

**CABLE TELEVISION
FRANCHISE ORDINANCE
CITY OF CALEDONIA, MN**

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CITY OF CALEDONIA, MINNESOTA

ORDINANCE NO. 2017-002

AN ORDINANCE GRANTING A FRANCHISE TO MEDIACOM MINNESOTA, LLC TO OPERATE AND/OR MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF CALEDONIA, MINNESOTA AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE.

The City Council of the City of Caledonia, Minnesota ordains.

STATEMENT OF INTENT AND PURPOSES

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

FINDINGS

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

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

SECTION 1. SHORT TITLE AND DEFINITIONS

1. Short Title. This Franchise Agreement shall be known and cited as the Franchise Agreement.
2. Definitions. For the purposes of this Franchise Agreement, capitalized terms shall be defined as set forth in the Franchise and, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words

in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.

- (a) Applicable Laws" means any local law, or federal or state statute, law, regulation or other final legal authority governing any of the matters addressed in this Franchise.
- (b) Basic Cable Service" means the lowest available Service tier which includes the lawful retransmission of local television broadcast signals and any local broadcast stations carried pursuant to must-carry requirements, public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b) (7).
- (c) Cable Service or Service" means (A) the one-way transmission to Subscribers of (i) video programming or (ii) other programming service, and (B) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Cable Service or Service as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(6).
- (d) Cable System" or System" means a system of antennas, cables, wires, lines, towers, waveguides, or other conductors, Converters, equipment or facilities located in City and designed and constructed for the purpose of producing receiving, transmitting, amplifying, or distributing audio, video, and data. System as defined herein shall not be inconsistent with the definitions set forth in Minn. Stat. 238.02, Subd. 3 and 47 U.S.C. § 522(7). City and Grantee acknowledge and agree that Grantee will use affiliated telephony networks to overlay video service to the City.
- (e) Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel as defined by the FCC.
- (f) City" means the City of Caledonia, a municipal corporation, in the State of Minnesota, acting by and through its City Council.
- (g) City Council" means the governing body of the City of Caledonia, Minnesota.
- (h) Converter" means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the Service.
- (i) Drop" means the cable that connects the ground block on the Subscriber's residence to the nearest Feeder Cable of the System.
- (j) FCC" means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- (k) Franchise" means this Franchise and the regulatory and contractual relationship established hereby.

(l) “Franchise Fee” means any tax, fee or assessment of any kind imposed by the City or any other Governmental Authority on a Grantee or cable Subscriber, or both, solely because of their status as such. The term “Franchise Fee” does not include: (i) any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers); (ii) capital costs which are required by the Franchise to be incurred by the Grantee for PEG Access Facilities; (iii) requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for letters of credit, insurance, indemnification, penalties or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.

(m) “GAAP” means generally accepted accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”).

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

(o) “Grantee” is Mediacom Minnesota LLC, its agents and employees, lawful successors, transferees or assignees.

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

(q) “Installation” means the connection of the System to the point of connection, including standard Installations and custom Installations.

(r) “Lockout Device” means an optional mechanical or electrical accessory to a Subscriber’s terminal which inhibits the viewing of a certain program, certain channel, or certain channels provided by way of the Cable Communication System.

(s) “Normal Business Hours” means those hours during which most similar businesses in City are open to serve customers. In all cases, “Normal Business Hours” must include some evening hours at least one night per week and/or some weekend hours. Grantee’s Normal Business Hours are 8:00 AM – 4:30 PM. Dispatch is available until 5:30 PM and on Saturdays.

(t) “Normal Operating Conditions” means those Service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the System.

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

(v) “Person” is any Person, firm, partnership, association, corporation, company, or other legal entity.

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

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

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

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

(y) “Service Interruption” means the loss of picture or sound on one or more cable channels.

(z) “Standard Installation” means any residential Installation within one hundred fifty (150) feet or less.

(aa) “Streets” means the area on, below, or above any real property in City in which City has interest including, but not limited to any Street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area, or real property owned by or under the control of City, including other dedicated rights-of-way for travel purposes and utility easements.

(bb) “Subscriber” means any Person who lawfully receives Cable Service, and in the case of multiple office buildings or multiple dwelling units, the “Subscriber” means the lessee, tenant or occupant.

SECTION 2. GRANT OF AUTHORITY AND GENERAL PROVISIONS

1. Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein.
2. Grant of Nonexclusive Authority.
 - (a) The Grantee shall have the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the Streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto in City, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in City of a Cable System as herein defined.
 - (b) Grantee shall have the authority to use City easements, public rights-of-way, Streets and other conduits for the distribution of Grantee's System. The City may require all developers of future subdivisions to allow and accommodate the construction of the System as part of any provisions for utilities to serve such subdivisions.
 - (c) The Franchise granted herein is non-exclusive. The City specifically reserves the right to grant, at any time, additional franchises for a System in accordance with state and federal law. Any additional franchise or franchises granted by the City shall be granted in compliance with Minnesota Statutes Chapter 238.
3. Compliance with Laws. This Franchise complies with the Minnesota franchise standards contained in Minnesota Chapter 238.
4. Previous Franchises. This Franchise shall supersede any previous Franchise granting a franchise to Grantee to own, operate and maintain a System within the City. Franchise Ordinance No. 203 is hereby repealed.
5. Franchise Term. This term of this Franchise shall be for the period of ten (10) years from the date of acceptance by Grantee, unless sooner renewed, revoked or terminated as herein provided.
6. Rules of Grantee. The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligation under this Franchise Agreement and to assure uninterrupted Service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with provisions hereto, the rules of the FCC, the laws of the State of Minnesota, City, or any other body having lawful jurisdiction thereof.
7. Territorial Area Involved. This Franchise is granted for the corporate boundaries of City, as it exists from time to time. In the event of annexation by City, or as development occurs, any new territory shall become part of the area covered, provided, however, that Grantee shall not be required to extend Service beyond its present System boundaries unless there is a minimum density equivalent of eight (8) homes per one-quarter (1/4) cable mile. Access to Cable Service

shall not be denied to any group of potential residential cable Subscribers because of the income of the residents of the area in which such group resides. Grantee shall be given a reasonable period of time to construct and activate Service to annexed or newly developed areas.

8. Written Notice. All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered: 1) via email with verification of delivery; or 2) when delivered personally to any party designated below; or 3) 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 or 4) on the next business day if sent by express mail or nationally recognized overnight air courier addressed to the party to whom notice is being given.

If to City: City Clerk-Administrator
 231 East Main Street
 P.O. Box 232
 Caledonia, MN 55921

If to Grantee: Mediacom Minnesota LLC
 1504 Second Street SE
 PO Box 110
 Waseca MN 56093

Copy to: Bruce Gluckman, Esq.
 Group Vice President and Deputy General Counsel
 Mediacom Communications Corporation
 One Mediacom Way
 Mediacom Park, NY 10918

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

9. Cable Service to Public Buildings.

(a) Throughout the term of this Franchise Grantee shall provide, free of charge, one (1) service Drop, one (1) Converter, if necessary and requested, and Basic Cable Service and the next highest penetrated level of Cable Service generally available to all Subscribers (as of the effective date referred to as Expanded Basic Cable Service) ("Complimentary Service"), to all of the sites listed on Exhibit A attached hereto. If Converters or other customer premises equipment ("CPE") are required to receive Complimentary Service, Grantee reserves the right to commence billing the institution for the published rate for such CPE so long as Grantee also imposes the same CPE fee obligation in all other Minnesota jurisdictions where Grantee provides Cable Service.

(b) The City or the building occupant shall have the right to extend Cable Service throughout the building to additional outlets for the provision of Complimentary Service to such additional outlets. If ancillary equipment, such as a Converter, is required to receive the signal at additional outlets beyond the one (1) complimentary Converter

referenced in paragraph a) above, the institution shall be required to pay the same monthly rate that Subscribers pay.

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

(d) Notwithstanding Exhibit A, Grantee may implement fees or charges for Complimentary Service or additional outlets in the City (or seek to offset or deduct from Franchise Fees) only if Grantee also imposes the same fees or charges in other municipalities located in Minnesota.

(e) In the event Grantee is legally permitted, in accordance with Applicable Laws, to offset the value of Complimentary Service against Franchise Fees payable to the City, the Grantee agrees that it will do so only: 1) after providing City with ninety (90) days prior written notice; and 2) at such time as Grantee also imposes the same offset in all other Minnesota jurisdictions where Grantee provides Cable Service and where Grantee is legally authorized to impose said offset. The City shall have right to discontinue receipt of all or a portion of the Complimentary Service provided by Grantee in the event Grantee elects to offset the value of Complimentary Service as set forth in the preceding sentence.

(f) Grantee shall, in any K-12 school and municipal public building hereinafter built, provide all materials, design specifications and technical advice to provide Complimentary Service to such building. If the Installation to such building exceeds three hundred fifty (350) feet, Grantee will accommodate the Installation up to three hundred fifty (350) feet if the City or other agency provides the necessary attachment point for aerial service or conduit pathway for underground service. If the necessary pathway is not provided, the City or other agency shall pay the incremental cost of such Installation in excess of two hundred fifty (250) feet for an aerial service Installation or in excess of one hundred fifty (150) feet for an underground service Installation. For purposes of this paragraph, "incremental cost" means Grantee's actual cost to provide the Installation beyond the applicable distances, with no mark-up for profit. The recipient of the service will secure any necessary right of entry.

10. Consumer Protection and Service Standards. Grantee shall provide the necessary facilities, equipment and personnel to comply with the following consumer protection standards under Normal Operating Conditions:

(a) Cable System office hours and telephone availability:

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

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

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

(2) 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.

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

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

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

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

(1) Standard Installations will be performed within seven (7) business days after an order has been placed.

(2) Excluding conditions beyond the control of Grantee, Grantee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem. Grantee shall resolve all Service Interruptions within forty-eight (48) hours under Normal Operating Conditions.

(3) The "appointment window" alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four-hour time block during Normal Business Hours. (Grantee may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)

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

(5) If Grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer

will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(c) Communications between Grantee and Subscribers:

(1) Notifications to Subscribers:

a. Grantee shall provide written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers (this notice may, in Grantee's sole discretion, be delivered electronically as long as it is directly communicated to Subscribers or inserted into a direct Subscriber billing), and at any time upon request:

- i. Products and Services offered;
- ii. Prices and options for programming services and conditions of subscription to programming and other Services;
- iii. Installation and Service maintenance policies;
- iv. Instructions on how to use the Cable Service;
- v. Channel positions of the programming carried on the System; and
- vi. Billing and complaint procedures, including the address and telephone number of the Grantee's office within the Service area.

b. Customers will be notified of any changes in rates, programming services or Channel positions as soon as possible in writing (this notice may, in Grantee's sole discretion, be delivered electronically as long as it is directly communicated to Subscribers or inserted into a direct Subscriber billing). Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the changes are within the control of the Grantee. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by Section 2.10 (c)(1). Grantee shall not be required to provide prior notice of any rate changes as a result of a regulatory fee, franchise fee, or other fees, tax, assessment or charge of any kind imposed by any federal agency, state or franchising authority on the transaction between the operator and the Subscriber.

(2) Billing:

a. Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly

delineate all activity during the billing period, including optional charges, rebates and credits.

- b. In case of a billing dispute, the Grantee must respond to a written complaint from a Subscriber within thirty (30) days.
- (3) Refunds: Refund checks will be issued promptly, but no later than either:
- a. The customer'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 Grantee if Service is terminated.
- (4) Credits: Credits for Service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

Upon written request, Grantee shall provide City with a quarterly customer service compliance report specific to the System serving City in the form mutually agreed upon, which report shall, at a minimum, describe in detail Grantee's compliance with each and every term and provision of this section and any additional customer service requirements contained in Grantee's Franchise and shall outline and summarize all Subscriber complaints received by Grantee during the preceding quarter.

11. 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.

SECTION 3. MINNESOTA REQUIRED CONSTRUCTION STANDARDS

1. Construction Standards.

(a) Nothing in this Franchise shall in any way affect the physical plant used by Grantee or any of its affiliated companies to provide telephone service. The construction standards set forth in this Section 3 are included in this Franchise pursuant to Minnesota Statutes Section 238.084, are to be enforced consistent with Applicable Law, and are not applicable to existing telephone facilities.

(b) Subject to Section 3 herein, if the System, or subsequent rebuilds or extensions, proposed for the Franchise Area consist of fewer than one hundred (100) plant miles of cable:

(1) Within ninety (90) days of the granting of the Franchise, Grantee shall apply for the necessary governmental permits, licenses, certificates, and authorizations;

(2) The energized trunk cable must be extended substantially throughout the authorized area within one (1) year after receipt of the necessary governmental

permits, licenses, certificates, and authorizations and the Persons along the route of the energized cable shall have individual Installations as desired during the same period of time; and

(3) The above-stated requirements may be waived by City only upon occurrence of acts beyond the reasonable control of Grantee or acts of God.

2. Construction Codes and Permits.

(a) Grantee shall obtain all necessary permits from City before commencing any construction upgrade or extension of the System, including the opening or disturbance of any Street, or private or public property within City. Grantee shall strictly adhere to all state and local laws and building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the System in City and give due consideration at all times to the aesthetics of the property.

(b) City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise and to make such tests at its own expense as it shall find necessary to ensure compliance with the terms of the Franchise and Applicable Law.

3. Use of existing poles or conduits.

(a) Grantee shall utilize existing poles, conduits and other facilities whenever possible and shall not construct or install any new, different or additional poles, conduits or other facilities whether on public property or on privately-owned property until the written approval of City is obtained. No location or any pole or wire-holding structure of Grantee shall be a vested interest, and such poles or structures shall be removed or modified by Grantee at its own expense whenever City determines that the public convenience would be enhanced thereby.

(b) The facilities of Grantee shall be installed underground in those areas of City where existing telephone and electric services are both underground at the time of construction by Grantee. In areas where either telephone or electric utility facilities are installed aerially at the time of System construction, Grantee may install its facilities aerially; however, at such time as the existing aerial facilities are placed underground, Grantee shall likewise place its facilities underground at sole cost to Grantee.

4. Minimum Interference.

(a) 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 Streets.

(b) All transmission and distribution structures, lines and equipment erected by Grantee shall be located so as to cause minimum interference with the unencumbered use of Streets and other public places and minimum interference with the rights and

reasonable convenience of property owners who adjoin any of the Streets and public places.

5. Repair of Streets and Property. Any and all Streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee's work, as approved by City in the case of Streets and other public property. If Grantee shall fail to promptly perform the restoration required herein, City shall have the right to put the Streets, public, or private property back into good condition. In the event City determines that Grantee is responsible for such disturbance or damage, Grantee shall be obligated to fully reimburse City for such restoration within thirty (30) days after its receipt of City's invoice therefor.

6. Conditions on Street Use.

(a) Nothing in this Franchise shall be construed to prevent City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Street; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

(b) All System transmission and distribution structures, lines and equipment erected by Grantee within City shall be located so as not to obstruct or interfere with the proper use of Streets, alleys and other public ways and places, and to cause minimum interference with the rights of property owners who abut any of the said Streets, alleys and other public ways and places, and not to interfere with existing public utility installations. Grantee shall furnish to and file with City Clerk-Administrator the maps, plats, and permanent records of the location and character of all facilities constructed, including underground facilities and Grantee shall file with City updates of such maps, plats and permanent records annually if changes have been made in the System.

(c) If at any time during the period of this Franchise City shall elect to alter, or change the grade or location of any Street, alley or other public way, the Grantee shall, at its own expense, upon reasonable notice by City, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System, and in each instance comply with the standards and specifications of City. If City reimburses other occupants of the Street, Grantee shall be likewise reimbursed.

(d) Grantee shall not place poles, conduits, or other fixtures of System above or below ground where the same will interfere with any gas, electric, telephone, water or other utility fixtures and all such poles, conduits, or other fixtures placed in any Street shall be so placed as to comply with all requirements of City.

(e) The Grantee shall, on request of any Person holding a moving permit issued by City, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same, and the

Grantee shall be given not less than twenty (20) days advance notice to arrange for such temporary changes.

(f) Nothing contained in this Franchise shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities.

7. Tree Trimming. Grantee shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over Streets and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee. City representatives shall have authority to supervise and approve all trimming of trees conducted by Grantee.

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

9. Use of Grantee's Facilities. The City shall, at its own expense, have the right to install and maintain upon the poles and within the underground pipes and conduits of Grantee, any wires and fixtures desired by the City to the extent that such installation and maintenance does not interfere with existing operations of Grantee in Grantee's sole discretion.

10. Undergrounding of Cable. Grantee shall be granted access to any easements granted to a public utility, municipal utility or utility district in any areas annexed by City or new developments.

11. Erection, Removal and Joint Use of Poles. Subject to the provisions of Section 3 above, no poles, conduits, or other wire-holding structures excluding pedestals and make-ready accommodation on existing poles shall be erected or installed by the Grantee on public property without prior approval of City with regard to location, height, type and other pertinent aspects.

SECTION 4. DESIGN PROVISIONS

1. Programming Additions. All programming decisions remain the sole discretion of Grantee provided that Grantee complies with federal law regarding notice to City and Subscribers prior to any Channel additions, deletions, or realignments, and further subject to Grantee's signal carriage obligations pursuant to 47 U.S.C. §§ 531-536, and subject to City's rights pursuant to 47 U.S.C. § 545. Grantee shall conduct programming surveys from time to time to obtain input on programming decisions from Subscribers.

2. Technical Standards. The Cable System shall at all times meet the technical standards established by the FCC as they may be amended from time to time and shall be operated so as to minimize disruption of signal to Subscribers. A description of the System is attached hereto as Exhibit B.

3. Special Testing. City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or

other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing. Before ordering such tests, Grantee shall be afforded thirty (30) days to correct problems or complaints upon which tests were ordered. City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, City wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted by City. In the event that special testing is required by City to determine the source of technical difficulties, the cost of said testing shall be borne by the Grantee if the testing reveals the System does not meet FCC technical specifications which are applicable to the complaint or problem for which the testing is conducted. If the testing reveals the System does meet FCC technical standards which are applicable to the complaint or problem for which the testing is conducted, then the cost of said test shall be borne by the City.

4. FCC Reports. The results of tests required to be filed by the FCC must be filed within ten (10) days of the conduct of the tests with the City.
5. Emergency Alert Capability. At all times during the term of this Franchise, Grantee shall provide and maintain an Emergency Alert System (EAS) consistent with applicable federal law and regulations including 47 C.F.R., Part 11, and any Minnesota State Emergency Alert System requirements. The City may identify authorized emergency officials for activating the EAS consistent with the Minnesota State Emergency Statewide Plan ("EAS Plan"). Nothing in this section is intended to expand Grantee's obligations beyond that which is required by the EAS Plan and Applicable Law.
6. Lockout Device. Upon the request of a Subscriber, Grantee shall provide by sale or lease a Lockout Device.

SECTION 5. SERVICES PROVISIONS

1. Rate Regulation. The City reserves the right to regulate rates for Basic Cable Service and any other regulated services offered over the Cable System, to the extent not prohibited by Applicable Laws. The Grantee shall be subject to the rate regulation provisions provided for herein, and those of the FCC at 47 C.F.R., Part 76, Subpart N, as the same may be amended from time to time. The City shall follow the rules relating to cable rate regulation promulgated by the FCC at 47 C.F.R., Part 76, Subpart N, as the same may be amended from time to time. The City and Grantee acknowledge that upon the effective date of this Franchise the Grantee is subject to effective competition as determined by the FCC.
2. Leased Channel Service. Grantee shall offer leased Channel service on reasonable terms and conditions and in accordance with Applicable Laws.
3. Sales Procedures. Grantee shall not exercise deceptive sales procedures when marketing its Cable Television Services within City. Grantee shall have the right to market its Cable Services door-to-door during reasonable hours consistent with local ordinances and regulation.

4. Subscriber Inquiry and Complaint Procedures. Subject to the privacy provisions of 47 U.S.C. § 521 et seq. (1993), City and Grantee shall prepare and maintain written records of all complaints made to them and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the regional office of Grantee. Grantee shall upon request by City provide the City with a written summary of such complaints and their resolution on a bi-annual basis.

5. Subscriber Contracts. Grantee shall submit any residential Subscriber contract utilized to City. If no written contract exists, Grantee shall file with the City Clerk-Administrator a document completely and concisely stating the terms of the residential Subscriber contract offered to customers, specifically including the length of the Subscriber contract. The length and terms of any Subscriber contract shall be available for public inspection during Normal Business Hours.

6. Refund Policy. In the event a Subscriber established or terminates Service and receives less than a full month's Service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which Service was rendered to the number of days in the billing.

7. Subscriber Privacy.

(a) To the extent required by Minn. Stat. §238.084 Subd. 1(s) Grantee shall comply with the following: No signals including signals of a Class IV Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. The request for permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such permission. The permission shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

(b) No information or data obtained by monitoring transmission of a signal from a Subscriber terminal, including but not limited to lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee or its agents for Grantee's business use, and also to the Subscriber subject of that information, unless Grantee has received specific written permission from the Subscriber to make such data available. The request for permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such permission. The permission shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

(c) Written permission from the Subscriber shall not be required for the conducting of system wide or individually addressed electronic sweeps for the purpose of verifying

System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in subparagraph (b) of this section.

(d) For purposes of this provision, a "Class IV Channel" means a signaling path provided by a Cable System to transmit signals of any type from a Subscriber terminal to another point in the System.

SECTION 6. PUBLIC ACCESS PROVISIONS

1. Public, Educational and Government Access.

(a) The City or its designee is hereby designated to operate, administer, promote, and manage access programming (public, educational, and governmental programming) (hereinafter "PEG Access") to the Cable System established pursuant to this Section 6. Grantee shall have no responsibility whatsoever for PEG Access except as expressly stated in this Section 6 or by a written agreement between City and Grantee.

(b) Grantee shall dedicate two (2) Channels for PEG Access use on the System to be used by the City. One (1) Channel shall be activated immediately upon the effective date of this Franchise, and the other shall remain available but activated only after request from City. All residential Subscribers who receive all or any part of the total Services offered on the System shall be eligible to receive said access Channel at no additional charge. Nothing herein shall be construed to diminish the City's rights pursuant to Minn. Stat. § 238.084, incorporated herein by reference.

2. Access Support.

(a) Upon ninety (90) days advance written request by City, Grantee shall collect on behalf of City, a per Subscriber fee of up to seventy-five cents (\$.75) per month, solely to fund PEG access-related expenditures (hereinafter "Access Fee"). The Access Fee shall be paid on the same schedule as the Franchise Fee set forth in Section 7.1 of this Franchise. Once implemented, the Access Fee shall be automatically increased every two (2) years on or about the effective date of this Franchise based on the increase in the Minneapolis/St. Paul Consumer Price Index for all consumers compounded annually or three percent (3%) each year, whichever is higher, so long as the City provides sixty (60) days prior written notice to Grantee stating the amount of the increased Access Fee.

(b) Grantee shall not be required to remit the Access Fee until such time as the City requires the same Access Fee to be paid by the competitive cable operator serving Subscribers in the City and the City notifies the Grantee in writing that said competitive cable operator is contractually required to remit the same Access Fee. In no event shall Grantee be required to remit an Access Fee at a higher per Subscriber level than the competitive cable operator.

(c) The Access Fee is not part of the Franchise Fee, and falls within one (1) or more of the exceptions in 47 U.S.C. § 542. Such costs may be categorized, itemized, and passed through to Subscribers as permissible, in accordance with 47 U.S.C. §542 or other Applicable Law. Grantee agrees that it will not offset or reduce its payment of past,

present or future Franchise Fees required as a result of its obligation to remit the Access Fee.

(d) Should Grantee continue to provide Cable Service after the scheduled expiration of this Franchise, until and unless this Franchise is superseded by a renewed Franchise in accordance with Applicable Law, Grantee shall continue to make monthly Access Fee payments for, and in support of PEG Channels as specified hereinabove.

(e) Any Access Fee amounts owing pursuant to this Franchise which remain unpaid more than twenty-five (25) days after the date the payment is due shall be delinquent and shall thereafter accrue interest at twelve percent (12%) per annum or the prime lending rate published by the Wall Street Journal on the day the payment was due, whichever is greater.

3. Access Rules.

(a) The City shall implement rules for use of any specially designated PEG Access Channels. The initial access rules and any amendments thereto shall be maintained on file with the City and available for public inspection during Normal Business Hours.

(b) Prior to the cablecast of any program on any PEG Access Channel established herein, the City shall require any Person who requests access (public, education, and government) to the System to provide written certification in a form and substance acceptable to Grantee and the City which releases, indemnifies, and holds harmless City, Grantee and their respective employees, offices, agents, and assigns from any liability, cost, damages and expenses, including reasonable expenses for legal fees, arising or connected in any way with said program.

4. Grantee as Purchasing Agent. Upon request by City, Grantee shall act as purchasing agent for the City in the acquisition of said equipment to allow the City to take advantage of Grantee's bulk purchasing power. Grantee shall have no obligation to purchase or provide access equipment beyond that stated herein, or to maintain, repair or replace any access equipment.

5. Periodic Evaluation. Upon written request from either party, Grantee and City shall meet to evaluate the effect of Section 6, above. Both parties agree to discuss any proposal for modification presented by the other party. Nothing herein shall presume or require consent to any such proposed modification. Modifications may only occur by mutual written consent of both parties. The notice and meeting contemplated herein shall be required to occur no more than every three (3) years after adoption of this Franchise, however, nothing shall prevent mutually agreed upon negotiations between both parties at any time.

SECTION 7. OPERATION AND ADMINISTRATION PROVISIONS

1. Franchise Fee.

(a) During the term of the Franchise, Grantee shall pay quarterly to the City a Franchise Fee of five percent (5%) of Gross Revenues provided that all franchised cable

operators in the City pay the same percent Franchise Fee. If any such law, regulation or valid rule alters the five percent (5%) Franchise Fee ceiling enacted by the Cable Act, then the City shall have the authority to (but shall not be required to) increase the Franchise Fee accordingly, provided such increase is for purposes not inconsistent with Applicable Law. In the event Grantee bundles or combines Cable Services (which are subject to the Franchise Fee) with non-Cable Services (which are not subject to the Franchise Fee) so that Subscribers pay a single fee for more than one (1) class of service resulting in a discount on Cable Services, Grantee agrees that for the purpose of calculation of the Franchise Fee, it shall allocate to Cable Service revenue no less than a pro rata share of the revenue received for the bundled or combined services. The pro rata share shall be computed on the basis of the published charge for each service in the bundled or combined classes of services when purchased separately.

(b) Each Franchise Fee payment shall be paid quarterly not later than thirty (30) days following the end of a given quarter and each payment shall be certified by Grantee's controller or chief financial officer and shall be accompanied by a report in such form as the City may reasonably request showing the computation of the Franchise Fee as it relates specifically to the Service Area for the preceding calendar quarter and such other relevant facts as may be required by the City, including the completion of a Franchise Fee Payment Worksheet in the form attached hereto as Exhibit C.

(c) Except as otherwise provided by law, no acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a Franchise Fee under this Franchise or for the performance of any other obligation of the Grantee. Failure by the City to enforce compliance with the requirements of this Section 7.1 shall not serve to waive of the City rights to pursue full payments of all fees owed the City, together with applicable interest, to the maximum extent permitted by applicable law.

(d) Any Franchise Fees not paid to City within thirty (30) days after the end of each calendar quarter shall accrue late charges at the rate of one percent (1%) per month compounded monthly from the date such amounts were due until such amounts and accrued late charges are paid. Enforcement of unpaid Franchise Fees shall be handled in accordance with Section 9.6; however, Grantee shall in all cases be subject to late charges on any payment more than thirty (30) days after the end of a given quarter.

(e) Upon thirty (30) days prior written notice, City shall have the right to conduct an independent review/audit of Grantee's records. If such review/audit indicates a Franchise Fee underpayment of five percent (5%) or more, the Grantee shall assume all of City's out-of-pocket costs associated with the conduct of such a review/audit and shall remit to City all applicable Franchise Fees due and payable together with applicable late charges.

2. Not Franchise Fees. Taxes.

(a) Grantee acknowledges and agrees that the Franchise Fees payable by Grantee to City pursuant to this section shall take precedence over all other material provisions of the Franchise and shall not be deemed to be in the nature of a tax, and shall be in addition

to any and all taxes of general applicability and other fees and charges which do not fall within the definition of a Franchise Fee under 47 U.S.C. § 542.

(b) Grantee shall not apply or seek to apply all or any part of any taxes, fees or assessments of general applicability levied or imposed by the City or (including any such tax, fee or assessment imposed on both utilities and cable operators or their services) that do not fall within the definition of a Franchise Fee under 47 U.S.C. § 542 as a deduction or other credit from or against any of the Franchise Fees or other payments or contributions to be paid or made by Grantee to City pursuant to this Franchise which shall be deemed to be separate and distinct obligations of Grantee.

3. Reports to be Filed with City. In addition to all reports required pursuant to this Franchise, Grantee shall prepare and furnish to City, at the times and in the form prescribed by the City, such reports with respect to the operations, affairs, transactions or property, as they relate to the System, which the City may require.

4. Technician. Grantee shall assign a technician to provide any technical service requested by Subscribers or City. The technician shall be available to schedule technical service to Subscribers or City from 8 a.m. to 5 p.m., Monday through Friday.

SECTION 8. GENERAL FINANCIAL AND INSURANCE PROVISIONS

1. Security Fund.

(a) At the time of acceptance of this Franchise, Grantee shall deliver to the City a letter of credit inuring to the benefit of the City and in form and substance acceptable to the City, in the amount of Five Thousand Dollars (\$5,000.00) (hereinafter the "Security Fund"). The City may, from year to year, in its sole discretion, reduce the amount of the Security Fund.

(b) The Security Fund may be drawn upon by City for those purposes specified in Section 9.6 hereof. Grantee's recourse, in the event Grantee believes that City's action in taking any Security Funds is improper, shall be through legal action after the security has been drawn upon. Actions brought by Grantee hereunder may be subject to 47. U.S. C. 555A - Limitations of Franchising Authority Liability - which is hereby incorporated by reference as if fully set forth herein.

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

(d) If said letter of credit or any subsequent letter of credit delivered pursuant thereto expires during the term of this Franchise, it shall be renewed or replaced during the term of this Franchise. The renewed or replaced letter of credit shall be of the same form and with a bank authorized herein and for the full amount stated in Section 8.1(a) of this Franchise.

(e) If City draws upon the letter of credit or any subsequent letter of credit delivered pursuant hereto, in whole or in part, Grantee shall replace or replenish to its full amount

the same within ten (10) days and shall deliver to City a like replacement letter of credit or certification of replenishment for the full amount stated in Section 8.1(a) as a substitution of the previous letter of credit. This shall be a continuing obligation for any draws upon the letter of credit.

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

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

2. Liability Insurance.

(a) Grantee shall with its acceptance of this Franchise, and at its sole expense, take out and maintain during the term of this Franchise public liability insurance with a company licensed to do business in the State of Minnesota with a rating by A.M. Best & Co. of not less than "A" that shall protect the Grantee, the City and their officials, officers, directors, employees and agents from claims which may arise from operations under this Franchise, whether such operations be by the Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee's vehicles, products and operations. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall not be less than Two Million Dollars (\$2,000,000.00). The following endorsements shall be attached to the liability policy:

- (1) The policy shall provide coverage on an "occurrence" basis;
- (2) The policy shall cover personal injury as well as bodily injury;
- (3) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage;
- (4) Broad form property damage liability shall be afforded;
- (5) The City shall be named as an additional insured on the policy;
- (6) An endorsement shall be provided which states that the coverage is primary insurance and that no other insurance maintained by the City will be called upon to contribute to a loss under this coverage;

(7) Standard form of cross-liability shall be afforded; and

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

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

3. Indemnification.

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

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

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

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

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

with work performed by City and permitted by this Franchise, on or adjacent to the Cable System.

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

- (1) Promptly notify Grantee within ten (10) business days in writing of any written claim or legal proceeding which gives rise to such right;
- (2) Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
- (3) Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to subparagraph (ii) above.

SECTION 9. SALE, ABANDONMENT, TRANSFER AND REVOCATION

1. Franchise Non-transferable.

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

(b) Without limiting the nature of the events requiring the Council's approval under this section, the following events shall be deemed to be a sale, assignment or other transfer of the Franchise and/or Cable System requiring compliance with this section: (i) the sale, assignment or other transfer of all or a majority of Grantee's assets or the assets comprising the Cable System to any Person; (ii) the merger of the Grantee or any of its parents with or into another Person (including the merger of Grantee or any parent with or into any parent or subsidiary corporation or other Person); (iii) the consolidation of the Grantee or any of its parents with any other Person; (iv) the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in Grantee or any of its parents by one or more of its existing shareholders, partners, members or other equity owners so as to create a new Controlling Interest in Grantee; (v) the issuance of additional capital stock or partnership, membership or other equity interest by Grantee or any of its parents so as to create a new Controlling Interest in Grantee; and (vi) the entry by the Grantee into an agreement with respect to the management or operation of the Grantee, any of Grantee's parents and/or the System or the subsequent amendment

thereof. The term "Controlling Interest" as used herein is not limited to majority equity ownership of the Grantee, but also includes actual working control over the Grantee, any parent of Grantee and/or the System in whatever manner exercised.

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

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

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

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

2. City's Right to Purchase System.

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

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

3. Abandonment or Removal of Franchise Property.

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

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

(c) City, upon such terms as City may impose, may give Grantee permission to abandon, without removing, any System facility or equipment laid, directly constructed, operated or maintained in, on, under or over the Franchise Area. Unless such permission is granted or unless otherwise provided in this Franchise, the Grantee shall remove all abandoned facilities and equipment upon receipt of written notice from City and shall restore any affected Street to its former state at the time such facilities and equipment were installed, so as not to impair its usefulness. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation made by or on behalf of Grantee and shall leave all Streets and other public ways and places in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. City shall have the right to inspect and approve the condition of the Streets, public ways, public places, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this Franchise and any Security Fund provided for in this Franchise shall continue in full force and effect during the period of removal and until full compliance by Grantee with the terms and conditions of this section.

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

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

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

4. Extended Operation and Continuity of Services. Upon termination or forfeiture of this Franchise, Grantee shall remove its cable, wires, and appliances from the Streets, alleys, or other public places within the Service Area if the City so requests. Failure by the Grantee to remove its cable, wires, and appliances as referenced herein shall be subject to the requirements of Section 9.3 of this Franchise.

5. Receivership and Foreclosure.

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

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

6. Procedure for Enforcing Franchise.

(a) In the event the City Council finds that a material violation or breach exists and that Grantee has not cured the same in a satisfactory manner, has not diligently commenced correction of such violation or breach or has not diligently proceeded to fully remedy such violation or breach, the City Council may impose liquidated damages, assessable from the Security Fund, of up to One Hundred and Seventy-Five Dollars (\$175) per day or per incident for all violations or breaches of this Franchise, provided that all violations or breaches of a similar nature occurring at the same time shall be considered one (1) incident.

(b) In the event City believes that Grantee has breached or violated any material provision of this Franchise, City shall act in accordance with the following procedures:

(1) City shall notify Grantee of the alleged violation or breach and demand that Grantee cure the same within a reasonable time, which shall not be less than ten (10) days in the case of an alleged failure of the Grantee to pay any sum or other amount due the City under this Franchise and thirty (30) days in all other cases.

(2) Upon receipt of the violation notice from the City, the Grantee shall within ten (10) days of such receipt, notify City in writing if Grantee disputes that a violation or failure has in fact occurred. Such written notice by Grantee to City shall specify with particularity the matters disputed by Grantee. Such notice by Grantee shall toll the accrual of all penalties from the security fund and the timeframe allowed for cure until the City issues a decision following the required hearing herein.

(3) If Grantee fails either to cure the alleged violation or breach within the time prescribed or to commence correction of the violation or breach within the time prescribed and thereafter diligently pursue correction of such alleged violation or breach, the City shall then give written notice of not less than fourteen (14) days of a public hearing to be held before the City Council. Said notice shall specify the violations or breaches alleged to have occurred. At the public hearing, the City Council shall hear and consider relevant evidence and thereafter render findings and its decision.

a. City shall hear Grantee's dispute within sixty (60) days and render a final decision within sixty (60) days thereafter, unless such time is extended by mutual agreement of the parties.

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

(4) In the event the City Council finds that a material violation or breach exists and that Grantee has not cured the same in a satisfactory manner or has not diligently commenced to cure of such violation or breach after notice thereof from

City and is not diligently proceeding to fully cure such violation or breach, the City Council may impose penalties from the Security Fund or may terminate this Franchise.

(5) If the City chooses to terminate this Franchise, the following additional procedures shall be followed:

a. The City shall provide Grantee with written notice of the City's intention to terminate this Franchise and specify in detail the reason or cause for the proposed termination. The City shall allow Grantee a minimum of fifteen (15) days subsequent to receipt of the notice in which to cure the default;

b. Grantee shall be provided with an opportunity to be heard at a regular or special meeting of City prior to any final decision of City to terminate this Franchise;

c. In the event that City determines to terminate this Franchise, the Grantee shall have an opportunity to appeal said decision in accordance with all Applicable Laws; and

d. If a valid appeal is filed, the Franchise shall remain in full force and affect while said appeal is pending, unless the term of the Franchise sooner expires.

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

SECTION 10. MISCELLANEOUS PROVISIONS

1. Franchise Renewal. Any renewal of this Franchise shall be done in accordance with Applicable Laws and regulations.

2. Work Performed by Others. All provisions of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise. Grantee shall provide notice to the City of the name(s) and address(es) of any entity, other than Grantee, which performs substantial services pursuant to this Franchise. This requirement strictly applies to Cable Service and shall not apply to the telephone plant of Grantee or any of its affiliated companies.

3. Amendment of Franchise Agreement. Grantee and the City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 10.6 or at any other time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in Applicable Laws. City shall act pursuant to local law pertaining to the ordinance amendment process.

4. Force Majeure. In the event Grantee's performance of any of the terms, conditions, obligations or requirements of this Franchise is prevented or impaired due to any cause beyond its reasonable control, such inability to perform shall be deemed to be excused for the period of such inability and no penalties or sanctions shall be imposed as a result thereof. Such causes beyond Grantee's reasonable control shall include, but shall not be limited to, acts of God, civil emergencies and labor unrest or strikes, inability of Grantee to obtain access to an individual's property and inability of Grantee to secure all necessary permits or utilize utility poles and conduit so long as Grantee utilizes due diligence to timely obtain said permits. The provisions contained in this paragraph 4 shall apply only if Grantee, to the extent reasonably possible, has notified the City in writing of the reason for its inability to comply with the requirements of this Franchise within twenty (20) days from the Grantee's discovery of the reason for its noncompliance.

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

6. Administration of Franchise.

(a) The City shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise. The City may issue such reasonable rules and regulations concerning the construction, operation and maintenance of the System as are consistent with the provision of the Franchise.

(b) The City Administrator or his or her designee shall be responsible for administering the Franchise, sending notices pursuant to the procedures outlined in Section 2.8 of this Franchise and monitoring the Grantee's compliance with its terms and conditions of the Franchise, provided; however, the City Council shall have the sole authority to: 1) determine if a disputed violation has occurred; and 2) to conduct any public hearings required by this Franchise regarding such alleged violations and issue any decisions regarding enforcement the Franchise; and 3) enforce penalties and remedies under the Franchise.

7. Periodic Evaluation. The field of cable communications is rapidly changing and may see many regulatory, technical, financial, marketing and legal changes during the term of this Franchise. Therefore, in order to provide for a maximum degree of flexibility in this Franchise, and to help achieve a continued advanced and modern System, the following evaluation provisions shall apply:

(a) The City may require evaluation sessions at any time during the term of this Franchise, upon thirty (30) days written notice to Grantee, provided, however, there shall

not be more than one (1) review session during each two (2) year period commencing on the effective date of this Franchise.

(b) All evaluation sessions shall be open to the public and notice of sessions published in the same way as a legal notice. Grantee shall notify Subscribers of all evaluation sessions by announcement on at least one (1) Basic Cable Service Channel of the System between the hours of 7:00 p.m. and 9:00 p.m. for five (5) consecutive days preceding each session.

(c) Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System performance, programming offered, access Channels, facilities and support, municipal uses of cable, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics the City and Grantee deem relevant.

(d) As a result of a periodic review or evaluation session, the City and Grantee shall develop such changes and modifications to the terms and conditions of the Franchise, as are mutually agreed upon and which are both economically and technically feasible taking into consideration the remaining life of the franchise.

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

SECTION 11. PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

1. Publication; Effective Date. This Franchise shall be published in accordance with applicable Minnesota law. The effective date of this Franchise shall be the date of acceptance by Grantee in accordance with the provisions of Section 11.2.

2. Acceptance.

(a) Grantee shall accept this Franchise within thirty (30) days of its enactment by the City Council, unless the time for acceptance is extended by City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes. In the event acceptance does not take place, this Franchise and any and all rights previously granted to Grantee shall be null and void.

(b) Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein.

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

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

(2) With its acceptance, Grantee shall also deliver the letter of credit and insurance certificates required herein that have not previously been delivered.

Passed and adopted this 23rd day of October, 2017.

ATTEST:

CITY OF CALEDONIA, MINNESOTA

By: *Ack Swam*

By: *Dwayne A Schum*

Its: *Clerk-administrator*

Its: *Mayor*

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

MEDIACOM MINNESOTA LLC

Dated: *November 22nd*, 2017

By: *[Signature]*

Its: *Group Vice President*



Theresa MV Sunde
November 22, 2017

**EXHIBIT A
SERVICE TO PUBLIC BUILDINGS**

LOCATION

ADDRESS

Caledonia Council Chambers

Caledonia Elementary School

Caledonia Junior High School

Caledonia Senior High School

Caledonia Fire Station

Caledonia Police Station

Houston County Sheriff's Office (911 Dispatch)

Caledonia Ambulance Station

Other: Any City building or school district building hereinafter built located within three hundred fifty (350) feet of the System.

EXHIBIT B
DESCRIPTION OF SYSTEM (Informational Only)

1. General Requirements.

Grantee shall use equipment used in high-quality, reliable, modern Cable Systems of similar design. Within ninety (90) days prior to commencement of any System upgrade, rebuild or extension, Grantee shall provide to the City a plan for upgrading the current System indicating, at least, a general overview of the construction schedule.

2. General Description.

The System shall operate with 550 MHz of bandwidth. It will have a return capacity of 5-30MHz. The design will provide the benefits of proven 550 MHz electronics while positioning the System for expansion of bandwidth and channel capacity as technology and future services develop.

3. Design.

The design of the System shall be based upon a Hybrid Fiber Coax (HFC) system. This system will deliver the signals by fiber optics directly to each neighborhood. With a neighborhood group average of only 500 homes, the resulting System will have improved reliability while delivering a high quality picture. Grantee will place fiber optic cables throughout the City, delivering the signals to an optical node placed in each neighborhood area. There shall be no more than six (6) active amplifiers in a cascade from each node to the residential dwelling. The incorporation of stand-by power supplies, strategically placed throughout the system including all hubs, will further reduce the likelihood of service interruptions.

**EXHIBIT C
FRANCHISE FEE PAYMENT WORKSHEET**

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

CERTIFICATION

I, Adam Swann, clerk-administrator of the City of Caledonia, Houston County, Minnesota, do hereby certify that the foregoing Ordinance No. 2017-002 was duly passed and approved by the Council of the City of Caledonia, Minnesota on the 23rd day of October, 2017; and the title of Ordinance No. 2017-002 and a summary of Ordinance No. 2017-002 were published in the *Caledonia Argus*, a newspaper of general circulation in the City of Caledonia, Minnesota, on the 22nd day of November, 2017, all as provided by law.

Dated this 29th day of November, 2017.



City Clerk-Administrator