

# **CABLE TELEVISION FRANCHISE ORDINANCE**

**City of Luverne, Minnesota**

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**Prepared By:**

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## **ORDINANCE NO. 342, THIRD SERIES**

AN ORDINANCE GRANTING A FRANCHISE TO CLARITY TELECOM, LLC TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF LUVERNE, MINNESOTA; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE.

The City Council of the City of Luverne ordains.

### **STATEMENT OF INTENT AND PURPOSES**

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

### **FINDINGS**

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

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

### **SECTION 1. SHORT TITLE AND DEFINITIONS**

- 1.) Short Title. This Franchise shall be known and cited as the Clarity 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 local law, or federal or State statute, law, regulation or other final legal authority governing any of the matters addressed in this Franchise.



(b) “Basic Cable Service” means any service tier which includes the lawful retransmission of local television broadcast signals. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7)(1993).

(c) “Cable Act” means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984) (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V 1987)) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385 and the Telecommunications Act of 1996, Pub. L. No. 104-458 and as the same may, from time to time, be amended.

(d) “Cable Board” means the Cable Television Advisory Board of the City of Luverne, Minnesota, appointed by the Council.

(e) “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.

(f) “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. §§ 201-226, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541) 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 Section 653 of the Cable Act; or

(v) Any facilities of any electric utility used solely for operating its electric utility system.

(g) “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 as defined by the Federal Communications Commission.

(h) “City” means the City of Luverne, Minnesota as represented by the Council or any delegate acting within the scope of its jurisdiction.

- (i) “Complaint” means any verbal or written allegation or assertion of noncompliance with or nonperformance of the terms and conditions of this Franchise made by a Subscriber which is received by the Grantee.
- (j) “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.
- (k) “Council” means the City Council of the City of Luverne, Minnesota.
- (l) “Drop” means the cable that connects the ground block on the Subscriber’s residence to the nearest feeder cable of the System.
- (m) “Expanded Cable Service” means most highly penetrated tier of Cable Service offered by Grantee other than Basic Cable Service.
- (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 any tax, fee or assessment of any kind imposed by the City or any other Governmental Authority on a grantee or cable Subscriber, or both, solely because of their status as such. The term “Franchise Fee” does not include: (i) any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers); (ii) capital costs which are required by the Franchise to be incurred by the Grantee for PEG Access Facilities; (iii) requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for 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) “GAAP” means generally accepted accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”).
- (r) “Governmental Authority” means any court or other federal, State, county, municipal or other governmental department, commission, board, agency or instrumentality.
- (s) “Grantee” is Clarity Telecom, LLC, its agents and employees, lawful successors, transferees or assignees.
- (t) “Gross Revenues” means any and all revenue derived by the Grantee from the or in connection with the operation of the Cable System to provide Cable Service in the City. Gross Revenues shall include, by way of example but not limitation, revenues from Basic Cable Service, all Cable Service fees, premium, pay-per-view, pay television, Franchise

Fees, late fees, guides, home shopping revenue, Installation and reconnection fees, upgrade and downgrade fees, advertising revenue, converter rental fees and lockout device fees. Gross Revenue shall not include FCC fee, PEG fees, refundable deposits, bad debt, investment income nor any taxes, fees or assessments of general applicability imposed or assessed by any governmental entity. 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 Generally Accepted Accounting Principles.

(u) “Installation” means the connection of the System from feeder cable to the point of connectivity.

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

(w) “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.

(x) “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 System.

(y) “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.

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

(aa) “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.

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

(cc) “Service Interruption” means the loss of picture or sound on one (1) or more Cable Channels.

(dd) “Standard Installation” or “Installation” means any residential installation which can be completed using a Drop of one hundred fifty (150) feet or less.

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

(ff) “Street” means any street, alley, other land or waterway, dedicated or commonly used for utility purposes, including general or utility easements in which the City has the right and authority to authorize, regulate or permit the location of facilities other than those of the City. “Street” shall not include any real or personal City property that is not specifically described in the previous sentence and shall not include City buildings, fixtures and other structures or improvements, regardless of whether they are situated in the public right-of-way.

(gg) “Subscriber” means any Person who lawfully elects to subscribe to Cable Service via the System. In the case of multiple office buildings or multiple dwelling units, the “Subscriber” means the lessee, tenant or occupant.

(hh) “Wireline MVPD” means a multichannel video programming distributor that utilizes the Streets to install cable or fiber and is engaged in the business of making available for purchase, by Subscribers, multiple Channels of video programming in the City.

## **SECTION 2.**

### **GRANT OF AUTHORITY AND GENERAL PROVISIONS**

1.) Franchise Required. It shall be unlawful for any Person, unless specifically required by Applicable Laws, 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 franchise.

2.) Grant of Franchise.

(a) This Franchise is granted pursuant to the terms and conditions contained herein. The City hereby authorizes Grantee to occupy or use the City’s Streets subject to: 1) the provisions of this non-exclusive Franchise to provide Cable Service within the City; and 2) all applicable provisions of the City Code. Said Franchise shall constitute both a right and an obligation to provide Cable Services as required by the provisions of this Franchise. Nothing in this Franchise shall be construed to prohibit Grantee from: (1) providing services other than Cable Services to the extent not prohibited by Applicable Law; 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 right to regulate.

(b) The Grantee shall have the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the Streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof; and additions thereto in City, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in City of a Cable System as herein defined.

3.) Grant of Nonexclusive Authority.

(a) The Franchise granted herein shall be nonexclusive. The City specifically reserves the right to grant, at any time, such additional franchises for a Cable System as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Grantee other than as described herein. If any other Wireline MVPD enters into any agreement with the City to provide multi channel video programming or its equivalent to residents in the City, the City, upon written request of the Grantee, shall permit the Grantee to construct and/or operate its Cable System and provide multi channel video programming or its equivalent to Subscribers in the City under the same material terms as applicable to the new MVPD. Within one hundred eighty (180) days after the Grantee submits a written request to the City, the Grantee and the City shall enter into an agreement or other appropriate authorization (if necessary) containing any the identical terms and conditions as are applicable to the new Wireline MVPD.

(b) The Cable System constructed and maintained by Grantee or its agents shall not interfere with other uses of Streets. Grantee shall make use of existing poles and other facilities available to Grantee to the extent it is technically and economically feasible to do so.

(c) Grantee shall have the authority to use City Streets for the distribution of Grantee's System. The City may, in City's sole discretion, require all developers of future subdivisions to allow and accommodate the construction of the System as part of any provisions for utilities to serve such subdivisions.

(d) This Franchise complies with the Minnesota franchise standards set forth in Minnesota Statutes Section 238.084. The City and Grantee 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.

4.) Franchise Term. This Franchise shall be in effect for a period of ten (10) years from the date of acceptance by Grantee, unless renewed, revoked or terminated sooner as herein provided or extended pursuant to Section 10 herein.

5.) Previous Franchises. Upon acceptance by Grantee as required by Section 11 herein, this Franchise shall supersede and replace any Franchise or Agreement granting a Franchise to Grantee to own, operate and maintain a Cable System within City.

6.) Rules of Grantee. The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligation under this Franchise 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 Code, the rules of the FCC, the laws of the State of Minnesota, City, or any other body having lawful jurisdiction thereof.

8.) Written Notice. All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered 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 Company: Mr. J. Keith Davidson  
Clarity Telecom, LLC  
104 East Center, Suite 201  
Sikeston, Missouri 63801

9.) Drops to Public Buildings.

(b) Redistribution of the free Basic Service and Expanded Cable Service provided pursuant to this section shall be allowed. Additional Drops and/or outlets in any of the above locations will be provided by Grantee at the cost of Grantee's time and material. Alternatively, at the institution's request, said institution may add outlets at its own expense, as long as such Installation meets Grantee's technical standards. Nothing herein shall be construed as requiring Grantee to extend the System to serve additional institutions as may be designated by City except as provided above. Grantee shall have ninety (90) days, weather permitting, from the date of City Council designation of additional institution(s) to complete construction of the Drop and outlet.

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law and regulation including 47 C.F.R., Part 11 and any applicable State/County Emergency Alert System Plan. In the case of an emergency or disaster, Grantee shall, at the request of City, make its System available to the City for providing information to the public regarding the emergency or disaster. City shall have authority to test the system and if system fails to perform Grantee shall immediately make all repairs, at Grantee's sole cost, and shall retest the system to demonstrate compliance.

### **SECTION 3. MINNESOTA REQUIRED CONSTRUCTION STANDARDS**

1.) Construction Standards. If the System, or subsequent rebuilds or extensions, proposed for the Franchise area consist of fewer than one hundred (100) plant miles of cable:

- (a) Within ninety (90) days of the granting of the Franchise, the Grantee shall apply for the necessary governmental permits, licenses, certificates, and authorizations;
- (b) The energized trunk cable must be extended substantially throughout the authorized area within one (1) year after receipt of the necessary governmental permits, licenses, certificates, and authorizations and the Persons along the route of the energized cable shall have individual Drops as desired during the same period of time; and
- (c) The above-stated requirements may be waived by City only upon occurrence of acts beyond the reasonable control of Grantee or acts of God.

2.) Construction Codes and Permits.

- (a) Grantee shall obtain all necessary permits from City before commencing any construction upgrade or extension of the System, including the opening or disturbance of any Street, or private or public property within City. Grantee shall strictly adhere to all Applicable Laws and building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the System in City and give due consideration at all times to the aesthetics of the property.
- (b) The City shall have the right to inspect all construction or Installation work performed pursuant to the provisions of the Franchise and to make such tests at its own expense as it shall find necessary to ensure compliance with the terms of the Franchise and Applicable Laws.

3.) Repair of Streets and Property. Any and all Streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee's work, as approved by City in the case of Streets and other public property. If Grantee shall fail to promptly perform the restoration required herein, City shall have the right, at Grantee's sole cost, to put the Streets, public, or private property back into a condition as good as that prevailing prior to Grantee's work.

4.) Conditions on Street Use.

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

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

(c) Grantee shall have the authority to trim any trees, in accordance with all applicable utility restrictions, City Code, ordinance and easement restrictions, upon and overhanging the Streets, alleys, sidewalks or public easements of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee. City representatives shall have authority to supervise and approve all trimming of trees conducted by Grantee. Grantee will contact the owners of private easements prior to engaging in the trimming of trees or shrubs adjacent to Grantee's System. Grantee will make reasonable accommodations with and for the property owner to ensure Grantee's System and cable plant is safe and secure as well as that the property of owner's trees and shrubs are trimmed in accordance with established standards of the National Arborist Association.

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, regrading or changing the line of any Rights-of-Way or public place or the construction or reconstruction of any sewer or water system.

6.) Relocation.

(a) City Property. If, during the term of the Franchise, the City or any government entity elects or requires a third party to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any Street, public way or other public property; or to construct, maintain or repair any public improvement; or to replace, repair install, maintain, or otherwise alter any cable, wire conduit, pipe, line, pole, wire-holding structure, structure, or other facility, including a facility used for the provision of utility or other services or transportation of drainage, sewage or other liquids, Grantee shall, upon request, except as otherwise hereinafter provided, at its sole expense remove or relocate as necessary its poles, wires, cables, underground conduits, vaults, pedestals, manholes and any other facilities which it has installed.



(b) Utilities and Other Entities. If, during the term of the Franchise, another entity which holds a Franchise or any utility requests Grantee to remove or relocate such facilities to accommodate the construction, maintenance or repair of the requesting party's facilities, or their more efficient use, or to "make ready" the requesting party's facilities for use by others, or because Grantee is using a facility which the requesting party has a right or duty to remove, Grantee shall do so. The companies involved may decide among themselves who is to bear the cost of removal or relocation, provided that the City shall not be liable for such costs.

(c) Notice to Remove or Relocate. Any Person requesting Grantee to remove or relocate its facilities shall give Grantee no less than forty-five (45) days' advance written notice to Grantee advising Grantee of the date or dates removal or relocation is to be undertaken; provided, that no advance written notice shall be required in emergencies or in cases where public health and safety or property is endangered.

(d) Failure by Grantee to Remove or Relocate. If Grantee fails, neglects or refuses to remove or relocate its facilities as directed by the City; or in emergencies or where public health and safety or property is endangered, the City may do such work or cause it to be done, and the cost thereof to the City shall be paid by Grantee. If Grantee fails, neglects or refuses to remove or relocate its facilities as directed by another Franchisee or utility, that Franchisee or utility may do such work or cause it to be done, and if Grantee would have been liable for the cost of performing such work, the cost thereof to the party performing the work or having the work performed shall be paid by Grantee.

7.) Procedure for Removal of Cable. Grantee shall not remove any underground cable or conduit which requires trenching or other opening of the Streets along the extension of cable to be removed, except as hereinafter provided. Grantee may remove any underground cable from the Streets which has been installed in such a manner that it can be removed without trenching or other opening of the Streets along the extension of cable to be removed. Subject to Applicable Law, Grantee shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the Streets along the extension thereof or otherwise which is ordered to be removed by the City based upon a determination, in the sole discretion of the City, that removal is required in order to eliminate or prevent a hazardous condition. Underground cable and conduit in the Streets which is not removed shall be deemed abandoned and title thereto shall be vested in the City.

8.) Movement of Buildings. Grantee shall, upon request by any Person holding a building moving permit, Franchise or other approval issued by the City, temporarily remove, raise or lower its wire to permit the movement of buildings. The expense of such removal, raising or lowering shall be paid by the Person requesting same, and Grantee shall be authorized to require such payment in advance. The City shall require all building movers to provide not less than fifteen (15) days' notice to the Grantee to arrange for such temporary wire changes.

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

10.) Erection, Removal and Joint Use of Poles. No poles, conduits, or other wire-holding structures shall be erected or installed by the Grantee without prior approval of City with regard to location, height, type and other pertinent aspects.

#### **SECTION 4. DESIGN PROVISIONS**

1.) Minimum Channel Capacity.

(a) Grantee shall provide a System utilizing 750 MHz equipment which is capable of delivering at least eighty (80) Channels of programming. Maintenance of the System shall occur as described in Exhibit B attached hereto.

(b) The System will utilize a hybrid fiber-coaxial architecture. In conjunction with any upgrade/construction, Grantee shall replace any existing headend equipment with state-of-the-art standard frequency headend equipment which is technically necessary to meet FCC technical standards.

(c) Grantee shall operate and maintain a System capable of providing non-video services such as high-speed data transmission, internet access, and other programming services.

(d) All programming decisions remain the sole discretion of Grantee provided that Grantee notifies City and Subscribers in writing thirty (30) days prior to any Channel additions, deletions, or realignments. Grantee shall comply with federal law regarding notice to City and Subscribers prior to any Channel additions, deletions, or realignments, and further subject to Grantee's signal carriage obligations pursuant to 47 U.S.C. §§ 531-536, and subject to City's rights pursuant to 47 U.S.C. § 545. Grantee shall conduct programming surveys from time to time to obtain input on programming decisions from Subscribers.

(e) Grantee shall maintain a Twin City based news, weather and information broadcast channel on its Channel lineup available to Subscribers in the City unless prohibited by Applicable Law.

2.) Operation and Maintenance of System. The Grantee shall render effective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruption, to the extent feasible, shall be preceded by notice in accordance with Section 2.8 herein and shall occur during periods of minimum use of the System.

3.) 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 Communications Systems pursuant to the FCC's rules and regulations and found in Title 47, Section 76.601 to 76.617, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference.

4.) Special Testing. City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints pertaining to such

location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. The City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing. 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 selected by City. In the event that special testing is required by City to determine the source of technical difficulties, the cost of said testing shall be borne by the Grantee if the testing reveals the source of the technical difficulty to be within Grantee's reasonable control. If the testing reveals the difficulties to be caused by factors which are beyond Grantee's reasonable control then the cost of said test shall be borne by City.

5.) FCC Reports. The results of tests required by the FCC must be filed within ten (10) days of the conduct of the tests with the City.

6.) Nonvoice Return Capability. Grantee is required to use cable having the technical capacity for nonvoice return communications.

7.) Lockout Device. Upon the request of a Subscriber, Grantee shall provide by sale or lease a Lockout Device.

8.) Right of Inspection. Nothing herein shall prevent City's right to inspect all construction, reconstruction or installation work performed by Grantee pursuant to all applicable provisions of the City Code.

## **SECTION 5. SERVICE PROVISIONS**

1.) Regulation of Service Rates.

(a) The City may regulate rates for the provision of Cable Service, equipment, or any other communications service provided over the System to the extent not inconsistent with Applicable Law(s). In exercising its jurisdiction to regulate any such rates, City will adhere to regulations adopted by the FCC at 47 C.F.R., 76.900 et seq., as they may be amended from time to time.

(b) A list of Grantee's current Subscriber rates and charges shall be maintained on file with City and shall be available for public inspection. Grantee shall give City and Subscribers written notice of any change in a rate or charge no less than thirty (30) days prior to the effective date of the change.

2.) Leased Channel Service. Grantee shall offer leased channel service on reasonable terms and conditions and in accordance with Applicable Laws.

- 3.) Sales Procedures. Grantee shall not exercise deceptive sales procedures when marketing its Cable Services within City. Grantee shall have the right to market its Cable Services door-to-door during reasonable hours consistent with local ordinances and regulation.
- 4.) Consumer Protection and Customer Service Standards. Grantee shall maintain a convenient local customer service or bill payment location for receiving Subscriber payments. Grantee shall also maintain or arrange for a location where equipment can be dropped off or exchanged as is necessary or, in the alternative, establish a system for having Subscriber equipment picked up at the Subscriber residence free-of-charge. Grantee shall also provide the necessary facilities, equipment and personnel to comply with the consumer protection standards attached hereto as Exhibit C.

## SECTION 6. PUBLIC ACCESS PROVISIONS

- 1.) Public, Educational and Government Access.
- (a) Grantee shall provide two (2) Channels for PEG access use. One (1) Channel shall be activated immediately and an additional PEG Channel shall be activated upon ninety (90) days prior written notice from City to Grantee. Grantee shall have the right to use the second Channel until such time as City provides ninety (90) days' notice of its intent to program same. All residential Subscribers who receive all or any part of the total services offered on the System shall be eligible to receive the PEG Channels at no additional charge. Nothing herein shall be construed to diminish the City's rights pursuant to Minn. Stat. § 238.084, incorporated herein by reference.
- (b) Upon thirty (30) days' notice from the City and, within twelve (12) months of the Effective Date of this Franchise, Grantee shall have no further obligation for the playback of PEG programming. All existing PEG equipment shall transfer to the City once the City begins playback of PEG programming, no later than Twelve (12) months from the Effective Date of this Franchise.
- (c) Grantee will deliver PEG channels to Subscribers at equivalent visual and audio quality and equivalent functionality as Grantee delivers the primary signal of local television broadcast stations on its Cable System. Grantee shall carry all components of the standard definition ("SD") or high definition ("HD") PEG access signals provided by the City, including but not limited to, closed captioning, multichannel television sound, channel recording or DVR capability, last channel capability, virtual linear channel accessibility, active format description and other elements associated with the programming. Grantee shall not be required to carry a PEG Channel in a higher quality format than that of the signal delivered to Grantee, but Grantee shall distribute the access channel without degradation.
- (d) In the event the City and Grantee mutually agree to the relocation of the PEG Channels from their present Channel locations, the City and Grantee agree that the PEG Channels will be located reasonably close in proximity to other broadcast Channels. The Grantee agrees that PEG Channels located immediately below Channel No. 1 are not considered in reasonably close proximity. Grantee agrees not to encrypt the PEG Channels

any differently than other commercial Channels available on the Cable System. In conjunction with any occurrence of PEG Channel(s) relocation, Grantee shall provide a minimum of Five Thousand and No/100 (\$5,000) of in-kind air time on advertiser supported Channels (e.g. USA, TNT, TBS, Discovery Channel, or other comparable Channels) for the purpose of airing City's (or City's designee's) pre-produced thirty (30) second announcement explaining the change in location.

(e) In addition to the foregoing, PEG Channels may be used for transmission of non-video signals in compliance with federal law. This may include downstream transmission of data using a protocol such as TCP/IP or current industry standards. Should Grantee develop the capability to provide bi-directional data transmission, spectrum capacity shall be sufficient to allow Subscribers to transmit data to PEG facilities.

(f) Grantee agrees that if it utilizes a visual interface under its control on its Cable System for all Channels, the PEG Channels shall be treated in a non-discriminatory fashion consistent with Applicable Law so that Subscribers will have ready access to PEG Channels. This shall not be construed to require Grantee to pay any third party fees that may result from this obligation.

2.) Analog, Digital and HD PEG Carriage Requirement. Grantee shall provide the Access Channels on the Basic Cable Service tier in accordance with the Cable Act, Section 611, and as further set forth in this Section 6. At such time as Grantee no longer offers Basic Cable Service in an analog format, Grantee shall carry all PEG Channels in a standard digital format in Grantee's Basic Cable Service package, unless the parties agree to an earlier conversion date. The City shall have the right to require that Grantee carry one (1) of the City's PEG channels in both SD and HD format consistent with the manner and tier placement in which Grantee delivers the primary signal of the network affiliates of ABC, NBC, CBS and Fox on its cable system. The City shall have the sole discretion to determine which of its channels migrate to HD without the addition of mandates or content restrictions imposed by Grantee. HD resolution will be equivalent to the resolution used in Grantee's HD tier. Grantee will continue to carry the City's PEG channels in SD format in addition to HD format (simulcast) as long as there are SD channels in Grantee's basic channel lineup.

(a) The City acknowledges that receipt of an HD format Access Channel may require Subscribers to buy or lease special equipment, or pay additional HD charges applicable to all HD services.

(b) Upon ninety (90) days written notice to Grantee, the City may provide PEG Channels in only HD format to the demarcation point to provide the signal to Grantee, and as such the City will no longer provide the PEG Access Channels in a standard definition digital format. Grantee shall provide all necessary transmission equipment from the demarcation point and throughout Grantee's distribution system, in order to deliver the PEG Channels. PEG Channel signals delivered in HD format to Grantee shall not require Grantee to deliver such HD signals to Subscribers except as set forth herein and shall not be required to be carried on the Basic Cable Service tier or on a dual carriage basis.

3.) Noncommercial Use of PEG. Permitted noncommercial uses of the PEG Channels shall include by way of example and not limitation: (1) the identification of financial supporters similar to what is provided on public broadcasting stations; or (2) the solicitation of financial support for the provision of PEG programming by the City or third party users for charitable, educational or governmental purposes; or (3) programming offered by accredited, non-profit, educational institutions which may offer telecourses over a PEG Channel.

4.) PEG Channels on Basic Service. All PEG Channels shall be provided as part of Basic Service and all PEG Channels will have the same bandwidth as Basic Service Channels. All PEG Channels may be delivered by City to Grantee in either analog, standard digital format or HD format. Any and all costs associated with any modification of the PEG Channels or signals after the PEG Channels/signals leave the City's playback facility, or any designated playback center authorized by the City, shall be provided free of charge to the City and its designees and shall be borne entirely by Grantee. Grantee shall not cause any programming to override PEG programming on any PEG Channel, except by oral or written permission from the City, with the exception of emergency alert system signals.

5.) Charges for Use. Channel time and playback of prerecorded programming on the specially designated access Channel must be provided without charge to the general public, except that personnel, equipment and production costs may be assessed for live studio presentations exceeding five (5) minutes in length. Charges for production costs must be consistent with the goal of affording the public a low-cost means of television access.

6.) Access Rules.

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

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

7.) Dedicated Fiber Return Lines for PEG. Grantee shall provide and maintain, free of charge, throughout the life of this Franchise all existing fiber return lines and other return lines and associated equipment that are in place as of the effective date of this Franchise and any additional return lines listed below in order to enable the distribution of PEG Access programming to Grantee's Subscribers. The City shall ensure PEG Channels and signals leaving the playback facilities are in compliance with applicable FCC technical standards. Grantee shall construct, repair and maintain over the term of the Franchise all necessary technical equipment, fiber and related infrastructure to provide high quality twenty-four (24) hours per day fiber return feeds for each PEG Channel from the following designated access sites to Grantee's Cable System headend:

(a) City Office Building; and

- (b) Luverne High School.

At such time that the City determines that it desires the capacity to allow Subscribers in the City to receive PEG programming (video and character generated) which may originate from schools, City facilities and/or other government facilities (other than those indicated above); or at such time that the City determines that it wants to establish or change a location from which PEG programming is originated; or in the event the City wants to upgrade the connection to Grantee from an existing signal point of origination, the City will give Grantee written notice detailing the point of origination and the capability sought by the City. Grantee agrees to submit a cost estimate to implement the City's plan within a reasonable period of time. The cost estimate will be on a time and materials basis with no additional markup. After an agreement to reimburse Grantee for its out of pocket time and material costs, Grantee will implement any necessary Cable System changes within a reasonable period of time.

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

9.) Access Operating Support.

(a) Grantee shall collect on behalf of City a per Subscriber fee initially set at ninety-five cents (95¢) per month, solely to fund PEG Access related capital expenditures (hereinafter "PEG Fee"). The PEG Fee shall be paid on the same schedule as the Franchise Fee set forth in Section 7.1(b) of this Franchise. The PEG Fee shall be automatically increased every two (2) years on or about the effective date of this Franchise based on the increase in the Minneapolis/St. Paul Consumer Price Index for all consumers compounded annually or three percent (3%) each year, whichever is higher. Grantee shall not be required to remit the PEG Fee until such time as the City requires the same PEG Fee to be paid by the competitive cable operator serving Subscribers in the City. In no event shall Grantee be required to remit a PEG Fee at a higher per Subscriber level than the competitive cable operator.

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

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

(d) Any PEG Access capital 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, whichever is greater.

(e) Upon acceptance of this Franchise, Grantee shall pay the City a one-time Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) capital equipment grant ("Grant"). Grantee retains all legal authority it may possess to recover the Grant from Subscribers in any manner permitted by Applicable Laws.

10.) Technical Quality.

(a) Grantee shall maintain its Cable System in accordance with FCC Technical Standards so that PEG Channels and return lines are at the same level of technical quality and reliability as other commercial signals carried by Grantee, so long as the signal comes to Grantee at that level of quality. There shall be no significant deterioration in signal from the point of origination upstream to the point of reception downstream on the Cable System. All processing equipment used by Grantee for processing PEG signals will be of similar quality to the processing equipment used for other commercial Channels.

(b) Within twenty-four (24) hours of a written request from City to the Grantee identifying a technical problem and requesting assistance, Grantee will provide technical assistance or 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. If the problem persists and there is a dispute about the cause, then the parties shall meet with engineering representation from Grantee and the City in order to determine the course of action to remedy the problem.

11.) Change in Technology. In the event Grantee makes any change in the Cable System and related equipment and facilities or in its signal delivery technology, which requires the City to obtain new equipment in order to be compatible with such change, Grantee shall, at its own expense, purchase such equipment as may be necessary.

12.) Relocation of Grantee's Headend. In the event Grantee relocates its headend, Grantee will be responsible for replacing or restoring the existing dedicated connection at Grantee's cost so that all the functions and capacity remain available, operate reliably and satisfy all applicable technical standards without additional costs to the City.

13.) Periodic Evaluation. Upon written request from City to Grantee, Grantee and City shall meet to evaluate the effect of Section 6.7, above. Both parties agree to discuss any proposal for modification presented by the other party. Nothing herein shall presume or require consent to any such proposed modification. Modifications may only occur by mutual written consent of both parties. The notice and meeting contemplated herein shall be required to occur no more than every three (3) years after adoption of this Franchise, however, nothing shall prevent mutually agreed upon negotiations between both parties at any time.

14.) Compliance with Minnesota Statutes Chapter 238. In addition to the requirements contained in this Section 6 of this Franchise, Grantee and City shall comply with the PEG requirements mandated by Minnesota Statutes 238.084.



**SECTION 7.**  
**OPERATION AND ADMINISTRATION PROVISIONS**

1.) Franchise Fee.

(a) Grantee shall pay to City a Franchise Fee in an amount equal to five percent (5%) of its annual Gross Revenues.

(b) The payment of Franchise Fees shall be made on a quarterly basis and shall be due forty-five (45) days following the end of a given quarter. Each Franchise Fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the Franchise Fees paid during that period in a form and substance substantially equivalent to Exhibit D attached hereto.

(c) All amounts paid shall be subject to audit and recomputation by City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount.

2.) Not Franchise Fees - Taxes.

(a) Grantee acknowledges and agrees that the Franchise Fees payable by Grantee to City pursuant to this section shall take precedence over all other material provisions of the Franchise and shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability and other fees and charges which do not fall within the definition of a Franchise Fee under 47 U.S.C. § 542.

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

3.) Reports to be Filed with City.

(a) In addition to all reports required pursuant to this Franchise, Grantee shall prepare and furnish to City, at the times and in the form prescribed, such reports with respect to the operations, affairs, transactions or property, as they relate to the System, which Grantee and City may agree upon.

**SECTION 8.**  
**GENERAL FINANCIAL AND INSURANCE PROVISIONS**

1.) Security Fund.

(a) At the time of acceptance of this Franchise, Grantee shall deposit into a bank account in the name of City the sum of Seven Thousand Five Hundred and No/100 Dollars

(\$7,500.00). Grantee shall maintain said security fund throughout the term of this Franchise and until such time as Grantee has liquidated all of its obligations with City. Interest accrued on this deposit shall remain with the deposit as additional security.

(b) The security fund shall provide that funds will be paid to City, upon written demand of City, and after the procedures of this section have been complied with in payment for penalties charged pursuant to this section, in payment for any monies owed by Grantee pursuant to its obligations under this Franchise, or in payment for any damage incurred as a result of any acts or omissions by Grantee pursuant to this Franchise.

(c) In addition to recovery of any monies owed by Grantee to City or damages to City 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 security fund the following penalties:

(d) For failure to provide data, documents, reports or information or to cooperate with City during an application process or system review or as otherwise provided herein, the penalty shall be One Hundred Fifty and No/100 Dollars (\$150) per day for each day, or part thereof, such failure occurs or continues.

(i) For failure to comply with construction, operation or maintenance standards; 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.

(ii) For failure to provide the services Grantee has proposed; including, but not limited to, the implementation and the utilization of the access channels and the maintenance and/or replacement of the equipment and other facilities, the penalty shall be One Hundred and No/100 Dollars (\$100) per day for each day, or part thereof, such failure occurs or continues.

(iii) For Grantee's breach of any written contract or agreement with or to the City or its designee, the penalty shall be One Hundred Fifty and No/100 Dollars (\$150) per day for each day, or part thereof, such breach occurs or continues.

(iv) For failure to comply with any of the provisions of this Franchise, or other City Code related to Franchise operations for which a penalty is not otherwise specifically provided pursuant to this subparagraph (c), the penalty shall be One Hundred Fifty and No/100 Dollars (\$150) per day for each day, or part thereof, such failure occurs or continues.

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

(f) Whenever City finds that Grantee has violated one (1) or more terms, conditions or provisions of this Franchise, a written notice shall be given to Grantee, specifying with particularity the alleged violation. At any time after thirty (30) days (or such additional reasonable time which is necessary to cure the alleged violation) following local receipt of notice, provided Grantee remains in violation of one (1) or more material terms, conditions

or provisions of this Franchise, City may draw from the security fund all penalties and other monies due City from the date of the local receipt of notice.

(g) Whenever notice of an alleged violation has been received by Grantee, Grantee may, within thirty (30) days of local receipt of notice, notify City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee to City shall toll the running of the time frames for cure and the accrual of any penalties herein and shall specify with particularity the matters disputed by Grantee. City shall hear Grantee's dispute at its next regularly scheduled Council meeting or as soon thereafter as possible pursuant to this Section 8. In no event shall City delay hearing Grantee's dispute for more than ninety (90) days from receipt of Grantee's notice. Grantee shall be afforded a reasonable notice of the meeting and afforded a reasonable opportunity to participate in and be heard at the meeting. City shall supplement its decision with a written order sustaining or overruling the decision, and shall specify with particularity the factual and legal basis for its decision.

(h) Upon determination by City that no violation has taken place, City shall withdraw the notice alleging a violation.

(i) Grantee shall have the right to challenge in a court of competent jurisdiction the City's findings that Grantee has violated one (1) or more material terms, conditions or provisions of this Franchise or has failed to substantially cure such violation.

(j) If said security fund or any subsequent security fund delivered pursuant thereto expires prior to the expiration of the Franchise, it shall be renewed or replaced during the term of this Franchise to provide that it will not expire earlier than the expiration of this Franchise. The renewed or replaced security fund shall be on the same form and with a bank authorized herein and for the full amount stated in paragraph (a) of this section.

(k) If City draws upon the security fund or any subsequent security fund delivered pursuant hereto, in whole or in part, Grantee shall replace the same within fifteen (15) days and shall deliver to City a like replacement security fund for the full amount stated in paragraph (a) of this section as a substitution of the previous security fund.

(l) If any security fund is not so replaced, City may draw on said security fund for the whole amount thereof and hold the proceeds, without interest, and use the proceeds to pay costs incurred by City in performing and paying for any or all of the obligations, duties and responsibilities of Grantee under this Franchise that are not performed or paid by Grantee pursuant hereof, including attorneys' fees incurred by the City in so performing and paying.

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

## 2.) Indemnification.

(a) Grantee shall indemnify, defend and hold City, its officers, boards, commissions, agents and employees (collectively the "Indemnified Parties") harmless from and against

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

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

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

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

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

### 3.) Insurance.

(a) On the Effective Date of this Franchise, the Grantee shall file with the City, and at all times thereafter maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including contractual liability coverage, in protection of the City in its capacity as such, its officers, elected officials, boards, commissions, agents and employees. The policy or policies shall name as additional insured the City, its, officers, agents and employees. The policies of insurance shall be in the sum of not less than One Million Dollars (\$1,000,000) for personal injury or death of any one (1) Person, and Two Million Dollars (\$2,000,000) for personal injury or death of two (2) or more Persons in any one occurrence, One Million Dollars (\$1,000,000) for property damage to

any one (1) Person and One Million Dollars (\$1,000,000) for property damage resulting from any one (1) act or occurrence.

(b) The policy or policies of insurance shall be maintained by the Grantee in full force and effect during the entire term of the Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of the Grantee or for other reasons, except after thirty (30) days' advance written notice have been provided to the City.

4.) 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, and to fully indemnify the City from and against any and all claims arising out of occurrences on the work. Grantee hereby indemnifies City for any and all costs, expenses (including attorneys' fees and disbursements of counsel), damages and liabilities incurred by City as a result of any failure of either Grantee or any subcontractor to take out and maintain such insurance. 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**

1.) Franchise Non-transferable.

(a) Grantee shall not voluntarily or involuntarily, by operation of law or otherwise, sell, assign, transfer, lease, sublet or otherwise dispose of, in whole or in part, the Franchise and/or Cable System or any of the rights or privileges granted by the Franchise, without the prior written consent of the City and then only upon such terms and conditions as may be prescribed by the City with regard to the proposed transferee's legal, technical and financial qualifications, which consent shall not be unreasonably denied or delayed. Any attempt to sell, assign, transfer, lease, sublet or otherwise dispose of all or any part of the Franchise and/or Cable System or Grantee's rights therein without the prior written consent of the Council shall be null and void and shall be grounds for termination of the Franchise pursuant to Section 9.5 hereof and the applicable provisions of any Franchise.

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

equity interest by Grantee or any of its parents so as to create a new Controlling Interest in Grantee; and (vii) the entry by the Grantee into an agreement with respect to the management or operation of the Grantee, any of Grantee's parents and/or the System or the subsequent amendment thereof. The term "Controlling Interest" as used herein is not limited to majority equity ownership of the Grantee, but also includes actual working control over the Grantee, any parent of Grantee and/or the System in whatever manner exercised.

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

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

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

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

2.) City's Right to Purchase System.

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

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

3.) Abandonment or Removal of Franchise Property.

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

(b) In the event 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 Streets 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 Minn. Stat. 237.01 *et seq.*, City shall not require the removal of the Cable System. Nothing in this section shall be deemed either to grant or to preclude the provision of services other than Cable Service.

(c) If Grantee has failed to commence removal of Cable 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 Cable 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 pursuant to the provisions of 47 U.S.C. § 547 (1989).

4.) Receivership and Foreclosure.

(a) The Franchise granted hereunder shall, at the option of City, cease and terminate one hundred twenty (120) days after appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of Grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless: (1) such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise

granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all the defaults and violations under this Franchise or provided a plan for the remedy of such defaults and violations which is satisfactory to the City; and (2) such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise.

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

5.) Procedure for Enforcing Franchise.

(a) In the event the City Council finds that a material violation or breach exists and that Grantee has not cured the same in a satisfactory manner, has not diligently commenced correction of such violation or breach or has not diligently proceeded to fully remedy such violation or breach, the City Council may impose liquidated damages, assessable from the security fund or, in the event City believes that Grantee has breached or violated any material provision of this Franchise, City may act in accordance with the following procedures:

1. City may notify Grantee of the alleged violation or breach and demand that Grantee cure the same within a reasonable time, which shall not be less than ten (10) days in the case of an alleged failure of the Grantee to pay any sum or other amount due the City under this Franchise and thirty (30) days in all other cases. If Grantee fails either to cure the alleged violation or breach within the time prescribed or to commence correction of the violation or breach within the time prescribed and thereafter diligently pursue correction of such alleged violation or breach, the City shall then give written notice of not less than fourteen (14) days of a public hearing to be held before the City Council. Said notice shall specify the violations or breaches alleged to have occurred. At the public hearing, the City Council shall hear and consider relevant evidence and thereafter render findings and its decision. In the event the City Council finds that a material violation or breach exists and that Grantee has not cured the same in a satisfactory manner or has not diligently commenced to cure of such violation or breach after notice thereof from City and is not diligently proceeding to fully cure such violation or breach, the City Council may impose penalties from the security fund or may terminate this Franchise. If the City chooses to terminate this Franchise, the following additional procedure shall be followed:



2. The City shall provide Grantee with written notice of the City's intention to terminate this Franchise and specify in detail the reason or cause for the proposed termination. The City shall allow Grantee a minimum of fifteen (15) days subsequent to receipt of the notice in which to cure the default.
  3. Grantee shall be provided with an opportunity to be heard at a regular or special meeting of City prior to any final decision of City to terminate this Franchise.
  4. In the event that City determines to terminate this Franchise, the Grantee shall have an opportunity to appeal said decision in accordance with all Applicable Laws.
  5. If a valid appeal is filed, the Franchise shall remain in full force and affect while said appeal is pending, unless the term of the Franchise sooner expires.
- 6.) Reservation of Rights. City and Grantee reserve all rights that they may possess under Applicable Laws unless expressly waived herein.

#### **SECTION 10. MISCELLANEOUS PROVISIONS**

- 1.) Franchise Renewal. Any renewal of this Franchise shall be done in accordance with Applicable Laws and regulations.
- 2.) Work Performed by Others. All provisions of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise. Grantee shall provide notice to 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. 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 10.6 or at any other time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in Applicable Laws. City shall act pursuant to local law pertaining to the City Code. In the event of any direct conflict between the terms and conditions of this Franchise and the provisions of the City Code, the provisions of this Franchise shall control. Grantee expressly acknowledges and agrees that the City hereby retains all of its police powers and the City may unilaterally amend the City Code in the exercise of its police powers and Grantee shall comply with said City Code as may be amended; provided, however, that City hereby agrees to use reasonable efforts to address public health, welfare and safety needs without resorting to amending the City Code and in all cases shall not act in any manner which materially impairs the rights and/or privileges granted to Grantee pursuant to the City Code or the Franchise.
- 4.) Right of Individuals.
  - (a) Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, Channel users, or general citizens on the basis of race, color, religion,

disability, national origin, age, gender or sexual preference. Grantee shall comply at all times with all other Applicable Laws, relating to nondiscrimination.

(b) Grantee shall adhere to the applicable equal employment opportunity requirements of Applicable Laws, as now written or as amended from time to time including 47 U.S.C. Section 551, Protection of Subscriber Privacy.

(c) Neither Grantee, nor any Person, agency, or entity shall, without the Subscriber's consent, tap or arrange for the tapping, of any cable, line, signal input device, or Subscriber outlet or receiver for any purpose except routine maintenance of the System, detection of unauthorized service, polling with audience participating, or audience viewing surveys to support advertising research regarding viewers where individual viewing behavior cannot be identified.

(d) In the conduct of providing its services or in pursuit of any collateral commercial enterprise resulting therefrom, Grantee shall take reasonable steps to prevent the invasion of a Subscriber's or general citizen's right of privacy or other personal rights through the use of the System as such rights are delineated or defined by Applicable Laws. Grantee shall not, without lawful court order or other applicable valid legal authority, utilize the System's interactive two-way equipment or capability for unauthorized personal surveillance of any Subscriber or general citizen.

(e) No cable line, wire, amplifier, Converter, or other piece of equipment owned by Grantee shall be installed by Grantee in the Subscriber's premises, other than in appropriate easements, without first securing any required consent. If a Subscriber requests service, permission to install upon Subscriber's property shall be presumed. Where a property owner or his or her predecessor was granted an easement including a public utility easement or a servitude to another and the servitude by its terms contemplates a use such as Grantee's intended use, Grantee shall not be required to service the written permission of the owner for the Installation of cable television equipment.

(f) No signals of a class IV cable communications channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of a 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. The written permission must be for a limited period of time not to exceed one year which is renewable at the option of the Subscriber. No penalty may be invoked for a Subscriber's failure to provide or renew the authorization. The authorization is revocable at any time by the Subscriber without penalty of any kind. The permission must be required for each type or classification or class IV cable communications activity planned.

(i) No information or data obtained by monitoring transmission of a signal from a Subscriber terminal, including but not limited to the lists of the names and addresses of the Subscribers or lists that identify the viewing habits of Subscribers may be sold or otherwise made available to any Person other than to Grantee and its employees for internal business use, or to the Subscriber who is the subject of that

information, unless the Grantee has received specific written authorization from the Subscriber to make the data available.

(ii) Written permission from the Subscriber must not be required for the Systems conducting system-wide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing. Confidentiality of this information is subject to paragraph (i) above.

(iii) For purposes of this Section 10.4, a “class IV cable communications channel” means a signaling path provided by a System to transmit signals of any type from a Subscriber terminal to another point in the System.

5.) Compliance with Applicable Laws. If any Applicable 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.

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

(a) The City may require evaluation sessions at any time during the term of this Franchise, upon thirty (30) days written notice to Grantee, provided, however, there shall not be more than one (1) review session during each four (4) year period commencing on the effective date of this Franchise.

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

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

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

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

- (a) The City Administrator shall be responsible for administering the Franchise and monitoring the Grantee's compliance with its terms and conditions.
- (b) The Grantee shall construct, operate and maintain the System subject to the supervision of all the authorities of the City who have jurisdiction in such matters and in strict compliance with all laws, ordinances, departmental rules and regulations affecting the System, and which are not inconsistent with the provisions herein.
- (c) The Grantee recognizes and accepts that the Council has appointed a citizens' advisory cable board ("Cable Board") to assist and advise the City Administrator and Council regarding the administration of the Franchise and in monitoring the Grantee's compliance with its terms and conditions. The Cable Board shall meet at the call of its chairperson or at such other times as the Cable Board shall determine.
- (d) The Cable Board shall:
  - (i) Advise the City Council on all matters regarding the administration and enforcement of this Franchise;
  - (ii) Oversee compliance by the Grantee with the provisions of this Franchise and advise the City Council on matters which might constitute grounds for imposition of liquidated damages or revocation of the Franchise in accordance with the provisions contained herein and make recommendations regarding the same;
  - (iii) Advise the City Council on the regulation of rates in accordance with Applicable Law;
  - (iv) Hear all Complaints of Subscribers which have not been satisfied by appeal to the Grantee, and record all such Complaints, along with actions and results;
  - (v) Review any proposed change in Franchise ownership and make recommendations to the City Council regarding City approval of such transfers pursuant to Section 9.1 of this Franchise;
  - (vi) Audit all of the Grantee's records as required by this Franchise;
  - (vii) Advise and coordinate with the Grantee regarding the promotion, development, and utilization of access and local origination channels and programming;
  - (viii) Prescribe rules and procedures consistent with this Franchise under which the Grantee may use access Channel capacity for the provision of other services while access channels are not being used for access purposes;
  - (ix) Prescribe rules and procedures consistent with this Franchise under which use of the access channels for non-access purposes by the Grantee shall cease;

- (x) Study and evaluate any System upgrade and make recommendations to the City Council;
- (xi) Evaluate the need and economic feasibility of an institutional network as well as the implementation of such a system;
- (xii) Provide the Grantee with recommendations regarding programming based upon input from community groups, Subscribers, and other interested parties;
- (xiii) Study and evaluate the progress of the Grantee's efforts to interconnect the System with neighboring communities and institutions;
- (xiv) Evaluate and monitor the picture quality of signals on the System taking into consideration all applicable technical standards and propose to the Grantee ways in which the picture quality can be improved or maintained;
- (xv) Keep current and abreast of all changes in the law, technology, and service which may impact the enforcement of this Franchise and report such developments to the City Council;
- (xvi) Participate in all periodic reviews and evaluations as prescribed in this Franchise; and
- (xvii) Submit an annual report to the City Council regarding the activities of the Cable Board during the previous year and outlining future goals and long-range plans for cable communications in the City;
- (xviii) Other matters relating to cable communications as the City Council of the City from time to time delegates to the Cable Board.

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

## SECTION 11. PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

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

2.) Acceptance.

(a) Grantee shall accept this Franchise within sixty (60) days of its enactment by the City Council, unless the time for acceptance is extended by City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes. In the event acceptance

does not take place, this Franchise and any and all rights previously granted to Grantee shall be null and void.

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

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

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

(ii) With its acceptance, Grantee shall also deliver any security fund and insurance certificates required herein that have not previously been delivered.

Passed and adopted this 22<sup>nd</sup> day of September, 2015.

ATTEST:

By: 

John M. Call

Its: City Administrator

CITY OF LUVERNE, MINNESOTA

By: 

Patrick T. Baustian

Its: Mayor

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

CLARITY TELECOM, LLC

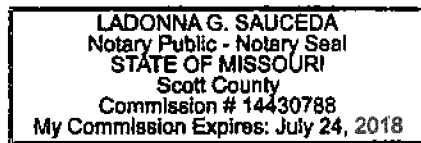
Dated: December 10, 2015

By: [Signature]  
Its: CFO

SWORN TO BEFORE ME this

10<sup>th</sup> day of December, 2015.

[Signature]  
NOTARY PUBLIC



**EXHIBIT A**  
**Cable Drops to Public Buildings**

**CITY:**

City Office Building  
Community Hospital  
Library

**COUNTY:**

County Courthouse  
Sheriff's Office

**SCHOOL:**

Community Education Building  
Luverne Elementary School  
Luverne High School - - -



**EXHIBIT B**  
**Description of System**

- 1) The Cable System shall be designed, constructed, routinely inspected, and maintained to guarantee that the Cable System meets or exceeds the requirements of the most current editions of the National Electrical Code (NFPA 70) and the National Electrical Safety Code (ANSI C2). In all matters requiring interpretation of either of these codes, the City's interpretation shall control over all other sources and interpretations.
- 2) Grantee shall use equipment used in high-quality, reliable, modern Cable Systems of similar design.
- 3) The Cable System shall provide Subscribers with a technically advanced and reliable Cable System. The System shall have at least 750 MHz of bandwidth capacity, capable of delivering approximately 80 analog channels of programming. The System will be two-way active, and it will be designed to have capability to transmit return signals upstream in the 5-40 MHz spectrum. The design will provide the benefits of proven 80 Channel electronics while positioning the System for expansion of bandwidth and Channel capacity as technology and future services develop.
- 4) The design of the System shall be based upon a "Fiber to the node" architecture that will deliver the signals by fiber optics directly to each neighborhood. Grantee's initial design includes a minimum of six (6) fibers to each node site having a neighborhood group average of approximately three hundred (300) homes. If Grantee splits nodes into smaller sizes, fewer fibers will extend to such smaller nodes. There shall be no more than seven (7) active amplifiers in a cascade from each node to the residential dwelling. The incorporation of stand-by power supplies, strategically placed throughout the system including all hubs, will further reduce the likelihood of service interruptions.
- 5) The System shall meet or exceed FCC requirements. In no event shall the System fall below the following standards:
  - a) The System shall be capable of meeting the following distortion parameters:

i)	Carrier to RMS Noise	48 dB
ii)	Carrier to Second Order	53 dB
iii)	Carrier to Cross Modulation	51 dB
iv)	Carrier to Composite Triple Beat	53 dB
  - b) The frequency response of a single Channel as measured across any 6 MHz analog Channel shall not exceed +/- 2 dB.
  - c) The frequency response of the entire passband shall not exceed  $N/10 + 2$  dB for the entire System where N is the number of amplifiers in cascade.
  - d) The System shall be designed such that at a minimum all technical specifications of this Franchise are met.
  - e) The System shall be designed such that no noticeable degradation in signal quality will appear at the Subscriber terminal.

**EXHIBIT C**  
**Consumer Protection and Customer Service Standards**

- 1) Cable System office hours and telephone availability.
  - a) 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 will 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.
  - b) 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.
  - c) Grantee shall 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.
  - d) Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.
  - e) Customer service center and bill payment locations will be open at least during Normal Business Hours and will be conveniently located.
- 2) Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:
  - a) Standard Installations will be performed within seven (7) business days after an order has been placed.
  - b) 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.
  - c) 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.)
  - d) Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
  - e) If Grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the

customer.

- 3) Communications between Grantee and Subscribers:
  - a) Refunds. Refund checks will be issued promptly, but no later than either:
    - i) The customer'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 Cable Service is terminated.
  - b) Credits. Credits for Cable Service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.
- 4) Billing:
  - a) Consistent with 47 C.F.R. § 76.1619, bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, Basic Cable Service and premium Cable Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
  - b) In case of a billing dispute, Grantee must respond to a written complaint from a Subscriber within thirty (30) days.
- 5) Subscriber Information. Grantee will 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 programming carried on the System; and
  - f) Billing and complaint procedures, including the address and telephone number of the Grantee's customer service department.

Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by Grantee, including the address of the responsible officer of the Grantee. 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 change is within the control of Grantee. In addition, Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the information required by this Section 5).

6) Notice of Rate Programming Change. In addition to the requirement of this subparagraph (6) regarding advance notification to Subscribers of any changes in rates, programming services or Channel positions, Grantee shall give thirty (30) days written notice to both Subscribers and the City before implementing any rate or Service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of Channels). When

the change involves the addition or deletion of Channels, each Channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, Grantee need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

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.

8) Refund Policy. If a Subscriber's Cable Service is interrupted or discontinued, 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.

9) Late Fees. Grantee shall comply with all applicable state and federal 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. The City reserves the right to enforce Grantee's compliance with all Applicable Laws to the maximum extent legally permissible.

10) Disputes. All Subscribers and members of the general public may direct complaints, regarding Grantee's Service or performance to the city administrator of the City or the city administrator's designee, which may be a board or Commission of the City.

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 4), 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)).

12) Failure to Resolve Complaints. Grantee shall resolve a complaint within thirty (30) days in a manner deemed reasonable by the City under the terms of the Franchise.

13) Maintain a Complaint Phone Line. Grantee shall maintain a local or toll-free telephone Subscriber complaint line, available to its Subscribers twenty-four (24) hours per day, seven (7) days a week.

14) 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), 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 contact information for Grantee's corporate customer service department as provided

in Grantee's Privacy Policy.

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

**EXHIBIT D**  
**Franchise Fee Payment Worksheet**

	Month/Year	Month/Year	Month/Year	Total
Basic Cable Service				
Installation Charge				
Bulk Revenue				
Expanded Basic Service				
Pay Service				
Pay-per-view				
Guide Revenue				
Franchise Fee Revenue				
Advertising Revenue				
Home Shopping Revenue				
Digital Services				
Inside Wiring				
Other Revenue				
Equipment Rental				
Processing Fees				
Bad Debt				
TOTAL REVENUE				
Fee Calculated				