

ORDINANCE NO. 98-05

CITY OF FALCON HEIGHTS

CABLE TELEVISION FRANCHISE ORDINANCE

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ORDINANCE NO. 98-05

AN ORDINANCE GRANTING A FRANCHISE TO MEDIAONE NORTH CENTRAL COMMUNICATIONS CORP. TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE COMMUNICATIONS SYSTEM IN THE CITY OF FALCON HEIGHTS; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY [IN CONJUNCTION WITH THE CITY'S RIGHT-OF-WAY ORDINANCE, IF ANY, AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN;

The City Council of the City of Falcon Heights ordains:

STATEMENT OF INTENT AND PURPOSE

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

Adoption of this Franchise is, in the judgment of the Council, in the best interests of the City and its residents.

FINDINGS

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

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

SECTION 1.

SHORT TITLE AND DEFINITIONS

1. Short Title. This Franchise Ordinance shall be known and cited as the Cable Franchise Ordinance.
2. Definitions. For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.
 - a. "Basic Cable Service" means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7).
 - b. "City" means City of Falcon Heights, a municipal corporation, in the State of Minnesota, acting by and through its City Council, or its lawfully appointed designee.
 - c. "City Council" means the governing body of the City.
 - d. "Cable Service" or "Service" means the provision of communications and/or entertainment services as "Cable Service" is defined by Minn. Stat. § 238.01 et seq. and 47 U.S.C § 521 et seq., as may be amended from time to time, but including Institutional Network services.
 - e. "Cable System" or "System" means a system of antennas, cables, wires, lines, towers, waveguides, or other conductors, Converters, equipment, or facilities located in City and designed and constructed for the purpose of producing, receiving, transmitting, amplifying, or distributing audio, video, and data. System as defined herein shall not be inconsistent with the definitions set forth in Minn. Stat. 238.02, subd. 3 and 47 U.S.C. § 522(7).
 - f. "Class IV Cable 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.
 - g. "Commercial Need" or "Marketplace Need" means such need or market demand which City and Grantee may jointly determine requires action or performance by Grantee as specifically set forth in this Franchise. Such determination shall be based upon evidence and information presented by

City, Grantee and other interested parties at a duly noticed public proceeding. Grantee shall have an opportunity to present evidence regarding the level of market demand, the cost of meeting such demand and the availability of technologies to meet such demand. Any decision regarding Commercial or Marketplace Need which requires action by Grantee shall not be unreasonable.

- 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. "Drop" means the cable that connects the ground block on the Subscriber's residence or institution to the nearest feeder cable of the System.
- j. "FCC" means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- k. "Franchise" or "Cable Franchise" means this ordinance and the regulatory and contractual relationship established hereby.
- l. "Grantee" is MediaOne North Central Communications Corp., its lawful successors, transferees or assignees.
- m. "Gross Revenues" means all revenue received directly or indirectly by the Grantee, its affiliates, subsidiaries, parent, or person in which Grantee has financial interest of five percent (5%) or more, from the operation of its System within City including, but not limited to, all Cable Service fees, Franchise Fees, PEG Fees, late fees, Installation and reconnection fees, upgrade and downgrade fees, advertising revenue, Converter rental fees, Lockout Device fees, fees related to commercial and institutional usage of the I-net, Internet access fees, cable modem service fees and interest. The term Gross Revenues shall not include any taxes on services furnished by Grantee imposed by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit.
- n. "Installation" means the connection of the System from feeder cable to the point of connection with the Subscriber Converter or other terminal equipment.
- o. "Institutional Network" or "I-net" means the discrete communications network and services related to such network provided by Grantee to identified institutions as required by this Franchise.

- p. "Lockout Device" means an optional mechanical or electrical accessory to a Subscriber's terminal which inhibits the viewing of a certain program, certain channel, or certain channels provided by way of the Cable Communication System.
- q. "Memorandum of Understanding" or "MOU" means that certain agreement dated November 3, 1994 regarding PEG access funding, creation of a "PEG Fee" and certain rate regulatory issues.
- r. "North Suburbs Access Corporation" means that certain non-profit corporation or its lawful successor, designee, or assignee, which is delegated authority and responsibility for providing certain community programming functions including public access.
- s. "North Suburban System" means the Cable System located in those municipalities collectively comprising the North Suburban Cable Service territory as originally approved by the Minnesota Cable Communications Board.
- t. "Pay Television" means the delivery over the System of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or Cable Programming Services.
- u. "Person" is any person, firm, partnership, association, corporation, company, or other legal entity.
- v. "Proposal" means the Proposal for Franchise Renewal dated May 13, 1997, submitted to the North Suburban Cable Communications Commission by Group W Cable of the North Suburbs, Inc., as amended by the revised Renewal Proposal submitted under cover letter dated August, 4, 1997, and related correspondence and prior agreements or resolutions which are attached hereto as Exhibit A.
- w. "Right-of-Way" or "Rights-of-Way" means the area on, below, or above any real property in City in which the City has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area, or real property owned by or under the control of City, including other dedicated Rights-of-Way for travel purposes and utility easements.
- x. "Right-of-Way Ordinance" means the ordinance codifying requirements regarding regulation, management and use of Rights-of-Way in City, including registration and permitting requirements.

- y. "Standard Installation" means any residential installation which can be completed using a Drop of 250 feet or less.
- z. "Subscriber" means any Person who lawfully receives service via the System. In the case of multiple office buildings or multiple dwelling units, the "Subscriber" means the lessee, tenant or occupant.

SECTION 2.

GRANT OF AUTHORITY AND GENERAL PROVISIONS

1. Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein. Grantee shall comply with all provisions of its Proposal, which is expressly incorporated herein by reference. Failure of Grantee to provide a System as described in its Proposal, or meet obligations and comply with all provisions therein, shall be deemed a violation of this Franchise.
2. Grant of Nonexclusive Authority.
 - a. The Grantee shall have the right and privilege, subject to the permitting and other lawful requirements of City ordinance, rule or procedure, to construct, erect, and maintain, in, upon, along, across, above, over and under the Rights-of-Way in City a Cable System and shall have the right and privilege to provide Cable Service. The System constructed and maintained by Grantee or its agents shall not interfere with other uses of the Rights-of-Way. Grantee shall make use of existing poles and other above and below facilities available to Grantee to the extent it is technically and economically feasible to do so.
 - b. Notwithstanding the above grant to use Rights-of-Way, no Right-of-Way shall be used by Grantee if City determines that such use is inconsistent with the terms, conditions, or provisions by which such Right-of-Way was created or dedicated, or with the present use of the Right-of-Way.
 - c. This Franchise shall be nonexclusive, and City reserves the right to grant a Franchise to any Person at any time during the period of this Franchise for the provision of Cable Service. The terms and conditions of any such Franchise shall be, when taken as a whole, no less burdensome or more beneficial than those imposed upon Grantee pursuant to this Franchise.
3. Lease or Assignment Prohibited. No Person may lease Grantee's System for the purpose of providing Service until and unless such Person shall have first obtained and shall currently hold a valid Franchise or other lawful authorization containing substantially similar burdens and obligations to this Franchise. Any assignment of

rights under this Franchise shall be subject to and in accordance with the requirements of Section 10, Paragraph 5.

4. Franchise Term. This Franchise shall be in effect for a period of fifteen (15) years from the date of acceptance by Grantee, unless sooner renewed, revoked or terminated as herein provided.
5. Previous Franchises. Upon acceptance by Grantee as required by Section 13 herein, this Franchise shall supersede and replace any previous Ordinance granting a Franchise to Grantee.
6. Compliance with Applicable Laws, Resolutions and Ordinances.
 - a. The terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of the System in City. However, the Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power, statutory rights, local ordinance-making authority, and eminent domain rights of City. Except as provided below, any modification or amendment to this Franchise, or the rights or obligations contained herein, must be within the lawful exercise of City's police power, in which case the provision(s) modified or amended herein shall be specifically referenced in an ordinance of the City authorizing such amendment or modification. This Franchise may also be modified or amended with the written consent of Grantee as provided in Section 13.3 herein.
 - b. Grantee shall comply with the terms of any City ordinance or regulation of general applicability which addresses usage of the Rights-of-Way within City which may have the effect of superseding, modifying or amending the terms of Section 3 and/or Section 8.5(c) herein, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.
 - c. In the event of any conflict between Section 3 and/or Section 8.5 (c) of this Franchise and any City ordinance or regulation which addresses usage of the Rights-of-Way, the conflicting terms in Section 3 and/or Section 8.5 (c) of this Franchise shall be superseded by such City ordinance or regulation, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.

- d. In the event any City ordinance or regulation which addresses usage of the Rights-of-Way adds to, modifies, amends, or otherwise differently addresses issues addressed in Section 3 and/or Section 8.5 (c) of this Franchise, Grantee shall comply with such ordinance or regulation of general applicability, regardless of which requirement was first adopted except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.
 - e. In the event Grantee cannot determine how to comply with any Right-of-Way requirement of City, whether pursuant to this Franchise or other requirement, Grantee shall immediately provide written notice of such question, including Grantee's proposed interpretation, to the City with copy to the North Suburban Cable Communications Commission, in accordance with Section 2.9. The City or Commission shall provide a written response within fourteen (14) days of receipt indicating how the requirements cited by Grantee apply. Grantee may proceed in accordance with its proposed interpretation in the event a written response is not received within seventeen (17) days of mailing or delivering such written question.
7. 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 obligations 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 rules of the FCC, the laws of the State of Minnesota, City, or any other body having lawful jurisdiction.
 8. Territorial Area Involved. This Franchise is granted for the corporate boundaries of City, as it exists from time to time. In the event of annexation by City, or as development occurs, any new territory shall become part of the territory for which this Franchise is granted provided, however, that Grantee shall not be required to extend service beyond its present System boundaries unless there is a minimum of 50 homes per cable mile for underground plant and 35 homes per cable mile for overhead plant. Access to cable service shall not be denied to any group of potential residential cable Subscribers because of the income of the residents of the area in which such group resides. Grantee shall be given a reasonable period of time to construct and activate cable plant to service annexed or newly developed areas but in no event not to exceed twelve (12) months from notice thereof by City to Grantee and qualification pursuant to the density requirements of this Subsection 8.
 9. Written Notice. All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any

officer of Grantee or City's Administrator of this Franchise or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to City: City of Falcon Heights
2077 W. Larpenteur Ave.
Falcon Heights, Minnesota 55113
Attention: City Manager/Administrator

With copies to: North Suburban Cable Communications Commission
950 Woodhill Drive
Roseville, Minnesota 55113

And to: Thomas D. Creighton, Esq. and Robert J. V. Vose, Esq.
Bernick and Lifson, P.A.
5500 Wayzata Boulevard, Suite 1200
Minneapolis, Minnesota 55416

If to Grantee: General Manager
MediaOne
950 Woodhill Drive
Roseville, Minnesota 55113

With copies to: John F. Gibbs, Esq.
Robins, Kaplan, Miller & Ciresi, L.L.P.
2800 LaSalle Plaza
800 LaSalle Ave. So.
Minneapolis, Minnesota 55402

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

10. Subscriber Network Drops to Designated Buildings. Grantee shall provide, free of charge, Installation of one (1) subscriber network Drop, one (1) cable outlet, one (1) Converter, if necessary, and monthly Basic Cable Service without charge to the institutions identified on Exhibit B attached hereto and made a part hereof, and such other public or educational institutions subsequently designated by City which is located five hundred (500) feet or less from the existing Subscriber network. Any such institution located more than five hundred (500) feet shall be connected if such institution agrees to reimburse Grantee for Grantee's actual costs in excess of the five hundred (500) foot installation actual costs.

Additional subscriber network Drops and/or outlets in any of the locations identified on Exhibit B will be installed by Grantee at the cost of Grantee's time

and material. Alternatively, said institution may add outlets at its own expense, as long as such Installation meets Grantee's standards. Grantee shall have three (3) months from the date of City designation of additional institution(s) to complete construction of the Drop and outlet unless weather or other conditions beyond the control of Grantee requires more time. The provision of Institutional Network service is addressed in Section 7 herein.

SECTION 3.

CONSTRUCTION STANDARDS

1. Registration, Permits and Construction Codes.
 - a. Grantee shall strictly adhere to all state and local laws and building and zoning codes currently or hereafter applicable to location, construction, installation, operation or maintenance of the System in City and give due consideration at all times to the aesthetics of the property.
 - b. Failure to obtain permits or comply with permit requirements shall be grounds for revocation of this Franchise, or any lesser sanctions provided herein or in any other applicable law.
2. Repair of Rights-of-Way and Property. Any and all Rights-of-Way, or public or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, expansion, extension or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to the same condition as that prevailing prior to Grantee's work, as determined by City. If Grantee shall fail to promptly perform the restoration required herein, after written request of City and reasonable opportunity to satisfy that request, City shall have the right to put the Rights-of-Way, public, or private property back into good condition. In the event City determines that Grantee is responsible for such disturbance or damage, Grantee shall be obligated to fully reimburse City for such restoration.
3. Conditions on Right-of-Way 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 Right-of-Way; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.
 - b. All System transmission and distribution structures, lines and equipment erected by the Grantee within City shall be located so as not to obstruct or

interfere with the use of Rights-of-Way except for normal and reasonable obstruction and interference which might occur during construction and to cause minimum interference with the rights of property owners who abut any of said Rights-of-Way and not to interfere with existing public utility installations.

- c. If at any time during the period of this Franchise City shall elect to alter or change the grade or location of any Right-of-Way, the Grantee shall, at its own expense, upon reasonable notice by City, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System, and in each instance comply with the reasonable and lawful standards and specifications of City.
 - d. The Grantee shall not place poles, conduits, or other fixtures of System above or below ground where the same will interfere with any gas, electric, telephone, water or other utility fixtures and all such poles, conduits, or other fixtures placed in any Right-of-Way shall be so placed as to comply with all reasonable and lawful requirements of City.
 - e. The Grantee shall, upon 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 written notice to arrange for such temporary changes.
 - f. The Grantee shall have the authority to trim any trees upon and overhanging the Rights-of-Way of City so as to prevent the branches of such trees from coming in contact with the wires and cables or other facilities of the Grantee.
 - g. Grantee shall use its best efforts to give reasonable prior notice to any adjacent private property owners who will be negatively affected or impacted by Grantee's work in the Rights-of-Way.
4. Undergrounding of Cable. Unless otherwise required by action of City Council, Grantee must place newly constructed facilities underground in areas of City where all other utility lines are placed underground. Amplifier boxes and pedestal mounted terminal boxes may be placed above ground if existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe, all pursuant to plans submitted with Grantee's permit application(s) and approved by City.
5. Installation of Facilities. No poles, conduits, amplifier boxes, pedestal mounted terminal boxes, similar structures, or other wire-holding structures shall be erected or installed by the Grantee without required permit of City.

6. Safety Requirements.

- a. The Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injuries.
- b. The Grantee shall install and maintain its System and other equipment in accordance with City's codes and the requirements of the National Electric Safety Code and all other applicable FCC, state and local regulations, and in such manner that they will not interfere with City communications technology related to health, safety and welfare of the residents.
- c. All System structures, and lines, equipment and connections in, over, under and upon the Rights-of-Way of City, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of City or any Person.

SECTION 4.

DESIGN PROVISIONS

1. System Upgrade: Minimum Channel Capacity.

- a. Grantee shall develop, construct and operate for the term of this Franchise a System providing 750 MHz capacity and which is fully activated with the capability of delivering to all Subscribers capable of receiving them a minimum of up to 81 video programmed channels. Construction will be completed and channels activated as described in Exhibit C attached.
- b. The System will utilize a hybrid fiber-coaxial architecture as detailed in the Proposal. In addition, the System will be designed with the capability to transmit return signals upstream in the 5 - 40 MHz spectrum which shall be activated as Commercial Need dictates. Finally, in conjunction with the upgrade, Grantee shall replace all existing headend equipment with state-of-the-art standard frequency headend equipment.
- c. Grantee shall develop, construct and operate a System capable of providing non-video services such as high-speed data transmission, Internet access, and other competitive services which shall be activated as Marketplace Need dictates. Grantee may use 200 MHz of the total 750 MHz System capacity for the provision of such services.

- d. During the design, walkout and preliminary construction activities related to upgrade of the System, Grantee shall seek to identify the non-video interests of the business community within City and will seek to quantify business community demand for non-video services. Grantee shall report the results of its investigation into business demand for non-video services to the City or its designee no later than one (1) year from the commencement date of the Franchise.
- e. All final programming decisions remain the discretion of Grantee in accordance with the Proposal, provided that Grantee notifies City and Subscribers in writing thirty (30) days prior to any channel additions, deletions, or realignments, and further subject to Grantee's signal carriage obligations hereunder and pursuant to 47 U.S.C. § 531-536, and further subject to City's rights pursuant to 47 U.S.C. § 545. Location and relocation of the PEG Channels shall be governed by Section 6, 1. (c).

2. Construction Timetable.

- a. Grantee shall complete all construction related to the System upgrade required by Section 4 herein on or before November 30, 2000, in accordance with the specific timeline identified in Exhibit C attached. Failure to timely complete such construction shall be a violation of this Franchise.
- b. The System, once upgraded, shall continue to offer Service to all dwelling units serviceable prior to upgrade and shall extend Service to any area within the corporate boundaries of City which was not previously constructed which exceeds a density of 35 dwelling units per cable mile or greater for overhead plant and 50 dwelling units per cable mile for underground plant.
- c. Within ninety (90) days after the commencement of the renewal term of this Franchise, Grantee shall commence application for all necessary permits, licenses, certificates and authorizations which are required in the conduct of its business. Failure to timely commence application for the aforementioned authorizations shall be a violation of this Franchise.
- d. Within ninety (90) days after commencement of the term of this renewed Franchise, Grantee will commence System design, walkout and all other preliminary construction activities related to upgrade of the System and shall give written notice thereof to City upon commencement of such activities.

3. Interruption of Service. The Grantee shall interrupt service only for good cause and for the shortest time possible. Such interruption shall occur during periods of

minimum use of the System. If service is interrupted for a total period of more than forty eight (48) hours in any thirty (30) day period, Subscribers shall be credited pro rata for such interruption.

4. Technical Standards. The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76.601 to 76.617, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference.
5. Special Testing.
 - a. The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise. In addition, the City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints regarding such construction or installation work or 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.
 - b. Before ordering such tests, Grantee shall be afforded thirty (30) days following receipt of written notice to investigate and, if necessary, 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 at Grantee's expense by a qualified engineer selected by City and Grantee, and Grantee shall cooperate in such testing.
6. Drop Testing and Replacement. Grantee shall insert a 750 MHz carrier at a level 10db below the video carriers that will be measured by Grantee as a normal procedure during all service calls. In addition, the Drops and related passive equipment will be inspected during Installations to assure that the Drop and passive equipment can pass the full 750 MHz System capacity. In the event measurement of the carrier or the inspection demonstrate that a Drop or associated passive equipment do not pass the full 750 MHz, the Subscriber address will be recorded by Grantee and Grantee shall provide City, or its designee, upon request a report indicating the addresses where Drops or associated passive equipment have failed. Grantee shall replace all failing Drops and/or associated passive equipment at the

time the address upgrades service to a level which requires a signal above the 550 MHz spectrum at no separate charge to the individual subscriber.

7. FCC Reports. The results of any tests required to be filed by Grantee with the FCC shall upon request of City also be filed with the City or its designee within ten (10) days of the conduct of such tests.
8. Interconnection. The System servicing the Cities of Arden Hills, Falcon Heights, Lauderdale, Little Canada, Mounds View, New Brighton, North Oaks, Roseville, St. Anthony, and Shoreview shall continue to be completely interconnected. In addition, Grantee shall make available for interconnection purposes one (1) six (6) MHz channel for forward video purposes, one (1) six (6) MHz channel for return video purposes, one (1) six (6) MHz channel for forward data or other purposes, and one (1) six (6) MHz channel for return data or other purposes between all Systems adjacent to the North Suburban System and under common ownership with Grantee.
9. Nonvoice Return Capability. Grantee is required to use cable and associated electronics having the technical capacity for nonvoice return communications.
10. Lockout Device. Upon the request of a Subscriber, Grantee shall make available a Lockout Device at no additional charge to Subscribers.

SECTION 5.

SERVICE PROVISIONS

1. Regulation of Service Rates.
 - a. The City may regulate rates for the provision of Cable Service, equipment, or any other communications service provided over the System to the extent allowed under federal or state law(s). City reserves the right to regulate rates for any future services to the extent permitted by law.
 - b. Grantee shall give City and Subscribers written notice of any change in a rate or charge at least one billing cycle prior to the effective date of the change. Bills must be clear, concise, and understandable, with itemization of all charges.
2. Non-Standard Installations. Grantee shall install and provide Cable Service to any Person requesting other than a Standard Installation provided that said Cable Service can meet FCC technical specifications and all payment and policy obligations are met. In such case, Grantee may charge for the incremental increase in material and labor costs incurred beyond the Standard Installation.

3. Sales Procedures. Grantee shall not exercise deceptive sales procedures when marketing any of its services within City. In its initial communication or contact with a non-Subscriber and in all general solicitation materials marketing the Grantee or its services as a whole, Grantee shall inform the non-Subscriber of all levels of service available, including the lowest priced and free service tiers. Grantee shall have the right to market door-to-door during reasonable hours consistent with local ordinances and regulation.
4. Subscriber Inquiry and Complaint Procedures.
 - a. Grantee shall have a publicly listed toll-free telephone number which shall be operated so as to receive Subscriber complaints and requests on a twenty-four (24) hour-a-day, seven (7) days-a-week, 365 days a year basis. During normal business hours, trained representatives of Grantee shall be available to respond to Subscriber inquiries.
 - b. Grantee shall maintain adequate numbers of telephone lines and personnel to respond in a timely manner to schedule service calls and answer Subscriber complaints or inquiries in a manner consistent with regulations adopted by the FCC and City where applicable and lawful. 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 (90) percent of the time under normal operating conditions, measured on a quarterly basis. Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time. Grantee shall respond to written complaints with copy to City or its designee within thirty (30) days.
 - c. Subject to Grantee's obligations pursuant to law regarding privacy of certain information, Grantee shall prepare and maintain written records of all complaints received from City and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the office of Grantee. Grantee shall provide City with a written summary of such complaints and their resolution upon request of City. As to Subscriber complaints, Grantee shall comply with FCC record-keeping regulations, and make the results of such record-keeping available to City upon request.
 - d. Subscriber requests for repairs shall be performed within thirty-six (36) hours of the request unless conditions beyond the control of Grantee prevent such performance. Grantee may schedule appointments for Installations and other service call either at a specific time or, at a maximum, during a four hour time block during normal business hours.

Grantee may also schedule service calls outside normal business hours for the convenience of customers. Grantee shall use its best efforts to not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If the installer or technician is late and will not meet the specified appointment time, he/she must use his/her best efforts to contact the customer and reschedule the appointment at the sole convenience of the customer. Service call appointments must be met in a manner consistent with FCC standards.

5. Subscriber Contracts. Grantee shall file with City any standard form 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 Subscriber contract(s) shall be available for public inspection during normal business hours.
6. Refund Policy. In the event a Subscriber establishes or terminates service and receives less than a full month's service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which service was rendered to the number of days in the billing.
7. Late Fees. Fees for the late payment of bills shall not be assessed until after the service has been fully provided and, as of the due date of the bill notifying Subscriber of an unpaid balance, the bill remains unpaid. Late Fees may not exceed the actual costs to Grantee of late payment of bills and the servicing and collecting of such accounts.
8. Office Policy. Grantee shall maintain a location in City or the Franchise territory encompassing any joint regulatory body of which City is a Member for receiving Subscriber inquiries and bill payments. The location must be staffed by a person capable of receiving inquiries and bill payments. In addition, Grantee shall maintain a local drop box for receiving Subscriber payments after hours.

SECTION 6.

ACCESS CHANNEL(S) PROVISIONS

1. Public, Educational and Government Access.
 - a. City or its designee is hereby designated to operate, administer, promote, and manage access (public, education, and government programming) (hereinafter "PEG access") programming on the Cable System.
 - b. Grantee shall dedicate 12 channel(s) for PEG access and community programming use in accordance with the Proposal. All residential

Subscribers who receive all or any part of the total services offered on the System shall be eligible to receive such channels at no additional charge. The channel(s) shall be activated upon the effective date of this Franchise and thereafter maintained. City may rename, reprogram, or otherwise change the use of these channels in its sole discretion, provided such use is non-commercial, lawful, and retains the general purpose of the provision of community programming. Nothing herein shall diminish the City's rights to secure additional channels pursuant to Minn. Stat. § 238.084, which is expressly incorporated herein by reference. City shall provide ninety (90) days prior written notice to Grantee of City's intent to activate access channels.

- c. Each public and government access channel(s) required by this Section shall retain the channel designation/number it had as of the commencement of this Franchise term. Grantee may not move or otherwise change the channel number or location of any public or government access or community program channel without the written approval of the City or its designee. Upon six (6) months notice to City, any other access channel may be moved by Grantee, but in no event more than once every two (2) years unless otherwise allowed by City, provided Grantee pays all reasonable costs or expenses arising out of the channel move including, but not limited to, equipment necessary to effect the change at the programmer's production or receiving facility (school frequency routing equipment, etc.), signage, letterhead, business cards, and reasonable marketing or other constituency notification costs. In any event, those access channels carried on the universal service tier pursuant to the MOU shall remain on the universal service tier. This paragraph shall not apply to Regional Channel 6.

2. Charges for Use. Channel time and playback of prerecorded programming on the PEG access and community program channel(s) must be provided without charge to City and the public.
3. Access Rules. City, or its designee, shall implement rules for use of any access channel(s).
4. Access Support. Grantee shall continue to be obligated pursuant to the MOU, and shall additionally provide \$667,286.00 over the term of this Franchise for the acquisition of new equipment according to the schedule in Exhibit A attached.
5. Studio Relocation. In addition to the agreement between the City and Grantee regarding the North Suburbs Access Corporation relocation pursuant to the access transfer agreement, the following shall apply: If North Suburbs Access Corporation expends, with Grantee's express written consent which may not be unreasonably withheld, over \$1,000.00 to remodel or renovate its leasehold in a

twelve (12) month period and Grantee thereafter requires North Suburbs Access Corporation to move studio locations, Grantee shall reimburse North Suburbs Access Corporation 100% of its expenditures if the request to move is within one (1) year of the expense of North Suburbs Access Corporation. Said reimbursement shall be decreased by 20% for each year the expense was incurred prior to the date North Suburbs Access Corporation is required to move.

6. Regional Channel 6. Grantee shall designate standard VHF Channel 6 for uniform regional channel usage.
7. State and Federal Law compliance. Satisfaction of the requirements of this Section 6 satisfies any and all of Grantee's state and federal law requirements of Grantee with respect to PEG access.

SECTION 7.

INSTITUTIONAL NETWORK (I-NET) PROVISIONS

1. Capacity.
 - a. Grantee shall provide an Institutional Network with 54 channel capacity (16 upstream channels and 38 downstream channels) in the 5-450 MHz spectrum, all in accordance with the Proposal. All institutions designated on Exhibit B attached hereto and made a part hereof shall be connected to the Institutional Network along with any new City Hall which may be constructed by City or to which City may otherwise move its government offices or City Council meeting locations. Other public or educational institutions subsequently designated by City shall be connected to the Institutional Network if the designated institution is located less than five hundred (500) feet from the existing Institutional Network, or if such designated institution agrees to reimburse Grantee for Grantee's actual costs in excess of the five hundred (500) foot installation actual costs.
 - b. All institutions designated on Exhibit B attached shall be allowed to make use of the full channel capacity for video uses at no charge. The institutions designated on Exhibit B attached may make use of three (3)-6 MHz channels downstream and three (3)-6 MHz channels upstream for non-video uses at no charge.
 - c. Grantee shall construct and thereafter maintain fiber optics to the Institutional Network nodes which shall include two (2) fibers to transmit the fifty-four (54) channels required in subparagraph a. above, and four (4) additional fibers which are expressly for the use of the institutions listed in Exhibit B.

Charges to designated institutions for non-video use of the channels other than the six (6) non-video dedicated channels (three (3) upstream and three (3) downstream) on the Institutional Network required in subparagraph a. above shall be calculated based on Grantee's actual cost plus a 45% margin or the "most favored comparable user rate", whichever is lower. Charges to the designated institutions for video or non-video use of the six (6) fibers provided to the Institutional Network nodes shall be calculated based only upon Grantee's incremental actual cost for providing the additional six (6) fibers.

Use of the Institutional Network by a designated institution is limited to its own use(s) and no institution may sell Institutional Network capacity or usage to any third party, without the express written consent of Grantee.

2. Grantee's Use of Capacity. Grantee may use available capacity on the fifty-four (54) channel Institutional Network required in Paragraph 1a. above for other uses including commercial uses, provided, however, that usage of seventy-five percent (75%) of such capacity by designated institutions shall have priority over other uses subject to rules or policies adopted by Grantee and approved in advance by City. Further, should City determine that any portion of Grantee's use of the twenty-five percent (25%) should be terminated to accommodate the use by a designated institution for video purposes, City may direct that Grantee terminate its use at the expiration of any third party use contract or three (3) years, whichever is sooner.
3. End-User Equipment.
 - a. Designated institutions shall be generally responsible for providing their own end-user equipment. However, Grantee shall provide at no charge twenty (20) new modulators for City and/or designated institutions use of the Institutional Network, all as approved by the City.
 - b. With respect to non-video end-user equipment, upon request by a designated institution, Grantee must either lease the equipment requested to the requesting institution or make reasonable efforts to arrange for the lease of such equipment. Within 30 days of a written request, Grantee must notify the requesting institution in writing of its ability or inability to lease the requested equipment and the terms of such lease. The City, its designee, or the requesting institution may purchase or lease the equipment from any vendor.
 - c. In addition, Grantee will provide standby power for the Institutional Network, provide fifteen (15) new pilot generators, re-tune ten (10) existing return pilot generators, and re-tune one hundred twenty-four (124) existing return amplifiers.

4. Service Standards. Grantee shall maintain those technical and performance standards as are detailed in Exhibit D attached. Grantee shall provide the City, or its designee, upon request with reports of the performance of the I-Net and Grantee's compliance with the technical and performance standards.

SECTION 8.

OPERATION AND ADMINISTRATION PROVISIONS

1. Administration of Franchise. The City Administrator or other designee shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise. The City, or its designee, may issue such reasonable rules and regulations concerning the construction, operation and maintenance of the System as are consistent with the provisions of the Franchise and law.
2. Delegated Authority. The City may appoint a citizen advisory body or a Joint Powers Commission, or may delegate to any other body or Person authority to administer the Franchise and to monitor the performance of the Grantee pursuant to the Franchise. Grantee shall cooperate with any such delegatee of City.
3. Franchise Fee.
 - a. During the term of the Franchise, Grantee shall pay quarterly to City or its delegatee a Franchise Fee in an amount equal to five percent (5%) of its quarterly Gross Revenues, or such other amounts as are subsequently permitted by federal statute.
 - b. Any payments due under this provision shall be payable quarterly. The payment shall be made within thirty (30) days of the end of each of Grantee's fiscal quarters together with a report showing the basis for the computation.
 - c. All amounts paid shall be subject to audit and recomputation by City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount.
4. Access to Records. The City shall have the right to inspect, upon reasonable notice and during normal business hours, or require Grantee to provide within a reasonable time copies of any records maintained by Grantee which relate to System operations including specifically Grantee's accounting and financial records.

5. Reports and Maps to be Filed with City.
 - a. Grantee shall file with the City, at the time or payment of the Franchise Fee, a report of all Gross Revenues in form and substance as required by City.
 - b. Grantee shall prepare and furnish to City, at the times and in the form prescribed, such other reasonable reports with respect to Grantee's operations pursuant to this Franchise as City may require.
 - c. If required by City, Grantee shall furnish to and file with City Administrator the maps, plats, and permanent records of the location and character of all facilities constructed, including underground facilities, and Grantee shall file with City updates of such maps, plats and permanent records annually if changes have been made in the System.

6. Periodic Evaluation.
 - a. The City may require evaluation sessions at any time during the term of this Franchise, upon fifteen (15) days written notice to Grantee.
 - b. Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System performance, programming offered, access channels, facilities and support, municipal uses of cable, subscriber rates, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics City deems relevant.
 - c. As a result of a periodic review or evaluation session, upon notification from City, Grantee shall meet with city and undertake good faith efforts to reach agreement on changes and modifications to the terms and conditions of the Franchise which are both economically and technically feasible.

SECTION 9.

GENERAL FINANCIAL AND INSURANCE PROVISIONS

1. Performance Bond.
 - a. At the time the Franchise becomes effective and at all times thereafter, until the Grantee has liquidated all of its obligations with City, the Grantee shall furnish a bond to City in the amount of \$500,000.00 in a form and with such sureties as reasonably acceptable to City. This bond will be conditioned upon the faithful performance by the Grantee of its Franchise obligations and upon the further condition that in the event the Grantee

shall fail to comply with any law, ordinance or regulation governing the Franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damages or loss suffered by City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, and further guaranteeing payment by the Grantee of claims, liens and taxes due City which arise by reason of the construction, operation, or maintenance of the System. The rights reserved by City with respect to the bond are in addition to all other rights City may have under the Franchise or any other law. City may, from year to year, in its sole discretion, reduce the amount of the bond.

- b. The time for Grantee to correct any violation or liability, shall be extended by City if the necessary action to correct such violation or liability is, in the sole determination of City, of such a nature or character as to require more than thirty (30) days within which to perform, provided Grantee provides written notice that it requires more than thirty (30) days to correct such violations or liability, commences the corrective action within the thirty (30) days period and thereafter uses reasonable diligence to correct the violation or liability.
- c. In the event this Franchise is revoked by reason of default of Grantee, City shall be entitled to collect from the performance bond that amount which is attributable to any damages sustained by City as a result of said default or revocation.
- d. Grantee shall be entitled to the return of the performance bond, or portion thereof, as remains sixty (60) days after the expiration of the term of the Franchise or revocation for default thereof, provided City has not notified Grantee of any actual or potential damages incurred as a result of Grantee's operations pursuant to the Franchise or as a result of said default.
- e. The rights reserved to City with respect to the performance bond are in addition to all other rights of City whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to the performance bond shall affect any other right City may have.

2. Letter of Credit.

- a. At the time of acceptance of this Franchise, Grantee shall deliver to City an irrevocable and unconditional Letter of Credit, in form and substance acceptable to City, from a National or State bank approved by City, in the amount of \$25,000.00.

- b. The Letter of Credit shall provide that funds will be paid to City, upon written demand of City, and in an amount solely determined by City in payment for penalties charged pursuant to this Section, in payment for any monies owed by Grantee to City or any person pursuant to its obligations under this Franchise, or in payment for any damage incurred by City or any person as a result of any acts or omissions by Grantee pursuant to this Franchise.
- c. In addition to recovery of any monies owed by Grantee to City or any person or damages to City or any person as a result of any acts or omissions by Grantee pursuant to the Franchise, City in its sole discretion may charge to and collect from the Letter of Credit the following penalties:
 - i. For failure to timely complete System upgrades as provided in this Franchise unless City approves the delay, the penalty shall be \$500.00 per day for each day, or part thereof, such failure occurs or continues.
 - ii. 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 penalty shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues.
 - iii. Fifteen (15) days following notice from City of a failure of Grantee to comply with construction, operation or maintenance standards, the penalty shall be \$500.00 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 penalty shall be \$500.00 per day for each day, or part thereof, such failure occurs or continues.
 - v. For Grantee's breach of any written contract or agreement with or to the City or its designee, the penalty shall be \$500.00 per day for each day, or part thereof, such breach occurs or continues.
 - vi. For failure to comply with any of the provisions of this Franchise, or other City ordinance for which a penalty is not otherwise specifically provided pursuant to this paragraph c, the penalty shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues.

- d. Each violation of any provision of this Franchise shall be considered a separate violation for which a separate penalty can be imposed.
- e. Whenever City finds that Grantee has violated one or more terms, conditions or provisions of this Franchise, or for any other violation contemplated in Subparagraph c. above, a written notice shall be given to Grantee informing it of such violation. At any time after thirty (30) days (or such longer reasonable time which, in the sole determination of City, is necessary to cure the alleged violation) following local receipt of notice, provided Grantee remains in violation of one or more terms, conditions or provisions of this Franchise, in the sole opinion of City, City may draw from the Letter of Credit all penalties and other monies due City from the date of the local receipt of notice.
- f. Whenever the Letter of Credit is drawn upon, Grantee may, within seven (7) days of such draw, 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. All penalties shall continue to accrue and City may continue to draw from the Letter of Credit during any appeal pursuant to this subparagraph f.
 - 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.
- g. If said Letter of Credit or any subsequent Letter of Credit delivered pursuant thereto expires prior to thirty (30) months after the expiration of the term of this Franchise, it shall be renewed or replaced during the term of this Franchise to provide that it will not expire earlier than thirty (30) months after the expiration 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 Paragraph A of this Section.
- h. 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 9.2 (a) as a substitution of the previous Letter of Credit. This shall be a continuing obligation for any draws upon the Letter of Credit.

- i. If any Letter of Credit is not so replaced or replenished, City may draw on said Letter of Credit for the whole amount thereof and use the proceeds as City determines in its sole discretion. 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.
 - j. The collection by City of any damages, monies or penalties 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.
- 3. Indemnification of City.
 - a. City, its officers, boards, committees, commissions, elected officials, employees and agents shall not be liable for any loss or damage to any real or personal property of any Person, or for any injury to or death of any Person, arising out of or in connection with Grantee's construction, operation, maintenance, repair or removal of the System or as to any other action of Grantee with respect to this Franchise.
 - b. Grantee shall indemnify, defend, and hold harmless City, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the City's exercise, administration, or enforcement of the Franchise.
 - c. Nothing in this Franchise relieves a Person, except City, from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regarding, or changing the line of a Right-of-Way or public place or with the construction or reconstruction of a sewer or water system.
- 4. Insurance.
 - a. As a part of the indemnification provided in Section 8.3, but without limiting the foregoing, Grantee shall file with City at the time of its acceptance of this Franchise, and at all times thereafter maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including broadcaster's/cablecaster's liability and contractual liability coverage, in protection of the Grantee, and the City, its officers, elected officials, boards, commissions, agents and employees

for any and all damages and penalties which may arise as a result of this Franchise. The policy or policies shall name the City as an additional insured, and in their capacity as such, City officers, elected officials, boards, commissions, agents and employees.

- b. The policies of insurance shall be in the sum of not less than \$1,000,000.00 for personal injury or death of any one Person, and \$2,000,000.00 for personal injury or death of two or more Persons in any one occurrence, \$500,000.00 for property damage to any one person and \$2,000,000.00 for property damage resulting from any one act or occurrence.
- c. The policy or policies of insurance shall be maintained by Grantee in full force and effect during the entire term of the Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of Grantee or for other reasons, except after sixty (60) days advance written notice have been provided to City.

SECTION 10.

SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE

1. City's Right to Revoke.

- a. In addition to all other rights which City has pursuant to law or equity, City reserves the right to commence proceedings to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if it is determined by City that:
 - i. Grantee has violated material provisions(s) of this Franchise; or
 - ii. Grantee has attempted to evade any of the provisions of the Franchise; or
 - iii. Grantee has practiced fraud or deceit upon City.

City may revoke this Franchise without the hearing required by 9.2(b) herein if Grantee is adjudged a bankrupt.

2. Procedures for Revocation.

- a. City shall provide Grantee with written notice of a cause for revocation and the intent to revoke 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 herein, City shall provide Grantee with the basis of the revocation.

- 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, 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 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.
3. Abandonment of Service. Grantee may not abandon the System or any portion thereof without having first given three (3) months written notice to City. Grantee may not abandon the System or any portion thereof without compensating City for damages resulting from the abandonment, including all costs incident to removal of the System.
4. Removal After Abandonment, Termination or Forfeiture.
- a. In the event of termination or forfeiture of the Franchise or abandonment of the System, City shall have the right to require Grantee to remove all or any portion of the System from all Rights-of-Way and public property within City.
 - b. If Grantee has failed to commence removal of System, or such part thereof as was designated by City, within thirty (30) days after written notice of City's demand for removal is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of City's demand for removal is given, City shall have the right to apply funds secured by the Letter of Credit and Performance Bond toward removal and/or declare all right, title, and interest to the System to be in City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it.

5. Sale or Transfer of Franchise.

- a. No sale or transfer of the Franchise, or sale, transfer, or fundamental corporate change of or in Grantee, including, but not limited to, a fundamental corporate change in Grantee's parent corporation or any entity having a controlling interest in Grantee, the sale of a controlling interest in the Grantee's assets, a merger including the merger of a subsidiary and parent entity, consolidation, or the creation of a subsidiary or affiliate entity, shall take place until a written request has been filed with City requesting approval of the sale, transfer, or corporate change and such approval has been granted or deemed granted, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and/or assets to secure an indebtedness.
- b. Any sale, transfer, exchange or assignment of stock in Grantee, or Grantee's parent corporation or any other entity having a controlling interest in Grantee, so as to create a new controlling interest therein, shall be subject to the requirements of this Section 10.5. The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. In any event, as used herein, a new "controlling interest" shall be deemed to be created upon the acquisition through any transaction or group of transactions of a legal or beneficial interest of fifteen percent (15%) or more by one Person. Acquisition by one Person of an interest of five percent (5%) or more in a single transaction shall require notice to City.
- c. The Grantee shall file, in addition to all documents, forms and information required to be filed by applicable law, the following:
 1. All contracts, agreements or other documents that constitute the proposed transaction and all exhibits, attachments, or other documents referred to therein which are necessary in order to understand the terms thereof.
 2. A list detailing all documents filed with any state or federal agency related to the transaction including, but not limited to, the MPUC, the FCC, the FTC, the FEC, the SEC or MnDOT. Upon request, Grantee shall provide City with a complete copy of any such document; and
 3. Any other documents or information related to the transaction as may be specifically requested by the City.
- d. City shall have such time as is permitted by federal law in which to review a transfer request.

- e. The Grantee shall reimburse City for all the legal, administrative, and consulting costs and fees associated with the City's review of any request to transfer. Nothing herein shall prevent Grantee from negotiating partial or complete payment of such costs and fees by the transferee. Grantee may not itemize any such reimbursement on Subscriber bills, but may recover such expenses in its subscriber rates.
- f. In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to subparagraph (a) or (b) of this Section be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City including, but not limited to, any adequate guarantees or other security instruments provided by the transferor.
- g. In the event of any proposed sale, transfer, corporate change, or assignment pursuant to subparagraph (a) or (b) of this Section, City shall have the right to purchase the System for the value of the consideration proposed in such transaction. City's right to purchase shall arise upon City's receipt of notice of the material terms of an offer or proposal for sale, transfer, corporate change, or assignment, which Grantee has accepted. Notice of such offer or proposal must be conveyed to City in writing and separate from any general announcement of the transaction.
- h. City shall be deemed to have waived its right to purchase the System pursuant to this Section only in the following circumstances:
 - i. If City does not indicate to Grantee in writing, within sixty (60) days of receipt of written notice of a proposed sale, transfer, corporate change, or assignment as contemplated in Section 10.5 (g) above, its intention to exercise its right of purchase; or
 - ii. It approves the assignment or sale of the Franchise as provided within this Section.
- i. No Franchise may be transferred if City determines Grantee is in noncompliance of the Franchise unless an acceptable compliance program has been approved by City. The approval of any transfer of ownership pursuant to this Section shall not be deemed to waive any rights of City to subsequently enforce noncompliance issues relating to this Franchise even if such issues predated the approval, whether known or unknown to City.

SECTION 11.

PROTECTION OF INDIVIDUAL RIGHTS

1. Discriminatory Practices Prohibited. Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, sex, age, status as to public assistance, affectional preference, or disability. Grantee shall comply at all times with all other applicable federal, state, and city laws, and all executive and administrative orders relating to nondiscrimination.

2. Subscriber Privacy.
 - a. No signals including signals of a Class IV Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. 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 authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of Class IV Channel activity planned for the purpose of monitoring individual viewing patterns or practices.

 - b. No 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 service business use or to City for the purpose of Franchise administration, and also to the Subscriber subject of that information, unless Grantee has received specific written authorization from the Subscriber to make such data available. 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 authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

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

SECTION 12.

UNAUTHORIZED CONNECTIONS AND MODIFICATIONS

1. Unauthorized Connections or Modifications Prohibited. It shall be unlawful for any firm, Person, group, company, corporation, or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any unauthorized connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System or receive services of the System without Grantee's authorization.
2. Removal or Destruction Prohibited. It shall be unlawful for any firm, Person, group, company, or corporation to willfully interfere, tamper, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any purpose whatsoever, except for any rights City may have pursuant to this Franchise or its police powers.
3. Penalty. Any firm, Person, group, company, or corporation found guilty of violating this section may be fined not less than Twenty Dollars (\$20.00) and the costs of the action nor more than Five Hundred Dollars (\$500.00) and the costs of the action for each and every subsequent offense. Each continuing day of the violation shall be considered a separate occurrence.

SECTION 13.

MISCELLANEOUS PROVISIONS

1. Franchise Renewal. Any renewal of this Franchise shall be performed in accordance with applicable federal, state and local laws and regulations. The term of any renewed Franchise shall be limited to a period not to exceed fifteen (15) years.
2. Work Performed by Others. All applicable obligations of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise, however, in no event shall any such subcontractor or other performing work obtain any rights to maintain and operate a System or provide Cable Service. Grantee shall provide notice to City of the name(s) and address(es) of any entity, other than Grantee, which performs substantial services pursuant to this Franchise.
3. Amendment of Franchise Ordinance. 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 7.5 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 federal, state or local laws. Provided, however, nothing herein shall restrict City's exercise of its police powers or City's authority to unilaterally amend Franchise provisions to the extent permitted by law.

4. Compliance with Federal, State and Local Laws.

- a. If any federal or state law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City shall conform to state laws and rules regarding cable communications not later than one year after they become effective, unless otherwise stated, and to conform to federal laws and regulations regarding cable as they become effective.
- b. If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and City.

5. Nonenforcement by City. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of City to enforce prompt compliance. City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.

6. Rights Cumulative. All rights and remedies given to City by this Franchise or retained by City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by City and the exercise of one or more rights

or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

7. Grantee Acknowledgment of Validity of Franchise. Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes City has the power to make the terms and conditions contained in this Franchise.

SECTION 14.

PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

1. Publication: Effective Date. This Franchise shall be published in accordance with applicable local and Minnesota law. The Effective Date of this Franchise shall be the date of acceptance by Grantee in accordance with the provisions of Section 14.2.
2. Acceptance.
 - a. Grantee shall accept this Franchise within sixty (60) 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 provided, however, this Franchise shall not be effective until all City ordinance adoption procedures are complied with and all applicable timelines have run for the adoption of a City ordinance. In the event acceptance does not take place, or should all ordinance adoption procedures and timelines not be completed, this Franchise and any and all rights granted hereunder to Grantee shall be null and void.
 - b. Upon acceptance of this Franchise, Grantee and City shall be bound by all the terms and conditions contained herein.
 - c. 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 grant payments, performance bond and insurance certificates required herein that have not previously been delivered.

Passed and adopted this 29th day of July, 1998.

ATTEST:

CITY OF FALCON HEIGHTS

By: Carla Asleson

By: Susan L. Gehrz

Its: City Clerk

Its: Mayor

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

Dated: _____

By: _____

Its: _____

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