

CABLE TELEVISION FRANCHISE ORDINANCE
City of Wayzata, Minnesota

May 26, 2022

TABLE OF CONTENTS

SECTION 1 SHORT TITLE AND DEFINITIONS.....	1
SECTION 2 GRANT OF AUTHORITY.....	6
SECTION 3 CONSTRUCTION STANDARDS.....	9
SECTION 4 DESIGN PROVISION.....	12
SECTION 5 SERVICE PROVISIONS.....	13
SECTION 6 PUBLIC ACCESS PROVISIONS.....	17
SECTION 7 OPERATION AND ADMINISTRATION PROVISIONS.....	18
SECTION 8 GENERAL FINANCIAL AND INSURANCE PROVISIONS.....	21
SECTION 9 SALE, ABANDONMENT, TRANSFER and REVOCATION.....	26
SECTION 10 MISCELLANEOUS PROVISIONS.....	31
SECTION 11 PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS.....	33
EXHIBIT A DESCRIPTION OF SYSTEM.....	A-1
EXHIBIT B PEG ACCESS FACILITIES AND EQUIPMENT.....	B-1
EXHIBIT C SERVICE TO PUBLIC FACILITIES.....	C-1
EXHIBIT D FRANCHISE FEE PAYMENT WORKSHEET.....	D-1
EXHIBIT E SUMMARY OF ORDINANCE FOR PUBLICATION.....	E-1

ORDINANCE NO. 813

AN ORDINANCE GRANTING A FRANCHISE TO COMCAST OF ARKANSAS/LOUISIANA/MINNESOTA/MISSISSIPPI/TENNESSEE, LLC TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE CITY OF WAYZATA, MINNESOTA; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS.

The City Council of the City of Wayzata ordains.

STATEMENT OF INTENT AND PURPOSES

The City of Wayzata intends, by the adoption of this Franchise, to bring about the development of a Cable System, and the continued operation of it. Such a development 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 development and operation of a Cable System.

FINDINGS

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

1. Grantee's technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;
2. Grantee's plans for constructing and operating the Cable System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;
3. The Franchise granted to Grantee by City complies with the existing applicable State statutes, federal laws and regulations; and
4. The Franchise granted to Grantee is nonexclusive.

SECTION 1 SHORT TITLE AND DEFINITIONS

1.1 Short Title. This Franchise shall be known and cited as the Cable Television Franchise Ordinance.

1.2 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, words 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) “Applicable Laws” means any local law, City Code or federal or State statute, law, regulation or other final legal authority governing any of the matters addressed in this Franchise.

(b) “Basic Cable Service” means any service tier which includes the lawful retransmission of local television broadcast signals. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 522(3).

(c) “Cable Act” means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984) (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V 1987)) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385 and the Telecommunications Act of 1996, Pub. L. No. 104-458 and as the same may, from time to time, be amended.

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

(i) The one-way transmission to Subscribers of (i) video programming, or (ii) other programming service; and

(ii) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(e) “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:

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

(ii) A facility that serves Subscribers without using any public rights-of-way;

(iii) A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541) 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;

(iv) An open video system that complies with Section 653 of the Cable Act; or

- (v) Any facilities of any electric utility used solely for operating its electric utility system.
- (f) “Channel” or “Cable 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 Federal Communications Commission.
- (g) “City” means the City of Wayzata, Minnesota.
- (h) “Converter” means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the service.
- (i) “Council” means the City Council of the City of Wayzata, Minnesota.
- (j) “Demarcation Point” shall have the meaning set forth in FCC regulations 47 C.F.R. § 76.5 (mm) as may from time to time be amended. Generally it shall mean a point agreed upon by Grantee and the City up to twelve (12) inches outside of the building wall.
- (k) “Drop” means the cable that connects the ground block on the Subscriber’s residence to the nearest Feeder Cable of the System.
- (l) “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- (m) “Feeder Cable” means coaxial cables that run along Streets within the served area and connects between the individual Taps which serve the Drops.
- (n) “Franchise” means this Franchise and the regulatory and contractual relationship established hereby.
- (o) “Franchise Fee” means any tax, fee or assessment of any kind imposed by the City or any other Governmental Authority on a Grantee or cable Subscriber, or both, solely because of their status as such. The term “Franchise Fee” does not include: (i) any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers); (ii) capital costs which are required by the Franchise to be incurred by the Grantee for PEG Access Facilities; (iii) requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.
- (p) “GAAP” means generally accepted accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”).

(q) “Governmental Authority” means any court or other federal, State, county, municipal or other governmental department, commission, board, agency or instrumentality.

(r) “Grantee” is Comcast of Arkansas/Louisiana/Minnesota/Mississippi/Tennessee, LLC, its lawful successors, transferees or assignees.

(s) “Gross Revenues” means any and all revenues derived by the Grantee from the operation of the Cable System to provide Cable Services in the Service Area. Gross Revenues shall include, by way of example but not limitation, revenues from Basic Cable Service, all Cable Service fees, premium, pay-per-view, pay television, late fees, guides, home shopping revenue, Installation and reconnection fees, revenues from program guides and electronic guides, additional outlet fees, Franchise Fees required by this Franchise upgrade and downgrade fees, advertising revenue, Converter rental fees and lockout device fees. Revenues which are not directly attributable to specific customers, such as advertising revenue and home shopping commissions, shall be allocated to systems and jurisdictions on a per subscriber basis measured in a consistent manner from period to period. “Gross Revenues shall not include any bad debt, refundable deposits, investment income, FCC fees, taxes, fees or assessments of general applicability imposed or assessed by any Governmental Authority including any PEG Fee. A Franchise Fee is not such a tax, fee or assessment. The City acknowledges and accepts that Grantee shall maintain its books and records in accordance with GAAP.

(t) “Installation” means the connection of the System from feeder cable to the point of connectivity.

(u) “Normal Business Hours” means those hours during which most similar businesses in the 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.

(v) “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 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 System.

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

(x) “Person” means any individual or any association, firm, general partnership, limited partnership, joint stock company, joint venture, trust, corporation, limited liability company or other legally recognized entity, private or public, whether for-profit or not-for-profit.

(y) “Public, Educational or Government Access Facilities” or “PEG Access Facilities” means:

(i) Channel capacity designated for public, educational or governmental use; and

(ii) Facilities and equipment for the use of such Channel capacity.

(z) “Section 621 Order” means the Third Report and Order in MB Docket No. 05-311 adopted by the FCC on August 1, 2019, as modified by any subsequent order.

(aa) “Service Area” means the entire geographic area within the City as it is now constituted or may in the future be constituted, unless otherwise specified in this Franchise.

(bb) “Service Interruption” means the loss of picture or sound on one (1) or more Cable Channels.

(cc) “Standard Installation” means the first one hundred twenty-five (125) feet of a residential Drop.

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

(ee) “Street” means any street, alley, other land or waterway, 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.

(ff) “Subscriber” means any Person who lawfully elects to subscribe to Cable Service via the System. In the case of multiple office buildings or multiple dwelling units, the “Subscriber” means the lessee, tenant or occupant.

(gg) “Tap” means a device installed in the Cable System which connects a Drop to the Feeder Cable.

(hh) “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.

1.3 Written Notice. The Grantee shall designate an agent upon whom process against it may be served on behalf of the City. All notices, reports or demands required or permitted to be given under this Franchise shall be in writing and shall be deemed to be given when delivered personally to the party designated below, or when five (5) days have elapsed after it has been deposited in the United States mail in a sealed envelope, with registered or certified mail, postage prepaid thereon, or on the next business day if sent by express mail or nationally recognized overnight air courier addressed to the party to which notice, report or demand is being given, as follows:

If to City: City Manager
600 Rice Street
Wayzata, MN 55391

If to Grantee: Comcast Regional Vice President
Comcast Twin Cities
10 River Park Plaza
St. Paul, MN 55331

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

SECTION 2 GRANT OF AUTHORITY

2.1 Franchise Required. It shall be unlawful for any Person, unless specifically required by Applicable Laws, to construct, install, operate or maintain a Cable System or to offer Cable Service in the City, unless such Person or the Person for whom such action is being taken shall have first obtained and shall currently hold a valid franchise.

2.2 Grant of Franchise. This nonexclusive Franchise is granted pursuant to the terms and conditions contained herein. The City hereby authorizes Grantee to occupy or use the City's Streets to construct and operate a Cable System subject to: 1) the provisions of this non-exclusive Franchise to provide Cable Service within the City; and 2) all applicable provisions of the City Code. Nothing in this Franchise shall be construed to prohibit Grantee from: (1) providing services other than Cable Services to the extent not prohibited by Applicable Law; or (2) challenging any exercise of the City's legislative or regulatory authority in an appropriate forum. 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 right to regulate.

2.3 Grant of Nonexclusive Authority.

(a) The Franchise granted herein shall be nonexclusive. 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. If any other Wireline MVPD enters into any agreement with the City to provide multi channel 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 multi channel video programming or its equivalent to Subscribers in the City under a substantially similar agreement as determined in City's reasonable discretion, as applicable to the new MVPD. Within one hundred eighty (180) 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 the substantially similar terms and conditions, as determined in City's reasonable discretion, as are applicable to the new Wireline MVPD.

(b) The Cable System constructed and maintained by Grantee or its agents shall not interfere with other uses of Streets. Grantee shall make use of existing poles and other facilities available to Grantee to the extent commercially reasonable. Nothing in this section authorizes the Grantee to construct poles in the City without prior City consent consistent with the City Code.

(c) Notwithstanding the above grant to use Streets, no Street shall be used by Grantee if 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 with the present use of the Street.

(d) Grantee shall have the authority to use Streets for the distribution of Grantee's System. The City may require all developers of future subdivisions to allow and accommodate the construction of the System as part of any provisions for utilities to serve such subdivisions.

(e) The Grantee specifically agrees to comply with the generally applicable and lawful provisions of the City's Right-of-Way Code and applicable regulations of the City. Subject to the police power exception below, in the event of a conflict between A) the lawful provisions of the City's Right-of-Way Code or applicable regulations of the City and B) this Franchise, the express provisions of the City's Right-of-Way Code shall govern. Subject to express federal and state preemption, 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 acknowledges that the City may modify its regulatory policies by lawful exercise of the City's police powers throughout the term of this Franchise. Grantee agrees to comply with such lawful modifications to the City Code; however, Grantee reserves any rights it may have to challenge such 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.

(f) 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.

(g) This Franchise complies with the Minnesota franchise standards set forth in Minnesota Statutes Section 238.084. The City and the Grantee shall conform to Minnesota laws promulgated subsequent to the date of this Franchise. The City and the Grantee shall conform to federal laws and regulations as they become effective.

2.4 Term. The term of this Franchise shall be for the period of ten (10) years from the date of acceptance by Grantee, unless renewed, revoked or, terminated sooner as herein provided ("Initial Term"). Upon mutual agreement by City and Grantee, the Initial Term may be extended for an additional five (5) years.

2.5 [RESERVED].

2.6 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.

2.7 Territorial Area Involved.

(a) This Franchise is granted for the Service Area.

(b) Grantee shall design, construct and maintain the Cable System to pass every dwelling unit and commercial building in the Service Area. Grantee shall deploy Cable Services throughout the Service Area no later than December 31, 2023.

(c) Upon completion of the Cable System buildout set forth in Section 2.7(b) above, Grantee shall thereafter extend plant to all areas of the City where the density reaches or exceeds seven (7) homes per on-quarter (1/4) linear strand mile of cable as measured from the nearest Tap required to deliver a signal that complies with the FCC Technical Standards, if applicable.

(d) After Service has been established by activating trunk and/or distribution cables for the Service Area, Grantee shall provide Cable Service to any requesting Subscriber within that Service Area within thirty (30) days from the date of request, provided that the Grantee is able to secure access to all rights-of-way necessary to extend Service to such Subscriber within such thirty (30) day period on reasonable terms and conditions and Grantee can provide Cable Service using a Standard Installation.

(e) If a Subscriber requires a non-Standard Installation (*e.g.* a Drop in excess of 250 feet), Grantee shall, upon request, provide a quote for construction of the non-Standard Installation and shall establish a mutually acceptable payment schedule not to exceed one (1) calendar year. For residential Installations only, Grantee shall be responsible for all costs of the Standard Installation and the Subscriber shall be responsible for one half (1/2) of the Actual Cost of any construction required beyond the cost of the Standard Installation; Grantee shall be responsible for the balance of the costs for the non-Standard Installation.

(f) Grantee shall promptly bury all Drops to Subscribers' dwellings when required by local construction standards. In the event the ground is frozen or otherwise unsuitable to permit immediate burial, Grantee shall be permitted to delay such burial until the ground becomes suitable for burial and shall complete said burial no later than June 1st of each year.

2.8 Governing Requirements and Non-waiver of Rights. City and Grantee shall comply with all lawful requirements of this Franchise and Applicable Law. 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.

SECTION 3 CONSTRUCTION STANDARDS

3.1 System Construction. The Cable System will utilize a fiber node architecture, with fiber optic cable deployed from Grantee's headend to Grantee's fiber nodes, tying into Grantee's coaxial Cable System serving Subscribers, that will provide Cable Services throughout the Service Area no later than December 31, 2023. Grantee shall not construct any Cable System facilities until Grantee has secured the necessary permits from City or other Governmental Authority. Grantee shall comply with Chapter 315 of the City Code. The City and Grantee agree that the permit application requirements set forth at: [Permits & Licensing | Wayzata, MN - Official Website](#) set forth all of the information the Grantee will be required to submit to the City to obtain a construction permit from the City. Within thirty (30) business days of the submittal of a complete application, as determined by the City, for a construction permit, the City will issue Grantee a blanket construction permit to install aerial and underground facilities within City Streets. Each blanket construction permit will cover a large geographic area of the City consisting of up to three hundred (300) homes and/or businesses. Submission of blanket construction permits shall be staggered in intervals of no greater than thirty (30) days, to allow the City adequate time for review, approval, and oversight.

3.2 Grantee's Facilities and Equipment.

(a) In those areas of the City where transmission or distribution facilities of all the public utilities providing telephone and electric power service are underground, the Grantee likewise shall construct, operate and maintain its transmission and distribution facilities therein underground.

(b) When installing its facilities underground, Grantee will install its fiber utilizing boring technology and procedures. In areas with high construction costs and/or where the deployment of conduit is not cost effective or feasible, on a case-by-case basis, subject to City approval, Grantee may be permitted to install its fiber utilizing open trench or micro-trenching technology and procedures.

(c) Grantee shall be granted access to any easements granted to a public utility, municipal utility or utility district in any areas annexed by City or new developments.

(d) In those areas of the City where Grantee's cables are located on the above-ground transmission or distribution facilities of the public utility providing telephone or electric power service, and in the event that the facilities of both such public utilities subsequently are placed underground, then the Grantee likewise shall construct, operate and maintain its transmission and distribution facilities underground in accordance with the City Code.

(e) 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; however, the City specifically reserves all of its rights to approve above-ground or underground locations for pedestals subject to Applicable Laws. Grantee shall be responsible for any costs associated with these obligations to the same extent other users of the Streets in accordance with Applicable Laws.

3.3 System Upgrades/Extensions. Subject to Section 3.1 herein, Grantee shall obtain all necessary permits from City before commencing any construction upgrade or extension of the System, including the opening or disturbance of any Street, or private or public property within City. Grantee shall strictly adhere to Applicable Law regarding the construction, operation or maintenance of the System in City and shall give due consideration at all times to the aesthetics of the property.

3.4 Construction Communications Plan. During construction of the System in the Service Area, Grantee will implement a construction communications plan and will use commercially reasonable efforts to meet the following timelines and standards, as they relate to each approved construction application permit area:

(a) At least four (4) days, but no more than ten (10) days, prior to the commencement of construction, Grantee will place doorhangers on each residential dwelling or commercial property in that area advising occupants of upcoming construction activities and providing a phone number to contact with questions or concerns.

(b) At least fourteen (14) days, but no more than thirty (30) days, prior to the commencement of construction in any area of the community, Grantee will have an internet landing page (website) where the City can direct community members.

(c) Each communication provided to an address, including the doorhangers, will include the URL to Grantee's construction website: <https://twincities.comcast.com/wayzataexpansion/>. On this website residents can find updated information regarding the construction plans in their area including;

(i) Frequently Asked Questions about what to expect during the construction process;

(ii) Information on how residents will be notified that service is available in their neighborhood and how to order services; and

(iii) Construction completion updates.

(d) Consistent with Applicable Law, the City shall have the right to inspect all construction or installation work performed pursuant to the provisions of this Franchise and to make such tests as it shall find necessary to ensure compliance with the terms of this Franchise and Applicable Law.

3.5 Repair of Streets and Property.

(a) Consistent with Applicable Law, any and all Streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly and fully restored to its previous condition by Grantee. Any disputes Grantee may have with property owners shall not serve to unreasonably delay the City's processing of permits for construction of the System.

(b) Consistent with Chapter 315 of the City Code, Grantee will use commercially reasonable efforts to restore property as outlined within the permit, subject to factors beyond Grantee's reasonable control. Consideration will be given to the amount of restoration needed with each boring and Grantee will endeavor to conduct borings in a manner which requires the least amount of restoration (e.g. when appropriate using streets and sidewalks for equipment rather than lawns, etc.). After boring under the street / curb and sidewalks, Grantee will inspect for any heaving that may have occurred from the boring process. City reserves its right to inspect Grantee's restoration work in accordance with Chapter 315 of the City Code.

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

(b) The Grantee shall furnish to and file with City Manager strand maps of the System, including the location of any underground plant and Grantee shall file with City updates of such map annually if changes have been made in the System. City shall have the right to travel to Grantee's office, which shall be located no further than the Lake Minnetonka region or the City of Chanhassen, to review as-built maps to be made available by the Grantee in accordance with Section 7.5 of this Franchise.

(c) The Grantee shall, on request of any Person holding a moving permit issued by City, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same, and the Grantee shall be given not less than ten (10) days advance notice to arrange for such temporary changes.

3.7 Tree Trimming. Grantee shall have the authority, pursuant to the City Code, to trim trees upon and hanging over Streets 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 Grantee.

3.8 Protection of facilities. Nothing contained in this section shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid damaging Grantee's facilities while performing any work connected with grading, regrading or changing the line of any Rights-of-Way or public place or the construction or reconstruction of any sewer or water system.

3.9 Use of Grantee's Facilities. The City shall, at its own expense, have the right to install and maintain upon the poles and within the underground pipes and conduits owned by Grantee, any wires and fixtures desired by the City only to the extent and under such terms and conditions as are mutually agreed upon by City and Grantee.

3.10 Construction Hours. Grantee and its contractors may perform construction activities including, but not limited to, boring, aerial construction, pulling cable, splicing and clean-up work ("Construction Activities") from 7 AM until 6 PM, except in the case of urgent necessity in the interest of public health and safety, in which case the City Manager may grant a permit for such work for a period of not to exceed three (3) days. No Construction Activities on Sundays or Holidays.

SECTION 4 DESIGN PROVISION

4.1 Minimum Channel Capacity.

(a) Grantee shall maintain and continue to provide for the term of this Franchise a Cable System that utilizes a fiber to the fiber node architecture, with fiber optic cable deployed from Grantee's headend to Grantee's fiber nodes, tying into Grantee's coaxial Cable System serving Subscribers which shall be capable of delivering a minimum of eighty (80) video program Channels.

(b) All programming decisions remain the sole discretion of Grantee subject to City's rights pursuant to 47 U.S.C. § 545.

(c) Grantee shall comply with federal law regarding notice to City and Subscribers prior to any Channel additions, deletions, or realignments.

4.2 Technical Standards. The System shall at all times meet the technical standards established by the FCC as they may be amended from time to time and shall be operated so as to minimize disruption of signal to Subscribers. The System specifications are outlined in Exhibit A for information purposes.

4.3 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 selected by City. In the event that special testing is required by City to determine the source of technical difficulties, the cost of said testing shall be

borne by the Grantee if the testing reveals the source of the technical difficulty to be within Grantee's reasonable control. If the testing reveals the difficulties to be caused by factors which are beyond Grantee's reasonable control then the cost of said test shall be borne by City.

4.4 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.

4.5 Emergency Alert Capability. At all times during the term of this Franchise, Grantee shall provide and maintain an Emergency Alert System (EAS) consistent with applicable federal law and regulations including 47 C.F.R., Part 11, and any Minnesota State Emergency Alert System requirements. The City may identify authorized emergency officials for activating the EAS consistent with the Minnesota State Emergency Statewide Plan ("EAS Plan"). The City may also develop a local plan containing methods of EAS message distribution, subject to Applicable Laws and the EAS Plan. Nothing in this section is intended to expand Grantee's obligations beyond that which is required by the EAS Plan and Applicable Law.

4.6 Parental Control Lock. Grantee shall provide the capability to inhibit the video and audio portions of any Channels offered by Grantee.

4.7 Right of Inspection. City shall have the right to inspect all construction, reconstruction or installation work performed by Grantee pursuant to all applicable provisions of the City Code.

SECTION 5 SERVICE PROVISIONS

5.1 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 not prohibited by Applicable Laws. The Grantee shall be subject to the rate regulation provisions provided for herein, and those of the FCC at 47 C.F.R., Part 76, Subpart N, as the same may be amended from time to time. The City shall follow the rules relating to cable rate regulation promulgated by the FCC at 47 C.F.R., Part 76, Subpart N, as the same may be amended from time to time.

5.2 Leased Channel Service. Grantee shall offer leased channel service on reasonable terms and conditions and in accordance with Applicable Laws.

5.3 Consumer Protection and Service Standards. Grantee shall maintain a convenient local customer service or bill payment location for receiving Subscriber payments; provided, however, this section does not require Grantee to maintain an office in the City. Grantee shall also maintain or arrange for a location where equipment can be dropped off or exchanged as is necessary or, in the alternative, establish a system for having Subscriber equipment picked up at the Subscriber residence free-of-charge. Grantee shall also comply with the following consumer protection standards for Cable Service under Normal Operating Conditions:

- (a) Cable System office hours and telephone availability.

(i) Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.

1. Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.

2. After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.

(ii) Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

(iii) Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(iv) Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.

(v) Customer service center and bill payment locations will be open at least during Normal Business Hours and will be conveniently located.

(b) Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

(i) Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system.

(ii) Excluding conditions beyond the control of Grantee, Grantee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem.

(iii) The "appointment window" alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Grantee

may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)

(iv) Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(v) If Grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(c) Communications between Grantee and Subscribers. Grantee shall comply with the provisions of 47 CFR §76.1601-1604 regarding communications with Subscribers in the City:

(i) Refunds. Refund checks will be issued promptly, but no later than either:

1. The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

2. The return of the equipment supplied by Grantee if Cable Service is terminated.

(ii) Credits. Credits for Cable Service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(d) Billing:

(i) Consistent with 47 C.F.R. § 76.1619, bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, Basic Cable Service and premium Cable Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(ii) In case of a billing dispute, Grantee must respond to a written complaint from a Subscriber within thirty (30) days.

(e) Subscriber Information. Grantee will provide written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers, and at any time upon request:

(i) Products and Services offered;

(ii) Prices and options for programming services and conditions of subscription to programming and other services;

- (iii) Installation and Service maintenance policies;
- (iv) Instructions on how to use the Cable Service;
- (v) Channel positions of programming carried on the System; and
- (vi) Billing and complaint procedures, including the address and telephone number of the City's cable office.

Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by Grantee, including the address of the responsible officer of the City. Subscribers will be notified of any changes in rates, programming services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of Grantee. In addition, Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the information required by this Section 5.3(e).

(f) Notice or Rate Programming Change. In addition to the requirement of this subparagraph (f) regarding advance notification to Subscribers of any changes in rates, programming services or Channel positions, Grantee shall give thirty (30) days written notice to both Subscribers and the City before implementing any rate or Service change consistent with applicable federal law. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of Channels). When the change involves the addition or deletion of Channels, each Channel added or deleted must be separately identified. No notice needs to be provided to the City for additional channels that do not involve a rate change. For purposes of the carriage of digital broadcast signals, Grantee need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

(g) Subscriber Contracts. Grantee shall, upon written 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 shall be maintained on file with City and shall be available for public inspection.

(h) Refund Policy. If a Subscriber's Cable Service is interrupted or discontinued, without cause, for twenty-four (24) or more consecutive hours, 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.

(i) Late Fees. Grantee shall comply with all applicable state and federal laws with respect to any assessment, charge, cost, fee or sum, however characterized, that

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.

(j) Disputes. All Subscribers and members of the general public may direct complaints, regarding Grantee's Service or performance to the chief administrative officer of the City or the chief administrative officer's designee, which may be a board or Commission of the City.

(k) Failure to Resolve Complaints. Grantee shall resolve a complaint within thirty (30) days. In addition, Grantee shall respond to written complaints from the City in a timely manner, and provide a copy of each response to the City within fifteen (15) days.

(l) Notification of Complaint Procedure. Grantee shall have printed clearly and prominently on each Subscriber bill and in the customer service agreement provided for in Section 5.3(e), the twenty-four (24) hour Grantee phone number for Subscriber complaints. Additionally, Grantee shall provide information to customers concerning the procedures to follow when they are unsatisfied with measures taken by Grantee to remedy their complaint. This information will include the phone number of the City office or Person designated to handle complaints. Additionally, Grantee shall state that complaints should be made to Grantee prior to contacting the City.

(m) Grantee Identification. Grantee shall provide all customer service technicians and all other Grantee employees entering private property with appropriate picture identification so that Grantee employees may be easily identified by the property owners and Subscribers.

SECTION 6 PUBLIC ACCESS PROVISIONS

6.1 **Public, Educational and Government Access.** City or its designee is hereby designated to operate, administer, promote, and manage public, educational, and governmental programming (hereinafter "PEG Access") to the Cable System established pursuant to this Section 6. Grantee shall have no responsibility whatsoever for PEG Access except as expressly stated in this Section 6 and Exhibit B attached hereto and hereby incorporated by reference as if fully set forth herein.

6.2 **Grantee Support for PEG Usage.** In accordance with the provisions of the Cable Act and Minnesota Statutes Section 238.084, Grantee shall provide and make available for PEG Access usage within the Service Area the following:

(a) Provision and use of the grant funds and Channels designated in Exhibit B of this Franchise for local educational and governmental programming and access use at no charge in accordance with the requirements of Exhibit B.

(b) Maintenance of the PEG Access Facilities and Channels, and support of educational and governmental programming to the extent specified in Exhibit B of this Franchise.

(c) Provision of free public building Installation and Cable Service and the provision of two-way capability as more clearly specified in Exhibit B.

(d) PEG Access Facilities shall be operated by the City.

SECTION 7 OPERATION AND ADMINISTRATION PROVISIONS

7.1 Franchise Fee.

(a) During the term of the Franchise, Grantee shall pay quarterly to the City a Franchise Fee of five percent (5%) of Gross Revenues. In the event Grantee bundles or combines Cable Services (which are subject to the Franchise Fee) with non-Cable Services (which are not subject to the Franchise Fee) so that Subscribers pay a single fee for more than one (1) class of service resulting in a discount on Cable Services, Grantee agrees that for the purpose of calculation of the Franchise Fee, it shall allocate to Cable Service revenue no less than a pro rata share of the revenue received for the bundled or combined services. The pro rata share shall be computed on the basis of the published charge for each service in the bundled or combined classes of services when purchased separately.

(b) Each Franchise Fee payment shall be paid quarterly not later than thirty (30) days following the end of a given quarter and each payment shall be accompanied by a Franchise Fee Payment Worksheet substantially in the form attached hereto as Exhibit D.

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

(d) Any Franchise Fees owing pursuant to this Franchise which remain unpaid more than thirty (30) days after the end of a given quarter shall be delinquent and shall immediately thereafter accrue interest at twelve percent (12%) per annum or two percent (2%) above prime lending rate as quoted by the Wall Street Journal, whichever is greater. Enforcement of unpaid Franchise Fees shall be handled in accordance with Section 9.6; however, Grantee shall in all cases be subject to interest on any payment more than thirty (30) days after the end of a given quarter.

(e) Upon ten (10) days prior written notice, City shall have the right to conduct an independent audit of Grantee's records. If such audit indicates a Franchise Fee underpayment of five percent (5%) or more, the Grantee shall assume all of City's out-of-pocket costs associated with the conduct of such an audit and shall remit to City all applicable Franchise Fees due and payable together with interest at twelve percent (12%) per annum or two percent (2%) above prime lending rate as quoted by the Wall Street Journal, whichever is greater.

7.2 Not Franchise Fees.

(a) Grantee acknowledges and agrees that the Franchise Fees payable by Grantee to the City pursuant to Section 7.1 hereof shall take precedence over all other payments, contributions, Services, equipment, facilities, support, resources or other activities to be provided or performed by the Grantee pursuant to this Franchise and that the Franchise Fees provided for in Section 7.1 of this Franchise shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability and other fees and charges which the Grantee shall be required to pay to the City and/or to any other Governmental Authority, all of which shall be separate and distinct obligations of Grantee.

(b) Grantee shall not apply or seek to apply or make any claim that all or any part of the Franchise Fees or other payments or contributions to be made by Grantee to City pursuant to this Franchise and shall be deducted from or credited or offset against any taxes, fees or assessments of general applicability levied or imposed by the City or any other Governmental Authority, including any such tax, fee or assessment imposed on both utilities and cable operators or their services.

(c) Grantee shall not apply or seek to apply all or any part of any taxes, fees or assessments of general applicability levied or imposed by the City or any other Governmental Authority (including any such tax, fee or assessment imposed on both utilities and cable operators or their services) as a deduction or other credit from or against any of the Franchise Fees each of which shall be deemed to be separate and distinct obligations of the Grantee

7.3 Periodic Evaluation, Review and Modification. City and Grantee acknowledge and agree that the field of cable television is rapidly changing and one which may see many regulatory, technical, financial, marketing and legal changes during the term of this Franchise. Therefore, in order to provide for the maximum degree of flexibility in this Franchise, and to help achieve a continued, advanced and modern Cable System, the following evaluation provisions will apply:

(a) Grantee shall be subject to the procedures and the subjects described in this Section 7.3.

(b) The City may require, in its sole discretion, that the Grantee participate in evaluation sessions with the City at any time and from time to time during the term of this Franchise; provided, however, there shall not be more than one (1) evaluation session during any three (3) year period.

(c) Topics which may be discussed at any evaluation session include, but are not limited to, rates, Channel capacity, the System performance, programming, PEG Access, municipal uses of the System, Subscriber complaints, judicial rulings, FCC rulings and any other topics the City or Grantee may deem relevant.

(d) During an evaluation session, Grantee shall fully cooperate with the City and shall provide without cost and in a timely manner such information and documents as the City may request to perform the evaluation.

(e) As a result of an evaluation session, the City or Grantee may determine that an amendment in the terms of this Franchise may be mutually agreed upon.

7.4 Reports.

(a) All reports and records required under this Franchise shall be furnished at the sole expense of Grantee, except as otherwise provided in this Franchise.

(b) Grantee shall provide City with an annual statement, within ninety (90) days of the close of each calendar year end, certified by an officer of the Grantee, reflecting the total amounts of Gross Revenues and all payments, and computations of the Franchise Fee for the previous calendar year.

(c) Grantee shall, upon written request of the City Manager, provide City with a quarterly customer service compliance report which shall, at a minimum, demonstrate Grantee's compliance with the terms and provisions of Section 5.3 of this Franchise.

(d) Upon request of the City and in no event later than thirty (30) days from the date of receipt of such request, Grantee shall make available to City such reports, maps and information or data with respect to Grantee's compliance with this Franchise. Neither City nor Grantee shall unreasonably demand or withhold information requested pursuant to this section.

7.5 Records Required and City's Right to Inspect

(a) 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:

(i) A full and complete set of plans, records and "as-built" drawings and/or maps which shall be updated annually showing the location of the Cable System installed or in use in the City, exclusive of Subscriber service Drops and equipment provided in Subscribers' homes.

(ii) a summary of service calls, identifying the number, general nature and disposition of such calls, in a form reasonably acceptable to the City; and

(iii) a summary of Grantee's compliance with the terms and provision of the customer service requirements set forth in Section 5.3 of this Franchise.

(b) Upon request of the City and in no event later than thirty (30) days from the date of receipt of such request, Grantee shall, free of charge, 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.

(c) 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.

7.6 Recovery of Processing Costs. To aid in the analysis and resolution of any future disputed matters relative to this Franchise, the City and Grantee may, by mutual written agreement (both as to whether to hire and whom to hire), employ the services of technical, financial and/or legal consultants, as mediators. All reasonable fees of the consultants incurred by the City and/or the Grantee in this regard shall, unless the parties otherwise agree, be borne equally by City and Grantee.

7.7 Confidentiality. 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 or a location no further than the Lake Minnetonka region, 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. 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. 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.

7.8 Administration of Franchise. The City Manager or its designee shall have continuing regulatory jurisdiction and supervision over the Cable System and the Grantee's operation under the Franchise. The City Manager shall have authority to issue notice of franchise violations to Grantee under 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.

SECTION 8 GENERAL FINANCIAL AND INSURANCE PROVISIONS

8.1 Security Fund.

(a) Upon acceptance of this Franchise, Grantee shall establish and provide to City a security fund, as security for the full and timely payment and performance by Grantee of all of its obligations under this Franchise in the amount of Ten Thousand and

No/100 Dollars (\$10,000) in the form of an irrevocable letter of credit, established in a local bank and maintained throughout the term of this Franchise. City may, in its sole discretion, reduce the amount of the letter of credit. If, at any time during the term of this Franchise, Grantee seeks consent to a transfer or assignment of its rights hereunder, City may unilaterally increase the security fund up to Twenty Thousand Dollars (\$20,000) if it so chooses.

(b) The security fund may be drawn upon by City for those purposes specified in Section 8.1(d) hereof. Grantee's recourse, in the event Grantee believes that City's actions in taking any security funds is improper, shall be through legal action after the security has been drawn upon. Actions brought by Grantee hereunder may be subject to 47 U.S.C. §555A – Limitations of Franchising Authority Liability – which is hereby incorporated by reference as if fully set forth herein.

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

(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 penalties:

(i) 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 damage shall be One Hundred Fifty and No/100 Dollars (\$150) per day for each day, or part thereof, such failure occurs or continues.

(ii) For failure to meet the Cable System construction obligations of Section 3.1 herein, the liquidated damage shall be Two Hundred Fifty and No/100 Dollars (\$250) per day for each day, or part thereof, such failure occurs or continues

(iii) For failure to comply with construction, operation or maintenance standards the liquidated damage shall be One Hundred Twenty-five and No/100 Dollars (\$125) per day for each day, or part thereof, such failure occurs or continues.

(iv) For failure to provide the services Grantee has proposed including, but not limited to, the implementation and the utilization of the access channels and the maintenance and/or replacement of the equipment and other facilities, the liquidated damage shall be One Hundred Fifty and No/100 Dollars (\$150) per day for each day, or part thereof, such failure occurs or continues.

(v) For failure to comply with any of the provisions of this Franchise, or other City ordinance related to Franchise operations for which a liquidated damage is not otherwise specifically provided pursuant to this subparagraph (d),

the liquidated damage shall be One Hundred Fifty and No/100 Dollars (\$150) per day for each day, or part thereof, such failure occurs or continues.

(e) Each violation of any provision of this Franchise shall be considered a separate violation for which a separate liquidated damage 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 (d), 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 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. Nothing herein is intended to modify the standard of review applicable to the City's determination.

(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 accrual of all liquidated damages from the security fund and the timeframe allowed for cure until the City issues a decision following the required hearing in Section 8.1(g) (i) 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 damages as set forth Section 8.1(d) herein.

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

(ii) 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.

(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 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 8.1(a) as a substitution of the previous letter of credit. This shall be a continuing obligation for any draws upon the letter of credit.

(j) The failure to replace or replenish any letter of credit 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.

8.2 Liability Insurance.

(a) Grantee shall with its acceptance of this Franchise, and at its sole expense, take out and maintain during the term of this Franchise public liability insurance with a company licensed to do business in the State of Minnesota with a rating by A.M. Best & Co. of not less than "A-" that shall protect the Grantee, the City and their officials, officers, directors, employees and agents from claims which may arise from operations under this Franchise, whether such operations be by the Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee's vehicles, products and operations. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall not be less than Three Million Dollars (\$3,000,000.00). The following endorsements shall be attached to the liability policy:

(i) The policy shall provide coverage on an "occurrence" basis.

(ii) The policy shall cover personal injury as well as bodily injury.

(iii) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.

(iv) Broad form property damage liability shall be afforded.

(v) The City shall be named as an additional insured on the policy.

(vi) An endorsement shall be provided which states that the coverage is primary insurance and that no other insurance maintained by the City will be called upon to contribute to a loss under this coverage.

(vii) Standard form of cross-liability shall be afforded.

(viii) An endorsement stating that the policy shall not be canceled without thirty (30) days' notice of such cancellation given to the City.

(b) Grantee shall submit to City documentation of the required insurance, including a certificate of insurance signed by the insurance agent and companies named, as well as all properly executed endorsements.

8.3 Indemnification.

(a) Grantee shall indemnify, defend and hold City, its officers, boards, commissions, agents and employees (collectively the “Indemnified Parties”) harmless from and against any and all lawsuits, claims, causes of action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses (including attorney’s 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 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.

(i) 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.

(ii) 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.

(iii) 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.

(iv) Grantee shall not be required to indemnify City for negligence or misconduct on the part of City or its officials, boards, commissions, agents, or employees. City shall hold Grantee harmless, subject to the limitations in Minnesota Statutes Chapter 466, for any damage resulting from the negligence or misconduct of the City or its officials, boards, commissions, agents, or employees in utilizing any PEG Access Channels, equipment, or facilities and for any such negligence or misconduct by City in connection with work performed by City and permitted by this Franchise, on or adjacent to the Cable System.

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

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

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

(iii) Fully 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 (ii) above.

8.4 Grantee's Insurance. Grantee shall not commence any Cable System reconstruction work or permit any subcontractor to commence work until all insurance required under this Franchise has been obtained. Said insurance shall be maintained in full force and effect until the expiration of this Franchise.

8.5 Workers' Compensation Insurance. 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 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 upon its acceptance of this Franchise.

SECTION 9 SALE, ABANDONMENT, TRANSFER AND REVOCATION

9.1 Franchise Non-transferable.

(a) Grantee shall not voluntarily or involuntarily, by operation of law or otherwise, sell, assign, transfer, lease, sublet or otherwise dispose of, in whole or in part, the Franchise and/or Cable System or any of the rights or privileges granted by the Franchise, without the prior written consent of the Council and then only upon such terms and conditions as may be prescribed by the Council with regard to the proposed transferee's legal, technical and financial qualifications, which consent shall not be unreasonably denied or delayed. Any attempt to sell, assign, transfer, lease, sublet or otherwise dispose of all or any part of the Franchise and/or Cable System or Grantee's rights therein without the prior written consent of the Council shall be null and void and shall be grounds for termination of the Franchise pursuant to Section 9.6 hereof and the applicable provisions of any Franchise.

(b) Without limiting the nature of the events requiring the Council's approval under this section, the following events shall be deemed to be a sale, assignment or other transfer of the Franchise and/or Cable System requiring compliance with this section: (i) the sale, assignment or other transfer of all or a majority of Grantee's assets or the assets comprising the Cable System to any Person; (ii) the merger of the Grantee or any of its parents with or into another Person (including the merger of Grantee or any parent with or into any parent or subsidiary corporation or other Person); (iii) the consolidation of the Grantee or any of its parents with any other Person; (iv) the creation of a subsidiary corporation or other entity; (v) the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in Grantee or any of its parents by one or more of its existing shareholders, partners, members or other equity owners so as to create a new Controlling Interest in Grantee; (vi) the issuance of additional capital stock or partnership, membership or other equity interest by Grantee or any of its parents so as to create a new Controlling Interest in Grantee; and (vii) the entry by the Grantee into an agreement with respect to the management or operation of the Grantee, any of Grantee's parents and/or the System or the subsequent amendment thereof. The term "Controlling Interest" as used herein is not limited to majority equity ownership of the Grantee, but also includes actual working control over the Grantee, any parent of Grantee and/or the System in whatever manner exercised.

(c) Grantee shall notify City in writing of any foreclosure or any other judicial sale of all or a substantial part of the property and assets comprising the Cable System of the Grantee or upon the termination of any lease or interest covering all or a substantial part of said property and assets. Such notification shall be considered by City as notice that a change in control or ownership of the Franchise has taken place and the provisions under this section governing the consent of City to such change in control or ownership shall apply.

(d) For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, City may inquire into the qualifications of the prospective transferee or controlling party, and Grantee shall assist City in any such inquiry. In seeking City's consent to any change of ownership or control, Grantee shall have the responsibility of insuring that the transferee completes an application in form and substance reasonably satisfactory to City, which application shall include the information required under this Franchise and Applicable Laws. The transferee shall be required to establish to the satisfaction of the City that it possesses the legal, technical and financial qualifications to operate and maintain the System and comply with all Franchise requirements for the remainder of the term of this Franchise. If, after considering the legal, financial, character and technical qualities of the transferee and determining that they are satisfactory, the City finds that such transfer is acceptable, the City shall permit such transfer and assignment of the rights and obligations of this Franchise as may be in the public interest. The consent of the City to such transfer shall not be unreasonably denied.

(e) Any financial institution having a security interest in any and all of the property and assets of Grantee as security for any loan made to Grantee or any of its affiliates for the construction and/or operation of the Cable System must notify the City

that it or its designee satisfactory to the City shall take control of and operate the Cable System, in the event of a default in the payment or performance of the debts, liabilities or obligations of Grantee or its affiliates to such financial institution. Further, said financial institution shall also submit a plan for such operation of the System within thirty (30) days of assuming such control that will insure continued service and compliance with all Franchise requirements during the term the financial institution or its designee exercises control over the System. The financial institution or its designee shall not exercise control over the System for a period exceeding one (1) year unless extended by the City in its discretion and during said period of time it shall have the right to petition the City to transfer the Franchise to another Grantee.

(f) In addition to the aforementioned requirements in this Section 9.1, the City and Grantee shall, at all times, comply with the requirements of Minnesota Statutes Section 238.083 regarding the sale or transfer of a franchise and with all other Applicable Laws.

9.2 City's Right to Purchase System.

(a) The City shall have a right of first refusal to purchase the Cable System in the event the Grantee receives a bona fide offer to purchase the Cable System from any Person. Bona fide offer as used in this section means a written offer which has been accepted by Grantee, subject to the City's rights under this Franchise. The price to be paid by the City shall be the amount provided for in the bona fide offer, including the same terms and conditions as the bona fide offer. The City shall notify Grantee of its decision to purchase within sixty (60) days of the City's receipt from Grantee of a copy of the written bona fide offer and such other relevant and pertinent information as the City shall deem appropriate.

(b) Consistent with Section 627 of the Cable Act and all other Applicable Laws, at the expiration, cancellation, revocation or termination of this Franchise, the City shall have the option to purchase, condemn or otherwise acquire and hold the Cable System.

9.3 Abandonment or Removal of Franchise Property.

(a) Grantee may not abandon the Cable System or any portion thereof without having first given three (3) months written notice to the City. Grantee may not abandon the Cable System or any portion thereof without compensating the City for damages resulting from the abandonment.

(b) In the event that the use of any property of Grantee within the Service Area or a portion thereof is discontinued for a continuous period of twelve (12) months, Grantee shall be deemed to have abandoned that property.

(c) City, upon such terms as City may impose, may give Grantee permission to abandon, without removing, any System facility or equipment laid, directly constructed, operated or maintained in, on, under or over the Service Area. Unless such permission is granted or unless otherwise provided in this Franchise, the Grantee shall

remove all abandoned facilities and equipment upon receipt of written notice from City and shall restore any affected Street consistent with Applicable Law. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation made by or on behalf of Grantee and shall leave all Streets and other public ways and places in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. City shall have the right to inspect and approve the condition of the Streets, public ways, public places, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this Franchise and any security fund provided for in this Franchise shall continue in full force and effect during the period of removal and until full compliance by Grantee with the terms and conditions of this section.

(d) Upon abandonment of any Franchise property in place, the Grantee, if required by the City, shall submit to City a bill of sale and/or other an instrument, satisfactory in form and content to the City, transferring to the City the ownership of the Franchise property abandoned.

(e) At the expiration or termination of the term for which this Franchise is granted, or upon its earlier revocation or termination, as provided for herein, in any such case without renewal, extension or transfer, the City shall have the right to require Grantee to remove, at its own expense, all above-ground portions of the Cable System from all Streets and public ways within the City within a reasonable period of time, which shall not be less than one hundred eighty (180) days.

(f) Notwithstanding anything to the contrary set forth in this Franchise, the Grantee may, with the consent of the City, abandon any underground Franchise property in place so long as it does not materially interfere with the use of the Street or public rights-of-way in which such property is located or with the use thereof by any public utility or other cable operator.

(g) Nothing herein shall require the removal of any portion of the System lawfully used to provide non-Cable Services in the City.

9.4 Extended Operation and Continuity of Services.

(a) 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 Service Area if the City so requests. Failure by the Grantee to remove its cable, wires, and appliances as referenced herein shall be subject to the requirements of Section 9.3 of this Franchise.

9.5 Receivership and Foreclosure

(a) The Franchise granted hereunder shall, at the option of City, cease and terminate one hundred twenty (120) days after 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 or other action or proceeding, unless such

receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless: (1) such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all the defaults and violations under this Franchise or provided a plan for the remedy of such defaults and violations which is satisfactory to the City; and (2) such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise.

(b) In the case of a foreclosure or other judicial sale of the Franchise property, or any material part thereof, City may give notice of termination of this Franchise upon Grantee and the successful bidder at such sale, in which the event this Franchise and all rights and privileges of the Grantee hereunder shall cease and terminate thirty (30) days after such notice has been given, unless (1) City shall have approved the transfer of the Franchise in accordance with the provisions of this Franchise; and (2) such successful bidder shall have covenanted and agreed with City to assume and be bound by all terms and conditions of this Franchise.

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

9.7 Reservation of Rights. City and Grantee reserve all rights that they may possess under Applicable Laws unless expressly waived herein.

SECTION 10 MISCELLANEOUS PROVISIONS

10.1 Franchise Renewal. Any renewal of this Franchise shall be in accordance with Applicable Laws. The term of any renewed Franchise shall be limited to a period not to exceed fifteen (15) years.

10.2 Amendment of Franchise. Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 7.3 or at any other 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 Applicable Laws. City shall act pursuant to local law pertaining to the ordinance amendment process.

10.3 Right of Individuals.

(a) Grantee shall comply at all times with all other 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.

(b) Grantee shall adhere to the applicable equal employment opportunity requirements of Applicable Laws, as now written or as amended from time to time including 47 U.S.C. § 554.

(c) Subscriber Privacy. To the extent required by Minn. Stat. § 238.084 Subd. 1(s) Grantee shall comply with the following:

(i) 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.

(ii) 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.

(iii) 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 (ii) of this section.

(iv) “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.

(d) Grantee shall at all times comply with 47 U.S.C. § 551 regarding protection of Subscriber’s personally identifiable information.

10.4 Rights Reserved to City. In addition to any rights specifically reserved to the City by this Franchise, the City reserves to itself every right and power which is required to be reserved by a provision of this Franchise.

10.5 Severability. If any provision of this Franchise is held by any Governmental Authority of competent jurisdiction, to be invalid as conflicting with any Applicable Laws now or hereafter in effect, or is held by such Governmental Authority to be modified in any way in order to conform to the requirements of any such Applicable Laws, such provision shall be considered a separate, distinct, and independent part of this Franchise, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such Applicable Laws are subsequently repealed, rescinded, amended or otherwise changed, so that the provision hereof which had been held invalid or modified is no longer in conflict with such laws, said provision shall thereupon return to full force and effect and shall thereafter be binding on City and Grantee, provided that City shall give Grantee thirty (30) days written notice of such change before requiring compliance with said provision or such longer period of time as may be reasonably required for Grantee to comply with such provision.

10.6 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. 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.

10.7 In-Kind Cable-Related Contributions.

(a) At any time after this Franchise is approved by the City Council, the Grantee may, if Grantee is permitted by Applicable Law, provide the City with a written list of “in-kind cable-related contributions” (as that term is defined by the FCC in the Section 621 Order) that the Franchise requires Grantee to provide (including but not limited to the Complimentary Service requirements in Exhibit B, paragraph 12(a-f) and any PEG Transport required by Exhibit B, paragraph 12(g)) and the marginal cost(s) associated with the provision of the in-kind cable-related contributions. Within ninety

(90) days of receiving the aforementioned list and associated marginal cost(s), the City will notify the Grantee whether, with respect to each identified in-kind cable-related contribution, the Grantee is relieved, or temporarily relieved, of its obligations or is required to comply, subject either to the Grantee taking an offset to the Franchise Fee payments payable under Section 7.1 as may be permitted by the Section 621 Order or to the Grantee and the City agreeing to a separately negotiated charge payable by the City to the Grantee.

(b) In the event the Section 621 Order is stayed or overturned in whole or in part by action of the FCC or through judicial review, the City and the Grantee will meet promptly to discuss what impact such action has on the provision of the in-kind cable-related contributions to which this section applies. It is the intent of the parties that the City shall be treated by the Grantee in a reasonably comparable manner as other Minnesota jurisdictions served by Grantee with respect to any offsets or charges imposed by Grantee for the provision of in-kind cable-related contributions. Nothing herein waives the City's right to enforce Grantee's compliance with all lawful obligations contained in this Franchise..

SECTION 11 PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

11.1 Publication; Effective Date. This Franchise shall be published in accordance with Applicable Law. The Summary of Ordinance for Publication attached hereto as Exhibit E, shall be published at least once in the official newspaper of the City, at Grantee's sole cost, to clearly inform the public of the intent of the ordinance. This Franchise shall be effective upon the date of Grantee's acceptance, in accordance with the provisions of Section 11.2.

11.2 Acceptance.

(a) Grantee shall accept this Franchise within thirty (30) 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) The City's "Notice of Intent to Consider an Application for a Franchise" ("Notice") provided, consistent with Minnesota Statutes Section 238.081, Subd. 8, that applicants would be required to reimburse the City for all necessary costs of processing a cable communications franchise. Grantee submitted a fee with its application to the City. The Notice further provided that any unused portion of the application fee would be returned, and any additional fees required to process the application and franchise, beyond the application fee, would be assessed to the successful applicant. The Grantee shall therefore submit to the City at the time of acceptance of this Franchise, a check made payable to the City of Wayzata, Minnesota for all additional fees and costs incurred

by the City. Within thirty (30) days of City Council approval, the City shall provide Grantee with a letter specifying such additional costs following approval of this Franchise by the City Council.

(d) Grantee shall accept this Franchise in the following manner:

(i) This Franchise will be properly executed and acknowledged by Grantee and delivered to City.

(ii) With its acceptance, Grantee shall also deliver any performance bond, security fund and insurance certificates required herein.

CITY OF WAYZATA, MINNESOTA

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

1st Reading: June 7, 2022

2nd Reading: June 21, 2022

Publication Date: June 30, 2022

ACCEPTED: This Franchise is accepted, and we agree to be bound by its terms and conditions.

**COMCAST OF ARKANSAS/ LOUISIANA/
MINNESOTA/MISSISSIPPI/TENNESSEE, LLC**

Dated: _____, 2022

By: _____

Its: _____

SWORN TO BEFORE ME this
_____ day of _____, 2022

Notary Public

EXHIBIT A
DESCRIPTION OF SYSTEM
For Information only

1. The Cable System shall be designed, constructed, routinely inspected, and maintained to guarantee that the Cable System meets or exceeds the requirements of the most current editions of the National Electrical Code (NFRA 70) and the National Electrical Safety Code (ANSI C2). In all matters requiring interpretation of either of these codes, the City's interpretation shall control over all other sources and interpretations.

2. Design. The design of the System shall be based upon a "Fiber to the node" architecture that will deliver the signals by fiber optics directly to each neighborhood. Grantee's initial design includes a minimum of six (6) fibers to each node site having a neighborhood group average of approximately three hundred (300) homes. If Grantee splits nodes into smaller sizes, fewer fibers will extend to such smaller nodes. There shall be no more than seven (7) active amplifiers in a cascade from each node to the residential dwelling. The incorporation of stand-by power supplies, strategically placed throughout the system including all hubs, will further reduce the likelihood of Service Interruptions.

3. Technical Standards. The System shall meet or exceed FCC requirements. To the extent the below standards apply to the Cable System, the Cable System shall not fall below the following standards:

- a. The System shall be capable of meeting the following distortion parameters:
 - 1. Carrier to RMS Noise 48 dB
 - 2. Carrier to Second Order 53 dB
 - 3. Carrier to Cross Modulation 51 dB
 - 4. Carrier to Composite Triple Beat 53 dB
- b. The frequency response of a single Channel as measured across any 6 MHz analog Channel shall not exceed +/- 2 dB.
- c. The frequency response of the entire passband shall not exceed $N/10 + 2$ dB for the entire System where N is the number of amplifiers in cascade.
- d. The System shall be designed such that at a minimum all technical specifications of this Franchise are met.
- e. The System shall be designed such that no noticeable degradation in signal quality will appear at the Subscriber terminal.

EXHIBIT B
PEG ACCESS FACILITIES AND EQUIPMENT

1. PUBLIC, EDUCATIONAL AND GOVERNMENT (PEG) ACCESS CHANNELS.

a) Grantee shall provide two (2) channels for use by the City to provide educational and governmental access (“PEG Channels”).

b) Whenever the PEG Channels are in use during eighty percent (80%) of the weekdays, Monday to Friday, for eighty percent (80%) of the time for any consecutive three (3) hour period for six (6) weeks running, and there is demand for use of an additional Channel for the same purpose, the Grantee shall then have six (6) months in which to provide a new PEG Channel for the same purpose, provided that provision of the additional Channel or Channels must not require the Cable System to install Converters.

c) The PEG Channels shall be dedicated for PEG use for the term of the Franchise, provided that Grantee may, utilize any portions of the PEG Channels not scheduled for PEG use. City shall establish rules and procedures for such scheduling in accordance with Section 611 of the Cable Act (47 U.S.C. § 531).

d) Grantee shall designate the standard Channel 6 for uniform regional channel usage currently provided by “Metro Channel 6” as required by Minnesota Statutes Section 238.43. Programming on this regional channel shall include a broad range of informational, educational, and public service programs and materials to cable television subscribers throughout the Twin Cities metropolitan area.

2. DIGITAL AND HD PEG CARRIAGE REQUIREMENTS.

a) Grantee shall provide the Access Channels on the Basic Cable Service tier or the lowest tier of service offered by Grantee in accordance with the Cable Act.

b) Upon commencement of Cable Service by Grantee to its first Subscriber in the City, Grantee shall carry all PEG Access Channels in both standard digital (SD) format and in high definition (HD) format.

c) Grantee shall be responsible for all costs associated with the transport and distribution of the PEG SD/HD Channels on its side of the Demarcation Point including any required headend equipment or hubs/node equipment or similar distribution facilities necessary to deliver the PEG SD/HD Channels to Subscribers.

d) The City shall be responsible for all costs associated with the creation and production of the PEG SD/HD Channels on its side of the Demarcation Point.

e) The City acknowledges that receipt of an HD format Access Channel may require Subscribers to buy or lease special equipment, or pay additional HD charges applicable to all HD services.

3. ACCESS CHANNEL LOCATIONS.

a) Grantee shall make every reasonable effort to coordinate the cablecasting of PEG Access programming on the Cable System on the same Channel designations as such programming is currently cablecast within the City. In no event shall any PEG Access Channel reallocations be made prior to ninety (90) days written notice to the City by Grantee, except for circumstances beyond Grantee's reasonable control. The PEG Access Channels will be located in the channel neighborhood within reasonable proximity (4-7 channel slots) to other commercial video or broadcast Channels in Grantee's reasonable discretion, excluding pay-per-view programming offered by Grantee in the City.

b) Grantee agrees not to encrypt the PEG Access Channels differently than other commercial Channels available on the Cable System.

c) In conjunction with any occurrence of any Access Channel(s) relocation, Grantee shall provide a minimum of Three Thousand Dollars (\$3,000) of in-kind air time per event on advertiser supported Channels (e.g. USA, TNT, TBS, Discovery Channel, or other comparable Channels) for the purpose of airing City's, or its designees', pre-produced thirty (30) second announcement explaining the change in location.

4. ANCILLARY EQUIPMENT. Any ancillary equipment operated by Grantee for the benefit of PEG Access Channels on Grantee's fiber paths or Cable System, whether referred to switchers, routers or other equipment, will be maintained by Grantee, at no cost to the City or schools for the life of the Franchise. Grantee is responsible for any ancillary equipment on its side of the Demarcation Point and the City or school is responsible for all other production/playback equipment.

5. PEG TECHNICAL QUALITY.

a) Grantee shall not be required to carry a PEG Access Channel in a higher quality format than that of the Channel signal delivered to Grantee, but Grantee shall not implement a change in the method of delivery of PEG Access Channels that results in a material degradation of signal quality or impairment of viewer reception of PEG Access Channels, provided that this requirement shall not prohibit Grantee from implementing new technologies also utilized for commercial Channels carried on its Cable System.

i) Grantee shall meet FCC signal quality standards when offering Access Channels on its Cable System and shall continue to comply with closed captioning pass-through requirements. There shall be no significant deterioration in an Access Channels signal from the point of origination upstream to the point of reception downstream on the Cable System.

ii) Within twenty-four (24) hours of a written request from City to the Grantee identifying a technical problem with a Access Channel and requesting

assistance, Grantee will provide technical assistance or 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. If the problem persists and there is a dispute about the cause, then the parties shall meet with engineering representation from Grantee and the City in order to determine the course of action to remedy the problem.

b) Grantee shall cablecast the entire programming stream of each PEG channel including any Program Related Material, as defined below in this Paragraph 6(d)), "Program Related Material" shall mean (i) closed-captioning information, (ii) program identification codes, (iii) program ratings information, (iv) such other material as may be essential, necessary or appropriate for the delivery or distribution of the signal, and (v) information and material that is directly related to the subject matter of the programs on the PEG channels, if such information or material is transmitted concurrently or substantially concurrently with its associated program content.

6. CHANGE IN TECHNOLOGY. In the event Grantee makes any change in the Cable System and related equipment and facilities or in its signal delivery technology, which requires new equipment in order to transport PEG Channel programming, Grantee shall be responsible for any equipment, free of charge to the City, required on its side of the Demarcation Point.

7. RELOCATION OF GRANTEE'S HEADEND. In the event Grantee relocates its headend, Grantee will be responsible for replacing or restoring the existing dedicated fiber connections at Grantee's cost so that all the functions and capacity remain available, operate reliably and satisfy all applicable technical standards and related obligations of the Franchise free of charge to the City or its designated entities.

8. PEG OPERATIONS. City may in its sole discretion, negotiate agreements with neighboring jurisdictions served by the same Cable System, educational institutions or others to share the operating expenses of the PEG Channels. City and Grantee may negotiate an agreement for management of PEG Access Facilities, if so desired by both parties.

9. TITLE TO PEG EQUIPMENT. City shall retain title to all PEG equipment and facilities purchased or otherwise acquired.

10. NAVIGATION TO PEG ACCESS CHANNELS/ELECTRONIC PROGRAMMING GUIDE. Grantee agrees that if it utilizes a visual interface under its control on its Cable System for all Channels, the PEG Access Channels shall be treated in a non-discriminatory fashion consistent with Applicable Laws so that Subscribers will have ready access to PEG Access Channels. Grantee will continue to make available to City the ability to place PEG Access Channel programming information on the interactive channel guide via the electronic programming guide ("EPG") vendor ("EPG provider") that Grantee utilizes to provide the guide service. Grantee will be responsible for providing the designations and instructions necessary for the PEG Access Channels to appear on the EPG. All costs and operational requirements of the EPG provider shall be the responsibility of the City. City acknowledges that the EPG is not

technically possible for all PEG Access Channel programming, and that Grantee is not responsible for operations of the EPG provider.

11. PEG ACCESS OPERATING SUPPORT.

- a) Upon commencement of Cable Service by Grantee to its first Subscriber in the City and through the end of the term of this Franchise, Grantee shall collect and remit to the City a per Subscriber fee of One Dollar and 20/100 (\$1.20) per month solely to fund public, educational and governmental access capital expenditures consistent with federal laws (hereinafter "PEG Fee").
- b) The City Council may vote to increase the PEG Fee up to a per Subscriber fee of One Dollar and 50/100 (\$1.50) per month.
- c) The City agrees that it will impose an identical PEG Fee upon any other cable operator holding a cable franchise issued by the City. The purpose of this provision is to ensure that all cable operators holding a cable franchise in the City will remit the same PEG Fee to the City. Grantee agrees to match any PEG fee, higher or lower, required of any other franchised cable operator in the City, upon ninety (90) days advance written notice from the City.
- d) The PEG Fee shall be used by City in its sole discretion to fund PEG Access expenditures in a manner consistent with federal law.
- e) The PEG Fee is not intended to represent part of the Franchise Fee and is intended to fall within one (1) or more of the exceptions in 47 U.S.C. § 542. The PEG Fee may be categorized, itemized, and passed through to Subscribers as permissible, in accordance with 47 U.S.C. §542 or other Applicable Laws. Grantee shall pay the PEG Fee to the City quarterly at the same time as the payment of Franchise Fees under Section 7.1 of the Franchise. Grantee agrees that it will not offset or reduce its payment of past, present or future Franchise Fees required as a result of its obligation to remit the PEG Fee.
- f) Any PEG Fees owing pursuant to this Franchise which remain unpaid more than thirty (30) days after the end of a given quarter shall be delinquent and shall immediately thereafter accrue interest at twelve percent (12%) per annum or two percent (2%) above prime lending rate as quoted by the Wall Street Journal, whichever is greater. Enforcement of unpaid PEG Fees shall be handled in accordance with Section 9.6 of the Franchise; however, Grantee shall in all cases be subject to interest on any payment more than thirty (30) days after the end of a given quarter.

12. SERVICE TO PUBLIC BUILDINGS.

- a) Subject to subparagraph 12(e) of this Exhibit B, throughout the term of this Franchise, Grantee shall provide, free of charge, one (1) service Drop, one (1) Converter, if necessary and requested, and Basic Cable Service and the next highest penetrated level of Cable Service generally available to all Subscribers (as of the effective date referred to

as Expanded Basic Cable Service) (“Complimentary Service”), to all of the sites listed on Exhibit C attached hereto that are not currently receiving service from any other cable operator holding a cable franchise issued by the City.

b) The City, however, shall have the right to request the disconnection of any other franchised cable operator’s Complimentary Service and require Grantee to provide Complimentary Service to that location provided the City maintains a fair distribution of service to public buildings between all franchised cable operators serving the City.

c) The City or the building occupant shall have the right to extend Cable Service throughout the building to additional outlets for the provision of Complimentary Service to such additional outlets. If ancillary equipment, such as a Converter, is required to receive the signal at additional outlets beyond the one (1) complimentary Converter referenced in paragraph a) above, the institution shall be required to pay the same monthly rate that Subscribers pay.

d) Notwithstanding anything to the contrary set forth in this section, Grantee shall not be required to provide Complimentary Service to such buildings unless it is technically feasible.

e) Notwithstanding subparagraph 12(a) of this Exhibit B, Grantee may implement fees or charges for Complimentary Service or additional outlets in the City (or seek to offset or deduct from Franchise Fees) only if Grantee also imposes the same fees or charges in other municipalities located within the Lake Minnetonka region.

f) Grantee shall, in any public building hereinafter built, provide all materials, design specifications and technical advice to provide Complimentary Service to such building. If the Installation to such building exceeds three hundred fifty (350) feet, Grantee will accommodate the Installation up to three hundred fifty (350) feet if the City or other agency provides the necessary attachment point for aerial service or conduit pathway for underground service. If the necessary pathway is not provided, the City or other agency shall pay the incremental cost of such Installation in excess of two hundred fifty (250) feet for an aerial service Installation or in excess of one hundred fifty (150) feet for an underground service Installation. For purposes of this paragraph, “incremental cost” means Grantee’s actual cost to provide the Installation beyond the applicable distances, with no mark-up for profit. The recipient of the service will secure any necessary right of entry.

g) PEG Transport. Grantee shall provide, free of charge, throughout the life of this Franchise, transport of the PEG Access Channels from the below listed locations to Grantee’s headend to facilitate the exchange of programming including live cablecast programming on the Grantee’s Cable System. Grantee shall further provide, free of charge, all interface equipment at each of the below listed locations (modulator/demodulator) which allows the City to cablecast programming to Grantee’s headend for cablecast on Grantee’s Cable System.

Fire Station
City Hall
Wayzata Public Library

600 Rice Street
600 Rice Street
620 Rice Street

EXHIBIT C
SERVICE TO PUBLIC FACILITIES

	FACILITY NAME	ADDRESS
1.	City Council Chambers	600 Rice Street
2.	Wayzata West Junior High	149 Barry Avenue North
3.	Fire Station	600 Rice Street
4.	Wayzata Public Works	299 Wayzata Boulevard West
5.	Wayzata Public Library	620 Rice Street
6.	Historic Depot	402 East Lake Street
7.	Water Treatment Plant 3	408 Gardner Street
8.	Water Treatment Plant 2	499 Lake Street West
9.	Section Foreman House	738 Lake Street East
10.	Panoway Plaza Public Bathroom	694 Lake Street East

**EXHIBIT D
FRANCHISE FEE PAYMENT WORKSHEET**

**TRADE SECRET/CONFIDENTIAL - TO THE EXTENT PERMISSIBLE UNDER
APPLICABLE LAW**

	Month/Year	Month/Year	Month/Year	Total
Cable Service Revenue				
Installation Charge				
Franchise Fee Revenue				
Advertising Revenue				
Home Shopping Revenue				
Equipment rental				
Other Revenue				
REVENUE				
Fee Calculated				
Franchise Fees				

Fee Factor: 5%

Nothing in this Franchise Fee Payment Worksheet shall serve to modify the definition of “Gross Revenues” set forth in the Franchise.

EXHIBIT E
SUMMARY OF ORDINANCE FOR PUBLICATION

AN ORDINANCE GRANTING A FRANCHISE TO COMCAST OF ARKANSAS/ LOUISIANA/MINNESOTA/MISSISSIPPI/TENNESSEE, LLC TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF WAYZATA, MINNESOTA SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY; AND PRESCRIBING LIQUIDATED DAMAGES FOR THE VIOLATION OF THE PROVISIONS HEREIN.

On June 21, 2022, the City of Wayzata, Minnesota (“City”) adopted an ordinance granting a Cable Television Franchise to Comcast of Arkansas/Louisiana/Minnesota/ Mississippi/Tennessee, LLC (“Grantee”). The Franchise serves two (2) purposes. First, it is intended to provide for and specify the means to attain the best possible Cable Service for the public by providing requirements for cable with respect to technical standards, customer service obligations, and related matters. Second, it grants a non-exclusive Cable Television Franchise to Grantee, to operate, construct and maintain a Cable System within the City and contains specific requirements for Grantee to do so.

The Franchise includes the following: 1) a Franchise Fee of five percent (5%) of Grantee’s annual Gross Revenues; 2) a Franchise term of ten (10) years; 3) a list of schools and public buildings entitled to receive complimentary Cable Service; 4) dedicated channel capacity for Public, Educational and Governmental (“PEG”) access programming and provides financial support of such PEG Channels; 5) customer service standards regarding Grantee’s Cable Services; and 6) a security fund and liquidated damages to enforce Grantee’s compliance with the franchise.

It is hereby determined that publication of this title and summary will clearly inform the public of the intent and effect of Ordinance No. 813. A copy of the entire ordinance shall be posted at the Wayzata City Hall.

It is hereby directed that only the above title and summary of Ordinance No. 813 be published, conforming to Minn. Stat. § 331A.01, with the following:

NOTICE

Persons interested in reviewing a complete copy of the ordinance may do so at the Wayzata City Hall at 600 Rice Street East, Wayzata, MN 55391 during the hours of 7:00 a.m. and 4:30 p.m., Monday through Thursday and 7:00 a.m. and 11:00 a.m. on Friday.

	<u>Yes</u>	<u>No</u>
Mayor <u>Johanna Mouton</u>	<u>X</u>	_____
Councilmember <u>Cathy Iverson</u>	<u>X</u>	_____
Councilmember <u>Jeff Buchanan</u>	<u>X</u>	_____
Councilmember <u>Alex Plechash (Absent)</u>	_____	_____
Councilmember <u>Molly MacDonald</u>	<u>X</u>	_____

Passed by the Wayzata City Council this 21st day of June, 2022.

ATTEST: _____, Mayor
