Access Rules. City shall implement rules for use of the government and educational Access Channels. The access rules and any amendments thereto shall be maintained on file with City and made available for public inspection during Normal Business Hours.
7. PEG Fee.
 - (a) Commencing within ninety (90) Days after the Effective Date of this Franchise through the end of the Term, Grantee shall collect on behalf of the City and remit to the City a per Subscriber per month fee of thirty seven cents (\$0.37)

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solely to fund PEG access expenditures as permitted by Applicable Law (hereinafter "PEG Fee"). Upon written request, City will provide Grantee with documentation evidencing the expenditures made with the PEG Fee pursuant to Applicable Law, including but not limited to the Minnesota Government Data Practices Act, Minn. Stat. §13.01 et. seq.

(b) Pursuant to Section 7.7(a) of this Franchise, Grantee has agreed to collect and remit to the City a per Subscriber per month PEG Fee. Solely for the purpose of calculating the PEG Fee, in the case of multiple dwelling units ("MDU") receiving Cable Service on a bulk basis, "Subscriber" shall be determined on an equivalent basic unit ("EBU") basis. EBU shall be calculated as follows: MDU revenue received from bulk billed units divided by the retail residential rate (billed on non-bulk per subscriber basis) to other customers for the applicable Cable Services.

(c) The City may, at any time, reduce the PEG Fee upon ninety (90) Days written notice to Grantee.

(d) Grantee shall pay the PEG Fee to the City quarterly, at the same time as the payment of Franchise Fees under Section 8.1 of this Franchise.

(e) Any PEG Fee amounts owing pursuant to this Franchise which remain unpaid more than forty-five (45) Days after the date the payment is due shall be past due and subject to a late fee of not more than three-quarter percent (.75 %) per month or the maximum amount permitted by law.

SECTION 8 OPERATION AND ADMINISTRATION PROVISIONS

1. Franchise Fee/Audit.

(a) For as long as this Franchise remains in place, Grantee shall pay to City a Franchise Fee in an amount equal to five percent (5%) of its annual Gross Revenues.

(b) The payment of Franchise Fees shall be made on a quarterly basis and shall be due forty-five (45) Days after the close of each calendar quarter.

(c) Any Franchise Fees owing pursuant to this Franchise which remain unpaid more than forty-five (45) Days after the dates specified herein shall be past due and subject to a late fee of not more than three quarter percent (.75 %) per month or the maximum amount permitted by law.

(d) Each Franchise Fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the

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Franchise Fees paid during that period in a form and substance substantially equivalent to Exhibit C attached hereto. Nothing in Exhibit C will modify the Gross Revenues definition of this Franchise.

(e) No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further additional sums payable as a Franchise Fee under this Franchise or for the performance of any other obligation of the Grantee.

2. Not Franchise Fees. Taxes.

(a) Grantee acknowledges and agrees that the Franchise Fees payable by Grantee to City pursuant to this section shall take precedence over all other material provisions of the Franchise and shall not be deemed to be in the nature of a tax. The Franchise Fees payable by Grantee to City pursuant to this section shall be defined consistent with 47 U.S.C. § 542 (g).

(b) Upon thirty (30) Days prior written notice, City shall have the right to conduct an independent review/audit of Grantee's records solely for the purpose of assessing Grantee's compliance with the Franchise Fee obligations herein.

3. Access to Records. Subject to the privacy provisions of the Cable Act, throughout the term of this Franchise, the Grantee agrees that the City, upon reasonable prior written notice of thirty (30) Days to the Grantee, shall have the right to review such of the Grantee's books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor and enforce Grantee's compliance with the provisions of this Franchise ("Records"). Such notice shall specifically reference those sections of the Franchise that are under review so that the Grantee may organize the necessary Records for easy access by the City. Grantee shall make available for review such Records at Grantee's sole cost and expense, free of charge to the City. Records shall be retained by the Grantee for a period of six (6) years, pursuant to Minnesota Statutes, Section 541.05. The Grantee shall not deny the City access to Records on the basis that the Records are under the control of any parent corporation, Affiliate or a third party. The City may request in writing copies of any such Records and the Grantee shall provide such copies within thirty (30) Days of the receipt of such request subject to the provisions of this section regarding confidential information. Grantee shall provide all Records requested by the City or City's agent in the following manner: 1) at a conference room in City Hall; or 2) at Grantee's office located in the City or no further than five (5) miles

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from the City limits; or 3) via mail or electronic communication acceptable to the City and Grantee.

4. Confidential Information.

(a) Subject to Applicable Law, Grantee may choose to provide any confidential or proprietary Records that it is obligated to make available to the City pursuant to this Franchise, by allowing the City, or its designated representative(s), to view the Records at a conference room in City Hall or at Grantee's office located in the City, without City obtaining its own copies of such Records. Grantee may also choose to provide any confidential or proprietary Records pursuant to a mutually acceptable non-disclosure agreement with a City designated agent. The intent of the parties is to work cooperatively to insure that those Records reasonably necessary for City's monitoring and enforcement of Franchise obligations are provided to City. To the extent that Grantee does provide Records directly to the City, City agrees to keep said Records confidential and proprietary to the fullest extent permitted by Applicable Law. Grantee shall be responsible for clearly and conspicuously identifying the Records confidential or proprietary. Grantee acknowledges that the Minnesota Data Practices Act ("MDPA") places limitations on the ability of the City to protect certain information unless such information meets the statutory requirements set forth in the MDPA.

(b) If the City believes it must release any such confidential or proprietary Records in the course of enforcing this Franchise, or for any other reason including compliance with the MDPA, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. The City agrees that, to the extent permitted by the MDPA and Applicable Law, it shall deny access to any of Grantee's Records marked confidential, as set forth above, to any Person and that it shall furnish only that portion of the Grantee's Records required under the MDPA and Applicable Law.

5. Reports to be Filed with City.

(a) All reports and Records required under this Franchise shall be furnished at the sole expense of Grantee.

(b) Grantee shall at all times maintain the following records and information relating specifically to the Cable System serving the City as identified by the FCC Community Unit Identifier ("CUID") as opposed to a regional Cable System or other operating unit of Grantee and shall provide such information to City upon no less than thirty (30) Days advance written request:

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- (1) A written or computer-stored record of all truck rolls undertaken by the Grantee for the preceding two (2) years.
 - (2) a complaint record for Cable Service which shall contain a semi-annual (January 1 through June 30 and July 1 through December 31) breakdown indicating the total number of escalated complaints received for the preceding reporting period, and shall indicate the classifications of all other complaints in general categories such as construction, billing, customer relations/service and miscellaneous. Escalated complaints shall mean those complaints that are received by the City, or received in writing by Grantee's area management.
 - (3) At the City's written request, Grantee shall provide the City with information which shall describe in detail Grantee's compliance with Exhibit B hereto.
 - (4) Grantee shall provide City with an annual statement, within ninety (90) Days of the close of each calendar year end reflecting the total amounts of Gross Revenues and all payments and computations of the Franchise Fee for the previous calendar year.
 - (5) Grantee shall submit a written end of the year report to the City utilizing the format attached hereto as Exhibit D.
- (c) Upon request of the City and only to the extent mutually upon by Grantee in no event later than thirty (30) Days from the date of receipt of such request, Grantee shall, upon mutually acceptable terms and conditions, prepare and furnish to the City such additional reports with respect to its operation, affairs, transactions or property, as may be reasonably necessary to ensure compliance with the terms of this Franchise. Neither City nor Grantee shall unreasonably demand or withhold information requested pursuant with the terms of this Franchise. The City agrees to request access to only those books and records, in exercising its rights under this section, which it deems reasonably necessary for the enforcement and administration of this Franchise.

SECTION 9 GENERAL FINANCIAL AND INSURANCE PROVISIONS

1. Letter of Credit.

- (a) Upon the Effective Date, Grantee shall deliver to City a cash deposit or an irrevocable and unconditional letter of credit, in form and substance acceptable to City, from a national or state bank approved by City, in the amount of Forty

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Thousand and No/100 Dollars (\$40,000.00). Interest on the deposit shall accrue to the Grantee. Upon request of the City, Grantee shall provide a copy of the letter of credit. City may, in its sole discretion, reduce the amount of the letter of credit.

(b) Nothing herein shall be deemed a waiver of the normal permit and bonding requirements made of all contractors working within the City's rights-of-way.

(c) The letter of credit shall provide that funds will be paid to City, upon written demand of City, and in an amount as outlined in the section in payment for penalties charged pursuant to this section, in payment for any monies owed by Grantee to City pursuant to its obligations under this Franchise, or in payment for any damage incurred by City as a result of any acts or omissions by Grantee pursuant to this Franchise.

(d) In addition to recovery of any monies owed by Grantee to City or damages to City as a result of any acts or omissions by Grantee pursuant to the Franchise, City in compliance with this section may charge to and collect from the letter of credit the following liquidated damages:

(1) For failure to provide data, documents, reports or information or to cooperate with City during an application process or system review or as otherwise provided herein, the liquidated damages shall be Two Hundred Fifty and No/100 Dollars (\$250.00) per Day for each Day, or part thereof, such failure occurs or continues up to a maximum of Ten Thousand and No/100 Dollars (\$10,000.00).

(2) For failure to comply with construction, operation or maintenance standards, the liquidated damages shall be Three Hundred Fifty and No/100 Dollars (\$350.00) per Day for each Day, or part thereof, such failure occurs or continues up to a maximum of Ten Thousand and No/100 Dollars (\$10,000.00).

(3) For failure to meet the PEG access requirements set forth in Section 7, of this Franchise, the liquidated damages shall be Two Hundred and No/100 Dollars (\$200.00) per Day for each Day, or part thereof, such failure occurs or continues up to a maximum of Ten Thousand and No/100 Dollars (\$10,000.00).

(4) For failure to comply with any of the provisions of this Franchise, or other City ordinance related to Franchise operations for which liquidated damages are not otherwise specifically provided pursuant to this subparagraph (c), the liquidated damages shall be Two Hundred Fifty and

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No/100 Dollars (\$250.00) per Day for each Day, or part thereof, such failure occurs or continues up to a maximum of Ten Thousand and No/100 Dollars (\$10,000.00).

(e) Each violation of any provision of this Franchise shall be considered a separate violation for which a separate penalty can be imposed.

(f) Whenever City finds that Grantee has violated one (1) or more terms, conditions or provisions of this Franchise, or for any other violation contemplated in subparagraph (c), above, a written notice shall be given to Grantee informing it of such violation. At any time after thirty (30) Days (or such longer reasonable time which, in the sole determination of City, is necessary to cure the alleged violation) following local receipt of notice, provided Grantee remains in violation of one (1) or more terms, conditions or provisions of this Franchise, in the sole opinion of City, City may draw from the letter of credit all liquidated damages and other monies due City from the date of the local receipt of notice.

(g) Upon receipt of the violation notice from the City, the Grantee may within thirty (30) Days of such receipt notify City in writing that there is a dispute as to whether a violation or failure has in fact occurred. Such written notice by Grantee to City shall specify with particularity the matters disputed by Grantee. Such notice by Grantee shall toll the timeframes herein and the accrual of all liquidated damages from the security fund until the City issues a decision following the required hearing in Section 9.1(g)(1) herein. If Grantee does not dispute the alleged violation set forth in the violation notice, Grantee shall have thirty (30) Days from the receipt of the violation notice to cure the alleged default before the City may impose liquidated damages as set forth Section 9.1(d) herein.

(1) City shall hear Grantee's dispute within sixty (60) Days and render a final decision within sixty (60) Days thereafter.

(2) Upon the determination of City that no violation has taken place, City shall refund to Grantee, without interest, all monies drawn from the letter of credit by reason of the alleged violation.

(h) If said letter of credit or any subsequent letter of credit delivered pursuant thereto expires during the term of this Franchise, it shall be renewed or replaced during the term of this Franchise. The renewed or replaced letter of credit shall be of the same form and with a bank authorized herein and for the full amount stated in subparagraph (a) of this section.

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(i) If City draws upon the letter of credit or any subsequent letter of credit delivered pursuant hereto, in whole or in part, Grantee shall replace or replenish to its full amount up the maximum provided by this Section 9.3(h) the same within ten (10) Days and shall deliver to City a like replacement letter of credit or certification of replenishment for the full amount stated in Section 9.1(a) as a substitution of the previous letter of credit. This shall be a continuing obligation for any draws upon the letter of credit up to an aggregate total of Seventy-Five Thousand and No/100 Dollars (\$75,000.00) over the Franchise term.

(j) The failure to replace or replenish any letter of credit as required by Section 9.3 (h) may also, at the option of the City, be deemed a default by Grantee under this Franchise. The drawing on the letter of credit by City, and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of Grantee which are in default, shall not be a waiver or release of such default.

(k) The collection by City of any liquidated damages or monies from the letter of credit shall not affect any other right or remedy available to City, nor shall any act, or failure to act, by City pursuant to the letter of credit, be deemed a waiver of any right of City pursuant to this Franchise or otherwise.

2. Procedures for Revocation, Termination or Cancellation.

(a) City shall provide Grantee with written notice of a cause for revocation, termination, or cancellation and the intent to revoke, terminate or cancel and shall allow Grantee thirty (30) Days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise. In the notice required therein, City shall provide Grantee with the basis of the revocation, termination or cancellation.

(b) Grantee shall be provided the right to a public hearing affording due process before the City Council prior to the Effective Date of revocation, termination, or cancellation, which public hearing shall follow the thirty (30) Day notice provided in subparagraph (a) above. City shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.

(c) Only after the public hearing and upon written notice of the determination by City to revoke, terminate or cancel the Franchise may Grantee appeal said decision with an appropriate state or federal court or agency.

(d) During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the

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Franchise would endanger the health, safety and welfare of any Person or the public.

3. Indemnification of City.

(a) Grantee shall indemnify, defend and hold the City, and their officers, boards, commissions, agents and employees (collectively the "Indemnified Parties") harmless from and against any and all lawsuits, claims, causes of action, actions, liability, demands, damages, judgments, settlements, disability, losses, expenses (including attorneys' fees and disbursements of counsel) and costs of any nature that any of the Indemnified Parties may at any time, suffer, sustain or incur arising out of, based upon or in any way connected with the grant of this Franchise, the operation construction, maintenance, or repair of Grantee's System, the breach by Grantee of its obligations under this Franchise and/or the activities of Grantee, its subcontractor, employees and agents hereunder. Grantee shall be solely responsible for and shall indemnify, defend and hold the Indemnified Parties harmless from and against any and all matters relative to payment of Grantee's employees, including compliance with Social Security and withholdings.

(b) The indemnification obligations of Grantee set forth in this Franchise are not limited in any way by the amount or type of damages or compensation payable by or for Grantee under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Franchise, or the terms, applicability or limitations of any insurance held by Grantee.

(c) City does not, and shall not, waive any rights against Grantee which it may have by reason of the indemnification provided for in this Franchise, because of the acceptance by City, or the deposit with City by Grantee, of any of the insurance policies described in this Franchise.

(d) The indemnification of City by Grantee provided for in this Franchise shall apply to all damages and claims for damages of any kind suffered by reason of any of the Grantee's operations referred to in this Franchise, regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

(e) Grantee shall not be required to indemnify City for claims arising from intentional acts or omissions or negligence on the part of City or its officials, boards, commissions, agents, or employees or for any claims or damages arising in any way from the PEG Access Channels.

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(f) In order for City to assert its rights to be indemnified, defended, and held harmless, City must, with respect to each claim:

(1) Promptly notify Grantee within ten (10) business days in writing of any claim or legal proceeding which gives rise to such right;

(2) Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and

(3) Cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to subparagraph (2) above.

4. Insurance.

(a) As a part of the indemnification provided in Section 9.3, but without limiting the foregoing, Grantee shall file with its acceptance of this Franchise, and at all times thereafter maintain in full force and effect at its sole expense, a certificate of insurance evidencing an occurrence-based comprehensive general liability insurance policy, including contractual liability coverage, in protection of City in its capacity as such, its officers, elected officials, boards, commissions, agents and employees. The policy or policies shall name as additional insured City and in their capacity as such, the City's officials, boards, commissions, agents, or employees. The policies of insurance shall be in the sum of not less than Three Million and No/100 Dollars (\$3,000,000.00) for personal injury and property damage or One Million and No/100 Dollars (\$1,000,000.00) together with a minimum of Two Million and No/100 Dollars (\$2,000,000.00) excess liability coverage.

(b) The policy or policies of insurance shall be maintained by Grantee in full force and effect during the entire term of the Franchise and shall be issued by company licensed to do business in the State of Minnesota with a rating by A.M. Best & Co. of not less than "A-" upon the Effective Date of this Franchise or at the time a sale or transfer of ownership is approved by City. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of Grantee or for other reasons, except after thirty (30) Days advance written or electronic notice have been provided to City by the insurer.

(c) Grantee shall obtain and maintain Workers' Compensation Insurance for all of Grantee's employees, and in case any work is sublet, Grantee shall require any subcontractor similarly to provide Workers' Compensation Insurance for all of their employees, all in compliance with state laws, and to fully indemnify the City from and against any and all worker's compensation claims arising out of occurrences on the work. Grantee hereby indemnifies City for any and all costs, expenses (including attorneys' fees and disbursements of counsel), damages and liabilities incurred by City as a result of any failure of either Grantee or any subcontractor to take out and maintain such insurance. Grantee shall provide the City with a certificate of insurance indicating Workers' Compensation coverage on the Effective Date.

SECTION 10. SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE

1. Abandonment of Service. Grantee may not abandon the System or any portion thereof without having first given three (3) months written notice to City. Grantee may not abandon the System or any portion thereof without compensating City for damages resulting from the abandonment. Grantee shall comply with the City Code (specifically Section 25.29 of the City Code) and Applicable Law and in the event of Grantee's abandonment of all or a portion of the Cable System. City shall have the right to require Grantee to conform to the state right-of-way rules and Minnesota Rules, Chapter 7819.3300 with respect any abandoned facilities in the City provided, however, that the Grantee reserves its rights under Applicable Law to assert that Grantee is providing services other than Cable Services pursuant to Minnesota Statutes, Section 237.01 et seq., and therefore not subject to this section.
2. Removal After Termination or Forfeiture.
 - (a) In the event of termination or forfeiture of the Franchise, City shall have the right to require Grantee to remove all or any portion of the System from all Streets and public property within City associated solely with the provision of Cable Service; provided, however, that if Grantee is providing services other than Cable Services or pursuant to Minnesota Statutes, Section 237.01 et seq., City shall not require the removal of the System. Nothing in this section shall be deemed either to grant or to preclude the provision of services other than Cable Services.
 - (b) If Grantee has failed to commence removal of System, or such part thereof as was designated by City, within one hundred twenty (120) Days after written notice of City's demand for removal is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of City's demand for removal is given, City shall have the right to declare all right, title, and interest to

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the System to be in City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it pursuant to the provisions of 47 U.S.C. § 547 (1989).

3. Sale or Transfer of Franchise.

(a) No sale, transfer, assignment or “fundamental corporate change”, as defined in Minnesota Statutes, Section 238.083, of this Franchise shall take place until the parties to the sale, transfer, or fundamental corporate change files a written request with City for its approval, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and assets to secure an indebtedness.

(b) City shall have thirty (30) Days from the time of the request to reply in writing and indicate approval of the request or its determination that a public hearing is necessary due to potential adverse effect on Grantee’s Subscribers resulting from the sale or transfer. Such approval or determination shall be expressed in writing within thirty (30) Days of receipt of said request, or the request shall be deemed approved as a matter of law.

(c) If a public hearing is deemed necessary pursuant to subparagraph (b) above, such hearing shall be commenced within thirty (30) Days of such determination and notice of any such hearing shall be given in accordance with local law or fourteen (14) Days prior to the hearing by publishing notice thereof once in a newspaper of general circulation in City. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by City.

(d) Within thirty (30) Days after the closing of the public hearing, City shall approve or deny in writing the sale or transfer request. City shall set forth in writing with particularity its reason(s) for denying approval. City shall not unreasonably withhold its approval.

(e) The parties to the sale or transfer of the Franchise only, without the inclusion of the System in which substantial construction has commenced, shall establish that the sale or transfer of only the Franchise will be in the public interest.

(f) Any sale or transfer of stock in Grantee so as to create a new controlling interest in the System shall be subject to the requirements of this Section 10.3. The term “controlling interest” as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

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(g) In no event shall a transfer or assignment of ownership or control be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations there under, and assuming all other rights and obligations of the transferor to the City.

(h) In the event of any proposed sale or assignment pursuant to subparagraph (a) of this section City shall have the right of first refusal of any bona fide offer to purchase the System. Bona fide offer, as used in this section, means an offer received by the Grantee which it intends to accept subject to City's rights under this section. This written offer must be conveyed to City along with the Grantee's written acceptance of the offer contingent upon the rights of City provided for in this section. City shall be deemed to have waived its rights under this section in the following circumstances:

(1) If it does not indicate to Grantee in writing, within sixty (60) Days of notice of a proposed sale or assignment, its intention to exercise its right of purchase; or

(2) It approves the assignment or sale of the Franchise as provided within this section.

4. Extended Operation and Continuity of Services. Upon termination or forfeiture of this Franchise, Grantee shall remove its cable, wires, and appliances from the Streets, alleys, or other public places within the Franchise Area if the City so requests. Failure by the Grantee to remove its cable, wires, and appliances as referenced herein shall be subject to this Franchise.
5. Receivership and Foreclosure. City and Grantee shall comply with Applicable Law in the event of an appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of Grantee, whether in a receivership, reorganization, bankruptcy, foreclosure or other action or proceeding. Nothing in this Section 10.5 constitutes a waiver by the City of any rights it may have pursuant to Applicable Law and this Franchise.

SECTION 11 PROTECTION OF INDIVIDUAL RIGHTS

1. Discriminatory Practices Prohibited. Grantee shall comply at all times with all Applicable Laws relating to nondiscrimination. Access to Cable Service shall not be denied to any group of potential Subscribers because of the income of the residents of the local area. Nothing contained herein shall prohibit the Grantee from offering bulk discounts, promotional discounts, package discounts, or other

such pricing strategies as part of its business practice to the extent permitted under Applicable Law.

SECTION 12 MISCELLANEOUS PROVISIONS

1. Franchise Renewal. Any renewal of this Franchise shall be in accordance with Applicable Laws.
2. Work of Contractors and Subcontractors. All provisions of this Franchise shall apply to any subcontractor or others performing any work or services on Grantee's behalf pursuant to the provisions of this Franchise. Grantee shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with the Franchise and Applicable Laws and shall indemnify the City pursuant to Section 9.3
3. Amendment of Franchise. Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made at any time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws.
4. Compliance with Federal, State and Local Laws.
 - (a) If any federal or state law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City shall conform to state laws and rules regarding cable communications not later than one (1) year after they become effective, unless otherwise stated, and shall conform to federal laws and regulations regarding cable as they become effective.
 - (b) If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified

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is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and City.

5. Nonenforcement by City. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of City to enforce prompt compliance. Any waiver by City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.
6. Administration of Franchise. The City Administrator shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise. The City Administrator shall have authority to issue notice of franchise violations to Grantee under Section 9 of this Franchise; provided, however, the Council shall have sole authority to conduct any required hearings regarding such alleged violations and issue any decisions regarding enforcement the Franchise.
7. Periodic Evaluation. The field of cable communications is rapidly changing and may see many regulatory, technical, financial, marketing and legal changes during the term of this Franchise. Therefore, in order to provide for a maximum degree of flexibility in this Franchise, and to help achieve a continued advanced and modern System, the following evaluation provisions shall apply:
 - (a) The City may require evaluation sessions at any time during the term of this Franchise, upon thirty (30) Days written notice to Grantee, provided, however, there shall not be more than two (2) review sessions during the term of this Franchise.
 - (b) Topics which may be discussed at any evaluation session may include, but are not limited to, new technologies, System performance, programming offered, PEG Access Channels, facilities and support, municipal uses of cable, customer complaints, judicial rulings, FCC rulings, line extension policies and any other topics City and Grantee deem relevant.
 - (c) As a result of a periodic review or evaluation session, City and Grantee may, upon mutual agreement, develop such changes and modifications to the terms and conditions of the Franchise and which are both economically and technically feasible.
8. Rights Cumulative. All rights and remedies given to City by this Franchise shall be in addition to and cumulative with any and all other rights and remedies, existing

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or implied, now or hereafter available to City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by City and the exercise of one (1) or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

9. Grantee Acknowledgment of Validity of Franchise. Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and has the right to enter into, execute and perform its obligations under this Franchise and that Grantee believes that said terms and conditions are not unreasonable and are valid and binding obligations. Subject to the foregoing, nothing in this Franchise shall be construed as a waiver of any rights of the City or Grantee.
10. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.
11. Force Majeure. In the event Grantee's performance of any of the terms, conditions, obligations or requirements of this Franchise is prevented or impaired due to any cause beyond its reasonable control, such inability to perform shall be deemed to be excused for the period of such inability and no penalties or sanctions shall be imposed as a result thereof, provided Grantee has notified City in writing within a reasonable time of its discovery of the occurrence of such an event then the Grantee shall have a commercially reasonable time under the circumstances to perform such obligation under this Franchise, or to procure a substitute for such obligation to the reasonable satisfaction of the City. Such causes beyond Grantee's reasonable control shall include, but shall not be limited to, acts of God, civil emergencies and labor unrest or strikes, untimely delivery of equipment, inability of Grantee to obtain access to an individual's property and inability of Grantee to secure all necessary permits to utilize utility poles and conduit so long as Grantee utilizes due diligence to timely obtain said permits.
12. Governing Law. This Franchise shall be deemed to be executed in the State of Minnesota, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with the laws of the State of Minnesota.

SECTION 13: PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

1. Publication; Effective Date. This Franchise shall be published in accordance with Applicable Law. The Effective Date of this Franchise shall be the date specified in Section 1.2 (“Definitions”).
2. Acceptance.
 - (a) Grantee shall accept this Franchise within thirty (30) Days of its enactment by the City Council, unless the time for acceptance is extended by City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes. In the event acceptance does not take place, this Franchise and any and all rights previously granted to Grantee shall be null and void.
 - (b) Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein.
 - (c) Grantee shall accept this Franchise in the following manner:
 - (1) This Franchise will be properly executed and acknowledged by Grantee and delivered to City.
 - (2) With its acceptance, Grantee shall also deliver any grant payments, letter of credit and insurance certificates required herein that have not previously been delivered.

(4235, 3/14/16)