

ORDINANCE NO. 183

AN ORDINANCE GRANTING A FRANCHISE TO CITIZENS TELECOMMUNICATIONS COMPANY OF MINNESOTA, LLC, A MINNESOTA LIMITED LIABILITY COMPANY ("GRANTEE") TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE CITY OF SCANDIA, MINNESOTA ("CITY"), SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS.

The City Council of the City of Scandia, Minnesota (the "City") hereby ordains:

STATEMENT OF INTENT AND PURPOSES

The City intends, by the adoption of this Franchise, to authorize the operation of a Cable System in competition with an incumbent franchised cable operator. Such competition can contribute significantly to the cable communications needs and desires of the residents and citizens of the City and the public generally.

FINDINGS

In the review of the request for a Franchise by Grantee and negotiations related thereto, and as a result of a public hearing, held October 18, 2016, the City Council makes the following findings:

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

SECTION 1

SHORT TITLE AND DEFINITIONS

1.1 Short Title. This Franchise shall be known and cited as the Cable Television Franchise Ordinance.

1.2 Definitions. 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. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in this section. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- (a) "Basic Cable Service" means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the franchise to be carried on the basic tier. Basic Cable Service as defined herein shall be the definition set forth in 47 U.S.C. § 522(3).
- (b) "Cable Act" means the Cable Communications Act of 1984 as amended, 47 U.S.C. §521 et. seq.
- (c) "Cable Service" or "Service" means:
 - (i) The one-way transmission to Subscribers of (i) Video Programming, or (ii) Other Programming Service; and
 - (ii) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service. Cable Service as defined herein shall be the definition set forth in 47 U.S.C. § 522(6).
- (d) "Cable System," or "System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include:
 - (i) A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
 - (ii) A facility that serves Subscribers without using any public Rights-of-Way;
 - (iii) A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et. seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers; unless the extent of such use is solely to provide interactive on-demand services;
 - (iv) An open video system that complies with 47 U.S.C. § 573;or
 - (v) Any facilities of any electric utility used solely for operating its electric utility system.

Cable System as defined herein shall be the definition set forth in 47 U.S.C. § 522(7).

- (e) "Channel" or "Cable Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel.
- (f) "City" means the City of Scandia, Minnesota.
- (g) "Commission" means the Forest Lake Cable Commission or its successors or delegations, including representatives of the Member Cities as may exist pursuant to a then valid and existing Joint and Cooperative Agreement between Member Cities.
- (h) "Converter" means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber.
- (i) "Council" means the City Council of the City of Scandia, Minnesota.
- (j) "Day" unless otherwise specified shall mean a calendar day.
- (k) "Demarcation Point" means a point agreed upon by Grantee and the City up to twelve inches outside the building wall consistent with 47 CFR §76.5 (mm) as may be amended.
- (l) "Drop" means the cable that connects the ground block on the Subscriber's residence to the nearest distribution point of the System.
- (m) "Effective Date" shall mean January 17, 2017.
- (n) "FCC" means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- (o) "Franchise" means this franchise and the regulatory and contractual relationship established hereby.
- (p) "Franchise Fee" means, in accordance with 47 U.S.C. § 542(g), any tax, fee, or assessment of any kind imposed by the City or other Governmental Authority on Grantee or cable Subscriber, or both, solely because of their status as such. The term "Franchise Fee" does not include: (i) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or Subscribers); (ii) capital costs which are required by the Franchise to be incurred by Grantee for PEG Access facilities; (iii) requirements or charges incidental to the award or enforcement of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.

- (q) “Governmental Authority” means any court or other federal, State, county, municipal or other governmental department, commission, board, agency or instrumentality.
- (r) “Grantee” is Citizens Telecommunications Company of Minnesota, LLC, a Minnesota Limited Liability Company, its lawful successors, transferees or assignees.
- (s) Gross Revenues” means any and all revenues actually received by the Grantee, as determined in accordance with generally accepted accounting principles (“GAAP”), from the operation of the Cable System to provide Cable Services in the Service Area. Gross Revenues shall not include any taxes, fees or assessments of general applicability imposed or assessed by any Governmental Authority, launch fees, tower rent, network capacity and facilities rent for the provision of non-cable services (including but not limited to voice or data services), investment income, bad debt, credits, refunds, any amounts collected from Subscribers for deposits, FCC Fees or PEG Fees. A Franchise Fee is not such a tax, fee or assessment. The City acknowledges and accepts that Grantee shall maintain its books and records in accordance with GAAP.

The parties acknowledge that the Grantee may offer a bundle or package of Cable Services and non-Cable Services at a discounted rate. In order to calculate Gross Revenues, the Grantee will allocate revenues between Cable Services (which are subject to the Franchise Fee) and non-Cable Services (which are not subject to the Franchise Fee but may be subject to other fees and/or taxes) included in the bundle or package of services. Nothing in this section shall have any effect on Grantee’s rates for other services that are rate regulated by the Minnesota Public Utilities Commission or Federal Communications Commission. The Grantee shall apportion the revenues generated from bundled or packaged services on a proportionate pro rata basis among the services offered unless such allocation methodology is directly in conflict with GAAP, in which case Grantee shall allocate bundled revenues in accordance with GAAP, and in no event shall the Grantee allocate the revenues to evade its Franchise Fee obligations under this Franchise or disproportionately reduce Gross Revenues.

- (t) “Installation” means the connection of the System from distribution cable to the point of connection, including Standard Installations and custom Installations.
- (u) “Normal Business Hours” means those hours during which most similar businesses in the City are open to serve customers. In all cases, “Normal Business Hours” must include some evening hours at least one (1) night per

week and/or some weekend hours. Cable System Normal Business Hours as defined herein shall be the definition set forth in 47 C.F.R. § 76.309(d).

(v) “Normal Operating Conditions” means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System. Normal Operating Conditions as defined herein shall be the definition set forth in 47 C.F.R. § 76.309(d).

(w) “Other Programming Service” means information that a cable operator makes available to all Subscribers generally. Other Programming Services as defined herein shall be the definition set forth in 47 U.S.C. § 522 (14).

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

(y) “Person” means any individual or any association, firm, general partnership, limited partnership, joint stock company, joint venture, trust, corporation, limited liability company or other legally recognized entity, private or public, whether for-profit or not-for-profit.

(z) “Service Area” means that portion of the City, as it is now constituted or may in the future be constituted, in which Grantee is authorized to provide local exchange telephone service as the incumbent local exchange carrier, unless otherwise specified in this Franchise.

(aa) “Service Interruption” means the loss of picture or sound on one (1) or more Cable Channels. Service Interruption as defined herein shall be the definition set forth in 47 C.F.R. § 76.309.

(bb) “Standard Installation” means any residential Installation to a Qualified Living Unit.

(cc) “State” means the State of Minnesota.

(dd) “Right of Way” or “Rights-of-Way” means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements of local government units including the City.

(ee) “Subscriber” means any Person who lawfully elects to subscribe to Cable Service via the System. Subscriber as defined herein shall be the definition set forth in 47 C.F.R. § 76.5(ee).

(ff) "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station. Video Programming as defined herein shall be the definition set forth in 47 U.S.C. § 522(20).

(gg) Qualified Living Unit means a living unit capable of receiving Cable Service.

1.3 Written Notice. All notices, reports or demands required or permitted to be given under this Franchise shall be in writing and shall be deemed to be given when delivered personally to the party designated below, or when five (5) Days have elapsed after it has been deposited in the United States mail in a sealed envelope, with registered or certified mail, postage prepaid thereon, or on the next business Day if sent by express mail or nationally recognized overnight air courier addressed to the party to which notice, report or demand is being given, as follows:

If to City:	City of <u>Scandia.</u>
	<u>Neil Soltis, City Administrator</u>
	<u>14727 209th Street North</u>
	<u>Scandia, MN 55073</u>

If to Grantee:	Jack Phillips
	Frontier Communications
	14450 Burnhaven Drive
	Burnsville, MN 55306

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

SECTION 2 GRANT OF AUTHORITY AND GENERAL PROVISIONS

2.1 Franchise Required. It shall be unlawful for any Person to construct, install, operate or maintain a Cable System or to offer Cable Service in the City unless such Person or the Person for whom such action is being taken shall have first obtained and shall currently hold a valid cable television franchise. The City shall at all times comply with the level playing field statute at Minnesota Statutes, Section 238.08, as amended, and any other applicable state or federal level playing field requirements.

2.2 Grant of Franchise.

(a) This nonexclusive Franchise is granted pursuant to the terms and conditions contained herein. The City hereby authorizes Grantee to occupy or use the City's Rights-of-Way subject to: 1) the provisions of this non-exclusive Franchise to provide Cable Service within the City; and 2) all generally applicable nondiscriminatory and competitively neutral provisions located within the City's ordinances. Nothing in this Franchise shall be construed to prohibit Grantee from: (1) providing services other than

Cable Services; or (2) challenging any exercise of the City's legislative or regulatory authority in an appropriate forum. The City hereby reserves all of its rights to regulate such other services to the extent not prohibited by applicable law and no provision herein shall be construed to limit or give up any City right to regulate.

(b) The City shall endeavor to require developers of future subdivisions to allow and accommodate the construction of the System as part of any provisions for utilities to serve such subdivisions.

(c) The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance related to the safety, health, and welfare of the public or use of Rights-of-Way, to the extent that the provisions of the ordinance do not conflict with this Franchise. This Franchise is a contract and except as to those changes which are the result of the City's lawful exercise of its general police power, the City may not take any unilateral action which materially changes the explicit mutual promises in this contract. Any changes to this Franchise must be made in writing signed by the Grantee and the City. In the event of any conflict between this Franchise and any City ordinance or regulation that is not generally applicable, this Franchise shall control. Grantee reserves all rights it may have to challenge any modifications to the City's ordinances whether arising in contract or at law. The City reserves all of its rights and defenses to such challenges whether arising in contract or at law.

(d) Nothing in this Franchise shall (a) abrogate the right of the City to perform any public works or public improvements of any description, (b) abrogate the right of the City to enforce its general police power anywhere within the jurisdiction of the City, (c) be construed as a waiver of any codes or ordinances promulgated by the City, (d) be construed as a waiver or release of the rights of the City in and to the Rights-of-Way, or (e) be construed as a waiver or release of rights of the Grantee.

(e) This Franchise complies with the Minnesota franchise standards set forth in Minnesota Statutes, Section 238.084, as amended. The City and the Grantee shall conform to Minnesota laws promulgated subsequent to the date of this Franchise. The City and the Grantee shall conform to federal laws and regulations as they become effective.

2.3 Additional Providers.

(a) The Franchise granted herein shall be nonexclusive.

(b) In the event the City initiates the franchising process pursuant to Minn. Stat. §238.081, the City shall notify Grantee in writing or by publication of notice of its intent to initiate the franchising process at least twenty (20) days prior to doing so.

(c) Grantee shall have the right to terminate this Franchise and operate the Cable System to the extent provided in any future amendment to applicable state or federal law.

2.4 Term. The initial term of this Franchise shall be for the period of ten (10) years from the date of acceptance by Grantee, unless renewed, revoked or terminated sooner as herein provided ("Initial Term"). The Initial Term may be extended by mutual agreement of the parties.

2.5 Rules of Grantee. The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligation under this Franchise and to assure uninterrupted service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with provisions hereto, the City's ordinances, or applicable law.

2.6 Service Area and Service Activation.

(a) This Franchise is granted for the Service Area. Grantee shall design, construct and maintain the Cable System in the Service Area in accordance with Minn. Stat. Section 238.084. As the Cable System is constructed and made capable of providing Cable Service, Grantee shall activate and offer Cable Service to Qualified Living Units within a reasonable period of time. No Person shall be refused Service arbitrarily.

(b) Throughout the term of the Franchise, Grantee shall annually meet with City representatives to report on the progress of Cable System construction and Service activation and, at such annual meetings, shall provide current Service Area maps. Grantee's annually updated maps may be marked as "Trade Secret" in which case the City shall maintain them accordingly under the Minnesota Data Practices Act, Minn. Stat. Ch. 13, as amended.

SECTION 3 CONSTRUCTION STANDARDS

3.1 Permits. Grantee shall not construct any Cable System facilities until Grantee has secured the permits from City required by applicable law.

3.2 Grantee's Facilities and Equipment.

(a) In those areas of the City where transmission or distribution facilities of all the utilities providing telephone and electric power service are underground, the Grantee likewise shall construct, operate and maintain its transmission and distribution facilities therein underground.

(b) Grantee shall be granted access to any easements granted to a public utility, municipal utility or utility district in any areas annexed by City or new developments.

(c) In those areas of the City where Grantee's cables are located on the above-ground transmission or distribution facilities of the utility providing telephone or electric power service, and in the event that the facilities of both such utilities subsequently are

placed underground, then the Grantee likewise shall construct, operate and maintain its transmission and distribution facilities underground.

(d) Certain of Grantee's equipment, such as pedestals, amplifiers and power supplies, which normally are placed above ground, may continue to remain in above-ground closures.

3.3 Conditions on Right-of-Way Use.

(a) Nothing in this Franchise shall be construed to prevent the City from constructing, maintaining, repairing or relocating sanitary sewers or storm sewer systems; grading, paving, maintaining, repairing, relocating and/or altering any Right-of-Way; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work consistent with applicable law.

(b) Relocation for the City. The Grantee shall, upon receipt of reasonable advance written notice, temporarily disconnect, relocate, or remove any property of Grantee when lawfully required by the City pursuant to its police powers. Grantee shall be responsible for any costs associated with these obligations to the same extent all other users of the City Rights-of-Way are responsible for the costs related to the relocation of their facilities.

(c) Relocation for a Third Party. The Grantee shall, on the request of any Person holding a lawful permit issued by the City, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Right-of-Way as necessary any property of the Grantee, provided that the expense of such is paid by any such Person benefiting from the relocation prior to Grantee commencing the work required and the Grantee is given reasonable advance written notice to prepare for such changes. The Grantee may require such payment in advance. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation and no less than one hundred twenty (120) days for a permanent relocation.

(d) Reimbursement of Costs. If governmental funds are available to any Person using the Rights-of-Way for the purpose of defraying the cost of any of the foregoing, the City shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the City shall make application for such funds on behalf of the Grantee.

(e) The Grantee shall, on request of any Person holding a moving permit issued by City, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same, and the Grantee shall be given not less than ten (10) Days advance notice to arrange for such temporary changes.

(f) Nothing in this Franchise shall be construed to prevent the City from adopting and enforcing requirements for the usage of Rights-of-Way, or from constructing, maintaining, repairing or relocating utility facilities, streets or sidewalks, or from grading, paving, maintaining, repairing, relocating and/or altering any Right-of-Way.

(g) All System facilities shall be located so as not to obstruct or interfere with the use of Right-of-Way, and so as not to unnecessarily interfere with the usual and customary trade, traffic, or travel upon the streets and public places in the franchise area or endanger the life or property of any Person.

3.4 Tree Trimming. Grantee shall have the authority to trim trees, in accordance with applicable law.

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

3.6 Safety requirements. The Grantee shall at all times keep and maintain the System in good condition, order, and repair so as to avoid endangering the life or property of any Person; employ ordinary and reasonable care and common industry practices to avoid causing damage, injuries, or nuisances to the public, and; keep and maintain the System in accordance with all federal, state and local laws and regulations including the National Electric Safety Code.

3.7 Drop burial. Grantee shall bury all Drops in a reasonable time period which shall not exceed ten (10) business days, subject to weather conditions and the completion of required utility locates. In the event the ground is frozen, Grantee shall be permitted to delay burial until the ground is suitable for burial, which in no event shall be later than June 30th.

3.8 Repair of Rights-of-Way and property. Any and all Rights-of-Way or public property disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly and fully restored by Grantee at its expense in accordance with any applicable ordinance governing Rights-of-Way.

SECTION 4

DESIGN PROVISIONS

4.1 Cable System Design and Functionality. The Grantee shall operate a Cable System with the functional equivalent of a 750 MHz Cable System (in terms of video offerings and functionality).

4.2 Programming Decisions.

(a) Grantee shall carry broad categories of video programming, including local news, sports, and entertainment. Any change in the broad categories of video

programming or other information services shall require City approval consistent with 47 U.S.C. § 544(b), which approval shall not be unreasonably withheld.

(b) Grantee shall comply with federal law regarding notice to the City and Subscribers prior to any Channel additions, deletions, or realignments.

4.3 Technical Standards. The technical standards used in the operation of the Cable System shall comply, at minimum, with applicable technical standards promulgated by the FCC relating to Cable Systems including, the extent applicable, Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference.

4.4 Special Testing. The City may reasonably require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. The City shall arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing. Before ordering such tests, Grantee shall be afforded thirty (30) Days to correct problems or complaints upon which tests were ordered. The City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, City wishes to commence special tests and the thirty (30) Days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted by a qualified engineer mutually selected by City and Grantee based on a mutually agreed upon scope of work. The parties shall bear their respective costs for the testing.

4.5 FCC Reports. The results of tests required to be filed by Grantee with the FCC shall also be copied to City within ten (10) Days of filing such report with the FCC.

4.6 Emergency Alert Capability. At all times during the term of this Franchise, Grantee shall provide and maintain an Emergency Alert System (EAS) consistent with applicable federal law and regulations including 47 C.F.R., Part 11, and any Minnesota State Emergency Alert System requirements. The City may identify authorized emergency officials for activating the EAS consistent with the Minnesota State Emergency Statewide Plan ("EAS Plan").

4.7 Parental Control Lock. Grantee shall provide, for sale or lease, to Subscribers, upon request, a parental control locking device or digital code that permits inhibiting the video and audio portions of any Channels offered by Grantee.

SECTION 5 SERVICE PROVISIONS

5.1 **Rate Regulation.** The City reserves the right to regulate rates for Basic Cable Service (hereinafter referred to as “the lowest cost level of Service”) and any other services offered over the Cable System, to the extent authorized by applicable law.

5.2 **Leased Channel Service.** Grantee shall offer leased channel service on reasonable terms and conditions and in accordance with applicable law.

5.3 **Service to Public Buildings.** Subject to applicable law, the Grantee shall provide, free of charge, the lowest cost level of Service to one (1) Drop at City Hall and, within one (1) year of the Effective Date, such institutional buildings as are listed in Exhibit A, and such additional institutional buildings that may be identified by the City and are a Qualified Living Unit, so long as such building is not currently served by another Cable Operator.

5.4 **Consumer Protection and Service Standards.** Grantee shall comply with the FCC Customer Service Rules at 47 CFR §76.309, and the following:

(a) **Complaint records.** Subject to Grantee's need to maintain the privacy of certain information, the Grantee shall at all times maintain a record of all written complaints received regarding interruptions or degradation of Cable Service and the resolution of such complaints, which shall be maintained for one (1) year. Upon request, Grantee shall make available for the City's review a written summary of such complaints and their resolution in accordance with Sections 7.3 and 7.4 herein. Upon request, Grantee will also make reports available with respect to the objectively measurable service standards established at 47 CFR §76.309.

(b) **Additional customer service requirements.** The City expressly reserves authority to adopt additional or modified customer service requirements to address Subscriber concerns or complaints in accordance with law and Sections 7.3 and 7.4. herein.

5.5 **Standard Installations.** The Grantee shall provide Standard Installations without charge to every Qualified Living Unit.

5.6 **Sales Procedures.** Grantee shall have the right to market door-to-door during reasonable hours consistent with local ordinances and regulations.

5.7 **Subscriber Contracts.** Grantee shall, upon written request, provide the City with any standard form residential Subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall file with the City a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. The length and terms of any standard form Subscriber contract(s) shall be available for public inspection during Normal Business Hours. A list of Grantee's current Subscriber rates and charges for Cable Service shall be maintained on file with City and shall be available for public inspection. For purposes of this section, the availability of this information on Grantee's website shall constitute compliance.

5.8 Refund Policy. If a Subscriber's Cable Service is interrupted or discontinued, without cause, for twenty-four (24) or more consecutive hours, Grantee shall, upon request by the Subscriber, credit such Subscriber pro rata for such interruption. For this purpose, every month will be assumed to have thirty (30) Days.

5.9 Late Fees. Grantee shall comply with all applicable laws with respect to any assessment, charge, cost, fee or sum, however characterized, that Grantee imposes upon a Subscriber for late payment of a bill.

5.10 Disputes. All Subscribers and members of the general public may direct complaints, regarding Grantee's Service or performance to the chief administrative officer of the City or the chief administrative officer's designee, which may be a board or commission of the City. Grantee shall endeavor to resolve Subscriber complaints within thirty (30) days.

5.11 Customer Bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (a) is not misleading and (b) does not omit material information. Notwithstanding anything to the contrary in Section 5.4(b), above, Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

5.12 Local Offices and Repair Phone Line. Grantee shall provide a conveniently located customer service office which shall be staffed and open during Normal Business Hours. Grantee shall also maintain a local or toll-free telephone Subscriber repair line, available to its Subscribers twenty-four (24) hours per Day, seven (7) Days a week.

5.13 Notification of Complaint Procedure. Grantee shall have printed clearly and prominently on each Subscriber bill and in the customer service agreement provided for in Section 5.4(b), the twenty-four (24) hour Grantee phone number for Subscriber complaints. Additionally, Grantee shall provide information to customers concerning the procedures to follow when they are unsatisfied with measures taken by Grantee to remedy their complaint. This information will include the phone number of the City office or Person designated to handle complaints. Additionally, Grantee shall state that complaints should be made to Grantee prior to contacting the City.

5.14 Subscriber Privacy. To the extent required by Minn. Stat. §238.084 Subd. 1(s) Grantee shall comply with the following:

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

IV cable communications channel" means a signaling path provided by the System to transmit signals of any type from a Subscriber terminal to another point in the System.

(b) No information or data obtained by monitoring transmission of a signal from a Subscriber terminal, including but not limited to lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee or its agents for Grantee's business use, and also to the Subscriber subject of that information, unless Grantee has received specific written permission from the Subscriber to make such data available.

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

5.15 Grantee Identification. Grantee shall provide all customer service technicians and all other Grantee employees entering private property with appropriate picture identification so that Grantee employees may be easily identified by the property owners and Subscribers.

SECTION 6

PUBLIC ACCESS PROVISIONS

6.1 Public, Educational and Government Access Facilities. City or its designee is hereby designated to operate, administer, promote, and manage the PEG programming (hereinafter "PEG Access") to the Cable System established pursuant to this Section 6. Grantee is responsible for PEG Access only as set forth in this Section 6 and Exhibit B.

6.2 Grantee Support for PEG Usage. In accordance with the provisions of the Cable Act and Minnesota Statutes Section 238.084, Grantee shall provide and make available for PEG Access usage within the Service Area the following:

(a) Provision and use of the funds and Channels designated in Exhibit B of this Franchise for local educational and governmental programming and access use in accordance with the requirements of Exhibit B.

(b) Maintenance of the PEG Access Facilities and Channels, and support of educational and governmental programming to the extent specified in Exhibit B.

(c) PEG Access Facilities shall be operated by the City or its designee and PEG Channels shall be programmed by the City or its lawful designee.

SECTION 7.
OPERATION AND ADMINISTRATION PROVISIONS

7.1 Franchise Fee.

(a) During the term of the Franchise, Grantee shall pay quarterly to the City a Franchise Fee of five percent (5%) of Gross Revenues. In no event shall the definition of Gross Revenues be different for any franchised cable operator in the City.

(b) Each Franchise Fee payment shall be paid quarterly not later than forty-five (45) Days following the end of a given quarter and shall be accompanied by a Franchise Fee Payment Worksheet substantially in the form attached hereto as Exhibit C. Any Franchise Fees owing pursuant to this Franchise which remain unpaid more than forty-five (45) Days after the dates specified herein shall be past due and subject to interest at an annual rate of the prime interest rate during the period of underpayment plus 1%.

(c) Except as otherwise provided by law, no acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a Franchise Fee under this Franchise or for the performance of any other obligation of the Grantee.

(d) No more than once every three (3) years and upon thirty (30) Days prior written notice, City shall have the right to conduct an independent review/audit of Grantee's records solely for the purpose of assessing Grantee's compliance with the Franchise Fee obligation herein. In the event an audit reveals an underpayment of five percent (5%) or more of the Franchise Fee amounts due during the period audited, in addition to payment of any delinquency in Franchise Fees, the Grantee shall reimburse the City's audit fees and expenses in full up to a maximum of \$5,000.

7.2 Reports.

(a) Grantee shall provide City with an annual statement, within ninety (90) Days of the close of each calendar year end, reflecting the total amounts of Gross Revenues and all payments, and computations of the Franchise Fee for the previous calendar year.

(b) Upon request, Grantee shall provide City with a summary of service calls, identifying the number, general nature and disposition of such calls shall be submitted to the City within thirty (30) Days following its request in a form reasonably acceptable to the City.

(c) All reports and records required under this Franchise shall be furnished at the sole expense of Grantee, except as otherwise provided in this Franchise.

7.3 Records Required and City's Right to Inspect.

(a) Grantee shall at all times maintain a full and complete set of plans, records and “as-built” drawings and/or maps showing the location of the Cable System installed or in use in the City, exclusive of Subscriber service Drops and equipment provided in Subscribers’ homes.

(b) Subject to the privacy provisions of the Cable Act and “Trade Secret” designation of certain records under the Minnesota Data Practices Act, Minn. Stat. Ch. 13, throughout the term of this Franchise, the Grantee agrees that the City, upon reasonable prior written notice of thirty (30) Days to the Grantee, and no more than once per calendar year, may review such of the Grantee’s books and records regarding the operation of the Cable System and the provision of Cable Service in the Service Area which are reasonably necessary to monitor and enforce Grantee’s compliance with the provisions of this Franchise (“Records”). Such notice shall specifically reference the section(s) of the Franchise that are under review so that the Grantee may organize the necessary Records for easy access by the City. Grantee shall make available for review such Records as soon as possible and in no event more than thirty (30) Days unless Grantee explains that it is not feasible to meet this timeline and provides a written explanation for the delay and an estimated reasonable date for when such information will be provided. All such Records pertaining to financial matters that may be the subject of an inspection by the City shall be retained by the Grantee for a period of six (6) years, pursuant to Minnesota Statutes Section 541.05. The Grantee shall not deny the City access to Records on the basis that they are under the control of any parent corporation, affiliated entity or a third party. Grantee shall provide all Records requested by the City or City’s agent in the following manner: 1) at a conference room in City Hall; or 2) at Grantee’s office located in or near the City; or 3) via mail or electronic communication acceptable to the City and Grantee. All Records shall be subject to the provisions of this Franchise and applicable law regarding confidentiality.

7.4 Confidential Information.

(a) Subject to applicable law, and except as otherwise expressly provided herein, Grantee may provide confidential Records that it is obligated to make available to the City pursuant to this Franchise, by allowing the City, or its designated representative(s), to view the Records at a mutually agreeable location and without the City obtaining its own copies of such Records. Grantee may also choose to provide any confidential or proprietary Records pursuant to a mutually acceptable non-disclosure agreement with a City-designated agent. The intent of the parties is to work cooperatively to insure that Records reasonably necessary for City’s monitoring and enforcement of Franchise obligations are available to City while protecting Grantee’s confidential information all in accordance with applicable law. To the extent that Grantee does provide Records directly to the City, City agrees to not disclose Records except as required by applicable law. Grantee shall be responsible for clearly and conspicuously identifying the Records confidential, proprietary, or “Trade Secret.” Grantee acknowledges that the Minnesota Data Practices Act, Minn. Stat. Ch. 13, as amended, limits the City’s ability to refuse public disclosure unless data or information constitutes “Trade Secrets” or otherwise is protected from disclosure under such Act.

(b) If the City believes it must release any confidential or proprietary Records in the course of enforcing, operating or maintaining this Franchise, or for any other reason including compliance with the Minnesota Data Practices Act, Minn. Stat. Ch. 13, as amended, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. The City agrees that, to the extent permitted by the Minnesota Data Practices Act, Minn. Stat. Ch. 13 and other applicable law, it shall deny access to any of Grantee's Records marked confidential or "Trade Secret," as set forth above, to any Person and that it shall furnish only that portion of the Grantee's Records required under the Minnesota Data Practices Act, Minn. Stat. Ch. 13, and other applicable law.

SECTION 8

GENERAL FINANCIAL AND INSURANCE PROVISIONS

8.1 Security Fund.

(a) At the time of acceptance of this Franchise, Grantee shall establish a "Security Fund" with the City in the form of (i) an irrevocable and unconditional letter of credit in form and substance acceptable to City from a National or State bank in the amount of Ten Thousand Dollars (\$10,000), or (ii) a cash escrow deposit in the amount of Ten Thousand Dollars (\$10,000.00). The City Attorney shall review and approve any such irrevocable and unconditional letter of credit provided to the City.

(b) In addition to recovery of any monies owed by Grantee to the City or damages to the City as a result of any acts or omissions by Grantee pursuant to the Franchise, the City in compliance with this section may charge to and collect from the Security Fund the following liquidated damages:

1. For failure to provide data, documents, reports or information required herein, the penalty shall be Fifty Dollars (\$50.00) per Day for each Day, or part thereof, such failure occurs or continues.
2. For failure to comply with construction, operation, customer service, or maintenance standards, the penalty shall be One Hundred Dollars (\$100.00) per Day for each Day, or part thereof, such failure occurs or continues.
3. For failure to meet the PEG access requirements set forth in Section 6 of this Franchise, the penalty shall be One Hundred Dollars (\$100.00) per Day for each Day, or part thereof, such failure occurs or continues.
4. For failure to comply with any of the other provisions of this Franchise, the penalty shall be Fifty Dollars (\$50.00) per Day for each Day, or part thereof, such violation continues.

Each violation of any provision of this Franchise shall be considered a separate violation for which a separate penalty can be imposed.

8.2 Procedure for Franchise Enforcement. Whenever the City finds that Grantee has allegedly violated one (1) or more terms, conditions or provisions of this Franchise, a written notice shall be given to Grantee. The written notice shall describe in reasonable detail the alleged violation so as to afford Grantee an opportunity to remedy the violation. Grantee shall have thirty (30) Days subsequent to receipt of the notice in which to correct the violation. Grantee may, within thirty (30) Days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee shall specify with particularity the matters disputed by Grantee and shall stay the running of the above-described time and the accrual of penalties.

(a) The City Council shall hear Grantee's dispute at a mutually agreed upon time. Grantee shall have the right to speak and introduce evidence. The City Council shall determine if Grantee has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, Grantee may petition for reconsideration.

(b) If after hearing the dispute, the claim is upheld by the City Council, then Grantee shall have thirty (30) Days within which to remedy the violation before the City may seek to draw on the Security Fund.

(c) Grantee may appeal any adverse decision by the City Council which shall stay the City's right to draw on the Security Fund until such time as the action has been finally adjudicated by a court of competent jurisdiction.

8.3 Time for Correction of Violation. The time for Grantee to correct any alleged violation may be extended by the City if the necessary action to correct the alleged violation is of such a nature or character as to require more than thirty (30) Days within which to perform provided Grantee commences corrective action within fifteen (15) Days and thereafter uses reasonable diligence, as determined by the City, to correct the violation.

8.4 Security Fund Replenishment. If City draws upon the Security Fund, in whole or in part, Grantee shall replace or replenish to its full amount up the maximum provided by this Section 8.4 the same within ten (10) Days and shall deliver to City a like replacement Security Fund for the full amount stated in Section 8.1(a) as a substitution of the previous Security Fund.

8.5 Liability Insurance.

(a) Grantee shall with its acceptance of this Franchise, and at its sole expense, take out and maintain during the term of this Franchise commercial general liability insurance with a company authorized to do business in the State of Minnesota that shall protect the Grantee, the City (as additional insured) and their officials, officers, directors, employees and agents from claims which may arise from operations under this Franchise, whether such operations be by the Grantee, its officials, officers, directors, employees or agents. This liability insurance shall include protection against claims arising from bodily injury, personal and advertising injury, and damage to property, resulting from Grantee's products and operations. The amount of insurance for coverage applying to

bodily injury, personal and advertising injury and, property damage shall not be less than Three Million Dollars (\$3,000,000.00) per occurrence, which may be satisfied through a combination of primary liability and umbrella/excess liability policies. The following shall be included in the liability policy:

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

(b) Grantee shall maintain during the term of this Franchise business automobile liability insurance, covering owned (if any), non-owned, and hired vehicles used in connection with the performance of this Franchise. This insurance shall have a minimum combined single limit of Three Million Dollars (\$3,000,000) each accident. This limit can be satisfied through a combination of primary liability and umbrella/excess liability policies.

(c) Grantee or its insurance carriers shall provide the City with thirty (30) Days prior written notice of cancellation for any of the policies required.

(d) Grantee shall submit to City certificate(s) of insurance evidencing the required insurance.

8.6 Indemnification.

(a) Grantee shall indemnify, defend and hold City, its officers, boards, commissions, agents and employees (collectively the "Indemnified Parties") harmless from and against any and all lawsuits, claims, causes of action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses (including attorney's fees and disbursements of counsel) and costs of any nature that any of the Indemnified Parties may at any time suffer, sustain or incur arising out of, based upon or in any way connected with the grant of this Franchise, the operation of Grantee's System, the breach by Grantee

of its obligations under this Franchise and/or the activities of Grantee, its subcontractor, employees and agents hereunder. Grantee shall be solely responsible for and shall indemnify, defend and hold the Indemnified Parties harmless from and against any and all matters relative to payment of Grantee's employees, including compliance with Social Security and withholdings.

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

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

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

(e) Grantee shall not be required to indemnify City for gross negligence or misconduct on the part of City or its officials, boards, commissions, agents, or employees. City shall hold Grantee harmless, subject to the limitations in Minnesota Statutes, Chapter 466, as amended, for any damage resulting from the gross negligence or misconduct of the City or its officials, boards, commissions, agents, or employees in utilizing any PEG Channels, equipment, or facilities and for any such gross negligence or misconduct by City in connection with work performed by City and permitted by this Franchise, on or adjacent to the Cable System.

8.7 Process. In order for City to assert its rights to be indemnified, defended, and held harmless, City must, with respect to each claim:

- i. Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right;
- ii. Afford Grantee the opportunity to participate in any compromise, settlement or other resolution or disposition of any claim or proceeding; and
- iii. Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in any compromise, settlement or resolution or other disposition of such claim or proceeding subject to subparagraph (ii) above.

8.8 **Grantee's Insurance.** Grantee shall not commence any Cable System construction work or permit any subcontractor to commence work until all insurance required under this Franchise has been obtained, and certificate(s) of insurance have been deposited with the City. Said insurance shall be maintained in full force and effect until the expiration of this Franchise.

8.9 **Workers' Compensation Insurance.** Grantee shall obtain and maintain Workers' Compensation Insurance for all of Grantee's employees, and in case any work is sublet, Grantee shall require any subcontractor similarly to provide Workers' Compensation Insurance for all of their employees, all in compliance with State laws. Grantee shall provide the City with a certificate of insurance indicating Workers' Compensation coverage upon its acceptance of this Franchise.

SECTION 9

SALE, ABANDONMENT, TRANSFER AND REVOCATION

9.1 **Abandonment of Service.** Grantee may only abandon the System or any portion thereof in accordance with Minn. Stat. Section 238.084, Subd. 1(w).

9.2 **Removal After Termination or Forfeiture.**

(a) In the event of termination or forfeiture of the Franchise, City shall have the right to require Grantee to remove all or any portion of the System from all Rights-of-Way and public property within City associated solely with the provision of Cable Service; provided, however, that if Grantee is providing services other than Cable Services or pursuant to Minnesota Statutes, Section 237.01 et seq., City shall not require the removal of the System. Nothing in this section shall be deemed either to grant or to preclude the provision of services other than Cable Services.

(b) If Grantee has failed to commence removal of System, or such part thereof as was designated by City, within one hundred twenty (120) Days after written notice of City's demand for removal is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of City's demand for removal is given, City shall have the right to declare all right, title, and interest to the System to be in the City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it pursuant to the provisions of 47 U.S.C. § 547 (1989).

9.3 **Sale or Transfer of Franchise.**

(a) No sale, transfer, or assignment of this Franchise, or "fundamental corporate change", as defined in Minnesota Statutes, Section 238.083, in Grantee, shall take place until a written request is filed with the City for its approval, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and assets to secure an indebtedness.

(b) The City shall have thirty (30) Days from the time of the request to reply in writing and indicate its determination that a public hearing is necessary due to potential adverse effect on Grantee's Subscribers resulting from the sale or transfer. Such determination shall be expressed in writing.

(c) If a public hearing is deemed necessary pursuant to subparagraph (b) above, such hearing shall be commenced within thirty (30) Days of such determination and notice of any such hearing shall be given in accordance with local law or fourteen (14) Days prior to the hearing by publishing notice thereof once in a newspaper of general circulation in the City. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by the City.

(d) Thereafter, the City shall approve or deny in writing the sale or transfer request. The City shall set forth in writing its reason(s) for denying approval. The City shall not unreasonably withhold its approval.

(e) The parties to the sale or transfer of the Franchise only, without the inclusion of the System in which substantial construction has commenced, shall establish that the sale or transfer of only the Franchise will be in the public interest.

(f) Any sale or transfer of stock in Grantee so as to create a new controlling interest in the System shall be subject to the requirements of this Section 9.3. The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

(g) In no event shall a transfer or assignment of ownership or control be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City.

9.4 Reservation of Rights. The City and Grantee reserve all rights that they may possess under applicable laws unless expressly waived herein.

SECTION 10 MISCELLANEOUS PROVISIONS

10.1 Franchise Renewal. Any renewal of this Franchise shall be in accordance with applicable laws. The term of any renewed Franchise shall be limited to a period as provided in Minn. Stat. Section 238.084, Subd. 1(c).

10.2 Work of Contractors and Subcontractors. All provisions of this Franchise shall apply to any subcontractor or others performing any work or services on Grantee's behalf pursuant to the provisions of this Franchise. Grantee shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with the Franchise and applicable laws and shall indemnify the City pursuant to Section 8.6.

10.3 Governing Law. This Franchise shall be deemed to be executed in the State of Minnesota, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the Cable Act and the laws of the State of Minnesota, as applicable to contracts entered into and performed entirely within the State.

10.4 Non-Enforcement by City. Grantee shall not be relieved of its obligation to comply with any of the provisions of this Franchise by reason of any failure of the City to enforce prompt compliance.

10.5 Captions. The paragraph captions and headings in this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning of interpretation of this Franchise.

10.6 Calculation of Time. Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last Day of the prescribed or fixed period or duration of time. When the last Day of the period falls on Saturday, Sunday or a legal holiday that Day shall be omitted from the computation and the next business Day shall be the last Day of the period.

10.7 Survival of Terms. Upon the termination or forfeiture of the Franchise, Grantee shall no longer have the right to occupy the Rights-of-Way for the purpose of providing Cable Service. However, Grantee's obligations to the City shall survive according to their terms.

10.8 Severability. If any provision of this Franchise is held by any Governmental Authority of competent jurisdiction to be invalid as conflicting with any applicable laws now or hereafter in effect, or is held by such Governmental Authority to be modified in any way in order to conform to the requirements of any such applicable laws, such provision shall be considered a separate, distinct, and independent part of this Franchise, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such applicable laws are subsequently repealed, rescinded, amended or otherwise changed, so that the provision hereof which had been held invalid or modified is no longer in conflict with such laws, said provision shall thereupon return to full force and effect and shall thereafter be binding on the City and Grantee, provided that the City shall give Grantee thirty (30) Days written notice of such change before requiring compliance with said provision or such longer period of time as may be reasonably required for Grantee to comply with such provision.

10.9 Force Majeure. In the event Grantee's performance of any of the terms, conditions, obligations or requirements of this Franchise is prevented or impaired due to any cause beyond its reasonable control, such inability to perform shall be deemed to be excused for the period of such inability and no penalties or sanctions shall be imposed as a result thereof. Such causes beyond Grantee's reasonable control shall include, but shall not be limited to, acts of God, civil emergencies and labor unrest or strikes, untimely delivery of equipment, inability of Grantee to obtain access to an individual's property and inability of Grantee to secure all

necessary permits to utilize utility poles and conduit so long as Grantee utilizes due diligence to timely obtain said permits.

SECTION 11

PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

11.1 Publication; Effective Date. This Franchise shall be published in accordance with applicable law. The Effective Date of this Franchise shall be the date specified in Section 1.2 - Definitions.

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

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

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

1. This Franchise will be properly executed and acknowledged by Grantee and delivered to City.
2. With its acceptance, Grantee shall also deliver any performance bond and insurance certificates required herein that have not previously been delivered.

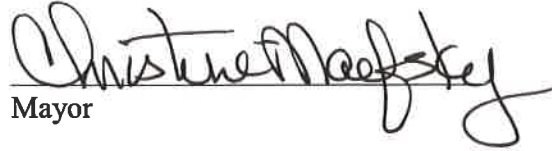
(c) Summary approved. The City Council hereby determines that the text of the summary marked "Official Summary of Ordinance No. 183", a copy of which is attached hereto clearly informs the public of the intent and effect of the ordinance. The City Council further determines that publication of the title and such summary will clearly inform the public of the intent and effect of the ordinance.

(d) Filing. The City Administrator shall file a copy of this ordinance in the City Administrator's office, which copy shall be available for inspection by any persons during regular office hours.

(e) Publication. The City Administrator shall publish the title of this ordinance and the official summary in the official newspaper of the City with notice that a printed copy of the ordinance is available for inspection by any person during regular office hours at the Office of the City Administrator.

Passed and adopted this 17th day of January, 2017.

CITY OF SCANDIA, MINNESOTA


Mayor

ATTEST:


City Administrator

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

CITIZENS TELECOMMUNICATIONS
COMPANY OF MINNESOTA, LLC, a
Minnesota Limited Liability Company

Dated: _____, 2017

By: _____

Its: _____

SWORN TO BEFORE ME this

_____ day of _____, 2017

Notary Public

EXHIBIT A
DROPS TO PUBLIC BUILDINGS

EXHIBIT B

PEG ACCESS PROVISIONS

1. PEG Channels and Regional Channel.

(a) City or its designee is hereby designated to operate, administer, promote, and manage PEG access provided over the Cable System. All Subscribers who receive all or any part of the total services offered on the System shall receive such Channels at no additional charge.

(b) Except as provided in paragraph c. below, within one hundred twenty (120) days from the date Grantee begins offering Cable Service in the Service Area, or within one hundred eighty (180) days after the City requests establishment of a PEG channel, whichever is later, Grantee shall dedicate a Channel for PEG access use. Use of the PEG Channel shall be determined in City's sole discretion and Grantee shall have no responsibility for the content, operations or use of the PEG Channel other than as specified herein. The City may rename, reprogram, or otherwise change the use of the PEG Channel in its sole discretion. In no event shall one cable operator in the City be required to offer more PEG channels than any other cable operator.

(c) City may request additional Channel capacity beyond the provisions of Section 1.b. in accordance with applicable law, including Minn. Stat. §238.084 which is expressly incorporated herein by reference.

(d) The following governs the Grantee's use of the PEG Channels for other services if a Channel is not being used for PEG purposes:

(i) If a PEG Channel is not "fully utilized" at any time during the term of this Agreement, the Grantee may temporarily use the PEG Channel no less than sixty (60) Days after submitting a written notice of such use to the City.

(ii) The PEG Channel shall be considered fully utilized if programming is delivered over it more than thirty-six (36) hours per week on average over a six (6) month period.

(iii) If the PEG Channel is being used by the Grantee in accordance with subsection (i), and the City has determined in good faith that it or its designated PEG provider has the ability to fully utilize the Channel again, then the City shall request return of the PEG Channel by delivering written notice of same to the Grantee. In such event, the PEG Channel shall be returned to the City for PEG programming within ninety (90) Days after receipt by the Grantee of such written notice.

(e) Grantee shall designate Channel 6 for uniform regional channel usage for so long as required by Minn. Stat. §238.43.

2. PEG Channel Locations.

(a) Grantee shall cablecast any PEG Channels on a mutually agreeable Channel designation. In the event Grantee elects to relocate any PEG Channels that are initially established, the Grantee shall give City at least sixty (60) Days prior written notice.

(b) Grantee shall give Subscribers at least sixty (60) Days prior written notice of any relocation of the PEG Channels to different Channel numbers. Prior to relocation, Grantee shall inform Subscribers of the new Channel locations through bill messages or inserts, and shall list the new Channel locations on the on-air program guide. The parties acknowledge that Grantee contracts with a third party or parties to provide on-screen and on-line program listings. It shall be the responsibility of the City, or its designee, to provide such detailed program information to the third-party entity or entities that produce such listings for Grantee in accordance with each such entity's normal format and scheduling requirements and at the City's cost.

3. HD PEG Carriage Requirements.

(a) Nothing herein precludes the Grantee from charging for any equipment needed to receive Basic Cable Service.

(b) Grantee shall provide any PEG channels in standard definition (SD), digital format, and in high definition (HD) provided that the signal received from the Commission or City is in HD, and provided that the Grantee shall not be required to provide any PEG channels at a resolution higher than the highest resolution used in connection with the Grantee's delivery of other channels.

(c) The City acknowledges that receipt of an HD format Channel may require Subscribers to buy or lease special equipment, or pay additional HD charges applicable to all HD services provided by Grantee. The Grantee shall ensure that any HD programming may be received and viewed by Subscribers who do not otherwise receive HD format programming without the need for additional customer premises equipment.

4. PEG Technical Quality.

(a) Any PEG Channels shall meet FCC technical standards including those applicable to the carriage of PEG Channels, provided, however, that the Grantee is not responsible for the production quality of PEG programming provided to the Demarcation Point. Grantee shall reasonably monitor the PEG Channels for technical quality to ensure FCC technical standards are met. The placement of PEG Channels on the System shall not make these PEG Channels more vulnerable to interference or ingress than the primary signals of local broadcast stations that are delivered using similar transmission technology in the City.

(b) The Grantee will provide all SD PEG Channels to Subscribers at reasonably equivalent visual and audio quality to that in which the Grantee delivers the SD CSPAN

channel, or its future equivalent. If applicable, the Grantee will provide all HD PEG Channels to Subscribers at reasonably equivalent visual and audio quality to that in which the Grantee delivers the HD CSPAN channel, or its future equivalent.

(c) There shall be no significant deterioration in a PEG Channel's signal from the point of origination upstream to the point of reception downstream on the Cable System; provided, however, this subsection shall not apply to the conversion of PEG Access Channel signals to a different technical format, such as when City delivers a PEG signal in HD and Grantee converts such signal to SD for cablecasting.

(d) Upon request, throughout the term of the Franchise, Grantee shall provide updated contact information for a local technical representative with local knowledge of the City's PEG operations, who shall be available to the City for consultation on technical matters as the need may arise. This technical representative shall be accessed through a direct telephone number available to the City (as opposed to a general public number). The Grantee shall not impose any unreasonable fees or charges to the City for this technical consultation. If such consultation is insufficient to diagnose the matter in question, within twenty-four (24) hours of a written request from City to the Grantee identifying a technical problem with a PEG Channel signal and requesting assistance, Grantee will provide, free of charge to City, diagnostic services to determine whether or not a problem with a PEG signal is the result of matters for which Grantee is responsible, and if so, Grantee will take prompt corrective action, free of charge to City, subject to the limitations on Grantee's responsibilities outlined herein. If the problem persists and there is a reasonable dispute about the cause, then the parties shall meet with engineering representation from Grantee and the City in order to mutually determine the course of action to remedy the problem. Nothing herein shall be construed to obligate Grantee to correct problems or take any other action caused by the City's signal, the City's network or internal wiring, the City's equipment, PEG access program content or other issues within the City's reasonable control.

(e) Grantee shall comply with applicable law regarding the carriage of PEG Channels.

5. Promotion of PEG Channels.

To the extent permitted by Grantee's billing process and solely for the purpose of promoting the PEG Channels, Grantee shall allow the City to place bill stuffers in Subscriber statements at cost to the City, no more frequently than once per year upon the written request of the City and at such times that the placement of such materials would not materially and adversely affect Grantee's cost for the production and mailing of such statements.

6. PEG Financial Support.

(a) Within ninety (90) days after the Effective Date, Grantee shall collect One Dollar and 50/100s (\$1.50) per Subscriber per month and shall remit said amounts collected to

the Commission or the City, as designated by the City, on a monthly basis to be used solely to support PEG Access in a manner consistent with Applicable Law ("PEG Fee"). Upon the fifth (5th) anniversary of this Franchise, the PEG Fee shall be increased to One Dollar and 65/100s (\$1.65) per Subscriber per month. The City need not expend the PEG Fees immediately but rather may place them in a designated account to be used for PEG capital purchases over the term of the Franchise.

(b) The PEG Fee shall not be deemed a "Franchise Fee" as defined in 47 U.S.C. §542. The PEG Fee may be categorized, itemized, and passed through to Subscribers as permissible, in accordance with 47 U.S.C. §542 or other Applicable Laws. Grantee shall pay the PEG Fee to the City monthly, within thirty (30) Days following the end of the each month. Grantee agrees that it will not offset or reduce its payment of past, present or future Franchise Fees required as a result of its obligation to remit the PEG Access support. Any PEG Access support amounts owing pursuant to this Franchise which remain unpaid more than twenty-five (25) days after the date the payment is due shall be delinquent and shall thereafter accrue interest at twelve percent (12%) per annum or the prime lending rate published by the Wall Street Journal on the day the payment was due plus two percent (2%), whichever is greater.

EXHIBIT C
FRANCHISE FEE PAYMENT WORKSHEET

TRADE SECRET – CONFIDENTIAL

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

Fee Factor: 5%

Ordinance Summary

ORDINANCE NO. 183, GRANTING A FRANCHISE TO CITIZENS TELECOMMUNICATIONS COMPANY OF MINNESOTA, LLC, A MINNESOTA LIMITED LIABILITY COMPANY ("GRANTEE") TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE CITY OF SCANDIA, MINNESOTA ("CITY"), SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS.

On January 17, 2017, at a Regular Meeting of the Scandia City Council, by majority vote, the City Council adopted Ordinance No. 183 which provides for the use of the City's road right-of-way and grant a franchise for the design, construction, and operation and maintenance of a cable system with the City for a period of 10 years with extensions provided by mutual agreement of the parties.

A printed copy of the Ordinance is available for inspection by any person during regular office hours at City Hall or by standard or electronic mail.

