

ORDINANCE NO. 1583

CITY OF COLUMBIA HEIGHTS, MINNESOTA

CABLE TELEVISION FRANCHISE ORDINANCE

Date: **August 9, 2010**

ORDINANCE NO. 1583

AN ORDINANCE GRANTING A FRANCHISE TO COMCAST OF MINNESOTA, INC. TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE CITY OF COLUMBIA HEIGHTS, MINNESOTA TO PROVIDE 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 LIQUIDATED DAMAGES FOR THE VIOLATION OF THE PROVISIONS HEREIN.

The City Council of the City of Columbia Heights, Minnesota ordains:

STATEMENT OF INTENT AND PURPOSE

The City of Columbia Heights, Minnesota (the "City") intends, by the adoption of this Franchise, to allow for the continued operation of a Cable System within easements dedicated for compatible uses and Rights-of Way to the extent authorized by law and regulation. Such continued operation can contribute significantly to the communication needs and desires of the residents and citizens of the City and the public generally. Further, the City may achieve better utilization and improvement of public services and enhanced economic development with the continued 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

After considering the Grantee's request and proposal for renewal, 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 maintaining 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 applicable Minnesota Statutes, federal laws and regulations; and

4. The Franchise granted to Grantee is nonexclusive.

SECTION 11.101

SHORT TITLE AND DEFINITIONS

- (A) Short Title. This Franchise Ordinance shall be known and cited as the “Cable Communications Code.”
- (B) Definitions. For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words 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 Title 47 of the United States Code, as amended, or Chapter 238 of Minnesota Statutes, as amended 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) “Actual Cost” means the direct incremental cost to the Grantee of materials (including any contractor materials) and capitalized labor (including capitalized contractor labor) necessary to install and construct fiber-optic lines, coaxial cable, copper wire and/or equipment.
- (2) “Affiliate” means any Person who owns or controls, is owned or controlled by, or is under common ownership and control with the Grantee.
- (3) “Basic Cable Service” means any service tier which includes the retransmission of local television broadcast signals, all PEG Access Channels that may be required by 47 U.S.C. § 543(b)(7)(A) and State law to be provided to Subscribers and any additional video programming signals or services the Grantee chooses to provide on the basic tier.
- (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. Cable Service, as defined herein, does not include any service that is only classified as an information service or a telecommunications service under applicable laws, orders and regulations. The City and Comcast shall conform the definition of Cable Service herein to any binding changes in applicable laws and regulations defining Cable Service or to any binding orders or decisions defining Cable Service.

- (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. The term “Cable System” or “System” also includes a cable communications system as defined in Minn. Stat. § 238.02, subd. 3. The foregoing definitions of “Cable System” or “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 or information system or provider of communications service or information service to the full extent permitted by law.
- (6) “Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel (as television channel is defined by the Federal Communications Commission by regulation) whether in an analog or digital format.
- (7) “City” means City of Columbia Heights, a municipal corporation, in the State of Minnesota, acting by and through its City Council, or its lawfully appointed designee.
- (8) “City Code” means the Columbia Heights City Code, as amended from time to time.
- (9) “City Council” means the governing body of the City.
- (10) “Converter” means an electronic device (sometimes referred to as a receiver, set-top unit or set-top box) which converts, decodes and/or decrypts signals to a frequency or format acceptable to a television receiver or television monitor of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals of a particular service.

- (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.
- (12) “Educational Access Channel” or “Educational Channel” means any Channel(s) on the System set aside by the Grantee for educational use by educational institutions, as contemplated by applicable law.
- (13) “FCC” means the Federal Communications Commission, its designee, and any legally appointed, designated or elected agent or successor.
- (14) “Franchise” or “Cable Franchise” means this agreement, as may be amended from time to time, any exhibits attached hereto and made a part hereof, and any related ordinance adopted by the City Council approving this agreement and awarding this Franchise to the Grantee for the express purposes specified herein.
- (15) “Governmental Access Channel” or “Governmental Channel” means any Channel(s) on the System set aside by the Grantee for use by the City or its designee(s).
- (16) “Grantee” is Comcast of Minnesota, Inc. and its lawful and permitted successors, transferees or assignees.
- (17) “Gross Revenue” means all revenue derived directly or indirectly by the Grantee or its Affiliates, subsidiaries or parent from the operation of the Cable System in the City to provide Cable Services. Gross Revenue includes, but is not limited to, basic, premium, pay-per-view and other video fees, gross advertising revenues and home shopping revenues, Installation, disconnection, and reconnection fees and charges, equipment rental fees, equipment sale revenues, programming guide revenues, Lockout Device revenues, FCC regulatory fees, leased access channel fees, late fees and administrative fees and franchise fees. Gross Revenue shall not include refundable deposits, bad debt (provided that bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected), investment income, programming launch support payments, advertising sales commissions paid to unaffiliated entities, nor any taxes, fees or assessments directly imposed or assessed by any governmental authority on the Grantee’s services that are collected by the Grantee on a governmental entity’s behalf, provided that franchise fees shall not be regarded as such taxes, fees or assessments. The City acknowledges that Comcast maintains its financial books and records, including those books and records pertaining to the City and the calculation of Gross Revenues, in accordance with Generally Accepted Accounting Principles.

In the event that the Grantee shall, during the term of this Franchise or any extension(s) thereof, bundle, tie or combine Cable Services (which are subject to the franchise fee provisions hereof) with non-Cable Services that are not subject to

the franchise fee provisions hereof, so that Subscribers pay a single fee for more than one class or type of service or receive a discount on Cable Services, a *pro rata* share of the revenue received for the bundled, tied, or combined services shall, to the extent reasonable, be allocated to Gross Revenues for purposes of computing the franchise fee. To the extent there are published charges or *a la carte* prices and they are reasonable under applicable law, the *pro rata* share of revenues allocated to Gross Revenues shall be computed on the basis of the published charge or *a la carte* price for each of the bundled, tied, or combined services, when purchased separately. Throughout the term of this Franchise, the Grantee agrees that it will not intentionally or unlawfully allocate service revenues for the purpose of evading or reducing the franchise fee payments required herein.

If particular non-Cable Services and the revenues derived therefrom may be lawfully included in Gross Revenues for the purpose of assessing a franchise fee at any time after the Effective Date of this Franchise, the City may immediately commence, though on a reasonable implementation schedule, the assessment of a franchise fee on such services to the maximum amount permitted by applicable law.

- (18) “Installation” means the connection of the System from feeder cable to the point of connection with the Subscriber Converter, television monitor/receiver or other terminal equipment.
- (19) “Institutional Network” or “I-Net” means any discrete communications network, regardless of transmission media used (*e.g.*, coaxial cable and fiber-optic cable), and services related to such network provided by the Grantee or its Affiliate to identified institutions as required by this Franchise and any binding and effective network services agreement between the City and the Grantee or its Affiliate.
- (20) “Lockout Device” means an optional mechanical or electrical accessory to a Subscriber’s terminal which inhibits the viewing of a certain program, certain Channel, certain Channels or certain signals provided by way of the Cable System.
- (21) “Memorandum of Understanding” or “MOU” means that certain agreement dated November 14, 1994, by and between Meredith/New Heritage Strategic Partners, L.P., North Central Cable Communications Corporation and Group W. Cable of Columbia Heights, Inc., Grantee’s predecessor(s) in interest, and the City regarding equipment replacement, universal PEG service, creation of a “PEG” fee and certain rate regulatory issues.
- (22) “Node” means the transition point between optical light transmission and RF transmission of signals being delivered to and received from the Subscriber’s premises, or in the case of an Institutional Network, signals being delivered to and received from Institutional Network sites, or in the case of a fiber-to-the-premises

system, the transition point between the backbone network and the individual premise connection.

- (23) “Normal Business Hours” means those hours during which most similar businesses in the community are open to serve customers. In all cases, “normal business hours” must include some evening hours at least one night per week and/or some weekend hours.
- (24) “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, and the maintenance or upgrade of the System (including any I-Net). 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.
- (25) “PEG” or “PEG Access” means public, educational and governmental access programming. For purposes of this Franchise, “governmental” includes (but is not limited to) public libraries, the State, the City Council and City agencies and departments, and the signals generated and transmitted by those entities.
- (26) “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.
- (27) “Public Access Channel(s)” means any Channel(s) on the System set aside by the Grantee for use by the general public, as contemplated by applicable law.
- (28) “Right-of-Way” or “Rights-of-Way” means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the City which, consistent with the purposes for which they were created, obtained or dedicated, may be used for the purpose of installing, operating and maintaining a System and any I-Net. A Right-of-Way does not include the airwaves above a Right-of-Way with regard to cellular or other non-wire telecommunications or broadcast services. 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 or the I-Net

- (29) “Right-of-Way Ordinance” means the ordinance codifying requirements regarding regulation, management and use of Rights-of-Way in the City, including registration and permitting requirements.
- (30) “Standard Installation” means any installation which can be completed using an underground Drop of 125 feet or less or an aerial Drop of 250 feet or less.
- (31) “State” means the State of Minnesota and its agencies and departments.
- (32) “Subscriber” means any Person or entity that lawfully receives Service via the System. In the case of office buildings or multiple dwelling units, the “Subscriber” means the lessee, tenant or occupant.

SECTION 11.102

GRANT OF AUTHORITY AND GENERAL PROVISIONS

- (A) Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein and in applicable law. The Grantee shall comply with all provisions of this Franchise and applicable laws, 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 and all applicable laws and regulations, may be deemed a violation of this Franchise.
- (B) Grant of Nonexclusive Authority.
 - (1) Subject to the terms of this Franchise, the City hereby grants the Grantee the nonexclusive 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 and lawful 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. The City makes no representation or guarantee that its interest in or right to

control any Right-of-Way is sufficient to permit the Grantee's use, and the Grantee shall gain only those rights to use that are within the City's power to convey.

- (2) Notwithstanding the above grant to use Rights-of-Way, no Right-of-Way shall be used by 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.
 - (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 and other video networks in the City.
 - (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 lawful and nondiscriminatory.
- (C) Lease or Assignment Prohibited. No Person or governmental body may lease Grantee's System for the purpose of providing Cable Service to Subscribers 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 11.110(E).
- (D) Franchise Term. The term of this Franchise shall extend from the date of acceptance by the Grantee until December 31, 2015, unless sooner renewed, revoked or terminated as herein provided, or unless extended by the City.
- (E) Previous Franchise.
- (1) As of the Effective Date, this Franchise shall supersede and replace any previous ordinance, as amended, of the City granting a Franchise to Grantee, including Ordinance No. 982, amending Chapter 11 of Ordinance No. 853, passed November 9, 1981, and Ordinance No. 1202, passed June 25, 1990 (collectively, the "Prior Franchise"). Except as otherwise specifically provided in this Franchise and the letter agreement dated July 8, 2010, the Grantee shall remain liable for payments of all franchise fees and other amounts owed under the Prior Franchise and for all

unfulfilled actions that the Grantee was required to take under the Prior Franchise up to the Effective Date of this Franchise, except where such obligations are expressly superseded by 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) With respect to the MOU, the parties agree that, as of the Effective Date of the Franchise, no new Universal PEG Service customers will be added. Existing Universal PEG Service customers will be served until such time as the Grantee provides Basic Cable Service in digital format only. At that time, current Universal PEG Service customers will be offered the option of receiving Basic Cable Service at a reduced rate of 50% off the standard rate card rate then in effect for a period of six months. The Grantee may recover the cost of any such discount in any manner allowed by law.

(F) Compliance with Applicable Laws, Resolutions and Ordinances.

- (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 all lawful exercise of the police powers of the City. The grant of this Franchise does not relieve the Grantee of its obligations to obtain any generally applicable licenses, permits and other authorizations as may be required by the City Code, as it may be amended, for the privilege of operating a business within the Rights-of-Way, to the extent not inconsistent with this Franchise. Except as provided below, any unilateral modification or unilateral amendment to this Franchise, or the rights or obligations contained herein, must be within the lawful exercise of City's police powers, in which case the provision(s) modified or amended herein shall be specifically referenced in an ordinance of the City authorizing such amendment or modification. This Franchise may also be modified or amended with the written consent of Grantee as provided in Section 11.113(C) herein.
- (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 11.103 and/or Section 11.108(E)(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 which exceed burdens placed on similarly situated Rights-of-Way users. Nothing in this Section shall prohibit Grantee from lawfully challenging any ordinance or regulation in a manner consistent with applicable law.

- (3) In the event of any conflict between Section 11.103 and/or Section 11.108(E)(3) of this Franchise and any City ordinance or regulation which addresses usage of the Rights-of-Way, conflicting terms in Section 11.103 and/or Section 11.108(E)(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 Right-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens placed on similarly situated Right-of-Way users. Nothing in this Section restricts Grantee's right to lawfully challenge any ordinance under applicable law.
- (4) In the event any City ordinance or regulation which addresses usage of the Rights-of-Way adds to, modifies, amends, or otherwise differently addresses issues addressed in Section 11.103 and/or Section 11.108(E)(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 which exceed burdens placed on similarly situated Rights-of-Way users. Nothing in this Section restricts any right or cause of action Comcast may have to lawfully challenge in a court of competent jurisdiction any Right-of-Way Ordinance or regulation adopted by the City which adds to, modifies, amends or differently addresses issues covered in Section 11.103 and/or Section 11.108(E)(3) of this Franchise. Notwithstanding the foregoing, the City does not waive or limit in any way all immunities, arguments, remedies, defenses and causes of action it may have under the Minnesota Constitution, this Franchise and applicable laws, regulations, orders, and decisions.
- (G) Territorial Area Involved. This Franchise is granted for the corporate boundaries of the City, as they exist from time to time. In the event of annexation by the City, or as development occurs, any new territory shall become part of the territory for which this Franchise is granted. The Grantee shall construct and extend its System so that it is able provide Cable Service to: (i) all areas located within the City as they exist on the Effective Date of this Franchise; and (ii) any areas which may be acquired, developed or annexed by the City during the Franchise term, or otherwise added to the City's jurisdiction during the Franchise term, or any extension thereof. Access to Cable Service shall not be denied to any group of potential cable Subscribers because of the income of the residents of the area in which such group resides. 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 to exceed twelve (12) months from notice thereof by the City.
- (H) Written Notice. Except as otherwise provided herein, 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, via courier or e-mail, 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 Columbia Heights, Minnesota
590 40th Avenue N.E.
Columbia Heights, Minnesota 55421-3878
Attention: City Manager

With copies to: Stephen J. Guzzetta
Bradley & Guzzetta, LLC
55 East Fifth Street
Suite 1220
St. Paul, Minnesota 55101

If to Grantee: Comcast
10 River Park Plaza
St. Paul, Minnesota 55107
Attention: Regional Vice-President

With copies to: Director of Government Affairs
Comcast
10 River Park Plaza
St. Paul, Minnesota 55107

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

(I) Free Subscriber Network Drops and Cable Service to Designated Buildings and Institutions.

- (1) The Grantee shall provide, or continue to provide, free of charge, Installation of one (1) subscriber network Drop, one (1) cable outlet, one (1) Converter, if necessary, one (1) remote control, if necessary, all necessary ports and monthly Basic Cable Service, the next highest level of Cable Service available to all Subscribers, and any other service tier, regardless of transmission format, that provides local broadcast and public, educational and/or government services and/or programming, without charge to the institutions identified on and consistent with Exhibit B attached hereto and made a part hereof, and such other public, governmental or educational institutions subsequently designated by the City which are located one hundred-fifty (150) feet or less from the existing subscriber network, in the case of underground connections, or two hundred-fifty

(250) feet or less from the existing subscriber network, in the case of aerial connections. Any such institution located more than one hundred-fifty (150) feet from the nearest feeder cable, where an underground connection is requested or required, or two hundred-fifty (250) feet from the nearest feeder cable, where an aerial connection is requested or permitted, shall be connected if such institution agrees to reimburse the Grantee for the Grantee's Actual Costs in excess of the Actual Costs of the initial one hundred-fifty (150) feet or two hundred-fifty (250) feet of construction, as the case may be. The Grantee shall have three (3) months from the Effective Date of this Franchise to complete the construction of Drops and outlets not already installed, unless weather or other conditions beyond the control of the Grantee require more time. Free Drops, outlets, equipment and commercial Cable Service programming provided pursuant to this paragraph shall not intentionally be made available for regular use or viewing by the general public, except as specifically provided on Exhibit B. For purposes of the foregoing sentence, the term "general public" does not include the City's employees, elected and appointed officials, commissioners and agents.

- (2) Additional subscriber network Drops and/or outlets provided to any of the institutions and locations identified on Exhibit B may be installed by the Grantee at the Grantee's Actual Cost, subject to verified technical limitations and Comcast's reasonable business practices concerning scheduling of Installations, provided that additional Drops and/or outlets requested under this Section 11.102(I)(2) shall be given priority status. Alternatively, said institution may add additional Drops and/or outlets at its own expense, as long as such Installation meets the Grantee's standards. Equipment that may be necessary to utilize additional Drops and/or outlets shall be furnished by an institution at its own expense. The Grantee shall have three (3) months from the date of City designation of additional institution(s) and locations to complete construction of the Drop and outlet unless weather or other conditions beyond the control of the Grantee require more time. The provision of any Institutional Network service is addressed in Section 11.107 herein.
- (3) If there is a change in the Grantee's technology that affects the ability of municipal, public and educational institutions to receive Basic Cable Service, the next highest level of Cable Service available to all Subscribers, and any other service tier that provides local broadcast and PEG services/programming, the Grantee shall be required to replace, at the Grantee's cost, all the Converters and remote controls provided to municipal, public and educational institutions pursuant to Section 11.102(I)(1). The equipment provided pursuant to this paragraph shall not intentionally be made available for regular use by the general public, other than to view non-commercial Cable Service programming, as provided by Exhibit B. For purposes of the foregoing sentence the term "general public" does not include the City's employees, elected and appointed officials, commissioners and agents.

- (4) In exchange for other consideration provided for in this Franchise, the Grantee voluntarily agrees that any and all costs and expenses associated with the provision of Basic Cable Service, cable programming service, Drops, outlets, Converters, ports and remote controls pursuant to this Section 11.102(I)(1), (2) and (3) shall not be offset against franchise fees paid to the City.
- (J) Effective Date. This Franchise shall become effective on _____ (the “Effective Date”), provided that: (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 and adopted 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 11.114.
- (K) Competitive Equity.
- (1) Any Cable Service Franchise granted by the City shall be nonexclusive and shall not preclude the City from granting other or further Cable Service franchises. The City reserves the right to grant one (1) or more additional Cable Service franchises. The City shall amend this Franchise, as requested by the Grantee, if it grants additional Cable Service franchises or similar authorizations that contain material terms or conditions which are substantially more favorable or less burdensome to the additional franchise holder than the material terms and conditions herein. A word for word identical franchise or authorization for a competitive entity is not required so long as the regulatory and financial burdens on each entity are generally equivalent.
- (2) Notwithstanding any provision to the contrary, at any time prior to the commencement of the Grantee’s thirty-six (36) month renewal window under Section 626 of the Cable Communications Policy Act of 1984, as amended, 47 U.S.C. § 546, that a non-wireless facilities based entity, legally authorized by State or federal law, makes available for purchase by Subscribers or customers, Cable Services within the City without a Cable Service franchise or other similar lawful authorization granted by the City, then the Grantee shall have a right to request Franchise amendments that relieve it of regulatory burdens that create a substantial competitive disadvantage to the Grantee. In requesting amendments, the Grantee shall file a petition seeking to amend this Franchise. Such petition shall: (a) indicate the presence of such wireline competitor and identify the competitor and the scope of its service area; (b) describe the Cable Services offered to Subscribers or customers by the competitor; (c) identify the Franchise terms and conditions for which Grantee is seeking amendments; (d) provide the text of all proposed Franchise amendments to the City, along with a written explanation and justification as to why the proposed amendments are necessary; and (e) identify all material terms or conditions in the applicable State or federal authorization which are substantially more favorable or less burdensome to the competitive entity.

Provided the Grantee fully cooperates with the City and provides all requested data, the City shall act on the petition within 120 calendar days, unless the parties agree to an extension of time. The City may consider all relevant factors, evidence and circumstances in making its decision under this paragraph.

- (3) In the event an application for an additional Cable Service franchise is filed with the City, the City shall notify the Grantee.

SECTION 11.103

CONSTRUCTION STANDARDS

(A) Registration, Permits and Construction Codes.

- (1) Grantee shall strictly adhere to all State and local laws and building and zoning codes currently or hereafter applicable to the location, construction, installation, operation or maintenance of the System and any I-Net in the City and give due consideration at all times to the aesthetics of public and private property.
- (2) Repeated 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.

- (B) Repair 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 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 and shall maintain the surface in good condition for six months thereafter, to the extent consistent with applicable statutes and rules and to the extent required of other utilities making use of the Rights-of- Way. 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 as quickly as possible under the circumstances 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, and to remove all dirt, rubbish and material, 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. This remedy shall be in addition to any other remedy available to the City for noncompliance with the City Code, the Right-of-Way Ordinance, State law and applicable rules, regulations, standards and requirements.

(C) Conditions on Right-of-Way Use.

- (1) Nothing in this Franchise shall be construed to prevent City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Right-of-Way; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.
- (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) 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, and/or any I-Net at the Grantee's expense. 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, except where such damage is the result of the City's gross negligence or willful misconduct.
- (4) All poles, conduits, or other fixtures placed in any Right-of-Way shall be so placed as to comply with all reasonable and lawful requirements of the City.
- (5) The Grantee shall, upon request of any Person holding a moving permit issued by City, temporarily move its wires or fixtures to permit the moving of buildings with

the expense of such temporary removal to be paid by the Person requesting the same, and the Grantee shall be given not less than ten (10) days' advance written notice to arrange for such temporary changes.

- (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 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 or a homeowner.
- (7) Grantee shall use its best efforts to give reasonable prior notice to any adjacent private property owners who will be negatively affected or impacted by Grantee's work in the Rights-of-Way.
- (8) If any removal, relaying or relocation of the System 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.
- (9) In the event the System 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 and/or the I-Net at the Grantee's expense.

(D) Undergrounding of Cable.

- (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. The Grantee may decline to use such third-party structures after (i) demonstrating to the City that such use would be incompatible with the Grantee's regular requirements for aerial or underground facilities, and (ii) receiving the City's approval, which shall not be unreasonably withheld.

- (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, the Right-of-Way Ordinance 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, the Right-of-Way Ordinance, and 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.

(E) Installation of Facilities.

- (1) No poles, conduits, ducts, cabinets, pedestal mounted boxes, similar structures, or other wire-holding structures shall be erected or installed by the Grantee without a required City permit or other authorization from the City.
- (2) No placement of any pole, cabinet, box, equipment 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.

(F) Safety Requirements.

- (1) All applicable safety practices required by law shall be used during construction, maintenance and repair of the System. 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.

- (2) The Grantee's construction, operation or maintenance of the System 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) 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 in Rights-of-Way.
 - (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, free of charge.
- (G) 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, subject to any other lawful and valid authorizations the Grantee may have to use the System in Public Rights-of-Way, 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. The City may not order removal the System, or portions thereof, until the parties have exhausted all applicable processes governing cable television franchise renewals set forth in 47 U.S.C. § 546. 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 11.104

DESIGN PROVISIONS

- (A) System Capacity and Technical Design.
- (1) The Grantee's System generally shall have at least the following characteristics:
 - (a) a modern design, 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;

- (b) 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;
- (c) a System that conforms to or exceeds all applicable FCC technical performance standards, which standards are incorporated herein by reference, industry standards and manufacturers' specifications concerning the transmission and reception of analog and digital video programming and other programming services, 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;
- (d) a System that shall, at all times, comply with applicable, then-current 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):
 - (i) National Electrical Code, as amended from time to time; and
 - (ii) National Electrical Safety Code (NESC), as amended from time to time.
- (e) facilities and equipment sufficient to cure violations of FCC technical standards and to ensure that Grantee's System is in compliance with the standards specified in subsection 11.104(A)(1)(d);
- (f) such facilities and equipment as are 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;
- (g) status monitoring equipment to alert the Grantee when and where back-up power supplies are being used;

- (h) antenna supporting structures designed in accordance with any applicable, then-current 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 FCC and all other applicable codes and regulations;
 - (i) 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;
 - (j) facilities and equipment capable of operating within the temperature ranges typical to the climate of the City over the calendar year;
 - (k) the System shall be constructed and operated (i) so that there is no material deterioration in the quality of Public Access Channel, Educational Access Channel or Governmental 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, and (ii) so that PEG signals are at the same or better level of technical quality and reliability as commercial signals carried by the Grantee on its System, so long as the PEG signal comes to the Grantee at that level of quality. All processing equipment used by the Grantee for processing PEG signals will be of similar quality to the processing equipment used for commercial Channels; and
 - (l) the Grantee shall insure that the System complies with FCC rules and regulations pertaining to signal leakage and shall ensure there is no degradation of picture quality delivered to Subscribers.
- (2) The System operated by the Grantee shall have at least the following characteristics:
- (a) active two-way plant for Subscriber interaction, if any, required for the selection or use of Cable Service;
 - (b) The System shall have a minimum Channel capacity of at least 200 Channels, downstream to all Subscribers, plus additional capacity capable of supporting digital and other services; and
 - (c) an initial analog passband of 750 MHz.

- (3) The System shall be designed, constructed and activated in order to facilitate narrowcasting of the PEG Access Channels solely within the City, except that the Educational Access Channel and the Government Access Channel programmed by the City library system may be transmitted to and viewed on the Cable System serving the City of Hilltop, Minnesota. The Grantee shall provide and maintain all equipment and facilities necessary to accomplish this narrowcasting, at no cost to the City or any PEG Access Channel manager and programmer.
- (4) All power supplies for the System shall be equipped with standby power capability in accordance with Section 11.104(A)(1)(b). 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 11.104(A)(1)(g).
- (5) Emergency Alert System.
The Grantee shall 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.
- (6) The Grantee shall, in connection with any new underground System construction, install conduit adequately sized to address future System rebuilds or System additions, with the intent to limit the need to reopen Rights-of-Way for construction and installation work.
- (7) 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.

(B) System Construction and Line Extension.

- (1) The Grantee shall construct and operate its System so that it is able to offer and provide Cable Service to all Persons within the City as of the Effective Date of this Franchise, upon request, without charging such Persons more than the Standard Installation charges for the individual Drop. Notwithstanding anything to the contrary in this Franchise, the Grantee shall continue to offer Cable Service to all locations serviceable prior to the Effective Date of this Franchise. The requirements in this paragraph may be waived in writing by the City, in its sole discretion, upon request.
- (2) 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 in the City, but in no event shall the applicable timeframe exceed twelve (12) months from notice thereof by the City to the Grantee.

- (3) All System construction and maintenance shall be performed in accordance with applicable laws, procedures, standards and regulations.
- (4) The Grantee shall provide the City with notice prior to commencement of all steps of System construction or maintenance in which possible service disruptions or major physical construction activities may occur, including but not limited to: (i) pedestal and cabinet placements or replacements; (ii) underground duct placements or replacements; (iii) overloading of aerial fiber optic, coaxial or copper lines; and (iv) underground placement or replacement of vaults and cables.
- (5) The Grantee shall maintain complete and comprehensive strand maps of the System throughout the Franchise term, and shall make them available to the City for inspection, upon request, on a confidential basis, to the extent confidential treatment is permitted by law. Such maps shall be updated as changes occur in the System. The Grantee shall provide to the City, upon request, (including any electronic form regularly maintained in the normal course of business) copies of all strand maps 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, hub, and Node routing diagrams, showing routing from source input to combiner output and routing between headends, hubs, and Nodes for all System and I-Net signal transport. Such routing diagrams shall be made available to the City for inspection, upon request, on a confidential basis, to the extent confidential treatment is permitted by law. In addition, the Grantee shall, upon request, provide the City with all data and information specified in Minnesota Rules, Part 7819.4100. At the City's request, the Grantee shall provide existing data on its existing facilities within the Rights-of-Way in the form maintained by the Grantee at the time the request was made, if available.
- (6) Following commencement of any major System construction or I-Net construction, the Grantee shall, upon request of the City, meet with the City and provide an update on the progress of the System or I-Net construction. Prior to the beginning of the System construction or I-Net construction, 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 construction; (ii) areas where construction crews will be working; and (iii) any expected temporary interruptions to existing services which may occur.

(C) System Maintenance.

- (1) The Grantee shall interrupt service only for good cause and for the shortest time possible. Such interruption shall occur during periods of minimum use of the System. The Grantee shall use its best efforts to provide the City with at least twenty-four (24) hours prior notice of a planned service interruption. If service is interrupted for more than twenty-four (24) consecutive hours, Subscribers shall be credited *pro rata* for such interruption, upon notifying Comcast orally or in writing.
 - (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.
- (D) Technical Standards. The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76.601, *et seq.*, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference, as well as applicable industry standards (*e.g.*, NTSC and ATSC), manufacturers' specifications and good engineering practices. The results of tests required by the FCC shall be retained by the Grantee in a manner consistent with applicable law, and shall be made available to the City for inspection upon written request or as otherwise permitted by applicable law, including Minn. Stat. § 238.084, Subd. 1(q).
- (E) System Tests and Inspections; Special Testing.
- (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.
 - (2) The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise. In addition, the City may require special testing of a location or locations within the System if there is a regular pattern of controversy or unresolved complaints regarding such construction or installation work or pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating a regular pattern of unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. The City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing.

- (3) Before ordering such tests, Grantee shall be afforded thirty (30) days following receipt of written notice to investigate and, if necessary, correct problems or complaints upon which tests were ordered. The City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, the City wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted at Grantee's expense by a qualified engineer selected by City and Grantee shall cooperate in such testing. Any costs and expenses associated with testing or retesting the System shall not be considered franchise fees and shall not be deducted from or offset against franchise fee payments or other payments made to the City.
- (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.
- (5) The Grantee shall provide the City with at least two (2) business days' prior written notice of, and opportunity to observe, any special tests required by the City pursuant to subparagraph (2) of this Section and performed on the System.
 - (a) Test results shall be provided to the City within fourteen (14) days of a written request by the City, unless otherwise required by the terms of this Franchise.
 - (b) 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, shall take corrective action, retest the locations and advise the City of the action taken and the results achieved by filing a written report certified by the Grantee's chief technical authority. Any costs associated with testing or retesting the System shall not be considered franchise fees and shall not be deducted from or offset against franchise fee payments or other payments made to the City.
- (F) 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 City also be made available to the City for review at Comcast's local offices within ten (10) days of the request.
- (G) Lockout Device. Upon the request of a Subscriber, Grantee shall make available a Lockout Device at its regular and nondiscriminatory charge to Subscribers.

- (H) 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 laws or regulations.
- (I) Uses of System. The Grantee shall, upon request of the City, advise the City of all active uses of the System, for both entertainment and other purposes, and the City shall have the right to conduct unannounced audits of such usage.

SECTION 11.105

SERVICE PROVISIONS

- (A) Customer Service Standards. The Grantee shall at all times comply with FCC customer service standards and all applicable State standards, which standards are incorporated into and made a part of this Franchise. Applicable customer service standards in effect on the Effective Date of this Franchise include, but are not limited to, those customer service requirements set forth in this Section 11.105 and Exhibit A, which is attached hereto and incorporated herein. Nothing in this Franchise shall limit the City's ability to adopt and enforce additional or stricter customer service standards than those delineated in federal law to the extent permitted by applicable law. The parties acknowledge that Comcast may pass through to Subscribers direct and verifiable costs attributable to complying with such additional or stricter customer service standards adopted by the City in any manner consistent with and permitted by applicable law.
- (B) Video Programming. Except as otherwise provided in this Franchise or in applicable law, all video programming decisions remain the discretion of the Grantee, provided that the Grantee notifies the City 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 City prior to delivery to Subscribers.
- (C) Regulation of Service Rates.
 - (1) The City may regulate rates for the provision of Cable Service, equipment, or any other communications service provided over the System to the extent allowed under federal or State law(s). The City reserves the right to regulate rates for any future services to the extent permitted by law.
 - (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.

- (D) Subscriber Contracts. Upon written request, the Grantee shall provide the City any standard form Subscriber contract utilized by the Grantee then in effect. If no such written contract exists, Grantee shall provide the City with 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) and current Subscriber rates and charges shall be available for public inspection at Grantee's offices during Normal Business Hours.
- (E) Service Credit.
 - (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.
 - (2) If, for any reason, Service is interrupted for more than twenty-four (24) consecutive hours in any thirty (30) day period, Subscribers shall be credited *pro rata* for such interruption upon notifying Comcast orally or in writing.
- (F) Refunds or Credits.
 - (1) Any refund checks shall be issued promptly, but not later than either:
 - (a) the Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier; or
 - (b) the return of the equipment supplied by the Grantee if Service is terminated.
 - (2) Any credits for Cable Service shall be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.
- (G) Late Fees. Fees for the late payment of bills shall not be assessed until after the Service has been fully provided and, as of the due date of the bill notifying Subscriber of an unpaid balance, the bill remains unpaid. The Grantee shall comply with all State and local consumer protection laws and regulations pertaining to late fees, and such fees shall not exceed any amount permitted by State or local law.
- (H) Notice to Subscribers. Subscriber notices shall comply with those FCC regulations then in effect and with the requirements set forth in Exhibit A.

(I) Anticompetitive Acts Prohibited.

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 or other multichannel video programming services in the City.

(J) Office Availability and Drop Boxes.

- (1) Grantee shall maintain a location in the City or in a contiguous jurisdiction for receiving Subscriber inquiries and bill payments. The location must be staffed by a Person capable of receiving inquiries and bill payments. In addition, Grantee shall maintain a local drop box in the City for receiving Subscriber payments after hours at a location agreed upon by the City and the Grantee. The drop box 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.
- (2) The Grantee shall, at the request of a Subscriber, deliver or retrieve electronic equipment (e.g., Converters and remote controls) to or from the Subscriber's premises. The rate(s) or charge(s) for such delivery or retrieval shall not exceed the amounts permitted by rate regulation rules and applicable law.
- (3) The Grantee shall provide Subscribers and the City with at least sixty (60) days' prior notice of any change in the location of the customer service center serving the City, which notice shall apprise Subscribers of the customer service center's new address, and the date the changeover will take place.

SECTION 11.106

PEG ACCESS PROVISIONS

(A) Public, Educational and Government Access Capacity on the System.

- (1) The City or its designee is hereby designated to operate, administer, promote, and manage PEG Access (public, educational, and governmental) programming and PEG Access Channels on the Cable System. The City may designate one (1) or more entities, including a non-profit access corporation or a municipal joint powers commission, to operate, manage, administer, promote and/or program any Public Access Channel, Governmental Access Channel or Educational Access

Channel. As of the Effective Date, Independent School District #13 is designated to operate, manage, administer, promote and program any Educational Access Channel or Educational Access Channel capacity on the Cable System. The City may change the designation of a PEG Access manager at any time, in its sole discretion.

- (2) For as long as any PEG Access Channel is delivered to Subscribers in an analog format, the Grantee shall make available sufficient capacity on the System to deliver to Subscribers each analog PEG Channel signal as received, with no material degradation of quality, in accordance with Section 11.104(A)(1)(k) above. The City or its designee(s) shall allocate the PEG Access Channels in its sole discretion. As of the Effective Date of this Franchise, the Grantee shall dedicate and provide four (4) Channels for PEG use, which shall initially be allocated as follows:
 - (a) One Channel for City Government Access Channel use, designed, constructed and activated for discrete transmissions within the City;
 - (b) One Channel for Educational Access Channel use, designed, constructed and activated for discrete transmissions within the City; and
 - (c) One Channel for Governmental Access Channel use by the public library system in the City, designed, constructed and activated for discrete transmissions within the City.

Comcast shall maintain one additional Channel in reserve for PEG use as of the Effective Date. The parties acknowledge that Comcast may use this Channel to provide commercial programming subject to reclamation by the City. The City may reclaim the loaned PEG Channel for PEG use in accordance with Section 11.106(A)(3) of this Franchise.

If Comcast elects to offer PEG Access Channels in a digital format during the Franchise term or any extension(s) thereof, those PEG Channels shall be delivered to Subscribers over the System in a manner consistent with the standards set forth in Section 11.104(A)(1)(k). Digital PEG Access Channels shall also be transmitted to Subscribers with a picture resolution consistent with the standards set forth in Section 11.104(A)(1)(k). All Subscribers who receive all or any part of the total services offered on the System shall be eligible to receive such PEG Channels at no additional charge, other than any generally applicable and lawful equipment charges. The PEG Access Channel(s) shall be activated upon the Effective Date of this Franchise and thereafter maintained. The City may rename, reprogram, or otherwise change the use of the PEG Channels in its sole discretion, provided such use is lawful, and retains the general purpose of the provision of

PEG communications. The City may secure additional PEG Channel capacity pursuant to Minn. Stat. § 238.084, which is expressly incorporated herein by reference. The City shall provide ninety (90) days' prior written notice to the Grantee of the City's intent to activate an additional PEG Access Channel.

- (3) With respect to the three (3) initial PEG Access Channels provided under this Franchise, Grantee may utilize any unused PEG Access Channel, or portion thereof, which is allocated under this Section 11.106, upon request, and after written approval by the City. The City shall act expeditiously on any such request and shall not unreasonably withhold approval. Upon a determination of need by the City, in its sole discretion, the City shall request return of such Channel or capacity or portion thereof, by delivering written notice to the Grantee and in such case the Grantee shall cease use of the Channel or capacity within two (2) months after receipt by the Grantee of such written notice, and take all steps necessary to enable the City's designated user to program and otherwise utilize the Channel or capacity.
- (4) Any PEG Access Channel reassignment must be to a Channel that meets or exceeds the service and technical standards required by this Franchise.
- (5) As long as the Grantee's System carries Basic Cable Service Channels in analog format, the Grantee must make the PEG Access Channels available in analog format to Subscribers within the City. If and when the Grantee's Cable System carries PEG Access Channels in digital format, those digital PEG Channels must be made available to all Subscribers in the City. If the Grantee opts to carry PEG Access Channels in a digital format, it shall assume the cost of replacing all equipment necessary to ensure that once the PEG Access signals leave the City's or programmer's router, the signals can be transmitted on the Grantee's appropriate service tier.
- (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 Access Channel programming or PEG Access services to fall below the service quality or technical levels provided for in Section 11.104(A)(1)(k), 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 Access programming facilities may be used as intended, including, among other things, so that live and recorded programming can be produced, edited, encoded and transmitted efficiently to Subscribers and so that Subscribers receive PEG Access programming which has technical characteristics (*e.g.*, picture quality and audio quality) that comply with the requirements set forth in Section 11.104(A)(1)(k).

- (7) All PEG Channels shall be either transmitted in the same format as provided to Comcast, or Comcast shall bear the cost of converting the PEG Access Channels for carriage on its System. All PEG Access Channels shall be carried on the Basic Cable Service tier to the extent required by applicable laws and/or regulations. In the event the Basic Cable Service tier lawfully ceases to exist, all PEG Access Channels shall be carried as provided by applicable laws and regulations.
- (B) Charges for Use. Channel time and playback of prerecorded programming on the PEG Access Channel(s) must be provided without charge to the City, PEG Access programmers and PEG Access managers. The Grantee shall also provide downstream transmission of the PEG Channels at no charge to the City, PEG Access programmers and PEG Access managers.
- (C) PEG Access Rules. The City may adopt reasonable rules and procedures regarding the use of PEG Channels pursuant to Section 611(d) of the Cable Communications Policy Act of 1984, as amended, 47 U.S.C. § 531(d), and Chapter 238 of Minnesota Statutes. The City may, in its sole discretion, delegate the authority to promulgate such rules to an entity managing a particular PEG Access Channel. The City shall have the sole authority to resolve any disputes regarding allocation or utilization of PEG Access Channels.
- (D) PEG Support Obligations.
- (1) Within thirty (30) days of the Effective Date of this Franchise, the Grantee shall voluntarily pay the sum of ONE HUNDRED NINETY-FOUR THOUSAND EIGHT HUNDRED FORTY-TWO DOLLARS AND 00/100 (\$194,842.00) to the City for PEG Access capital purposes, to the extent required by applicable law, including (but not limited to) capital construction costs related to the I-Net and the acquisition of PEG Access equipment (the "PEG Grant"). The City, in its sole discretion, shall allocate this PEG Grant to one or more entities managing PEG Access in the City. The voluntary PEG Grant set forth in this paragraph shall be in addition to the franchise fees paid to the City, and all other obligations of the Grantee. Comcast may recover the PEG Grant, in addition to any permissible interest not to exceed 4.5 percent, over a term of sixty (60) months or less commencing on the Effective Date, in its rate base and/or via a line item on Subscribers' bills to the extent permitted by and consistent with applicable laws and regulations. After the PEG Grant has been fully recovered, Comcast shall completely eliminate the PEG Grant from its rate base and rate structure, and immediately cease including the PEG Grant (and any associated interest charges) in the PEG line item on Subscriber bills for the remaining term of this Franchise, and any extension thereof. Upon written notification to the City, the Grantee shall have the right to review the City's use of the PEG Grant to ensure compliance with any applicable "capital use" requirements of this Franchise. Any such

review shall be limited to a period that does not exceed three (3) calendar years preceding the date of any written request from Comcast to perform a PEG Grant review. Once Comcast has performed a PEG Grant review for a specified period of time its review right for that period is permanently extinguished.

- (2) In the event the payment required by paragraph 11.106(D)(1) is not made on or before the required date, the Grantee shall pay, during the period such unpaid amount is owed, additional compensation and interest charges computed from such due date, at an annual rate of ten percent (10%) or the maximum rate permitted by law. The Grantee waives any right to claim that any interest or penalties imposed hereunder constitute franchise fees within the meaning of 47 U.S.C. § 542. Failure to pay required the PEG Grant in a timely manner shall also be a material violation of this Franchise, subject to all sanctions and remedies herein, and the City may, at its discretion, declare this Franchise void and of no further force and effect.
 - (3) The Grantee agrees that if it utilizes an electronic programming guide or visual interface under its control on its System for all Channels, the PEG Access Channels shall be clearly identified so that Subscribers will have ready access to all PEG Access Channels.
 - (4) Any reduction in PEG-related costs incurred by the Grantee in this Franchise as compared to the Prior Franchise shall be accurately reflected in the Grantee's rates and charges and shall be passed through to Subscribers. Upon request, the Grantee shall provide the City with a report and supporting documentation, in a form and by a deadline specified by the City, clearly showing how PEG-related cost reductions have been passed through to Subscribers.
 - (5) The Grantee knowingly, intelligently, permanently and irrevocably waives and extinguishes any claim or cause of action it may have to recover any legitimate and documented under-collection of PEG costs it incurred during the Prior Franchise.
- (E) Return Feeds From PEG Access Signal Origination Sites to the Grantee's Headend.
- (1) The Grantee shall provide without charge (except for properly invoiced and verified construction, operation and installation charges associated with any I-Net) facilities and equipment so that PEG Access signals can be routed from the origination sites identified in Exhibit B onto an appropriate PEG Channel on the Cable System. Upstream transmission provided by the Grantee under this Section shall include all equipment and facilities necessary for amplification, optical conversion, receiving, transmitting, switching, and headend processing of upstream PEG signals from each PEG Access signal origination site. All such equipment, including but not limited to the electronics at each PEG Access signal

origination site, shall be installed, repaired, and maintained in good working order by the Grantee on the Grantee's side of the point of interconnection, provided, however, that the Grantee shall not be responsible for the cost of repairing any damage caused by the owner or operator of the PEG Access signal origination site or its agents or invitees. The reasonably certain and quantifiable incremental costs of construction of such upstream PEG Access signal transmission facilities and of associated equipment may be recovered from Subscribers as a separate line item on Subscriber bills in any manner consistent with and to the extent permitted by applicable law. Any and all incremental costs incurred by Comcast under this paragraph may not be recovered or itemized on Subscribers' bills more than once.

- (2) The Grantee shall be responsible for ensuring that signals for each PEG Access Channel are correctly routed from each PEG access signal origination site set forth on Exhibit B on to the correct PEG Channel for distribution to Subscribers.
- (3) Every upstream feed provided pursuant to this Section 11.106(E) shall ensure that the quality of PEG Access signals delivered to Subscribers shall meet the standards provided by Section 11.104(A)(1)(k).
- (F) Backup Facilities and Equipment. Subject to Section 11.106(E), the Grantee shall design, build and maintain all PEG upstream feeds, interconnection and distribution facilities so that such feeds function as reliably as the Grantee's Cable System as a whole within the City, and are no more likely to fail than is the Grantee's Cable System as a whole within the City.
- (G) Editorial Control. Except as expressly permitted by federal law, the Grantee shall not exercise any editorial control over the content of programming on the designated PEG Channels (except for such programming as the Grantee may produce and cablecast on such Channels).
- (H) Regional Channel 6. The Grantee shall designate standard VHF Channel 6 for uniform regional Channel usage, to the extent required by applicable law.
- (I) Leased Access Channels. The Grantee shall provide leased access Channels as required by federal and State law.
- (J) PEG Obligations. Except as expressly provided in this Franchise, the Grantee shall not make any changes in PEG Access support or in the transmission, reception and carriage of PEG Access Channels and equipment associated therewith, without the prior consent of the City.
- (K) Costs and Payments Not Franchise Fees. The parties agree that any and all costs and expenses to the Grantee and payments from the Grantee associated with the provision of

PEG Access Channels/capacity, PEG Access Channel/capacity signal transport, PEG facilities and equipment, PEG programming, interconnection, Universal PEG Service and/or the I-Net pursuant to Sections 11.102(E), 11.106 and 11.107 of this Franchise are voluntary and cable-related, and are not intended to 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 11.107

INSTITUTIONAL NETWORK (I-NET) PROVISIONS

(A) Institutional Network Facilities and Capacity.

- (1) Upon written request from the City, Comcast shall construct an Institutional Network for the City. Once constructed, the I-Net facilities and all I-Net capacity may be exclusively utilized by the City for any lawful, non-commercial use for governmental or educational purposes, as determined in the City's sole discretion, including (but not limited to) the transmission of video, voice and data. The limitations of this paragraph shall not prevent the City from installing and operating wireless Internet access points connected to the Institutional Network in government buildings.
- (2) After receiving a written request for the construction of the I-Net from the City, Comcast shall commence and complete construction, and activate the I-Net, in accordance with a reasonable construction schedule agreed to by the parties. Failure to timely complete and activate the I-Net shall be a material violation of this Franchise. The City may, in its sole discretion, require Comcast to post a construction bond in connection with any I-Net construction. The amount of the bond shall be reasonable given the nature of the construction involved and shall be with such sureties as are acceptable to the City. This bond will be conditioned upon the faithful performance and completion by the Grantee of any I-Net construction and upon the further condition that in the event the Grantee shall fail to comply with any applicable I-Net requirements in this Franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damages or loss suffered by City as a result. The rights reserved by the City with respect to any construction bond are in addition to all other rights and remedies the City may have under the Franchise or any other law, regulation, order or decision. Once any I-Net construction has been completed and accepted by the City, the construction bond may be eliminated.
- (3) The I-Net shall be a dedicated, point to point fiber network interconnecting the sites identified below, and shall be capable of carrying data, voice and video signals at the service levels set forth in this Section 11.107(A)(3).

- (a) The I-Net shall provide at least 60 Mbps service from the Public Safety Facility located at 825 41st Avenue, NE and Jackson Street (the “Public Safety Facility”) to the following remote sites:
 - (i) at least 20 Mbps from the Municipal Liquor Store located at 2105 37th Avenue N.E. to the Public Safety Facility;
 - (ii) at least 20 Mbps from the Municipal Liquor Store located at 5225 University Avenue N.E. to the Public Safety Facility; and
 - (iii) at least 20 Mbps from the Municipal Liquor Store located at 4950 Central Avenue N.E. to the Public Safety Facility (collectively, the “Municipal Liquor Stores”).
- (b) The I-Net shall also provide a 100 Mbps Internet Access Network Interface from the Public Safety Facility to the public Internet.

The Public Safety Facility and the Municipal Liquor Stores are collectively referred to herein as the “I-Net Sites” or individually as an “I-Net Site.”

- (4) The I-Net shall include Comcast-owned interface equipment at all I-Net Sites, which equipment shall be located on Comcast’s side of the demarcation point. In addition, the I-Net shall include up to thirty-two (32) routable static Internet Protocol addresses, if justified by the City.
- (5) Upon written request from the City, Comcast shall construct the I-Net for a total cost not to exceed \$69,842.00, payable by the City prior to the commencement of construction. The individual cost for constructing the I-Net to specific I-Net Sites shall be as follows:
 - (a) the Public Safety Facility: a cost not to exceed \$19,756.69;
 - (b) the Municipal Liquor Store located at 2105 37th Avenue N.E.: a cost not to exceed \$23,409.46;
 - (c) the Municipal Liquor Store located at 5225 University Avenue N.E.: a cost not to exceed \$16,800.79; and/or
 - (d) the Municipal Liquor Store located at 4950 Central Avenue N.E.: a cost not to exceed \$9,875.11.

The City may, in its sole discretion, utilize all or a portion of the PEG Grant to pay for applicable I-Net construction costs. Alternatively, the City may pay for specified I-Net construction costs out of its general fund or any other fund, budget or grant that may be used for this purpose.

- (6) Comcast shall retain ownership of all fiber-optic lines and equipment located on Comcast's side of the demarcation points at all I-Net Sites.
- (7) Until such time as the I-Net is fully operational and accepted by the City, Comcast shall continue to provide free cable modem service/Internet access to the City at the Municipal Liquor Stores, the City Hall building located at 590 40th Avenue N.E. and the City Gymnasium located at 1300 49th Avenue N.E.
- (8) The I-Net shall not be considered completed and accepted until all applicable cabling and construction standards have been met or exceeded. The Grantee shall notify the City, or its designee, in writing, at least ten (10) days in advance of completion of construction of each I-Net Site. The notice shall include the date the Grantee is prepared to conduct applicable tests on the site. The City or its designee shall have the option of attending any tests conducted pursuant to this paragraph. All tests must be successfully completed. If any I-Net Site does not pass the Grantee's performance test, the Grantee shall take all steps necessary to meet applicable standards, and the affected site shall be retested prior to activation. The Grantee shall send the City the results of each test conducted under this paragraph.
- (9) The City, or its designee, shall have the option of conducting a physical inspection of the construction and connections to all the I-Net Sites. This inspection shall be conducted no later than the date of the test in subsection 11.107(A)(8).
- (B) I-Net Performance Standards. Comcast, or its Affiliate, shall at all times operate, repair, maintain and manage the I-Net in accordance with an executed network services agreement and its "Ethernet Dedicated Internet Service Technical Description." The network services agreement shall set forth monthly fees for services, and all other material terms and conditions relative to Comcast's or its Affiliate's provision of I-Net services to the City. Where an executed network services agreement conflicts with any term or condition of this Franchise, the executed network services agreement shall prevail.
- (C) I-Net Use. The I-Net shall be for the exclusive use of the City throughout the term of this Franchise, and any extension(s) hereof.

SECTION 11.108

OPERATION AND ADMINISTRATION PROVISIONS

- (A) Administration of Franchise. The City Manager or other designee shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise. The City, or its designee, may issue such reasonable rules and regulations concerning the construction, operation and maintenance of the System as are consistent with the provisions of the Franchise and law.
- (B) 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 and enforce 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.
- (C) Franchise Fee.
 - (1) During the term of the Franchise, Grantee shall pay quarterly to the City a franchise fee in an amount equal to five percent (5%) of its quarterly Gross Revenues, in a manner consistent with federal law, or such other amounts as are subsequently permitted by federal or State law.
 - (2) Any payments due under this provision shall be payable quarterly. The payment shall be made within forty five (45) days of the end of each of Grantee's fiscal quarters together with a report showing the basis for the computation. The City shall have the right to require further supporting information for each franchise fee payment, which information shall be furnished directly to the City, subject to the confidentiality provisions of this Franchise, so long as such information is maintained in the ordinary course of business. In addition, the Grantee shall file with the City an annual report showing all Gross Revenues for the prior calendar year. This report shall be filed with the City within thirty (30) days of the end of each calendar year.
 - (3) All amounts paid shall be subject to review or audit and recomputation by the City 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 its designee(s) all documents, records and certifications necessary to confirm the accurate payment of franchise fees, regardless of whether such documents and records are held by the Grantee, an Affiliate or any other agent of the Franchisee. The Grantee shall maintain such documents and 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 or review discloses an overpayment or underpayment of

franchise fees, the City shall notify the Grantee of such overpayment or underpayment. The City's audit/review expenses shall be borne by the City 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 or review shall be paid to the City within thirty (30) days following written notice to the Grantee by the City of the underpayment, which notice shall include a copy of the audit/review 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 or review determines that there has been an overpayment by the Grantee, the Grantee may credit any overpayment against its next quarterly franchise fee payment.

- (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%).
 - (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.
 - (6) The franchise fee payments required by this Franchise shall be in addition to any and all taxes or fees of general applicability and all direct or indirect PEG and I-Net support costs, expenses and payments. 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 payments and 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 payments, 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 costs, expenses and payments, and 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.
- (D) Access to Records. The City, in its sole discretion, shall have the right to inspect, upon reasonable notice and during Normal Business Hours, or require the Grantee to provide within a reasonable time, copies of any records maintained by Grantee or an Affiliate or subsidiary of the Grantee which relate to System operations including (but not limited to) the Grantee's accounting and financial records.

(E) Reports and Maps to be Filed with the City.

- (1) The Grantee shall file with the City, at the time of payment of the franchise fee, a report of all Gross Revenues in substantially the form as attached as Exhibit C.
- (2) The Grantee shall prepare and furnish to the City, upon request, such information and data that are reasonably necessary for the City to enforce the terms and conditions of this Franchise and applicable law. The Grantee shall not be required to create new reports under this Section, but shall supply all requested data and information that are maintained in the ordinary course of business, regardless of format or form, in a manner that can be viewed by the City, subject to the confidentiality provisions of Section 11.108(H).
- (3) If required by the City, the Grantee shall furnish to the City the maps, plats, and permanent records of those strand maps identifying the general location and character of Cable System facilities constructed, including underground facilities, and shall update said maps from time to time upon written request. In addition, the Grantee must promptly provide mapping information for any of its underground facilities in accordance with Minnesota Rules, Parts 7819.4000 and 7819.4100.

(F) Periodic Evaluation.

- (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.
- (2) Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System and I-Net performance, programming offered, PEG Access Channel capacity, 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.
- (3) Nothing in this Section shall require the change or modification of any provision of this Franchise, except as may be agreed to in writing by the Grantee and the City.

- (G) Review of PEG and I-Net Cost Recovery. The City may review the Grantee's pass-through and recovery of PEG-related and I-Net-related costs and expenses included in any line item on Subscribers' bills and/or in the Grantee's rate base. Subject to the confidentiality provisions of this Franchise, the Grantee shall be responsible for providing the City and/or its designee(s) all documents, records and certifications maintained in the ordinary course of business and necessary to confirm the accurate pass-through and

recovery of PEG-related and I-Net related costs incorporated in its rate base and/or itemized on Subscriber billing statements, regardless of whether such documents and records are held by the Grantee, an Affiliate or any other agent of the Grantee. The Grantee shall maintain such documents and 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 a review discloses an over-recovery of PEG-related and/or I-Net-related costs, the City shall notify the Grantee of such over-recovery and may order Subscriber refunds. Any refunds owed to Subscribers shall be made by Comcast within ninety (90) calendar days of receiving an order from the City, or such other time period as may be provided for in applicable laws or regulations.

(H) Confidential Treatment of Certain Information Furnished by Comcast Pursuant to this Franchise.

The Grantee shall provide books, documents, information and records to the City, and/or its agents, in accordance with the terms of this Franchise; provided, however, that requested books, documents, information and records that are confidential or proprietary may be disclosed to the City and/or its agents pursuant to a non-disclosure agreement, an example of which is attached hereto as Exhibit D, whereby the information required to be disclosed under this Franchise will be provided for a specific purpose defined in the non-disclosure agreement. The intent of the parties is to work cooperatively to insure that those books, documents, information and records necessary for the City's monitoring, administration and enforcement of Franchise obligations are provided to the City, and/or its agents, or made available for review. If the Grantee requests that the City and/or its agents review particular books, documents, information and/or records at Comcast's offices, and the City or its agents agree, in their sole discretion, then the Grantee shall pay all actual costs incurred by the City and/or its representative(s) in traveling to Comcast's offices and reviewing and analyzing requested documents, books, records and/or information. To the extent that Grantee furnishes documents, books, information and/or records directly to the City, City officials agree to protect any proprietary or confidential books or records, in accordance with the terms of an executed non-disclosure agreement substantially in the form attached hereto as Exhibit D, to the extent permitted by law or by any applicable State or federal order or decision. The Grantee shall be responsible for clearly and conspicuously identifying and marking confidential or proprietary documents, books, records and information as "confidential" or "proprietary" consistent with the terms of an executed non-disclosure agreement. If the City receives a lawful demand from any Person for disclosure of any information properly and lawfully designated by the Grantee as confidential or proprietary pursuant to an enforceable non-disclosure agreement then in effect, the City shall, so far as consistent with applicable law, advise the Grantee and provide the Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. If the Grantee believes that the disclosure of such documents by the City

would cause irreparable harm to the Grantee's rights under federal or State law, the Grantee may institute an action in Anoka County District Court to prevent the disclosure by the City of such documents. The Grantee shall join the Person requesting the documents to such an action. The Grantee shall defend, indemnify and hold the City harmless from any claim or judgment as well as any costs, expenses, damages, penalties and attorneys fees incurred in participating in any such proceeding. The Grantee shall also make arrangements for the return of confidential or proprietary information to the Grantee's designated offices at Grantee's sole expense, unless otherwise agreed to in writing by the parties.

SECTION 11.109

GENERAL FINANCIAL AND INSURANCE PROVISIONS

(A) Letter of Credit.

- (1) On the Effective Date of this Franchise, the Grantee shall deliver to the City 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 City, in the amount of \$25,000.00, and maintain such Letter of Credit for the duration of this Franchise, and any extension(s) thereof. 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 City in payment for any monies, fees and/or taxes owed by the Grantee to the City or any Person pursuant to its obligations under this Franchise, or in payment for any damage incurred by the City, or any Person as a result of any acts or omissions by the Grantee pursuant to this Franchise.
- (2) If the Grantee fails to make timely payment to the City of any amount due under this Franchise or applicable law, the City may, after ten (10) business days written notice to the Grantee, make a claim against the Letter of Credit for the amount due, with interest and any applicable penalties.
- (3) If the City determines that the Grantee is in default of any provision of this Franchise which is subject to liquidated damages pursuant to subsection (B) below, and determines that the collection of liquidated damages is appropriate, upon ten (10) days' written notice to the Grantee, the City may make a claim against the Letter of Credit for the amount of the liquidated damages.

(B) Liquidated Damages.

- (1) Because it may be difficult to calculate the harm to the City in the event of a breach of this Franchise by Grantee, the parties agree to liquidated damages as a reasonable estimation of the actual damages. To the extent that the City elects to

assess liquidated damages as provided in this Franchise and such liquidated damages have been paid, such damages shall be the City's sole and exclusive remedy for time period that liquidated damages have been assessed and collected by the City. Nothing in this Section is intended to preclude the City from exercising any other legal or equitable right or remedy with respect to a breach that continues past the time the City stops assessing liquidated damages for such breach.

- (2) Prior to assessing any liquidated damages, the City shall mail to the Grantee a written notice by certified or registered mail of the alleged violation(s) and the proposed liquidated damages, specifying the violation(s) at issue. The Grantee shall have thirty (30) days from the date of receipt of the written notice to cure or commence to cure, as is appropriate depending on the nature of the alleged violation, or to file a written response refuting the alleged violation or explaining why additional time for cure is necessary. In the case of breaches of requirements measured on a monthly, quarterly or longer period (such as customer service standards), Grantee's cure period shall be no less than one such period.
- (3) The City may not assess any liquidated damages if the Grantee has reasonably responded to the City's written notice of violation or cured or commenced to cure, as may be appropriate, a violation within a reasonable time frame not to exceed thirty (30) days following receipt of written notice from the City, unless some other cure period is approved by the City. In the event Grantee fails to cure or commence to cure, or fails to refute the alleged breach, the City may assess liquidated damages and shall inform Grantee in writing of the assessment. Grantee shall have thirty (30) days to pay the damages.
- (4) The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period, including any extension of the cure period granted by the City.
- (5) The Grantee may appeal (by pursuing judicial relief or other relief afforded by the City) any assessment of liquidated damages within thirty (30) days of receiving written notice of the assessment. The Grantee's obligation to pay the liquidated damages assessed shall be stayed pending resolution of the appeal.
- (6) In no event may liquidated damages be assessed for a time period exceeding one hundred twenty (120) days. If after that amount of time the Grantee has not cured or commenced to cure the alleged breach to the satisfaction of the City, the City may pursue all other remedies at law or in equity.
- (7) Liquidated damages shall be as follows:

- (a) For failure to timely complete I-Net construction as provided in this Franchise or any side agreement, unless the City approves the delay, the damages shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues.
- (b) For failure to provide data, records, documents, reports or information or to cooperate with the City during an application process or System review or as otherwise provided herein, the liquidate damages shall be \$150.00 per day for each day, or part thereof, such failure occurs or continues.
- (c) For failure of the Grantee to comply with construction, operation or maintenance standards, the penalty shall be \$150.00 per day for each day, or part thereof, such failure occurs or continues.
- (d) For failure to provide the services, equipment, facilities and payments required by this Franchise, including, but not limited to, the implementation and the utilization of the PEG Channels/capacity and the provision of PEG payments, the liquidated damages shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues.
- (e) For Grantee's material breach of any written contract or agreement with or to the City or its designee, the liquidated damages shall be \$250.00 per day for each day, or part thereof, such breach occurs or continues, unless such breach is addressed by Section 11.109(B)(7)(a).
- (f) For failure to comply with any of the material provisions of this Franchise, customer service standards or City ordinance or regulation for which liquidated damages are not otherwise specifically provided pursuant to this paragraph 11.109(B)(7), the liquidated damages shall be 150.00 per day for each day, or part thereof, such failure occurs or continues.
- (8) Each violation of any provision of this Franchise shall be considered a separate violation for which separate liquidated damages can be imposed.
- (9) In the event that Grantee fails to pay liquidated damages pursuant to the provisions of Section 11.109(B)(7), the City may draw upon the Letter of Credit or any subsequent Letter of Credit delivered pursuant hereto, in whole or in part. If the City is obliged to draw upon the Letter of Credit, and the obligation to pay is not stayed pursuant to Section 11.109(B)(5), the Grantee shall replace or replenish to its full amount the same within ten (10) days and shall deliver to the City a like replacement Letter of Credit or certification of replenishment for the full amount stated in Section 11.109(A)(1) as a substitution of the previous Letter

of Credit. This shall be a continuing obligation for any withdrawals from the Letter of Credit.

- (10) The collection by the City of any damages, monies, fees, or taxes from the Letter of Credit shall not affect any other right or remedy available to the City, nor shall any act, or failure to act, by the City pursuant to the Letter of Credit, be deemed a waiver of any right of the City pursuant to this Franchise or otherwise, including (but not limited to) its right to recover from the Grantee any additional damages, losses, costs and expenses that are incurred by the City by reason of the Grantee's breach of this Franchise once the initial 120-day period for assessing liquidated damages has expired.

(C) Alternative Remedies.

- (1) No provision of this Franchise shall be deemed to bar the right of either party to seek or obtain judicial relief from a violation of any provision of this Franchise, applicable law or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise or applicable law nor the exercise thereof shall be deemed to bar or otherwise limit the right of either party to recover monetary damages, as allowed under applicable law, or to seek and obtain judicial enforcement of obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.
- (2) The City specifically does not, by any provision of this Franchise, waive any right, immunity, limitation, defense or protection (including complete damage immunity) otherwise available to the City and its officers, elected and appointed officials, boards, commissions, agents, or employees under federal, State, or local law including by example, but not limitation, Section 635A of the Cable Act. The Grantee shall not have any monetary recourse against the City, or its officers, elected and appointed officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Franchise or the enforcement or non-enforcement thereof, subject to applicable law.

(D) Indemnification of City.

- (1) The City, 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 the Grantee's construction, operation, maintenance, repair or removal of the System and/or any I-Net or as to any other action of the Grantee with respect to this Franchise.

- (2) The Grantee shall indemnify, defend, and hold harmless the City, its officers, boards, committees, commissions, elected and appointed officials, employees, volunteers and agents, from and against all claims, suits, causes of action, proceedings and judgments, and all liability, damages, fees, costs, and penalties arising therefrom, which they may legally be required to pay as a result of the City's award, exercise, administration, or enforcement of the Franchise or the Grantee's installation, construction, operation and/or maintenance of the System.
- (3) Nothing in this Franchise relieves a Person, except the City, from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, 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.

(E) Insurance.

- (1) As a part of the indemnification provided in Section 11.109(D), but without limiting the foregoing, Grantee shall file with the City at the time of its acceptance of this Franchise, and at all times thereafter maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including broadcaster's/cablecaster's liability, copyright and trademark liability, and contractual liability coverage, in protection of the Grantee, the City, and its officers, elected and appointed officials, boards, commissions, agents, volunteers and employees for any and all damages, losses, costs, fees and penalties which may arise as a result of this Franchise. The policy or policies shall name the City as an additional insured, and in their capacity as such, City officers, elected and appointed officials, boards, commissions, commissioners, agents, volunteers and employees.
- (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.
- (3) The policy or policies of insurance shall be maintained by the Grantee in full force and effect during the entire term of the Franchise, and any extension(s) thereof. 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 the Grantee or for other reasons, except after sixty (60) days' advance written notice have been provided to the City. 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.

- (4) All insurance policies shall be with sureties qualified to do business in the State, with an A- or better rating of insurance by Best's Key Rating Guide, Property/Casualty Edition, and shall be subject to approval by the City or its designee.
- (5) All insurance policies shall be available for review by the City and the Grantee shall keep on file with the City certificates of insurance.
- (6) Failure to comply with the insurance requirements of this Section shall constitute a material violation of this Franchise.

SECTION 11.110

SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE

(A) City's Right to Revoke.

- (1) In addition to all other rights which the City has pursuant to law or equity, the 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 the City that:
 - (a) the Grantee has violated material provisions(s) of this Franchise; or
 - (b) the Grantee has attempted to evade any of the provisions of the Franchise; or
 - (c) the Grantee has practiced fraud or deceit upon the City or Subscribers.

The City may revoke this Franchise without the hearing required by Section 11.110(B)(2) herein if the Grantee is adjudged a bankrupt.

(B) Procedures for Revocation.

- (1) The City shall provide the Grantee with written notice of a cause for revocation and the intent to revoke and shall allow the Grantee sixty (60) 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 of the revocation.

- (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 sixty (60) day notice provided in subsection 11.110(B)(1) above. The City shall provide the Grantee with written notice of its decision together with written findings of fact supplementing said decision.
 - (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.
 - (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.
- (C) Abandonment of Service. The 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 damages resulting from the abandonment, including all costs incident to removal of the System if required by the City pursuant to Section 11.110(D).
- (D) Removal After Abandonment, Termination or Forfeiture.
- (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, unless the Grantee is permitted to utilize the entire System and occupy the Rights-of-Way pursuant to a lawful and valid authorization in effect as of the date of termination or forfeiture.
 - (2) If the Grantee has failed to commence removal of the System, or such part thereof as was designated by 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, or portion thereof, to be in the City with all rights of ownership including, but not limited to, the right to operate the System, or portion thereof, or transfer the System to another for operation by it.
- (E) Sale or Transfer of Franchise.
- (1) No sale or transfer of the Franchise, or sale, transfer, or fundamental corporate change of or in the Grantee, including, but not limited to, a fundamental corporate

change in the Grantee's parent corporation or any entity having a controlling interest in the 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 the Grantee grants a security interest in its Franchise and/or assets to secure an indebtedness. Approval of a transfer or sale request that is subject to this Section 11.110(E) shall not be unreasonably withheld.

- (2) Any sale, transfer, exchange or assignment of stock in the Grantee, or Grantee's parent corporation or any other entity having a controlling interest in the Grantee, so as to create a new controlling interest therein, shall be subject to the requirements of this Section 11.110(E). The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.
- (3) The Grantee shall file all documents, forms and information required to be filed by applicable law.
- (4) The City or its designee shall have such time as is permitted by federal law in which to review a transfer request.
- (5) The parties acknowledge and agree that incidental costs and fees and any other lawful fees and costs associated with reviewing and/or acting on a Franchise transfer, sale or transfer of the Grantee or the System, a fundamental corporate change or change of control may be required in an amount to be established by resolution of the City Council, to the extent consistent with applicable law.
- (6) In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to subsection (1) or (2) of this Section be approved without the Grantee remaining, or (if other than the current Grantee) the transferee becoming a signatory to this Franchise and assuming or continuing to have all rights and obligations hereunder.
- (7) In the event of any proposed sale, transfer, corporate change, or assignment pursuant to subsection (1) or (2) of this Section, the City shall have the right to purchase the System and/or the I-Net for the value of the consideration proposed in such transaction to the extent provided State law. The City's right to purchase shall arise upon the City's receipt of notice of the material terms of an offer or proposal for sale, transfer, corporate change, or assignment, which the Grantee

has accepted. Notice of such offer or proposal must be conveyed to the City in writing and be separate from any general announcement of the transaction.

- (8) The City shall be deemed to have waived its right to purchase the System and/or the I-Net pursuant to this Section only in the following circumstances:
 - (a) If the 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 11.110(E)(7) above, its intention to exercise its right of purchase; or
 - (b) It approves the assignment or sale of the Franchise as provided within this Section.
- (9) No Franchise may be transferred if the City determines the Grantee is in noncompliance of the Franchise unless an acceptable compliance program has been approved by the City. The approval of any transfer of ownership pursuant to this Section shall not be deemed to waive any rights of the City to subsequently enforce noncompliance issues relating to this Franchise even if such issues predated the approval, whether known or unknown to the City.
- (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 sale or transfer for which approval would otherwise be required.

SECTION 11.111

PROTECTION OF INDIVIDUAL RIGHTS

- (A) Discriminatory Practices Prohibited. The 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. The Grantee shall comply at all times with all other applicable federal, State, and City laws, and all executive and administrative orders relating to nondiscrimination.
- (B) Subscriber Privacy.

The Grantee shall at all times comply with federal and State laws governing Subscriber privacy, including, but not limited to, Minn. Stat. § 238.084, Subd. 1(s).

SECTION 11.112

UNAUTHORIZED CONNECTIONS AND MODIFICATIONS

- (A) Unauthorized Connections or Modifications Prohibited. It shall be unlawful for any firm, Person, group, company, corporation, or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any unauthorized connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System or receive services of the System without the Grantee's authorization.
- (B) Removal or Destruction Prohibited. It shall be unlawful for any firm, Person, group, company, or corporation to willfully interfere, tamper, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any purpose whatsoever, except for any rights the City may have pursuant to this Franchise or its police powers.

SECTION 11.113

MISCELLANEOUS PROVISIONS

- (A) Franchise Renewal. Any renewal of this Franchise shall be performed in accordance with applicable federal, State and local laws and regulations. The term of any renewed Franchise shall be limited to a period not to exceed fifteen (15) years.
- (B) Work Performed by Others. Grantee shall ensure that all applicable obligations of this Franchise are adhered to with regard to work performed by 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 Person performing work obtain any rights to maintain and operate a System and/or an I-Net or provide Cable Service. Upon request, the Grantee shall provide notice to the City of the name(s) and address(es) of any entity, other than the Grantee, which performs substantial services pursuant to this Franchise.
- (C) Amendment of Franchise Ordinance. The Grantee and the City may agree, from time to time, to amend this Franchise by a written instrument executed by the City and the Grantee. Such written amendments may be made subsequent to a review session pursuant to Section 11.108(F) 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 to the extent permitted by law.

(D) Compliance with Federal, State and Local Laws.

- (1) If any federal or State law or regulation shall require or permit the City or the Grantee to perform any service or act or shall prohibit the City or the 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. The Grantee and the City shall conform to State laws and rules regarding cable communications not later than one year after they become effective, unless otherwise stated, and to conform to federal laws and regulations regarding cable as they become effective.
- (2) The Grantee and the City agree that the terms and conditions of this Franchise are not severable.
- (3) The Grantee shall, at all times during the term of this Franchise, including all extensions or renewals hereof, comply with applicable federal, State and local laws and regulations.

(E) Nonenforcement by City. The 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 the City to enforce prompt compliance. The City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by the 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.

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

(G) 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 the Grantee believes that said terms and conditions are not unreasonable, unlawful or arbitrary, and that the Grantee believes the City has the power to make the terms and conditions contained in this Franchise.

(H) Governing Law. This Franchise shall be governed in all respects by the laws of the State of Minnesota.

- (I) 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.
- (J) 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.
- (K) Captions and Headings. 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. 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.
- (L) 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 11.114

PUBLICATION; EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

- (A) Publication; Effective Date. This Franchise shall be published in accordance with applicable local and Minnesota law.
- (B) Acceptance.
 - (1) The Grantee shall voluntarily accept this Franchise within thirty (30) days of its adoption by the City Council, 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 does not take place in a timely manner, 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.

- (2) Upon acceptance of this Franchise, the Grantee and the City shall be bound by all the terms and conditions contained herein and in the Charter of the City of Columbia Heights. Specifically, the Grantee agrees that:
- (a) this Franchise is not inconsistent with applicable laws and regulations at the time it is executed;
 - (b) it shall be subject to and will perform on its part all of the terms of Sections 94-102, inclusive, of the Charter of the City of Columbia Heights;
 - (c) it shall not issue any capital stock on account of the Franchise or the value thereof, and that the Grantee shall have no right to receive, upon condemnation proceedings brought by the City to acquire the public utility exercising such Franchise, any return on account of the Franchise or its value;
 - (d) notwithstanding anything to the contrary herein, no sale or lease of this Franchise shall be active until the assignee or lessee shall have filed in the office of the City Clerk an instrument, duly executed, reciting the fact of such sale or lease, accepting the terms of the Franchise, and agreeing to perform all the conditions required of the Grantee hereunder;
 - (e) notwithstanding anything to the contrary herein, and subject to State laws and regulations, every grant of permission contained in this Franchise for the erection of poles, masts, or other fixtures in the Rights-of-Way and for the attachment of wires thereto, or for the laying of tracks in, or of pipes or conduits, under places of any permanent or semi-permanent fixtures whatsoever, shall be subject to the condition that the City Council shall have the power to require such alternations therein, or relocation or rerouting thereof, as the City Council may at any time deem necessary for safety, health, or convenience of the public, and particularly that it shall have the power to require the removal of poles, masts and other fixtures bearing wires and the placing underground of poles, masts, and of other fixtures bearing wires and the placing underground of all wires for whatsoever purpose used; and
 - (f) acceptance of this Franchise, and every extension or renewal hereof, in writing by the Grantee within thirty (30) days after its passage by the City Council and before its submission to the vote of the people in the case of a referendum. No such Franchise shall be binding upon the City until its acceptance by the Grantee. Such acceptance shall be construed to be an acceptance of and consent to all the terms, conditions and limitations contained in the ordinance granting this Franchise as well as of the provisions of the Charter of the City of Columbia Heights.

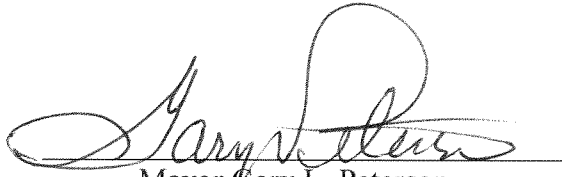
- (3) The Grantee shall accept this Franchise in the following manner:
- (a) This Franchise will be properly executed and acknowledged by the Grantee and delivered to the City.
 - (b) With its acceptance, the Grantee shall also deliver any payments, performance bond, letter of credit and insurance certificates required herein that have not previously been delivered.
- (4) 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 9th day of August, 2010.

This ordinance shall be in full force and effect from and after thirty (30) days after its passage.

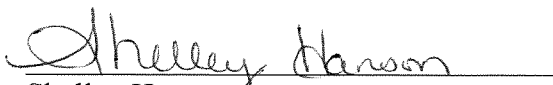
First Reading: July 26, 2010
Second Reading: August 9, 2010
Date of Passage: August 9, 2010

Offered by: Kelzenberg
Seconded by: Williams
Roll Call: All ayes



Mayor Gary L. Peterson

Attest:



Shelley Hanson
Secretary

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

COMCAST OF MINNESOTA, INC.

Dated: _____

By: _____

Its: _____

EXHIBIT A

CUSTOMER SERVICE REQUIREMENTS

- (1) The Grantee shall have a publicly listed toll-free telephone number which shall be operated so as to receive public and Subscriber complaints and requests on a twenty-four (24) hour-a-day, seven (7) days-a-week, 365 days-a-year basis. During Normal Business Hours, trained representatives of Grantee shall be available to respond to Subscriber inquiries.
- (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 laws and regulations adopted by the FCC and/or 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. The Grantee shall respond to written complaints with a copy to the City or its designee within thirty (30) days.
- (3) 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.
- (4) Except as provided in paragraph (3), the Grantee shall schedule appointments for Installations and other service calls either at a specific time or, at a maximum, during a four hour time block to commence not later than 8:00 a.m. and end not earlier than 7:00 p.m. The Grantee shall 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) 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 made to the City regarding Grantee's service, and provided to

Grantee, and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the local office of Grantee. The Grantee shall provide the City with a written summary of such complaints and their resolution upon request of the City. As to Subscriber complaints, the Grantee shall comply with FCC record-keeping regulations, and make the results of such record-keeping available to the City upon request.

- (6) The Grantee shall respond to written complaints from the City in a timely manner, and provide a copy of each response to the City within thirty (30) days. In addition, the Grantee shall respond to all written complaints from Subscribers within (30) days of receipt of the complaint.
- (7) The Grantee shall provide each Subscriber at the time Cable Service is installed, and at least every twelve (12) months thereafter, the following materials:
 - (a) instructions on how to use the Cable Service;
 - (b) 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);
 - (c) a schedule of rates and charges, Channel positions and a description of products and services offered;
 - (d) prices and options for programming services and conditions of subscription to programming and other services; and
 - (e) a description of the Grantee's Installation, Service, maintenance and arbitration policies, Subscriber privacy rights, high-speed Internet 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.
- (8) Copies of materials specified in paragraph (7) shall be provided to the City upon request.
- (9) 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.

EXHIBIT B

FREE SUBSCRIBER NETWORK DROPS, OUTLETS AND CABLE SERVICE TO INSTITUTIONS, BUILDINGS AND OFFICES

City of Columbia Heights:

Columbia Heights Public Library – 820 40th Avenue, NE**
Columbia Heights City Hall – 590 40th Avenue, NE**
John P. Murzyn Hall – 530 Mill Street, NE*
Columbia Heights Municipal Service Center – 637 38th Avenue, NE
Columbia Heights Municipal Liquor Store – 4950 Central Avenue, NE
Columbia Heights Municipal Liquor Store – 2105 37th Avenue, NE
Columbia Heights Municipal Liquor Store – 5225 University Avenue, NE
New Public Safety Facility – 825 41st Avenue, NE & Jackson Street
New City Gymnasium – 1300 49th Avenue, NE*

Public School Facilities (I.S.D. #13):

Columbia Heights High School – 1400 49th Avenue, NE**
Central Middle School – 900 49th Avenue, NE
Highland Elementary School – 1500 49th Avenue, NE
Valley View Elementary School – 800 49th Avenue, NE
District Facilities - 1460 49th Avenue, NE
District Center – 1440 49th Avenue, NE
New School District Gymnasium – 1440 49th Avenue, NE*

Private Schools:

Immaculate Conception School – 4053 Quincy Street, NE

Senior Citizen Developments:

Park View Villa – Community Room - 965 40th Avenue, NE*

All facilities, institutions and/or locations specified in this Exhibit B shall be provided with or continue to be provided with at least a free subscriber network Drop, free outlet, free Converter, a free remote control and free Cable Service in a non-public location in accordance with § 11.102(I) of this Franchise. Only those areas in designated facilities denoted with an asterisk (*) are recognized as publicly-viewed connections. These specific locations shall be connected to the Cable System, and shall receive or continue to receive at least a free Basic Cable Service-only subscriber network Drop and outlet, free Converter, free remote control and free Basic Cable Service, in accordance with §§ 11.102(I) of the Franchise. Those locations have the option to subscribe to Comcast Commercial Video Services at the best available rate. Facilities

noted with two asterisks (**) are origination sites for PEG Access signals to be inserted on the System consistent with Section 11.106(E) of the Franchise.

EXHIBIT C

Basic Cable Service		
Expanded Basic Service		
Digital Service Tiers		
Equipment		
Guide		
Installation		
Premium Services		
Pay-Per-View		
Other Income		
Franchise Fee		
PEG Fee		
FCC Fee		
Bad Debt		
Late Fee		
Shopping		
Ad Sales		
Other Non-Sub Revenue		
TOTAL		

EXHIBIT D

CONFIDENTIALITY AGREEMENT

BY AND BETWEEN

[INSERT NAME],

A N D

COMCAST OF MINNESOTA, INC.

THIS AGREEMENT is made as of the date first written below by Comcast of Minnesota, Inc. (hereinafter "Comcast"), a Delaware corporation, the City of Columbia Heights, a Minnesota municipal corporation (the "City") and **[INSERT NAME]** (hereinafter "Consultant").

WHEREAS, the City of Columbia Heights, Minnesota (the "City") has granted Comcast a cable franchise in the form of an ordinance and agreement (the "Ordinance"); and

WHEREAS, the City has the power to enforce and administer the Ordinance; and

WHEREAS, Section 11.108 of the Ordinance authorizes the City to review and recompute franchise fees paid by Comcast and to require Comcast to provide all records necessary to confirm the accurate payment of franchise fees; and

WHEREAS, the City has retained the Consultant to perform a review and recalculation of any amounts due to the City under the Ordinance ("Review"); and

WHEREAS, conduct of the Review may require the Consultant to have access to certain information that may be considered by Comcast to be proprietary and confidential; and

WHEREAS, in connection with the Review, Comcast may be required to produce documentation, notwithstanding any claims of confidentiality by Comcast; and

WHEREAS, Comcast and the Consultant (hereinafter collectively the "Parties") desire to enter into a working relationship which will permit the review of necessary documentation so that the Review can be completed, while providing reasonable assurances to Comcast that any documentation it produces that is legitimately considered confidential will not be publicly disclosed by the Consultant, to the extent permissible under applicable laws and regulations or this Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. This Agreement shall apply only to "Confidential Information," as defined herein. The purpose of the disclosure of Confidential Information hereunder shall be for the purpose of permitting the Consultant to perform the Review. The Consultant agrees to use the Confidential Information (defined

below in Section 2) for such purpose and related actions (such as preparation of a report to City officials, and to enforce the terms of the franchise) in accordance with the terms of the franchise, the Ordinance and this Agreement.

2. The term “Confidential Information” shall mean and refer to all Comcast confidential or proprietary information, documents, and materials, whether printed or in machine-readable form or otherwise, including, but not limited to, processes, hardware, software, inventions, trade secrets, ideas, designs, research, know-how, business methods, production plans, marketing and branding plans, human resource policies, programs, and procedures relating to and including but not limited to organizational structure, management, marketing and branding strategies, products and services, customer service, human resource and employee benefit policies, programs, and services, and internal communication processes and technology tools. Confidential Information shall include all Comcast financial information, data, and records legitimately marked by Comcast as “Confidential” provided to the Consultant.
3. Subject to Sections 4 and 5 hereof:
 - a. The Consultant agrees to use the same degree of care and scrutiny as they would use with respect to their own confidential information, but in any case using no less than a reasonable degree of care, to avoid, to the extent permissible under applicable law and this Agreement, disclosure, publication, or dissemination of any or all of the Confidential Information obtained hereunder; and
 - b. Confidential Information will be kept confidential for a period of three (3) years from the date hereof and shall not, without the prior written consent of Comcast, be disclosed to a third party, except to the extent required or allowed by law, a court or this Agreement, by the Consultant, in any manner whatsoever, in whole or in part.
4. Consultant agrees that with respect to Confidential Information they will:
 - a. Not use the Confidential Information other than in connection with the Review and related uses contemplated herein;
 - b. At Comcast’s reasonable request and at Comcast’s sole cost, return promptly to Comcast or destroy (and confirm such destruction in writing to Comcast) any and all portions of the Confidential Information disclosed under this Agreement (including copies forwarded to subcontractors and/or agents), together with all copies thereof, that come into their possession; and
 - c. Prepare a Review report to the City in accordance with Section 8 of this Agreement. Confidential Information may be used as reasonably necessary to defend such report’s findings against any challenge by Comcast or a third party, under procedures mutually agreed upon by the Parties to assure confidentiality to the extent permissible under applicable law or this Agreement.

5. It is understood, however, that the foregoing provisions in Sections 1, 2, 3, and 4 above shall not apply to any portion of the Confidential Information which:
 - a. Was previously known to either the the City or Consultant without obligation of confidentiality pursuant to this Agreement;
 - b. Is obtained by either the City or Consultant after the date hereof from a third party lawfully in possession of such information and which is not in violation of any contractual or legal obligation to Comcast with respect to such information;
 - c. Is or becomes part of a public record or the public domain through no fault of either the City or Consultant or any of its or their respective employees, subcontractors, or agents;
 - d. Is required to be disclosed by subpoena, statute, or administrative or judicial action provided that the City and the Consultant as soon as reasonably possible after notice of such action notifies Comcast of such action to give Comcast the opportunity to seek any other legal remedies to maintain such Confidential Information in confidence prior to the required disclosure. Comcast shall indemnify and hold harmless the Consultant and the City from any and all expenses of any type or nature which may occur to the Consultant or the City by reason of any legal or administrative proceedings pursued to protect the confidentiality of Comcast's records; or
 - e. Is approved for disclosure and release by written authorization of Comcast.
6. All the Confidential Information disclosed to, delivered to or acquired by Consultant from Comcast hereunder shall be and remain the sole property of Comcast.
7. Disclosure of the Confidential Information disclosed by Comcast to Consultant shall not constitute any option, grant or license to either the City or Consultant of such Confidential Information under any patent, know-how, or other rights heretofore, now, or hereinafter held by Comcast. It is understood and agreed that the disclosure by Comcast of the Confidential Information hereunder shall not result in any obligation on the part of either party to enter into any further agreement with the other with respect to the subject matter hereof or otherwise.
8. Any final Review report prepared by Consultant that references or is based upon Confidential Information provided shall disclose such information only to the extent necessary to convey essential report information (*e.g.*, as in a compilation, abstract or aggregation). Any such disclosure shall not be a violation of this Agreement. The Consultant shall provide Comcast a copy of their Review report prior to the public release of such report to the City, and Comcast shall notify Consultant within five (5) business days of such notice if it reasonably believes that the Review report contains Confidential Information (other than Confidential Information expressed as a compilation, abstract or aggregation)

and the Parties shall negotiate in good faith changes to the Review report to prevent disclosure of Confidential Information (other than Confidential Information expressed as a compilation, abstract or aggregation). If disclosure of Confidential Information (other than Confidential Information expressed as a compilation, abstract or aggregation) is absolutely essential to the report, the Parties shall in good faith negotiate toward an agreed manner of presenting the information while protecting the interests of Comcast and the City. Consultant shall not release any confidential or proprietary information except in accordance with the terms of this Agreement. The Consultant shall have reasonable access to all requested documents. The requested documents shall be delivered to **[INSERT NAMES]** at the addresses set forth in Section 10. The Consultant shall be permitted to view and review such documents to the extent necessary to complete the Review and any subsequent enforcement proceeding pursuant to the Ordinance, and may take and retain any handwritten or typewritten (*i.e.*, notes typed on a computer or similar device) notes they deem necessary. Such notes, to the extent they refer to or contain Confidential Information (other than Confidential Information expressed as a compilation, abstract or aggregation) in any manner, shall be deemed within the scope of this Agreement.

9. This Agreement is binding on the Parties, their successors and assigns. No modification of this Agreement shall be effective unless in writing and signed by the Parties hereto.
10. Notices hereunder shall be in writing and shall be deemed to have been delivered as of the day they are received when delivered personally, via certified mail, or via nationally recognized overnight courier:
 - a. if to Consultant: Attention: **[INSERT]**
 - b. if to City: Attention: **[INSERT]**
 - c. if to Comcast: Attention: Ms. Kathi Donnelly-Cohen
Comcast
10 River Park Plaza
St. Paul, Minnesota 55107
11. Comcast's waiver of any breach or failure to enforce any of the terms and conditions of this Agreement at any time shall not in any way affect, limit, or waive its right thereafter to enforce and compel strict compliance with every term and condition hereof.
12. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Minnesota, without regard to its principles of conflicts of law.
13. This Agreement may be executed in counterparts and constitutes the complete agreement between the Parties hereto and supersedes and cancels any and all

prior communications and agreements between the Parties with respect to the disclosure of Confidential Information related to the purposes described herein and the subject matter hereof.

IN WITNESS HEREOF, the Parties hereby indicate their agreement this _____ day of _____, 2010.

COMCAST OF MINNESOTA, INC.

By: _____

Title: _____

[INSERT NAME]

By: _____

Title: _____

[INSERT NAME]

By: _____

Title: _____