

**CITY OF NORTHFIELD**

**ORDINANCE NO. 778**

**AN ORDINANCE GRANTING A FRANCHISE TO CHARTER CABLE PARTNERS, LLC (FORMERLY MARCUS CABLE PARTNERS) d/b/a CHARTER COMMUNICATIONS, TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF NORTHFIELD, MINNESOTA, FOR THE SOLE PURPOSE OF PROVIDING CABLE SERVICE; SETTING FORTH CONDITIONS FOR THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY IN CONJUNCTION WITH THE CITY'S RIGHT-OF-WAY ORDINANCE, IF ANY; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN.**

**THE CITY COUNCIL OF THE CITY OF NORTHFIELD, DAKOTA & RICE COUNTIES, MINNESOTA, DOES ORDAIN:**

**ARTICLE 1.  
STATEMENT OF INTENT AND PURPOSE, AUTHORITY AND  
FINDINGS**

**1.1) Statement of Intent and Purpose**

- (a) The City of Northfield intends, by adoption of this Franchise, to renew an existing franchise that will foster competition in cable services consistent with the intent and goals of the Communications Act of 1934, as amended, and to ensure that the needs and interests of the City will be benefited through Cable Service competition.
- (b) The City, pursuant to applicable federal and State law, is authorized to grant one or more nonexclusive Franchises to construct, operate, maintain, and reconstruct Cable Systems within the City.
- (c) The City finds that Cable Service has become an integral part of its citizens' lives, and that evolving Cable Systems have the potential to play an even more dramatic role in the future, providing great benefits and advanced capabilities to residents of the City. At the same time, the rapidly emerging role of Cable Systems as an integrated broadband communications platform necessitates a finding that the City has a legitimate and vital role to play in regulating Cable Services in a manner that ensures high quality customer service, while at the same time fostering competition to the extent permitted under law. The City further finds that the public convenience, safety, and general welfare can best be served by establishing regulatory powers that are vested in the City or the designees of the City.
- (d) In order to ensure that the City and its residents receive state-of-the-art Cable Services and capabilities as broadband technology further evolves, the

Franchise granted pursuant to this Ordinance will be subject to periodic review and modifications to keep current with changing law, technology, and services. It is the intent of this Ordinance to provide for and specify the means to attain the best possible Cable Services for the City and its residents.

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

**1.2) Findings.** In reviewing the Franchise application submitted by Grantee and information adduced during Franchise negotiations, and as a result of a public hearing, the City Council makes the following findings:

- (a) That the City, pursuant to Applicable Law, is authorized to grant one or more nonexclusive Franchises to construct, operate, maintain and reconstruct Cable Systems within City limits; and
- (b) That the development of Cable Systems has the potential of having great benefit and impact upon the residents of the City. Because of the complex and rapidly changing technology associated with cable television, the City Council further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in City or such Persons as City shall designate; and
- (c) That Grantee has applied to the City for a nonexclusive franchise to construct, install, maintain and operate a Cable System in City; and
- (d) That the construction, installation, maintenance and operation of such a System involves the occupation of and placement of private commercial facilities in the Rights-of-Way within the City; and
- (e) That the City has considered the financial, technical and legal qualifications of Grantee, and has determined that Grantee's plans for constructing, operating and maintaining its Cable System are adequate, in a full public proceeding affording all parties due process and a reasonable opportunity to be heard; and
- (f) That City has relied on Grantee's representations regarding its financial, technical and legal qualifications and its plans for constructing, operating, and maintaining its Cable System, and has considered the information that Grantee has presented to it; and
- (g) That based on Grantee's representations and information, and in response to its request for a cable television franchise, the City Council has determined that the grant of a nonexclusive franchise on the terms and conditions herein and subject to Applicable Law, is consistent with the public interest; and

- (h) That to the knowledge and belief of the City, this Franchise and the procedure used in formulating and awarding the same in all ways complies with the Franchise standards of federal, State and local law; and
- (i) That this Franchise granted to Grantee is nonexclusive; and
- (j) That the City and Grantee have reached agreement on the terms and conditions set forth herein.

**ARTICLE 2.  
TITLE OF ORDINANCE**

This Ordinance shall be known and may be cited as the “Northfield Cable Franchise Ordinance,” and it shall become part of the ordinances and Legislative Code of the City of Northfield, Minnesota.

**ARTICLE 3.  
DEFINITIONS**

For the purpose of this ordinance, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. References to officials, departments, agencies or other entities, whether defined or not, shall be read to refer to the same, or their authorized successors. References to statutory provisions shall refer to those provisions as they may be renumbered from time to time. References to Applicable Law or to any part of the Code of Ordinances of the City of Northfield refer to the same as they may be amended from time to time during the term of the Franchise. Words not defined herein shall be defined as in 47 U.S.C. § 521 et seq.; if not defined there, the words herein shall be given their common and ordinary meaning.

**3.1) Access.** “Access” shall mean the availability for Noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, of the Cable System to acquire, create, receive, and distribute video Cable Services and other services and signals as permitted under Applicable Law, including, but not limited to:

- (a) **Public Access.** “Public Access” shall mean Access where community-based organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users.
- (b) **Educational Access.** “Educational Access” shall mean Access where: (i) schools are the primary providers, producers and/or users having editorial control over programming and services; or (ii) programming and service content is about or related to schools, regardless of whether schools exercise any editorial control over the programming or are the original program producer.

- (c) **Government Access.** “Government Access” shall mean Access where governmental institutions or their designees are the primary users having editorial control over programming and services.
- 3.2) Access Channel.** “Access Channel” shall mean any Channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming or services.
- 3.3) Activated.** “Activated” shall mean the status of any capacity or part of the Cable System in which any Cable Service requiring the use of that capacity or part is available without further installation of System equipment, whether hardware or software.
- 3.4) Affiliate.** “Affiliate” shall mean any Person who owns or controls, is owned or controlled by, or is under common ownership or control with the Grantee.
- 3.5) Applicable Law.** “Applicable Law” shall mean any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable to City by any governmental authority having jurisdiction over City.
- 3.6) Bad Debt.** “Bad Debt” shall mean amounts lawfully billed to a Subscriber and owed by the Subscriber for Cable Service and accrued as revenues on the books of Grantee, but not collected after all reasonable efforts have been made by Grantee to collect the charges.
- 3.7) Basic Cable Service.** “Basic Cable Service” shall mean any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7).
- 3.8) Cable Act.** “Cable Act” shall mean the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, and including regulations promulgated pursuant to such Act and as it may be amended, and any future federal laws, acts or regulations governing Cable Systems and Cable Service.
- 3.9) Cable Service.** “Cable Service” or “Service” shall mean (1) the one-way transmission to Subscribers of video programming or other programming services; and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming services.
- 3.10) Cable System or System.** “Cable System” or “System” shall mean the facility of the Grantee 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 the City, but such term does not include: (1) a facility that only serves to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any Rights-of-Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a System if such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with 47 U.S.C. § 573; or (5) any facilities of any electric utility used solely for operating its electric utility system. A reference to the System in this Franchise refers to any part of such System including, without limitation, Converters. The foregoing definition of “Cable System” shall not be deemed to circumscribe or limit the valid authority of the City to regulate or franchise the activities of any other communications system or provider of communications service to the full extent permitted by law. “Cable System” or “System” as defined herein shall not be inconsistent with the definitions set forth in Applicable Law.

**3.11) Change of Control.** “Change of Control” as used in this Agreement shall mean any change, transfer or acquisition of control of ten (10) percent or more of the equity ownership of Grantee, whether accomplished directly or indirectly through intervening subsidiaries of the transferor and/or transferee and whether by means sale, exchange, merger, consolidation, transfer or any other means or device whatever. The word “control” as used in this Section is not limited to direct equity owners, but includes de facto control or significant influence with respect to the operation of the Cable System. For purposes of this Section, “significant influence” occurs where a Person other than Grantee or a Person controlling, controlled by or under common control with Grantee exercises working or effective control of material decisions affecting the operation of the Cable System and includes without limitation management agreements conveying such decision-making to managers other than Grantee. For purposes of this Section, an initial public offering of Grantee’s common stock pursuant to a Registration Statement filed with the United States Securities and Exchange Commission on Form S-1 shall not be deemed a “Change of Control,” provided that this exception shall not apply if any one Person shall directly acquire ten percent (10%) or more of the outstanding stock of Grantee directly through such an offering.

**3.12) Channel.** “Channel” or “Cable Channel” shall mean either a 6 MHz analog portion of the electromagnetic frequency spectrum or its digital equivalent, which is used in a Cable System and which is capable of delivering a television channel as defined by the FCC.

**3.13) Class IV Cable Channel.** “Class IV Cable Channel” shall mean the signaling path provided by a Cable System to transmit signals of any type from a Subscriber terminal to another point in the System.

**3.14) City.** “City” shall mean the City of Northfield, a Minnesota municipal corporation, as it exists and as its borders may from time to time be changed. Where the

Franchise requires that an action be taken by the City, that action may be taken by any person authorized to act on the City's behalf.

- 3.15) Commercial Subscribers.** "Commercial Subscribers" shall mean any Subscribers other than Residential Subscribers.
- 3.16) Complaint.** "Complaint" shall mean any written inquiry, allegation or assertion made by a Person.
- 3.17) Converter.** "Converter" shall mean an electronic device (sometimes referred to as a receiver) which may serve as an interface between a System and a Subscriber's television monitor, and which may convert signals to a frequency acceptable to a television monitor of a Subscriber, and may by an appropriate selector, permit a Subscriber to view all Subscriber signals included in service.
- 3.18) Council.** "Council" shall mean the City Council of the City of Northfield, Minnesota.
- 3.19) CPI.** "CPI" shall mean the annual average of the Consumer Price Index for all Urban Consumers (CPI-U) for the Minneapolis-St. Paul CMSA, as published by the Bureau of Labor Statistics.
- 3.20) Demarcation Point.** "Demarcation Point" shall mean the patch panel, termination block or other termination device provided by the Grantee, located within each Public Building. In all cases the Demarcation Point will be clearly marked as such by Grantee, and will provide an identifiable interface for the end user electronics.
- 3.21) Designated Access Provider.** "Designated Access Provider" shall mean the entity or entities designated now or in the future by the City to manage or co-manage Access Channels and facilities. The City may be a Designated Access Provider.
- 3.22) Downstream.** "Downstream" shall mean carrying a transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.
- 3.23) Drop.** "Drop" shall mean the cable that connects the ground block on the Subscriber's residence or institution to the nearest feeder cable of the System.
- 3.24) Dwelling Unit.** "Dwelling Unit" shall mean any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy. This definition of Dwelling Unit shall be consistent with Minnesota Statutes Section 238.22, Subdivision 2. Buildings with more than one set of facilities for cooking shall be considered Multiple Dwelling Units unless the additional facilities are clearly accessory.
- 3.25) Easement.** "Easement" shall mean those Rights-of-Way maintained for the benefit of the public and controlled by the City, the terms, conditions or limitations of which are not inconsistent with the erection, construction or maintenance of a Cable System, its structures or equipment.

**3.26) Effective Date.** “Effective Date” shall mean the date this Franchise becomes effective, in accordance with this Franchise and the rules and procedures of the City.

**3.27) Expanded Basic Service.** “Expanded Basic Service” shall mean the Tier of optional video programming services, which is the level of Cable Service received by most Subscribers above Basic Service and does not include Premium Services or pay-per-view services.

**3.28) Fair Market Value.** “Fair Market Value” shall mean the sum of the amount a willing buyer, under no compulsion to buy, would pay to a willing seller, under no compulsion to sell, to acquire all assets of the Grantee, real and personal, but not intangible, reduced for the value of any dedication of assets of the Grantee to third parties which are not revenue producing.

**3.29) FCC.** “FCC” shall mean the Federal Communications Commission, its designee, and any legally appointed, designated or elected agent or successor.

**3.30) Franchise or Cable Franchise.** “Franchise” or “Cable Franchise” shall mean this ordinance, as may be amended from time to time, any exhibits attached hereto and made a part hereof, and the regulatory and contractual relationship established hereby.

**3.31) Franchise Fee.**

(a) The term “Franchise Fee” includes any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such;

(b) The term “Franchise Fee” does not include:

(1) 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);

(2) In the case of any Franchise in effect on October 30, 1984, any payments which are required by the Franchise to be incurred by the cable operator for public, educational, or governmental access facilities;

(3) 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

(4) Any fee imposed under Title 17.

**3.32) GAAP.** “GAAP” shall mean generally accepted accounting principles.

**3.33) Grantee.** “Grantee” shall mean Charter Cable Partners, LLC (formerly Marcus Cable Partners) d/b/a Charter Communications, and its lawful successors, transferees or assignees.

**3.34) Gross Revenues.** “Gross Revenues” shall mean any and all revenues arising from or attributable to, or in any way derived directly or indirectly by the Grantee or its Affiliates, subsidiaries, or parent, or by any other entity that is a cable operator of the System, from the operation of the Grantee’s System to provide Cable Services. Gross Revenues shall include, but shall not be limited to:

(a) Revenues from Cable Services, other service, monthly fees for programming offered on a per-channel, or per-program basis;

(b) Revenues from installation, disconnection, reconnection, and change-in-service fees; Lockout Device fees; Leased Access Channel fees; late fees, upgrade and downgrade fees, and administrative fees; revenues from fees, rentals or sales of Converters, Lock Out Devices, or other equipment; advertising revenues from advertising carried on the Cable System or in subscriber bills or any other medium; interest; revenues from program guides; Franchise Fees;

(c) Revenues to the System from home shopping, bank-at-home channels and other revenue sharing arrangements;

(d) Grantee shall market any “bundled” services to fairly reflect an appropriate and reasonable division of services among the various services offered. Revenues from the sale of such bundled services shall be apportioned for purposes of the Cable Franchise in such manner that an amount equal to the Cable Franchisee’s usual and customary charge for Cable Service alone shall be included in “Gross Revenues;” provided, however, if a Grantee discounts the cost or otherwise receives reduced revenue from the sale of such bundled service, the amount attributable to “Gross Revenues” shall be reduced on a pro rata basis equal to the percentage difference between the costs for the bundled and unbundled service components. For purposes of Franchise fee computation purposes, the discount shall be in accordance with the following example:

(1) Assume a subscriber’s charge for a given month for Cable Service alone would be \$40, for local telephone service alone would be \$30 and for long distance service alone would be \$30, for a total of \$100. In fact the three services are offered in effect at a combined rate where the subscriber receives a twenty percent (20%) discount from the rates that would apply to a service if purchased individually. The discount (here, \$20) for Franchise fee computation purposes would be applied pro rata so that for such purposes, Gross Revenues for the provision of Cable Service would be deemed to be \$32 (\$40 less 20%). The result would be the same if the subscriber received a \$20 discount only for telephone service on the condition that he or she also subscribes or



is a subscriber to cable service and/or long distance service nonbundled standard rates.

- (e) To the maximum extent permitted by Applicable Law, revenues derived from the provision by Grantee or any Affiliate thereof of Internet access, cable modems and/or other Internet-related services.

Gross Revenues shall not include: (i) to the extent consistent with GAAP, actual Bad Debt write-offs, provided, however, that all or part of any such actual Bad Debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (ii) any taxes on services furnished by the Grantee imposed by any municipality, state or other governmental unit, provided that Franchise Fees shall not be regarded as such a tax; (iii) FCC regulatory fees; (iv) Subscriber credits, adjustments or refunds; or (v) refundable Subscriber deposits.

This definition shall be deemed to include all gross receipts and revenues to the fullest extent permitted by Applicable Law.

- 3.35) Guaranty.** “Guaranty” shall mean a contract wherein the parent of Grantee, general partnership or other Persons, firms or organizations whose financial standing is used to support the commitments of Grantee will undertake to promise that the obligations, duties and liabilities may be assumed by and become the responsibility of guarantor.
- 3.36) Headend.** “Headend” shall mean any facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for broadcast signals, equipment for the Interconnection of the Cable System with adjacent Cable Systems and Interconnection of any networks which are part of the Cable System, and all other related equipment and facilities.
- 3.37) Installation.** “Installation” shall mean the connection of the System from feeder cable to the point of connection with the Subscriber Converter or other terminal equipment.
- 3.38) Interconnect or Interconnection.** “Interconnect” or “Interconnection” shall mean the linking of the Cable System with another cable system, communications system in a manner that permits the transmission and receiving of electronic and optical signals between the Cable System and other cable system, communications system.
- 3.39) Internet Service.** “Internet Service” means the direct access to the Internet provided to customers over the Cable System and shall not include Internet web design or Internet web hosting.
- 3.40) Leased Access Channel.** “Leased Access Channel” shall mean channels on the System which are designated or dedicated for use by a Person unaffiliated with the Grantee pursuant to 47 U.S.C. § 532.

- 3.41) Local.** “Local” shall mean within the City of Northfield, Minnesota.
- 3.42) Lockout Device.** “Lockout Device” shall mean an optional mechanical or electrical accessory to a Subscriber’s terminal, which inhibits the viewing of a certain program, certain channel, or certain channels provided by way of the Cable System.
- 3.43) Make-Ready.** “Make-ready” shall mean the rearrangement of existing wires on utility poles and other work performed by telephone and electric utility companies of the Grantee to allow for the addition of cable plant on such poles, including the replacement of wire and holding structures.
- 3.44) Node.** “Node” shall mean the transition point between optical light transmission (fiber- optic cable) and the RF transmission (coaxial cable) of video and data signals being delivered to and received from the Subscriber’s home, and all necessary equipment related to such transition point.
- 3.45) Noncommercial.** “Noncommercial” shall mean, in the context of PEG channels, that particular products and services are not promoted or sold. This term shall not be interpreted to prohibit a PEG channel operator or programmer from soliciting and receiving financial support to produce and transmit video programming on a PEG channel, or from acknowledging a contribution. An acknowledgement shall not be in the form of an advertisement of goods and service.
- 3.46) Normal Business Hours.** “Normal Business Hours” shall mean those hours during which most similar businesses in City are open to serve customers. In all cases, “Normal Business Hours” shall include some evening hours at least one night per week and some weekend hours.
- 3.47) Normal Operating Conditions.** “Normal Operating Conditions” shall mean those service conditions that are within the control of the Grantee. Conditions that 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, maintenance, or upgrade of the System. Conditions that 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.
- 3.48) Other Programming Service.** “Other Programming Service” shall mean information that Grantee makes available to all Subscribers generally.
- 3.49) PEG.** “PEG” shall mean public, educational, and governmental.
- 3.50) Person.** “Person” shall mean any individual, partnership, association, joint stock corporation, joint venture, domestic or foreign corporation, stock or non-stock corporation, limited liability company, professional limited liability corporation, or other organization of any kind, or any lawful successor or transferee thereof, but such term does not include the City.

- 3.51) Public Property.** “Public property” shall mean any property owned by the City other than a street or sidewalk.
- 3.52) Resident.** “Resident” shall mean any Person residing in the City as otherwise defined by Applicable Law.
- 3.53) Residential Subscriber.** “Residential Subscriber” shall mean any Person who receives Cable Service delivered to Dwelling Units or Multiple Dwelling Units.
- 3.54) Right-of-Way or Rights-of-Way.** “Right-of-Way” or “Rights-of-Way” shall mean the surface, air space above the surface and the area below the surface of any public street, highway, lane, path, alley, sidewalk, avenue, boulevard, drive, court, concourse, bridge, tunnel, park, parkway, skyway, waterway, dock, bulkhead, wharf, pier, easement or similar property or waters within the City owned by or under control of the City, or dedicated for general public use by the City, including, but not limited to, any riparian right, which, consistent with the purposes for which it was created, obtained or dedicated, may be used for the purpose of installing, operating and maintaining a System. No reference herein to a “Right-of-Way” shall be deemed to be a representation or guarantee by the City that its interest or other right to control or use such property is sufficient to permit its use for the purpose of installing, operating and maintaining the System.
- 3.55) Right-of-Way Ordinance.** “Rights of Way Ordinance” shall mean any ordinance of the City codifying requirements regarding regulation, management and use of Rights-of-Way in the City, including registration, fees, and permitting requirements.
- 3.56) Service/Franchise Area.** “Service/Franchise Area” shall mean the entire geographic area within the City as it is now constituted or may in the future be constituted.
- 3.57) Service Interruption.** “Service Interruption” shall mean the loss of picture or sound on one or more Channels on the System.
- 3.58) Sidewalk.** “Sidewalk” shall mean that portion of a highway, other than the roadway, set apart by curbs, barriers, markings or other delineation for pedestrian travel, including parkways, not on private lands.
- 3.59) Standard Installation.** “Standard Installation” shall mean any residential Installation that can be completed using a Drop of 200 feet or less.
- 3.60) State.** “State” shall mean the State of Minnesota, its agencies and departments.
- 3.61) Subscriber.** “Subscriber” shall mean any Person who lawfully receives service via the System. In the case of multiple office buildings or Multiple Dwelling Units, the term “Subscriber” means the lessee, tenant or occupant.
- 3.62) Subscriber Network.** “Subscriber Network” shall mean that portion of the Cable System used primarily by Grantee in the transmission of Cable Services to Residential Subscribers.

- 3.63) Tier.** “Tier” shall mean a group of Channels for which a single periodic subscription fee is charged.
- 3.64) Two-Way.** “Two-Way” shall mean that the Cable System is capable of providing both Upstream and Downstream transmissions.
- 3.65) Upstream.** “Upstream” shall mean carrying a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.
- 3.66) User.** “User” shall mean any individual, institution, organization, or business that purchases any portion of the Grantee’s bandwidth for delivery of programming or services or for receipt of programming or services, or which is entitled to use any portion of the bandwidth at no charge.
- 3.67) Video Programming.** “Video Programming” shall mean programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

## **ARTICLE 4. GRANT OF FRANCHISE**

### **4.1) Grant of Authority and General Provisions.**

- (a) **Grant of Franchise.** This Franchise is granted pursuant to the terms and conditions contained herein.
- (b) **Franchise Required.** It shall be unlawful for any person to construct, operate or maintain a system or provide service in the City unless such person shall first obtain and hold a valid franchise.
- (c) **Grant of Nonexclusive Authority.**
- (1) The Grantee shall have the right and privilege pursuant to this Franchise, subject to the requirements of any applicable ordinance, rule or procedure, to construct, erect, maintain, and operate a cable system in, upon, along, across, above, over and under the Rights-of-Way in the City and shall have the right and privilege to provide Cable Service. The system constructed and maintained by Grantee or its agents shall not interfere with other uses of the Rights-of-Way. Grantee shall make use of existing poles and other above and below ground facilities available to Grantee to the extent it is technically and economically feasible to do so.
- (2) Notwithstanding the above grant to use Rights-of-Way, use of such Rights-of-Way shall not be inconsistent with the terms and conditions by which such Rights-of-Way were dedicated and with all legal requirements related to the use of such Rights-of-Way, including the terms and conditions of any applicable Rights-of-Way ordinance. This provision in no way limits Grantee’s rights pursuant to Minn. Stat. § 238.35.

- (3) This Franchise shall be nonexclusive. Additional cable franchises granted by the City shall be granted the substantially similar terms and conditions.
- (d) **Lease or Assignment Prohibited.** No person may lease Grantee's system for the purpose of providing Cable Service until and unless such Person shall have first obtained and shall currently hold a valid franchise.
- (e) **Previous Franchises.** Upon acceptance by Grantee, as required by Section 13 herein, this Franchise shall supersede and replace the previous ordinance granting a Franchise to Grantee.
- (f) **Compliance with Applicable Laws, Resolutions and Ordinances.** The Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power, statutory rights, local ordinance-making authority and eminent domain rights of the City. This Franchise shall comply with Minnesota franchise standards contained in Minn. Stat. § 238.01 et seq.
- (g) **Territorial Area Involved.** This Franchise is granted for the corporate boundaries of the City, as it exists from time to time. In the event of annexation by City, or as development occurs, any new territory shall become part of the territory for which this Franchise is granted, provided, however, that Grantee shall not be required to extend service beyond its present system boundaries unless there is a minimum of thirty (30) homes per cable mile. Grantee shall extend service to any other areas or persons requesting service at a cost equal to the construction costs, including material, labor and any necessary easements, per mile multiplied by a fraction whose numerator equals the actual number of homes per mile, and whose denominator equals thirty (30) homes. Those persons wishing to become subscribers and requesting service will bear the remainder of the construction costs on a pro rata basis. The Grantee may require that the payment of these costs by such potential subscribers be made in advance. Access to cable service shall not be denied to any group of potential residential cable subscribers because of the income of the residents of the area in which such group resides. Grantee shall be given a reasonable period of time to construct and activate cable plant to service annexed or newly developed areas but in no event to exceed twelve (12) months from notice thereof by City to Grantee.
- (h) **Written Notice.** All notices, reports or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of Grantee or City's administrator of this Franchise or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to City: City Administrator

City Hall  
801 Washington Street  
Northfield, MN 55057

With copies to: Michael R. Bradley, Esq.  
Creighton Bradley & Guzzetta, LLC  
5402 Parkdale Drive, Suite 102  
Minneapolis, MN 55416

If to Grantee: Charter Communications  
440 Science Drive, Suite 302  
Madison, WI 53711

With Copies to: Operations Manager  
16900 Cedar Avenue South  
Rosemount, MN 55068

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

- (i) **Drops to Public Buildings.** Grantee shall provide, free of charge, installation of one (1) two-way activated cable drop which does not include upstream transmission equipment, one (1) cable outlet, and monthly Basic Cable Service without charge to the institutions identified in Exhibit A attached and such other public or educational institutions within the cable service territory which the City may designate and which are within 200 feet of the system.
- (j) **Redistribution of Service.** Redistribution of the free Basic Cable Service provided pursuant to this section shall be allowed with the Grantee's prior written consent or for educational purposes. At the City or institution's request, said institution may add outlets at its own expense, as long as such Installation meets applicable FCC technical standards. Drops to subsequently designated institutions in excess of 200 feet shall be provided by the Grantee at the cost of Grantee's time and materials less the cost of the 200 feet closest to the building. Grantee shall have one (1) year from the date of the City designation of additional institution(s) to complete construction of the drop and outlet.

**4.2) Franchise Term.** This Franchise shall be in effect for a period of fifteen (15) years, such term commencing on the Effective Date specified herein, unless sooner renewed, extended, revoked or terminated as herein provided.

**4.3) Right-of-Way Ordinance.** The Grantee shall comply with the terms of any City ordinance or regulation of general applicability which addresses usage of the Rights-of-Way within the City which may have the effect of superseding, modifying or amending the terms herein.

**4.4) 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 obligations under this Franchise and Applicable Law, and to assure uninterrupted service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with provisions hereto, the rules of the FCC, the laws of the State of Minnesota, the City, or any other body having lawful jurisdiction.

**ARTICLE 5.  
GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION**

**5.1) Construction Standards.**

**(a) Conditions of Right-of-Way Use.**

- (1) Nothing in this Franchise shall be construed to prevent the City from adopting and enforcing requirements for the usage of Rights-of-Way or from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Right-of-Way; constructing, laying down, repairing, maintaining or relocating water mains; or constructing, maintaining, relocating or repairing any sidewalk or other public work.
- (2) All system transmission and distribution structures, lines and equipment erected by the Grantee shall be located so as not to obstruct or interfere with the use of right-of-way and to cause minimum interference with the rights of property owners who abut any of said Right-of-Way and not to interfere with existing public utility installations. The Grantee shall furnish to and file with the City the maps, plats and permanent records of the location and character of all facilities constructed, including underground facilities, and Grantee shall file with the City updates of such maps, plats and permanent records annually if changes have been made in the system.
- (3) The Grantee shall not place poles, conduits or other fixtures of system above or below ground where the same will interfere with any gas, electric, telephone, water or other utility fixtures and all such poles, conduits or other fixtures placed in any Right-of-Way shall be so placed as to comply with all requirements of the City. Grantee shall utilize existing poles, conduits or other wire-holding structures of existing utilities to the extent technically and economically feasible. City shall have no obligation to assist Grantee in obtaining the consent for use of existing facilities from any utility company.

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

(b) **Undergrounding of Cable.** Grantee must place newly constructed facilities underground in areas of the City where all other utility lines are placed underground. Amplifier boxes and pedestal mounted terminal boxes may be placed above ground if existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe, all as may be approved by the City in accordance with applicable requirements.

(c) **Cable Drop Burial.** Grantee shall bury all Drops to subscribers' dwellings in a reasonable time period, which shall not exceed twenty-five (25) business days, subject to weather conditions and the completion of required utility locates. In the event the ground is frozen or otherwise unsuitable to permit immediate burial, Grantee shall be permitted to delay such burial until the ground becomes suitable for burial which in no event shall be later than June 30th.

(d) **Erection, Removal and Joint Use of Poles.** No poles, conduits, amplifier boxes, pedestal mounted terminal boxes, similar structures, or other wire-holding structures shall be erected or installed by the Grantee without prior approval of the City with regard to location, height, type and other pertinent aspects.

(e) **Safety Requirements.**

(1) The Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

(2) The Grantee shall install and maintain its system and other equipment in accordance with all federal, State and local laws and regulations, and the requirements of the National Electric Safety Code and in such manner that they will not interfere with private radio, police and fire communications or any installations of the City or of any public utility serving the City.

(3) All system structures and lines, equipment and connections in, over, under and upon the Rights-of-Way, wherever situated or located, shall at all times be kept and maintained in good condition, order and repair so that the same shall not menace or endanger the life or property of the City or any person.

(f) **Emergency Use of Facilities.** In the case of any emergency or disaster, the Grantee shall, upon the request of the City, make available its facilities to City during the period of emergency or disaster.



- 5.2) State and Local Law.** The Grantee shall strictly adhere to all State and local laws, regulations and policies adopted by the City applicable to the location, construction, installation, operation or maintenance of the system in the City. The City has the right to supervise all construction or Installation work performed in the Rights-of-Way as it shall find necessary to ensure compliance with the terms of this Franchise and Applicable Law. Failure to obtain permits or to comply with permit requirements shall be grounds for revocation of this Franchise, or any lesser sanctions provided herein or in any other Applicable Law, code or regulation.
- 5.3) General Standard of Care.** Grantee shall erect and maintain all parts of the System in good condition and in accordance with industry standards, good engineering practices and manufacturer specifications throughout the entire Franchise term. All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices.
- 5.4) Permits Required for Construction.** Prior to doing any work in the Right-of-Way or other public property, Grantee shall apply for, and obtain, appropriate permits from the City. As part of the permitting process, the City may impose such conditions and regulations as are necessary for the purpose of protecting any structures in such Rights-of-Way, proper restoration of such Rights-of-Way and structures, the protection of the public, and the continuity of pedestrian and vehicular traffic. Such conditions may also include the provision of a construction schedule and maps showing the location of the facilities to be installed in the Right-of-Way. Grantee shall pay all applicable fees for the requisite City permits received by Grantee.
- 5.5) Emergency Permits.** In the event that emergency repairs are necessary, Grantee shall immediately notify the City of the need for such repairs. Grantee may initiate such emergency repairs without required permits, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.
- 5.6) GIS Mapping.** Grantee shall cooperate with the City regarding geographic information mapping systems for users of the Rights-of-Way.
- 5.7) Warning Devices.** The Grantee shall install and maintain such devices as will apprise or warn Persons using the Rights-of-Way of the existence of work being performed on the System in Rights-of-Way.
- 5.8) Prewiring.** Any ordinance or resolution of the City which requires prewiring of subdivisions or other developments for electrical and telephone service shall be construed to include wiring for Cable Systems.
- 5.9) Restoration of Rights-of-Way and Property.** The Grantee shall protect Rights-of-Way and public and private property from damage. If damage occurs, the Grantee shall promptly notify the property owner within twenty-four (24) hours in writing. Any Rights-of-Way, or any sewer, gas or water main or pipe, drainage facility,

electric, fire alarm, police communication or traffic control facility of the City, or any other public or private property, which is disturbed, damaged or destroyed during the construction, repair, replacement, relocation, operation, maintenance, expansion, extension or reconstruction of the System shall be promptly and fully restored, replaced, reconstructed or repaired by the Grantee, at its expense, to the same condition as that prevailing prior to the Grantee's work, to the extent consistent with applicable statutes and rules. It is agreed that in the normal course, with respect to fire and police department facilities and equipment, and water and sewer facilities, and other essential utilities and services, as determined by the City, such restoration, reconstruction, replacement or repairs shall be commenced immediately after the damage, disturbance or destruction is incurred, and the Grantee shall take diligent steps to complete the same, unless an extension of time is obtained from the appropriate City agency or department. In all other cases, reconstruction, replacement, restoration or repairs shall be commenced within no more than three (3) days after the damage, disturbance or destruction is incurred, and shall be completed as soon as reasonably possible thereafter. Grantee shall warrant any restoration work performed by or for Grantee in the Right-of-Way or on other public property for one (1) year. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the City may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the City. If the Grantee shall fail to perform the repairs, replacement, reconstruction or restoration required herein, the City shall have the right to put the Rights-of-Way, public or private property back into good condition and recover the cost of repairs from the Grantee. In the event City determines that the Grantee is responsible for such disturbance or damage, the Grantee shall be obligated to fully reimburse the City for required repairs, reconstruction and restoration.

**5.10) Use of Grantee Facilities.** The City may install or affix and maintain wires and equipment owned by the City for City purposes in or upon any and all of Grantee's poles, ducts, conduits or equipment in the Rights-of- Way and other public places, without charge to the City or to the Grantee, to the extent space therein or thereon is reasonably available, does not interfere with Grantees facilities, and is pursuant to all Applicable Law. For the purposes of this subsection, "City purposes" includes, but is not limited to, the use of the structures and installations for City fire, police, traffic, water, telephone, and/or signal systems, but not for Cable Service in competition with Grantee. Grantee shall not deduct the value of such use of its facilities from its Franchise Fee payments or from other fees payable to the City.

**5.11) Protect, Support, Temporarily Disconnect, Relocate or Remove.** The Grantee shall, at its sole expense, by a reasonable time specified by the City, protect, support, temporarily disconnect, relocate or remove any of its property when required by the City by reason of traffic conditions; public safety; Rights-of-Way

construction; street maintenance or repair (including resurfacing or widening); change in Right-of-Way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks or any other type of government-owned communications or traffic control system, public work or improvement of government-owned utility; Right-of-Way vacation; or for any other purpose where the convenience of the City would be served thereby. If the Grantee fails, neglects or refuses to comply with the City's request, the City may protect, support, temporarily disconnect, relocate or remove the appropriate portions of the System at the Grantee's expense for any of the City's incremental costs incurred as a result of the Grantee's failure to comply. Except for the City's gross negligence, the City shall not be liable to the Grantee for damages resulting from the City's protection, support, disconnection, relocation or removal, as contemplated in the preceding sentence.

### **5.12) Conduit Facility.**

(a) For the purposes of this subsection:

(1) "Attachment" means any optical fiber, coaxial cable or other wire, and any related device, apparatus or auxiliary equipment used to transmit or to support the transmission of voice, video or data.

(2) "Conduit" or "Conduit Facility" means any structure, or section thereof, containing one or more poles, wireholding structures, ducts, conduits, manholes, handhole or other such facilities in Grantee's Cable System.

(3) "Duct" means a single enclosed raceway for cables, fiber optics or other wires.

(4) "Licensee" means any Person licensed or otherwise permitted by the City to use the Rights-of-Way.

(5) "Surplus Ducts or Conduits" are Conduit Facilities other than those occupied by Grantee or any prior Licensee, or unoccupied Ducts held by Grantee as emergency use spares, or other unoccupied Ducts that Grantee reasonably expects to use within two (2) years from the date of a request for use.

(b) Grantee acknowledges that the Rights-of-Way have a finite capacity for containing Conduits. Therefore, Grantee agrees that whenever the City determines it is impracticable to permit construction of an underground Conduit system by any other Person which may at the time have authority to construct or maintain Conduits or Ducts in the Rights-of-Way, the City may require Grantee to afford to such Person the right to use Grantee's Surplus Ducts or Conduits in common with Grantee, pursuant to the terms and conditions of an agreement for use of Surplus Ducts or Conduits entered into by Grantee and the Licensee. Nothing herein shall require Grantee to enter into an agreement with such Person if, in Grantee's

reasonable determination, such an agreement could compromise the integrity of the Grantees System and Property.

- (c) A Licensee occupying part of a Duct shall be deemed to occupy the entire Duct.
- (d) Grantee shall give a Licensee a minimum of one hundred twenty (120) days notice of its need to occupy a leased Conduit and shall propose that the Licensee take the first feasible action as follows:
  - (1) Pay revised Conduit rent designed to recover the cost of retrofitting the Conduit with multiplexing, fiber optics or other space-saving technology sufficient to meet Grantee's space needs;
  - (2) Pay revised Conduit rent based on the cost of new Conduit constructed to meet Grantee's space needs;
  - (3) Vacate the needed Ducts or Conduit; or
  - (4) Construct and maintain sufficient new Conduit to meet Grantee's space needs.
- (e) When two or more Licensees occupy a section of Conduit Facility, the last Licensee to occupy the Conduit Facility shall be the first to vacate or construct new Conduit. When Conduit rent is revised because of retrofitting, space-saving technology or when new Conduit is constructed, all Licensees occupying the Grantee's ducts and conduits shall bear the increased cost.
- (f) All Attachments shall meet local, State, and federal clearance and other safety requirements, be adequately grounded and anchored, meet the provisions of contracts executed between Grantee and the Licensee, and comply with Applicable Law. Grantee may, at its option, correct any Attachment deficiencies and charge the Licensee for its costs, unless an agreement between the parties provides otherwise. Each Licensee shall pay Grantee for any fines, fees, damages or other costs the Licensee's attachments cause Grantee to incur, unless a contract between the parties provides otherwise. In all cases, a contract between the Grantee and Licensee shall provide that either the Grantee or the Licensee shall be responsible for payment of applicable fines, fees, damages or other costs owed to the City.

In order to enforce the provisions of this subsection with respect to Grantee, the City must demonstrate that it has required that all similarly situated users of the Rights-of-Way to comply with the provisions of this subsection.

**5.13) Acquisition of Facilities.** Upon Grantee's acquisition of facilities in any Right-of-Way, or upon City annexation or acquisition of any area in which Grantee owns or operates any facility, Grantee shall, at the City's request, submit to the City a statement describing all facilities involved, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such

facilities to the extent Grantee has possession of such information. Such facilities shall immediately be subject to the terms of this Franchise if used to provide Cable Services.

**5.14) Movement of Cable System Facilities For City Purposes.** The City shall have the right to require Grantee to relocate, remove, replace, modify or disconnect Grantee's facilities and equipment located in the Rights-of-Way or on any other property of the City in the event of an emergency or when reasonable public convenience requires such change (for example, without limitation, by reason of traffic conditions, public safety, Right-of-Way vacation, Right-of-Way construction, change or establishment of Right-of-Way grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by the City for public purposes). Such work shall be performed at the Grantee's expense. Except during an emergency, the City shall provide reasonable notice to Grantee, not to be less than five (5) business days, and allow Grantee with the opportunity to perform such action. In the event of any capital improvement project exceeding \$500,000 in expenditures by the City which requires the removal, replacement, modification or disconnection of Grantee's facilities or equipment, the City shall provide at least sixty (60) days written notice to Grantee. Following notice by the City, Grantee shall relocate, remove, replace, modify or disconnect any of its facilities or equipment within any Right-of-Way, or on any other property of the City. If the City requires Grantee to relocate its facilities located within the Rights-of-Way, the City shall make a reasonable effort to provide Grantee with an alternate location within the Rights-of-Way. If funds are generally made available to users of the Rights-of-Way for such relocation, Grantee shall be entitled to its pro rata share of such funds. If the Grantee fails to complete this work within the time prescribed and to the City's satisfaction, the City may cause such work to be done and bill the cost of the work to the Grantee, including all costs and expenses incurred by the City due to Grantee's delay. Within thirty (30) days of receipt of an itemized list of the City's costs, the Grantee shall pay the City.

**5.15) Accommodation for Other Authorized Users.** If any removal, relaying or relocation is required to accommodate the construction, operation or repair of the facilities of a Person that is authorized to use the Rights-of-Way, the Grantee shall, after thirty (30) days' advance written notice and payment of all costs by such Person, commence action to effect the necessary changes requested by the responsible entity. If multiple responsible parties are involved, the City may resolve disputes as to the responsibility for costs associated with the removal, relaying or relocation of facilities among entities authorized to install facilities in the Rights-of-Way if the parties are unable to do so themselves, and if the matter is not governed by a valid contract between the parties or any State or federal law or regulation.

**5.16) Temporary Changes for Other Permittees.** At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be

paid by the permit holder, except when the permit holder is the City, in which case the Grantee shall move or remove its wiring free of charge, and Grantee may require a reasonable deposit of the estimated payment in advance.

**5.17) Reservation of City Use of Right-of-Way.** Nothing in this Franchise shall be construed to prevent the City or public utilities owned, maintained or operated by public entities other than the City from constructing maintaining, repairing or relocating sewers; grading, paving, repairing relocating and/or altering any Right-of-Way; constructing, laying down, repairing maintaining, relocating, or removing any water mains; or constructing or establishing any other public work or improvement.

**5.18) Tree Trimming.** To the extent consistent with generally Applicable Law, the Grantee shall have the right to remove, cut, trim and keep clear of its System trees or other vegetation in and along or overhanging the Rights-of-Way. However, in the exercise of this right, the Grantee agrees not to cut or otherwise injure said trees to any greater extent than is reasonably necessary. This Franchise does not give the Grantee any authority to remove trees on private property in the City. All trimming shall be performed at no cost to the City and City residents.

**5.19) Inspection of Construction and Facilities.** The City may inspect any of Grantee's facilities, equipment or construction at any time upon at least twenty-four (24) hours' notice, or, in case of emergency, upon demand without prior notice. The City shall have the right to charge generally applicable inspection fees therefor. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under Applicable Law, may order Grantee, orally or in writing, to make the repairs and alterations necessary to correct the unsafe condition by a time the City establishes. The City has the right to correct, inspect, administer and repair the unsafe condition if Grantee fails to do so, and to charge Grantee therefor.

**5.20) Stop Work.**

(a) On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City.

(b) The stop work order shall:

- (1) Be in writing;
- (2) Be given to the Person doing the work, or posted on the work site;
- (3) Be sent to Grantee by overnight delivery at the address given herein;
- (4) Indicate the nature of the alleged violation or unsafe condition; and
- (5) Establish conditions under which work may be resumed.

**ARTICLE 6.**  
**CABLE SYSTEM DESIGN, TECHNICAL STANDARDS AND TESTING**

**6.1) Design Provisions.**

**(a) System Upgrade; Minimum Channel Capacity.**

- (1) Grantee shall develop, construct and continue for the term of this Franchise to provide a 750 MHz fiber/coaxial hybrid system which is engineered and Activated so as to be capable of delivering a minimum of 78 video programmed channels. The system shall be designed with an average five hundred (500) or less homes per fiber node configuration.
- (2) All programming decisions remain the discretion of Grantee; provided, however, that Grantee notifies the City and subscribers in writing thirty (30) days prior to any channel additions, deletions or realignments, and further subject to Grantee's signal carriage obligations hereunder and pursuant to 47 U.S.C. §§ 531-536, and further provided that Grantee may not eliminate, move or renumber any PEG access or other community programming channel required hereunder without prior approval of the City which approval shall not be unreasonably withheld. Grantee shall conduct programming surveys from time to time to obtain input on programming decisions from subscribers.
- (3) Grantee shall Interconnect with any adjoining cable system at such time as mutual consent with the adjoining operator is agreed upon. Nothing herein shall require Grantee to Interconnect unless the operator of the adjoining system agrees to pay a pro rata share of the Interconnection costs.

**(b) 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 provisions herein and shall occur during periods of minimum use of the system.

**(c) Technical Standards.** The technical standards used in the operation of the system shall comply, at a minimum, with the technical standards promulgated by the FCC relating to cable systems pursuant to Code of Federal Regulations 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.

**(d) Special Testing.**

- (1) The City may require testing of a location or locations within the system or the system as a whole. Demand for such special tests

may be made on the basis of Complaints received or other evidence indicating an unresolved controversy or noncompliance. 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.

- (2) Before ordering such tests, Grantee shall be afforded thirty (30) days to correct problems or Complaints upon which tests were ordered. If 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.
  - (3) In the event that special testing determines that the system or Grantee is the source of technical difficulties in violation of the FCC technical specifications as required by this Franchise, the cost of said testing shall be reimbursed by the Grantee.
- (e) **FCC Reports.** The results of any tests required to be filed by Grantee with the FCC shall also be filed with the City or its designee within ten (10) days, upon written request, of the conduct of such tests.
- (f) **Nonvoice Return Capability.** Grantee is required to use cable having the technical capacity for nonvoice return communications.
- (g) **Lockout Device.** Upon the request of a subscriber, Grantee shall provide a Lockout Device.

## **ARTICLE 7. CUSTOMER SERVICE**

### **7.1) Service Provisions.**

#### **(a) Regulation of Service Rates.**

- (1) A list of Grantee's current subscriber rates and charges shall be maintained on file with the City and shall be available for public inspection. Grantee shall give the 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) Non-standard installations. Grantee shall install and provide cable service to any person requesting other than a standard installation provided that said cable service can meet FCC technical specifications. In such case, Grantee may charge for the incremental increase in material and labor costs incurred beyond the standard installation.
- (3) Sales procedures. Grantee in its initial face-to-face communication with a non-Subscriber, Grantee shall inform the non-Subscriber of



all levels of Service available by providing a rate card outlining all available Services and rates.

(4) Telephone inquiries and Complaints.

- (b) **Availability.** Grantee will maintain a toll free customer service number or collect call telephone access lines which will be available to its subscribers 24 hours a day, seven days a week, so as to receive subscriber Complaints, requests and inquiries. During normal business hours, trained representatives of Grantee shall be available to respond to subscriber inquiries. Grantee will ensure that: (1) an adequate number of trained company representatives will be available to respond to customer telephone inquiries during normal business hours, and; (2) after normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Further, inquiries received after normal business hours must be responded to by a trained company representative on the next business day.
- (c) **Telephone answer time and busy signals.** Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds after the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis. Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.
- (d) **Installation, outage and service calls.** Under normal operating conditions, each of the following standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:
- (1) Installations will be performed within seven (7) business days after an order has been placed.
  - (2) Grantee will begin working on service interruptions promptly, in no event later than twenty-four (24) hours after the interruption becomes known, and subscriber requests for repairs shall be performed within twenty-four (24) hours of the request unless conditions beyond the control of Grantee prevent such performance.
  - (3) The appointment window alternatives for installations, service calls and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. The Grantee may schedule service calls and other installation activities outside of normal business hours for the convenience of the customer.
  - (4) Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

- (5) If a representative of Grantee 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 convenient for the customer.
- (6) Complaint and other service records. Subject to Grantee's need to maintain the privacy of certain information, Grantee shall prepare and maintain written records of all Complaints received and the resolution of such Complaints, including the date of such resolution. Such written records shall be on file at the office of Grantee. Grantee shall, upon written request, provide the City with a written summary of such Complaints and their resolution. Grantee will also provide, upon written request, detailed compliance reports with respect to the objectively measurable service standards herein in a form mutually agreed upon.
- (e) **Billing and subscriber communications.** Grantee must give subscribers thirty (30) days advance written notice with copy to City before any changes in rates, programming services, or channel positions. Bills must be clear, concise and understandable, with itemization of all charges for services, equipment charges and any optional services, charges and other activity during the billing period. In case of a billing dispute, the cable operator must respond to a written Complaint from a subscriber within thirty (30) days.
- (f) **Refunds and credits.** In the event a subscriber establishes or terminates service and receives less than a full month's service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which service was rendered to the number of days in the billing. Refund checks will be issued promptly, but no later than 30 days after the return of the equipment supplied by the Grantee if service is terminated. If service is interrupted or discontinued for a total of more than 48 hours in any 30-day period, subscribers shall be credited pro rata for such interruption beginning with the date of interruption. Credits will be issued no later than the subscriber's next billing cycle following the determination that a credit is warranted.
- (g) **Late fees.** Fees for the late payment of bills shall not accrue until the normal billing cut-off for the next month's service and in no event less than one (1) month after the unpaid bill in question was sent to the subscriber. Customer service center and bill payment locations will be open at least during normal business hours. Payments at the cable operator's drop-box location shall be deemed received on the date such payments are picked up by the cable operator, which shall occur within 24 hours after every due date. The cable operators shall continue to provide a grace period of at least five (5) days after each due date. Late fees shall not exceed the

Grantee's actual and demonstrable costs associated with collection of late payments.

(h) **Drop box.** Grantee shall maintain a local drop-box for receiving subscriber payments after hours.

(i) **Additional Customer Service Requirements.** The City expressly reserves authority to adopt additional or modified customer service requirements to address subscriber concerns or Complaints in accordance with Applicable Law.

**7.2) Time Schedule for Installations and Service.** The Grantee shall schedule appointments for Installations and other service calls either at a specific time or, at a maximum, during a four-hour time block during Normal Business Hours, (Normal Business Hours shall be no less than 9:00 a.m. to 5:00 p.m., Monday through Friday, and 9:00 a.m. to 1:00 p.m. on Saturdays). The Grantee may also schedule service calls outside such hours for the convenience of customers. The Grantee shall use its best efforts to not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If the installer or technician is late and will not meet the specified appointment time, he/she must use his/her best efforts to contact the customer and reschedule the appointment at the sole convenience of the customer. Service call appointments must be met in a manner consistent with FCC standards.

**7.3) Response to Written Complaints.** The Grantee shall respond to written Complaints from the City within 24 hours, and provide a copy of each response to the City within five (5) days. In addition, the Grantee shall respond to all written Complaints from Subscribers within two (2) days of receipt of the Complaint, with copies to the City.

**7.4) Subscriber Contracts.** At the written request of the City the Grantee shall provide to the City any standard form Subscriber contract utilized by Grantee. If no such written contract exists, the Grantee shall file with the City a document completely and concisely stating the length and terms of the Subscriber contract offered to customers.

**7.5) Exclusive Contracts and Anticompetitive Acts Prohibited.** The Grantee may not require a residential Subscriber to enter into an exclusive contract as a condition of providing or continuing Cable Service.

**7.6) Local Customer Service Center.** The Grantee shall operate and maintain the customer service office serving the community of Northfield, currently located at 16900 Cedar Avenue South in Lakeville. The hours of operation for this facility are 8:00 a.m. to 5 p.m. Monday through Friday and 9:00 a.m. to 1:00 p.m. on Saturday, excluding holidays. The Grantee shall maintain at least two payment drop-boxes within the City limits at convenient locations. The Grantee shall promptly notify the City of any relocation of the payment drop-boxes. The Grantee shall maintain an adequate number of local, toll-free telephone access

lines which will be available to its subscribers 24 hour per day, seven days a week, so as to receive subscriber inquiries, requests and Complaints.

## **ARTICLE 8. ACCESS**

### **8.1) Public, Educational and Governmental Access.**

#### **(a) Public, Educational and Government Access.**

- (1) The City or its Designated Access Provider is hereby designated to operate, administer, promote, and manage community programming (public, education, and government programming) (hereinafter PEG access) in the cable system.
- (2) Grantee shall dedicate three (3) Channel(s), with channel defined as a NTSC analog channel or digital equivalent, for PEG access and community programming use. All residential subscribers who receive all or any part of the total services offered on the system shall be eligible to receive such Channels at no additional charge. The Channel(s) shall be Activated upon the effective date of this Franchise and thereafter maintained. The City may rename, reprogram, or otherwise change the use of these channels in its sole discretion, provided such use is Noncommercial and retains the general purpose of the provision of community programming. Nothing herein shall diminish the City's rights to secure additional channels pursuant to Minn. Stat. § 238.084, which is expressly incorporated herein by reference. The City shall provide ninety (90) days prior written notice to Grantee of City's intent to activate Access Channels and shall allow Grantee reasonable time to vacate said channel(s).
- (3) The Grantee shall have the right to program one of the PEG Channels until such time as the City notifies the Grantee that it wishes to assume programming responsibilities. Upon receiving notification from the City, the Grantee shall, within three (3) months, discontinue routing video signals onto the PEG Channel, and take all steps necessary to permit the City to begin cablecasting Noncommercial PEG programming on the Channel.
- (4) The VHF spectrum must be used for the PEG Access Channel(s) required in this section. Grantee shall designate the channel locations of any other Access Channel(s) but may not move or otherwise change the channel number or location of any PEG access or community program channel without the written approval of the City, which approval shall not be unreasonably withheld.

- (5) Any PEG Channel shall not be relocated without the consent of the City which consent shall not be unreasonably withheld. If the City agrees to change the channel designation for any PEG Channel, the Grantee must provide at least three (3) months notice to the City prior to implementing the change, and shall reimburse the City and/or PEG entity for any reasonable costs incurred for: (i) purchasing or modifying equipment, business cards and signage; (ii) any marketing and notice of the channel change that the City reasonably determines is necessary; (iii) logo changes; and (iv) promoting, marketing and advertising the channel location of the affected PEG channel(s) during the three-month period preceding the effective date of the channel change, unless otherwise agreed upon in writing by the parties.
- (6) The Grantee shall provide, install and maintain (at no cost to the City) all equipment, facilities and software up to the Demarcation Point necessary to allow the City to independently insert PEG programming on the PEG channel(s). If the City requests return of either or both of the loaned channels identified above, the obligation described in this subsection shall at that time apply to the identified channel(s) as well.
- (7) As long as the Grantee's System carries Basic Cable Service channels in analog form, the Grantee must make the PEG channels available in analog form to Subscribers within the City. If and when the Grantee's Cable System carries PEG channels in digital form, those digital PEG channels must be made available as a digital service to all Subscribers in the City. At all times, the Grantee's Cable System must make the PEG channels available to all Basic Cable Service Subscribers residing within the City in at least one format (digital or analog); thus, the Grantee shall make the PEG channels available to all such Subscribers in analog form unless and until it makes Basic Cable Service channels available to Subscribers only in digital form.
- (8) In the event the Grantee makes any change in the System and related equipment and facilities or in signal delivery technology, which change directly or indirectly causes the signal quality or transmission of PEG channel programming or PEG services to fall below technical standards under Applicable Law, the Grantee shall, at its own expense, provide any necessary technical assistance, and training of PEG personnel, and in addition, provide necessary technical assistance so that PEG facilities may be used as intended, including, among other things, so that live and taped programming can be cablecasted efficiently to Subscribers.

- (9) All PEG channels shall be transmitted in the same format as all other Basic Cable Service channels and shall be carried on the Basic Service tier.
- (10) The Grantee shall provide Leased Access Channels as required by federal and State law.
- (b) **Charges for Use.** Channel time and playback of prerecorded programming on the PEG access and community program channel(s) must be provided without charge to the City and the public.
- (c) **Access Rules.** City, or its designee, may implement rules for use of any Access Channel(s).
- (d) **Access Support.**
- (1) Grantee shall collect from subscribers and quarterly pay to the City in support of PEG operations the full amount of revenues generated by a \$.75 per month, per subscriber, fee beginning upon the effective date of this Franchise. This fee may be separately itemized as a PEG fee and passed through to subscribers independent from rates regulated pursuant to FCC regulations. The City may require increases in the PEG fee up to a limit of \$1.25 increased annually by the Consumer Price Index (CPI) or three percent (3%), whichever is less. The City may not increase the PEG fee by more than twenty-five cents (\$.25) in any given year. The City shall notify Grantee of any such increase on or before September 30, assuming a January 1 implementation. Should Grantee change the date of any annual rate change from January 1, and so notify the City, then the City shall notify Grantee of any PEG increase at least ninety (90) days prior to the new Grantee rate change date. Such payment shall be separate from and in addition to the Franchise Fee.
  - (2) Within sixty (60) days of the effective date of this Franchise, Grantee shall pay City \$100,000.00 as a capital equipment grant. Grantee may recoup said grant by retaining an amount up to fifty cents (\$.50) of the PEG fee. Such additional PEG fee shall be retained by Grantee until such time as the capital grant above is recouped, in accordance with Applicable Law. Upon such recoupment, Grantee shall notify the City. The City shall have the option of leaving the recoupment addition as part of the PEG fee on a going forward basis. Grantee shall pay this additional amount to the City in its regular PEG fee payment to the City. In the year of recoupment, the City may not increase the PEG fee an additional amount.
  - (3) Except as expressly provided in this Franchise, the Grantee shall not make any changes in PEG support. Grantee shall notify City of any changes in the transmission, reception and carriage of PEG

Channels, and equipment associated therewith, within 90 days of the change.

- (4) The parties agree that any costs to the Grantee associated with the provision of support for PEG access pursuant to this Franchise, do not constitute and are not part of a Franchise Fee.

**ARTICLE 9.  
OPEN**

[This Article has been intentionally left open]

**ARTICLE 10.  
ADMINISTRATION AND REGULATION**

**10.1) Authority.** The City shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under Applicable Law, in its sole discretion. Nothing in this Franchise shall limit or expand the City's right of eminent domain under State law.

**10.2) Reserved Authority.** The City reserves all regulatory authority arising from the Cable Act and any other relevant provisions of federal, State or local law.

**10.3) Regulations Promulgated by City Council.**

(a) In addition to the powers held by the City under the Minnesota Constitution, the City Charter and Applicable Law, the City Council is hereby authorized to promulgate by ordinance, in the exercise of its lawful powers, such additional regulations and requirements as it shall find necessary to effectuate fully and regulate the construction and operation of a Cable System pursuant to this Franchise.

(b) The Grantee may propose additional regulations by application to the City Council, but the City Council shall not adopt any such proposal until it expressly determines that such proposal is in the public interest and is consistent with the terms and conditions of this Franchise. Notwithstanding anything to the contrary, the City Council shall be under no obligation to adopt any proposal offered by the Grantee.

**10.4) Rates and Charges.** All of Grantee's rates and charges related to or regarding Cable Services shall be subject to regulation by the City to the full extent authorized by applicable federal, State and local laws.

**10.5) Rate Discrimination.** All of Grantee's rates and charges, excluding special/limited time promotional offers, shall be published (in the form of a publicly-available rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with governing law, with identical rates and charges for all Subscribers receiving identical Cable Services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or

economic status, or physical or mental disability or geographic location within the City. Grantee shall offer the same Cable Services to all Residential Subscribers at identical rates. Grantee shall permit Subscribers to make any lawful in-residence connections the Subscriber chooses without additional charge nor penalizing the Subscriber therefore. However, if any in-home connection requires service from Grantee due to signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged reasonable service charges by Grantee that comply with FCC rules and any rate orders issued by the City. Nothing herein shall be construed to prohibit:

- (a) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns; or
- (b) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens; or
- (c) The offering of rate discounts for Cable Service; or
- (d) The Grantee from establishing different and nondiscriminatory rates and charges and classes of service for Commercial Subscribers, to the extent allowed by federal law and regulations.

**10.6) Time Limits Strictly Construed.** Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material breach of this Franchise, and sufficient grounds for the City to invoke any relevant remedy.

**10.7) Periodic Evaluation.**

- (a) **Notice.** The City may require evaluation sessions once every two years during the term of this Franchise, upon fifteen (15) days written notice to the Grantee.
- (b) **Topics.** 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, PEG facilities and support, municipal uses of cable, Subscriber rates, customer Complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics the City deems relevant.
- (c) **Good Faith Effort.** As a result of a periodic review or evaluation session, upon notification from City, Grantee shall meet with City and undertake good faith efforts to reach agreement on changes and modifications to the terms and conditions of this Franchise which are both economically and technically feasible.

**10.8) Sale or Transfer of Franchise.**



- (a) No sale or transfer of this Franchise, or Change of Control, sale, transfer or fundamental corporate change of or in Grantee, including, but not limited to, a fundamental corporate change in Grantee's parent corporation or any entity having a controlling interest in Grantee, the sale of a controlling interest in the Grantee's assets, a merger including the merger of a subsidiary and parent entity, consolidation or the creation of a subsidiary or Affiliate entity, shall take place until a written request has been filed with the City requesting approval of the sale, transfer and such approval has been granted or deemed granted, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and/or assets to secure an indebtedness. Upon notice to the City, Grantee may undertake legal changes necessary to consolidate the corporate or partnership structures of its Minnesota/Wisconsin Systems provided there is no change in the controlling interests which could materially alter the financial responsibilities for the Grantee.
- (b) Any Change of Control, sale, transfer, exchange or assignment of stock in Grantee, or Grantee's parent corporation or any other entity having a controlling interest in Grantee, so as to create a new controlling interest therein, shall be subject to the requirements of this Section.
- (c) The Grantee shall file, in addition to all documents, forms and information required to be filed by Applicable Law, the following: All contracts, agreements or other documents that constitute the proposed transaction and all exhibits, attachments or other documents referred to therein which are necessary in order to understand the terms thereof. The City shall have such time as is permitted by federal law in which to review a transfer request.
- (d) In no event shall a sale, transfer, corporate change or assignment of ownership or control pursuant to this Section be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations hereunder and the parent of Transferee signing a Guaranty as defined and provided herein.
- (e) In the event of any proposed sale, transfer, corporate change or assignment, the City shall have the right to purchase the "System" serving the City for the fair-market value of the system as a going concern pursuant to USC 547. The City's right to purchase shall arise upon City's receipt of a transfer request. Upon receipt of a transfer request, the city shall have ninety (90) days to exercise its rights pursuant to this section.
- (f) No Franchise may be transferred if the City determines that Grantee is in noncompliance of the Franchise unless an acceptable compliance program has been approved by City. The approval of any transfer of ownership shall not be deemed to waive any rights of the City to subsequently enforce noncompliance issues relating to this Franchise.

(g) Any transfer or sale of the Franchise without the prior written consent of the City shall be considered to impair the City's assurance of due performance. The granting of approval for a transfer or sale in one instance shall not render unnecessary approval of any subsequent transfer or sale for which approval would otherwise be required.

(h) Any transfer of ownership prior to the completion of the Cable System as defined herein shall render this Franchise null and void.

**10.9)** The Grantee shall pay all transfer requirements and charges incidental to the enforcement of the franchise, including all the reasonable legal, administrative, and consulting costs and fees associated with the City's review of any request to transfer. Nothing herein shall prevent Grantee from negotiating partial or complete payment of such costs and fees by the transferee. Grantee may not itemize any such reimbursement on Subscriber bills, but may recover such expenses in its subscriber rates. Grantee reserves its rights to challenge any such payments herein as falling within the definition of Franchise Fee.

**10.10) Compliance with Federal, State and Local Laws.**

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

(b) In the event that federal or State laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Franchise, the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required or necessitated by law. In the event such federal or State law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City.

(c) If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such

law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and City without further action by the City.

- (d) The Grantee shall, at all times during the term of this Franchise, including all extensions and renewals thereof, comply with Applicable Laws and regulations.

**10.11) Conflict of Laws.** In the event of any conflict between this Franchise and any lawfully applicable City ordinance or regulation that addresses usage of the Rights-of-Way, the conflicting terms in this Franchise shall be superseded by such City ordinance or regulation.

- (a) In the event any lawfully applicable City ordinance or regulation which addresses usage of the Rights-of-Way adds to, modifies, amends or otherwise differently addresses issues addressed in this Franchise, the Grantee shall comply with such ordinance or regulation of general applicability, regardless of which requirement was first adopted.

- (b) In the event the Grantee cannot determine how to comply with any Right-of-Way requirement of the City, whether pursuant to this Franchise or other requirement, the Grantee shall immediately provide written notice of such question, including the Grantee's proposed interpretation, to the City. The City shall provide a written response within ten (10) business days of receipt indicating how the requirements cited by the Grantee apply. The Grantee may proceed in accordance with its proposed interpretation in the event a written response is not received within thirteen (13) business days of mailing or delivering such written question.

**ARTICLE 11.**  
**GENERAL FINANCIAL AND INSURANCE PROVISIONS**

**11.1) Performance Bond.**

- (a) **Amount and Conditions.** At the time the Franchise becomes effective and at all times thereafter, until the Grantee has liquidated all of its obligations with the City, the Grantee shall furnish a bond to the City in the amount of \$100,000.00 in a form and with such sureties as are reasonably acceptable to the City. This bond will be conditioned upon the faithful performance by the Grantee of its Franchise obligations and upon the further condition that in the event the Grantee shall fail to comply with any law, ordinance or regulation governing the Franchise, there shall be recoverable jointly and severally from the principal and surety of the bond after exhaustion of due process any damages or loss suffered by City as a result, including the full amount of any compensation, indemnification or cost of removal or

abandonment of any property of the Grantee, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, and further guaranteeing payment by the Grantee of claims, liens and taxes due the City which arise by reason of the construction, operation, or maintenance of the System. The rights reserved by the City with respect to the bond are in addition to all other rights the City may have under the Franchise or any other law. The City may, from year to year, in its sole discretion, reduce the amount of the bond.

- (b) **Time to Cure.** The time for Grantee to correct any violation or liability shall be extended by City if the necessary action to correct such violation or liability is, in the reasonable determination of City, of such a nature or character as to require more than thirty (30) days within which to perform, provided Grantee provides written notice that it requires more than thirty (30) days to correct such violations or liability, commences the corrective action within the thirty (30)-day cure period and thereafter uses reasonable diligence to correct the violation or liability.
- (c) **Return of Performance Bond.** Grantee shall be entitled to the return of the performance bond, or portion thereof, as remains upon the expiration of the term of the Franchise or revocation for default thereof, provided City has not notified Grantee of any actual or potential damages incurred as a result of Grantee's operations pursuant to the Franchise or as a result of said default.
- (d) **Reservation of Rights.** The rights reserved to City with respect to the performance bond are in addition to all other rights of City whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to the performance bond shall affect any other right City may have.

#### **11.2) Letter of Credit.**

- (a) Within fourteen (14) days of receipt of a notice from the City of an alleged violation of this Franchise, as determined by the City, Grantee shall provide the City with an irrevocable Letter of Credit in the sum of Ten Thousand Dollars (\$10,000.00). The Letter of Credit shall insure the faithful performance by the Grantee of all the provisions of this Franchise, and compliance with all orders, permits and directions of the City and the payment by Grantee of any claim, penalties, damages, liens and taxes due the City related thereto or which arise by reason of the construction, operation or maintenance of the Cable System. The Letter of Credit shall be provided by Grantee regardless of whether Grantee disputes the alleged violation. Any failure by Grantee to provide the Letter of Credit as required herein shall constitute a breach of this Franchise. Any interest on this deposit shall be paid to the Grantee. Once the proceeding addressing the alleged violation has been completed the Grantee shall be relieved of maintaining the Letter of Credit until such time as another alleged

violation notification is received by Grantee at which time the process shall begin again.

- (b) In addition to the other remedies provided for herein, for a substantial violation of any material provision of this franchise (“violation”), liquidated damages in the amount of \$250 per day, with a maximum of \$10,000.00 that the violation continues may be awarded to Franchising Authority.
- (c) The liquidated damages described in the preceding section may at the Franchising Authority’s option, either be (i) awarded by a court of competent jurisdiction, (ii) awarded by an independent arbitrator appointed by the Chief Judge of Rice County District Court, to whose appointment, assessment and award Company hereby consents; (iii) or may be assessed in accordance with the following procedures:
- (d) A notice of intent to assess liquidated damages shall be served on Company by the Franchising Authority containing such facts and information as may be necessary to apprise Company of the liquidated damages being sought and the factual bases therefore.
- (e) Company may pay such proposed liquidated damages in full, cure the violation within forty-five (45) days, or if it desires to contest the violation, the Company shall have forty-five (45) days following the receipt of the notice to file an answer.
- (f) Franchising Authority shall schedule a public hearing on the notice within forty-five (45) days after the date upon which Company’s answer to the notice was to have been filed with Franchising Authority. At the hearing, Franchising Authority may request information from Company and may undertake any actions deemed necessary to render a decision on the notice and/or the Company’s answer thereto. Company shall have the right to present witnesses and evidence in its defense and to question the evidence of Franchising Authority.
- (g) Following the close of the hearing, the Franchising Authority shall, within thirty (30) days, render a written decision.
- (h) The action taken by Franchising Authority pursuant to these hearings shall, without further proceedings, become the final decision of Franchising Authority. In the event Franchising Authority determines that a violation has occurred, Company may appeal the decision to a court of competent jurisdiction for a judicial review. A hearing under this Section prohibits the accumulation of liquidated damages only until a court of competent jurisdiction renders a final decision.
- (i) If Company fails to pay to Franchising Authority any monetary obligations due and owing to Franchising Authority under the terms and conditions of this Franchise on the date when the obligation is due and payable to

Franchising Authority as provided for herein or if Company fails to pay to Franchising Authority any liquidated damages assessed against Company as provided for under this Part (such as within three (30) days after receiving notice of the assessment of liquidated damages following a hearing by Franchising Authority) Franchising Authority may claim against the Performance Bond for the amount owing to Franchising Authority as of that date.

- (j) The Franchising Authority has the right to apply any one or any combination of the remedies provided for in this Franchise, including without limitation all remedies provided for in this Section, and may without limitation pursue any rights, remedies or actions that it may have in law or equity. Notwithstanding the foregoing, if liquidated damages are assessed against Grantee for any violation of its obligations under this Franchise, they shall be considered the full and final resolution of the violation and shall constitute a waiver of any future claims regarding the violation.

**11.3) Remedies Not Exclusive.** The Franchising Authority has the right to apply any one or any combination of the remedies provided for in this Franchise, including without limitation all remedies provided for in this Section, and may without limitation pursue any rights, remedies or actions that it may have in law or equity. Notwithstanding the foregoing, if liquidated damages are assessed against Grantee for any violation of its obligations under this Franchise, they shall be considered the full and final resolution of the violation and shall constitute a waiver of any future claims regarding the violation.

- (a) Whenever the Letter of Credit is drawn upon, Grantee may, within seven (7) days of such draw, notify City in writing that there is a dispute as to whether a violation or failure has in fact occurred. Such written notice by Grantee to City shall specify with particularity the matters disputed by Grantee. All liquidated damages shall continue to accrue from the Letter of Credit during any appeal pursuant to this subparagraph (f).

- (1) City shall hear Grantee's dispute within sixty (60) days and render a final decision within sixty (60) days thereafter.

- (2) Upon the determination of City that no violation has taken place, City shall refund to Grantee, without interest, all monies drawn from the Letter of Credit by reason of the alleged violation.

- (b) If City draws upon the Letter of Credit or any subsequent Letter of Credit delivered pursuant hereto, in whole or in part, Grantee shall replace or replenish to its full amount the same within ten (10) days and shall deliver to City a like replacement Letter of Credit or certification of replenishment for the full amount stated in Section 8.2 (a) as a substitution of the previous Letter of Credit. This shall be a continuing obligation for any draws upon the Letter of Credit.

- (c) If any Letter of Credit is not so replaced or replenished, City may draw on said Letter of Credit for the whole amount thereof and use the proceeds as City determines in its sole discretion. The failure to replace or replenish any Letter of Credit may also, at the option of the City, be deemed a default by Grantee under this Franchise. The drawing on the Letter of Credit by City, and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of Grantee which are in default, shall not be a waiver or release of such default.
- (d) The collection by City of any damages, monies or liquidated damages from the Letter of Credit shall not affect any other right or remedy available to City, nor shall any act, or failure to act, by City pursuant to the Letter of Credit, be deemed a waiver of any right of City pursuant to this Franchise or otherwise.

#### **11.4) Indemnification of City.**

- (a) The City and its officers, boards, committees, commissions, commissioners, elected and appointed officials, employees, volunteers and agents shall not be liable for any loss or damage to any real or personal property of any Person, or for any injury to or death of any Person arising out of or in connection with Grantee's construction, operation, maintenance, repair or removal of the System or as to any other action of Grantee with respect to this Franchise.
- (b) Nothing in this Franchise relieves a Person, from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work in the Rights-of-Way or in Public Property.
- (c) Relating to PEG programming or other City uses of the signal, the Grantee shall not be required to indemnify the City, nor is the Grantee liable, for negligence or misconduct on the part of the City or its officers, boards, committees, commissions, commissioners, elected or appointed officials, employees, volunteers or agents, including any loss or claims.

#### **11.5) Insurance.**

- (a) As a part of the indemnification provided herein, but without limiting the foregoing, Grantee shall file with City at the time of its acceptance of this Franchise, and at all times thereafter maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including broadcaster's/cablecaster's liability and contractual liability coverage, in protection of the Grantee, the City and its officers, elected and appointed officials, boards, commissions, commissioners, agents, employees and volunteers for any and all damages and liquidated damages which may arise as a result of this Franchise. The broadcasters'/cablecasters' liability coverage specified in this provision shall be subject to the provisions herein regarding indemnification of the City.

(b) The policies of insurance shall be in the sum of not less than \$1,000,000.00 for personal injury or death of any one Person, and \$2,000,000.00 for personal injury or death of two or more Persons in any one occurrence, \$1,000,000.00 for property damage to any one person and \$2,000,000.00 for property damage resulting from any one act or occurrence.

(c) The policy or policies of insurance shall be maintained by 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 Grantee or for other reasons, except after sixty (60) days advance written notice have been provided to the City.

**11.6) Deductibles/Certificate of Insurance.** Any deductible of the required insurance policies shall not in any way limit Grantee's liability to the City.

## **ARTICLE 12.**

### **FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS**

**12.1) Franchise Fee.** As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use the City's Rights-of-Way, Grantee shall pay as a Franchise Fee to the City, or its delegatee, throughout the term of this Franchise an amount equal to five percent (5%) of Grantee's Gross Revenues. Accrual of such Franchise Fee shall commence as of the Effective Date of this Franchise.

**12.2) Acceptance of Payment and Recomputation.** No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of Grantee.

**12.3) Underpayments.** If a net Franchise Fee underpayment is discovered as the result of an audit, Grantee will be assessed damages and interest pursuant to Applicable Law.

**12.4) Maximum Legal Compensation.** The parties acknowledge that, at present, applicable federal law limits the City to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the duration of this Franchise, the City is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then this Franchise may be amended unilaterally by the City to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Grantee to the City hereunder, provided that Grantee has received at least ninety (90) days prior written notice from the City of such amendment.

**12.5) Quarterly Payments.** Any payments due under this provision shall be payable quarterly. The payment shall be made within thirty (30) days of the end of each of



Grantee's fiscal quarters together with a report, as required herein, showing the basis for the computation. The City shall have the right to require further supporting information for each Franchise Fee payment.

**12.6) Penalty.** In the event any Franchise Fee payment or recomputation amount is not made on or before the required date, the Grantee shall pay interest on the amount due of 1 ½% per month, 18% per year, or such other maximum rate allowed by law.

**12.7) Deduction Prohibited.** Nothing in this Franchise shall be construed to limit any authority of the City to impose any tax, fee or assessment of general applicability. The Franchise Fee payments required by this Franchise shall be in addition to any and all taxes or fees of general applicability. The Grantee shall not have or make any claim for any deduction or other credit of all or any part of the amount of said Franchise Fee payments from or against any of said taxes or fees of general applicability, except as expressly permitted by law. The Grantee shall not apply nor seek to apply all or any part of the amount of said Franchise Fee payments as a deduction or other credit from or against any of said taxes or fees of general applicability, except as expressly permitted by law. Nor shall the Grantee apply or seek to apply all or any part of the amount of any of said taxes or fees of general applicability as a deduction or other credit from or against any of its Franchise Fee obligations, except as expressly permitted by law.

**12.8) Tax Liability.** The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State or the United States including, without limitation, sales, use and other taxes, business license fees or other payments. Payment of the Franchise Fees under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the City. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

**12.9) Payment on Termination.** If this Franchise terminates for any reason, the Grantee shall file with the City within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The City reserves the right to satisfy any remaining financial obligations of the Grantee to the City by utilizing the funds available in the letter of credit or other security provided by the Grantee.

### **ARTICLE 13. PROTECTION OF INDIVIDUAL RIGHTS**

**13.1) Discriminatory Practices Prohibited.** Grantee shall not deny service, deny access or otherwise discriminate against Subscribers or general citizens on the basis of

race, color, religion, national origin, sex, age, status as to public assistance, affectional preference or disability. Grantee shall comply at all times with all other applicable federal, State and City laws.

**13.2) Monitoring Individual Viewing Patterns Prohibited.** No signals, including signals of a Class IV Cable Channel, may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of Class IV Cable Channel activity planned for the purpose of monitoring individual viewing patterns or practices.

**13.3) Subscriber Lists Prohibited.** No lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee or its agents for Grantee's service business use or to City for the purpose of Franchise administration, and also to the Subscriber subject of that information, unless Grantee has received specific written authorization from the Subscriber to make such data available. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

**13.4) System Wide Monitoring.** Written permission from the Subscriber shall not be required for the conducting of System wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provisions set forth herein.

#### **ARTICLE 14.**

#### **UNAUTHORIZED CONNECTIONS AND MODIFICATIONS**

**14.1) Unauthorized Connections or Modifications Prohibited.** It shall be unlawful for any firm, Person, group, Grantee, corporation or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any unauthorized connection, extension or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System or to receive services of the System without Grantee's authorization.

**14.2) Removal or Destruction Prohibited.** It shall be unlawful for any firm, Person, group, Grantee or corporation to willfully interfere, tamper with, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any

purpose whatsoever, except for any rights the City may have pursuant to this Franchise or its police powers.

- 14.3) Penalty.** Any firm, Person, group, Grantee or corporation found guilty of violating this section may be fined not less than Twenty Dollars (\$20.00) and the costs of the action nor more than Five Hundred Dollars (\$500.00) and the costs of the action for each and every subsequent offense. Each continuing day of the violation shall be considered a separate occurrence.

## **ARTICLE 15. DEFAULT; REMEDIES**

**15.1) Event of Default.** In the event of default by Grantee under this Franchise, the City Cable Administrator shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty days to either cure the default or to provide satisfactory written proof that a cure cannot be completed within the thirty-day period, but that the cure is being actively and expeditiously pursued, and will be completed within a time certain. If the default is not fully cured within that thirty-day period following written demand; or if there is not written proof satisfactory to the City Cable Administrator that corrective action has been taken or is being actively and expeditiously pursued so that the cure will be completed by a time satisfactory to the City Cable Administrator; or if the City Cable Administrator provides the Grantee additional time to cure and the Grantee fails to cure within a time satisfactory to the City Cable Administrator; the City Cable Administrator may:

- (a) Recommend the revocation of this Franchise pursuant to the procedures herein;
- (b) Assess liquidated damages against Grantee as provided for herein; or
- (c) Recommend any other legal or equitable remedy available under this Franchise or any Applicable Law.

**15.2) Procedure for Revocation.**

- (a) **Public Hearing.** In the event revocation of this Franchise is recommended, the Grantee shall be provided the right to a public hearing affording due process before the City Council prior to the effective date of revocation, which public hearing shall follow the thirty (30) day notice provided herein. Such notice shall indicate with reasonable specificity the grounds for revocation that are believed to exist so that the Grantee may have a reasonable opportunity to cure or otherwise address the same. The City Council shall hear and consider the issue and shall hear any person interested therein, and shall determine, in its discretion, whether or not any violation by the Grantee has occurred. If the Council determines that the violation by the Grantee was within its control, and that the Grantee has failed to completely cure the violation, the council may, by resolution, declare that the Grantee's Franchise be revoked. Nothing herein prevents

the City from providing the Grantee with additional opportunities to cure. The City council may not give the Grantee any opportunity to comply where fraud and/or misrepresentation has been alleged and proved to the council's satisfaction. The City shall provide the Grantee with written notice of its decision together with written findings of fact supplementing said decision.

- (b) The administrative hearing shall be conducted so as to protect the full due process rights of the parties and provide for, at a minimum, the right to have counsel, the right to call and cross-examine witnesses, and the right to a full transcript of the proceedings.
- (c) After the close of the hearing, the City or the designated hearing officer shall issue a written decision based on the record of the proceedings, stating with specificity the findings and reasons supporting the decision.
- (d) Upon revocation, a Grantee shall have a period of one hundred and twenty (120) days subsequent to the date of the formal adoption of a revocation of the Franchise by the City within which to file an appeal with a court of competent jurisdiction.
- (e) **Full Force and Effect.** During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the Franchise would endanger the health, safety and welfare of any person or the public.

**15.3) Revocation.** The City reserves the right to revoke the Franchise, in the event that Grantee substantially violates any material provision of this Franchise Agreement.

**15.4) Conditions of Sale After Revocation or Termination.** The Franchising Authority may, to the extent permitted by 47 U.S.C. § 547, acquire ownership of the system in accordance with the following conditions:

- (a) Upon revocation of a Franchise, a fair valuation shall be an equitable value that shall not include any sum attributable to the value of the Franchise itself.
- (b) At the expiration of a Franchise Agreement and following a denial of renewal of the Franchise Agreement, a fair valuation shall be the fair market value of the plant and property, exclusive of the value attributed to the Franchise itself.
- (c) In the event Franchising Authority shall acquire a Franchise pursuant to the provisions of this Ordinance or a Franchise Agreement, and commenced operation of the System, Franchising Authority shall reimburse the Grantee for the Fair Market Value of the System.

**15.5) Remedies Nonexclusive.** The rights reserved by the City herein are in addition to all other rights and remedies the City may have under this Franchise or any other law and are not intended to be exclusive, nor shall this provision be read to

supersede or limit the applicability of any penalty provisions under Applicable Law.

**15.6) City Options in the Event of Expiration, Termination or Revocation.** If this Franchise expires without renewal or is otherwise lawfully terminated or revoked, the City may, subject to Applicable Law:

- (a) Allow Grantee to maintain and operate its Cable System on a month-to-month basis or short-term extension of this Franchise for not less than six (6) months, unless a sale of the Cable System can be closed sooner or Grantee demonstrates to the City's satisfaction that it needs additional time to complete the sale;
- (b) Order removal of the System in accordance with § 15.11; or
- (c) Purchase Grantee's Cable System in accordance with the procedures set forth herein.

In the event that a sale has not been completed as set forth above, the City shall have the right to require the Grantee, at the Grantee's sole expense: (i) to remove all portions of the System from all Rights-of-Way within the City; and (ii) to restore affected sites to their original condition. Should the Grantee fail, refuse or neglect to comply with the City's directive, all portions of the System, or any part thereof, may at the option of the City become the sole property of the City, at no expense to the City; or the City may cause the work to be done and Grantee shall reimburse the City for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or the City may recover the costs through the letter of credit and/or performance bond provided by Grantee. The City shall not be liable to the Grantee for damages resulting from such removal, alteration or relocation. The indemnification performance bond and insurance provisions and the letter of credit shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefor.

**15.7) What Constitutes Abandonment.** The Cable System shall be declared abandoned if:

- (a) The Grantee fails to provide Cable Service in accordance with this Franchise over a substantial portion of the Franchise Area for four (4) consecutive days, unless the City authorizes a longer interruption of service, or
- (b) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Franchise.

**15.8) Effect of Abandonment.** If the Grantee abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the City, at its option, may to the extent permitted by Applicable Law operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the City, or until the Franchise is revoked and a new franchisee is

selected by the City; or obtain an injunction requiring the Grantee to continue operations. If the City is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the City or its designee for all reasonable costs, expenses and damages incurred, or such expenses may be drawn from the performance bond and/or the letter of credit.

**15.9) Removal After Abandonment, Termination or Forfeiture.**

(a) In the event of revocation of the Franchise or abandonment or forfeiture of the System, the City shall have the right to require the Grantee to remove all or any portion of the System from all Rights-of-Way and public property within the City.

(b) If the Grantee has failed to commence removal of the System, or such part thereof as was designated by the City, within thirty (30) days after written notice of the City's demand for removal is given, or if the Grantee has failed to complete such removal within twelve (12) months after written notice of the City's demand for removal is given, the City shall have the right to apply funds secured by the letter of credit and performance bond toward removal and/or declare all right, title and interest to the System to be in the City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another Person for operation by it.

**15.10) Discontinuing Use of Cable System Facilities.** Whenever Grantee intends to discontinue using any facility within the Rights-of-Way, Grantee shall submit for the City's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that the City permit it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, the City may require Grantee to remove the facility from the Right-of-Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. The City may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule set by the City. Until such time as Grantee removes or modifies the facility as directed by the City, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Right-of-Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility.

**ARTICLE 16.  
REPORTS AND RECORDS**

**16.1) Open Records.** Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the City. The City, including the City's Auditor or his/her authorized representative, shall have access to, and the right to inspect, any books and records of Grantee, and its

parent corporations and Affiliates which are reasonably related to the administration or enforcement of the terms of this Franchise. Grantee shall not deny the City access to any of Grantee's records on the basis that Grantee's records are privileged, confidential or trade secret data, or under the control of any parent corporation, Affiliate or a third party. The City may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request.

**16.2) Confidentiality.** The City agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or State law, to the extent Grantee makes the City aware of such confidentiality.

**16.3) Records Required.**

(a) Grantee shall at all times maintain, and shall furnish to the City upon request free of charge:

- (1) A complete set of maps showing the exact location of all Cable System equipment and facilities in the Right-of-Way, but excluding detail on proprietary electronics contained therein and Subscriber Drops. As-built maps including proprietary electronics shall be available at Grantee's offices for inspection by the City's authorized representatives or agent(s) at any time during Normal Business Hours. These maps shall be certified as accurate by an appropriate representative of the Grantee;
- (2) A copy of all FCC filings on behalf of Grantee, its parent corporations or Affiliates which relate to the operation of the Cable System in the City;
- (3) Current Subscriber Records and information; not individually identifiable subscriber records;
- (4) A log of Cable Services added or dropped, Channel changes, number of Subscribers added or terminated, all construction activity, and total homes passed for the previous twelve (12) months;
- (5) A list of Cable Services, rates and Channel line-ups;
- (6) A complete schedule of applicable rates and charges for Cable Services provided under this Franchise; and
- (7) Upon request of the City, Grantee shall provide a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee. The schedule shall include a description of the price, terms and conditions established by Grantee for Leased Access Channels.

(b) Unless otherwise provided for herein, all information furnished to the City is public information, and shall be treated as such, except for information involving the privacy rights of individual Subscribers.

- 16.4) Gross Revenue Report.** Each Franchise Fee payment shall be accompanied by a written report to the City, verified by an authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Cable System and shall be drafted in accordance with GAAP.
- 16.5) Miscellaneous Reports.** The Grantee shall prepare and furnish to the City, at the times and in the form prescribed, such other reports with respect to Grantee's operations pursuant to this Franchise as the City may require.
- 16.6) Maps, Plats and Permanent Records.** If required by the City, the Grantee shall furnish to and file with the City the maps, plats and permanent records of the location and character of all facilities constructed, including underground facilities, and Grantee shall file with the City updates of such maps, plats and permanent records annually if changes have been made in the System.
- 16.7) Annual Reports.** Within sixty (60) days after the end of the calendar year, Grantee shall submit to the City a written report, in a form acceptable to the City, which shall include, but not necessarily be limited to, the following information:
- (a) A Gross Revenue statement, stating the total amount of Gross Revenues for the year and all payments, deductions and computations for the period. Such statement shall be audited by a certified public accountant, who may also be the chief financial officer or controller of Grantee, prior to submission to the City.
  - (b) A summary of the previous year's activities in the development of the Cable System, including, but not limited to, Cable Services begun or discontinued during the reporting year, and the number of Subscribers for each class of Cable Service (i.e., Basic, Expanded Basic Service, and Premium); and
  - (c) The number of homes passed, beginning and ending plant miles, any services added or dropped, and any technological changes occurring in the Cable System; and
  - (d) A statement of planned construction, if any, for the next year.
- 16.8) Copies of Federal and State Reports.** Grantee shall submit, upon written request, to the City copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporations, to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the City.
- 16.9) Complaint File and Reports.** Subject to the Grantee's obligations pursuant to law regarding privacy of certain information, the Grantee shall prepare and maintain written records of all Complaints received from the City and the resolution of such Complaints, including the date of such resolution. Such written records shall



be on file at the office of the Grantee for at least 3 years. These files shall remain open to the City during Normal Business Hours. Grantee shall provide the City, upon written request, an executive summary, which shall include the following information:

- (a) A summary of service requests, identifying the number and nature of the requests and their disposition;
- (b) A log of all service interruptions;
- (c) A summary of customer Complaints referred by the City to Grantee;
- (d) Average response time for service calls,
- (e) Video programming changes (additions/deletions); and
- (f) Such other information as reasonably requested by the City, provided that Grantee is given thirty (30) days prior written notice of such request before the beginning of the applicable month.

**16.10) Financial Records.** Grantee agrees to meet with a representative of the City, upon request to review Grantee's methodology of record-keeping, financial reporting, the computing of Franchise Fee obligations and other procedures, the understanding of which the City deems necessary for reviewing reports and records.

**16.11) Audit.** All amounts paid shall be subject to audit or review 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. The Grantee shall be responsible for providing the City all records necessary to confirm the accurate payment of Franchise Fees. The Grantee shall maintain such records for five (5) years, unless in the Grantee's ordinary course of business specific records are retained for a shorter period, but in no event less than three (3) years. If an audit or review discloses an overpayment or underpayment of Franchise Fees, the City shall notify the Grantee of such overpayment or underpayment. The City's audit or review expenses shall be borne by the City unless the audit or review determines that the payment to the City should be increased by more than five percent (5%) in the audited period, in which case the costs of the audit or review shall be borne by the Grantee as a cost incidental to the enforcement of the Franchise. Any additional amounts due to the City as a result of the audit or review shall be paid to the City within thirty (30) days following written notice to the Grantee by the City of the underpayment, which notice shall include a copy of the audit or review report. If the recomputation results in additional revenue to be paid to the City, such amount shall be subject to a ten percent (10%) annual interest charge. If the audit or review determines that there has been an overpayment by the Grantee, the Grantee may credit any overpayment against its next quarterly payment.

## **ARTICLE 17. MISCELLANEOUS PROVISIONS**

- 17.1) Franchise Renewal.** Any renewal of this Franchise shall be performed in accordance with applicable federal, State and local laws and regulations.
- 17.2) Work of Contractors and Subcontractors.** Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's ordinances, regulations and requirements. Work by contractors and subcontractors are subject to the same restrictions, limitations and conditions as if the work were performed by Grantee itself. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise and Applicable Laws governing the work performed by them. All applicable obligations of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise; however, in no event shall any such subcontractor or other performing work obtain any rights to maintain and operate a System or provide Cable Service. The Grantee shall provide notice to the City of the name(s) and address(es) of any entity, other than Grantee, which performs substantial services pursuant to this Franchise.
- 17.3) Amendment of Franchise Ordinance.** The Grantee and the City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to this Franchise or at any other time if the City and the Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, State or local laws. Provided, however, nothing herein shall restrict the City's exercise of its police powers or the City's authority to unilaterally amend Franchise provisions to the extent permitted by law.
- 17.4) Non-Waiver.** Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of City to enforce prompt compliance. City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.
- 17.5) Rights Cumulative.** All rights and remedies given to City by this Franchise or retained by City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by City and the exercise of one or more rights

or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

**17.6) Grantee Acknowledgment of Validity of Franchise.** The 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, illegal or arbitrary, and that Grantee believes City has the power to make the terms and conditions contained in this Franchise.

**17.7) Force Majeure.** The Grantee shall not be deemed in default of provisions of this Franchise or the City Code where performance was rendered impossible by war or riots, labor strikes or civil disturbances, floods or other causes beyond the Grantee's control, and the Franchise shall not be revoked or the Grantee penalized for such noncompliance, provided that the Grantee, when possible, takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible, under the circumstances, with the Franchise without unduly endangering the health, safety and integrity of the Grantee's employees or property, or the health, safety and integrity of the public, the Rights-of-Way, public property or private property.

**17.8) Governing Law.** This Franchise shall be governed in all respects by the laws of the State of Minnesota.

**17.9) Captions and References.**

(a) The captions and headings of sections throughout this Franchise are intended solely to facilitate reading and reference to the sections and provisions of this Franchise. Such captions shall not affect the meaning or interpretation of this Franchise.

(b) When any provision of the City Code is expressly mentioned herein, such reference shall not be construed to limit the applicability of any other provision of the City Code that may also govern the particular matter in question.

**17.10) Rights of Third Parties.** This Franchise is not intended to, and shall not be construed to, grant any rights to or vest any rights in third parties, unless expressly provided herein.

**17.11) Merger of Documents.** This Franchise and the attachments hereto, constitute the entire Franchise agreement between the City and the Grantee, and supersede all prior oral or written franchises and understandings.

**17.12) Equal Employment Opportunity and Affirmative Action.**

(a) The Grantee shall not deny service, deny access or otherwise discriminate against subscribers, channel users or other persons on the basis of race, color, creed, religion, ethnic origin, age, sex, sexual or affectional orientation, familial status, marital status, status with regard to public

assistance, or handicap. The Grantee shall comply with all requirements of federal, state and local laws and regulations relating to nondiscrimination.

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

**17.13) Interconnection with Neighboring CATV Systems.** The Grantee shall cooperate with any Interconnection corporation, regional Interconnection authority or city, county, state or federal regulatory agency which may be hereby established for the purpose of regulating, financing or otherwise providing for the Interconnection of Cable Systems beyond the boundaries of the City.

**17.14) Guaranty.** The performance of the Grantee shall be guaranteed in all respects by Charter Communications Corporation. A signed Guaranty, in a form acceptable to the City, shall be filed with the City contemporaneous with the Effective Date hereof. Any substitute guarantor is subject to approval by the City, such approval not to be unreasonably withheld.

## **ARTICLE 18. PUBLICATION; EFFECTIVE DATE; ACCEPTANCE**

**18.1) Publication.** This Franchise shall be published in accordance with applicable local and Minnesota law.

### **18.2) Acceptance.**

(a) Grantee shall accept this Franchise within thirty (30) days of its enactment by the City Council unless the time for acceptance is extended by the City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes provided, however, this Franchise shall not be effective until all City ordinance adoption procedures are complied with and all applicable timelines have run for the adoption of a City ordinance. In the event acceptance does not take place, or should all ordinance adoption procedures and timelines not be completed, this Franchise and any and all rights granted hereunder to the Grantee shall be null and void.

(b) Upon acceptance of this Franchise, the Grantee and the City shall be bound by all the terms and conditions contained herein. The Grantee agrees that this Franchise is not inconsistent with Applicable Law or regulations at the time it is executed.

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

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

(2) With its acceptance, Grantee shall also deliver any grant payments, performance bond and insurance certificates required herein that are due but have not previously been delivered.

**18.3) Binding Acceptance.** This Franchise shall bind and benefit the parties hereto and their respective authorized heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns.

Passed and adopted this 18<sup>th</sup> day of February, 2003.

Keith Covey  
Mayor

Dixon Bond  
Council Member

Attest:

Karl Huber, Jr.  
Finance Director/City Clerk

Jim Pokorney  
Council Member

First Reading:02-03-2003

Second Reading:02-18-2003

Published:02-22-2003

Attest: **CITY OF NORTHFIELD**

By: Keith Covey By: Karl Huber, Jr.

Its: Mayor Its: Finance Director/City Clerk

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

**CHARTER  
COMMUNICATIONS**

Dated: \_\_\_\_\_ By: \_\_\_\_\_

Its: \_\_\_\_\_

## **EXHIBIT A**

### City Hall

(including the departments of Administration, Human Resources, Community Development, Finance, Motor Vehicle, Engineering)

801 Washington Street  
5051

Northfield, MN 55057

### Water Department

1101 College Street

Northfield, MN 55057

### Street Department

1710 Riverview Drive

Northfield, MN 55057

### Wastewater Department

Highway 3 North

Northfield, MN 55057

### Arena

1280 S. Hwy 3

Northfield, MN 55057

### Fire Department

300 Fifth Street West

Northfield, MN 55057

### Police Department

300 Fifth Street West

Northfield, MN 55057

### Park and Recreation Department

Northfield Community Resource Center

1651 Jefferson Parkway

Northfield, MN 55057

Municipal Liquor Store – Signal not for public use

116 Fifth Street West

Northfield, MN 55057

### Library

210 Washington Street

Northfield, MN 55057

**CITY OF NORTHFIELD**

**ORDINANCE NO. 778**

AN ORDINANCE GRANTING A FRANCHISE TO CHARTER CABLE PARTNERS, LLC (FORMERLY MARCUS CABLE PARTNERS) d/b/a CHARTER COMMUNICATIONS, TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF NORTHFIELD, MINNESOTA, FOR THE SOLE PURPOSE OF PROVIDING CABLE SERVICE; SETTING FORTH CONDITIONS FOR THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY IN CONJUNCTION WITH THE CITY’S RIGHT-OF-WAY ORDINANCE, IF ANY; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN.

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