

Granting a franchise for an additional ten-year period to
Comcast of St. Paul, Inc.

Adopted by Council: _____

Appendix H. Cable Communications Franchise Comcast of St. Paul, Inc.

Cross reference(s)--Cable communications service, Chapter 430.

WHEREAS, Comcast of St. Paul ("Comcast") holds a cable franchise previously held by Continental Cablevision of St. Paul ("CCSP") authorizing it to provide Cable service in the City of St. Paul. issued April 29, 1998, and wishes to extend that franchise; and

WHEREAS, the City of Saint Paul ("City") has, following reasonable notice, conducted a public hearing affording all persons reasonable opportunity to be heard, which proceeding was concerned with the analysis and consideration of the technical ability, financial condition, legal qualification and general character of Comcast; and

WHEREAS, the City after such consideration, analysis and deliberation does hereby agree to grant Comcast a franchise, which franchise shall have the effect of extending its existing franchise with amendments from the effective date hereof; and Comcast has agreed to the same; and

WHEREAS, to the knowledge and belief of the City this grant and the procedure used in formulating and awarding the same in all things and in all ways complies with the franchise standards of Minnesota State Law; and

Provided, however, that the said franchise shall be subject to the following terms and performance conditions as set forth herein.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF SAINT PAUL DOES ORDAIN:

Section 1.

Appendix H, Cable Communications Franchise, is hereby deleted in its entirety and replaced with the following:

ARTICLE I. GRANT OF FRANCHISE AND GENERAL PROVISIONS

Section 100. Title of Ordinance.

This ordinance shall be known and may be cited as the "Saint Paul Cable Franchise," hereinafter "franchise," and it shall become a part of the ordinances and Legislative Code of the City of Saint Paul.

Section 101. Definitions.

For the purpose of this ordinance, 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, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. References to officials, departments, agencies or other entities, whether defined or not, shall be read to refer to the same, or their authorized successors. References to statutory provisions shall refer to those provisions as they may be renumbered from time to time. References to applicable law or to any part of the Legislative Code of the City of St. Paul refer to the same as they may be amended from time to time during the term of the franchise. Words not defined shall be defined as in Chapter 430 of the Legislative Code of the City of St. Paul; if not defined there, as defined is 47 U.S.C. § 521 et. seq.; if not defined there, the words shall be given their common and ordinary meaning.

- 101.(a). *Basic service or basic cable service* shall have the same meaning as the term "basic service" under federal law; and shall include the public, educational and governmental access channels.
- 101.(b). *Cable service* means
- 101.(b).(1). the one-way transmission to subscribers of (A) video programming, or (B) other programming service, and
- 101.(b).(2). the subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- 101.(c). *Cable system or System* has the same meaning as the term cable system under federal law. In addition, unless the context clearly indicates otherwise, the term cable system in this franchise means Company's cable system, and all equipment, facilities and devices appurtenant thereto.
- 101.(d). *City* is the City of Saint Paul, a Minnesota municipal corporation, as it exists and as its borders may from time to time be changed. Where the franchise requires that an action be taken by the City, that action may be taken by any Person authorized to act on the City's behalf.
- 101.(e). *Company* is Comcast, the permitted transferee/grantee of rights under this ordinance awarding a franchise to CCSP, or its permitted successor, transferee or assignee.
- 101.(f). *Converter* shall mean an electronic device, which converts signals from cable distribution system frequencies to a form receivable by a television set.
- 101.(g). *Council* is the City council of the City of Saint Paul.
- 101.(h). *Easement* shall mean those rights-of-way maintained for the benefit of the public and controlled by City, the terms, conditions or limitations of which are not inconsistent with the erection, construction or maintenance of a cable

system, its structures or equipment.

101.(i). [Reserved]

101.(j). *Economically disadvantaged* shall mean those persons who receive assistance under any of the following programs or their successors: the Minnesota Telephone Assistance Plan ("TAP"); Food Stamps; Minnesota Family Investment Program; General Assistance.

101.(k). *Expanded basic service* for purposes of Sections 300(g) and 305 means all subscriber services other than basic service provided by the Company covered by a regular monthly charge, but not including optional programming offered on a pay-per-channel or pay-per-view basis or usage sensitive pay basis.

101.(l). *Gross revenues* shall mean all revenue derived directly or indirectly by the Company, any cable operator of the Cable system, their affiliates, subsidiaries, parents, and any Person in which the same have a financial interest from or in connection with the operation of the Cable system to provide Cable services within the franchise area. It is the intent of this provision to permit the City to collect the maximum franchise fee permitted by federal law, except as expressly noted. Gross revenues shall include, by way of example and not limitation, revenues from Basic service, other Cable service tiers, monthly fees for programming offered on a per-channel or per-program basis, installation and reconnection, leased channel fees, Converter rentals, studio rentals, production equipment and personnel fees, interactive Cable service, advertising revenues subject only to the limitation in the following sentence, cable store sales, late payment service fees and other Cable services offered over the system. Gross revenues shall not include commissions paid to third party advertising agencies that are not owned or controlled in whole or in part by any cable operator of the system or affiliate thereof; the parties agree that commissions or fees paid to NCC Media, its affiliates or successors are not subject to this exclusion. Gross revenues also do not include any taxes on services furnished by the Company herein imposed directly upon any subscriber or user by the state, City or other governmental unit and collected by the Company on behalf of said governmental unit, such as a sales tax. The franchise fee is not such a tax. The City acknowledges and agrees that the Company shall maintain its books and records in a manner consistent with Generally Accepted Accounting Principles or successor accounting principles with which the Company may be required to comply under the state or federal law (GAAP).

To the extent revenues are received by the Company for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, The Company shall calculate revenues to be included in Gross Revenues in accordance with GAAP.

101.(m). *Installation* shall mean the connection of the system from feeder cable to subscribers' facilities.

101.(n). *Local* means within the City of St. Paul.

- 101.(o). *Lockout device* is an optional mechanical or electrical accessory to a subscriber's terminal which, when activated, inhibits the viewing of a certain channel or channels provided by way of the Cable system.
- 101.(p). *Make-ready* shall mean the rearrangement of existing wires on utility poles performed by telephone and electric utility companies to allow for the addition of cable plant on such poles.
- 101.(q). *Non-profit institution* means (1) a Person, other than a religious organization, which qualifies for federal tax exempt status; and (2) any governmental body, agency, department, or commission; accredited school; library; hospital; or any legal entity contracting with the City to provide social services; whether or not such entity falls within the scope of subdivision (1).
- 101.(r). *Person* includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, including the City.
- 101.(s). *Person with disabilities* means any living person that: (1) receives assistance under the Social Security disability insurance program, or the Supplemental Security Income (SSI) disability program; or (2) has been issued an identifying certificate by the State of Minnesota for persons with physical disabilities; or (3) receives any vocational rehabilitation services pursuant to Section 268A.01 of the Minnesota State Statutes.
- 101.(t). *Public property* is any property owned by the City other than a street or sidewalk.
- 101.(u). [Reserved]
- 101.(v). *Senior citizen* means any living person over 65.
- 101.(w). *Sidewalk* shall mean that portion of a highway, other than the roadway, set apart by curbs, barriers, markings or other delineation for pedestrian travel, including parkways, not on private lands.
- 101.(x). *Subscriber* means the City, any government entity or any other Person who legally receives any Cable service delivered over the Cable system.
- 101.(y). *Street* shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way or place, alley, court, sidewalk, boulevard, parkway, drive, other easement or rights-of-way now or hereafter held by the City for the purpose of public travel and shall include such other easements or rights-of-way as shall be now held or hereafter held by the City which shall within their proper use and meaning entitle the City and the Company to use thereof for the purpose of installing or transmitting Cable transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a Cable system.
- 101.(z). *User* shall mean any individual, institution, organization, or business that purchases any portion of the Company's bandwidth for delivery of

programming or services or for receipt of programming or services, or which is entitled to use any portion of the bandwidth at no charge.

101.(aa). *Video channel* shall have the same meaning as the term “channel” as defined by 47 U.S.C. Section 522(4) and the regulations referenced therein.

101.(bb). *Walkout* shall mean the process whereby a cable company and telephone and electric utility companies inspect utility poles throughout the City to determine the amount of make-ready to be performed by the utility companies.

Section 102. Franchise administrator.

The City may from time to time designate an entity to be responsible for the continuing administration of the Cable franchise and for the planning and development of Cable services by providing written notice of the designation to the Company. The designee as of the effective date of this franchise shall be the City's Cable Communications Officer. Any action taken by such designee, within the scope of the authority granted by the City, and any notice received from such designee, shall be treated as an action of, or notice by the City.

Section 103. Grant.

The City hereby grants to Company a nonexclusive ten-year Cable System franchise through and including June 30, 2025 to provide Cable service, subject to all the terms and conditions as herein provided. Nothing in this franchise authorizes the Company to provide non-cable services. If the Company is authorized to provide non-cable services, the City may either by separate ordinance or by amendment of this ordinance establish additional conditions or requirements related to the provision of those services or to the use of Streets or public property in connection with the provision of non-cable services, and no provision in this franchise shall operate as a limitation on the City's authority in this regard. *Provided, however,* nothing herein is intended to grant the City greater rights with respect to franchising telecommunications providers than it has under applicable law, as amended from time to time.

Section 104. Rights and privileges of Company.

The franchise granted by the City pursuant to this ordinance shall grant to the Company the right and privilege to erect, construct, operate and maintain in, upon, along, across, above, over and under the Streets now in existence and as may be created or established during its terms, any poles, wires, cable, antennas, towers, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation of its Cable System for the provision of Cable service in the City of St. Paul on the terms and conditions hereinafter set forth. The franchise is not in lieu of any permit or other requirements that exist or may be established by the City. Permits must be obtained at the time and in the manner the City may specify, and permit conditions must be strictly adhered to. The franchise does not grant the Company the right to occupy any particular location upon, along, across, above, over and under the Streets; nor does the franchise permit the Company to interfere with the use of the Streets by others or to occupy other public property.

Section 105. Agreement.

- 105.(a). Company agrees to be bound by all the terms and conditions contained herein.
- 105.(b). The Company also agrees to provide the following broad categories of services, in addition to providing the channels for PEG use. The City acknowledges that the programming carried on the system as of January 1, 2014 satisfies this requirement:
- 105.(b).(1). Cable services responsive to the needs and interests of the community throughout the franchise term, as determined through surveys or studies of St. Paul subscribers;
 - 105.(b).(2). public affairs and news programming about the City of St. Paul;
 - 105.(b).(3). public affairs and news programming about the Twin Cities region;
 - 105.(b).(4). a channel or channels of children's programming;
 - 105.(b).(5). a channel or channels of arts and cultural programming;
 - 105.(b).(6). a channel or channels of programming of special interest to minority groups.
- 105.(c). The Company agrees that, throughout the term of this franchise, it shall make available at least the percentage of channels it was required to make available for commercial use under 47 U.S.C. § 612 as of the effective date of this agreement. These channels, referred to as "leased access" channels in this franchise, shall be available for lease by any Person unaffiliated with the Company, or to the City, to provide any services.

Section 106. Term.

- 106.(a). The term of the franchise to be granted by the City pursuant to this ordinance shall be for a period of ten years, excluding any period of time during which the Company is enjoined by a court of competent jurisdiction from performing its obligations under the franchise.
- 106.(b). References to "franchise term" in this franchise refer to the franchise term and any renewals or extensions thereof.

Section 107. Effective date.

The franchise term shall be in force upon the later of the following:

- 107.(a). Company's delivery to the City Clerk of:
- 107.(a).(1). a signed acceptance of the franchise;
 - 107.(a).(2). proof that the insurance, bonds and letters of credit required

hereunder have been obtained and are in force;

- 107.(a).(3). payment by the Company of costs for the publication of this ordinance; and
- 107.(a).(4). payment of any amounts due on or before the effective date and provision of any proofs and documents due on or before the effective date.

Section 108. Area.

This franchise is granted for the entire area of the City of Saint Paul as it exists and as its borders may from time to time be changed. The Company shall provide Cable service throughout the entire franchise area.

Section 109. Fees, payment of fees and penalties.

- 109.(a). Throughout the term of this franchise, Company shall pay to City a franchise fee of five (5) percent of Gross revenues as defined herein. Provided that, the City may at any time increase this fee to the maximum that may be charged consistent with state and federal law, should the federal law limit change or be eliminated. However, the City may not increase the franchise fee except after providing the Company 90 days advance written notice, and providing Company the opportunity to comment on the proposed change within that 90-day period.
- 109.(b). The following shall not be included in Gross revenues for purposes of calculating the franchise fee: reimbursements received by the Company from programmers for the costs actually expended by the Company in a temporary joint marketing campaign, including programming launch fees.
- 109.(c). Gross revenues shall be reduced by the amount of bad debt expense (using the direct write-off method). For purposes of this Section 109(c), the term "bad debt expense" refers to amounts lawfully billed to a customer and owed by the customer for Cable service and accrued as revenues on the books of Company, but not collected after reasonable efforts have been made to collect the charges. Bad debt expense, by way of example and not limitation, does not include the amount of discounts, promotions, or credits provided a subscriber that may reduce the amount a subscriber owes to the Company. *Provided, however* that (bad debt expense shall again be treated as revenue when recovered.)
- 109.(d). The exclusion of the foregoing reimbursements and bad debt expense from the franchise fee calculation shall not be read to suggest that any other reimbursement, similar or dissimilar, should or should not be excluded from the calculation of Gross revenues.
- 109.(e). The franchise fee and any other cost or penalties assessed shall be payable, except as otherwise specified in this franchise, quarterly to the City

office of financial services, and the Company shall file a complete and accurate verified statement of all Gross revenues within the City during the period for which said quarterly payment is made, and said payment for each quarter shall be made to the City not later than forty-five (45) days after the expiration of the quarter when due.

- 109.(g). In addition to its other rights to review and copy the Company's records under other provisions of this franchise or the St. Paul Legislative Code, the City shall have the right to inspect the Company's records to determine whether the Company has paid the franchise fee owed. The City may, but is not required to, audit such records and to recompute any amounts determined to be payable under this ordinance. The Company shall reimburse the City for all expenses incurred by the City in conducting the audit where such audit shows the Company's fee payment for any quarter reviewed is five (5) percent or more under the amount found by the City to be due and owing.
- 109.(h). In the event that any franchise payment or recomputed amount, cost or penalty is not made on or before the applicable dates heretofore specified, interest shall be charged daily from the date of such default or delay at the rate of interest which is the prime rate charged by the US Bank National Association (or a successor bank used by the City) for preferred customers as adjusted on the first day of each month for the month in which such default or delay first occurred.
- 109.(i). The acceptance by the City of any franchise fee payment shall not be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such franchise fee payment be construed as a release of any claim the City may have for additional sums payable.
- 109.(j). The franchise fee payment is not a payment in lieu of any tax, fee or other assessment except as specifically provided in this franchise, or as required by applicable law. By way of example, and not limitation, permit fees and business franchise taxes are not waived and remain applicable.

Section 110. Use of Company facilities.

The City shall have the right, during the life of this franchise, to install and maintain free of charge upon the poles of the Company any wires and pole fixtures that do not unreasonably interfere with the Cable service operations of the Company; provided, however, that the City will hold Company harmless for any damages resulting from the City's negligent installation or use of said wires and/or poles or pole fixtures.

Section 111. Rates.

- 111.(a). Except to the extent and for the time prohibited by federal law, all of Company's rates and charges are subject to regulation and prior approval by the City.
- 111.(b). Rates and charges that may be regulated shall be reasonable. Company shall maintain a current list of all rates and charges with the Cable Communications Officer. Changes in rates and charges require the prior approval of the City, except as federal law otherwise provides. Both initial rates and charges and subsequent changes shall be subject to review and Company may be required to refund excessive rates and charges.
- 111.(c). Except to the extent the City may not enforce such a requirement, the Company is prohibited from discriminating in its rates or charges or from granting undue preferences to any Subscriber, potential Subscriber, or group of Subscribers or potential Subscribers; *provided, however*, that Company may offer temporary, bona fide promotional discounts in order to attract or maintain Subscribers, so long as such discounts are offered on a non-discriminatory basis to similar classes of persons throughout the franchise area; *provided further* that discounts are permitted for Senior citizens, Persons with disabilities, or the Economically disadvantaged and in any case where the Company is required to provide a discount, or is expressly entitled to provide a discount under federal law, so long as such discounts are applied in a uniform and consistent manner.
- 111.(d). Equipment security deposit option and recovery costs:
- 111.(d).(1). The Company reserves the right to charge a deposit for Converters or other terminal equipment placed in Subscribers' homes.
- 111.(d).(2). The Company reserves the right to charge full replacement, repair and administrative costs for Converters or other Company-owned equipment which is lost, stolen or damaged through neglect or misuse by the Subscriber, so long as it is not already recovering those charges through other rates.
- 111.(d).(3). The Company reserves the right to refuse service to any Subscriber for bona fide credit reasons and may levy reasonable collection charges on overdue or delinquent accounts. Provided, however, that a Subscriber must be reconnected upon request if the Subscriber pays the amount owed to the Company, the reconnection fee, and provides any lawfully required deposit.
- 111.(d).(4). Deposits must be returned within 30 days of the date a Subscriber terminates service.
- 111.(e). The Company shall provide at its cost of labor and materials an antenna-cable switch to any Subscriber requesting such a switch.

- 111.(f). Prewiring Projects:
- 111.(f).(1). The owner or builder of a residential or commercial building or other project shall have the right to prewire an entire project for Cable service. The Company shall connect its Cable system to the wiring installed by the owner or builder, so long as the prewired installation uses internal cable wiring that meets or exceeds the Company's specifications for installations that the Company applied to itself as of the date the project was undertaken.
- 111.(f).(2). The Company shall publish specifications for internal cable wiring, and shall provide a copy of those specifications to any Person upon request. A copy of the specifications shall be provided to the Cable Communications Officer on or before the effective date of the franchise, and any change in the specifications must be filed prior to the date the changes go into effect.
- 111.(f).(3). The owner or builder may request inspection and approval of internal wiring according to a schedule supplied by Company. Company shall inspect and provide technical assistance at its cost upon request.
- 111.(f).(4). Nothing in this section prohibits the Company from refusing to connect to a prewired building if the prewiring causes signal leakage in excess of amounts permitted under applicable law.
- 111.(g). The Company shall offer the greater of a one dollar (\$1.00) per month or ten percent (10%) per month discount on Basic service for Senior citizens, Persons with disabilities and Persons who are Economically disadvantaged. The Company shall offer a ten percent (10%) discount on other cable services that it offers to Senior citizens, Persons with disabilities or the Economically disadvantaged. The Company may require persons who seek to take advantage of the discount to provide reasonable proof that they are eligible for the discount. Age may be proven by presentation of a birth certificate, passport, or valid, state-issued photo identification card. Proof of eligibility for discount on grounds of Economic disadvantage may be shown by any document from an agency or company responsible for any of the programs referenced in Section 101(j), showing that Person seeking the discount is served by any of the programs described in 101(j). Proof of eligibility for discount on grounds of disability may be shown by any document from an agency or company responsible for any of the programs referenced in Section 101(s), showing that the Person seeking the discount is served by any of the programs described in 101(s), or by presentation of the certificate described in 101s(2).
- 111.(h). Where subscriber network installation as required in Article III, Section 305 is made without charge to governmental, educational and Non-profit institutions that include living quarters, the Company may charge for all

services to individual living units within such building, including, but not limited to, individual student housing units (i.e., dormitory rooms) and hospital rooms. Rooms within fire and police stations are not treated as living quarters for purposes of this Section 111(h).

- 111.(i). Except as federal law requires otherwise, service requests for maintenance or repair of Cable facilities are performed at no charge unless such maintenance or repair is required as a result of damage caused by a subscriber.

Section 112. Rate regulation procedures.

- 112.(a). Pursuant to Saint Paul City Charter, section 16.03, all rates and charges (collectively referred to as “rates”) that must be regulated in accordance with regulations established by the federal government shall be regulated by the City in conformity with those applicable regulations, and the procedures set forth in the St. Paul Legislative Code and this agreement. Other rates that are subject to regulation shall be regulated in accordance with the St. Paul Legislative Code and this agreement. To the extent that any provisions of this franchise or of Saint Paul Legislative Code are inconsistent with applicable federal regulations, the federal regulations shall control.

- 112.(b). Should the Company decide to alter its rates or charges, it shall file its schedule of rates with the City at least 30 days prior to the effective date of a planned modification.

Section 113. Costs.

Unless expressly provided otherwise, the Company’s costs associated with compliance with this franchise and with applicable law shall be borne by the Company, and with no cost to the City. The City may recover its costs associated with awarding or enforcing of the franchise, subject to any limitations imposed by federal law. Such costs shall include, but not be limited to, publication of the franchise and notices prior to any public meeting provided for pursuant to this franchise, and the costs incurred by City in its preparation of applications for the issuance of a franchise to the Company or the transfer of the franchise to another Person. The Company will reimburse the City for costs the City incurs in connection with the foregoing within thirty (30) days after the date a bill of costs is sent to it.

Section 114. Notices.

All notices from Company to the City pursuant to this franchise shall be filed with the City Clerk and with the City's Cable Communications Officer. Company shall maintain with the City, throughout the term of this franchise, an address for service of notices by mail. Company shall also maintain with the City, a local office and telephone number for the conduct of matters related to this franchise during normal business hours.

Section 115. Letter of credit.

- 115.(a). Prior to the effective date of its franchise, the Company shall deposit with the City a letter of credit from a local financial institution in the amount of fifty thousand dollars (\$50,000.00). The City must be able to draw upon the letter of credit if it has followed the procedures described below, even if there is a dispute as to whether there has been an act or omission that would entitle the City to call upon the letter of credit. The form and content of such letter of credit shall be approved by the City Attorney. The letter of credit shall be used to insure the faithful performance by the Company of all provisions of this franchise; and compliance with all orders, permits and directions of any agency, commission, board, department, division or office of the City having a jurisdiction over its acts or defaults under this franchise; and the payment by the Company of any claims, liens and taxes due the City which arise by reason of the construction, operation or maintenance of the system.
- 115.(b). Whenever the City shall receive payment of any amount against the letter of credit pursuant to this Section 115, the Company shall pay to or deposit with the financial institution with whom it maintains said letter of credit an amount sufficient to replenish the letter of credit to its full value of fifty thousand dollars (\$50,000.00) within ten (10) days after the Company has been tendered delivery by registered mail, return receipt requested, of the request for payment. The Cable Communications Officer shall be furnished with written proof of replenishment not later than twenty-four (24) hours after it is accomplished.
- 115.(c). If the Company fails to pay to the City any compensation within the time fixed herein or within this franchise ordinance; or fails, after ten (10) days' notice, to pay to the City any taxes due and unpaid; or fails to repay the City within ten (10) days any damages, costs or expenses which the City is compelled to pay by reason of any act or default of the Company in connection with this franchise; or fails, after three (3) days' notice of such failure by the City, to comply with any provision of this franchise which the City reasonably determines can be remedied by demand on the letter of credit, the City may immediately request and receive payment of the amount thereof, with interest and any penalties, from the financial institution holding the letter of credit. Upon such request for payment, the City shall notify the Company of the amount and date thereof.
- 115.(d). The rights reserved to the City with respect to the letter of credit are in addition to all other rights of the City, whether reserved by this franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the City may have.
- 115.(e). The letter of credit shall contain the following endorsement:

"It is hereby understood and agreed that this letter of credit may not be canceled by the financial institution nor the intention not to renew be stated until thirty (30) days after receipt by the City, by registered mail, of a written notice of such intention to cancel or not to renew."
- 115.(f). Neither withdrawal of money by the City pursuant to this provision nor

wording contained herein shall be construed as a limitation of the Company's right to contest penalties under Saint Paul Legislative Code, Section 430.037.

Section 116. Bonds.

- 116.(a). The Company shall file with the City Clerk and to maintain throughout the term of this franchise a labor and material payment bond in the amount of five hundred thousand dollars (\$500,000.00). The City may require the Company to increase the amount of this bond if the City concludes that it is necessary to do so given the amount of construction being performed by the Company, or based upon the harm being caused by the Company to Streets or public or private property.
- 116.(b). Until such time as the Company has liquidated all of its obligations with the City, the Company shall file with the City Clerk and maintain throughout the term of this agreement a faithful performance bond running to the City in the penal sum of five hundred thousand dollars (\$500,000.00) conditioned upon the faithful performance of the Company of all the terms and conditions of this franchise and upon the further condition that, in the event the Company shall fail to comply with any law, ordinance, rule or regulation governing this franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damage or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of property of the Company plus costs and reasonable attorney's fees up to the full amount of the bond.
- 116.(c). The bonds shall be subject to the approval of the City Attorney and shall contain the following endorsement:
- "It is hereby understood and agreed that this bond may not be canceled until sixty (60) days after receipt by the City Attorney, by registered mail, return receipt requested, of a written notice of intent to cancel or not to renew."
- 116.(d). The rights reserved by the City with respect to the bonds herein are in addition to all other rights and remedies the City may have under this franchise or any other law.

Section 117. Liability and insurance.

- 117.(a). The Company agrees by the acceptance of this franchise to indemnify, keep and save the City free and harmless from liability on account of injuries or damage to persons or property arising out of the construction, maintenance, repair and operation of its Cable system. In the event that suit shall be brought or that recourse or damages shall be sought against the City either independently or jointly with the Company on account thereof, the Company, upon notice by the City, shall defend the City in any such suit or action at the cost of the Company, and in the event of final judgment being obtained against the City either independently or jointly with the Company, the Company shall indemnify the City and pay such judgment with all costs and hold the City harmless therefrom.

- 117.(b). The Company shall pay, and by its acceptance of the franchise, specifically agrees that it will pay all additional expenses incurred by the City in defending itself with regard to all damages and penalties mentioned in subsection 117.(a) above. These additional expenses shall include, but not be limited to, fees for outside attorneys and special consultants.
- 117.(c). The Company shall maintain, and by its acceptance of the franchise specifically agrees that it will maintain throughout the term of the franchise, liability insurance insuring the City and the Company with regard to all damages mentioned in subsection 117(a). in the minimum amount of the liability limits imposed on the City under Minnesota Statute Chapter 466.04 or as amended, or the following, whichever is higher :
- 117.(c).(1). \$500,000.00 for property damage to any one person;
- 117.(c).(2). \$2,000,000.00 for property damage in any one accident;
- 117.(c).(3). \$1,000,000.00 for personal injury to any one person; and
- 117.(c).(4). \$2,000,000.00 for personal injury in any one accident.
- 117.(d). The insurance policy obtained by the Company in compliance with this section must be approved by the City Attorney and such insurance policy, along with written evidence of payment of required premiums, shall be filed and maintained with the City Clerk during the term of the franchise, and may be changed from time to time to reflect rising liability limits. The Company shall immediately in writing advise the City Attorney of any litigation that may develop that would affect this insurance.
- 117.(e). Neither the provisions of this section or any damages recovered by the City thereunder shall be construed to or shall limit the liability of the Company under its franchise for damages.
- 117.(f). All insurance policies maintained pursuant to this franchise shall contain the following endorsement:
- "It is hereby understood and agreed that this insurance policy may not be canceled nor the intention not to renew be stated until sixty (60) days after receipt by the City, by registered mail, of written notice of such intention to cancel or not to renew."
- 117.(g). Nothing in this section shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Company's facilities while performing any work connected with grading, regrading or changing the line of any Street or public place or with the construction or reconstruction of any sewer or water system.
- 117.(h). For purposes of this Article I, Section 117, the term "City" includes the City of St. Paul, its elected officials, officers, boards (including the Board of Water Commissioners), commissions or employees.

Section 118. Indemnification.

- 118.(a). Company shall, at its sole cost and expense, fully indemnify, defend and hold harmless the City, its elected officials, officers, boards (including the Board of Water Commissioners), commissions and employees against any and all claims, suits, actions, liability and judgments for damages (including, but not limited to, reasonable expenses for outside legal fees and disbursements and liabilities assumed by the City in connection therewith):
- 118.(a).(1). To persons or property, in any way arising out of or through the acts or omissions of Company, its servants, agents or employees or to which Company's negligence shall in any way contribute;
 - 118.(a).(2). Arising out of any claim for invasion of the right of privacy, for defamation of any Person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any Person, firm or corporation (excluding claims arising out of or relating to City or access programming);
 - 118.(a).(3). Arising out of Company's failure to comply with the provisions of any federal, state or local statute, ordinance or regulation applicable to Company in its business hereunder;
 - 118.(a).(4). Arising out of any claim for which Company has been adjudged liable or to have engaged in unlawful conduct which causes or has caused the City to deny a franchise to any other Person, partnership, corporation or other legal entity. The indemnification provided for herein shall not extend or apply to any acts of the City constituting a violation or breach by the City of the contractual provisions of the franchise ordinance, unless such acts are a result of the order of a court or administrative agency or are caused by the act or acts of Company.
- 118.(b). In the event that the City awards any additional cable communications franchise in any future franchise process to a firm other than Company, then Company agrees that it will not bring, nor cause to be brought, any action, suit or other proceeding claiming damages, or seeking any other relief against City, its officials, officers, boards (including the Board of Water Commissioners), commissions, employees or agents, for any award of a franchise made in conformity with applicable state and federal law.
- 118.(c). The cost and expense covered by the indemnities shall include, but not be limited to, fees for outside attorneys and special consultants.
- 118.(d). The City shall give Company reasonable notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. The Company shall cooperate with the City

in the defense of any such action, suit or other proceeding at the request of the City; however, in the absence of such request, nothing herein shall be deemed to prevent the Company from cooperating with the City and participating in the defense of any litigation by its own counsel at the Company's cost and expense.

- 118.(e). No recovery by the City of any sum by reason of the letter of credit required in Article I, Section 115 shall be construed as any limitation upon the liability of the Company to the City under the terms of this section, except that any sum so received by the City shall be deducted from any recovery for the same damages which the City might have against the Company under the terms of this section. The provisions of this section shall not be dependent or conditioned upon the validity of this ordinance or the validity of any of the procedures or agreements involved in the award or acceptance of the franchise, but shall be and remain a binding obligation of the City and Company even if this ordinance, any part hereof, or grant of the franchise is declared null and void in a legal or administrative proceeding. It is expressly the intent of Company and City that the provisions of this section shall survive any such declaration and shall be a binding obligation of and shall inure to the benefit of the Company and City and their successors and assigns, if any.
- 118.(f). It is the purpose of this section to provide maximum indemnification to the City under the terms set out herein and, in the event of a dispute as to this section, it shall be construed to the greatest extent permitted by law to provide for the indemnification of the City by Company.
- 118.(g). Notwithstanding Section 117(g), to the extent permitted by law, Company shall have no monetary recourse whatsoever against City for any loss, costs, expenses, or damages arising out of any provision or requirement of this franchise, or Chapter 430 because of the enforcement of this franchise or Chapter 430, or any action taken pursuant thereto, including damages that may be caused by movement or removal of the Cable system during emergencies or in the course of any other activity of the City in the public streets or on public property, except in cases where the damage is the result of the City's gross negligence or willful misconduct. In no event shall the City be liable to the Company for any losses resulting from the interruption of its business, or for any other consequential damages, punitive damages or exemplary damages. The rights of City under this Section 118(g) are in addition to, and shall not be read to limit, any immunities the City may have under federal or state law or other provisions of this franchise.

Section 119. Service of process and consent to jurisdiction.

The Company shall designate an agent within the City upon whom process against it may be served on behalf of the City or any other party in enforcing this franchise or in asserting any other right or claim. The Company, for such purposes, and any other purposes, hereby consents to, and submits to, the laws, jurisdiction and courts of the State of Minnesota or, for matters appropriate to federal court jurisdiction, to the United States District Court for the District of Minnesota.

Section 120. - [RESERVED FOR PURPOSES OF NUMBERING]

Section 121. Sale or transfer of the franchise; sale or transfer of stock.

- 121.(a). The franchise shall not be assigned or transferred or leased, sublet or mortgaged in any manner whether by sale or lease of assets or transfer of control of the Company or its parents, or otherwise, either in whole or in part, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any Person without the prior written consent of the City Council which shall not be unreasonably withheld. No authorization of the Council shall be required for any mortgage, pledge or other encumbrance of this franchise ordinance or the cable system as security for financing purposes, so long as:
- 121.(a).(1). the mortgage, pledge or other encumbrance may not allow any Person to succeed to the Company's interest in the franchise or the system without the prior approval of the City; and
 - 121.(a).(2). the terms and conditions of the mortgage, pledge or other encumbrance must be subordinate to the terms and conditions of this franchise.
- 121.(b). The Company shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party, of control of the Company, or any other event constituting a transfer of the franchise, and shall file a request for approval of the transfer as provided in Chapter 430, containing such information as is required therein. The word "control," as used herein, is not limited to major stockholders, general partners and limited partners, but includes actual working control in whatever manner exercised. Without limiting the foregoing, a ten percent (10%) change or more in the ownership of Company shall be presumed to be a change in control. Every change, transfer or acquisition of control of the Company shall make the franchise subject to cancellation unless and until the Council shall have consented thereto, which consent will not be unreasonably withheld.
- 121.(c). The acts described in 121(a)-(b) are collectively referred to as "transfers," and the entity or entities to whom transfer is to be made is referred to below as the "transferee."
- 121.(d). For the purpose of determining whether it shall consent to a transfer, the City may inquire into the qualification of the prospective transferee, and the Company shall assist the Council in any such inquiry. The proposed transferee must show financial responsibility as determined by the City and must agree to comply with all provisions of the franchise. A request for a transfer will not be granted unless the Council determines that:
- 121.(d).(1). there will be no adverse effect on the public interest, or the City's interest;
 - 121.(d).(2). the transferee will agree to be bound by all the conditions of the

franchise and to assume all the obligations of its predecessor; and

- 121.(d).(3). any outstanding compliance and compensation issues have been resolved or are preserved to the satisfaction of the City.
- 121.(e). The consent or approval of the Council to any transfer shall not constitute a waiver or release of the rights of the City, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of the franchise and any amendments or agreements related thereto.
- 121.(f). In no event shall any transfer be approved without transferee becoming a signatory to the franchise, and any amendments or agreements related thereto.

Section 122. Right of municipal acquisition.

- 122.(a). In the event the Company forfeits or upon revocation or other termination of the franchise pursuant to provisions of this ordinance, or at the normal expiration of the franchise term, or in the event of any transfer, City shall have the right of first refusal to purchase the Cable system. The City may, if it chooses, acquire the Cable system and its assets and transfer the system and all its assets to a third party purchaser; without limitation, the City may enter into such a purchase agreement before acquiring the Cable system and its assets from the Company.
- 122.(b). If the City elects to purchase the System at the normal expiration of the franchise term, or upon transfer, the value of the Cable system shall be: the fair market value of the Cable system as an ongoing business concern, less the value of the franchise. The value of the Cable system shall be determined by a panel of three (3) independent appraisers agreed upon by the City and the Company. Should City and Company fail to agree upon the selection of three (3) independent appraisers, each shall select one appraiser. The two (2) appraisers so selected shall then select a third. If the City elects to purchase the System in the event of forfeiture, termination or revocation prior to the normal expiration date, the purchase price to be paid by the City shall be an equitable price. The parties agree that the equitable price shall be the Company's capitalization cost less depreciation. "Capitalization cost" shall mean the monies invested for the tangible assets that are being purchased, exclusive of intangible assets such as goodwill or value of the franchise. The date of valuation shall be no earlier than the day following the date for such forfeiture, termination or revocation.
- 122.(c). Upon exercise of this option and the payment of the above sum by the City and its service of official notice of such action upon Company, the Company shall immediately transfer to the City possession and title to all facilities and property, real and personal, of the Cable system, free from any and all liens and encumbrances not agreed to be assumed by the City in lieu of some portion of the purchase price set forth above; and the Company shall execute such warranty deeds or other instruments of conveyance to City as

shall be necessary for this purpose.

- 122.(d). Notwithstanding the above, if the Cable system or any part of the Cable system is abandoned by Company, or if the Company fails to operate its Cable system in accordance with material provisions of this franchise during any time it is required to operate its Cable system, or the Company otherwise terminates its franchise, upon reasonable notice of at least thirty (30) days and an opportunity to be heard, the ownership of the Cable system or the abandoned portions thereof in Streets or on other Public property, or such portion as the City may desire, shall revert to the City and the City may sell, assign, or transfer all or part of the assets of the Cable system, or the City Council, at its option, may use or dispose of the system as it sees fit. The Company shall execute such quit claim deeds and other documents as may be necessary to transfer the Cable system or affected part thereof free and clear of liens and encumbrances to the City.
- 122.(e). Each contract entered into by Company with reference to its Cable system or operations under the franchise shall be subject to the exercise of the rights of the City under this Section 122.
- 122.(f). Nothing in this franchise in any respect affects the City's powers of eminent domain, or its right to exercise these powers with respect to the Cable system.
- 122.(g). The Company may not take any action that would interfere with the City's purchase rights, or take action that would have the effect of limiting the facilities and equipment available to the City.
- 122(h) None of this Section 122(a)-(d) is intended to alter any rights the Company may have under 47 U.S.C. § 541(b)(3)(C).

Section 123. Certificate of confirmation.

The franchise shall cease to be of any force and effect if the Company fails to obtain any authorization required by state or federal law at the time required by such federal or state law.

ARTICLE II. - CABLE COMMUNICATIONS REGULATION AND ADMINISTRATION

Section 200. - Cable communications regulatory ordinance.

Section 201. - Police powers.

Section 202. - Compliance with state and federal laws.

Section 203. - Equal employment opportunity and affirmative action.

Section 204. - Labor policies.

Section 205. - Continuity of service mandatory.

Section 206. - Subscriber privacy.

Section 207. - Report on cable utilization.

Section 208. - Customer service and subscriber complaint procedures.

Section 209. - Termination and forfeiture.

Section 210. - Liquidated damages; penalties.

Section 211. - Abandonment of service.

Section 212. - Removal of cable equipment upon termination or forfeiture or abandonment.

Section 200. Cable communications regulatory ordinance.

The terms and conditions of this franchise shall be subject to and shall incorporate the provisions of the Cable Communications Regulatory Ordinance, Saint Paul Legislative Code, Chapter 430, as amended from time to time during the term of the franchise if such an amendment adopted after January 1, 2015, does not change any of the express material terms of the franchise, unless the City and the Company agree otherwise. Any conflict between express provisions of this franchise ordinance and the regulatory ordinance as it existed on January 1, 2015, shall be resolved in favor of the franchise. However, in interpreting this franchise, no rights pass by implication. By way of example, and not limitation, any conflict between this franchise agreement and a change adopted by the City in the exercise of its police or regulatory powers would be resolved as provided in Section 201. By way of further example and not limitation, Company must comply with permitting procedures and permitting fees set forth in Chapters 116 and 135 of the St. Paul Legislative Code. The failure of this franchise to establish or reference a requirement contained in the Legislative Code does not relieve Company of its duties to comply with such requirements. While this franchise is subject to Chapter 430, that chapter is not a contract.

Section 201. Police powers.

In accepting this franchise, the Company acknowledges that its rights hereunder are subject to the police power of the City to adopt and enforce ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable laws and ordinances enacted by the City pursuant to such power. Company understands and agrees that the reference to police powers includes by way of example and not limitation, all regulatory powers of the City that may now exist or be hereafter obtained.

Any conflict between the provisions of this franchise and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter, except that any such exercise that applies exclusively to the Company which contains provisions inconsistent with this franchise shall prevail only if upon such exercise the City finds an emergency exists constituting a danger to health, safety, property or general welfare or such exercise is mandated by law. An ordinance that applies to Cable systems generally shall not be deemed to apply exclusively to Company. By way of example and not limitation, nothing herein prevents the City from adding or changing requirements governing permitting or use of the Streets.

Section 202. Compliance with state and federal laws.

Provisions of Minnesota State Law that are required to be incorporated in this franchise, and which are not otherwise already incorporated in this franchise, are hereby specifically adopted and incorporated by reference.

Notwithstanding any other provisions of this franchise to the contrary, the Company shall at all times comply with all state laws and rules regarding cable communications not later than one year after they become effective unless otherwise stated and with all federal laws and regulations regarding cable communications as they become effective. Provided, however, if any such state or federal law or regulation shall require the Company to perform any service, or shall permit the Company to perform any service, or shall prohibit the Company from performing any service in conflict with the terms of this franchise or of any law or regulation of the City, then as soon as possible following knowledge thereof, the Company shall notify in writing the City Attorney of the point of conflict believed to exist between such regulation or law and the laws or regulations of the City or this franchise.

If the City determines that a material provision of this ordinance is affected by any subsequent action of the state or federal government, or by any order of a court or agency of competent jurisdiction; or in the event the Company raises a claim or defense that a material provision is void or otherwise unenforceable in accordance with its terms, the City shall have the right to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full extent and purpose of this agreement, provided such modifications do not place any greater total financial obligations on the Company than were required under this ordinance prior to the action of the state or federal government, or the order by the court or agency, or the date the claim was raised, and provided such modifications are presented to and agreed upon by the Company. In the event that the parties cannot agree to a proposed modification, the matter shall be resolved by binding arbitration pursuant to Section 430.035 of the City's Legislative Code.

Section 203. Equal employment opportunity and affirmative action.

203.(a). The Company shall not deny service, deny access or otherwise discriminate against Subscribers, channel users or other persons on the basis of race, color, creed, religion, ethnic origin, age, sex, sexual or affectional orientation, familial status, marital status, status with regard to public assistance, or handicap. The Company shall comply with all requirements of federal, state and local laws and regulations relating to nondiscrimination.

203.(b). The Company shall comply with or exceed all federal, state and local laws and regulations relating to equal employment opportunity.

203.(c). The Company also agrees to be bound by all the provisions of Chapter 183 of the St. Paul Legislative Code, including those provisions that apply to persons contracting with the City.

203.(d). The City has a goal of assisting economically disadvantaged businesses to participate in public contracts through its Vendor Outreach Program, which is addressed in Chapter 84 of the Saint Paul Administrative Code. The City requires the Company to make a good faith effort to purchase goods, supplies, and services from Targeted Vendors certified with the City during this contract period.

Section 204. Labor policies.

204.(a). The wages and benefits paid to the occupational groups utilized by the Company or its contractors or subcontractors in the construction, operation, or maintenance of the Cable system shall not be less than the wages or fringe benefits paid to comparable positions in the classified civil service system.

204.(b). Company shall recognize the right of its employees to bargain collectively through representatives of their own choosing in accordance with applicable laws and shall deal with representatives duly elected by a majority of its employees for the purpose of collective bargaining with respect to compensation, hours of employment or any other terms, conditions or privileges of employment.

204.(c). Company shall ensure that at least 17% of its Twin Cities workforce works within the City of St. Paul. For purposes of compliance with this section, the Company shall multiply seventeen percent (.17) by the sum of the number of people employed by the Company in the Twin Cities region and those people employed by the call center located at 10 River Park Plaza or any successor location within the City of St. Paul. No employee shall be double counted in completing this calculation.

Section 205. Continuity of service mandatory.

205.(a). It shall be the right of all Subscribers to continue receiving service insofar as their financial and other obligations to the Company are honored. In the event that the Company elects to overbuild, rebuild, modify or sell the system, or the City gives notice of intent to terminate or fails to renew this franchise, the Company shall undertake all reasonable efforts to ensure that all Subscribers receive continuous, high-quality, uninterrupted service regardless of the circumstances.

205.(b). In the event of a change of franchise, or in the event a new operator acquires the system, the Company shall cooperate with the City, new company or operator in maintaining continuity of service to all Subscribers. During such period, Company shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for its services when it no longer operates the system.

205.(c). In the event the franchise is revoked or terminated, the Company may be required to continue to provide service for a reasonable period as directed by the City in order to assure an orderly transition of service from the Company to another entity. During any such transitional period, Company

shall operate its Cable system in accordance with the requirements of this franchise and applicable law.

- 205.(d). In the event Company fails to operate the system for four (4) consecutive days without prior approval of the City or without just cause, or willfully fails to provide service in accordance with its obligations hereunder for any period, the Company will be deemed to have abandoned its Cable system. The City may, at its option, do any or all of the following:
- 205.(d).(1). operate the System or designate an operator until such time as Company restores service under conditions acceptable to the City or a permanent operator is selected. If the City or a designee is required to fulfill this obligation for the Company, the Company shall reimburse the City or its designee for all reasonable costs or damages in excess of revenues from the Cable system received by the City or its designee that are the result of the Company's failure to perform.
 - 205.(d).(2). declare the franchise forfeited and require the Company to remove its Cable system from the City by a time specified by the City, as provided in Article II, Section 212.
 - 205.(d).(3). take possession of all or a portion of the abandoned facilities, in accordance with Article I, Section 122(d).
 - 205.(d).(4). impose liquidated damages as provided for in this franchise.
 - 205.(d).(5). exercise any other remedy available to it as a matter of law or equity.

Section 206. Subscriber privacy.

Company shall comply fully with all state and federal laws and regulations governing subscriber privacy.

Section 207. – [RESERVED FOR PURPOSES OF NUMBERING]

Section 208. Customer service and subscriber complaint procedures.

- 208.(a). The Company shall comply with all federal and state customer service standards, and in addition will comply with the customer service requirements established by the City from time to time. Without limiting its obligation to comply with customer service standards established under federal, state and local law, Company shall comply with the customer service standards set forth in this franchise, which standards shall be treated as minimum, not maximum requirements. In the event of conflicts between standards, the stricter requirement shall control.
- 208.(b). At a minimum:
- 208.(b).(1). During the term of the franchise the Company shall maintain within the City a local business office or offices for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, billings disputes and similar

matters. The office must be reachable by a local, toll-free telephone call, and Company shall provide the City with the name, address and telephone number of a Person who will act as the Company's agent to receive complaints, regarding quality of service, equipment malfunctions, billings, and similar matters.

- 208.(b).(2). The local office shall be open to receive inquiries or complaints from subscribers during normal business hours, and in no event less than 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays.
- 208.(b).(3). Company shall provide the means to accept complaint calls twenty-four (24) hours a day, seven (7) days a week. Any service complaints from subscribers shall be investigated and acted upon within twenty-four (24) hours. Any service complaint shall be addressed within three (3) calendar days.
- 208.(b).(4). Upon notification by a subscriber and verification by the Company, the Company shall credit a Subscriber's account on a pro-rata basis for loss of service exceeding four hours within a twenty-four hour period, or for loss of service that exceeds forty-eight hours in any thirty-day period. The Subscriber will be credited for one day of lost service for every four hours the subscriber's service is out.
- 208.(b).(5). The Company shall keep a maintenance service log which will indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint and the time and date thereof. This log shall be made available for periodic inspection by City.
- 208.(b).(6). As Subscribers are connected or reconnected to the System, the Company shall, by appropriate means, such as a card or brochure, (i) furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed; and (ii) information concerning the City office responsible for administration of the franchise, including at least the name of the office, the address and main telephone number of the office.
- 208.(b).(7). Company shall, in addition to its other obligations, install and maintain such equipment, implement procedures and maintain such records and prepare such reports as are necessary to show Company's compliance with each and every customer service standard.

208(c) Subject to Section 208(d), for purposes of determining compliance with these minimum standards the following measurements shall be used. Nothing in this section alters or relieves Franchisee of its obligation to comply with customer service standards established by the FCC as the same may be amended or interpreted, or to prevent the City from enforcing the same, but to the extent that those standards are incorporated into this agreement the following shall be used to measure compliance with those incorporated

obligations initially.

- 208.(c).(1). Standard installations. Under normal operating conditions, this standard must be satisfied no less than 95% of the time measured on a quarterly basis. The phrase “of the time” will be interpreted to refer to the number of standard installations requested in the City, so that if 100 persons request service requiring an installation, at least 95 of those installations must be scheduled and completed within seven business days unless otherwise initially requested by the customer.
- 208.(c).(2). Company must investigate and act upon any service complaint promptly and in no event later than 24 hours after the problem becomes known. Company must resolve service complaints within three (3) calendar days.
- 208.(c).(3). Subject to the other provisions in this section, the term “normal operating conditions” shall be interpreted as defined in the FCC rules; but notwithstanding how the FCC may interpret the term, upgrades, rebuilds, plant or facilities construction or replacement (including but not limited to moving, adding or eliminating facilities, or changing addresses), additions, deletions or changes in equipment (including Company’s telephone systems, computer systems, record-keeping systems) or employees, or changes in operating or management procedures, consolidations, transfers, corporate mergers, reorganizations, roll-out of services, price and service changes or any combination of the above will be deemed to be “normal operating conditions.”
- 208.(c).(4). The reports and procedures specified in this Section 208(c)(5)-(7) will be utilized to demonstrate compliance with telephone standards described therein through January 1, 2016. After that date, those reports and procedures will continue to be utilized until (a) 30 days after Company gives written notice that the reports and procedures shall not apply; or (b) the City implements different telephone answering standards, or different reports and procedures for complying with the existing telephone answering standards. Prior to January 1, 2016, the City and Company will meet to discuss whether to continue to utilize the reports and procedures, or whether alternative reports and procedures should be used.
- 208.(c).(5). Under the federal customer service standards incorporated herein, telephone transfer time to a customer service representative may not exceed 30 seconds, and this standard must be met 90% of the time under normal operating conditions on a quarterly basis. Within 10 business days of the end of the each month, Company shall submit a report entitled “Telephone Service Factor,” (“TSF”) in substantially the form as provided to the City as of January 1, 2015. 1 and a report entitled “Average Speed of Answer” (“ASA”)
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in substantially the form provided January 1, 2015. If Company properly prepares the reports, and (a) the ASA Report shows that the average answer time was 45 seconds or less; and (b) the TSF Report shows that the telephone service factor was 80 per cent or higher (these standards are referred to as the "Preliminary Standards", Company will be deemed to be in compliance with its customer service obligation to transfer calls within 30 seconds 90% of the time under normal operating conditions.

- 208.(c).(6) If there is any month in a calendar quarter in which the Preliminary Standards are not satisfied, Company shall prepare and submit a Detailed Log Report in substantially the form provided to the City as of January 1, 2015 ("DLR") (including summary data) for the entire quarter within 20 business days of the end calendar quarter. The purpose of this report is to identify those calls received during periods that were not normal operating conditions, to determine whether the telephone transfer measure has been satisfied. The DLR will include summary data showing (a) the total number of calls received in the reporting period; the total number of calls received during normal operating conditions; and (b) the total number of half-hour intervals during the reporting period; the total number of half-hour intervals where normal operating conditions applied; and the percentage of half-hour intervals where calls were transferred and answered within 30 seconds during normal operating conditions. If the report, properly prepared, shows that: counting only periods of normal operating conditions, during 90% of the time periods in the quarter, the average speed of answer was 30 seconds or less, Company will be deemed to be in compliance with its customer service transfer time obligation. If not, Company will be deemed to be out of compliance and Company will, upon written request from the Cable Communications Officer promptly pay liquidated damages to the City for violating the standard for the quarter covered by the quarterly DLR by a date specified by the Cable Communications Officer. Nothing in this Section 208(c)(6) prevents the City from contesting Company's classification of particular time periods as involving "normal" or "abnormal" operating conditions.
- 208.(c).(7). Under the federal customer service standards incorporated into the Franchise Documents, a caller must receive a busy signal less than three percent of the time during normal operating conditions. Within 10 business days of the end of each month, Company shall submit an "All Trunks Busy" ("ATB") Report, in substantially the form provided to the City as of January 1, 2015. Within 20 business days of the end of each calendar quarter, Company will prepare a consolidated ATB Report. If Company properly prepares the quarterly report, and the quarterly report shows that all trunks were busy less than three percent of the time during the quarter, Company will be deemed to be in compliance with its "busy signal" customer service obligation. If not, Company will be deemed to be out of compliance and Company will, upon written request from the Cable Communications Officer, promptly pay

liquidated damages to the City for violating the standard during the quarter covered by the quarterly report, by a date specified by the Cable Communications Officer.

- 208.(c).(8). Each of the reports prepared under Section 208.(c).(5) – 208.(c).(7) will reflect only the calls from and resources dedicated to customer service for the Twin Cities Metropolitan Area, as defined by the United States Census Bureau, and St. Croix and Pierce Counties, Wisconsin.
- 208.(c).(9). In determining whether a particular outage event constitutes a normal operating condition for purposes of preparing the report, Company will only count those events beyond its or its Affiliates' control which result in outages for 100 or more subscribers.
- 208.(c).(10). The data used to prepare the ASA will measure the average elapsed time from when a customer makes a selection on a phone system menu to the time when the phone is answered by a Customer Care Professional ("CCP") (if the CCP can answer the phone but put the customer on hold to handle other calls, the wait time should be included in the elapsed time).
- 208.(c).(11). The data used to prepare the TSF will measure the percent of total calls that were transferred and answered within 30 seconds (if the CCP can answer the telephone but put the customer on hold to handle other calls, the wait time should be included in determining whether the 30-second standard is met).
- 208.(c).(12). The ATB measures the percentage of time (measured in one-second increments) that all trunks coming into the call center that are available for calls from the Metropolitan Area are in use.
- 208.(d). By agreeing to the measurements for determining compliance as set out in sections 208 (c), the parties are not agreeing that the measurements represent the proper interpretations of the FCC rules. Rather, the parties are agreeing that these measurements provide a reasonable means of determining whether Company has met its customer service obligations under FCC rules. Nothing herein alters the City's authority under its police powers, or under applicable law. The City may change or repeal customer service standards, adopt different or additional customer service standards and apply the same to the Company.

Section 209. Termination and forfeiture.

- 209.(a). In addition to all other rights and powers retained by the City under the franchise, Chapter 430 or otherwise, the City reserves the right to forfeit and terminate the franchise and all rights and privileges of the Company hereunder in the event of a substantial breach of its terms and conditions. A substantial breach by Company shall include, but shall not be limited to, the following:
 - 209.(a).(1). Violation of any provision of the franchise or any rule, order, regulation or determination of the City made pursuant to the franchise;

- 209.(a).(2). Attempting to dispose or disposing of any of the facilities or property of its Cable system to prevent the City from purchasing it, as provided for herein;
 - 209.(a).(3). Engaging in a course of conduct intentionally designed to practice any fraud or deceit upon the City, any subscriber or any other user of the system;
 - 209.(a).(4). Attempting to evade the provisions of the franchise;
 - 209.(a).(5). Failure to extend the System as provided under the franchise;
 - 209.(a).(6). Failure to provide the types or quality of service as required herein;
 - 209.(a).(7). Abandonment of the Cable system. For purposes of this section, abandonment shall be deemed to mean any event that would constitute abandonment under Article II Section 205, or the failure to restore service after ninety-six (96) consecutive hours of interrupted service, except when approval of such interruption is obtained from the City;
 - 209.(a).(8). Any material misrepresentation of fact in application for or negotiation of the franchise;
 - 209.(a).(9). Failure to replenish the fund secured by the letter of credit within thirty (30) days after a draw by City;
 - 209.(a).(10). Failure to maintain bonds and/or insurance; and
 - 209.(a).(11). Failure to activate the PEG channels required hereunder; failure to maintain the institutional network or otherwise comply with the requirements of Appendix 1 and Section 301; and the failure to timely complete the network required by the Indefeasible Right of Use agreement, or failure to comply with the terms of that agreement..
- 209.(b). The foregoing shall not constitute a major breach if the violation occurs as a result of circumstances beyond Company's reasonable control. Forces beyond the Company's reasonable control, include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Events within the control of the Company include, but are not limited to, delays caused by the Company (or its parent) own act or failure to timely act or plan for action. Company shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.
- 209.(c). In the event that the City determines that the Company has substantially violated any provision of the franchise, any rule or regulation promulgated pursuant hereto or any applicable federal, state or local law, the City shall make a written demand, by registered mail, return receipt requested, upon the Company that it remedy such violation and that continued violation may

be cause for termination. The City shall give the Company thirty (30) days after service of the aforementioned notice to correct the violation.

- 209.(d). Within that thirty-day period, the Company must either cure the violation, or provide satisfactory written proof that a cure cannot be completed within the thirty-day period, but that the cure is being actively and expeditiously pursued, and will be completed within a time certain. If the violation, breach, failure, refusal or neglect is not fully cured within that thirty (30) day period following written demand; or if there is not written proof satisfactory to the City that corrective action has been taken or is being actively and expeditiously pursued so that the cure will be completed by a time satisfactory to the City; or if the City provides the Company additional time to cure and the Company fails to cure within a time satisfactory to the City; the City may place the issue of termination of the franchise before the City council.
- 209.(e). If the City chooses to place the issue of termination before the City Council, a public hearing shall be held and the Company shall be provided with an opportunity to be heard upon written notice, by registered mail, return receipt requested, to the Company of the cause for termination, the intent to terminate and the time and place of said public hearing.
- 209.(f). The City Council shall hear and consider the issue and shall hear any Person interested therein, and shall determine, in its discretion, whether or not any violation by the Company has occurred. If the Council determines that the violation by the Company was within its control, and that the Company has failed to completely cure the violation, the Council may, by resolution, declare that the Company's franchise be forfeited and terminated. Nothing herein prevents the City from providing the Company with additional opportunities to cure. The City Council may not give Company any opportunity to comply where fraud and/or misrepresentation has been alleged and proved to the Council's satisfaction.

Section 210. Liquidated damages; Penalties.

- 210.(a). The parties agree that the amount of damages for violation of certain franchise provisions may be difficult to ascertain, and for that reason, agree that liquidated damages may be assessed against the Company and charged against the letter of credit as follows (amounts are in 1997 dollars):
- 210.(a).(1). For failure to provide data, documents, reports, information or to cooperate with City during an applicable process or cable communication system review, Company shall pay fifty dollars (\$50.00) per day for each day, or part thereof, the violation occurs or continues.
- 210.(a).(2). For failure to test, analyze and report on the performance of the System following a request pursuant to the franchise, the Company shall pay to the City fifty dollars (\$50.00) per day for each day, or part thereof, that such noncompliance continues.
- 210.(a).(3). For transferring the franchise without the prior approval of the City, \$2,000 per day for each day that the violation continues;

- 210.(a).(4). For failure to comply with any other provision of the franchise for which damages may be difficult to ascertain, including the customer service requirements other than those addressed by Section 210(a).(6)., Company shall pay to the City two hundred dollars (\$200.00) per day for each day, or part thereof, that such noncompliance continues.
- 210.(a).(5). For initiating or using a procedure or device for procuring information or data from a subscriber's terminal, dwelling or business without the prior valid authorization of the affected subscriber as required by Article II, Section 206.(a). of this franchise, the Company shall pay fifty dollars (\$50.00) per day for each day, or part thereof, the violation continues or occurs.
- 210.(a).(6). With respect to customer service standards where compliance is measured over a period of time and on a group rather than individual basis (as is the case with telephone answering time response), for each standard violated, for each day of the period during which Company was out of compliance, Company will owe \$200 . By way of example and not limitation, if Company failed to satisfy telephone transfer time standards for a single quarter, the Company would owe \$200 x (the number of days in the applicable period).
- 210.(b). Each breach of each provision shall be considered a separate breach for which separate liquidated damages can be imposed.
- 210.(c). Liquidated damages accrue on breach, and the City need not provide opportunity to cure prior to imposing or collecting liquidated damages. Provided that, before imposing or collecting liquidated damages, the City must provide the Company the opportunity to appear before the City and to show cause why liquidated damages should not be imposed or collected except that, no such opportunity is required for liquidated damages as described in Section 208.(c).(5).-208.(c).(7).
- 210.(c). A violation of any provision of the Saint Paul Legislative Code, Chapter 430 is by Saint Paul Legislative Code, Section 1.05 deemed to be a misdemeanor.
- 210.(d). The rights reserved by the City herein are in addition to all other rights and remedies the City may have under this franchise or any other law and are not intended to be exclusive; nor shall this provision be read to superseded or limit the applicability of any penalty provisions under Chapter 430 or other provisions of the Legislative Code, all of which shall apply.

Section 211. [RESERVED FOR PURPOSES OF NUMBERING]

Section 212. Removal of cable equipment upon termination or forfeiture or abandonment.

- 212.(a). Upon termination or forfeiture of a franchise, or abandonment of the franchise or the system, if the City so requests in writing, the Company shall remove its Cable system or such portions of it as the City may direct from the streets and other public property within the franchise area. Such request shall be served upon the Company's local business office by registered mail, return receipt requested, and shall give the Company a reasonable period of time to effectuate such removal. The City may require the Company to submit a plan for removal by a date certain, and require the Company to comply with that plan and such other conditions as the City may reasonably establish to protect the Streets and public and private property, or to protect the City's rights under this franchise.
- 212.(b). Should Company fail to remove the Cable system, fail to act in compliance with an approved removal plan, or fail to restore property to the satisfaction of the City, the City shall have the right to treat all or part of the Cable system as abandoned and to exercise its rights under Article I, Section 122, and shall have the right to remove all or portions of the Cable system at the expense of the Company and the Company shall, upon written demand, pay to the City the cost of such work done or performed by the City.
- 212.(c). The Company shall restore Streets and other public property disturbed by the removal of the Cable system to at least as good a condition as existed immediately prior to removal.

ARTICLE III. CABLE SYSTEM FEATURES

Section 300. - Subscriber network.

Section 301. - Institutional network.

Section 302. - Existing facilities.

Section 303. - Interconnection with neighboring CATV systems.

Section 304. - Support for public, educational and government use of the cable system.

Section 305. - Free drops to subscriber network.

Section 306. - Support not franchise fees.

Section 307. - Research and development.

Section 308. - Company rules and regulations.

Section 300. Subscriber network.

- 300.(a). Company will maintain and, as necessary, upgrade the portion of the Cable system primarily designed to provide Cable services to residential Subscribers so that it at all times complies with this Article III. At a minimum, the System must meet or have a design that provides a performance equal to or superior to a System with the following design. The parties acknowledge that as of January 1, 2014, the Company had fulfilled and completed the requirements of Sections 300(a) – (b) herein.:

- 300.(a).(1). The system will use a fiber to the area node architecture (hybrid fiber-coax).
- 300.(a).(2). On average, the system will pass no more than 500 residential units per fiber node, and the plant from any node will not pass more than 750 residential units. On average, there will be no more than seven active components in a cascade from the headend to the tap from which a Subscriber is served, and no more than nine active components in any cascade.
- 300.(a).(3). All active distribution electronics will be 750 MHz equipment, or equipment of higher bandwidth. All passive electronic components will be rated at 1 GHz or higher.
- 300.(a).(4). The Cable system will be two-way activated.
- 300.(a).(5). All power supplies will be inspected and replaced as necessary to provide reliable service; back-up power supplies will be provided as described in more detail below.

300.(b). *System functionality.*

- 300.(b).(1). As designed, upgraded and maintained, the Subscriber network must have a reliability comparable to the reliability of the highest quality Cable systems whose initial construction or rebuild was completed after 1996. Reliability is measured in terms of number of outages, outage duration and number of Subscribers affected by outages.
- 300.(b).(2). As designed, upgraded and maintained, the Cable system must be adequately segmented to meet Subscriber demand.
- 300.(b).(3). As designed, upgraded and maintained, the Cable system must be able to deliver high quality signals that meet FCC technical quality standards.
- 300.(b).(4). The Cable system must be designed, and must be maintained so that it has the upgradeability and flexibility to provide new services without the need for substantial new network construction.
- 300.(b).(5). [Reserved for purposes of numbering]
- 300.(b).(6). The requirement that back-up power be provided requires 24 hour back-up at the headend, three hour rated back-up at each node, three hour rated backup covering coaxial amplifiers throughout the system, and six hour rated backup for hub sites and optical transition nodes. Such equipment shall be constructed and maintained so as to cut in automatically upon failure of the commercial utility power; to revert automatically to a standby mode when alternating current power returns; and so that it complies with all utility and other safety regulations to prevent the

alternate power supply from powering a "dead" utility line so as to prevent injury to any Person. The term "rated" in this section refers to rated at 68° F. Back-up power supplies will be monitored remotely to determine condition and when they have begun to operate due to loss of electrical power.

300.(b).(7). The System shall be capable of and shall deliver standard color and monochrome signals on all channels without noticeable picture degradation or visible evidence of color distortion or other forms of interference directly attributable to the performance of the Cable system; and without noticeable sound distortion. The Company shall use equipment generally used in high-quality reliable modern systems. This requires that equipment be installed at the headend to allow the Company to cablecast signals in substantially the form received, without substantial alteration or deterioration (for example, the headend should include equipment that will transmit color video signals received at the headend in color, and stereo signals in stereo). Equipment must be installed so that all closed captioning programming received by the Cable system shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards.

300.(c). Company may use any transmission technology (as that term is defined in federal law), provided that the Cable system has characteristics that in all relevant respects meet or exceed the characteristics of the Cable system described by this Article III. By way of example and not limitation, the reference to a fiber to the node network does not prevent the provision of a fiber-to-the-home network.

300.(d). Company will deliver a substantially similar quantity and quality of video programming services to Subscribers in St. Paul as are delivered within the Twin Cities area.

300.(e). [RESERVED FOR PURPOSES OF NUMBERING]

300.(f). Throughout the franchise term, the Company shall provide and maintain all equipment necessary and all capacity necessary to allow for an audio and visual override on all channels simultaneously for public emergency announcements in a manner consistent with the state's emergency service plan and federal requirements.

300.(g). *System changes.*

300.(g).(1). If the Company moves its headend or its operations, it will ensure that subscribers are not adversely affected thereby in any respect.

300.(g).(2). If Company modifies its Cable system or its operations in a manner that has the effect of requiring modifications to public, educational and governmental ("PEG") use facilities and equipment, including institutional network facilities and equipment,

the Company will bear any cost required to ensure that there is no adverse effect on the City or those the City authorizes to use the facilities and equipment ; or on the persons responsible for managing the PEG access channels on the subscriber network. If for example, the Company moves its hub, and that relocation has the effect of requiring different or additional connections in order to maintain the quality and capability of links between the master control playback for the PEG channels and the Company's hub , the Company would provide such connections at its cost. Likewise, for example, if the Company changes the manner in which signals must be transmitted over the Cable system in order to be receivable by the Subscriber on the Subscriber's terminal equipment, the Company at its cost will provide such facilities and equipment as are necessary so the PEG use signals are useable at the terminal equipment.

- 300.(g).(3). Company will provide all Subscribers that receive only basic service with a Converter box or similar device that will allow them to receive the same channel numbers as Subscribers who receive expanded basic service.

300.(h). Access channels.

- 300.(h).(1). The Company shall make available for access programming purposes five channels on the subscriber network for PEG access use by entities designated by the City of St. Paul, as follows: three channels for public access; one channel for government access; and one for educational access. The parties recognize that under Minnesota State law, Company is also required to provide one channel for regional PEG access, but Company is only required to provide this channel for so long as it is required under state law, and the regional channel does not count against the channels described above. The term "channel" refers to the capacity required to satisfy the Company's obligations under this section, and any requirements of state or federal law.
- 300.(h).(2). The Company will not change the current channel positions of public (channels 14, 15, 19, and 20), government (channel 18), the regional channel (channel 6), or educational (channel 16) access channels delivered in standard definition format, unless new locations are mutually agreed upon by the Company and City or required by state or federal law. Other PEG signals will be grouped with other local broadcast channels; if local broadcast channels are grouped based in part on format, PEG and local broadcast channels carried in the same format will be grouped together. If it is not possible to group PEG and local broadcast channels together, PEG channels will be grouped in some other manner reasonably acceptable to City. Company shall assign each HD PEG channel a channel number near other HD local broadcast stations if such channel positions are not already taken, or if that is not possible, near HD news/public affairs programming

channels if such channel positions are not already taken, or if not possible, as reasonably close as available channel numbering will allow.

300.(h).(3). The government access channels shall be administered solely by the City or its designee. The PEG use channels (other than the regional PEG use channel) shall be administered by an entity or entities designated by the City, or in such other manner as the City, in its sole discretion, determines. Where there is shared use of a channel, for PEG and non-PEG purposes, the Company shall administer non-PEG use of the channel.

300.(i). *Access channel usage.*

300.(i).(1). The City and the Company agree that the initial rules for use of the PEG access channels, facilities and equipment shall be the rules that were in effect as of January 1, 2014. The rules and procedures may be changed by the City, or by action of the Person responsible for managing a particular PEG channel (the "designated entity"). *Provided*, however, any rule for use shall be consistent with the requirements of Minnesota law, as the same existed on the effective date of this ordinance, and consistent with provisions of federal law prohibiting Company control of the editorial content of PEG channels. The Company shall be provided with a copy of any proposed amendments and a reasonable opportunity to comment on those amendments to the rules. The Company's approval of any amendment is not required and the Company is not responsible in any manner for the rules and procedures, or their application, except as state law requires that it be responsible for such rules.

300.(i).(2). All programming and/or information carried on the access channels, except for the leased access channels, shall be noncommercial in nature. As used herein, the term "noncommercial" shall mean that the programming and/or information carried on the access channels shall not include any advertising except such underwriting credits as may be allowed under the aforementioned access rules. No portion of any access channel other than the leased access channel shall be leased, transferred or otherwise assigned by the City and/or SPNN or other designated access entity to any third party for any purpose without the Company's written consent.

300.(j). The Company, at its cost, shall provide the necessary devices and connections, and maintain and operate the system so that:

(i) the City or the designated entities or users of PEG use capacity (through the designated entity) may transmit signals in "real time" upstream from distant locations to master controls for any of the PEG channels. This obligation may be satisfied by providing, maintaining and replacing as

necessary up to three sets of mobile DOCSIS cable modems (or such other devices as may replace DOCSIS modems during the term of the franchise) and associated encoders, decoders or similar devices, that can be connected to the Subscriber network at permanent or temporary drops, subject to prior notification to Company, and that can use upstream capacity on the Subscriber network to transmit programming via the Subscriber network and the connections to PEG playback centers, and by configuring the equipment and connections so that signals can be transmitted to the playback centers equal to or of better quality than the PEG signals transmitted to Subscribers. Company may remove any modem, encoder, or similar device if it interferes with Company's delivery of Cable service.

(ii) the City may transmit signals upstream from City Hall playback facilities to the headend, to the designated entities' respective master controls and to Subscribers, receive video signals from designated providers and transmit those signals to Subscribers and other Users. The Company shall also maintain and operate the System and provide necessary connections so that signals can be routed onto the appropriate PEG use channels and so that designated entities may, from their respective master control sites, receive signals from and transmit signals to the headend and through the subscriber network on the appropriate channels. Designated entities must be able to control signals from distant locations and preview them before they are transmitted to Subscribers or other Users. The Company shall at all times provide a dedicated connection to the master playback controls for the PEG access channels with sufficient capacity so that each designated entity can program the channels under its control, and so that the full signals provided by the designated entity are picked up and delivered without deterioration or manipulation that may affect signal content or quality. In addition, the Company shall provide a connection with sufficient activated capacity so that the public access designated entities may program all the Subscriber network PEG channels for which they have playback responsibility simultaneously, and so the public access master playback control can preview signals originated elsewhere and route them onto the appropriate channels. The Company shall maintain and operate the System so that the City or its designated entities can take advantage of the capabilities of the System. The Company will, at City's request, provide and maintain connections so that PEG programming signals can be transported from origination points designated by the City to Subscribers.

300.(k). The Company shall further maintain and operate the System so that signals as received by Subscribers (whether originated at the master control or at distant locations) meet or exceed signal quality standards established by the FCC, or such other standards as may be required under other provisions of this franchise, but the Company is not responsible for signal quality problems that result from the failure of the City or an access user or designated entity to provide an adequate signal at the point the signal is delivered to the Company. Delivery is deemed to occur at the input of the modulator, cable modem, encoder or other device used to place a signal on the network so that it can be transmitted to the headend. The Company shall use components and provide maintenance services for PEG access channels and associated system equipment at least of the same quality as the

components and maintenance services for other channels. The obligation to maintain and operate includes, but is not limited to, the obligation to provide connections and electronics, including temporary drops, and connections from the master control to the headend as required to accomplish the foregoing, including all necessary modulators and demodulators, cable modems, decoders, encoders or similar devices.

300.(l). *Miscellaneous PEG requirements.*

300.(l).(1). Company shall provide PEG access channels to Subscribers so that Subscribers may record, select and view PEG channels, and access or otherwise use other information provided with the signal in the same manner local broadcast channels and information provided with the broadcast channels can be recorded, selected, viewed and used. From a Subscriber viewpoint, there should be no difference between PEG and local broadcast channels (other than differences that are a result of the signal delivered to Company or as specifically provided in this agreement). Access channels and connections shall be provided so that designated entities may deliver, and Subscribers may receive, PEG signals equivalent in quality to local broadcast signals carried on the System, in the same formats as the primary local broadcast signals are delivered, subject to the provisions herein, and unless City directs otherwise.

While the parties recognize that while the primary signals of local broadcast stations are simulcast in standard definition (SD) and high definition (HD) formats, the Company's obligation with respect to carriage of PEG in HD and SD formats shall be as follows:

- (a) On the effective date of this agreement, or such later date as the City notifies the Company that it is prepared to deliver an HD signal, Company will provide one HD channel to City, provided that City shall give Company 120 days' notice prior to the date it requires carriage in HD.
- (b) Company will carry one additional channel requested by the City in HD format commencing 120 days after a City request for carriage, but not earlier than one year after the effective date of this franchise.
- (c) At any time after five (5) years from the effective date of this franchise, upon 120 days' notice to the Company, the City may elect to convert an additional existing channel from SD to HD. In other words, the total number of PEG channels available to the City shall not exceed 7, but the mix may be adjusted from 5SD/2HD to 4SD/3HD.
- (d) At such time as 80 percent of the Company's basic service tier channels are provided exclusively in HD format, the City may request, and the Company shall provide upon 120 days' notice, that the remaining SD PEG channels be converted to HD channels, subject to the other requirements of this section. The maximum number of PEG channels provided during the term of

this franchise, in whatever combination of HD and SD signals may otherwise be required, shall continue to be seven. For purposes of calculating the 80% threshold, "on demand" programming and similar programming is not considered a channel, even if available to basic service subscribers.

- (e) Via the HD signals provide by the Company, City may either simulcast SD programming or differentiate HD and SD programming. The provision of an HD channel does not eliminate the Company's obligation to provide PEG in SD. While PEG access signals may be delivered to Company in multiple formats, if a signal is delivered in a higher quality format for simulcasting, Company will down convert the signal for simulcasting. Company is not required to convert a signal delivered in a lower quality format to a higher quality format. Designated entities have no obligation to provide a signal to the Company in a digital format.
- (f) Notwithstanding the foregoing, the Company need only provide an HD channel if the City certifies that the designated entity responsible for the channel will be able to program at least 5 hours of HD programming 5 days a week.
- (g) All PEG access channels must be receivable by Subscribers without special expense in addition to the expense paid to receive commercial services the subscriber receives. City acknowledges that HD programming may require the viewer to have special viewer equipment (such as an HDTV and an HD-capable digital device/receiver), but any Subscriber who can view an HD signal delivered via the cable system at a receiver shall also be able to view the HD PEG channels at that receiver, without additional charges or equipment. By agreeing to make PEG available in HD format, Company is not agreeing to provide free HD equipment to customers including complimentary municipal and educational accounts, nor to modify its equipment or pricing policies in any manner. City acknowledges that not every customer may be able to view HD PEG programming (for example, because they do not have an HDTV in their home or have chosen not to take an HD-capable receiving device from Company or other equipment provider) or on every television in the home.

300.(l).(2). The Company, upon request of a designated entity, will provide technical assistance or diagnostic services to determine whether or not the problem with the PEG signals is the result of matters for which the Company is responsible, and if so the Company will take prompt corrective actions.

300.(l).(4). The Company will provide any PEG access channels on the Basic Service tier throughout the life of the franchise, or if there is no basic tier, shall provide the PEG access channels to any Person who subscribes to any level of cable video programming service ,

and otherwise in accordance with federal and state law. If channels are selected through menu systems, the PEG access channels shall be displayed in the same manner as other channels, and with equivalent information regarding the programming on the channel. To the extent that any menu system is controlled by a third party, Company shall ensure that the Company will provide PEG listings on that menu system, if it is provided with the programming information by a designated entity.

- 300.(l).(4). The Company shall not charge for use of the PEG access channels, equipment, facilities or services.

Section 301. Institutional network.

- 301.(a). Company shall construct and maintain an institutional network for the use of the City and entities authorized by the City to use the institutional network for non-commercial purposes; “non-commercial” has the same meaning as in Section 300.(i).(2) except that nothing in this Section 301.(a) or Section 300.(i).(2) shall prevent an institutional network user from charging to recover its costs, or prevent the City from charging other institutional network users to recover its costs. The obligation to construct and maintain an institutional network shall apply throughout the term of this franchise, and for any period that the Company continues to operate within the City of St. Paul, except as provided herein.

From and after the effective date of this Franchise, the parties agree that the institutional network obligations of Franchisee shall be governed by those certain contracts between City and Company providing for provision of a fiber institutional network and for managed services in this agreement. The failure to upgrade the institutional network to fiber by the time provided in those agreements shall be treated as a violation of this franchise. Until the network is upgraded, and managed services are being provided as required in the agreements, the provisions below and in Appendix 1 shall remain in full force and effect. After such time, Company will continue to provide the portion of the institutional network required by Section 301.(a).(1). or an equivalent or better network acceptable to City, but its obligations to provide the institutional network components described in 301.(a)(2)-(4). will cease. Until that time, the institutional network shall consist of four distinct but integrated parts:

- 301.(a).(1). the CityLink network, a coaxial portion of the institutional network linking certain locations within the downtown St. Paul area and developed as part of an institutional network development project pursuant to Appendix 1.
- 301.(a).(2). the “Coaxial Institutional Network,” the institutional network (other than the CityLink) required by Appendix 1;
- 301.(a).(3). the “Upgraded HFC Institutional Network,” which shall be the institutional network described by Section 301(a).(2) as described in Appendix 1; and

- 301.(a).(4). the Fiber Institutional Network, a fiber-to-the-location institutional network described in Exhibit B to this franchise and in Section 301(e) in Appendix 1.
- 301.(a).(5). The institutional network described in Sections 301(a)(1)-(4) shall satisfy the performance and testing standards referenced in this franchise and set forth in Appendix 1.

Section 302. Existing facilities

Whether specifically enumerated herein or not, Company shall continue through this franchise term to provide all PEG use facilities and equipment that it was providing or was required to provide as of June 1, 2014, except as otherwise set forth in section 304.(c)(1) - 304(c)(3). By way of example and not limitation, all then-existing production equipment provided by the Company will continue to be provided for PEG use. Likewise, all institutional network facilities and equipment necessary or useful to the operation of the institutional network required hereunder will continue to be provided subject to section 301.(a).

Section 303. Interconnection with neighboring CATV systems.

- 303.(a). Company shall cooperate with any interconnection corporation, regional interconnection authority or city, county, state or federal regulatory agency which may be hereby established for the purpose of regulating, financing or otherwise providing for the interconnection of cable systems beyond the boundaries of the City.
- 303.(b). Upon City request, the Company shall negotiate in good faith to interconnect the Cable system with contiguous Cable systems. Within three (3) months of a City request, the Company shall report to the City the results of the negotiations. Where Company has negotiated in good faith with the Cable operator of a contiguous Cable system and where that operator refuses to interconnect, the City shall not penalize the Company for such failure to interconnect. The City shall not require the Company to interconnect where the Company would be required to pay more than its pro-rata share of the interconnection costs based upon the number of basic subscribers served.
- 303.(c). Notwithstanding the above, except in the case of an unaffiliated cable operator of a contiguous cable system that refuses to interconnect, the Company shall interconnect with all contiguous cable systems operated in the Minneapolis-Saint Paul metropolitan area no later than six (6) months after the effective date of this franchise, unless the City determines that a particular interconnection is not in the public interest. The interconnections shall permit the interconnected systems to exchange PEG programming intended to be carried on the subscriber network, including, by way of example and not limitation, live coverage of public meetings.

Section 304. Support for public, educational and government use of the cable system.

- 304.(a). In addition to satisfying the other requirements of this Article III, the Company is required to provide the following additional PEG use funding (as

used in this Section 304, PEG access refers to the channels, facilities and equipment used in connection with the channels on the subscriber network provided under Section 300 and associated interconnections; PEG use includes PEG access and institutional network use, including use in connection with the network provided pursuant to the agreements referenced in Section 301):

- 304.(a).(1). The Company will provide the following capital grant for PEG use for so long as it continues to operate under this franchise: 2.5% of Gross revenues paid quarterly based upon revenues for the calendar quarter. The first payment shall be due on May 15, 2015 based on Gross revenues for the quarter beginning January 1, 2015 and ending March 31, 2015, and thereafter, payments shall be due 45 days after the end of each calendar quarter, based on revenues for that quarter, or if the franchise should terminate or be revoked, 45 days after termination or revocation for any portion of quarter during which Company provided cable service. To remove any doubt, in addition to the amounts owed under this paragraph, Company shall also pay the amount that would have been due for the quarter ending December 31, 2014.
- 304.(a).(2). Notwithstanding the foregoing requirements of Section 304(a), if Company has a valid and binding contract with an entity designated by the City to manage any public access channel, the City agrees that Company may offset any amount it pays under such contract against payments required under Section 304.(a).(3). The City may establish offset limits for each calendar year by resolution. Nothing in this section requires or shall be deemed to require Company to make any payment that constitutes a franchise fee under 47 U.S.C. § 542.
- 304.(b). Throughout the franchise term, playback for the PEG access channels must be configured so that the designated entities that are responsible for the access channels are able to use their own independent automated playback facilities, located the premises of their choice. Any master control that Company intends to use for its operations must be located outside the space occupied by a designated entity, unless the parties agree otherwise. The playback facility must be configured so as to permit the designated entity to program all channels for which it is responsible for playback, on a live or taped basis. Company shall continue to have access to the designated entity's master control so that it can conduct necessary maintenance and repair upon reasonable notice or at any time in the event of emergencies.
- 304.(c). *Public access facilities.*
- 304.(c).(1). Subject to section 304.(c)(1-3). below, through and including December 31, 2015, Company shall provide, free of rent and other charges, except those specified below, the space at 375 Jackson Street (hereinafter "designated space" or "space") for use by the designated entity responsible for public access. The designated

entity shall pay Company fifty (50) percent of the amount (if any) actually paid by the Company annually for rent, property taxes and operating charges, but no more than \$12,500.00 per annum. The designated space shall include the studio, edit facilities and other equipment and resources, available for PEG use as of the effective date. Company shall maintain the availability of existing utilities and HVAC in the space as part of Company's obligation to ensure that this space remains commercially habitable consistent with its existing use and will allow the designated entity to expand HVAC and utilities, and allow the designated entity temporary access to any space it may control within the building for such purposes. In addition, the Company shall ensure that adequate restroom facilities are available to the designated space.

304.(c).(2). In the event the designated entity is denied use of the designated space by Company or any third party, the use of the designated space is prohibited by local law or code, or the designated space is rendered unfit for use as a video production and playback facility, prior to January 1, 2016, Company shall provide to designated entity on comparable terms and conditions, comparable space finished to comparable quality and with comparable utilities and services as existed in the designated space at the time of relocation at an alternative location (hereinafter "substitute space" or "space"), mutually selected by Company and City, or, if the parties cannot agree, by binding arbitration pursuant to Section 430.035 of the City's Legislative Code. Company shall pay reasonable relocation expenses, including, but not limited to, expenses for reinstalling electrical and technical equipment and for third-party reactivation, reconnection of internal equipment, and balancing. The alternative space must be provided so that there is no interruption in PEG operations.

304.(c).(3). Beginning January 1, 2016, the Company is not responsible for providing PEG space. Company, however, is responsible for providing and maintaining the connections to any PEG playback facility designated by City, whether at 375 Jackson Street or other location and shall provide the equipment required by Section 300. At City's request, and if permitted by the building owner, Company will transfer the lease for facilities at 375 Jackson Street to City or its designee.

304.(d). Company shall provide the following promotional support for access:

304.(d).(1). Two (2) cross-channel public service announcement spots daily to promote community programs and the availability of community programming facilities and training;

304.(d).(2). Insertion at the Company's cost in at least two (2) bill stuffers annually for promoting the designated entity's service or generally

promoting community programming, which bill stuffers shall be produced by the designated entity and shall conform to the Company's standards and policies for size and weight. Any bill stuffer denigrating the Company, its service or its programming is not permitted.

- 304.(d).(3). Distribution of the designated entity's newsletter to Company's employees.
- 304.(e). The designated entity responsible for public access shall indemnify, keep and save the City and Company free and harmless from any or all claims (other than claims for which the Company may enjoy immunity under 47 U.S.C. Section 558) arising out of the designated entity's actions or omissions, or its PEG programming operations, to the extent the claims are not attributable to the acts or omissions or operations of the party seeking indemnification. Subject to the foregoing, in the event that suit shall be brought or recourse or damages sought against either the City or the Company, the designated entity shall defend and indemnify the City and/or the Company and pay any judgments or damages with all costs. The indemnity is conditioned on the party seeking indemnification tendering notice to the designated entity of any proceeding asserting claims for which it may seek indemnity within ten (10) days of the date the party seeking indemnification receives notice of such proceeding. The party seeking indemnification may participate by its own counsel in any action against it, but at its own expense. The City may require the designated entity to obtain liability or other insurance in the City's discretion.
- 304.(f). Payments made under this agreement by Company in one calendar year do not have to be spent in that calendar year. References to the designated entity include any successor to the designated entity. An entity that is a designated entity may only hold and use the resources, equipment, facility and funds provided for under the franchise for so long and to the extent it is a designated entity, and must transfer resources, equipment, facilities and funds to its successor upon request of the City.
- 304.(g). For any period or for any channel where there is no designated entity, the City, at its option and after notifying the Company in writing, the City shall act and enjoy all rights and responsibilities as if it were the designated entity.

Section 305. Free drops to subscriber network.

- 305.(a). As part of its support for PEG use of the system, the Company shall:
- 305.(a).(1). subject to the section 305.(b)., continue to provide a free drop to the Subscriber network and free Basic and Expanded Basic service to each public and private school, public library branch, police and fire station, community center and public building which has a free drop as of the effective date of this agreement;
- 305.(a).(2). provide a free drop to the Subscriber network and free Basic and Expanded Basic service to each public and private school, public

library branch, police and fire station, community center and public building that requests a drop in writing, and to such other public institutions as the City may reasonably request from time to time. Where a drop requested under this Section 305.(a).(2). would require the Company to install a drop longer than 400 feet in length measured from the closest street, the Company may charge the location for the cost of the labor and materials required to extend the drop beyond the 400 feet.

- 305.(b). The Company is only required to provide a single free drop to the Subscriber network, to a single outlet at a point within the location selected by that location. However, the location may extend the drop to multiple outlets and receive free Basic and Expanded Basic service at each outlet so long as such extension does not result in any violations of leakage standards which the Company is obligated to meet. A location that wishes to install multiple outlets may do so itself, or may contract with the Company to do so. Those locations that have digital Converter devices as of the effective date may keep those devices free of charge. Company shall provide up to three (3) additional devices to each new location free of charge so that the services can be received and individually tuned by each receiver connected to the drop at a location. If a User physically moves locations, such User may move existing devices to the new locations with a free drop, and the moved device will not count against the three additional devices. Company will replace and maintain devices it provides or that it had provided as necessary so that locations may continue to view the free services the company is required to provide.

Section 306. Support not franchise fees.

The parties agree that any cost to the Company associated with providing any support for PEG use required under this Franchise (including the provision of the institutional network and support for and payments made outside this franchise, if any), are not part of the franchise fee, and fall within one or more of the exceptions in 47 U.S.C. § 542.

Section 307. Research and development.

Company shall, on an ongoing basis, conduct research and development with regard to improvement of existing services, provision of new services and enhancement of system capabilities.

Section 308. Company rules and regulations.

The Company 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 the Company to exercise its rights and perform its obligations under this franchise, and to assure an uninterrupted service to each and all of its customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state, federal or local laws, rules and regulations. Any rules or regulations promulgated pursuant to this section shall be published at Company's expense. After the adoption of such regulations, the Company shall file with the City Clerk and with the Cable Communications Officer, copies of

all rules and regulations which shall be available for public inspection.

ARTICLE IV. - CABLE SYSTEM CONSTRUCTION

Section 400. - Construction plan, and construction procedures.

Section 401. - New development under-grounding.

Section 402. - System construction procedures.

Section 403. - Installation services.

Section 404. - Books and records; inspection of system; testing requirements.

Section 405. - Miscellaneous.

Section 400. Construction plan, and construction procedures. [Reserved for purposes of numbering]

Section 401. New development undergrounding.

- 401.(a). In cases of new construction or property development where utilities are to be placed underground, the Company must place its facilities underground at the time of such construction or development, so long as the developer, utility or property owner shall give Company reasonable written notice of such construction, or development, and of the particular date on which open trenching will be available for Company's installation of conduit, pedestals and/or vaults, and laterals to be provided at Company's expense.
- 401.(b). Company shall provide specifications as needed for trenching when requested to do so, and shall maintain a current copy of the specifications that it is providing with the Cable Communications Officer.
- 401.(c). Costs of trenching and easements required to bring service to the development shall be a matter to be negotiated between the developer, utility or property owner and the Company.

Section 402. System construction procedures.

- 402.(a). The Cable system shall be constructed, operated and maintained in accordance with all applicable codes of the City governing the use of the Streets and other Public property. Without limiting the Company's obligations thereunder, the Company agrees that, at a minimum, it will follow the system construction procedures established by this franchise, including by way of example and not limitation, the requirements of this Article IV. No requirement in this franchise shall be read to limit or condition any of the obligations of Company under applicable law or Chapter 430. It is the duty of the Company to construct, operate and maintain its Cable system, and to move and relocate its facilities, so that the City is not required to bear any costs or delays as a result of the Cable system's occupation of the streets or other public property, so that the public is not discommoded, and so that the

use of the Streets or other Public property by the City and by others is not impeded. It is the duty of Company to repair any damage caused to the streets or public property promptly to specifications of the City or other responsible authority and to compensate the property owner for any loss. It is likewise the duty of Company to repair promptly any damage caused to private property and to compensate the private property owner for any loss. Unless expressly provided otherwise, costs associated with complying with this section and with applicable law shall be borne by the Company, and with no cost to the City. If there is a conflict between the procedures applicable under other provisions of the legislative code and the requirements of this franchise with respect to the use of the streets or other public property, the provision that the City determines best protects it shall control.

- 402.(b). The Company shall not assert the fact that the City has performed any prior review of its plans or exercised any ministerial function in granting permits, franchises, certificates, authorizations, approvals, etc., as a defense against its obligations to indemnify and hold the City harmless pursuant to Article I, Section 118. The Company shall furnish all plans, drawings and technical data in sufficient detail so as to enable each City department to fulfill its obligations under this franchise and other applicable laws and regulations.
- 402.(c). Company shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements, FCC technical standards, and state law. Within six months of the effective date of the franchise, Company shall provide the City with three copies of a construction practices manual. The Company will be obligated to comply with the manual, except insofar as complying with the manual would conflict with Company's obligations under this franchise or other applicable law, or the City otherwise disapproves of a practice. The City's failure to comment upon the manual or any particular practice is not an approval of the manual or a particular practice. Without limiting the foregoing, or Company's obligations under any other provision of this Franchise or applicable law, Company must have a program for inspecting drops on an ongoing basis as part of ordinary service calls for compliance with then-applicable safety codes.
- 402.(d). Construction, operation and maintenance of the Cable system in City shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple-cable configurations shall be arranged in parallel, and bundled with due respect for engineering considerations.
- 402.(e). Company shall at all times comply with the relevant edition of:
- 402.(e).(1). National Electrical Safety Code as prepared by the Institute of Electrical and Electronics Engineers;
 - 402.(e).(2). National Electrical Code of the National Fire Protection Association;
 - 402.(e).(3). Bell Telephone System's Code of Pole Line Construction, also known as Bell System Manual of Construction Procedures; and

- 402.(e).(4). Other applicable federal, state and local law provisions.
- 402.(f). In any event, the System shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the Company may have equipment located.
- 402.(g). Any antenna structure used in the Cable system shall comply with construction, marking and lighting of antenna structures required under applicable law.
- 402.(h). All working facilities and conditions used during construction, operation and maintenance of the Cable system shall comply with the standards of the Occupational Safety and Health Administration.
- 402.(i). Company shall comply with all applicable standards for RF signal leakage.
- 402.(j). Upon grant of this franchise to construct and maintain a Cable system to provide Cable service in the City, the Company may enter into contracts with any public utility companies or any other owner or lessee of any poles located within or out of the City to whatever extent such contract or contracts may be expedient and of advantage to the Company for use of poles and posts necessary for proper installation of the system, obtain right-of-way permits from appropriate state, county and federal officials necessary to cross highways or roads under their respective jurisdiction to supply main trunk lines from the Company's receiving antennas, obtain permission from Federal Aviation Administration to erect and maintain antennas suitable to the needs of the system and its subscribers and obtain whatever other permits a city, county, state or federal agency may require. In the construction, installation and maintenance of its system, Company will use steel, cable and materials and electronic devices, all of specialized and advanced design and type. In the operation of its system, the Company will employ personnel with training, skill and experience in electronics and communications.
- 402.(k). The Company's system, poles, wires and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons, or interfere with any improvements the City may deem proper to make, or unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, easements or public property.
- 402.(l). Company shall utilize existing poles, conduits and other structures whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other structures whether in the Streets, on Public property or on privately-owned property until the written approval of the City is obtained. However, no location of any pole or wire holding structure or other facility of the Company shall be a vested interest and such poles or structures or facilities shall be removed or modified by the Company at its own expense whenever the City or any Person acting on the City's behalf determines that the public or the City's convenience would be enhanced thereby.
- 402.(m). All transmission and distribution structures, lines and equipment and all other parts of the Cable system shall be constructed, operated and

maintained so as to cause minimum interference with the proper use of Streets and other Public property, and to cause minimum interference with the rights or reasonable conveniences of property which adjoins any of the said Streets, or other Public property.

- 402.(n). In case of any disturbance of any street, pavement, sidewalk, driveway, foundation or other surfacing the Company shall, at its own cost and expense and in a manner approved by the City, replace and restore the same to as good condition as before said work was commenced and in accordance with standards for such work set by the City. If, upon reasonable written notice, the Company fails to promptly restore any Street or other Public property in accordance with this provision, the City shall have the right to put such Street or Public property back into good condition at the expense of the Company and the Company shall, upon demand, pay to the City the cost of such work done or performed by the City.
- 402.(o). In case of any disturbance of any other Public property not included in the scope of subsection 402(n), the Company shall, at its own cost and expense and in a manner approved by the City, replace and restore all such property to as good condition as before said work was commenced and in accordance with standards for such work set by the City. If, upon reasonable written notice, the Company fails to promptly replace and restore any such property in accordance with this provision, the City shall have, in addition to such other rights as it may have under this franchise, the right to replace or restore such Public property to at least as good condition as existed prior to the damage at the expense of the Company and the Company shall, upon demand, pay to the City the cost of such work done or performed by the City.
- 402.(p). In case of any disturbance of any private property, the Company shall, at its own cost and expense replace and restore all such property to as good condition as before said work was commenced and in accordance with any applicable standards for such work set by the City. If, upon reasonable written notice, the Company fails to promptly replace and restore any such property in accordance with this provision, the property owner shall have, in addition to such other rights as it may have under law or equity, the right to replace or restore such private property to at least as good condition as existed prior to the damage at the expense of the Company and the Company shall, upon demand, pay to the owner the reasonable cost of such work done or performed by the owner.
- 402.(q). Whenever the City shall, during the period of this franchise, undertake any public improvement which affects the Cable system, it shall direct the Company to remove or relocate its wires, conduits, cables, vaults, pedestals, manholes, poles and other fixtures and property from the area affected by the improvements at the Company's expense, upon reasonable notice to the Company of the undertaking of such public improvements. Likewise, the Company at its expense shall protect, support, temporarily disconnect, relocate, or remove any property of Company when, in the opinion of the City the same is required by reason of traffic conditions, public safety, street vacation, freeway or street construction, change or establishment of street grade, installation or movement of structures by governmental agencies whether acting in a governmental or a proprietary capacity, including but not limited to movement of buildings, urban renewal and redevelopment, and any

program under which the City shall undertake to cause all such properties to be located beneath the surface of the ground, street vacation, or for any other reason where the convenience of the City or the public would be served thereby. If the Company fails to move its facilities by a time specified by the responsible government authority, that authority may perform the work, and bill the Company therefor.

- 402.(r). Notwithstanding the foregoing, whenever, in case of fire or other emergency, it becomes necessary to remove any of the Company's facilities, the City may do so without prior notice.
- 402.(s). The Company shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone facilities or obstruct or hinder in any manner the various utilities serving the residents of the City. All such poles or other fixtures shall be placed close to the line of the lot abutting on said street, and then in such manner as not to interfere with the usual travel on said streets.
- 402.(t). Company shall promptly move and relocate its Cable system for any private party authorized to occupy the Streets or other Public property to accommodate the construction, operation or maintenance of facilities by such party. Costs shall be borne as provided by applicable law.
- 402.(u). The Company shall, on the request of any Person holding a building moving permit or other permit for moving oversized objects issued by the City, temporarily raise or lower its wires to permit the moving of the buildings or objects. The reasonable expense of such temporary removal, raising or lowering of wires shall be paid by the Person requesting the same, if the system is properly installed and the Company shall have the authority to require such payment in advance. The Company shall be given not less than ten (10) working days' advance notice to arrange for such temporary wire changes. In constructing, operating and maintaining its Cable system, the Company shall respect any and all building movers corridors on truck routes established by the state, the City and any of their subdivisions or agencies.
- 402.(v). The Company shall not remove any tree or trim any portion, either above, at or below ground level, of any tree within any public place without the prior consent of the City. The City shall have the right to do the trimming requested by the Company and may charge the Company for the City's direct costs for such trimming. Regardless of who performs the work requested by the Company, the Company shall be responsible, shall defend and hold City harmless for any and all damages to any tree as a result of trimming, or to the land surrounding any tree, whether such tree is trimmed or removed.
- 402.(w). The Company shall erect and maintain all parts of the system in good condition throughout the entire franchise period.
- 402.(x). All necessary easements over and under private property shall be arranged for by the Subscribers or the Company.
- 402.(y). The Company shall render efficient service, make repairs and adjustments promptly, and interrupt service only for good cause and for the shortest time possible. All costs incurred in making such repairs and

adjustments shall be borne by the Company except as otherwise provided for in this ordinance.

- 402.(z). Company shall not allow its cable or other operations to interfere with broadcast reception or persons not served by Company.

Section 403. Installation services.

- 403.(a). Company shall provide at least the following installation services:

403.(a).(1). *Standard installation.* Standard installation for the Subscriber network shall consist of an aerial drop, not exceeding two hundred (200) feet, from a single pole attachment to the customer's residence. The use of exposed (external) wiring is the standard method of wiring all buildings.

- 403.(a).(2). Project prewiring:

(A). Company shall provide service to prewired projects and utilize the cabling provided for the prewired projects as required by Article I, Section 111(f).

(B). Company shall review and approve methods and materials, supply specifications, technical assistance and material according to Article I, Section 111.(f).

(C). Company shall prewire a project upon request according to Article I, Section 111.(f).

403.(a).(3). Subject to the City's rate regulation authority under sections 111 and 112, the Company shall provide additional outlets as customers may request, but Subscribers shall also have the option of installing additional outlets themselves. However, this section does not require the Company to connect to wiring that would result in signal leakage in excess of the limits under applicable law.

Section 404. Books and records; inspection of system; testing requirements.

- 404.(a). Company shall provide the City access to all books and records, as required by Chapter 430. Without limiting its obligations under that Chapter, or other provisions of applicable law, the Company agrees that it will provide the City access to all books and records related in whole or in part to the construction, operation, or repair of the Cable system so that the City may inspect and copy these books and records. The Company's' obligation includes the obligation to produce all books and records related to revenues derived from the operation of the Cable system. If the Company offers cable-related and non-cable-related services and equipment in a bundle, and allocates revenue from the bundle among cable and non-cable related services and equipment, it must maintain records adequate to permit City to audit the accuracy of the allocation of revenues among cable-related and non-cable-related service and to ensure that the proper franchise fee owed on cable-related revenues was paid. The Company is responsible for obtaining or maintaining the necessary possession or control of all such

books and records related to the construction, operation or repair of the Cable system so that it can produce the documents upon request, without regard to whether the books and records are held by it, a parent company, a contractor or subcontractor, or someone else. Books and records must be maintained for a period of five years, except that (a) any record that is a public record must be maintained for no less than the period required by state law; and (b) the City may from time to time specify a shorter period for certain categories of voluminous books and records where the information contained therein can be derived simply from other materials. The Company shall take all reasonable steps required, if any, to ensure that it is able to provide the City all information which must be provided or may be requested under this franchise or applicable law, including by providing appropriate subscriber privacy notices. Company shall be responsible for redacting any data that applicable law prevents it from providing to the City. Nothing in this Section 404 shall be read to require the Company to violate state or federal law protecting subscriber privacy or personnel records.

- 404.(b). The terms "books and records" shall be read expansively to include information in whatever format stored. The term "construction, operation and repair" shall be read expansively, including by way of example and not limitation, information related to system management, contractual relationships with Subscribers and other entities located in the Streets, and information related to the use of the Cable system.
- 404.(c). Books and records requested shall be produced to the City at the location designated by the Cable Communications Officer. However, if any books and records are too voluminous, or for security reasons (for example, because the documents contain trade secrets) cannot be copied and moved, then Company may request that the inspection take place at some other location mutually agreed to by the City and the Company, provided that (1) the Company must make necessary arrangements for promptly copying documents selected by the City after its review and providing them to the City; and (2) the Company must pay all travel and additional copying expenses incurred by the City (above those that would have been incurred had the documents been produced in the City) in inspecting those documents or having those documents inspected by its designee.
- 404.(d). [RESERVED FOR PURPOSES OF NUMBERING]
- 404.(e). Without limiting the foregoing, the Company shall provide the City the following within 10 days of their receipt or (in the case of documents created by the Company or an affiliate) filing:
- 404.(e).(1). notices of deficiency or forfeiture related to the operation of the Cable system (other than notices issued by the City); and
- 404.(e).(2). copies of any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the Company or by any partnership or corporation that owns or controls the Company directly or indirectly.
- 404.(f). The Cable Communications Officer may require the Company to maintain records, and to prepare reports relevant to determining the

compliance of the Company with the terms and conditions of this franchise or applicable law. Without limiting this general obligation, the Company shall prepare the following reports:

- 404.(f).(1). As part of only the first quarterly report of the year, the Company shall provide:
- (A). [reserved for purposes of numbering]
 - (B). A report detailing Company's performance under each applicable customer service standard as defined by FCC rules, Chapter 430 and regulations adopted pursuant thereto, and this franchise. For each standard not met, the report will explain the cause, and corrections taken for each.
 - (C). An estimate of the number of handicapped, Senior citizens or Economically disadvantaged persons receiving any rate discounts, and the amount of the discounts.
 - (D). A full schedule of all Subscriber and user rates, fees and charges for all Cable services provided for the preceding year.
 - (E). A copy of Subscriber and User agreements used by the Company.
 - (F). *Provided that*, when it provides the information required by subsections (D) and (E), Company need not include proprietary MDU rates and agreements, so long as the same are made available for the City's inspection upon request.
 - (I). A copy of an actual subscriber bill, which includes showing how Company is itemizing franchise fees, and taxes, and itemizing costs.
- 404.(f).(2). Within 45 days of the end of each quarter, which shall end on March 31, June 30, September 30, and December 31 of every year, Company shall provide:
- (A). A statement, in a form approved by City, showing the number of Subscribers served in the franchise area.
 - (B). A statement certified as true by an independent auditor or a designated representative for the Company (i) listing by category the revenues for each source of revenue which is included within the definition of gross revenues in this franchise, and (ii) identifying any other revenues of the Cable system that the Company has excluded from Gross revenues; the amount of the exclusion; and the reason for the exclusion; and identifying any adjustments or offsets against payments and the basis for the same.
 - (C). A report summarizing known Cable system outages in the franchise area, and an estimate of the number of Subscribers affected by the outage, and the time it took to repair the outage,

measuring from the time the Company first knew about the outage. An outage is defined as a loss of audio or video or impairment of audio or video affecting more than one Subscriber.

(D). A report showing the percentage of time service interruptions were cured within 36 hours; the average time from notice that a problem existed to final cure; and the percentage of time that other service calls were resolved within 96 hours.

(E). [reserved for numbering]

(F). The percentage of time standard and non-standard installations were completed within the time required by the City.

404.(g). Company shall provide the City the following on an ongoing basis:

404.(g).(1). A statement of the resolution of complaints referred to it by the City.

404.(g).(2). Company shall provide the City with a special number that the City may call to obtain information about any unplanned or unanticipated outage. This number cannot be the same number used by general Subscribers, and must provide a means for the City to promptly contact a Person knowledgeable about the outage.

404.(g).(3). Company shall provide the City with at least a 24-hour advance notice of any planned outages affecting 500 or more Subscribers on the same distribution line or fiber node within the franchise area.

404.(h). Company shall maintain records of all complaints received, the disposition of those complaints, and the time from disposition to any cure.

404.(i). Company shall maintain accurate and detailed maps and improvement plans which show the location, size, and a general description of all facilities installed in the streets and any power supply sources (including voltages and connections). Maps shall be based upon post-construction inspection to verify location. These maps and plans must be submitted to the City upon request in an electronic format. The medium and the format used for the electronic submissions must be a standard medium and format satisfactory to the City. The Company shall keep current records and plats on all underground facilities it owns or operates. Such plats and records are to be available to all utilities and the City immediately upon request.

404.(j). Company shall maintain accurate subscriber and institutional network drawings which show the location of all facilities, and it must provide those drawings upon request in electronic format specified by the City.

404.(k). The Cable system and all property owned or used by the Company in connection with the system shall be subject to inspection and testing by the City to determine compliance with the provisions of this ordinance and applicable law. The City shall be notified two weeks in advance of, and shall

have the right to be present when the Cable system is tested by the Company for any required proof of performance test, or any test that the Company is required to perform under Section 404.(m). The City shall have the right to be present for any other test, upon request. The Company must respond to requests for information regarding its system and plans for the system as the City may from time to time issue, including requests for information regarding its plans for construction, operation and repair and the purposes for which the plant is being constructed, operated, or repaired.

404.(l). If, based on complaints received or upon its own inspection, the Cable Communications Officer concludes that there is reason to believe that the System may not be performing as required, it may require the Company to perform tests and inspections of its system, and to prepare a report showing the results of the inspection or testing, and any corrective action taken as a result thereof.

404.(m). Except to the extent that federal law prevents the Company from enforcing this requirement, the Company shall be required to test its Cable system periodically for compliance with all applicable technical and performance standards. The tests shall be conducted at least twice each year, shall be conducted by trained personnel using properly calibrated and tested equipment, and accepted engineering testing procedures designed to measure performance under the worst case scenarios.

- 404.(n). In addition, Company shall make available upon request the results of testing it performs. Company shall provide City with credentials of Person or persons conducting said tests. Nothing in this section relieves Company of any obligation it may have under FCC rules to submit proof of performance tests to the City.
- 404.(o). All costs of testing shall be borne by Company. Where special testing is required to determine the source of technical difficulties, the Company shall be liable for all the costs thereof.
- 404.(p). Company must produce the books and records, prepare the reports and permit the City to conduct the inspections, requested by the City even if the Company does not believe that the request satisfies the standard set out in this Section 404, unless the City waives the requirement, or the Company obtains a court order from a court of competent jurisdiction enjoining the request.
- 404.(q). Any material misrepresentation made by the Company in any report required by this section shall subject the Company to the liquidated damages provisions of this ordinance and shall subject the Company to all remedies available to the City by law.

Section 405. Miscellaneous.

- 405.(a). By the acceptance of this franchise, Company waives its rights, if any, to relocation costs that might otherwise be provided by law and that would otherwise be available from the City or in connection with any project in which the City is a participant.
- 405.(b). This franchise, as modified, shall be treated as an extension of the franchise. The extension shall not act as a release with respect to either party of claims arising under the franchise. This franchise, as modified between Company and City, including the exhibits, Settlement Agreement, Transfer Agreement, Indefeasible Right to Use Agreement and Metro-E Agreement, embodies the entire understanding and agreement of the parties with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral.
- 405.(c). All remedies are cumulative and may be exercised singly or in combination, and are in addition to any other remedies available to the City at law or equity.
- 405.(d). Material terms are not severable.
- 405.(e) Competitive Equity.

The City reserves the right to grant additional franchises or similar authorizations to provide video programming services via cable systems or similar wireline systems located in the public rights of way. It is not the City's intent to treat competitors in a discriminatory manner and to advantage one competitor over another by regulation. If the City grants such an additional

franchise or authorization to use the public rights of way to provide such services and Company believes the City has done so on terms materially more favorable than the obligations under this Franchise, then the provisions of this paragraph will apply.

As part of the Company's franchise, the City has agreed upon the following terms as a condition of granting the franchise which terms may place the Company at a significant competitive disadvantage if not required of a competitor: a 5% franchise fee, PEG funding, PEG channels, and customer service obligations (hereinafter "Material Obligations").

Within one year of the adoption of the competitor's franchise or similar authorization, Company must notify the City in writing of the Material Obligations in Company's franchise that exceed the Material Obligations of the competitor's franchise to similar authorization. The City shall have sixty (60) days to agree to allow Company to adopt the same Material Obligations provided to the competitor, or dispute that the Material Obligations are different. In the event the City disputes the Material Obligations are different, Company may bring an action in federal or state court for a determination as to whether the Materials Obligations are different.

Nothing in this section is intended to alter the rights or obligations of either party under state law, and it shall only apply to the extent permitted under applicable FCC orders. In no event will the City be required to refund or to offset against future amounts due the value of benefits already received.

This provision does not apply if the City is ordered or required to issue a franchise on different terms and conditions, or it is legally unable to do so; and the relief is contingent on the new franchisee actually commencing provision of service in the market to its first customer. This provision does not apply to open video systems, nor does it apply to common carrier systems exempted from franchise requirements pursuant to 47 U.S.C. Section 571; or to systems that serve less than 5% (five per cent) of the geographic area of the City; or a system that only provides video services via the public Internet.

Section 2.

This ordinance shall take effect and be in force thirty (30) days from and after its passage, approval and publication, provided company executes before that time a written acceptance of all terms, conditions and limitations of this franchise and the of the Charter and Code of the City of Saint Paul, of the terms and conditions of a Settlement Agreement between Company and City and of both an Indefeasible Right of Use Agreement and Metro-E Agreement.

APPENDIX 1 - COPY OF FORMER FRANCHISE SECTIONS 301(b) – (f).

- 301.(b). The City will retain control of the entire capacity of CityLink, the cable broadband network developed as part of the institutional network demonstration projects, and may use all the capacity on CityLink for transmission and reception of data, video or other communications at no charge. The Company, at its cost, will maintain the CityLink network from the City's points of connection, whether the City's end user equipment or the City's control system for CityLink, through the network, including the Company's headend and remodulators so that it may be used for those purposes. The maintenance obligation includes, but is not limited to, the replacement of network components. Operational responsibilities will be shared as those responsibilities have been shared prior to December 1, 1997, with each party bearing its own costs. The City shall have the right, at its cost, to install equipment and devices on the system as appropriate to accommodate new services or functions, so long as it does not degrade technical system operation, and, further, for that portion of the System which the Company maintains, the right is subject to the consent of the Company, which shall not be unreasonably withheld. The Company, upon request, will install one (1) standard drop from the network to City buildings adjacent to the network at no charge, and otherwise will extend CityLink upon written request, but may charge the City the actual cost it incurs in extending the system, including drop costs. The parties will cooperate to share information and to assist each other technically as required to assure the efficient operation of the CityLink. A map showing CityLink as it existed as January 1, 1998 is attached as Exhibit E.
- 301.(c). The Coaxial Institutional Network shall be constructed, provided and maintained at Company's cost as required by Appendix H, until the Upgraded HFC Institutional Network is completed. From and after completion of the Upgraded HFC Institutional Network, only the obligations established by or incorporated into the requirements for the Upgraded HFC Institutional Network shall apply.
- 301.(d). The Upgraded HFC Institutional Network shall be constructed, operated and maintained as required by the Corrective Plan, which is attached hereto as Exhibit C. The Corrective Plan obligations shall apply throughout the term of this franchise as if fully set forth herein, and for any period that the Company continues to operate within the City of St. Paul. The responsibility for costs and respective rights of the parties shall be as specified in the Corrective Plan (as clarified by the Agreement dated April 15, 1998), with the following additional amendments:
- 301.(d).(1). Under the Corrective Plan, the City is entitled to use all the capacity on the hybrid-fiber coaxial portion of the Institutional Network except for 12 MHz in the forward path and 12 MHz in the reverse path as initially activated. The City agrees that Company may utilize up to 20 per cent of the available capacity in the forward path on the hybrid-fiber coaxial portion of the Upgraded

HFC Institutional Network (counting the 12 MHz as part of the 20 per cent) and 20 per cent of the available capacity in the reverse path on the hybrid-fiber coaxial portion of the Upgraded HFC Institutional Network (counting the 12 MHz as part of the 20 per cent), so long as the Company does so in a manner that (i) does not impair the City's use of the institutional network in any respect; and (ii) does not impose additional cost upon the City. Available capacity is defined as the portion of the 450 MHz activated capacity in a particular direction that is useable, less the capacity devoted to pilot and control signals that benefit the City.

- 301.(d).(2). Under the Corrective Plan, the city is entitled to 50 per cent of any increase in the hybrid-fiber coaxial portion of the Upgraded HFC institutional Network. If the capacity of the hybrid-fiber coaxial portion of the Upgraded HFC Network is increased by Company, Company shall make additional capacity available to the City within six months of a request therefor. However, the City agrees that on or before the time it requests such additional capacity, it will submit a plan for use of that capacity to the Company, showing why it believes that there is a need therefor. The Company may, within 45 days of receipt of the plan, submit an alternative plan for satisfying the City's needs. If the City, in its sole discretion, decides that the alternative plan is adequate, it will rescind its request; otherwise, the requested capacity must be provided. The parties clarify that this provision does not place an independent obligation on the company to increase the capacity of the Upgraded Institutional Network.
- 301.(d).(3). Under the Corrective Plan, the Company is required to activate a single data channel in the forward path and a single data channel in the reverse path for City use. Within six months of a City request therefor, Company agrees to provide an additional data channel in the forward and reverse paths for City use as more fully described in Exhibit B.
- 301.(d).(4). Under the Corrective Plan, the Company is required to activate a single data channel in the forward path and a single data channel in the reverse path for school use. Within six months of a City request therefor, Company agrees to provide an additional data channel in the forward and reverse paths for school use as more fully described in Exhibit B.

- 301.(d).(5). The Corrective Plan establishes a series of testing procedures and other obligations that are not applicable to CityLink or to the Fiber Institutional network required herein. The Corrective Plan is hereby clarified to provide that the space that Company agrees to provide at the headend can be utilized for any part of the institutional network; that the testing procedures that apply with respect to video transmissions and data transmissions shall also apply to the CityLink and to the Fiber Institutional Network; and to provide that the requirements of Attachment 2-F-1 - Attachment 2-F-2 shall be read to extend to all portions of the institutional network. *Provided that*, with respect to the dark fiber provided by the Company for the Fiber Institutional Network, the tests shall be performed in accordance with Exhibit B. *Provided further*, notwithstanding any other provision of the Corrective Plan, maintenance of the Fiber Institutional Network shall be paid for as provided below.
- 301.(d).(6). The Corrective Plan is clarified to make it clear that the City may improve any portion of the institutional network at any time (before and after it is upgraded) to increase the capabilities of the institutional network at its cost.
- 301.(d).(7). Company and the City shall also be bound by the requirements of the Corrective Plan Agreement, as if fully set forth herein, except that the provisions of Section 6 and Section 8 shall not apply.
- 301.(e). The company will construct, operate and maintain a Fiber Institutional Network as provided herein.
- 301.(e).(1). The Company at its cost will install fiber to the locations specified in Exhibit B. The fibers will be installed in the amount and in a topology as indicated on Exhibit B. If a ring topology is not used, the City Hall Annex will serve as the core location. This fiber must be installed no later than the time the Company upgrades the subscriber network, and must be completed and successfully tested on or before the date scheduled for completion of the subscriber network upgrade, except as otherwise provided in Exhibit B. These fibers will be installed at no charge to the City, except with respect to locations that are to be designated by November 30, 1998. With respect to those locations, if the average incremental cost of providing fiber to those locations exceeds the average incremental cost of providing fiber to all other locations listed on Exhibit B, the City will pay an amount equal to the amount by which the average cost of serving the newly designated locations (or, if lower, the not-to-exceed incremental cost estimate) exceeds the average cost of serving the other locations (or, if higher, the average cost estimate described below) (the Average Cost Excess). Within 30 days of the date the City designates the additional locations, Company must provide a not-to-exceed cost estimate of the incremental cost of providing fiber to those locations and an estimate of the average cost of providing fiber to all other locations. The City will

then only be liable to pay the Average Cost Excess if City directs the Company to install the fiber to the newly designated locations. All installation will be planned to take advantage of economies of scale and minimize future maintenance costs to the city.

- 301.(e).(2). If the City desires to have the Fiber Institutional Network extended to locations other than those specified on Exhibit B, by the Company, it may require the Company to extend the Fiber Institutional Network, but the City shall pay the Company the Company's incremental cost for installing the fiber as provided in Section 301.(e).(3). Any fiber shall be installed in the number and in a topology designated by the City.
- 301.(e).(3). If the City notifies the Company that it desires to have fiber installed to a particular location, pursuant to Section 301.(e).(2), the Company will develop a "not-to-exceed" price for the extension based upon its estimated incremental extension costs. The extension will be planned to take advantage of any economies of scale that may result from installation of fiber at the same time that the Company installs fiber for its own purposes., and to minimize maintenance costs for the City. If the City directs the Company to install the fibers to that location, the Company may bill the City for its incremental costs, up to the not-to-exceed price, upon completion, testing and acceptance of the fiber link.
- 301.(e).(4). Nothing herein prevents the City from extending the Fiber Institutional Network itself, at its own cost.
- 301.(e).(5). Company, if requested to do so, shall maintain the Fiber Institutional Network. Beginning on the later of the date the upgrade to the Subscriber network is completed or 36 months after the effective date of the franchise, it may charge the City its actual incremental direct costs for maintenance, plus 10 per cent. However, the Company may not charge for maintenance unless it provides the City six months' notice in advance that it intends to do so. The actual incremental direct cost will be deemed to be \$0.00 where the fiber used for the Fiber Institutional Network is included in or lashed to a fiber sheath containing fibers that are used for other portions of the institutional network or other portions of the Company's Cable system. The City may maintain the Fiber Institutional Network itself, if it wishes to do so. "Maintenance" for purposes of this section means ordinary preventive and corrective maintenance and inspections. If the Fiber Institutional Network plant is cut or destroyed or must be relocated, it is company's duty to replace, repair or relocate the plant, at its cost.
- 301.(e).(6). Company shall provide the City with access to its facilities and equipment as necessary to maintain or upgrade the Fiber Institutional Network with reasonable notice given the nature of the problem.
- 301.(e).(7). The Fiber Institutional Network fibers shall be for the exclusive use

of the City, or other persons authorized by the City to use the Fiber Institutional Network.

301.(e).(8). Company shall otherwise construct, operate and maintain the Fiber Institutional Network, and charge for construction or maintenance as provided in Exhibit B.

301.(f). There shall be no charge for the institutional network or its use, other than the construction charges and maintenance charges for the Fiber Institutional Network set out in Section 301(e).