

**ORDINANCE NO. \_\_\_\_\_  
CITY OF BLAINE, MINNESOTA**

**CABLE TELEVISION FRANCHISE ORDINANCE**

**Date: \_\_\_\_\_, 2002**

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## **ORDINANCE NO.**

AN ORDINANCE GRANTING A FRANCHISE TO MEDIAONE NORTH CENTRAL COMMUNICATIONS CORP., D/B/A AT&T BROADBAND, TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF BLAINE, MINNESOTA, FOR THE PURPOSE OF PROVIDING CABLE SERVICE; 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 Blaine, Minnesota 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 interests 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 growth with the development and operation of a Cable 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

### 1.1 **Short Title.**

This Franchise Ordinance shall be known and cited as the “Cable Franchise Ordinance.”

### 1.2 **Definitions.**

For purposes of this Franchise, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; words in the singular number include the plural; and the masculine gender includes the feminine gender. Unless otherwise expressly stated, words not defined herein or in the City Code shall be given the meaning set forth in applicable law and, if not defined therein, the words shall be given their common and ordinary meaning. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory.

1.2.1 **“Actual Cost”** means the incremental cost to the Grantee of materials, capitalized labor and borrowing necessary to install and construct fiber-optic lines, coaxial cable and/or equipment.

1.2.2 **“Affiliate”** means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with the Grantee.

1.2.3 **“Basic Cable Service”** means the lowest priced tier of Cable Service that includes the lawful retransmission of local television broadcast signals and any public, educational and governmental access programming required by this 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).

1.2.4 **“Cable Service”** or **“Service”** means (1) the one-way transmission to Subscribers of (a) video programming or (b) other programming services; and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming services. For purposes of this Franchise, the parties hereto acknowledge that the FCC is currently undertaking a proceeding addressing whether cable modem service may be lawfully considered a cable service under federal law. As of the adoption of this Franchise, cable modem services are not considered “Cable Service.” As to the definition of “Cable Service,” and any inclusion of cable modem service in such service, the parties agree to comply with future applicable federal or State law or applicable regulations.

1.2.5 **“Cable System”** or **“System”** means the facility of the Grantee consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service, which includes video

programming and which is provided to multiple Subscribers within the City, but such term does not include: (1) a facility that only serves to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any Rights-of-Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a System (other than for purposes of 47 U.S.C. § 541(c)) if such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with 47 U.S.C. § 573; (5) any facilities of any electric utility used solely for operating its electric utility system; or (6) a translator system which receives and rebroadcasts over-the-air signals. A reference to the System in this Franchise refers to any part of such System including, without limitation, Converters, but does not include the Institutional Network or the DFOI. The foregoing definition of “System” shall not be deemed to circumscribe or limit the valid authority of the City to regulate or franchise the activities of any other communications system or provider of communications service to the full extent permitted by law. “Cable System” or “System” as defined herein shall not be inconsistent with the definitions set forth in applicable law. Any reference to “Cable System” or “System” herein, which system is owned or operated by a Person or governmental body other than the Grantee, shall be defined the same as this Section 1.2.5.

- 1.2.6** “City” means the City of Blaine, Minnesota, a municipal corporation, in the State of Minnesota, acting by and through its City Council, or its lawfully appointed designee.
- 1.2.7** “City Code” means the Blaine City Code, as amended from time to time.
- 1.2.8** “Commission” means the North Metro Telecommunications Commission, a municipal joint powers consortium comprised of the municipalities of Blaine, Centerville, Circle Pines, Ham Lake, Lexington, Lino Lakes and Spring Lake Park, Minnesota. In the event the City lawfully withdraws from the Commission, any reference to the Commission in this Franchise shall thereafter be deemed a reference to the City, and the rights and obligations related thereto shall, where possible, accrue pro rata to the City, pursuant to a transition agreement to be negotiated at such time by and between the City, the Commission and the Grantee. The total burden of Grantee’s obligations under this Franchise and the Grantee’s Franchise with the other member cities of the Commission shall not be increased as a result of any such withdrawal.
- 1.2.9** “Converter” means an electronic device (sometimes referred to as a receiver) which may serve as an interface between a System and a Subscriber’s television monitor, and which may convert signals to a frequency acceptable to a television monitor of a Subscriber and may, by an appropriate selector, permit a Subscriber to view all signals of a particular service.

- 1.2.10 **“CPI”** means the annual average of the Consumer Price Index for all Urban Consumers (CPI-U) for the Minneapolis-St. Paul CMSA, as published by the Bureau of Labor Statistics.
- 1.2.11 **“Drop”** means the cable that connects the ground block on the Subscriber’s residence or institution to the nearest feeder cable of the System.
- 1.2.12 **“Educational Access Channel”** or **“Educational Channel”** means any channel on the System set aside by the Grantee for Noncommercial educational use by educational institutions, as contemplated by applicable law.
- 1.2.13 **“FCC”** means the Federal Communications Commission, its designee, and any legally appointed, designated or elected agent or successor.
- 1.2.14 **“Franchise”** or **“Cable Franchise”** means this ordinance, as may be amended from time to time, any exhibits attached hereto and made a part hereof, and the regulatory and contractual relationship established hereby.
- 1.2.15 **“Governmental Access Channel”** or **“Governmental Channel”** means any channel on the System set aside by the Grantee for Noncommercial use by the City or its delegatee.
- 1.2.16 **“Grantee”** is MediaOne North Central Communications Corp., Inc., d/b/a AT&T Broadband, and its lawful successors, transferees or assignees.
- 1.2.17 **“Gross Revenues”** means any and all revenues arising from or attributable to, or in any way derived directly or indirectly by the Grantee or its Affiliates, subsidiaries, or parent, or by any other entity that is a cable operator of the System, from the operation of the Grantee’s System to provide Cable Services (including cash, credits, property or other consideration of any kind or nature). Gross Revenues include, by way of illustration and not limitation, monthly fees charged to Subscribers for any basic, optional, premium, per-channel, or per-program service, or other Cable Service including, without limitation, Installation, disconnection, reconnection, and change-in-service fees; Lockout Device fees; Leased Access Channel fees; late fees and administrative fees; fees, payments or other consideration received from programmers for carriage of programming on the System and accounted for as revenue under GAAP; revenues from rentals or sales of Converters or other equipment; fees related to commercial and institutional usage of the System or the I-Net; advertising revenues; interest; barter; revenues from program guides; franchise fees; and revenues to the System from home shopping, bank-at-home channels and other revenue sharing arrangements. Gross Revenues shall include revenues received by an entity other than the Grantee, an Affiliate or another entity that operates the System where necessary to prevent evasion or avoidance of the Grantee’s obligation under this Franchise to pay the franchise fee. Gross Revenues shall not include: (i) to the extent consistent with generally accepted accounting principles, actual bad debt write-offs, provided, however, that



all or part of any such actual bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (ii) any taxes on services furnished by the Grantee imposed by any municipality, state or other governmental unit, provided that franchise fees shall not be regarded as such a tax; (iii) FCC regulatory fees; (iv) Subscriber credits, adjustments or refunds; (v) PEG Fees; or (vi) refundable Subscriber deposits. As previously stated in the definition of “Cable Services” as to cable modem service, the parties agree to comply with future applicable federal or State law or regulation as to the inclusion of fees for such service being included or excluded from the definition of “Gross Revenues.”

- 1.2.18 “Installation”** means the connection of the System from feeder cable to the point of connection with the Subscriber Converter or other terminal equipment.
- 1.2.19 “Institutional Network” or “I-Net”** means the discrete hybrid fiber-coaxial, bi-directional communications network and services related to such network provided by the Grantee to identified institutions as required by this Franchise, and as further described in Section 7 herein.
- 1.2.20 “Leased Access Channel”** means channels on the System which are designated or dedicated for use by a Person unaffiliated with the Grantee pursuant to 47 U.S.C. §532.
- 1.2.21 “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 System.
- 1.2.22 “Memorandum of Understanding” or “MOU”** means that certain agreement dated January 29, 1996, by and between Meredith/New Heritage Strategic Partners, L.P., Grantee’s predecessor in interest, and the City regarding PEG funding, creation of a “PEG” fee and certain rate regulatory issues, which is attached hereto as Exhibit D and made a part hereof.
- 1.2.23 “Node”** means the transition point between optical light transmission (fiber-optic cable) and the RF transmission (coaxial cable) of video and data signals being delivered to and received from the Subscriber’s home, or in the case of the Institutional Network, signals being delivered to and received from Institutional Network user sites.
- 1.2.24 “Noncommercial”** means, in the context of PEG channels, that particular products and services are not promoted or sold. This term shall not be interpreted to prohibit a PEG channel operator or programmer from soliciting and receiving voluntary financial support to produce and transmit video programming on a PEG channel, or from acknowledging a contribution. In the context of the Institutional Network, particular products or services shall not be sold by the City or other I-Net Users, Dark Fiber Optic Infrastructure Users or Additional DFOI Users, however, the City

may provide governmental services or products, as distinguished from proprietary services or products, for a fee to other governments or educational institutions.

- 1.2.25 “Normal Operating Conditions”** means those service conditions that are within the control of the Grantee. Conditions that 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, maintenance or upgrade of the System (including the I-Net and/or the DFOI) and the development, operation or maintenance of the Grantee’s telephone system. Conditions that 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.
- 1.2.26 “North Metro Franchise Area”** means the geographic area consisting of the Minnesota cities of Blaine, Centerville, Circle Pines, Ham Lake, Lexington, Lino Lakes and Spring Lake Park.
- 1.2.27 “North Metro System”** means the Cable System operated pursuant to this Franchise and located in the member municipalities of the Commission.
- 1.2.28 “PEG”** means public, educational, religious and governmental.
- 1.2.29 “Person”** means any individual, partnership, association, joint stock company, joint venture, domestic or foreign corporation, stock or non-stock corporation, limited liability company, professional limited liability corporation, or other organization of any kind, or any lawful successor or transferee thereof, but such term does not include the City or the Commission.
- 1.2.30 “Public Access Channel(s)”** means any channels on the System set aside by the Grantee for Noncommercial use by the general public, as contemplated by applicable law.
- 1.2.31 “Right-of-Way” or “Rights-of-Way”** means the surface, air space above the surface and the area below the surface of any public street, highway, lane, path, alley, sidewalk, avenue, boulevard, drive, court, concourse, bridge, tunnel, park, parkway, skyway, waterway, dock, bulkhead, wharf, pier, easement or similar property or waters within the City owned by or under control of the City, or dedicated for general public use by the City, including, but not limited to, any riparian right, which, consistent with the purposes for which it was created, obtained or dedicated, may be used for the purpose of installing, operating and maintaining a System, I-Net and DFOI.. No reference herein to a “Right-of-Way” shall be deemed to be a representation or guarantee by the City that its interest or other right to control or use such property is sufficient to permit its use for the purpose of installing, operating and maintaining the System, I-Net or DFOI.

- 1.2.32 “**Right-of-Way Ordinance**” means any ordinance of the City codifying requirements regarding regulation, management and use of Rights-of-Way in the City, including registration, fees, and permitting requirements.
- 1.2.33 “**Standard Installation**” means any residential Installation which can be completed using a Drop of 150 feet or less.
- 1.2.34 “**State**” means the State of Minnesota, its agencies and departments.
- 1.2.35 “**Subscriber**” means any Person that lawfully receives service via the System with the Grantee’s express permission. In the case of multiple office buildings or multiple dwelling units, the term “Subscriber” means the lessee, tenant or occupant.
- 1.2.36 “**System Upgrade**” means the improvement or enhancement in the technology or service capabilities made by the Grantee to the System as more fully described in Section 4.

## SECTION 2. GRANT OF AUTHORITY AND GENERAL PROVISIONS

### 2.1 **Grant of Franchise.**

This Franchise is granted pursuant to the terms and conditions contained herein and in applicable law. The Grantee, the City and the Commission shall comply with all provisions of this Franchise and applicable law, regulations and codes. Failure of the Grantee to construct, operate and maintain a System as described in this Franchise, or to meet obligations and comply with all provisions herein, may be deemed a violation of this Franchise.

### 2.2 **Grant of Nonexclusive Authority.**

2.2.1 Subject to the terms of this Franchise, the City hereby grants the Grantee the right to own, construct, operate and maintain a System in, along, among, upon, across, above, over, or under the Rights-of-Way. The grant of authority set forth in this Franchise applies only to the Grantee’s provision of Cable Service; provided, however, that nothing herein shall limit the Grantee’s ability to use the System for other purposes not inconsistent with applicable law or with the provision of Cable Service; and provided further, that any local, State and federal authorizations necessary for the Grantee’s use of the System for other purposes are obtained by the Grantee. This Franchise does not confer any rights other than as expressly provided herein, or as provided by federal, State or local law. No privilege or power of eminent domain is bestowed by this Franchise or grant. The System constructed and maintained by Grantee or its agents pursuant to this Franchise shall not interfere with other uses of the Rights-of-Way. The Grantee shall make use of existing poles and other aerial and underground facilities available to the Grantee to the extent it is technically and economically feasible to do so.

- 2.2.2** Notwithstanding the above grant to use Rights-of-Way, no Right-of-Way shall be used by the Grantee if the 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.
- 2.2.3** This Franchise and the right it grants to use and occupy the Rights-of-Way shall not be exclusive and this Franchise does not, explicitly or implicitly, preclude the issuance of other franchises or similar authorizations to operate Cable Systems within the City. Provided, however, that the City shall not authorize or permit itself or another Person or governmental body to construct, operate or maintain a Cable System on material terms and conditions which are, taken as a whole, more favorable or less burdensome than those applied to the Grantee.
- 2.2.4** This Franchise authorizes only the use of Rights-of-Way for the provision of Cable Service. Therefore, the grant of this Franchise and the payment of franchise fees hereunder shall not exempt the Grantee from the obligation to pay compensation or fees for the use of City property, both real and personal, other than the Rights-of-Way; provided, however, that such compensation or fees are required by City ordinance, regulation or policy and are nondiscriminatory.

**2.3 Lease or Assignment Prohibited.**

No Person or governmental body may lease Grantee's System for the purpose of providing Cable 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, including, without limitation, a requirement on such Person to pay franchise fees on such Person's or governmental body's use of the System to provide Cable Services, to the extent there would be such a requirement under this Franchise if the Grantee itself were to use the System to provide such Cable Service. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 10.5.

**2.4 Franchise Term.**

This Franchise shall be in effect for a period of fifteen (15) years, such term commencing on the Effective Date specified in Section 2.10, unless sooner renewed, extended, revoked or terminated as herein provided.

**2.5 Previous Franchises.**

As of the Effective Date, this Franchise shall supercede and replace any previous Ordinance, as amended, of the City granting a Franchise to Grantee, except the Grantee, the City and Commission shall continue to be bound by the MOU (except as modified or superseded herein) and by any previously accrued but unfulfilled obligations under Ordinance No. 83-786 (the "Prior Franchise") for which the Grantee had notice. Except as otherwise provided in this Franchise, the Grantee shall remain liable for payments of all

franchise fees and other amounts owed under the Prior Franchise and the MOU, and for all unfulfilled actions that the Grantee was notified of and required to take under the Prior Franchise up to the Effective Date of this Franchise. The grant of this Franchise shall have no effect on the Grantee's duty under the Prior Franchise to indemnify or insure the City against acts and omissions occurring during the period that the Prior Franchise was in effect.

## **2.6 Compliance with Applicable Laws, Resolutions and Ordinances.**

**2.6.1** The terms of this Franchise shall define the contractual rights and obligations of the Grantee with respect to the provision of Cable Service and operation of the System in the City. However, the Grantee shall at all times during the term of this Franchise be subject to the lawful exercise of the police powers of the City, the City's right to adopt and enforce additional generally applicable ordinances and regulations, and lawful and applicable zoning, building, permitting and safety ordinances and regulations. The grant of this Franchise does not relieve the Grantee of its obligations to obtain any generally applicable licenses, permits or other authority as may be required by the City Code, as it may be amended, for the privilege of operating a business within the City or for performing work on City property or within the Rights-of-Way, to the extent not inconsistent with this Franchise. 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 the City's police powers, as enumerated above, 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 the Grantee as provided in Section 13.3 herein.

**2.6.2** The Grantee shall comply with the terms of any City ordinance or regulation of general applicability which addresses usage of the Rights-of-Way within the City which may have the effect of superseding, modifying or amending the terms of Section 3 and/or Section 8.5.3 herein; except that the 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 that exceed burdens on similarly situated Right-of-Way users.

**2.6.3** In the event of any conflict between Section 3 and/or Section 8.5.3 of this Franchise and any lawfully applicable City ordinance or regulation which addresses usage of the Rights-of-Way, the conflicting terms in Section 3 and/or Section 8.5.3 of this Franchise shall be superseded by such City ordinance or regulation; except that the 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 Public Rights-of-Way that exceed burdens on similarly situated Right-of-Way users.

**2.6.4** In the event any lawfully applicable 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 8.5.3 of this Franchise, the

Grantee shall comply with such ordinance or regulation of general applicability, regardless of which requirement was first adopted; except that the 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 that exceed burdens on similarly situated Rights-of-Way users.

**2.6.5** In the event the Grantee cannot determine how to comply with any Right-of-Way requirement of the City, whether pursuant to this Franchise or other requirement, the Grantee shall immediately provide written notice of such question, including the Grantee's proposed interpretation, to the City. The City shall provide a written response within ten (10) business days of receipt indicating how the requirements cited by the Grantee apply. The Grantee may proceed in accordance with its proposed interpretation in the event a written response is not received within thirteen (13) business days of mailing or delivering such written question.

**2.7 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 applicable law, 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, the City, or any other body having lawful jurisdiction.

**2.8 Territorial Area Involved.**

This Franchise is granted for the corporate boundaries of the City, as they exist from time to time; provided, however, that the Grantee shall not be required to extend service beyond its present System boundaries except pursuant to the line extension requirement set forth in Section 4.4 of this Franchise.

**2.9 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 the Grantee or the City's designated Franchise administrator, 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 Blaine  
    10801 Town Square Drive NE  
    Blaine, Minnesota 55449  
    Attention: City Manager/Administrator

With copies to: Executive Director  
North Metro Telecommunications Commission  
1630 101<sup>st</sup> Avenue, N.E.  
Blaine, Minnesota 55434

And to: Thomas D. Creighton, Esq.  
Creighton, Bradley & Guzzetta, LLC  
5402 Parkdale Drive, Suite 102  
Minneapolis, Minnesota 55416

If to Grantee: General Manager  
MediaOne d/b/a AT&T Broadband  
10 River Park Plaza  
St. Paul, Minnesota 55107

With copies to: John F. Gibbs, Esq.  
Robins, Kaplan, Miller & Ciresi, LLP  
2800 LaSalle Plaza  
800 LaSalle Avenue South  
Minneapolis, Minnesota 55402

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

**2.10 Effective Date.**

This Franchise shall become effective after: (i) all conditions precedent to its effectiveness as an ordinance of the City have occurred; (ii) all conditions precedent to its execution are satisfied; (iii) it has been approved by the City Council in accordance with applicable law; and (iv) it has been accepted and signed by the Grantee and the City in accordance with Section 14 (the “Effective Date”).

**2.11 Grantee Not a Common Carrier.**

Nothing in this Franchise shall be deemed to require the Grantee to assume the status of a common carrier as defined under applicable law.

**SECTION 3. CONSTRUCTION STANDARDS**

**3.1 Registration, Permits and Construction Codes.**

**3.1.1** The Grantee shall strictly adhere to all State and local laws, regulations and policies adopted by the City Council applicable to the location, construction, installation, operation or maintenance of the System, I-Net and DFOI in the City. The City and/or its delegatee has the right to supervise all construction or installation work

performed in the Rights-of-Way as it shall find necessary to ensure compliance with the terms of this Franchise and other applicable provisions of law and regulations.

- 3.1.2 Failure to obtain permits or to comply with permit requirements shall be grounds for revocation of this Franchise, or any lesser sanctions provided herein or in any other applicable law, code or regulation.

### **3.2 Restoration of Rights-of-Way and Property.**

Any Rights-of-Way, or any sewer, gas or water main or pipe, drainage facility, electric, fire alarm, police communication or traffic control facility of the City, or any other public or private property, which is disturbed, damaged or destroyed during the construction, repair, replacement, relocation, operation, maintenance, expansion, extension or reconstruction of the System, the I-Net and/or the DFOI shall be promptly and fully restored, replaced, reconstructed or repaired by the Grantee, at its expense, to the same condition as that prevailing prior to the Grantee's work, to the extent consistent with applicable statutes and rules. It is agreed that in the normal course, with respect to fire and police department facilities and equipment, and water and sewer facilities, and other essential utilities and services, as determined by the City, such restoration, reconstruction, replacement or repairs shall be commenced immediately after the damage, disturbance or destruction is incurred, and the Grantee shall take diligent steps to complete the same, unless an extension of time is obtained from the appropriate City agency or department. In all other cases, reconstruction, replacement, restoration or repairs shall be commenced within no more than three (3) days after the damage, disturbance or destruction is incurred, and shall be completed as soon as reasonably possible thereafter. If the Grantee shall fail to perform the repairs, replacement, reconstruction or restoration required herein, the 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 the Grantee is responsible for such disturbance or damage, the Grantee shall be obligated to fully reimburse the City for required repairs, reconstruction and restoration.

### **3.3 Conditions on Right-of-Way Use.**

- 3.3.1 Nothing in this Franchise shall be construed to prevent the 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.
- 3.3.2 All System transmission and distribution structures, lines and equipment erected by the Grantee within the 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.



- 3.3.3** The Grantee shall, at its sole expense, by a reasonable time specified by the City, protect, support, temporarily disconnect, relocate or remove any of its property when required by the City by reason of traffic conditions; public safety; Rights-of-Way construction; street maintenance or repair (including resurfacing or widening); change in Right-of-Way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks or any other type of government-owned communications or traffic control system, public work or improvement of government-owned utility; Right-of-Way vacation; or for any other purpose where the convenience of the City would be served thereby. If the Grantee fails, neglects or refuses to comply with the City's request, the City may protect, support, temporarily disconnect, relocate or remove the appropriate portions of the System, the I-Net and/or the DFOI at the Grantee's expense for any of the City's incremental costs incurred as a result of the Grantee's failure to comply. Except for the City's gross negligence, the City shall not be liable to the Grantee for damages resulting from the City's protection, support, disconnection, relocation or removal, as contemplated in the preceding sentence.
- 3.3.4** The Grantee shall not place poles, conduits or other fixtures of the System, I-Net or DFOI 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 lawful requirements of the City.
- 3.3.5** The Grantee shall, upon request of any Person holding a moving permit issued by the 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. The Grantee shall be given not less than ten (10) days' advance written notice to arrange for such temporary wire changes.
- 3.3.6** To the extent consistent with generally applicable City Code provisions, rules and regulations, the Grantee shall have the right to remove, cut, trim and keep clear of its System, the I-Net and the DFOI trees or other vegetation in and along or overhanging the Rights-of-Way. However, in the exercise of this right, the Grantee agrees not to cut or otherwise injure said trees to any greater extent than is reasonably necessary. All trimming shall be performed at no cost to the City, the Commission or a homeowner.
- 3.3.7** The Grantee shall use its best efforts to give prior notice to any adjacent private property owners who will be negatively affected or impacted by Grantee's work in the Rights-of-Way.
- 3.3.8** If any removal, relaying or relocation is required to accommodate the construction, operation or repair of the facilities of a Person that is authorized to use the Rights-of-Way, the Grantee shall, after thirty (30) days' advance written notice and payment of all costs by such Person, commence action to effect the necessary changes requested by the responsible entity. If multiple responsible parties are involved, the City may resolve disputes as to the responsibility for

costs associated with the removal, relaying or relocation of facilities among entities authorized to install facilities in the Rights-of-Way if the parties are unable to do so themselves, and if the matter is not governed by a valid contract between the parties or any State or federal law or regulation.

- 3.3.9** In the event the System, I-Net and/or DFOI is contributing to an imminent danger to health, safety or property, as reasonably determined by the City, after providing actual notice to the Grantee, if it is reasonably feasible to do so, the City may remove or relocate any or all parts of the System, I-Net and/or DFOI at no expense to the City or the Commission other than the City's cost to act on such determination.

**3.4 Use of Existing Poles and Undergrounding of Cable.**

- 3.4.1** Where existing poles, underground conduits, ducts or wire holding structures are available for use by the Grantee, but it does not make arrangements for such use, the City may require, through the established permit, or any other applicable procedure, the Grantee to use such existing poles and wire holding structures if the City determines that the public convenience would be enhanced thereby and the terms available to the Grantee for the use of such poles and structures are just and reasonable.
- 3.4.2** The Grantee agrees to place its cables, wires or other like facilities underground, in the manner as may be required by the provisions of the City Code and City policies, procedures, rules and regulations, as amended from time to time, where all utility facilities are placed underground. The Grantee shall not place facilities, equipment or fixtures where they will interfere with any existing gas, electric, telephone, water, sewer or other utility facilities or with any existing installations of the City, or obstruct or hinder in any manner the various existing utilities serving the residents of the City. To the extent consistent with the City Code, City policies, procedures, rules and regulations, System cable and facilities may be constructed overhead where poles exist and electric or telephone lines or both are now overhead. However, in no case may the Grantee install poles in areas of the City where underground facilities are generally used by the utilities already operating. If the City, at a future date, requires all electric and telephone lines to be placed underground in all or part of the City, the Grantee shall, within a reasonable time, similarly move its cables and lines. If the City reimburses or otherwise compensates any Person using the Rights-of-Way for the purpose of defraying the cost of any of the foregoing, the City shall also reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the City shall not oppose or otherwise hinder any application for or receipt of such funds on behalf of the Grantee.

### **3.5 Installation of Facilities.**

- 3.5.1** No poles, towers, conduits, amplifier boxes, pedestal mounted terminal boxes, similar structures or other wire-holding structures shall be erected or installed by the Grantee without obtaining any required permit or other authorization from the City.
- 3.5.2** No placement of any pole or wire holding structure of the Grantee is to be considered a vested fee interest in the Rights-of-Way or in City property. Whenever feasible, all transmission and distribution structures, lines, wires, cables, equipment and poles or other fixtures erected by the Grantee within the City are to be so located and installed as to cause minimum interference with the rights and convenience of property owners.

### **3.6 Safety Requirements.**

- 3.6.1** All applicable safety practices required by law shall be used during construction, maintenance and repair of the System, the I-Net and the DFOI. The Grantee agrees, at all times, to employ ordinary and reasonable care and to install and maintain in use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage or injuries to the public or to property. All structures and all lines, equipment and connections in the Rights-of-Way shall at all times be kept and maintained in a safe condition, consistent with applicable safety codes.
- 3.6.2** The Grantee's construction, operation or maintenance of the System, the I-Net and the DFOI, as applicable, shall be conducted in such a manner as not to interfere with City communications technologies related to the health, safety and welfare of City residents.
- 3.6.3** The Grantee shall install and maintain such devices as will apprise or warn Persons and governmental entities using the Rights-of-Way of the existence of work being performed on the System, the I-Net and/or the DFOI in Rights-of-Way.
- 3.6.4** The Grantee shall be a member of the One Call Notification System (otherwise known as "Gopher State One Call") or its successor, and shall field mark the locations of its underground facilities upon request. Throughout the term of this Franchise, the Grantee shall identify the location of its facilities for the City or the Commission at no charge to the City or the Commission.

### **3.7 City Use of Facilities.**

The City, after consultation with the Grantee, shall have the right to use for its sole Noncommercial purposes the Grantee's poles, conduits, ducts and manholes free of charge, provided that such current or continued use will not unreasonably interfere with the present or future needs or operations of the Grantee.

### **3.8 Removal of Facilities at Expiration of Franchise.**

At the expiration of the term for which this Franchise is granted, or upon the expiration of any renewal or extension period which may be granted, the City shall have the right to require the Grantee, at the Grantee's sole expense: (i) to remove all portions of the System from all Rights-of-Way within the City; and (ii) to restore affected sites to their original condition. Should the Grantee fail, refuse or neglect to comply with the City's directive, all portions of the System, or any part thereof, may at the option of the City become the sole property of the City, at no expense to the City, or be removed, altered or relocated by the City at the cost of the Grantee. The City shall not be liable to the Grantee for damages resulting from such removal, alteration or relocation.

## **SECTION 4. DESIGN PROVISIONS**

### **4.1 System Facilities and Equipment.**

**4.1.1** Upon completion of the subscriber network System Upgrade, the System generally shall have at least the following characteristics:

- 4.1.1.1** a modern design when built, utilizing an architecture that will permit additional improvements necessary for high-quality and reliable service throughout the Franchise term, and the capability to operate continuously on a twenty-four (24) hour a day basis without severe material degradation during operating conditions typical to the Minneapolis/St. Paul metropolitan area;
- 4.1.1.2** standby power generating capacity at the headend. The Grantee shall maintain motorized standby power generators capable of powering all headend equipment for at least twenty-four (24) hours. The back-up power supplies serving the System shall be capable of providing power to the System for not less than three (3) hours per occurrence measured on an annual basis according to manufacturer specifications in the event of an electrical outage. The Grantee shall maintain sufficient portable motorized generators to be deployed in the event that the duration of a power disruption is expected to exceed three (3) hours;
- 4.1.1.3** facilities of good and durable quality, generally used in high-quality, reliable systems of similar design;
- 4.1.1.4** a System that conforms to or exceeds all applicable FCC technical performance standards, as amended from time to time, which standards are incorporated herein by reference, and any other applicable technical performance standards. Upstream signals shall at all times meet or exceed manufacturers' specifications for successful operation of upstream equipment provided by the

Grantee or approved for use by the Grantee at any Subscriber's premises. End of the line performance must meet or exceed FCC specifications at the end of the Subscriber Drop;

- 4.1.1.5** a System shall, at all times, comply with applicable federal, State and local rules, regulations, practices and guidelines pertaining to the construction, upgrade, operation, extension and maintenance of Cable Systems, including, by way of example (but not limitation):

  - (A) National Electrical Code, as amended from time to time; and
  - (B) National Electrical Safety Code (NESC), as amended from time to time;
- 4.1.1.6** facilities and equipment sufficient to cure violations of FCC technical standards and to ensure that Grantee's System remains in compliance with the standards specified in subsection 4.1.1.5;
- 4.1.1.7** such facilities and equipment as necessary to maintain, operate and evaluate the Grantee's System for compliance with FCC technical and customer service standards, as such standards may hereafter be amended;
- 4.1.1.8** status monitoring equipment to alert the Grantee when and where back-up power supplies are being used, which capability shall be activated and used on or before the completion of the System Upgrade;
- 4.1.1.9** all facilities and equipment required to properly test the System and conduct an ongoing and active program of preventative and demand maintenance and quality control, and to be able to quickly respond to customer complaints and resolve System problems;
- 4.1.1.10** antenna supporting structures designed in accordance with any applicable governmental building codes, as amended, and painted, lighted and erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration, the Federal Communications Commission and all other applicable codes and regulations;
- 4.1.1.11** facilities and equipment at the headend allowing the Grantee to transmit or cablecast signals in substantially the form received, without substantial alteration or deterioration. For example, the headend should include equipment that will transmit color video signals received at the headend in color, stereo audio signals received at the headend in BTSC stereo format, and a signal received with a secondary audio track with both audio tracks;

- 4.1.1.12 the Grantee shall provide adequate security provisions in its Subscriber site equipment to permit parental control over the use of Grantee's Cable Service. The Grantee, however, shall bear no responsibility for the exercise of parental controls and shall incur no liability for any Subscriber's or viewer's exercise or failure to exercise such controls;
- 4.1.1.13 facilities and equipment capable of operating within the temperature ranges typical to the climate of the North Metro Franchise Area over the calendar year;
- 4.1.1.14 the System shall be so constructed and operated that there is no perceptible deterioration in the quality of Public, Educational, Governmental or religious Access Channel signals after delivery of such signals to the first interface point with an Institutional Network hub, Grantee's headend or the subscriber network, whichever is applicable, as compared with the quality of any other channel on the System. As used in this paragraph, "deterioration" refers to delivery that is within the control of the Grantee; and
- 4.1.1.15 the Grantee must have TDD/TYY (or equivalent) equipment at the company office, and a publicly listed telephone number for such equipment, that will allow hearing impaired customers to contact the company.
- 4.1.2 The Grantee is authorized and required to continue to operate Grantee's Cable System substantially as it exists on the date hereof, and to provide service substantially equivalent to its existing service, within the territorial limits of the City as of the Effective Date of this Franchise, until such time as the System is upgraded, as provided herein.
- 4.1.3 The Grantee shall complete a System Upgrade in accordance with the schedule set forth in subsection 4.2 providing at least the following characteristics:
  - 4.1.3.1 upon completion of the System Upgrade, the System shall include a hybrid fiber-coaxial architecture, with fiber-optic cable from the headend to hubs, and from hubs to Nodes. Nodes System-wide shall serve on average 250 dwelling units or less, with a minimum of three (3) fibers connecting such a 250-home average Node to System headends and hubs. Individual Nodes may serve cable passing a number of dwelling units in excess of 250, provided there is no adverse effect on the performance characteristics of the System serving Subscribers from that Node. No Node shall serve more than 750 dwelling units.
  - 4.1.3.2 the capability of supporting both analog and digital Cable Services;

- 4.1.3.3** segmentation of the System, including Nodes that are divisible by two, so that sufficient capacity is available for targeted and interactive services at all times;
- 4.1.3.4** activation of the bandwidth from 5 to 42 MHz for upstream transmissions on the System;
- 4.1.3.5** an average of no more than four (4), but in no event more than seven (7), amplifiers per coaxial cable in each cascade from any Node;
- 4.1.3.6** a capacity rating of at least 860 MHz for all active and passive components;
- 4.1.3.7** audio control units shall be utilized for each channel for volume control on analog service, excluding off-air broadcast channels or channels that are sent through a processor instead of being modulated and de-modulated, locally processed in the hub serving the geographic area; and
- 4.1.3.8** electronic transmission and powering equipment connecting the hub(s) in the North Metro System to the Grantee's other hubs and/or headend facilities in the Twin Cities metropolitan area shall be of a redundant design.
- 4.1.4.** The upgraded System shall initially have a minimum analog channel capacity of at least 78 channels, downstream to all Subscribers, plus additional capacity for digital and other services.
- 4.1.5.** The System shall be designed, constructed and activated in order to facilitate narrowcasting of Government Access Channels discretely by municipality. The Grantee shall provide and maintain all equipment and facilities necessary to accomplish this narrowcasting, at no cost to the City or the Commission.
- 4.1.6.** All power supplies for the System shall be equipped with standby power capability in accordance with Section 4.1.1.2. Additionally, the Grantee shall use status monitoring equipment at all power supply locations in the System. Such equipment shall have the capabilities described in Section 4.1.1.8.
- 4.1.7.** PEG channels shall not be channel mapped without the prior approval of the Commission. As to all other channels, the Grantee shall make good faith efforts to avoid channel mapping unless that mapping is required to deliver a high-quality signal or to comply with applicable laws or regulations. In the event mapping of non-PEG channels is required to deliver a high quality signal or to comply with applicable laws or regulations, the Grantee agrees to map as few channels as possible.

**4.1.8. Emergency Alert System.**

**4.1.8.1.** The Grantee shall install and thereafter maintain an Emergency Alert System (“EAS”) fully compliant with local, state and federal EAS requirements. This EAS shall at all times be operated in compliance with FCC regulations.

**4.1.8.2.** The Grantee shall, at no cost to the City or Commission, furnish and install equipment that will allow a representative of the City to remotely activate the EAS, including activation by telephone, and to override the audio and video on all channels on the Grantee’s Cable System that may be lawfully overridden (subject to any contractual or other rights of broadcasters) without the assistance of the Grantee, for emergency broadcasts.

**4.1.8.3.** The City or the Commission may, from time to time, conduct reasonable tests of the EAS. The City or the Commission shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent use of the Grantee’s Cable System in any manner that results in unlawful use thereof, or any physical loss or physical damage to the Cable System. Except to the extent expressly prohibited by law, the City and the Commission shall hold the Grantee, its employees, officers and assigns harmless from any claims by third parties arising out of use of the EAS, including but not limited to reasonable attorneys’ fees and costs. The City or the Commission shall provide reasonable notice to the Grantee prior to any test use of the EAS. The Grantee shall cooperate with the City and/or the Commission in any such test.

**4.1.9.** During the design, walkout and preliminary construction activities related to the System Upgrade, the Grantee shall attempt to identify and take into account the Cable Service interests of the business community within the City. The Grantee shall, in connection with the System Upgrade, install conduit adequately sized to address future System rebuilds or System additions, with the intent to obviate the need to reopen the Rights-of-Way for construction and installation work.

**4.1.10.** The City may request, as part of the System Upgrade, that the Grantee remove from the Rights-of-Way, at its own expense, existing equipment, plant and facilities that will not be used in the future, whether activated or not. If any unused or deactivated equipment remains in Rights-of-Way after such City request and the Grantee’s reasonable opportunity to remove, the City may remove such plant, facilities and equipment at the Grantee’s expense. The Grantee may appeal any request to remove existing equipment, plant and facilities to the City Council and thereby stay City action until a final decision is issued by the City Council. In the event existing facilities, plant and equipment are left underground



in the Rights-of-Way, the City or the Commission may require the Grantee to provide accurate maps showing the location and the nature of the deactivated or unused facilities, plant and equipment, if such information has not already been provided to the City or the Commission.

**4.1.11.** The Grantee shall not assert or otherwise raise any claim before a court of competent jurisdiction or any administrative agency alleging that, as of the Effective Date of this Franchise, the minimum System design and performance requirements set forth in this Franchise are unenforceable under or inconsistent with then current applicable laws or regulations, or any orders, rules or decisions of the FCC.

## **4.2 System Construction Timetable.**

**4.2.1** Grantee shall complete all construction related to the System Upgrade and shall fully activate the upgraded System no later than July 15, 2004. The Grantee shall provide, where reasonably feasible, for phased activation launches of the subscriber network. Failure to timely complete construction of the System Upgrade shall be a violation of this Franchise.

**4.2.2** Within ninety (90) days after the Effective Date of this Franchise, the Grantee shall commence application for necessary permits, licenses, certificates and authorizations which are required in the conduct of its business.

**4.2.3** Within ninety (90) days after the Effective Date of this renewed Franchise, Grantee shall commence System preliminary construction, walkout, electronic design, fiber design, and other associated System Upgrade and construction steps, and shall give written notice to the City and the Commission upon commencement of such activities.

**4.2.4** All construction shall be performed in accordance with applicable laws, procedures, standards and regulations, except where specifically waived by the City.

**4.2.5** The Grantee shall provide the City and the Commission with notice prior to commencement of steps of the System Upgrade in which possible service disruptions or physical construction activities may occur, including but not limited to: (i) tap pedestal replacements; (ii) amplifier/line extender pedestal replacements; (iii) underground duct replacement; (iv) overlash of aerial fiber optic lines; and (v) underground placement or replacement of coaxial cables.

**4.2.6** Upon completion of the System Upgrade initial design, the Grantee shall make available to the City and the Commission for review, on a confidential basis, a concise description of the facilities proposed to be erected or installed, and subscriber network design prints/map(s), which shall include at least the following elements: (i) trunk and feeder design; (ii) fiber routes; (iii) Node

locations; (iv) standby power supply locations; and (v) areas of the City to be served by each Node.

**4.2.7** The Grantee shall maintain complete and comprehensive as-built drawings of the subscriber network, I-Net and DFOI throughout the Franchise term, and shall make them available to the Commission and/or the City for inspection, upon request, on a confidential basis. As-built drawings shall be updated continually as changes occur in the subscriber network, the I-Net and/or the DFOI. The Grantee shall provide to the City, upon request, (including electronic form) copies of all as-built drawings showing the Grantee's facilities and equipment in the Rights-of-Way, and on private property where necessary to investigate citizen complaints or to determine Franchise compliance. The Grantee shall also maintain throughout the Franchise term a full set of headend and hub routing diagrams, showing routing from source input to combiner output and routing between headends and hubs, for all subscriber network, I-Net and DFOI signal transport. Such routing diagrams shall be made available to the City and/or the Commission for inspection, upon request, on a confidential basis.

### **4.3 Periodic Progress Reporting.**

Following commencement of construction of the System Upgrade, the DFOI and the I-Net upgrade or any similar major construction, the Grantee shall, upon request of the Commission, meet with the Commission and provide an update on the progress of the System Upgrade, the DFOI construction and the I-Net upgrade or other construction.

**4.3.1** Public Notification. Prior to the beginning of the System Upgrade, and periodically during each phase of construction, the Grantee shall inform the public and its Subscribers, through various means, about: (i) the progress of the System Upgrade or major construction; (ii) areas where construction crews will be working; and (iii) any expected temporary interruptions to existing services which may occur.

**4.3.2** Delays in the Construction. The Grantee shall be excused from the timely performance of its obligation to begin and complete any System Upgrade, DFOI construction, and I-Net upgrade within the time specified herein, for the following occurrences:

**4.3.2.1** Any "Force Majeure" situation, as described herein; and

**4.3.2.2** Unreasonable failure or delay by the City to issue any permits or permission upon a timely and complete application submitted to the City by the Grantee or its contractor representative and tender of any required permit fee.

**4.3.3** Consequences of Delays. Absent a showing of excusable delay pursuant to subsection 4.3.2 above, should the Grantee be unable to demonstrate the commencement or timely completion of the System Upgrade, the DFOI and the I-

Net upgrade by the times specified herein, or be unable to reasonably justify any delays, then the Grantee shall be in violation of a material provision of this Franchise and the City may, in its sole discretion, either grant the Grantee an extension of time to complete such construction, or implement any enforcement measures or penalties specified in this Franchise or the City Code, including but not limited to revocation of the Franchise. In the event of excusable delay pursuant to subsection 4.3.2, the time for completion will be extended by the period of such delay.

#### **4.4 Line Extension Requirements.**

- 4.4.1** Subject to subsections 4.4.2 through 4.4.6, the Grantee shall make Cable Service available to all residences and businesses which can be served by the Installation of a standard Drop within the City, including multiple dwelling unit buildings, whose owners or occupants request Cable Service, except for multiple dwelling unit buildings to which the Grantee, after best efforts, has not obtained authorization to access.
- 4.4.2** In those areas solidly shaded green, orange or blue on the “North Metro Franchise” map attached hereto as Exhibit E, and made a part hereof, Grantee must extend its System upon request to provide service to any Person or business, without charging such Person or business more than the Standard Installation charges for the individual Subscriber’s Drop. Grantee’s System shall be capable of meeting this requirement no later than December 31, 2004.
- 4.4.3** Within the City’s boundaries, including any areas annexed after the Effective Date of this Franchise, except those areas solidly shaded in green, blue or orange in Exhibit E (which shall be served in accordance with Section 4.4.2) the Grantee must extend its System upon request to provide service to any Person or business, without charging such Person or business more than the Standard Installation charges for the individual Subscriber’s Drop, as long as the following conditions are satisfied, unless the Grantee demonstrates to the City’s satisfaction that a waiver of this requirement is justified due to extraordinary circumstances:
  - 4.4.3.1** the new Subscriber requesting service is located 150 feet or less from the termination of the Cable System; and
  - 4.4.3.2** the area of the City in which the new Subscriber resides has a density of at least thirty-five (35) dwelling units per mile of feeder cable, excluding Drop footage, when aerial construction is required for an extension, and at least fifty (50) dwelling units per mile of feeder cable, excluding Drop footage, when underground construction is required for an extension. All areas that reach the applicable density requirement at any time during the Franchise term shall be provided service upon reaching the minimum density. The City, for its part, shall facilitate the extension of service by requiring developers and utility companies to provide the Grantee

with at least fifteen (15) days advance notice of an available open trench for the placement of necessary cable, but in no event shall the City have any liability for its failure to require any Person to provide notice, or for any developer's or utility company's failure to provide advance notice hereunder.

**4.4.4** In the event that the requirements set forth in subsection 4.4.3 are not met, Persons requesting service can be required to bear the remainder of the total construction costs on a *pro rata* basis.

**4.4.4.1** The "total construction costs" are defined as the Actual Cost to construct the entire extension including electronics, pole make-ready charges and labor, but not the cost of the house Drop.

**4.4.4.2** In the event the number of Subscribers in a particular area of the City reaches the density specified in Section 4.4.3.2 within three (3) years from the date construction of the extension is completed, the Grantee shall return to the then existing Subscribers, *pro rata*, the full amount of their contributions for the extension.

**4.4.5** Irrespective of the density requirements set forth in this Section 4.4, the Grantee shall continue to offer Service to all dwelling units serviceable prior to the System Upgrade.

**4.4.6** Except as otherwise provided herein, the 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 shall the applicable timeframe exceed twelve (12) months from notice thereof by the City to Grantee, and qualification of the area requesting service pursuant to Section 4.4.3.2. Nothing in this paragraph shall be construed to limit or otherwise modify the requirement set forth in subsection 4.4.2.

## **4.5 System Maintenance.**

**4.5.1** The Grantee shall interrupt Cable Service only for good cause and for the shortest time possible. Such interruption shall occur during periods of minimum use of the System. The Grantee shall use its best efforts to provide the Commission with at least twenty-four (24) hours prior notice of a planned service interruption, except for a planned service interruption which will have a minimal impact on Subscribers, usually meaning affecting less than one hundred (100) Subscribers or less than a fifteen (15) minute interruption.

**4.5.2** Maintenance of the System shall be performed in accordance with the technical performance and operating standards established by FCC rules and regulations. Should the FCC choose to abandon this field and does not preempt the City's entry into this field, the City may adopt such technical performance and operating standards as its own, and the Grantee shall comply with them at all times.

#### **4.6 System Tests and Inspections; Special Testing.**

- 4.6.1** Grantee shall perform all tests necessary to demonstrate compliance with the requirements of the Franchise and other performance standards established by law or regulation.
- 4.6.2** The City and the Commission shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise. In addition, the City and/or the Commission may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints regarding System construction, operations or installation work pertaining to such location(s). Such tests shall be limited to the particular matter in controversy. The City and/or the Commission shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to the Grantee or to the Subscribers of such testing.
- 4.6.3** Before ordering such tests, the 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 and/or the Commission, as applicable, shall meet with the 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, the City and/or the Commission wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy or resolution of complaints, the tests shall be conducted at the Grantee's expense by a qualified engineer selected by the City and/or the Commission, as applicable, and the Grantee shall cooperate in such testing.
- 4.6.4** Unless otherwise provided in this Franchise, tests shall be supervised by the Grantee's chief technical authority, who shall certify all records of tests provided to the City and the Commission.
- 4.6.5** The Grantee shall provide the City and the Commission with at least two (2) business days' prior written notice of, and opportunity to observe, any tests performed on the System.
- 4.6.5.1** Test results shall be filed with the City and the Commission within fourteen (14) days of a written request by the City and/or the Commission.
- 4.6.5.2** If any test indicates that any part or component of the System fails to meet applicable requirements, the Grantee, without requirement of additional notice or request from the City or the Commission, shall take corrective action, retest the locations and advise the City and the Commission of the action taken and the results achieved by filing a written report certified by the Grantee's chief technical authority.

#### **4.7 Drop Testing and Replacement.**

The Grantee shall replace, at no separate charge to an individual Subscriber, all Drops and/or associated passive equipment incapable of passing the full 860 MHz System capacity at the time a Subscriber upgrades service to a level which requires a signal above the 550 MHz spectrum.

#### **4.8 FCC Reports.**

Unless otherwise required by the terms of this Franchise, the results of any tests required to be filed by Grantee with the FCC or in the Grantee's public file shall upon request of the City or the Commission also be filed with the City or the Commission, as applicable, within ten (10) days of the request.

#### **4.9 Lockout Capability.**

Upon the request of a Subscriber, the Grantee shall make lockout capability available at no additional charge, other than a charge for a Converter.

#### **4.10 Types of Service.**

Any change in programs or services offered shall comply with all lawful conditions and procedures contained in this Franchise and in applicable law or regulations.

#### **4.11 Uses of System.**

The Grantee shall, upon request of the Commission, advise the Commission of all active uses of the System, for both entertainment and other purposes, and the Commission shall have the right to conduct unannounced audits of such usage.

#### **4.12 Additional Capacity.**

The Grantee shall notify the City and the Commission in writing, in advance of the installation of any fiber optic capacity not contemplated by the initial design or System Upgrade, so that additional fibers may be installed on an Actual Cost basis for government and institutional use. If the City wishes to request additional fiber, it may notify the Grantee within fifteen (15) days of receipt of the Grantee's notification.

### **SECTION 5. SERVICE PROVISIONS**

#### **5.1 Customer Service Standards.**

The Grantee shall at all times comply with FCC customer service standards. In addition, the Grantee shall at all times satisfy all additional or stricter customer service requirements included in this Franchise and any customer service requirements set forth in any ordinance or regulation lawfully enacted by the City.

## **5.2 Video Programming.**

Except as otherwise provided in this Franchise or in applicable law, all programming decisions remain the discretion of the Grantee, provided that the Grantee notifies the City, the Commission and Subscribers in writing thirty (30) days prior to any channel additions, deletions or realignments unless otherwise permitted under applicable federal, State and local laws and regulations. Grantee shall cooperate with the City, and use best efforts to provide all Subscriber notices to the Commission prior to delivery to Subscribers. Location and relocation of the PEG channels shall be governed by Sections 6.1.3-6.1.4.

## **5.3 Regulation of Service Rates.**

**5.3.1** The City and/or its delegatee 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). The City reserves the right to regulate rates for any future services to the extent permitted by law.

**5.3.2** The Grantee shall provide at least one billing cycle prior written notice (or such longer period as may be specified in FCC regulations) to Subscribers and to the City of any changes in rates, regardless of whether or not the Grantee believes the affected rates are subject to regulation, except to the extent such notice requirement is specifically waived by governing law. Bills must be clear, concise and understandable, with itemization of all charges.

## **5.4. Sales Procedures.**

The Grantee shall not exercise deceptive sales procedures when marketing Services within the City. In its initial communication or contact with a Subscriber or a non-Subscriber, and in all general solicitation materials marketing the Grantee or its Services as a whole, the Grantee shall inform the non-Subscriber of all levels of Service available, including the lowest priced and free service tiers. The Grantee shall have the right to market door-to-door during reasonable hours consistent with local ordinances and regulations.

## **5.5 Subscriber Inquiry and Complaint Procedures.**

**5.5.1** The Grantee shall have a publicly listed toll-free telephone number which shall be operated so as to receive general public and Subscriber complaints, questions and requests on a twenty-four (24) hour-a-day, seven (7) days-a-week, 365 days-a-year basis. Trained representatives of the Grantee shall be available to respond by telephone to Subscriber and service inquiries.

**5.5.2** The 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 the 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.

- 5.5.3** Subject to the Grantee's obligations pursuant to law regarding privacy of certain information, the Grantee shall prepare and maintain written records of all complaints received from the City and the Commission and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the office of the Grantee. The Grantee shall provide the City and/or the Commission with a written summary of such complaints, upon request. As to Subscriber complaints, Grantee shall comply with FCC record-keeping regulations, and make the results of such record-keeping available to the City and/or the Commission, upon request.
- 5.5.4** Excluding conditions beyond the control of the Grantee, the Grantee shall commence working on a service interruption within twenty-four (24) hours after the service interruption becomes known and pursue to conclusion all steps reasonably necessary to correct the interruption. The Grantee must begin actions to correct other service problems the next business day after notification of the service problem, and pursue to conclusion all steps reasonably necessary to correct the problem.
- 5.5.5** The Grantee may schedule appointments for Installations and other service calls either at a specific time or, at a maximum, during a four-hour time block during the hours of 9:00 a.m. to 8:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturdays. The Grantee may also schedule service calls outside such hours for the convenience of customers. The 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.
- 5.5.6** The Grantee shall respond to written complaints from the City and the Commission in a timely manner, and provide a copy of each response to the City and the Commission within thirty (30) days. In addition, the Grantee shall respond to all written complaints from Subscribers within (30) days of receipt of the complaint.



**5.6 Subscriber Contracts.**

The Grantee shall file with the Commission any standard form Subscriber contract utilized by Grantee. If no such written contract exists, the Grantee shall file with the Commission 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 the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday.

**5.7 Service Credit.**

**5.7.1** 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 cycle.

**5.7.2** If, for any reason, Service is interrupted for a total period of more than twenty-four (24) hours in any thirty (30) day period, Subscribers shall, upon request, be credited pro rata for such interruption.

**5.8 Refunds or Credits.**

**5.8.1** Any refund checks shall be issued promptly, but not later than either:

**5.8.1.1** the Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier; or

**5.8.1.2** the return of the equipment supplied by the Grantee if Service is terminated.

**5.8.2** Any credits for Service shall be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

**5.9 Late Fees.**

Fees for the late payment of bills shall not be assessed until after the Service has been fully provided. Late fee amounts on file with the Commission shall not be adjusted by the Grantee without the Commission's prior approval.

**5.10 Notice to Subscribers.**

**5.10.1** The Grantee shall provide each Subscriber at the time Cable Service is installed, and at least every twelve (12) months thereafter, the following materials:

**5.10.1.1** instructions on how to use the Cable Service;

- 5.10.1.2 billing and complaint procedures, and written instructions for placing a service call, filing a complaint or requesting an adjustment (including when a Subscriber is entitled to refunds for outages and how to obtain them);
- 5.10.1.3 a schedule of rates and charges, channel positions and a description of products and services offered;
- 5.10.1.4 prices and options for programming services and conditions of subscription to programming and other services; and
- 5.10.1.5 a description of the Grantee's installation and service maintenance policies, Subscriber privacy rights, internet/Cable Modem policies and privacy rights (only at installation of such service), delinquent Subscriber disconnect and reconnect procedures and any other of its policies applicable to Subscribers.

5.10.2 Copies of materials specified in the preceding subsection shall be provided to the City and the Commission upon request.

5.10.3 All Grantee promotional materials, announcements and advertising of Cable Service to Subscribers and the general public, where price information is listed in any manner, shall be clear, concise, accurate and understandable.

**5.11. Exclusive Contracts and Anticompetitive Acts Prohibited.**

5.11.1 The Grantee may not require a residential Subscriber to enter into an exclusive contract as a condition of providing or continuing Cable Service.

5.11.2 The Grantee shall not engage in acts prohibited by federal or State law that have the purpose or effect of limiting competition for the provision of Cable Service in the City.

**5.12. Office Availability and Drop Boxes.**

5.12.1 The Grantee shall install, maintain and operate, throughout the term of this Franchise, a single drop box in the North Metro Franchise Area at a location agreed upon by the Commission and the Grantee. Additional drop boxes may be installed at other locations. The purpose of the drop box(es) shall be to receive Subscriber payments. Drop boxes shall be emptied at least once a day, Monday through Friday, with the exception of legal holidays, and payments shall be posted to Subscribers' accounts within forty-eight (48) hours of pick-up. Subscribers shall not be charged a late fee or otherwise penalized for any failure by the Grantee to empty a drop box as specified herein, or to properly credit a Subscriber for a payment timely made.

- 5.12.2 The Grantee shall, at the request of and at no delivery or retrieval charge to a Subscriber, deliver or retrieve electronic equipment (*e.g.*, Converters and remote controls).
- 5.12.3 After consultation with the Commission, the Grantee shall provide Subscribers with at least sixty (60) days' prior notice of any change in the location of the customer service center serving the North Metro System, which notice shall apprise Subscribers of the customer service center's new address, and the date the changeover will take place.

**SECTION 6. ACCESS CHANNEL(S) PROVISIONS**

**6.1. Public, Educational and Government Access.**

- 6.1.1 The Commission is hereby designated to operate, administer, promote, and manage PEG access programming on the Cable System.
- 6.1.2 The Grantee shall continue to dedicate and make available six (6) 6 MHz analog video channels for public, educational, governmental and religious use. The six (6) 6 MHz PEG Access Channels shall be allocated as follows on the Effective Date of this Franchise:
  - 6.1.2.1 one (1) full-time 6MHz analog video channel for Noncommercial City Government Access Channel use, designed, constructed and activated for discrete transmissions, as described in subsection 4.1.5;
  - 6.1.2.2 one (1) full-time 6 MHz analog video channel for Noncommercial Public Access Channel use; and
  - 6.1.2.3 three (3) full-time 6 MHz analog video channels for Noncommercial Educational Access Channel use; and
  - 6.1.2.4 one (1) full-time 6 MHz analog video channel for Noncommercial religious access use.

The Commission shall have the right to rename, reprogram or otherwise change the use of these channels at any time, in its sole discretion, provided such use is Noncommercial and public, educational, governmental or religious in nature. Nothing herein shall diminish any rights of the City and the Commission to secure additional PEG channels pursuant to Minn. Stat. §238.084, which is expressly incorporated herein by reference.

- 6.1.3 Public Access Channel 15 and Government Access Channel 16 shall not be relocated without the consent of the Commission. If the Commission agrees to change the channel designation for Public Access Channel 15 and/or Government Access Channel 16, the Grantee must provide at least three (3) months notice to

the City and the Commission prior to implementing the change, and shall reimburse the Commission and/or PEG entity for any reasonable costs incurred for: (i) purchasing or modifying equipment, business cards and signage; (ii) any marketing and notice of the channel change that the Commission reasonably determines is necessary; (iii) logo changes; and (iv) promoting, marketing and advertising the channel location of the affected PEG channel(s) during the twelve-month period preceding the effective date of the channel change. Alternatively, the Grantee may choose to supply necessary equipment itself, provided such equipment is satisfactory to the Commission or PEG entity.

**6.1.4** Prior to the completion of the System Upgrade, the Grantee shall have the right to relocate each of the PEG channels (other than Public Access Channel 15 and Government Access Channel 16) one time without the Commission's consent, and without reimbursing the Commission for any costs it incurs as a result of the relocation. If a qualified PEG channel has been relocated once without Commission approval, that channel may not be moved again unless: (i) the Commission has consented to the move; and (ii) the Grantee reimburses the Commission and/or a PEG entity for all reasonable costs of such move, as described below, and provides at least three (3) months notice to the Commission and the City before making the change in channel designation. After the System Upgrade is completed, no PEG channel shall be relocated without the consent of the Commission. If the Commission agrees to change the channel designation for a PEG channel, the Grantee must provide at least three (3) months notice to the City and the Commission prior to implementing the change, and shall reimburse the Commission and/or PEG entity for any reasonable costs incurred for: (i) purchasing or modifying equipment, business cards and signage; (ii) any marketing and notice of the channel change that the Commission reasonably determines is necessary; (iii) logo changes; and (iv) promoting, marketing and advertising the channel location of the affected PEG channel(s) during the twelve-month period preceding the effective date of the channel change. Alternatively, the Grantee may choose to supply necessary equipment itself, provided such equipment is satisfactory to the Commission or PEG entity. Notwithstanding anything to the contrary, the Grantee shall not be required to repay any school for any on-premises school expenses that arise out of any PEG channel relocation.

**6.1.5** As long as the Grantee's System carries Basic Cable Service channels in analog format, the Grantee must make the PEG channels available in analog format to Subscribers within the City. If and when the Grantee's Cable System carries PEG channels in digital format, those digital PEG channels must be made available to all Subscribers in the City. At all times, the Grantee's Cable System must make the PEG channels available to all Basic Cable Service Subscribers residing within the City in at least one format (digital or analog); thus, the Grantee shall make the PEG channels available to all such Subscribers in analog format unless and until it makes Basic Cable Service channels available to Subscribers only in digital format. If the Grantee opts to carry PEG channels in a digital format, it shall assume the cost of replacing all equipment necessary to ensure that once the PEG

signals leave the Commission's router, the signals can be transmitted on the Grantee's appropriate service tier.

- 6.1.6** In the event the Grantee makes any change in the System and related equipment and facilities or in signal delivery technology, which change directly or indirectly causes the signal quality or transmission of PEG channel programming or PEG services to fall below technical standards under applicable law, the Grantee shall, at its own expense, provide any necessary technical assistance, transmission equipment and training of PEG personnel, and in addition, provide necessary assistance so that PEG facilities may be used as intended, including, among other things, so that live and taped programming can be cablecasted efficiently to Subscribers.
- 6.1.7** All PEG channels shall be transmitted in the same format as all other Basic Cable Service channels and shall be carried on the Basic Service tier.
- 6.1.8** Except as otherwise provided in this Franchise, the Commission shall be responsible for any necessary master control switching of PEG signals and Institutional Network and DFOI transmissions.
- 6.1.9** The Grantee shall not transmit, carry or cablecast PEG signals originated or produced in the North Metro Franchise Area outside the North Metro Franchise Area without the prior written consent of the Commission.

## **6.2. PEG Support Obligations.**

- 6.2.1** The Grantee shall comply with the terms and conditions of the MOU throughout the Franchise term, except as the MOU is modified or superseded herein. Beginning on the Effective Date, the Grantee shall continue to collect and transmit to the Commission the PEG Fee from all Subscribers receiving and paying for Basic Cable Service from Grantee, in an amount as set in accordance with the MOU. Pursuant to the terms of the MOU, the Grantee may continue to itemize the PEG Fee on Subscriber billing statements. The Grantee shall apply one PEG Fee on the master account for services to non-dwelling bulk accounts (such as hotels, motels, prisons and hospitals). The Grantee shall calculate PEG Fees on a pro rata basis for bulk accounts in residential multiple dwelling unit ("MDU") buildings in the following manner: if the bulk rate for Basic Cable Service is one third (1/3) of the current residential rate, then a pro rated PEG Fee shall be added to the bulk bill for an MDU building in an amount equal to one third (1/3) of the current PEG Fee. If the bulk rate for Basic Cable Service is raised in any MDU building, the pro-rated PEG Fee in that building shall be recalculated and set based on the foregoing formula, regardless of any cap on per Subscriber PEG Fee amounts. Pursuant to the terms of the MOU, the amount of the PEG Fee may be increased annually by the CPI. During calendar year 2002, an estimated PEG Fee shall continue to be prepaid to the Commission on a quarterly basis, no later than thirty (30) days prior to the beginning of each calendar quarter. The estimated PEG Fee shall be reconciled annually to reflect

actual PEG Fee receipts by the Grantee, subject to more frequent reconciliation ordered by the Commission. Any amounts due to the Commission as a result of a reconciliation shall be paid by the Grantee to the Commission within thirty (30) days following written notice to the Grantee by the Commission of the underpayment. If reconciliation discloses an overpayment by the Grantee, the Grantee may credit the amount of any overpayment against its next quarterly PEG Fee payment. Beginning in calendar year 2003, payments for the PEG Fee pursuant to this subsection shall be made quarterly based on actual receipts from the prior quarter on the same schedule as franchise fee payments.

- 6.2.2** The Grantee shall provide the fiber-optic or other cabling and other electronics, equipment, software and other materials necessary to transport all PEG signals from their origination point to and from the Commission's master control to the appropriate subscriber network channel, including channels provided discretely. If the Commission's master control continues to be located at 1630 101<sup>st</sup> Avenue, NE, Blaine, MN, or if the Commission's master control is moved to a location up to 2,500 feet from the I-Net, the Grantee shall provide the aforementioned cabling, electronics, equipment, software and other materials at no cost to the City, the Commission, the North Metro Media Center, I-Net Users, Dark Fiber Infrastructure Users or Additional DFOI Users. Should the Commission relocate its master control to a location that is more than 2,500 feet from the I-Net, the Grantee shall remain responsible for providing all cabling, electronics, equipment, software and materials necessary to transport all PEG signals from their origination point to and from the Commission's master control to the appropriate subscriber network channel; provided, however, that the Commission agrees to reimburse the Grantee for its Actual Costs in excess of the cost of the first 2,500 feet of construction and installation. The Grantee shall not take any action pursuant to this paragraph until notified, in writing, by the Commission of the intended location of the Commission's master control facility. Once notified by the Commission, in writing, of the intended location of the master control facility, the Grantee shall, within thirty (30) days of notification, prepare and tender for the Commission's review a design plan related to the transport, reception and routing of PEG signals to and from the master control facility. A cost estimate shall also be furnished to the Commission, at the same time the design plan is submitted, if the selected master control facility site is not located at 1630 101<sup>st</sup> Avenue, NE, Blaine, MN or within 2,500 feet of the I-Net. After the Commission has approved the design plan and cost estimate (if applicable), in writing, the Grantee shall construct, install and activate all cabling, other electronics, equipment, software and other materials necessary to provide the origination capabilities described in this subsection 6.2.2, such that the capabilities are fully in place and functional prior to operational startup at the master control facility. If reimbursement amounts are owed to the Grantee pursuant to this paragraph for construction and installation work, such amounts shall be paid by the Commission within sixty (60) days of receiving an itemized invoice from the Grantee. No invoice shall be submitted to the Commission by the Grantee until all the capabilities described herein are operating properly, as

determined by Commission staff. Any invoices from Grantee's subcontractors will not be accepted by the Commission or the City for payment.

**6.2.3** The Grantee on the one hand and the City and the Commission on the other hand agree not to assert, raise or otherwise claim at any time before any court of competent jurisdiction or any administrative agency that, as of December 31, 2001, either party owes any amounts to the other party for actual or alleged overpayment(s) or underpayment(s) of PEG Fees or Franchise fees by the Grantee. In addition, the Grantee on the one hand and the City and the Commission on the other hand hereby: (i) completely and irrevocably release the other party from any liability or indebtedness for any actual or alleged PEG Fee and/or Franchise fee overpayments or underpayment(s) made by the Grantee that may exist as of December 31, 2001; and (ii) Grantee agrees that it will not, at any time, offset or deduct any actual or alleged PEG Fee and/or Franchise fee overpayment amounts that may exist as of December 31, 2001, from PEG Fees and Franchise fees owed and/or paid to the Commission and/or the City. In exchange for the Grantee's commitments under this paragraph, the City and the Commission agree that they will not, at any time, audit the accuracy of PEG Fee and/or Franchise fee payments actually made to the Commission through the period ending December 31, 2001. If, for any reason or at any time, the Grantee fails to comply fully with its obligations under this subsection 6.2.3, the City and the Commission shall regain the right to audit all of the Grantee's PEG Fee and/or Franchise fee payments, including (but not limited to) payments made under the Prior Franchise.

**6.3 Regional Channel 6.**

The Grantee shall designate standard VHF Channel 6 for uniform regional channel usage to the extent required by State law.

**6.4 Leased Access Channels.**

The Grantee shall provide Leased Access Channels as required by federal and State law.

**6.5 PEG Obligations.**

Except as expressly provided in this Franchise, the Grantee shall not make any changes in PEG support or in the transmission, reception and carriage of PEG channels and equipment associated therewith, without the consent of the City and/or the Commission.

**6.6 Costs and Payments not Franchise Fees.**

The parties agree that any costs to the Grantee and payments from the Grantee associated with the provision of support for PEG access, the DFOI or the Institutional Network pursuant to Sections 6 and 7 of this Franchise and the terms and conditions of the MOU do not constitute and are not part of a franchise fee and fall within one or more of the exceptions to 47 U.S.C. § 542.

## **SECTION 7. INSTITUTIONAL NETWORK (I-NET) PROVISIONS AND RELATED COMMITMENTS**

### **7.1. Institutional Network Facilities and Capacity.**

- 7.1.1** Within the timeframe specified for the subscriber network upgrade in subsection 4.2 herein, the Grantee shall, at no cost to the City, the Commission or any institution, upgrade, construct and activate an Institutional Network which consists of the following facilities: (i) a minimum of three (3) bi-directional fiber optic lines to each of a minimum of nine (9) Nodes dedicated solely to the I-Net; and (ii) bi-directional coaxial cable links between all the sites listed in Exhibit A (the “HFC I-Net Sites”), which exhibit is made a part hereof, and the nearest I-Net Node. In addition, the Grantee shall, without charge to the City, the Commission, or I-Net Users, ensure that the existing I-Net is fully functional and in good working order within sixty (60) days of the Effective Date of this Franchise. As part of the foregoing requirement, the existing I-Net shall be capable of providing all existing services to all locations and institutions connected to the existing I-Net within sixty (60) days of the Effective Date. The upgraded Institutional Network shall have the capability to transmit any and all signals between the sites listed in Exhibit A. The institutions listed in Exhibit A (“I-Net Users”) may not sell or resell services or capacity to any third party. However, I-Net Users may provide services to themselves, including those which the Grantee otherwise sells to others (for example, an institution may provide Internet service to itself or to other institutions that the Grantee sells to others). The limitations of this paragraph shall not prevent the City or the Commission from subleasing, bartering, selling, reselling or giving away capacity on the Institutional Network to any other public or nonprofit entity for Noncommercial purposes that do not directly compete with any products or services offered by the Grantee. Failure to timely complete construction of the I-Net upgrade shall be a violation of this Franchise.
- 7.1.2** All I-Net Nodes shall be connected via a minimum of three (3) bi-directional fiber optic lines to the hub serving the North Metro Franchise Area. The hub shall act as signal aggregation and turn-around points for I-Net signals within the North Metro Franchise Area. Such hub may also act as the main point of interconnection to the Grantee’s regional fiber infrastructure for purposes of connecting to other institutional networks facilitated by the Grantee within the Minneapolis/St. Paul metropolitan area. The Grantee shall provide space for all necessary I-Net equipment at the pertinent hub, free of charge, and shall provide appropriate I-Net Users with access to I-Net equipment at the hub, immediately upon request during normal business hours or within one (1) hour of a page to the on-call technician outside normal business hours. For purposes of this paragraph, the term “normal business hours” means Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding holidays.
- 7.1.3** The I-Net shall provide 450 MHz of activated capacity with no less than 156 MHz of bandwidth upstream and 210 MHz of bandwidth downstream to the HFC I-Net



Sites. Such capacity, and any future activated capacity on the portion of the I-Net made available to the Commission, the City and/or I-Net Users, shall be furnished free of charge to the Commission, the City and/or I-Net Users. The I-Net shall have fiber introduced into it to limit amplifier cascades to no more than an average of four (4), and a maximum of seven (7), excluding the Node, for the HFC I-Net Sites.

- 7.1.4** The Grantee shall connect the HFC I-Net Sites to the Institutional Network, at no cost to the City, the Commission or I-Net Users. Other governmental, public, or educational institutions subsequently designated by the City or the Commission shall be connected to the I-Net via coaxial cable, free of charge, if such institutions are located 500 feet or less from the existing I-Net, or if such designated institutions agree to reimburse the Grantee for its Actual Costs in excess of the cost of the first 500 feet of such installation, including the cost of any additional necessary equipment, such as fiber, node(s), etc., necessary to provide I-Net service. Such additional sites shall have an amplifier cascade as agreed to between the Grantee and the designated institution.
- 7.1.5** The I-Net shall be segmented to allow narrowcasting of signals within most municipal boundaries. The Grantee shall, at no cost to the City, the Commission or I-Net Users, provide and install all equipment necessary to achieve the required level of segmentation.
- 7.1.6** I-Net equipment at the hub related to the Institutional Network shall be connected to a gas powered generator capable of providing continuous electrical power, or equivalent, and to an uninterruptible power supply that both conditions commercial power and provides for zero transfer time between normal commercial power and hub/headend back-up generators.
- 7.1.7** All I-Net distribution system power supplies shall have the standby capability of providing at least three (3) hours of backup power for all I-Net Nodes and other active devices throughout the I-Net. Each power supply shall have status monitoring installed in it. Prior to battery failure, the Grantee shall connect I-Net Node power supplies to portable generators capable of producing adequate electrical current until commercial power is restored.
- 7.1.8** Pilot generators shall be installed at the end of mutually agreed upon I-Net cascades carrying any transmissions. Pilot generators shall be installed at the end of additional amplifier cascades when the Commission, in its sole discretion, determines that a particular cascade is not performing adequately.
- 7.1.9** Within sixty (60) days of the Effective Date, and throughout the Franchise term thereafter (including any extensions thereof), the Grantee shall provide up to twenty (20) modulators and demodulators, on an as needed basis, for the provision of PEG programming at locations on the I-Net designated by the Commission. If, at any time, it is determined that the I-Net is not meeting the performance specifications for PEG programming, either as transmitted over the

I-Net, or as received by a Subscriber on the subscriber network, and standard maintenance or repair activities cannot resolve the performance problem, then the Grantee shall provide, at no charge to the City, the Commission or I-Net Users, necessary fiber optic cabling, transmitters and receivers for the PEG access origination connection that is transmitting the affected programming, if such an action will resolve the performance problem.

- 7.1.10** The Grantee has made available to the City and the Commission for review a detailed design map of the proposed Institutional Network construction plan, including the following elements: (i) coaxial cable route; (ii) proposed fiber route; (iii) location of Nodes serving the Institutional Network; (iv) the name and location of facilities being served by such Nodes; and (v) the number of amplifiers in each cascade within the Institutional Network. The Grantee has taken the comments of the City and/or the Commission into account in implementing the Institutional Network plan.
- 7.1.11** No I-Net Node shall be activated until it is tested, and the Grantee determines that all applicable technical standards have been met or exceeded. Specifically, the Grantee shall notify the Commission, or its designee, in writing, at least ten (10) days in advance of completion of construction of each I-Net Node and HFC I-Net site. The notice shall include the date the Grantee is prepared to conduct RF noise, distortion, peak to valley and other tests according to FCC rules, NCTA recommended practices or other acceptable test methodologies and other applicable tests. The Commission or its designee shall have the option of attending any tests conducted pursuant to this paragraph. All tests must be successfully completed. The hybrid fiber-coaxial tests shall be deemed successfully completed if specifications detailed in Exhibit B are met or bettered. If any I-Net Node does not pass the Grantee's performance test, the Grantee shall take all steps necessary to meet applicable standards, and the affected Node shall be retested prior to activation. The Grantee shall send the Commission and the City the results of each test conducted under this paragraph.
- 7.1.12** The Commission, or its designee, shall have the option of conducting a physical inspection of the construction and connections to each HFC I-Net Site and each I-Net Node. This inspection shall be conducted no later than the date of the test in subsection 7.1.11.
- 7.1.13** After completing installation to each HFC I-Net Site and each I-Net Node, the Grantee shall provide the following documentation to the City or its designee: splice locations; panel numbers; cable numbering schemes; location of splitters; location of all RF actives and passives; OTDR; other optical, RF and coaxial test results and documentation; and any other pertinent documentation.

## **7.2 Dark Fiber Optic Infrastructure Requirements.**

- 7.2.1** Within the timeframe specified for the subscriber network upgrade in subsection 4.2 herein, the Grantee shall, at no cost to the City, the Commission, I-Net Users

or any institution designated for fiber connectivity by an asterisk on Exhibit A (“Dark Fiber Infrastructure Users”) interconnect six (6) single mode fiber optic lines from each Dark Fiber Infrastructure User’s site through the North Metro Media Center, or another site designated on Exhibit A with an asterisk, as determined by the Commission. The Grantee shall also, at no cost to the City, the Commission, I-Net Users or Dark Fiber Infrastructure Users, provide discrete, home-run, fiber optic cabling, consisting of a minimum of four (4) single mode fiber optic lines, from the I-Net hub(s) to each of the institutions designated by an asterisk in Exhibit A, except for the Independent School District 12 Area Learning Center, which shall instead have a 6-strand count fiber optic connection from its location to the Independent School District 12 Headquarters. All home-run, fiber optic cabling, all excess capacity designated for extension, all fiber optic-based access origination links, and each 6-count fiber optic connection to Dark Fiber Infrastructure Users’ sites shall be collectively referred to in this Franchise as the “Dark Fiber Optic Infrastructure” or the “DFOI.” If more than one hub serves the DFOI networking needs of the Commission’s member cities and other institutional users, then a discrete 6-strand count fiber connection will be made available as a DFOI interconnect between the hubs. In addition to the ten (10) Dark Fiber Infrastructure Users designated in Exhibit A, the Grantee shall connect up to nine (9) additional governmental, public or educational institutions subsequently designated by the Commission (“Additional DFOI Users”) using the following parameters. The Grantee shall have two (2) single mode fibers available at each splice point. The Commission may request an extension of such fibers from a splice point to an Additional DFOI User’s location. The Grantee shall not charge the City, Commission, I-Net Users or Dark Fiber Infrastructure Users for the two (2) single mode fibers from the I-Net hub to the respective splice point. The City, the Commission or the Additional DFOI User, as determined by the Commission, shall reimburse the Grantee for its Actual Cost of construction of two (2) single mode fibers from the splice point(s) to the Additional DFOI User’s location(s). Any end-to-end fiber optic strands required by this paragraph shall be passively terminated to connectors at the patch panel of the telephone equipment room of each DFOI site or at another location mutually agreed to by the Grantee and the Dark Fiber Infrastructure User/Additional DFOI User.

- 7.2.2** Prior to the implementation of the DFOI described in § 7.2.1 above, the Grantee has made available to the City and the Commission for review a detailed design map of the proposed Dark Fiber Optic Infrastructure construction plan, including, but not limited to, (i) the proposed fiber route, and (ii) the name and location of facilities being served by the DFOI. The Grantee will take the comments of the City and/or the Commission into account in implementing the DFOI plan.
- 7.2.3** The DFOI shall not be considered accepted until all applicable cabling and construction standards have been met or exceeded. Specifically, the Grantee shall notify the Commission, or its designee, in writing, at least ten (10) days in advance of completion of construction of each DFOI site. The notice shall include the date the Grantee is prepared to conduct an OTDR test at 1550 nm and

1310 nm end-to-end, according to industry standard and accepted test methodologies. The Commission, or its designee, shall have the option of attending any test conducted pursuant to this paragraph. All tests must be successfully completed. The fiber optic tests shall be deemed successfully completed if the optical performance standards in Exhibit B are met or bettered. If any DFOI link does not pass the tests required herein, the Grantee shall take all necessary steps to meet the applicable standards, and the affected link shall be retested prior to acceptance. The Grantee shall send the Commission and the City the results of each test conducted under this paragraph. Failure to timely complete construction of the DFOI shall be a violation of this Franchise.

**7.2.4** The Commission, or its designee, shall have the option of conducting a physical inspection of the construction of the DFOI. This inspection shall be conducted no later than the date of a successfully completed test as described in Subsection 7.2.3.

**7.2.5** After completing installation of each DFOI link, the Grantee shall provide documentation to the City, or its designee, including but not limited to: splice locations; panel numbers; strand numbering schemes; OTDR; other optical test results; and any other pertinent documentation.

**7.2.6** Dark Fiber Infrastructure Users and any Additional DFOI Users connected to the DFOI shall be responsible for any end user or interface equipment needed for transmission or reception of signals on the Dark Fiber Optic Infrastructure, except as indicated in subsection 7.1.9.

### **7.3 Grantee's Use of I-Net and DFOI Capacity.**

The I-Net and the DFOI shall be for the exclusive use of the City, the Commission, I-Net Users, Dark Fiber Infrastructure Users and Additional DFOI Users throughout the term of the Franchise. Notwithstanding the foregoing, the Grantee may use capacity on the I-Net and the DFOI, including for lease or other commercial purposes, provided that the City, the Commission, I-Net Users, Dark Fiber Infrastructure Users and Additional DFOI Users are not using such capacity and further provided that the Grantee's use does not interfere with use of the I-Net and the DFOI by the City, the Commission, I-Net Users, Dark Fiber Infrastructure Users and/or Additional DFOI Users. Upon receiving oral or written notice from the Commission, the Grantee or a lessee shall immediately cease using the I-Net or the DFOI for any purpose that the Commission, in its sole discretion, determines is interfering with I-Net Users', Dark Fiber Infrastructure Users' and/or Additional DFOI Users' communications. The Grantee or a lessee may appeal any determination concerning I-Net and DFOI interference to the City within ten (10) business days of the date that the requisite notice is received by the Grantee. Any such appeal shall: (i) be in writing; (ii) list the reasons that the Commission's determination regarding interference with I-Net Users', Dark Fiber Infrastructure Users' and/or Additional DFOI Users' communications is incorrect; and (iii) include any other information the Grantee or a lessee wishes the City to consider. Within forty-five (45)

calendar days of receiving a written appeal under this paragraph, the City shall: (i) determine whether the Commission's conclusion that the Grantee or a lessee was interfering with I-Net Users', Dark Fiber Optic Infrastructure Users' and/or Additional DFOI Users' communications was justified; and (ii) inform the Grantee or a lessee in writing of its findings. Use of the I-Net and the DFOI by the City, the Commission, I-Net Users, Dark Fiber Infrastructure Users and Additional DFOI Users shall, at all times, have priority over any use(s) by the Grantee or any lessee. The Grantee or a lessee shall terminate its use of any capacity on the I-Net or the DFOI within three (3) months after receiving notice from the Commission that the City, the Commission, or any I-Net User, Dark Fiber Infrastructure User or Additional DFOI User has determined to use such capacity. Any agreement entered into by the Grantee and a third party for the lease of I-Net or DFOI capacity shall be subject to the terms and conditions of this Franchise.

#### **7.4 I-Net and DFOI Performance Standards.**

The Grantee shall operate and maintain the I-Net and the DFOI in accordance with the technical and performance standards set forth in Exhibit B (I-Net and DFOI Performance Standards), which is made a part hereof. Upon request, the Grantee shall provide the City, or its designee, with reports of the performance of the I-Net and DFOI and the Grantee's compliance with the aforementioned technical and performance standards.

#### **7.5 Institutional Network and DFOI Security.**

The Grantee and the City shall at all times use reasonable efforts to protect the security of the Institutional Network and the DFOI. For purposes of this paragraph, "to protect security" means to protect those physical elements of the Institutional Network and the DFOI under the party's direct control from unauthorized intrusion, signal theft, tampering, wiretapping or other actions that might: (i) compromise the integrity of or degrade the signals carried over the Institutional Network and/or the DFOI; or (ii) result in the unauthorized interception and disclosure of information.

#### **7.6 Interconnection of Institutional Networks.**

**7.6.1** Within twelve (12) months of the Effective Date, the Grantee shall interconnect the I-Net and/or DFOI required herein with those institutional networks of Grantee's Systems, including (but not limited to) the institutional networks serving: (i) the City of Columbia Heights, Minnesota; (ii) the member cities of the Quad Cities Cable Communications Commission; (iii) the City of Coon Rapids, Minnesota; (iv) the member cities of the Northwest Suburban Cable Communications Commission; (v) the member cities of the North Suburban Communications Commission; (vi) the member cities of the Ramsey/Washington Counties Suburban Cable Communications Commission; and (vii) the City of St. Paul, Minnesota ("Municipal Institutional Networks"); provided, however, that this requirement shall only apply with respect to a particular Municipal Institutional Network when the operator of that network agrees to interconnection. Each interconnection link shall be completed within a reasonable timeframe mutually agreed upon by the Commission and the Grantee, unless an extension is

granted upon petition by the Grantee. The Grantee shall be responsible for routing all signals carried over the interconnection links described in this paragraph, including signals that are originated by or intended for the Commission, the City, I-Net Users, Dark Fiber Infrastructure Users or any Additional DFOI Users. The Grantee shall not be responsible for end-user equipment, inclusive of cards necessary for the transport and reception of signals, located at the hub(s) and/or the location of any user.

**7.6.2** Every interconnection link established pursuant to this Section 7.6 shall be designed, built and equipped to have the capability for the seamless transmission of all video, voice and data communications between the interconnected networks. If a fiber optic transmission medium is required for the interconnect to facilitate capacity, reliability or other networking needs, as determined by the City, Commission, I-Net User, Dark Fiber Infrastructure User or Additional DFOI User, such medium may use a non-exclusive fiber optic transmission medium employing at least two (2) strands per interconnect. If a hybrid fiber-coaxial transmission medium can be utilized for the interconnect, such medium shall provide, for the City's, the Commission's, an I-Net User's, a Dark Fiber Infrastructure User's and/or an Additional DFOI User's exclusive use, at least three (3) 6 MHz channels for forward video purposes (free of charge), three (3) 6 MHz channels for return video purposes (free of charge), two (2) 6 MHz channels for forward data and/or other purposes (free of charge) and two (2) 6 MHz channels for return data and/or other purposes (free of charge).

**7.6.3** Any interconnection link provided by Grantee to the City, the Commission, an I-Net User, a Dark Fiber Infrastructure User or an Additional DFOI User shall be on a nonexclusive basis. Capacity on interconnection links may be shared with others, including other cities, cable commissions, I-Net Users or Grantee.

**7.6.4** The Grantee shall cooperate with any interconnection corporation, regional interconnection authority, or state or federal agency which may be hereafter established for the purpose of regulating, facilitating, financing or otherwise providing for the interconnection of cable systems beyond the boundaries of the City and/or the North Metro Franchise Area.

## **7.7 Subscriber Network Drops to Designated Buildings.**

**7.7.1** Grantee shall provide or continue to provide, free of charge, Installation and activation of one (1) subscriber network Drop, and one (1) cable outlet at the institutions identified in Exhibit C, which is attached hereto and made a part hereof. Institutions that do not have a free Drop and outlet as of the Effective Date shall be provided with an active, fully functional Drop and outlet within three (3) years of the Effective Date of this Franchise.

**7.7.2** The Grantee shall provide or continue to provide Basic Cable Service and any equipment necessary to receive such service, free of charge, to all institutions identified in Exhibit C. Institutions currently receiving additional Cable Services

from Grantee shall continue to receive those same services, or comparable services, during the term of this Franchise, free of charge. Institutions that do not have a Drop as of the Effective Date of this Franchise shall receive free Basic Cable Service at the time the Drop required under subsection 7.7.1 is activated. The Cable Service provided pursuant to this subsection shall not be used for commercial purposes nor shall other than PEG services be shown in areas open to the public.

**7.7.3** Additional subscriber network Drops and/or outlets will be installed at designated institutions by the Grantee on an Actual Cost basis. Alternatively, said institution may add outlets at its own expense, as long as such Installation meets the Grantee's standards. The 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 the Grantee require more time.

**7.7.4** The Grantee has established a voluntary initiative to provide cable Internet service to all State-accredited K-12 public and private schools and public libraries that are passed by the upgraded Cable System at no charge to the City or institutions. Grantee intends to provide each of these schools and libraries with one (1) outlet of Internet access, including the necessary cable modem. For as long as Grantee continues to offer free cable Internet service to accredited schools, Grantee shall also provide free cable Internet service and required modems to one (1) location at City Hall and to the Commission at its designated PEG access facility.

## **SECTION 8. OPERATION AND ADMINISTRATION PROVISIONS**

### **8.1. Administration of Franchise.**

The City's designated cable television administrator, or his/her designee, shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise. The City may issue such reasonable rules and regulations concerning the construction, operation and maintenance of the System, as are consistent with the provisions of this Franchise and law.

### **8.2. 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. The Grantee shall cooperate with any such delegatee of the City.

### **8.3. Franchise Fee.**

**8.3.1** During the term of the Franchise, the Grantee shall pay quarterly to the City or its delegatee a Franchise fee in an amount equal to five percent (5%) of its Gross Revenues.

- 8.3.2** 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. The City or the Commission shall have the right to require further supporting information for each franchise fee payment.
- 8.3.3** All amounts paid shall be subject to audit and recomputation by City and/or the Commission, and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount. The Grantee shall be responsible for providing the City and/or the Commission all records necessary to confirm the accurate payment of franchise fees. The Grantee shall maintain such records for five (5) years, unless in the Grantee's ordinary course of business specific records are retained for a shorter period, but in no event less than three (3) years. If an audit discloses an overpayment or underpayment of franchise fees, the City and/or the Commission shall notify the Grantee of such overpayment or underpayment. The City's/Commission's audit expenses shall be borne by the City/Commission unless the audit determines that the payment to the City should be increased by more than five percent (5%) in the audited period, in which case the costs of the audit shall be borne by the Grantee as a cost incidental to the enforcement of the Franchise. Any additional amounts due to the City as a result of the audit shall be paid to the City within thirty (30) days following written notice to the Grantee by the City/Commission of the underpayment, which notice shall include a copy of the audit report. If the recomputation results in additional revenue to be paid to the City, such amount shall be subject to a ten percent (10%) annual interest charge. If the audit determines that there has been an overpayment by the Grantee, the Grantee may credit any overpayment against its next quarterly payment.
- 8.3.4** In the event any franchise fee payment or recomputation amount is not made on or before the required date, the Grantee shall pay, during the period such unpaid amount is owed, the additional compensation and interest charges computed from such due date, at an annual rate of ten percent (10%).
- 8.3.5** Nothing in this Franchise shall be construed to limit any authority of the City to impose any tax, fee or assessment of general applicability.
- 8.3.6** The franchise fee payments required by this Franchise shall be in addition to any and all taxes or fees of general applicability. The Grantee shall not have or make any claim for any deduction or other credit of all or any part of the amount of said franchise fee payments from or against any of said taxes or fees of general applicability, except as expressly permitted by law. The Grantee shall not apply nor seek to apply all or any part of the amount of said franchise fee payments as a deduction or other credit from or against any of said taxes or fees of general applicability, except as expressly permitted by law. Nor shall the Grantee apply or seek to apply all or any part of the amount of any of said taxes or fees of



general applicability as a deduction or other credit from or against any of its franchise fee obligations, except as expressly permitted by law.

#### **8.4 Access to Records.**

To the extent such documents are related to Grantee's compliance with this Franchise or applicable law (the burden to allege and, if so alleged, the initial burden to demonstrate that such requested documents are not related to Grantee's compliance with this Franchise or applicable law shall be the Grantee's), the City/Commission shall have the right to inspect or copy any records or documents maintained by Grantee (or maintained by an Affiliate on behalf of the Grantee, to the extent that review of such record or document maintained by the Affiliate on behalf of the Grantee is necessary in order for the City/Commission to enforce compliance with this Franchise) upon reasonable notice and during Grantee's administrative office hours, or require Grantee to provide copies of records and documents within a reasonable time, on a confidential and proprietary basis, to the extent such records and documents otherwise qualify as nonpublic, confidential, trade secret or proprietary pursuant to applicable law. Upon the City's/Commission's request, the Grantee shall provide to the City and/or the Commission copies of any records or documents that cannot be reasonably argued pursuant to applicable law to be nonpublic, confidential, trade secret or proprietary.

#### **8.5. Reports and Maps to be Filed with City.**

**8.5.1** The Grantee shall file with the City, at the time of payment of the Franchise Fee, a report of all Gross Revenues in a form and substance as required by the City or the Commission.

**8.5.2** The Grantee shall prepare and furnish to the City or the Commission, at the times and in the form prescribed, such other reports with respect to Grantee's operations pursuant to this Franchise as the City or the Commission may require. The City and the Commission shall use their best efforts to protect proprietary or trade secret information all consistent with State and federal law.

**8.5.3** If required by the City and/or the Commission, the Grantee shall furnish to and file with the City and/or the Commission the maps, plats and permanent records of the location and character of all facilities constructed, including underground facilities, and Grantee shall file with the City and/or the Commission updates of such maps, plats and permanent records annually if changes have been made in the System, the I-Net and/or the DFOI.

#### **8.6. Periodic Evaluation.**

**8.6.1** The City may require evaluation sessions at any time during the term of this Franchise, upon fifteen (15) days written notice to the Grantee.

**8.6.2** Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System, I-Net and DFOI 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 the City deems relevant.

- 8.6.3** 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**

### **9.1. Performance Bond.**

- 9.1.1** At the time the Franchise becomes effective and until such time as the construction of the System Upgrade, the DFOI and Institutional Network upgrade is completed, the Grantee shall furnish a bond to the Commission, in a form and with such sureties as are reasonably acceptable to the Commission, in the amount of \$500,000. Upon such completion of all System, DFOI and I-Net construction, the bond shall be reduced to \$50,000. 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 the City or the Commission 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 the City or the Commission which arise by reason of the construction, operation, or maintenance of the System, the I-Net and/or the DFOI. The rights reserved by the City and the Commission with respect to the bond are in addition to all other rights the City and the Commission may have under the Franchise or any other law. The Commission may, from year to year, in its sole discretion, reduce the amount of the bond.
- 9.1.2** The time for Grantee to correct any violation or liability shall be extended by Commission if the necessary action to correct such violation or liability is, in the sole determination of Commission, 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)-day cure period and thereafter uses reasonable diligence to correct the violation or liability.
- 9.1.3** 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.

**9.1.4** 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 the City or the Commission 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.

**9.1.5** The rights reserved to the City or the Commission with respect to the performance bond are in addition to all other rights of the City and the Commission 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 the City and the Commission may have.

**9.2. Letter of Credit.**

**9.2.1** On the Effective Date of this Franchise, the Grantee shall deliver to the Commission an irrevocable and unconditional Letter of Credit, in a form and substance acceptable to the City, from a National or State bank approved by the Commission, in the amount of \$25,000.00.

**9.2.2** The Letter of Credit shall provide that funds will be paid to the City upon written demand of the City, and in an amount solely determined by the City in payment for penalties charged pursuant to this Section, in payment for any monies deemed by the City to be owed by the Grantee to the City and/or the Commission, as applicable, after notice and opportunity to pay any such monies, pursuant to its obligations under this Franchise, or in payment for any damage incurred by the City or the Commission as a result of any acts or omissions by the Grantee pursuant to this Franchise.

**9.2.3** In addition to recovery of any monies owed by the Grantee to the City, or the Commission or damages to the City, the Commission or any Person as a result of any acts or omissions by the Grantee pursuant to the Franchise, the City and/or the Commission in its sole discretion may charge to and collect from the Letter of Credit the following penalties:

**9.2.3.1** For failure to timely complete the System Upgrade, the I-Net Upgrade and the DFOI as provided in this Franchise, unless the City or the Commission approves the delay, the penalty shall be \$500.00 per day for each day, or part thereof, such failure occurs or continues.

**9.2.3.2** For failure to provide data, documents, reports or information or to cooperate with City or the Commission 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.

- 9.2.3.3** Fifteen (15) days following notice from the City or the Commission of a failure of Grantee to comply with construction, operation or maintenance standards, the penalty shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues.
- 9.2.3.4** For failure to provide the services and the payments required by this Franchise, including, but not limited to, the implementation and the utilization of the PEG Access Channels, the penalty shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues.
- 9.2.3.5** For Grantee's breach of any written contract or agreement with or to the City or the Commission, the penalty shall be \$250.00 per day for each day, or part thereof, such breach occurs or continues.
- 9.2.3.6** For failure to comply with any of the provisions of this Franchise, or other City ordinance or regulation for which a penalty is not otherwise specifically provided pursuant to this subsection 9.2.3, the penalty shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues.
- 9.2.4** Each violation of any provision of this Franchise shall be considered a separate violation for which a separate penalty can be imposed.
- 9.2.5** Whenever the City or the Commission determines that the Grantee has violated one or more terms, conditions or provisions of this Franchise, or for any other violation contemplated in subsection 9.2.3 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 determination of the City or the Commission, is necessary to cure the alleged violation) following local receipt of notice, provided the City or its designee finds that the Grantee remains in violation of one or more terms, conditions or provisions of this Franchise, in the sole opinion of the City or the Commission, the City or the Commission may draw from the Letter of Credit all penalties and other monies due the City or the Commission from the date of the local receipt of notice.
- 9.2.6** Prior to drawing on the Letter of Credit, the City or the Commission shall give Grantee written notice that it intends to draw, and the Grantee may, within seven (7) days thereafter, notify the City or the Commission in writing that there is a dispute as to whether a violation or failure has in fact occurred. Such written notice by the Grantee to the City or the Commission shall specify with particularity the matters disputed by Grantee. Any penalties shall continue to accrue, but the City or the Commission may not draw from the Letter of Credit during any appeal pursuant to this subparagraph 9.2.6. The City or the Commission shall hear Grantee's dispute within sixty (60) days and the City or the Commission, as appropriate, shall render a final decision within sixty (60)

days thereafter. Withdrawal from the Letter of Credit may occur only upon a final decision.

- 9.2.7** 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 subsection 9.2.1 of this Section.
- 9.2.8** If the City or the Commission draws upon the Letter of Credit or any subsequent Letter of Credit delivered pursuant hereto, in whole or in part, the Grantee shall replace or replenish to its full amount the same within ten (10) days and shall deliver to the Commission a like replacement Letter of Credit or certification of replenishment for the full amount stated in Section 9.2.1 as a substitution of the previous Letter of Credit. This shall be a continuing obligation for any withdrawals from the Letter of Credit.
- 9.2.9** If any Letter of Credit is not so replaced or replenished, the City or the Commission may draw on said Letter of Credit for the whole amount thereof and use the proceeds as the City or the Commission determines in its sole discretion. The failure to replace or replenish any Letter of Credit may also, at the option of the City or the Commission, be deemed a default by the Grantee under this Franchise. The drawing on the Letter of Credit by the City or the Commission, and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of the Grantee which are in default, shall not be a waiver or release of such default.
- 9.2.10** The collection by the City or the Commission of any damages, monies or penalties from the Letter of Credit shall not affect any other right or remedy available to it, nor shall any act, or failure to act, by the City or the Commission pursuant to the Letter of Credit, be deemed a waiver of any right of the City or the Commission pursuant to this Franchise or otherwise.

**9.3. Indemnification of City.**

- 9.3.1** The City and its officers, boards, committees, commissions, elected and appointed officials, employees, volunteers 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, the I-Net and/or the DFOI, or as to any other action of Grantee with respect to this Franchise.
- 9.3.2** Grantee shall indemnify, defend, and hold harmless the City and its officers, boards, committees, commissions, elected and appointed officials, employees,

volunteers 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 or the Commission's exercise, administration or enforcement of the Franchise.

**9.3.3** Nothing in this Franchise relieves a Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regrading or changing the line of a Right-of-Way or public place or with the construction or reconstruction of a sewer or water system.

**9.3.4** The Grantee shall not be required to indemnify the City for negligence or misconduct on the part of the City or its officers, boards, committees, commissions, elected or appointed officials, employees, volunteers or agents, including any loss or claims.

#### **9.4. Insurance.**

**9.4.1** As a part of the indemnification provided in Section 9.3, but without limiting the foregoing, Grantee shall file with the Commission 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, the Commission, the City and its officers, elected and appointed officials, boards, commissions, commissioners, agents, employees and volunteers for any and all damages and penalties which may arise as a result of this Franchise. The policy or policies shall name the City and the Commission as an additional insured, and in their capacity as such, City and Commission officers, elected and appointed officials, boards, commissions, commissioners, agents, employees and volunteers. The broadcasters'/cablecasters' liability coverage specified in this provision shall be subject to Section 9.3 above regarding indemnification of the City.

**9.4.2** 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, \$1,000,000.00 for property damage to any one Person and \$2,000,000.00 for property damage resulting from any one act or occurrence.

**9.4.3** 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 the Commission. The Grantee shall not cancel any required insurance policy without submission of proof that the Grantee

has obtained alternative insurance satisfactory to the City which complies with this Franchise.

- 9.4.4 All insurance policies shall be with sureties qualified to do business in the State of Minnesota, with an A-1 or better rating of insurance by Best's Key Rating Guide, Property/Casualty Edition, and in a form approved by the City.
- 9.4.5 All insurance policies shall be available for review by the City and the Commission, and the Grantee shall keep on file with the Commission certificates of insurance.
- 9.4.6 Failure to comply with the insurance requirements of this Section shall constitute a material violation of this Franchise.

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

### **10.1. City's Right to Revoke.**

10.1.1 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:

10.1.1.1 Grantee has violated material provisions(s) of this Franchise; or

10.1.1.2 Grantee has attempted to evade any of the provisions of the Franchise;  
or

10.1.1.3 Grantee has practiced fraud or deceit upon the City or the Commission.

City may revoke this Franchise without the hearing required by Section 10.2.2 herein if Grantee is adjudged a bankrupt.

### **10.2. Procedures for Revocation.**

10.2.1 The City shall provide the 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, the City shall provide the Grantee with the basis for revocation.

10.2.2 The 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 subsection 10.2.1

above. The City shall provide the Grantee with written notice of its decision together with written findings of fact supplementing said decision.

**10.2.3** Only after the public hearing and upon written notice of the determination by the City to revoke the Franchise may the Grantee appeal said decision with an appropriate state or federal court or agency.

**10.2.4** 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.

**10.3 Continuity of Service.**

Grantee may not abandon the System or any portion thereof without having first given three (3) months written notice to the City. The Grantee may not abandon the System or any portion thereof without compensating the City for all costs incident to removal of the System if required by the City pursuant to section 10.4.

**10.4 Removal After Abandonment, Termination or Forfeiture.**

**10.4.1** In the event of termination or forfeiture of the Franchise or abandonment of the System, the City shall have the right to require the Grantee to remove all or any portion of the System from all Rights-of-Way and public property within the City.

**10.4.2** If the Grantee has failed to commence removal of the System, or such part thereof as was designated by the City, within thirty (30) days after written notice of the City's demand for removal is given, or if the Grantee has failed to complete such removal within twelve (12) months after written notice of the City's demand for removal is given, the 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 the 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.

**10.5. Sale or Transfer of Franchise.**

**10.5.1** 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 the 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. Upon notice to



the City, Grantee may undertake legal changes necessary to consolidate the corporate or partnership structures of its Minnesota/Wisconsin Systems provided there is no change in the controlling interests which could materially alter the financial responsibilities for the Grantee.

- 10.5.2** 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.
- 10.5.3** The Grantee shall file, in addition to all documents, forms and information required to be filed by applicable law, the following:
- 10.5.3.1** 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.
  - 10.5.3.2** 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
  - 10.5.3.3** Any other documents or information related to the transaction as may be specifically requested by the City
- 10.5.4** The City shall have such time as is permitted by federal law in which to review a transfer request.
- 10.5.5** The Grantee shall reimburse the City and/or the Commission for all the reasonable legal, administrative, and consulting costs and fees associated with the City's/Commission's review of any request to transfer. Nothing herein shall prevent the 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.
- 10.5.6** In no event shall a sale, transfer, corporate change or assignment of ownership or control pursuant to subsections 10.5.1 or 10.5.2 of this Section be approved without the Grantee remaining, or (if other than the current Grantee) transferee becoming a signatory to this Franchise and assuming or continuing to have all rights and obligations hereunder.
- 10.5.7** In the event of any proposed sale, transfer, corporate change or assignment pursuant to subsection 10.5.1 or 10.5.2, the City shall have the right to purchase

the System, the I-Net and the DFOI for the value of the consideration proposed in such transaction. The 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.

**10.5.8** The City shall be deemed to have waived its right to purchase the System, the I-Net and the DFOI pursuant to this Section only in the following circumstances:

**10.5.8.1** 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 10.5.7 above, its intention to exercise its right of purchase; or

**10.5.8.2** It approves the assignment or sale of the Franchise as provided within this Section.

**10.5.9** No Franchise may be transferred if the City and/or the Commission determines the Grantee is in noncompliance of the Franchise unless an acceptable compliance program has been approved by City or the Commission. The approval of any transfer of ownership pursuant to this Section shall not be deemed to waive any rights of the City or the Commission to subsequently enforce noncompliance issues relating to this Franchise.

**10.5.10** Any transfer or sale of the Franchise without the prior written consent of the City shall be considered to impair the City's assurance of due performance. The granting of approval for a transfer or sale in one instance shall not render unnecessary approval of any subsequent transfer or sale for which approval would otherwise be required.

## **SECTION 11. PROTECTION OF INDIVIDUAL RIGHTS**

### **11.1 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.

### **11.2. Subscriber Privacy.**

**11.2.1** 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.

**11.2.2** 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.

**11.2.3** 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 subsection 11.2.2.

## **SECTION 12. UNAUTHORIZED CONNECTIONS AND MODIFICATIONS**

### **12.1. 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 to receive services of the System without Grantee's authorization.

### **12.2. Removal or Destruction Prohibited.**

It shall be unlawful for any firm, Person, group, company or corporation to willfully interfere, tamper with, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any purpose whatsoever, except for any rights the City may have pursuant to this Franchise or its police powers.

**12.3. 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**

**13.1. Franchise Renewal.**

Any renewal of this Franchise shall be performed in accordance with applicable federal, State and local laws and regulations.

**13.2. 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 the System, the I-Net and/or the DFOI or provide Cable Service. The Grantee shall provide notice to the City of the name(s) and address(es) of any entity, other than Grantee, which performs substantial services pursuant to this Franchise.

**13.3. Amendment of Franchise Ordinance.**

The Grantee and the 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 8.6 or at any other time if the City and the 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 the City's exercise of its police powers or the City's authority to unilaterally amend Franchise provisions to the extent permitted by law.

**13.4. Compliance with Federal, State and Local Laws.**

**13.4.1** If any federal or State law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City shall conform to State laws and rules regarding cable communications not later than one (1) year after they become effective, unless otherwise stated, and to conform to federal laws and regulations regarding cable as they become effective.

**13.4.2** In the event that federal or State laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Franchise, the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required or necessitated by law. In the event such federal or State law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City or the Commission.

**13.4.3** If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance (including the City, the Grantee and the Commission) 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 (including the City, the Grantee and the Commission) 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 without further action by the City.

**13.4.4** The City and the Grantee shall, at all times during the term of this Franchise, including all extensions and renewals hereof, comply with applicable federal, State and local laws and regulations.

**13.5 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.

**13.6 Rights Cumulative.**

All rights and remedies given to City and the Commission by this Franchise or retained by City or the Commission herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the City and the Commission, 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 the City and the Commission 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.

**13.7 Grantee Acknowledgment of Validity of Franchise.**

The 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.

**13.8 Force Majeure.**

The Grantee shall not be deemed in default of provisions of this Franchise or the City Code where performance was rendered impossible by war or riots, labor strikes or civil disturbances, floods or other causes beyond the Grantee's control, and the Franchise shall not be revoked or the Grantee penalized for such noncompliance, provided that the Grantee, when possible, takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible, under the circumstances, with the Franchise without unduly endangering the health, safety and integrity of the Grantee's employees or property, or the health, safety and integrity of the public, the Rights-of-Way, public property or private property.

**13.9 Governing Law.**

This Franchise shall be governed in all respects by the laws of the State of Minnesota.

**13.10. Captions and References.**

**13.10.1** The captions and headings of sections throughout this Franchise are intended solely to facilitate reading and reference to the sections and provisions of this Franchise. Such captions shall not affect the meaning or interpretation of this Franchise.

**13.10.2** When any provision of the City Code is expressly mentioned herein, such reference shall not be construed to limit the applicability of any other provision of the City Code that may also govern the particular matter in question.

**13.11. Rights of Third Parties.**

This Franchise is not intended to, and shall not be construed to, grant any rights to or vest any rights in third parties, unless expressly provided herein.

**13.12. Merger of Documents.**

This Franchise, and the attachments hereto, constitute the entire Franchise agreement between the City and the Grantee, and supersede all prior oral or written franchises, drafts and understandings.

**SECTION 14. PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS**

**14.1 Publication.**

This Franchise shall be published in accordance with applicable local and Minnesota law.

**14.2 Acceptance.**

**14.2.1** Grantee shall accept this Franchise within sixty (60) days of its enactment by the City Council and the enactment of a Franchise on substantially similar terms by the other member municipalities of the Commission, unless the time for acceptance is extended by the 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 the Grantee shall be null and void.

**14.2.2** Upon acceptance of this Franchise, the Grantee and the City shall be bound by all the terms and conditions contained herein. The Grantee agrees that this Franchise is not inconsistent with applicable law or regulations at the time it is executed.

**14.2.3** Grantee shall accept this Franchise in the following manner:

**14.2.3.1** This Franchise will be properly executed and acknowledged by Grantee and delivered to City.

**14.2.3.2** With its acceptance, Grantee shall also deliver any performance bond and insurance certificates required herein that are due but have not previously been delivered.

**14.3**

**Binding Acceptance.**

This Franchise shall bind and benefit the parties hereto and their respective authorized heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns.

Passed and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

Attest:

CITY OF BLAINE, MINNESOTA

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

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

MEDIAONE NORTH CENTRAL  
COMMUNICATIONS CORP. D/B/A  
AT&T BROADBAND

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_