

#373

CABLE TELEVISION FRANCHISE ORDINANCE

FOR

NEW ULM TELECOM, INC.

AND

CITY OF SPRINGFIELD, MINNESOTA

JULY 20, 2004

ORDINANCE NO. 373

AN ORDINANCE GRANTING A FRANCHISE TO NEW ULM TELECOM, INC. TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE COMMUNICATIONS SYSTEM IN THE CITY OF SPRINGFIELD, MINNESOTA SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN;

The City Council of the City of Springfield, Minnesota ordains:

STATEMENT OF INTENT AND PURPOSE

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

Adoption of this Franchise is, in the judgment of the City Council, in the best interests of City and its residents.

FINDINGS

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

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

SECTION 1. SHORT TITLE AND DEFINITIONS

1. Short Title. This Franchise Ordinance shall be known and cited as the Cable Television Franchise Ordinance.
2. Definitions. For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word "shall" is

always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory.

- a. “Applicable Laws” means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority.
- b. “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 not be inconsistent with 47 U.S.C. § 543(b)(7).
- c. “Cable Service” or “Service” means (A) the one-way transmission to Subscribers of (i) Video Programming or (ii) Other Programming Service, and (B) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service. Cable Service or Service as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(6).
- d. “Cable System” or “System” means a 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:
 - (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations;
 - (2) a facility that serves Subscribers without using any public Right-of-Way;
 - (3) a facility of 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;
 - (4) an open video system that complies with 47 U.S.C. § 653; or
 - (5) any facilities of any electric utility used solely for operating its electric utility systems.
- e. “Channel” or “Cable Channel” means six (6) MHz of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel as defined by the Federal Communications Commission.

- f. “City” means City of Springfield, a municipal corporation, in the State of Minnesota, acting by and through its City Council, or its lawfully appointed designee.
- g. “City Council” means the governing body of the City of Springfield, Minnesota.
- h. “Class IV Cable Channel” means a signaling path provided by a Cable System to transmit signals of any type from a Subscriber terminal to another point in the System.
- i. “Converter” means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the Service.
- j. “Drop” means the cable that connects the ground block on the Subscriber’s residence or institution to the nearest feeder cable of the System.
- k. “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- l. “Franchise” or “Cable Franchise” means this ordinance and the regulatory and contractual relationship established hereby.
- m. “Franchise Fee” includes any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable Subscriber, or both, solely because of their status as such. It does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers); capital costs which are required by the Franchise to be incurred by the cable operator for public, educational, or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or any fee imposed under Title 17.
- n. “Grantee” is New Ulm Telecom, Inc., its lawful successors, transferees or assignees.
- o. “Gross Revenue” means all revenue derived by Grantee, its affiliates, subsidiaries, parent, or Person in which Grantee has financial interest of five percent (5%) or more, from the provision of Cable Service over its System within the City including, but not limited to, all Cable Service fees, Installation and reconnection fees, upgrade and downgrade fees, Converter rental fees and Lockout Device fees. The term Gross Revenue shall not include any taxes on Services furnished by Grantee imposed by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit including FCC user fees.

- p. "Installation" means the connection of the System from feeder cable to the point of connection including Standard Installations and custom Installations with the Subscriber Converter or other terminal equipment.
- q. "Lockout Device" means an optional mechanical or electrical accessory to a Subscriber's terminal which inhibits the viewing of a certain program, certain Channel, or certain Channels provided by way of the Cable System.
- r. "Normal Business Hours" means those hours during which most similar businesses in City are open to serve customers.
- s. "Normal Operating Conditions" means those service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the System.
- t. "Other Programming Service" means information that a cable operator makes available to all Subscribers generally.
- u. "Pay Television" means the delivery over the System of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or Cable Programming Services.
- v. "Person" is any Person, firm, partnership, association, corporation, company, or other legal entity.
- w. "Right-of-Way" or "Rights-of-Way" means the area on, below, or above any real property in City in which the City has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area, or real property owned by or under the control of City, including other dedicated Rights-of-Way for travel purposes and utility easements.
- x. "Service Area" or "Franchise Area" means the entire geographic area within the City as it is now constituted or may in the future be constituted.
- y. "Service Interruption" means the loss of picture or sound on one or more Cable Channels.
- z. "Standard Installation" means any residential Installation which can be completed using a Drop of one hundred fifty (150) feet or less.
- aa. "Subscriber" means any Person who lawfully receives Service via the System. In the case of multiple office buildings or multiple dwelling units, the "Subscriber" means the lessee, tenant or occupant.

- bb. "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

SECTION 2. GRANT OF AUTHORITY AND GENERAL PROVISIONS

1. Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein. Failure of Grantee to provide a System as described herein, or meet the obligations and comply with all provisions herein, shall be deemed a violation of this Franchise.
2. Grant of Nonexclusive Authority.
 - a. The Grantee shall have the right and privilege, subject to the permitting and other lawful requirements of City ordinance, rule or procedure, to construct, erect, and maintain, in, upon, along, across, above, over and under the Rights-of-Way in City a Cable System and shall have the right and privilege to provide Cable Service. The System constructed and maintained by Grantee or its agents shall not interfere with other uses of the Rights-of-Way. Grantee shall make use of existing poles and other above and below facilities available to Grantee to the extent it is technically and economically feasible to do so.
 - b. Notwithstanding the above grant to use Rights-of-Way, no Right-of-Way shall be used by Grantee if City determines that such use is inconsistent with the terms, conditions, or provisions by which such Right-of-Way was created or dedicated, or with the present use of the Right-of-Way.
 - c. This Franchise shall be nonexclusive, and City reserves the right to grant a use of said Rights-of-Way to any Person at any time during the period of this Franchise for the provision of Cable Service. The terms and conditions of any grant of any franchise shall be, when taken as a whole no less burdensome or more beneficial than those imposed upon Grantee pursuant to this Franchise.
3. Lease or Assignment Prohibited. No Person may lease Grantee's System for the purpose of providing Service until and unless such Person shall have first obtained and shall currently hold a valid franchise or other lawful authorization containing substantially similar burdens and obligations to this Franchise. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 9.5. This provision shall not prevent Grantee from complying with any commercial leased access requirements or any other provision of Applicable Law.
4. Franchise Term. This Franchise shall be in effect for a period of fifteen (15) years from the date of acceptance by Grantee, unless sooner renewed, revoked or terminated as herein provided.
5. Previous Franchises. Upon acceptance by Grantee as required by Section 13 herein, this Franchise shall supersede and replace any previous ordinance granting a Franchise to Grantee.
6. Compliance with Applicable Laws, Resolutions and Ordinances.

- a. The terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of the System in City. However, Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power, statutory rights, local ordinance-making authority, and eminent domain rights of City. This Franchise may also be modified or amended with the written consent of City and Grantee as provided in Section 12.3 herein.
7. Rules of Grantee. Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligations under this Franchise and 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 Applicable Laws.
8. Territorial Area Involved. This Franchise is granted for the corporate boundaries of City, as they exist from time to time. In the event of annexation by City, or as development occurs, any new territory shall become part of the territory for which this Franchise is granted; provided, however, that Grantee shall only be required to extend Service beyond its present System boundaries pursuant to Section 4.8 hereof. Access to Cable Service shall not be denied to any group of potential residential cable Subscribers because of the income of the residents of the area in which such group resides. Grantee shall be given a reasonable period of time to construct and activate cable plant to service annexed or newly developed areas. In no event shall the time period to construct and activate cable plant in annexed areas exceed nine (9) months from notice thereof by City to Grantee.
9. Written Notice. All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of Grantee or City's administrator of this Franchise or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to City: City Manager
 City of Springfield
 2 East Central
 Springfield, MN 56087

If to Grantee: Vice President
 New Ulm Telecom, Inc.
 27 North Minnesota
 P.O. Box 697
 New Ulm, MN 56073

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

10. Subscriber Network Drops to Designated Building. Upon request, Grantee shall provide, free of charge, throughout the term of this Franchise, Installation of one (1) Subscriber network Drop, one (1) cable outlet, one (1) Converter, if necessary, and basic service and cable programming service without charge to the institutions identified on Exhibit B-1 attached hereto and made a part hereof, and such other public or accredited educational institutions subsequently designated by City which are within one hundred fifty (150) feet of the System. The City may request that an institution which is beyond one hundred fifty (150) feet of the System receive Service and Grantee shall provide the Drop upon payment at the cost of Grantee's time and material in excess of one hundred fifty (150) feet. Grantee shall have three (3) months from the date of City designation of additional institution(s) within one hundred fifty (150) feet of the System to complete construction of the Drop and outlet unless weather or other conditions beyond the control of Grantee requires more time. The construction schedule for any other institution designated by the City shall be mutually agreed to by Grantee and City.

Said institutions may add outlets at their own expense, as long as such Installation meets Grantee's standards.

SECTION 3. CONSTRUCTION STANDARDS

1. Registration, Permits, Construction Codes, and Cooperation.
 - a. Grantee agrees to obtain a permit as required by City prior to removing, abandoning, relocating or reconstructing, if necessary, any portion of its facilities. Notwithstanding the foregoing, City understands and acknowledges there may be instances when Grantee is required to make repairs, in compliance with federal or state laws, that are of an emergency nature. Grantee will notify City prior to such repairs, if practicable, and will obtain the necessary permits in a reasonable time after notification to City.
 - b. Failure to obtain permits or comply with permit requirements shall subject Grantee to all enforcement remedies available to City under Applicable Law or this Franchise.
2. Use of existing poles or conduits.
 - a. Grantee shall utilize existing poles, conduits and other facilities whenever commercially reasonable and shall not construct or install any new, different or additional poles, conduits or other facilities on public property until the written approval of City is obtained, which approval shall not be unreasonably withheld. No location or any pole or wire-holding structure of Grantee shall be a vested interest.
 - b. The facilities of Grantee shall be installed underground in those areas of City where existing telephone and electric services are both underground at the time of construction by Grantee. In areas where either telephone or electric utility facilities are installed aerially at the time of System construction, Grantee may

install its facilities aerially; however, at such time as the existing aerial facilities are placed underground, Grantee shall likewise place its facilities underground at its sole cost. If City requires utilities to bury lines which are currently overhead, and the City financially participates in said undergrounding, then the City will provide the same cost sharing to the Grantee.

3. Minimum Interference. All transmission and distribution structures, lines and equipment erected by Grantee shall be located so as to cause minimum interference with the unencumbered use of Rights-of-Way and other public places and minimum interference with the rights and reasonable convenience of property owners who adjoin any of the Rights-of-Way and public places.
4. Disturbance or damage. Any and all Rights-of-Way, or public or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, expansion, extension or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee's work, as determined by City. If Grantee shall fail to promptly perform the restoration required herein, after written request of City and reasonable opportunity to satisfy that request, City shall have the right to put the Rights-of-Way back into condition as good as that prevailing prior to Grantee's work. In the event City determines that Grantee is responsible for such disturbance or damage, Grantee shall be obligated to fully reimburse City for such restoration within thirty (30) days after its receipt of City's invoice.
5. Temporary Relocation.
 - a. At any time during the period of the Franchise, Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate or remove any of its property when, in the opinion of City, (i) the same is required by reason of traffic conditions, public safety, Rights-of-Way vacation, freeway or Rights-of-Way construction, alteration to or establishment of any Rights-of-Way or any facility within the Rights-of-Way, sidewalk, or other public place, including but not limited to, installation of sewers, drains, waterlines, power lines, traffic signal lines or transportation facilities; or (ii) a City project or activity makes disconnection, removal, or relocation necessary or less expensive for City.
 - b. Grantee shall, on request of any Person holding a permit to move a building, temporarily raise or lower its wires to permit the movement of such buildings. The expense of such temporary removal or raising or lowering of wires shall be paid in advance by the Person requesting the same, and Grantee shall have the authority to require such payment in advance. Grantee shall be given not less than five (5) days advance notice to arrange such temporary wire alterations.
6. Emergency. Whenever, in case of fire or other emergency, it becomes necessary in the judgment of the City manager, police chief, fire chief, public utilities director or public works director or their delegates, to remove or damage any of Grantee's facilities, no charge shall be made by Grantee against City for restoration, repair or damages.

7. Tree Trimming. Grantee shall have the authority to trim trees on public Rights-of-Way at its own expense as may be necessary to protect its wires and facilities, subject to Applicable Law. Any trimming of trees by the Grantee in the Rights-of-Way and public ways shall be subject to such regulation as the City manager or other authorized official may establish to protect the public health, safety and convenience.
8. Protection of facilities. Nothing contained in this section shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid damaging Grantee's facilities while performing any work connected with grading, regrading or changing the line of any Rights-of-Way or public place or the construction or reconstruction of any sewer or water system.
9. Installation records. Each Grantee shall keep accurate Installation records of the location of all facilities in the Rights-of-Way and public ways and furnish them to City upon request.
10. Locating facilities. If, during the design process for public improvements, City discovers a potential conflict with proposed construction, Grantee shall either: (a) locate and, if necessary, expose its facilities in conflict or (b) use a location service under contract with City to locate or expose its facilities. Grantee is obligated to furnish the location information in a timely manner, but in no case longer than thirty (30) days.
11. Facilities in conflict. If, during the course of a project, City determines Grantee's facilities are in conflict, the following shall apply:
 - a. Prior to City Notice to Proceed to Contractor: Grantee shall, within a reasonable time, but in no event exceeding three (3) months, remove or relocate the conflicting facility. This time period shall begin running upon receipt by Grantee of written notice from City. However, if both City and Grantee agree, the time frame may be extended based on the requirements of the project.
 - b. Subsequent to City Notice to Proceed to Contractor: City and Grantee will immediately begin the coordination necessary to remove or relocate the facility. Removal or relocation is to begin no later than seventy-two (72) hours, if practicable, after written notification from City of the conflict.
12. Relocation Delays.
 - a. Subject to Grantee's compliance with Section 3.11 above, if Grantee's relocation effort so delays construction of a public project causing City to be liable for delay damages, Grantee shall reimburse City for those damages attributable to the delay created by Grantee. In the event Grantee should dispute the amount of damages attributable to Grantee, the matter shall be referred to the City engineer for a decision. In the event that Grantee disagrees with the City engineer's decision, the matter shall be submitted to the City manager or the City manager's designee for determination, whose decision shall be final and binding upon Grantee as a matter of City review, but nothing herein waives any right of appeal to the courts.

- b. In the event City becomes aware of a potential delay involving the requested relocation of Grantee's facilities, City shall promptly notify Grantee of this potential delay.
- 13. Interference with City Facilities. The installation, use and maintenance of the Grantee's facilities within the Rights-of-Way and public ways authorized herein shall be in such a manner as not to interfere with City's placement, construction, use and maintenance of its Rights-of-Way and public ways, Rights-of-Way lighting, water pipes, drains, sewers, traffic signal systems or other City systems that have been, or may be, installed, maintained, used or authorized by City.
- 14. Interference with Utility Facilities. Grantee agrees not to install, maintain or use any of its facilities in such a manner as to damage or interfere with any existing facilities of another utility located within the Rights-of-Way and public ways of City and agrees to relocate its facilities, if necessary, to accommodate another facility relocation. Nothing in this section is meant to limit any rights Grantee may have under Applicable Law to be compensated for the cost of relocating its facilities from the utility that is requesting the relocation.
- 15. Safety Requirements.
 - a. Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injuries.
 - b. Grantee shall install and maintain its System and other equipment in accordance with City's codes and the requirements of the National Electric Safety Code and all other applicable FCC, state and local regulations, and in such manner that they will not interfere with City communications technology related to health, safety and welfare of the residents.
 - c. Cable System structures, and lines, equipment and connections in, over, under and upon the Rights-of-Way of City, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of City or any Person.

SECTION 4. DESIGN PROVISIONS

- 1. System Upgrade: Minimum Channel Capacity.
 - a. Grantee shall maintain and operate for the term of this Franchise a System providing a minimum of 750 MHz capacity. Construction will be completed and Channels activated as described in Exhibit C attached hereto.
 - b. All final programming decisions remain the discretion of Grantee in accordance with this Franchise, provided that Grantee notifies City and Subscribers in writing thirty (30) days prior to any Channel additions, deletions, or realignments, and further subject to Grantee's signal carriage obligations hereunder and pursuant to

47 U.S.C. § 531-536, and further subject to City's rights pursuant to 47 U.S.C. § 545. Location and relocation of the PEG Channels shall be governed by Section 6 and Exhibit B.

2. Interruption of Service. Grantee shall interrupt Service only for good cause and for the shortest time possible. Such interruption shall occur during periods of minimum use of the System. If Service is interrupted for a total period of more than twenty-four (24) continuous hours in any thirty (30) day period, Subscribers shall be credited pro rata for such interruption.
3. Emergency Alert Capability. Grantee shall at all times comply with the Emergency Alert System standards pursuant to Title 47, Section 11, Subparts A-E of the Code of Federal Regulations, as may be amended or modified from time to time. City and Grantee agree that the Emergency Alert System shall not be used for routine communications such as street cleaning and snowplowing.
4. Technical Standards. The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, 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.
5. Special Testing.
 - a. City shall have the right to inspect all construction or Installation work performed pursuant to the provisions of the Franchise. In addition, City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints regarding such construction or Installation work or pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing.
 - b. Before ordering such tests, Grantee shall be afforded thirty (30) days following receipt of written notice to investigate and, if necessary, correct problems or complaints upon which tests were ordered. 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 at Grantee's expense by a qualified engineer selected by City and Grantee, and Grantee shall cooperate in such testing. If after such testing, it is found that Grantee is in compliance with the technical requirements of Section 4.4 above, then City shall pay the costs associated with the selected engineer.

6. FCC Reports. The results of any tests required to be filed by Grantee with the FCC shall, upon request of City, also be filed with City or its designee within ten (10) days of the completion of such tests.
7. Annexation. Upon the annexation of any additional land area by City, the annexed area shall thereafter be subject to all the terms of this Franchise immediately upon notification to Grantee of the annexation by City, subject to the line extension policies contained herein and provided that the annexed area is not already served by another cable operator.
8. Line Extension.
 - a. Grantee shall construct and operate its Cable System so as to provide Service to all parts of its Franchise Area as provided in this Franchise and having a density equivalent of five (5) residential units per one-quarter (1/4) cable mile of System, as measured from the nearest tap on the Cable System.
 - b. Where the density is less than that specified above, Grantee shall inform Persons requesting Service of the possibility of paying for Installation or a line extension and shall offer to provide them with a free written estimate of the cost, which shall be provided within fifteen (15) working days of such a request. The charge for Installation or extension for each Person requesting Service shall not exceed a pro rata share of the actual cost of extending the Service.
 - c. Any residential unit located within one hundred fifty (150) feet of the nearest tap on Grantee's System shall be connected to the System at no charge other than the Standard Installation charge. Grantee shall, upon request by any potential Subscriber residing in City beyond the one hundred fifty (150) foot limit, extend Service to such Subscriber provided that the Subscriber shall pay the net additional Drop costs.
 - d. Under Normal Operating Conditions, if Grantee cannot perform Installations within the times specified in applicable customer standards, the Subscriber may request and is entitled to receive a credit equal to the charge for a Standard Installation. For any Installation that is not a free Installation or a Standard Installation, Grantee shall provide the Subscriber with a written estimate of all charges within seven (7) days of a request by the Subscriber. Failure to comply will subject Grantee to appropriate enforcement actions. This section does not apply to the introduction of new products and Services when Grantee is utilizing a phased introduction.
9. Nonvoice Return Capability. Grantee is required to use cable and associated electronics having the technical capacity for nonvoice return communications.
10. Lockout Device. Upon the request of a Subscriber, Grantee shall make available by sale or lease a Lockout.

SECTION 5. SERVICE PROVISIONS

1. Regulation of Service Rates. City may regulate rates for the provision of Cable Service, equipment, or any other communications service provided over the System to the extent allowed under federal or state law(s). City reserves the right to regulate rates for any future Services to the extent permitted by law.
2. Non-Standard Installations. Grantee shall install and provide Cable Service to any Person requesting other than a Standard Installation provided that said Cable Service can meet FCC technical specifications and all payment and policy obligations are met. In such case, Grantee may charge for the incremental increase in material and labor costs incurred beyond the Standard Installation.
3. Sales Procedures. Grantee shall not exercise deceptive sales procedures when marketing any of its Services within City. In its initial communication or contact with a non-Subscriber, Grantee shall inform the non-Subscriber of all levels of Service available, including the lowest priced and free Service tiers. Grantee shall have the right to market door-to-door during reasonable hours consistent with local ordinances and regulation.
4. Consumer Protection and Service Standards.
 - a. Cable System office hours and telephone availability:
 - (1) Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.
 - i. Trained Grantee representatives shall be available to respond to customer telephone inquiries during Normal Business Hours.
 - ii. After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.
 - (2) Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.
 - (3) Grantee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

- (4) Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.
 - (5) Customer service center and bill payment locations will be open at least during Normal Business Hours.
- b. Installations, outages and service calls. Under Normal Operating Conditions, each of the following four (4) standards will be met no less than ninety-five percent (95%) of the time, measured on a quarterly basis:
 - (1) Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred fifty (150) feet from the existing distribution system.
 - (2) Excluding conditions beyond the control of Grantee, Grantee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem. Grantee shall resolve all Service Interruptions within forty-eight (48) hours under Normal Operating Conditions.
 - (3) The "appointment window" alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Grantee may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)
 - (4) Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
 - (5) If Grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted prior to the time of the scheduled appointment. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.
- c. Communications between Grantee and Subscribers:
 - (1) Notifications to Subscribers:
 - i. Grantee shall provide written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers, and at any time upon request:

- a. Products and services offered;
 - b. Prices and options for programming services and conditions of subscription to programming and other services;
 - c. Installation and Service maintenance policies;
 - d. Instructions on how to use the Cable Service;
 - e. Channel positions of the programming carried on the System; and
 - f. Billing and complaint procedures, including the address and telephone number of the City.
- (2) Subscribers will be notified of any changes in rates, programming Services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the changes are within the control of the Grantee. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by this Section 5.4(c). Grantee shall not be required to provide prior notice of any rate changes as a result of a regulatory fee, Franchise Fee, or other fees, tax, assessment or charge of any kind imposed by any federal agency, state or City on the transaction between the operator and the Subscriber.
- (3) Billing:
- i. Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
 - ii. In case of a billing dispute, the Grantee must respond to a written complaint from a Subscriber within thirty (30) days.
- (4) Refunds: Refund checks will be issued promptly, but no later than either:
- i. The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
 - ii. The return of the equipment supplied by Grantee if Service is terminated.

- d. Credits: Credits for Service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

Upon completion of System construction, Grantee shall comply with the cable industry's on-time guaranty as endorsed by the National Cable Television Association. This on-time guaranty generally provides that if Installation is not accomplished within the time frame specified by the operator, Installation shall be free for the Subscriber and operator shall provide said Subscriber with a Twenty Dollar (\$20) credit. Moreover, Grantee shall provide Subscribers with a Twenty Dollar (\$20) credit for any missed appointments.

5. Subscriber Contracts. Grantee shall file with City 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 Subscriber contract(s) shall be available for public inspection during Normal Business Hours.
6. Refund Policy. In the event a Subscriber establishes or terminates Service and receives less than a full month's Service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which Service was rendered to the number of days in the billing.
7. Local Office Policy.
 - a. Grantee shall maintain a drop box within the Service Area for receiving Subscriber payments after hours. Payments at Grantee's drop box location shall be deemed received on the date such payments are picked up by Grantee which shall occur no less than twenty-four (24) hours after each and every due date for Subscriber bills.

SECTION 6. ACCESS CHANNEL PROVISIONS

1. Grantee Support for PEG Access. Grantee shall provide the following support for PEG access usage within the Service Area:
 - a. Provision of the Channels designated in Exhibit B of this Franchise for local PEG programming and access use at no charge in accordance with the requirements of Exhibit B.
 - b. Provision of free public building Installation and Cable Service as more clearly specified in Exhibit B.

SECTION 7. OPERATION AND ADMINISTRATION PROVISIONS

1. Administration of Franchise. The City manager or other designee shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise; provided, however, that the City Council shall retain the sole authority to take enforcement action pursuant to this Franchise.
2. Delegated-Authority. The City may appoint a citizen advisory body or may delegate to any other body or Person authority to monitor the performance of Grantee pursuant to the Franchise. Grantee shall cooperate with any such delegates of City.
3. Franchise Fee.
 - a. During the term of the Franchise, Grantee shall pay quarterly to City a Franchise Fee in an amount equal to five percent (5%) of its quarterly Gross Revenues, or such other amounts as are subsequently permitted by federal statute.
 - b. Any payments due under this provision shall be payable quarterly. The payment shall be made within forty-five (45) days of the end of each of Grantee's fiscal quarters together with a report showing the basis for the computation.
 - c. Upon thirty (30) days prior written notice, City may review the computation of Gross Revenues at the Grantee's office. Acceptance of any franchise fee payment shall not be construed as an accord that the amount paid is in fact the correct amount.
4. Access to Records. The City shall have the right to inspect, upon forty-eight (48) hours notice, at any time during Normal Business Hours, those records maintained by Grantee which relate to System operations and to Gross Revenues, subject to the privacy provisions of 47 U.S.C. § 521 et. seq. ("Cable Act").
5. Reports to be Filed with City.
 - a. Grantee shall file prepare and furnish to the City, at the times and in the form prescribed, such reports with respect to operations, affairs, transactions or property as they relate to the System, which Grantee and City may agree upon.
6. Periodic Evaluation.
 - a. City may require evaluation sessions no more than once every two (2) years, upon thirty (30) days written notice to Grantee.
 - b. Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System performance, programming offered, access Channels, facilities and support, municipal uses of cable, Subscriber rates, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics Grantee and City deem relevant.

- c. As a result of a periodic review or evaluation session, upon notification from City, Grantee shall meet with City and undertake good faith efforts to reach agreement on changes and modifications to the terms and conditions of the Franchise which are legally permissible, and are both commercially practicable and utilize proven technology.

SECTION 8. GENERAL FINANCIAL AND INSURANCE PROVISIONS

1. Performance Bond.

- a. Thirty (30) days prior to initiation of any System construction/upgrade, in excess of One Hundred Thousand and no/100 Dollars, (\$100,000), Grantee shall furnish and file with the City a performance and payment bond, or a performance and payment bond together with such other security as is approved by the City. The bond shall run to the City in the penal sum of 15% of the projected construction cost. The bond shall be conditioned upon the faithful performance by Grantee of all terms and conditions of the System construction/upgrade. The rights reserved to the City with respect to the bond or other security are in addition to all other rights the City may have under the Franchise or any other law.
- b. Following the completion of the System construction/upgrade, as determined by the City the requirement to maintain said bond above shall be extinguished.
- c. The bond shall be subject to the approval of the City and shall contain the following endorsement:

“It is hereby understood and agreed that this bond may not be cancelled without the consent of the City until sixty (60) days after receipt by the City by registered mail, return receipt requested, of a written notice of intent to cancel or not to renew.”

2. Letter of Credit.

- a. Within fourteen (14) days of receipt of a notice from the City of an alleged violation of this Franchise, as determined by the City, Grantee shall provide the City with an irrevocable Letter of Credit in the sum of Ten Thousand and No/100 (\$10,000). The Letter of Credit shall insure the faithful performance by the Grantee of all the provisions of this Franchise, and compliance with all orders, permits and directions of the City and the payment by Grantee of any claim, penalties, damages, liens and taxes due the City related thereto or which arise by reason of the construction, operation or maintenance of the Cable System. The Letter of Credit shall be provided by Grantee regardless of whether Grantee disputes the alleged violation. Any failure by Grantee to provide the Letter of Credit as required herein shall constitute a breach of this Franchise. Any interest on this deposit shall be paid to the Grantee. Once the preceding addressing the alleged violation has been completed the Grantee shall be relieved of maintaining

the Letter of Credit until such time as another alleged violation notification is received by the Grantee at which time the process shall begin again

- b. In addition to recovery of any monies owed by Grantee to City or any Person or damages to City or any Person as a result of any acts or omissions by Grantee pursuant to the Franchise, City in its sole discretion may charge to and collect from the Letter of Credit the following penalties:
 - i. For failure to timely complete System upgrades as provided in this Franchise unless City approves the delay, the penalty shall be Five Hundred and No/100 Dollars (\$500) per day for each day, or part thereof such failure occurs or continues.
 - ii. For failure to comply with any of the provisions of this Franchise, or other City ordinance for which a penalty is not otherwise specifically provided pursuant to this subparagraph c, the penalty shall be Two Hundred Fifty and No/100 Dollars (\$250) per day for each day, or part thereof, such failure occurs or continues.
 - iii. For failure to pay to the City any taxes due and unpaid; or fails to repay to the City, any penalties, damages, costs or expenses which the City shall be compelled to pay by reason of any act or default of the Grantee.
- c. Each violation of any provision of this Franchise shall be considered a separate violation for which a separate penalty can be imposed.
- d. Whenever City finds that Grantee has violated one 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 the 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 before the City may require Grantee to make payment of penalties. Grantee, within ten (10) days of receipt of notice, shall notify the City if 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.
 - iv. The City Shall hear Grantee's dispute at a regularly scheduled or specially scheduled City Council meeting. The City shall determine if the Grantee has committed a violation and shall make written finding of fact relative to its determination.
 - v. If after hearing the dispute, the claim is upheld by the City, then Grantee shall have the remainder of the initial thirty (30) day cure period within which to remedy the violation before the City may require payment of penalties.
 - vi. The time for Grantee to correct an alleged violation shall be extended by the City, in City's sole discretion, 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 with fifteen (15) days and thereafter exercises due diligence to correct the violation.

- e. Whenever the Letter of Credit is drawn upon, Grantee may, within seven (7) days of such draw, notify City in writing that there is a dispute as to whether a violation or failure has in fact occurred. Such written notice by Grantee to City shall specify with particularity the matters disputed by Grantee and shall toll any further penalties during this appeal.
 - vii City shall hear Grantee's dispute within sixty (60) days and render a final decision within sixty (60) days thereafter.
 - viii Upon the determination of City that no violation has taken place, City shall refund to Grantee, without interest, all monies drawn from the Letter of Credit by reason of the alleged violation.
- f. If said Letter of Credit or any subsequent Letter of Credit delivered pursuant thereto expires prior to the expiration of the term of this Franchise, it shall be renewed or replaced during the term of this Franchise. The renewed or replaced Letter of Credit shall be of the same form and with a bank authorized herein and for the full amount stated in subparagraph (a) of this section.
- g. If City draws upon the Letter of Credit or any subsequent Letter of Credit delivered pursuant hereto, in whole or in part, Grantee shall replace or replenish to its full amount the same within ten (10) days and shall deliver to City a like replacement Letter of Credit or certification of replenishment for the full amount stated in Section 9.2(a) as a substitution of the previous Letter of Credit. This shall be a continuing obligation for any draws upon the Letter of Credit.
- h. If any Letter of Credit is not so replaced or replenished, City may draw on said Letter of Credit for the whole amount thereof and use the proceeds as City determines in its sole discretion. The failure to replace or replenish any Letter of Credit may also, at the option of the City, be deemed a default by Grantee under this Franchise. The drawing on the Letter of Credit by City, and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of Grantee which are in default, shall not be a waiver or release of such default.
- i. The collection by City of any damages, monies or penalties from the Letter of Credit shall not affect any other right or remedy available to City, nor shall any act, or failure to act, by City pursuant to the Letter of Credit, be deemed a waiver of any right of City pursuant to this Franchise or otherwise.

3. Liability Insurance.

- a. Upon the effective date, Grantee shall, at its sole expense take out and maintain during the term of this Franchise public liability insurance with a company licensed to do business in the state of Minnesota with a rating by A.M. Best & Co. of not less than "A" that shall protect the Grantee, City and its officials, officers, directors, employees and agents from claims which may arise from operations under this Franchise, whether such operations be by the Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee's vehicles, products and operations. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall not be less than One Million Dollars (\$1,000,000.00). The following endorsements shall be attached to the liability policy:

- (1) The policy shall provide coverage on an "occurrence" basis.
- (2) The policy shall cover personal injury as well as bodily injury.
- (3) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
- (4) Broad form property damage liability shall be afforded.
- (5) City shall be named as an additional insured on the policy.
- (6) An endorsement shall be provided which states that the coverage is primary insurance and that no other insurance maintained by the Grantor will be called upon to contribute to a loss under this coverage.
- (7) Standard form of cross-liability shall be afforded.
- (8) An endorsement stating that the policy shall not be canceled without thirty (30) days notice of such cancellation given to City.

- b. Grantee shall submit to City documentation of the required insurance in the form of a certificate of insurance.

4. 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 or 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 Grantee's operations, the exercise of the Franchise, the breach of 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. Grantee shall not be required to provide indemnification to City for programming cablecast over the educational and governmental access Channels administered by City.

- 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.

5. Grantee's Insurance.

- a. Grantee shall not commence any Cable System reconstruction work or permit any subcontractor to commence work until all insurance required under this Franchise has been obtained. Said insurance shall be maintained in full force and effect until the expiration of this Franchise.
 - (1) 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; and
 - ii. Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding.

- iii. Fully cooperate with reasonable requests of Grantee.

SECTION 9. SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE

1. City's Right to Revoke.

- a. In addition to all other rights which City has pursuant to law or equity, City reserves the right to commence proceedings to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if it is determined by City that after notice and an opportunity to cure as reordered herein;
 - (1) Grantee has violated material provisions(s) of this Franchise and has not cured; or
 - (2) Grantee has attempted to evade any of the provisions of the Franchise; or
 - (3) Grantee has practiced fraud or deceit upon City.
- b. City may revoke this Franchise without the hearing if Grantee is adjudged a bankrupt unless otherwise prohibited by Applicable Laws.

2. Procedures for Revocation.

- a. City shall provide Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee thirty (30) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise. In the notice required therein, City shall provide Grantee with the basis of the revocation.
- b. Grantee shall be provided the right to a public hearing affording due process before the City Council prior to the effective date of revocation, which public hearing shall follow the thirty (30) day notice provided in subparagraph (a) above. City shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.
- c. Only after the public hearing and upon written notice of the determination by City to revoke the Franchise may Grantee appeal said decision with an appropriate state or federal court or agency.
- d. During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the Franchise would endanger the health, safety and welfare of any Person or the public.

3. Abandonment of Service. Grantee may not abandon the System or any portion thereof without having first given three (3) months written notice to City. Grantee may not abandon the System or any portion thereof without compensating City for damages resulting from the abandonment, including all costs incident to removal of the System.
4. Removal After Abandonment, Termination or Forfeiture.
 - a. In the event of termination or forfeiture of the Franchise or abandonment of the System, 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.
 - b. If Grantee has failed to commence removal of System, or such part thereof as was designated by City, within thirty (30) 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 apply funds secured by the Letter of Credit and Performance Bond toward removal and/or declare all right, title, and interest to the System to be in 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.
5. Sale or Transfer of Franchise.
 - a. No sale or transfer of the Franchise, or sale, transfer, or fundamental corporate change of or in Grantee, including, but not limited to, a fundamental corporate change in Grantee's parent corporation or any entity having a controlling interest in Grantee, the sale of a controlling interest in the Grantee's assets, shall take place until a written request has been filed with City requesting approval of the sale, transfer, or corporate change and such approval has been granted or deemed granted; provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and/or assets to secure an indebtedness.
 - b. Any sale, transfer, exchange or assignment of stock in Grantee, or Grantee's parent corporation or any other entity having a controlling interest in Grantee, so as to create a new controlling interest therein, shall be subject to the requirements of this Section 9.5. The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.
 - c. The Grantee shall file, in addition to all documents, forms and information required to be filed by Applicable Law.
 - d. City shall have such time as is permitted by federal law in which to review a transfer request.
 - e. The Grantee may reimburse City for all the legal, administrative, and consulting costs and fees associated with City's review of any request to transfer. Nothing

herein shall prevent Grantee from negotiating partial or complete payment of such costs and fees by the transferee.

- f. In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to subparagraph (a) or (b) of this section 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 including, but not limited to, any adequate guarantees or other security instruments.
- g. The approval of any transfer of ownership pursuant to this section shall not be deemed to waive any rights of City to subsequently enforce noncompliance issues relating to this Franchise even if such issues predated the approval, whether known or unknown to City.
- h. If at any time Grantee offers System or all of its ownership or control in said System for sale, City shall have the right to purchase System in accordance with Minn. Stat. § 238.084. If at any time Grantee received a bona fide purchase offer for System which Grantee is willing to accept, a complete copy of such offer shall promptly be given to City and City shall have the right to purchase System according to the terms of that offer. City shall exercise such right by submitting to Grantee, within sixty (60) days after City's actual receipt of the bona fide offer, notice that the City desires to purchase System pursuant to said offer. If City does not exercise such right System may be sold, but only on the terms submitted to City. If City does not exercise its right to purchase System pursuant to any offer given to City pursuant to this paragraph, and System is not sold to the buyer and on the terms set out in the offer given to City, then the right of City to purchase System shall continue, and all subsequent purchase offers shall be given to City pursuant to this paragraph. Also, the City's right to purchase pursuant to this paragraph shall survive every sale to a buyer and shall continue to be binding upon every buyer of System.
- i. Upon forfeiture, revocation or termination of this Franchise, or at the normal expiration of the Franchise term, City shall have the right to purchase System. Such right shall be exercised upon written notice to Grantee within six (6) months after the occurrence of any such event.

SECTION 10. PROTECTION OF INDIVIDUAL RIGHTS

- 1. **Discriminatory Practices Prohibited.** Grantee shall not deny Service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, sex, age, status as to public assistance, affectional preference, or disability. Grantee shall comply at all times with all other applicable federal, state, and City laws, and all executive and administrative orders relating to nondiscrimination.
- 2. **Subscriber Privacy.** Grantee shall comply with the provisions of Section 631 of the Cable Act throughout the term of this Franchise.

SECTION 11. UNAUTHORIZED CONNECTIONS AND MODIFICATIONS

1. Unauthorized Connections or Modifications Prohibited. It shall be unlawful for any firm, Person, group, company, corporation, or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any unauthorized connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System or receive Services of the System without Grantee's authorization.
2. Removal or Destruction Prohibited. It shall be unlawful for any firm, Person, group, company, or corporation to willfully interfere, tamper, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any purpose whatsoever.
3. Penalty. Any firm Person, group, company, or corporation found guilty of violating this section may be fined not less than Twenty Dollars (\$20.00) and the costs of the action no more than Five Hundred Dollars (\$500.00) and the costs of the action for each and every subsequent offense. Each continuing day of the violation shall be considered a separate occurrence.

SECTION 12. MISCELLANEOUS PROVISIONS

1. Franchise Renewal. Any renewal of this Franchise shall be performed in accordance with applicable federal, state and local laws and regulations. The term of any renewed Franchise shall be limited to a period not to exceed fifteen (15) years.
2. Work Performed by Others. All applicable obligations of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise, however, in no event shall any such subcontractor or other performing work obtain any rights to maintain and operate a System or provide Cable Service. Grantee shall provide notice to City of the name(s) and address(es) of any entity, other than Grantee, which performs substantial services pursuant to this Franchise.
3. Amendment of Franchise Ordinance. Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 7.6 or at any other time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws; provided, however, nothing herein shall restrict City's exercise of its police powers.
4. Compliance with Federal, State and Local Laws.
 - a. If any federal or state law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City shall conform to state laws and rules regarding cable communications

not later than one (1) year after they become effective, unless otherwise stated, and to conform to federal laws and regulations regarding cable as they become effective.

- b. If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and City.
5. Nonenforcement by City. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of City to enforce prompt compliance. City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.
6. Rights Cumulative. All rights and remedies given to City by this Franchise or retained by City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.
7. Grantee Acknowledgment of Validity of Franchise. Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes City has the power to make the terms and conditions contained in this Franchise.
8. Force Majeure. Neither party shall be liable for any failure of performance hereunder due to causes beyond its reasonable control including but not limited to; acts of God, fire, explosion, vandalism, storm or other similar catastrophes; any law, order, regulation, direction, action or request of the United States Government or any other government including state and local governments (except for the City) having jurisdiction over either of the parties or of any department, agency, commission, court, bureau, governments, or of any civil or military authorities; national emergencies; insurrection; riots; wars; or

strikes, lockouts or work stoppages or failure to obtain required permits, easements, authorizations or equipment when properly and timely requested.

SECTION 13. PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

1. Publication, Effective Date. This Franchise shall be published in accordance with applicable local and Minnesota law. The effective date of this Franchise shall be the date of acceptance by Grantee in accordance with the provisions of Section 13.2.
2. Acceptance.
 - a. Grantee shall accept this Franchise within thirty (30) days of its enactment by the City Council, unless the time for acceptance is extended by City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes; provided, however, this Franchise shall not be effective until all City ordinance adoption procedures are complied with and all applicable timelines have run for the adoption of a City ordinance. In the event acceptance does not take place, or should all ordinance adoption procedures and timelines not be completed, this Franchise and any and all rights granted hereunder to Grantee shall be null and void.
 - b. Upon acceptance of this Franchise, Grantee and City shall be bound by all the terms and conditions contained herein.
 - c. Grantee shall accept this Franchise in the following manner:

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

Passed and adopted this 17 day of August, 2004.

ATTEST:

By: Amy A. Vogel

Its: City Clerk

CITY OF SPRINGFIELD, MINNESOTA

By: Mark Brown

Its: Mayor

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

NEW ULM TELECOM, INC.

Date: September 02, 2004

By: Brianne Bounhoff

Its: Vice President

EXHIBIT B

GRANTEE COMMITMENT TO PEG ACCESS FACILITIES AND EQUIPMENT

1. **PUBLIC, EDUCATIONAL AND GOVERNMENT (PEG) ACCESS CHANNELS –**
Grantee shall make two (2) video Channels available exclusively for PEG use (“PEG Channels”). Initially the one (1) Channel shall be provided by Grantee for shared public, educational and governmental (“PEG”) access use in accordance with Minnesota Statutes Section 238.084. Grantee shall make the second Channel available for PEG use upon ninety (90) days advance written notice from the City. The PEG Channels shall be dedicated for PEG use for the term of the Franchise Agreement, provided that Grantee may upon written request to City, utilize any PEG Channels for commercial or non-commercial programming when they are not scheduled for PEG use. City and Grantee shall establish rules and procedures for such scheduling in accordance with Section 611 of the Cable Act (47 U.S.C. § 531).

City may not request additional Channel capacity beyond the two (2) Channels for PEG use except in accordance with applicable State laws. City shall be responsible for all programming requirements, including but not limited to scheduling, playback, training, staffing, copyright clearances, and equipment, maintenance and repair.

2. **TITLE TO PEG EQUIPMENT**
City shall retain title to all PEG equipment and facilities purchased or otherwise acquired by City.
3. **RELOCATION OF PEG CHANNELS**
Grantee shall not relocate any PEG access Channel to a different Channel number unless specifically required by Applicable Laws or unless otherwise agreed to in writing by City.
4. **DROPS TO DESIGNATED BUILDINGS**
Upon written request by the City, Grantee shall provide a two-way connection to the City Hall, Community Center and Library to facilitate the exchange of programming.

EXHIBIT B-1
SERVICE TO PUBLIC BUILDINGS

1. City Hall
2. Fire Station
3. Police Station/Ambulance
4. Public Utilities Office
5. Street Shop
6. Library
7. Community Center

TWO-WAY DROPS TO PUBLIC BUILDINGS

1. City Hall
2. Community Center
3. Library

EXHIBIT C

DESCRIPTION OF SYSTEM

1. The Cable System shall be designed, constructed, routinely inspected, and maintained to guaranty the Cable System meets or exceeds the requirements of the most current additions of the National Electrical Code (NFPA 70) and the National Electrical Safety Code (ANSI C2).
2. General Requirements. Grantee shall use equipment used in high-quality, reliable, modern Cable Systems of similar design.
3. General Description. The Cable System shall provide Subscribers with a technically advanced and reliable Cable System.