

ORDINANCE NO. 778
CITY OF BURNSVILLE, MINNESOTA

CABLE TELEVISION FRANCHISE ORDINANCE

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ORDINANCE NO. _____

AN ORDINANCE GRANTING A FRANCHISE TO MEDIAONE NORTH CENTRAL COMMUNICATIONS CORP. TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE CITY OF BURNSVILLE, MINNESOTA FOR THE PURPOSE OF PROVIDING CABLE SERVICE; SETTING FORTH CONDITIONS ACCOMPANYING 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 Burnsville, Minnesota ordains:

STATEMENT OF INTENT AND PURPOSE

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

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

FINDINGS

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

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

SECTION 1.

SHORT TITLE AND DEFINITIONS

1. **Short Title.** This Franchise Ordinance shall be known and cited as the Cable Franchise Ordinance.

2. **Definitions.** For the purposes of this Franchise, the following terms, phrases, words, abbreviations and their derivations shall have the meaning 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; words in the singular number include the plural; and the masculine gender includes the feminine gender. Unless otherwise expressly stated, words not defined herein or in the City Code shall be given the meaning set forth in applicable law and, if not defined therein, the words shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.
 - a. **"Actual Cost"** means the incremental cost to the Grantee of materials, capitalized labor and borrowing necessary to install and construct fiber-optic lines, coaxial cable and/or equipment.

 - b. **"Affiliate"** means any Person who owns or controls, is owned or controlled by or is under common ownership or control with the Grantee.

 - c. **"Basic Cable Service"** means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7).

 - d. **"Burnsville/Eagan System"** means the Cable System operated pursuant to this Franchise and located in the member municipalities of the Commission.

 - e. **"Cable Modem"** means an electronic device, commonly referred to as such, at a minimum, containing a modulator and demodulator, tuner, interface, media access control mechanism and CPU, which acts as an interface between a Subscriber's customer premises equipment and the System and is capable of converting analog signals to digital signals and digital signals to analog signals, thereby allowing data communications to be carried over System facilities.

- f. **"Cable Service"** or **"Service"** means (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. For purposes of this Franchise, "Cable Service" includes, but is not limited to, the provision of Internet service over the System, Institutional Network services and any other services or capabilities, but only to the extent consistent with the definition of "Cable Service" pursuant to federal or State law or applicable regulations.
- g. **"Cable System"** or **"System"** means 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; (5) any facilities of any electric utility used solely for operating its electric utility system; or (6) a translator system which receives and rebroadcasts over-the-air signals. A reference to the System in this Franchise refers to any part of such System including, without limitation, Converters. The foregoing definition of "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.
- h. **"City"** means the City of Burnsville, Minnesota, a municipal corporation, in the State of Minnesota, acting by and through its City Council, or its lawfully appointed designee.
- i. **"City Code"** means the Burnsville City Code, as amended from time to time.
- j. **"City Council"** means the governing body of the City.
- k. **"Class IV Cable Channel"** means a signaling path provided by a Cable

System to transmit signals of any type from a Subscriber terminal to another point in the System.

- l.** “**Commission**” means the Burnsville/Eagan Telecommunications Commission, a municipal joint powers consortium comprised of the municipalities of Burnsville and Eagan, Minnesota. In the event the City lawfully withdraws from the Commission, any reference to the Commission in this Franchise shall thereafter be deemed a reference to the City, and the rights and obligations related thereto shall, where possible, accrue pro rata to the City, pursuant to a transition agreement to be negotiated at such time by and between the City, the Commission and the Grantee. The total burden of the Grantee’s obligations under this Franchise and the Grantee’s Franchise with the other member cities of the Commission shall not be increased as a result of any such withdrawal.
- m.** “**Converter**” means 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 signals of a particular service.
- n.** “**CPI**” means 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.
- o.** “**Drop**” means the cable that connects the ground block on the Subscriber’s residence or institution to the nearest feeder cable of the System.
- p.** “**Educational Access Channel**” or “**Educational Channel**” means any 6 MHz channel on a System set aside by the Grantee, the City and/or the Commission for Noncommercial educational use by educational institutions, as contemplated by applicable law.
- q.** “**FCC**” means the Federal Communications Commission, its designee, and any legally appointed, designated or elected agent or successor.
- r.** “**Franchise**” or “**Cable Franchise**” means 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.
- s.** “**Governmental Access Channel**” or “**Governmental Channel**” means any

6 MHz channel on the System set aside by the Grantee, the City and/or the Commission for Noncommercial use by the City or its delegatee.

- t. "**Grantee**" is MediaOne North Central Communications Corp., and its lawful successors, transferees or assignees.

- u. "**Gross Revenues**" means 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 (including cash, credits, property or other consideration of any kind or nature). Gross Revenues include, by way of illustration and not limitation, monthly fees charged to Subscribers for any basic, optional, premium, per-channel, or per-program service, or other Cable Service including, without limitation, Internet access and Cable Modem service fees charged to Subscribers, to the extent such services are offered as a Cable Service under applicable law; Installation, disconnection, reconnection, and change-in-service fees; Lockout Device fees; Leased Access Channel fees; late fees and administrative fees; fees, payments or other consideration received from programmers for carriage of programming on the System and accounted for as revenue under GAAP; revenues from rentals or sales of Converters or other equipment; fees related to commercial and institutional usage of the System or the I-Net; advertising revenues; interest; barter; revenues from program guides; franchise fees; and revenues to the System from home shopping, bank-at-home channels and other revenue sharing arrangements. Gross Revenues shall include revenues received by an entity other than the Grantee, an Affiliate or another entity that operates the System where necessary to prevent evasion or avoidance of the Grantee's obligation under this Franchise to pay the franchise fee. Gross Revenues shall not include: (i) to the extent consistent with generally accepted accounting principles, 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.

- v. "**Installation**" means the connection of the System from feeder cable to the point of connection with the Subscriber Converter or other terminal equipment.

- w. **"Institutional Network"** or **"I-Net"** means the discrete bidirectional communications network and services related to such network provided by the Grantee to identified institutions as required by this Franchise, and as further described in Section 7 herein.
- x. **"Leased Access Channel"** means 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.
- y. **"Lockout Device"** means an optional mechanical or electrical accessory to a Subscriber's terminal which inhibits the viewing of a certain program, certain channel, or certain channels provided by way of the Cable System.
- z. **"Node"** means 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, or in the case of the Institutional Network, signals being delivered to and received from Institutional Network user sites and all necessary equipment related to such transition point.
- aa. **"Noncommercial"** means, in the context of PEG channels, that particular products and services are not promoted or sold, if such products or services are the same as or in direct competition with the products or services promoted and sold by the Grantee. 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.
- bb. **"Normal Operating Conditions"** means 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, and the development, operation or maintenance of the Grantee's telephone 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.
- cc. **"PEG"** means public, educational, and governmental.
- dd. **"Person"** means any individual, partnership, association, joint stock company, 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 or the Commission.

- ee. **"Public Access Channel(s)"** means any 6 MHz channels on the System set aside by the Grantee, the City and/or the Commission for Noncommercial use by the general public, as contemplated by applicable law.
- ff. **"Right-of-Way" or "Rights-of-Way"** means 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.
- gg. **"Right-of-Way Ordinance"** means 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.
- hh. **"Standard Installation"** means any residential Installation which can be completed using a Drop of 250 feet or less.
- ii. **"State"** means the State of Minnesota, its agencies and departments.
- jj. **"Subscriber"** means 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.
- kk. **"System Upgrade"** means the improvement or enhancement in the technology or service capabilities made by the Grantee to the System as more fully described in Section 4.

SECTION 2.

GRANT OF AUTHORITY AND GENERAL PROVISIONS

1. **Grant of Franchise.** This Franchise is granted pursuant to the terms and conditions contained herein and in applicable law. The Grantee shall comply with all provisions of this Franchise and applicable laws, regulations and codes. Failure of the Grantee to construct, operate and maintain a System as described in this Franchise, or to meet obligations and comply with all provisions herein, may be deemed a violation of this Franchise.

2. **Grant of Nonexclusive Authority.**
 - a. Subject to the terms of this Franchise, the City hereby grants the Grantee the right to own, construct, operate and maintain a System along the Rights-of-Way. The grant of authority set forth in this Franchise applies only to the Grantee's provision of Cable Service; provided, however, that nothing herein shall limit the Grantee's ability to use the System for other purposes not inconsistent with the provision of Cable Service; and provided further, that any local, State and federal authorizations necessary for the Grantee's use of the System for other purposes are obtained by the Grantee. This Franchise does not confer any rights other than as expressly provided herein, or as provided by federal, State or local law. No privilege or power of eminent domain is bestowed by this Franchise or grant. The System constructed and maintained by Grantee or its agents pursuant to this Franchise shall not interfere with other uses of the Rights-of-Way. The Grantee shall make use of existing poles and other aerial and underground facilities available to the Grantee to the extent it is technically and economically feasible to do so.

 - b. Notwithstanding the above grant to use Rights-of-Way, no Right-of-Way shall be used by the Grantee if the City determines that such use is inconsistent with the terms, conditions, or provisions by which such Right-of-Way was created or dedicated, or with the present use of the Right-of-Way.

 - c. This Franchise and the right it grants to use and occupy the Rights-of-Way shall not be exclusive and this Franchise does not, explicitly or implicitly, preclude the issuance of other franchises or similar authorizations to operate Cable Systems within the City. Provided, however, that the City shall not authorize or permit another Person to construct, operate or maintain a Cable System on material terms and conditions which are, taken as a whole, more favorable or less burdensome than those applied to the Grantee.

 - d. Should any other multichannel video programming distributor ("MVPD")

over which the City has regulatory jurisdiction provide Cable Service in the current cable service area, the City shall not grant more favorable terms, taken as a whole, to such MVPD than are granted to the Grantee.

- e. In the event another Person operates a Cable System authorized by the City on terms and conditions that are, taken as a whole, more favorable or less burdensome than the terms and conditions applicable to the Grantee under this Franchise, the City shall adjust any such terms and conditions in any other provider's authorization or this Franchise so that the terms and conditions under which such other Person operates, taken as a whole, are not more favorable or less burdensome than those that are applied to the Grantee.
 - f. This Franchise authorizes only the use of Rights-of-Way for the operation of a System. Therefore, the grant of this Franchise and the payment of franchise fees hereunder shall not exempt the Grantee from the obligation to pay compensation or fees for the use of City property, both real and personal, other than the Rights-of-Way, provided, however, that such compensation or fees are required by City ordinance, regulation or policy and are non-discriminatory.
3. **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 or other lawful authorization containing substantially similar burdens and obligations to this Franchise, including, without limitation, a requirement on such Person to pay franchise fees on such Person's use of the System to provide Cable Services, to the extent there would be such a requirement under this Franchise if the Grantee itself were to use the System to provide such Cable Service. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 10(5).
4. **Franchise Term.** This Franchise shall be in effect for a period of fifteen (15) years, such term commencing on the Effective Date specified in Section 2(10), unless sooner renewed, extended, revoked or terminated as herein provided.
5. **Previous Franchises.** As of the Effective Date, this Franchise shall supercede and replace any previous Ordinance, as amended, of the City granting a Franchise to Grantee, including any agreement(s) of the parties related thereto, except the Grantee shall continue to be bound by any previously accrued but unfulfilled obligations under Ordinance No. 259 (the "Prior Franchise") for which the Grantee had notice. The Grantee shall remain liable for payments of all franchise fees and other amounts owed, and for all unfulfilled actions that the Grantee was notified of and required to take under the Prior Franchise up to the Effective Date of this Franchise. The grant of this Franchise shall have no effect on the Grantee's duty under the Prior Franchise

to indemnify or insure the City against acts and omissions occurring during the period that the Prior Franchise was in effect. This Franchise incorporates, amends and replaces that Memorandum of Understanding dated November 27, 1995.

6. Compliance with Applicable Laws, Resolutions and Ordinances.

- a. The terms of this Franchise shall define the contractual rights and obligations of the Grantee with respect to the provision of Cable Service and operation of the System in the City. However, the Grantee shall at all times during the term of this Franchise be subject to the lawful exercise of the police powers of the City, the City's the right to adopt and enforce additional generally applicable ordinances and regulations, and lawful and applicable zoning, building, permitting and safety ordinances and regulations. The grant of this Franchise does not relieve the Grantee of its obligations to obtain any generally applicable licenses, permits or other authority as may be required by the City Code, as it may be amended, for the privilege of operating a business within the City or for performing work on City property or within the Rights-of-Way, to the extent not inconsistent with this Franchise. Except as provided below, any modification or amendment to this Franchise, or the rights or obligations contained herein, must be within the lawful exercise of the City's police powers, as enumerated above, in which case the provision(s) modified or amended herein shall be specifically referenced in an ordinance of the City authorizing such amendment or modification. This Franchise may also be modified or amended with the written consent of the Grantee as provided in Section 13(3) herein.
- b. 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 of Section 3 and/or Section 8(5)(c) herein, except that the Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.
- c. In the event of any conflict between Section 3 and/or Section 8(5)(c) of this Franchise and any lawfully applicable City ordinance or regulation which addresses usage of the Rights-of-Way, the conflicting terms in Section 3 and/or Section 8(5)(c) of this Franchise shall be superseded by such City ordinance or regulation, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.

- d. 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 Section 3 and/or Section 8(5)(c) of this Franchise, the Grantee shall comply with such ordinance or regulation of general applicability, regardless of which requirement was first adopted except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.
 - e. 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 with a copy to the Commission, in accordance with Section 2(9). The City or the Commission shall provide a written response within fourteen (14) 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 seventeen (17) days of mailing or delivering such written question.
7. **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.
8. **Territorial Area Involved.** This Franchise is granted for the corporate boundaries of City, as they exist from time to time, provided, however, that the Grantee shall not be required to extend service beyond its present System boundaries except pursuant to the line extension requirement set forth in Section 4(6) of this Franchise.
9. **Written Notice.** All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of the Grantee or the City's designated Franchise administrator, 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 of Burnsville, Minnesota
City Hall
100 Civic Center Parkway
Burnsville, Minnesota 55337-3867
Attention: City Manager/Administrator

With copies to: Burnsville/Eagan Telecommunications Commission
100 Civic Center Parkway
Burnsville, Minnesota 55337-3867

And to: Thomas D. Creighton, Esq.
Bernick and Lifson, P.A.
5500 Wayzata Boulevard, Suite 1200
Minneapolis, Minnesota 55416

If to Grantee: General Manager
MediaOne
10 River Park Plaza
St. Paul, Minnesota 55107

With copies to: John F. Gibbs, Esq.
Robins, Kaplan, Miller & Ciresi, L.L.P.
2800 LaSalle Plaza
800 LaSalle Ave. So.
Minneapolis, Minnesota 55402

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

10. **Effective Date.** This Franchise shall become effective after: (i) all conditions precedent to its effectiveness as an ordinance of the City have occurred; (ii) all conditions precedent to its execution are satisfied; (iii) it has been approved by the City Council in accordance with applicable law; and (iv) it has been accepted and signed by the Grantee and the City (the "Effective Date").

SECTION 3.

CONSTRUCTION STANDARDS

1. **Registration, Permits and Construction Codes.**

- a. The Grantee shall strictly adhere to all State and local laws, regulations

and policies adopted by the City Council 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 other applicable provisions of law and regulations.

- b. 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.
2. **Restoration of Rights-of-Way and Property.** 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. 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. 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.
3. **Conditions on Right-of-Way Use.**
 - a. Nothing in this Franchise shall be construed to prevent the City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Right-of-Way; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

- b. All System transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be located so as not to obstruct or interfere with the use of Rights-of-Way except for normal and reasonable obstruction and interference which might occur during construction and to cause minimum interference with the rights of property owners who abut any of said Rights-of-Way and not to interfere with existing public utility installations.
- c. 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 in the case of 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.
- d. The Grantee shall not place poles, conduits, or other fixtures of the 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 lawful requirements of the City.
- e. The Grantee shall, upon request of any Person holding a moving permit issued by the City, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same (except in the case where the requesting Person is the City for the purpose of moving a City-owned building, in which case no payment shall be required). The Grantee shall be given not less than ten (10) days' advance written notice to arrange for such temporary wire changes.

- f. To the extent consistent with generally applicable City Code provisions, rules and regulations, 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 the sole cost of the Grantee.
- g. The Grantee shall use its best efforts to give reasonable prior notice to any adjacent private property owners who will be negatively affected or impacted by Grantee's work in the Rights-of-Way.
- h. 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 Commission 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.
- i. In the event that the System creates or is contributing to an imminent danger to health, safety or property, as reasonably determined by the City, the City, after providing notice to the Grantee, if it is reasonably feasible to do so, may remove or relocate any or all parts of the System at no expense to the City, other than the City's costs to act on such determination.

4. Use of Existing Poles and Undergrounding of Cable.

- a. Where existing poles, underground conduits, ducts or wire holding structures are available for use by the Grantee, but it does not make arrangements for such use, the City may require, through the established permit, or any other applicable procedure, the Grantee to use such existing poles and wireholding structures if the City determines that the public convenience would be enhanced thereby and the terms available to the Grantee for the use of such poles and structures are just and reasonable.
- b. The Grantee agrees to place its cables, wires or other like facilities

underground, in the manner as may be required by the provisions of the City Code and City policies, procedures, rules and regulations, as amended from time to time, where all utility facilities are placed underground. The Grantee shall not place facilities, equipment or fixtures where they will interfere with any existing gas, electric, telephone, water, sewer or other utility facilities or with any existing installations of the City, or obstruct or hinder in any manner the various existing utilities serving the residents of the City. To the extent consistent with the City Code, City policies, procedures, rules and regulations, System cable and facilities may be constructed overhead where poles now exist and electric or telephone lines or both are now overhead. However, in no case may the Grantee install poles in areas of the City where underground facilities are generally used by the utilities already operating. If the City, at a future date, requires all electric and telephone lines to be placed underground in all or part of the City, the Grantee shall, within a reasonable time, as determined by the City, similarly move its cables and lines, at no expense to the City, and shall not seek damages from the City for such compliance.

5. Installation of Facilities.

- a. No poles, towers, conduits, amplifier boxes, pedestal mounted terminal boxes, similar structures, or other wire-holding structures shall be erected or installed by the Grantee without obtaining any required permit or other authorization from the City.
- b. No placement of any pole or wireholding structure of the Grantee is to be considered a vested fee interest in the Rights-of-Way or in City property. Whenever feasible, all transmission and distribution structures, lines, wires, cables, equipment and poles or other fixtures erected by the Grantee within the City are to be so located and installed as to cause minimum interference with the rights and convenience of property owners.

6. Safety Requirements.

- a. All applicable safety practices required by law shall be used during construction, maintenance and repair of the System. The Grantee agrees, at all times, to employ ordinary and reasonable care and to install and maintain in use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage or injuries to the public or to property. All structures and all lines, equipment and connections in the Rights-of-Way shall at all times be kept and maintained in a safe condition, consistent with applicable safety codes.

- b. The Grantee's construction, operation or maintenance of the System shall be conducted in such a manner as not to interfere with City communications technologies related to the health, safety and welfare of City residents.
 - c. 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.
 - d. The Grantee shall be a member of the One Call Notification System (otherwise know as "Gopher State One Call") or its successor, and shall field mark the locations of its underground facilities upon request. Throughout the term of this Franchise, the Grantee shall identify the location of its facilities for the City at no charge to the City.
7. **City Use of Facilities.** The City, after consultation and cooperation with the Grantee, may use the Grantee's poles, conduits, ducts and manholes free of charge, provided that such use will not unreasonably interfere with the present or future needs or operations of the Grantee. Other facilities of the Grantee shall be provided to the City at fair and reasonable rates which shall not exceed actual cost to the Grantee.
8. **Removal of Facilities at Expiration of Franchise.** At the expiration of the term for which this Franchise is granted, or upon the expiration of any renewal or extension period which may be granted, the City shall have the right to require the Grantee, at its 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 Sytem, 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 be removed, altered or relocated by the City at the cost of the Grantee. The City shall not be liable to the Grantee for damages resulting from such removal, alteration or relocation.

SECTION 4.

DESIGN PROVISIONS

1. **System Facilities and Equipment.**
- a. Upon completion of the System Upgrade, the System generally shall have at least the following characteristics:

- i. a modern design when built, utilizing an architecture that will permit additional improvements necessary for high-quality and reliable service throughout the Franchise term, and the capability to operate continuously on a twenty-four hour a day basis without severe material degradation during operating conditions typical to the Minneapolis/St. Paul metropolitan area;
- ii. standby power generating capacity at the headend. The Grantee shall maintain motorized standby power generators capable of powering all headend equipment for at least twenty-four (24) hours. The back-up power supplies serving the System shall be capable of providing power to the System for not less than three (3) hours per occurrence measured on an annual basis according to manufacturer specifications in the event of an electrical outage. The Grantee shall maintain sufficient portable motorized generators to be deployed in the event that the duration of a power disruption is expected to exceed three (3) hours;
- iii. facilities of good and durable quality, generally used in high-quality, reliable systems of similar design;
- iv. a System that conforms to or exceeds all applicable FCC technical performance standards, as amended from time to time, which standards are incorporated herein by reference, and any other applicable technical performance standards. End of the line performance must meet or exceed FCC specifications at the end of the Subscriber Drop;
- v. a System shall, at all times, comply with applicable federal, State and local rules, regulations, practices and guidelines pertaining to the construction, upgrade, operation, extension and maintenance of Cable Systems, including, by way of example (but not limitation):
 - (A) National Electrical Code, as amended from time to time; and
 - (B) National Electrical Safety Code (NESC), as amended from time to time.
- vi. facilities and equipment sufficient to cure violations of FCC technical standards and to ensure that Grantee's System remains in compliance with the standards specified in subparagraph (v);
- vii. such facilities and equipment as necessary to maintain, operate and

- evaluate the Grantee's System for compliance with FCC technical and customer service standards, as such standards may hereafter be amended;
- viii. status monitoring equipment to alert the Grantee when and where back-up power supplies are being used, which capability shall be activated and used on or before the completion of the System Upgrade;
 - ix. all facilities and equipment required to properly test the System and conduct an ongoing and active program of preventative maintenance and quality control, and to be able to quickly respond to customer complaints and resolve System problems;
 - x. antenna supporting structures designed in accordance with any applicable governmental building codes, as amended, and painted, lighted and erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration, the Federal Communications Commission and all other applicable codes and regulations;
 - xi. facilities and equipment at the headend allowing the Grantee to transmit or cablecast signals in substantially the form received, without substantial alteration or deterioration. For example, the headend should include equipment that will transmit color video signals received at the headend in color, stereo audio signals received at the headend in BTSC stereo format, and a signal received with a secondary audio track with both audio tracks;
 - xii. the Grantee shall provide adequate security provisions in its Subscriber site equipment to permit parental control over the use of Grantee's Cable Service. The Grantee, however, shall bear no responsibility for the exercise of parental controls and shall incur no liability for any Subscriber's or viewer's exercise or failure to exercise such controls;
 - xiii. facilities and equipment capable of operating within the temperature ranges typical to the climate of the Burnsville/Eagan area over the calendar year;
 - xiv. the System shall be so constructed and operated that there is no perceptible deterioration in the quality of Public, Educational or Governmental Access Channel signals after delivery of such signals

to the first interface point with an Institutional Network hub, Grantee's headend or the subscriber network, whichever is applicable, as compared with the quality of any other channel on the System. As used in this paragraph, "deterioration" refers to delivery that is within the control of the Grantee; and

- xv. the Grantee must have TDD/TYY (or equivalent) equipment at the company office, and a publicly listed telephone number for such equipment, that will allow hearing impaired customers to contact the company.

- b. The Grantee is authorized and required to continue to operate Grantee's Cable System substantially as it exists on the date hereof, and to provide service substantially equivalent to its existing service, within the territorial limits of the City as of the Effective Date of this Franchise, until such time as the System is upgraded, as provided herein.

- c. The Grantee shall complete a System Upgrade in accordance with the schedule set forth in subsection 4(4) providing at least the following characteristics:
 - i. upon completion of the System Upgrade, the System shall include a hybrid fiber-coaxial architecture, with fiber-optic cable from the headend to hubs, and from hubs to Nodes. Nodes System-wide shall serve an average of approximately 250 dwelling units or less, with a minimum of three (3) fibers connecting such a 250-home average Node to System headends and hubs. Individual Nodes may serve cable passing a number of dwelling units in excess of 250, provided there is no adverse effect on the performance characteristics of the System serving Subscribers from that Node.
 - ii. segmentation of the System so that sufficient capacity is available for interactive services at all times;
 - iii. activation of the bandwidth from 5 to 40 MHz for upstream transmissions;
 - iv. no more than four (4) amplifiers per coaxial cable in each cascade from the Node;
 - v. a capacity rating of at least 750 MHz for all active and passive components;

- vi. modular audio control units shall be utilized for each channel for volume control on analog service, excluding off-air broadcast channels or channels that are sent through a processor instead of being modulated and de-modulated; and
 - vii. electronic transmission and powering equipment connecting the hubs in the Burnsville/Eagan System to the Grantee's other hubs and/or headend facilities in the Twin Cities metropolitan area shall be of a redundant design.
- d. The upgraded System shall initially have a minimum analog channel capacity of at least 78 channels, downstream to all Subscribers, plus additional capacity for digital and other services.
 - e. The System shall be designed and constructed in order to allow narrowcasting of Governmental Access Channels and Public Access Channels discretely by municipality and, to the extent technically feasible within the System design, the Grantee shall use its best efforts to accommodate narrowcasting of Educational Access Channels by school district boundaries. The Grantee shall provide and maintain all equipment and facilities necessary to accomplish this narrowcasting, at no cost to the City or the Commission.
 - f. All power supplies for the System shall be equipped with standby power capability in accordance with Section 4(1)(a)(ii). Additionally, the Grantee shall use status monitoring equipment at all power supply locations in the System, including the Institutional Network. Such equipment shall have the capabilities described in Section 4(1)(a)(viii).
 - g. PEG channels shall not be channel mapped without the prior approval of the Commission. As to all other channels, the Grantee shall make good faith efforts to avoid channel mapping unless that mapping is required to deliver a high-quality signal or to comply with applicable laws or regulations. In the event mapping of non-PEG channels is required to deliver a high quality signal or to comply with applicable laws or regulations, the Grantee agrees to map as few channels as possible.
 - h. Emergency Alert System.
 - i. The Grantee shall install and thereafter maintain an Emergency Alert System ("EAS") fully compliant with local, state and federal EAS requirements. This EAS shall at all times be operated in compliance with FCC regulations.

- ii. If the City, in its sole discretion, concludes that the existing EAS cannot adequately inform City residents of local emergencies or other significant events, then the Grantee shall, at no cost to the City or the Commission, furnish and install equipment that will allow a representative of the City to remotely activate the EAS and to override the audio and video on all channels on the Grantee's Cable System within the City that may be lawfully overridden (subject to any contractual or other rights of broadcasters) without the assistance of the Grantee, for emergency broadcasts from a location designated by the City. At Actual Cost to the City, equipment will be installed by the Grantee (*e.g.*, a comb generator or its equivalent) that shall, at a minimum, provide the City with the technical ability to override the audio and video on all channels within its territorial boundaries, without overriding the audio and video portions of signals carried on segments of the Grantee's System located outside the City. If the City desires both to originate System specific signals and receive only those signals originated in Burnsville or Eagan, the Actual Cost of construction and activation of a separate headend in Burnsville/Eagan shall be borne by the City.
- iii. In the event that the City requires the Grantee to provide for local activation of the EAS, the City may, from time to time, conduct reasonable tests of the EAS. The City or the Commission shall provide reasonable notice to the Grantee prior to any test use of the EAS. The Grantee shall cooperate with the City in any such test.
- i. During the design, walkout and preliminary construction activities related to the System Upgrade, the Grantee shall seek to identify the non-video interests of the business community within the City and shall seek to quantify business community demand for non-video services. Prior to making any final determination of such demand, the Grantee shall solicit input from the City regarding the location of business corridors that may desire such services. The Grantee shall, in connection with the System Upgrade, install conduit adequately sized to address future System rebuilds or System additions, with the intent to obviate the need to reopen the Rights-of-Way for construction and installation work.
- j. The City may request, as part of the System Upgrade, that the Grantee remove from the Rights-of-Way, at its own expense, existing equipment, plant and facilities that will not be used in the future, whether activated or not. If any unused or deactivated equipment remains in Rights-of-Way after such City request and the Grantee's reasonable opportunity to remove, the City may remove such plant, facilities and equipment at the Grantee's

expense. The Grantee may appeal any request to remove existing equipment, plant and facilities to the City Council within ten (10) days of the date that the request is received by the Grantee. Any such appeal shall: (i) be in writing; (ii) list the reasons that the City's request to remove existing equipment, plant and/or facilities is inappropriate or unreasonable; and (iii) include any other information that the Grantee wishes the City Council to consider. Within ninety (90) calendar days of receiving a written appeal under this paragraph, the City Council shall: (i) determine whether a request to remove existing facilities, equipment and/or plant is justified; and (ii) inform the Grantee in writing of its findings. In the event existing facilities, plant and equipment are left underground in the Rights-of-Way, the City may require the Grantee to provide accurate maps showing the location and the nature of the deactivated or unused facilities, plant and equipment, if such information has not already been provided to the City.

- k. The Grantee shall not assert or otherwise raise any claim before a court of competent jurisdiction or any administrative agency alleging that, as of the Effective Date of this Franchise, the minimum System design and performance requirements set forth in this Franchise are unenforceable under or inconsistent with applicable law or any orders or decisions of the FCC.

2. Interconnection.

- a. The Grantee shall, at the City's request, interconnect its System to other commonly owned, adjacent Systems located in the Minneapolis/St. Paul metropolitan area. Interconnection shall be completed within a reasonable timeframe mutually agreed upon by the City and the Grantee, unless an extension is granted upon petition by the Grantee.
- b. The Grantee shall, at the City's request, interconnect its System to adjacent Cable Systems in the Minneapolis/St. Paul metropolitan area that are not commonly owned or controlled by the Grantee or its Affiliates. Except as otherwise provided herein, interconnection shall be completed within a reasonable timeframe mutually agreed upon by the City and the Grantee, unless an extension is granted upon petition by the Grantee. The cost of establishing an interconnection link to the border of the adjacent jurisdiction shall be borne by the Grantee. As to the actual costs of physical interconnection at the border, the Grantee shall bear no more than fifty percent (50%) of such costs, unless the parties agree otherwise. The Grantee will obtain relief from this interconnection requirement where: (i) it shows to the satisfaction of the City that interconnection is technically infeasible to perform; and (ii) it proposes a reasonable alternative, in light of the purposes to be served by the interconnection. Alternatively, the Grantee will obtain

relief from this interconnection requirement if it is unable to reach an agreement with the designated adjacent System, after a good faith effort to reach an agreement, provided that the Grantee provides the City with the proposed agreement and explains the reason(s) why the parties have been unable to reach agreement.

- c. Concurrent with the System Upgrade, the Grantee shall construct an interconnection link to the demarcation point agreed upon by the Grantee and the franchised cable system operator in Apple Valley and/or Lakeville, Minnesota, should there be such an agreement. The cost of constructing the interconnection link to the border of the City shall be borne solely by the Grantee. As to the actual physical interconnection at the border, the Grantee shall bear no more than fifty percent (50%) of such costs. The Commission shall be responsible for switching the signals carried over the interconnection link that are originated by or intended for the City, the Commission or I-Net Users.
- d. Every interconnection link established pursuant to this Section 4(2) shall, at a minimum: (A) use a transmission medium that is not inferior to any other transmission medium used in the System; (B) allow for the seamless transmission of all required signals on both systems; and (C) provide, for the City's and/or the Commission's exclusive use, at least one (1) 6 MHz channel for forward video purposes, one (1) 6 MHz channel for return video purposes, one (1) 6 MHz channel for forward data and/or other purposes and one (1) 6 MHz channel for return data and/or other purposes.
- e. The Grantee may use excess capacity on the interconnection link described in paragraph (c), provided such use does not interfere with or degrade video or data signals originated by or intended for the City, the Commission and I-Net Users. If, in the Commission's opinion, the Grantee's use of the interconnection link is interfering with other users' communications, the Commission shall notify the Grantee of the problem, and require immediate cessation of the interference or specify a reasonable date by which the interference must be stopped.
- f. The Grantee shall be responsible for all costs associated with its use of the interconnection link described in paragraph (c).
- g. The Grantee shall cooperate with any interconnection corporation, regional interconnection authority, or state or federal agency which may be hereafter established for the purpose of regulating, facilitating, financing or otherwise providing for the interconnection of cable systems beyond the boundaries of the City.

3. High-Speed Services.

- a. To the extent the Grantee can lawfully provide non-video Cable Service (such as high-speed Internet service) via the System as a Cable Service, the System shall provide such a service if the System is technically capable of providing that service.
- b. The Grantee shall offer one (1) free Cable Modem and free monthly Cable Modem service, including Internet access, to the following entities if they cannot use the Institutional Network for high-speed data transmission: (i) each elementary and secondary school located in City; and (ii) all governmental institutions. The specified Cable Modems and monthly Cable Modem service shall be made available to every consenting school and governmental institution within six (6) months of the date that two-way high-speed Internet access is introduced on a commercial basis.

4. System and Institutional Network Construction Timetable.

- a. The Grantee shall complete all construction related to the System Upgrade and the Institutional Network and shall fully activate the upgraded System and the upgraded Institutional Network on or before September 30, 2002. The Grantee shall provide for phased activation launches of the subscriber network as Nodes are completed. Failure to timely complete such construction shall be a violation of this Franchise.
- b. Within ninety (90) days after the Effective Date of this Franchise, the Grantee shall commence application for necessary permits, licenses, certificates and authorizations which are required in the conduct of its business.
- c. Within ninety (90) days after the Effective Date of this renewed Franchise, Grantee shall commence System preliminary construction, walkout, electronic design, fiber design, and other associated System Upgrade steps, and shall give written notice to the City upon commencement of such activities.
- d. All construction shall be performed in accordance with applicable laws and regulations, except where specifically waived by the City.
- e. The Grantee shall provide the City with notice prior to commencement of steps of the System Upgrade in which possible service disruptions or physical

construction activities may occur, including but not limited to: (i) tap pedestal replacements; (ii) amplifier/line extender pedestal replacements; (iii) underground duct replacement; (iv) overlashing of aerial fiber optic lines; and (v) underground placement or replacement of coaxial cables.

- f. Upon completion of the System Upgrade initial design, the Grantee shall make available to the City for review, on a confidential basis, a concise description of the facilities proposed to be erected or installed, and subscriber network design prints/map(s), which shall include at least the following elements: (i) trunk and feeder design; (ii) fiber routes; (iii) Node locations; (iv) standby power supply locations; and (v) areas of the City to be served by each Node.
 - g. At least thirty (30) days prior to commencement of construction, the Grantee shall make available to the City for review, on a confidential basis, a detailed design map of the proposed Institutional Network construction plan, including at least the following elements: (i) coaxial cable route; (ii) proposed fiber route; (iii) location of Nodes serving the Institutional Network; (iv) the the name and location of facilities being served by such Nodes; and (v) number of amplifiers in cascade within the Institutional Network. The City may make comments regarding the Institutional Network design map prior to commencement of construction of the Institutional Network, and the Grantee shall take any such comments into account in implementing the Institutional Network plan.
 - h. No System Node shall be activated until it is tested, and the Grantee determines that all applicable technical standards have been met or exceeded. The City shall have the right to attend every test conducted on a System Node. If any Node does not pass the Grantee's performance test, the Grantee shall take all steps necessary to meet applicable standards, and the affected Node shall be retested prior to activation. At the Commission's request, the Grantee shall send the City the results of each test conducted under this paragraph.
5. **Periodic Progress Reporting.** Following commencement of construction of the System Upgrade or any similar major construction, the Grantee shall, upon request of the Commission, meet with the Commission and provide an update on the progress of the System Upgrade or other construction.
- a. **Public Notification.** Prior to the beginning of the System Upgrade and periodically during each phase, the Grantee shall inform through various means the public and its Subscribers about: (i) the progress of the System Upgrade or major construction; (ii) areas where construction crews will be

working; and (iii) any expected temporary interruptions to existing services which may occur.

- b. Delays in the System Upgrade. The Grantee shall not be excused from the timely performance of its obligation to begin and complete any System Upgrade within the time specified herein, except for the following occurrences:
 - i. Any "Force Majeure" situation, as described herein; and
 - ii. Unreasonable failure or delay by the City to issue any permits or permission upon a timely and complete application submitted to the City by the Grantee or its contractor representative and tender of any required permit fee.
- c. Consequences of Delays. Absent a showing of excusable delay pursuant to subsection 4(5)(b) above, should the Grantee be unable to demonstrate the commencement or timely completion of the System Upgrade (including the Institutional Network) by the times specified herein, or be unable to reasonably justify any delays, then the Grantee shall be in violation of a material provision of this Franchise and the City may, in its sole discretion, either grant the Grantee an extension of time to complete such construction, or implement any enforcement measures or penalties specified in this Franchise or the City Code, including but not limited to revocation of the Franchise. In the event of excusable delay pursuant to subsection 4(5)(b), the time for completion will be extended by the period of such delay.

6. Line Extension Requirements.

- a. Subject to subsection 4(6)(b), the Grantee shall make Cable Service available to all residences, businesses and other structures within the City, including multiple dwelling unit buildings, whose owners or occupants request Cable Service, except for multiple dwelling unit buildings to which the Grantee, after best efforts, has not obtained authorization to access.
- b. Within the City's boundaries, including any areas annexed after the Effective Date of this Franchise, the Grantee must extend its System upon request to provide service to any Person or business upon request, without charging such Person or business more than the Standard Installation charges for the individual Subscriber's Drop, as long as the following conditions are satisfied, unless the Grantee demonstrates to the City's satisfaction that a waiver of this requirement is justified due to extraordinary circumstances:

- i. the new Subscriber requesting service is located 250 feet or less from the termination of the Cable System; and
 - ii. the area of the City in which the new Subscriber resides has a density of at least thirty-five (35) dwelling units per mile of feeder cable, excluding Drop footage, when aerial construction is required for an extension, and at least forty (40) dwelling units per mile of feeder cable, excluding Drop footage, when underground construction is required for an extension. All areas that reach the applicable density requirement at any time during the Franchise term shall be provided service upon reaching the minimum density. The City, for its part, shall facilitate the extension of service by requiring developers and utility companies to provide the Grantee with at least fifteen (15) days advance notice of an available open trench for the placement of necessary cable, but in no event shall the City have any liability for its failure to require any Person to provide notice, or for any developer's or utility company's failure to provide advance notice hereunder.
- c. In the event that the requirements set forth in subsection 4(6)(b) are not met, Persons requesting service can be required to bear the remainder of the total construction costs on a *pro rata* basis.
 - i. The "total construction costs" are defined as the Actual Cost to construct the entire extension including electronics, pole make-ready charges, and labor, but not the cost of the house Drop.
 - ii. In the event the number of Subscribers in a particular area of the City reaches the density specified in Section 4(6)(b)(ii) within three (3) years from the date construction of the extension is completed, the Grantee shall return to the then existing Subscribers, *pro rata*, the full amount of their contributions for the extension.
- d. Irrespective of the density requirements set forth in this Section 4(6), the Grantee shall continue to offer Service to all dwelling units serviceable prior to the System Upgrade.
- e. The 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 shall the applicable timeframe exceed twelve (12) months from notice thereof by the City to Grantee and qualification pursuant to the specific requirements of this Subsection 4(6).

7. System Maintenance.

- a. The Grantee shall interrupt Service only for good cause and for the shortest time possible. Such interruption shall occur during periods of minimum use of the System. The Grantee shall use its best efforts to provide the Commission with at least twenty-four (24) hours' prior notice of a planned service interruption, except for a planned service interruption which will have a minimal impact on Subscribers, usually meaning affecting less than one hundred (100) Subscribers or less than a fifteen (15) minute interruption.
- b. Maintenance of the System shall be performed in accordance with the technical performance and operating standards established by FCC rules and regulations. Should the FCC choose to abandon this field and does not preempt the City's entry into this field, the City may adopt such technical performance and operating standards as its own, and the Grantee shall comply with them at all times.

8. System Tests and Inspections; Special Testing.

- a. The Grantee shall perform all tests necessary to demonstrate compliance with the requirements of the Franchise and other performance standards established by law or regulation.
- b. The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise. In addition, the City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints regarding System construction, operations or installation work pertaining to such location(s). Such tests shall be limited to the particular matter in controversy. The City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to the Grantee or to the Subscribers of such testing.
- c. Before ordering such tests, the Grantee shall be afforded thirty (30) days following receipt of written notice to investigate and, if necessary, correct problems or complaints upon which tests were ordered. The City shall meet with the Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, the City wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy or resolution of complaints, the tests shall be conducted at the Grantee's expense by a qualified engineer selected by the City and the Grantee, and Grantee shall cooperate in such testing.

- d. Unless otherwise provided in this Franchise, tests shall be supervised by the Grantee's chief technical authority, who shall certify all records of tests provided to the City.
 - e. The Grantee shall provide the Commission with at least two (2) business days' prior written notice of, and opportunity to observe, any tests performed on the System.
 - f. Test results shall be filed with the City and the Commission within fourteen (14) days of a written request by the City or the Commission.
 - g. If any test indicates that any part or component of the System fails to meet applicable requirements, the Grantee, without requirement of additional notice or request from the City or the Commission, shall take corrective action, retest the locations and advise the City and the Commission of the action taken and the results achieved by filing a written report certified by the Grantee's chief technical authority.
9. **Drop Testing and Replacement.** The Grantee shall insert a 750 MHz carrier at a level 10db below the video carriers that will be measured by Grantee as a normal procedure during all service calls. In addition, the Drops and related passive equipment shall be inspected during Installations to assure that the Drop and passive equipment can pass the full 750 MHz System capacity. In the event measurement of the carrier or the inspection demonstrate that a Drop or associated passive equipment do not pass the full 750 MHz, the Subscriber address shall be recorded by the Grantee and the Grantee shall provide the City with a report indicating the addresses where Drops or associated passive equipment have failed. The Grantee shall replace all failing Drops and/or associated passive equipment at the time the address upgrades service to a level which requires a signal above the 550 MHz spectrum at no separate charge to the individual Subscriber.
10. **FCC Reports.** Unless otherwise required by the terms of this Franchise, the results of any tests required to be filed by Grantee with the FCC or in the Grantee's public file shall upon request of the City also be filed with the City within ten (10) days of the request.
11. **Nonvoice Return Capability.** Grantee is required to use cable and associated electronics having the technical capacity for nonvoice return communications.
12. **Lockout Device.** Upon the request of a Subscriber, the Grantee shall make a Lockout Device available at no additional charge, other than a charge for a Converter.

13. **Types of Service.** Should the Grantee desire to change the selection of programs or services offered on any of its tiers, it shall maintain the mix, quality and level of services provided over the System. Any change in programs or services offered shall comply with all lawful conditions and procedures contained in this Franchise and in applicable law or regulations.
14. **Uses of System.** The Grantee shall, upon request of the Commission, advise the Commission of all active uses of the System, for both entertainment and other purposes, and the City shall have the right to conduct unannounced audits of such usage.
15. **Additional Capacity.** So long as the City is not in or preparing to be in competition with the Grantee, Grantee shall notify the City in writing, in advance of the installation of any fiber optic capacity not contemplated by the initial design or System Upgrade, so that additional fibers may be installed on an Actual Cost basis for government and institutional use. At a minimum and to the extent it can be filed as non-public information, this notification shall include the fiber count that the Grantee is planning to install. If the City wishes to request additional fiber, it may notify the Grantee within fifteen (15) days of receipt of the Grantee's notification.

SECTION 5.

SERVICE PROVISIONS

1. **Customer Service Standards.** The Grantee shall at all times comply with FCC customer service standards. In addition, the Grantee shall at all times satisfy all additional or stricter customer service requirements included in this Franchise and any customer service requirements set forth in any ordinance or regulation lawfully enacted by the City.
2. **Video Programming.** Except as otherwise provided in this Franchise or in applicable law, all programming decisions remain the discretion of the Grantee, provided that the Grantee notifies the City and Subscribers in writing thirty (30) days prior to any channel additions, deletions, or realignments unless otherwise permitted under applicable federal, State and local laws and regulations. Grantee shall cooperate with City and use best efforts to provide all Subscriber notices to the Commission prior to delivery to Subscribers. Location and relocation of the PEG channels shall be governed by Sections 6(1)(c)-(d).
3. **Regulation of Service Rates.**
 - a. The City may regulate rates for the provision of Cable Service, equipment,

or any other communications service provided over the System to the extent allowed under federal or State law(s). The City reserves the right to regulate rates for any future services to the extent permitted by law.

- b. The Grantee shall provide at least one billing cycle prior written notice (or such longer period as may be specified in FCC regulations) to Subscribers and to the City of any changes in rates, regardless of whether or not the Grantee believes the affected rates are subject to regulation, except to the extent such notice requirement is specifically waived by governing law. Bills must be clear, concise, and understandable, with itemization of all charges.

4. **Non-Standard Installations.** The Grantee shall install and provide Cable Service to any Person requesting other than a Standard Installation provided that said Cable Service can meet FCC technical specifications and all payment and policy obligations are met. In such case, Grantee may charge for the incremental increase in material and labor costs incurred beyond the Standard Installation.

5. **Sales Procedures.** The Grantee shall not exercise deceptive sales procedures when marketing Services within the City. In its initial communication or contact with a Subscriber or a non-Subscriber, and in all general solicitation materials marketing the Grantee or its Services as a whole, the Grantee shall inform the non-Subscriber of all levels of Service available, including the lowest priced and free service tiers. The Grantee shall have the right to market door-to-door during reasonable hours consistent with local ordinances and regulations.

6. **Subscriber Inquiry and Complaint Procedures.**

- a. The Grantee shall have a publicly listed toll-free telephone number which shall be operated so as to receive general public and Subscriber complaints, questions and requests on a twenty-four (24) hour-a-day, seven (7) days-a-week, 365 days a year basis. Trained representatives of the Grantee shall be available to respond by telephone to Subscriber and service inquiries.

- b. The Grantee shall maintain adequate numbers of telephone lines and personnel to respond in a timely manner to schedule service calls and answer Subscriber complaints or inquiries in a manner consistent with regulations adopted by the FCC and the City where applicable and lawful. Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (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.

- c. 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 Commission 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. The Grantee shall provide the City with a written summary of such complaints and their resolution upon request of City. As to Subscriber complaints, Grantee shall comply with FCC record-keeping regulations, and make the results of such record-keeping available to the City upon request.
 - d. Excluding conditions beyond the control of the Grantee, the Grantee shall commence working on a service interruption within twenty-four (24) hours after the service interruption becomes known and pursue to conclusion all steps reasonably necessary to correct the interruption. The Grantee must begin actions to correct other service problems the next business day after notification of the service problem, and pursue to conclusion all steps reasonably necessary to correct the problem.
 - e. The Grantee may schedule appointments for Installations and other service calls either at a specific time or, at a maximum, during a four-hour time block during the hours of 9:00 a.m. to 8:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 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.
 - f. The Grantee shall respond to written complaints from the City in a timely manner, and provide a copy of each response to the City within thirty (30) days. In addition, the Grantee shall respond to all written complaints from Subscribers within (30) days of receipt of the complaint.
7. **Subscriber Contracts.** The Grantee shall file with the Commission any standard form Subscriber contract utilized by Grantee. If no such written contract exists, the Grantee shall file with the Commission a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. The length and terms of any Subscriber contract(s) shall be available for public inspection during the

hours of 9:00 a.m. to 5:00 p.m., Monday through Friday.

8. Service Credit.

- a. 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 cycle.
- b. If, for any reason, Service is interrupted for a total period of more than twenty-four (24) hours in any thirty (30) day period, Subscribers shall, upon request, be credited pro rata for such interruption.

9. Refunds or Credits.

- a. Any refund checks shall be issued promptly, but not later than either:
 - i. the Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier; or
 - ii. the return of the equipment supplied by the Grantee if Service is terminated.
- b. Any credits for Service shall be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

10. Late Fees. Fees for the late payment of bills shall not be assessed until after the Service has been fully provided. Late fee amounts on file with Commission shall not be adjusted by the Grantee without the Commission's prior approval.

11. Notice to Subscribers.

- a. The Grantee shall provide each Subscriber at the time Cable Service is installed, and at least every twelve (12) months thereafter, the following materials:
 - i. instructions on how to use the Cable Service;
 - ii. billing and complaint procedures, and written instructions for placing a service call, filing a complaint, or requesting an adjustment (including when a Subscriber is entitled to refunds for outages and how to obtain them);

- iii. a schedule of rates and charges, channel positions and a description of products and services offered, including any free or universal service;
 - iv. prices and options for programming services and conditions of subscription to programming and other services; and
 - v. a description of the Grantee's installation and service maintenance policies, Subscriber privacy rights, internet/Cable Modem policies and privacy rights (only at installation of such service), delinquent Subscriber disconnect and reconnect procedures and any other of its policies applicable to Subscribers.
- b. Copies of materials specified in the preceding subsection shall be provided to the Commission, upon request.
 - c. All Grantee promotional materials, announcements and advertising of Cable Service to Subscribers and the general public, where price information is listed in any manner, shall be clear, concise, accurate and understandable.

12. Exclusive Contracts and Anticompetitive Acts Prohibited.

- a. The Grantee may not require a residential Subscriber to enter into an exclusive contract as a condition of providing or continuing Cable Service.
- b. The Grantee shall not engage in acts prohibited by federal or State law that have the purpose or effect of limiting competition for the provision of Cable Service in the City.

13. Office Availability and Drop Boxes.

- a. The Grantee shall maintain and operate during normal business hours, as mutually agreed to by the Grantee and the Commission, a local customer service office in the Burnsville/Eagan franchise area where Subscribers may make payments, request Service, exchange Converters and other equipment and schedule service and Installation appointments. However, the Grantee may elect to close its local customer service office in the Burnsville/Eagan franchise area subject to the following requirements:
 - i. if the Grantee closes its Burnsville/Eagan local office after the Commission has remodeled its studio facility, which is currently located adjacent to the Grantee's office, the Grantee shall reimburse the Commission for the actual cost of remodeling to incorporate the

Grantee's former office space into the Commission's facility;

- ii. the Grantee shall operate and maintain a local customer service center in Dakota County, Minnesota, where Subscribers may make payments, request Service, exchange Converters and other equipment and schedule service and Installation appointments. This local customer service center shall be open at least during the hours of 8:00 a.m. to 7:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturdays, excluding holidays;
 - iii. the Grantee shall, at the request of and at no delivery or retrieval charge to a Subscriber, deliver or retrieve electronic equipment (*e.g.*, Converters and remote controls); and
 - iv. the Grantee shall install, maintain and operate, throughout the term of this Franchise, multiple drop boxes in the areas served by the Burnsville/Eagan System. These drop boxes shall be installed for the purpose of receiving Subscriber payments and shall be located as follows, unless otherwise mutually agreed: two (2) drop boxes in the City of Eagan; two (2) drop boxes in the City of Burnsville; and (1) drop box at a PEG access facility designated by the Commission. Additional drop boxes may be installed at other locations agreed upon by the Commission and the Grantee. Drop boxes shall be emptied at least once a day, Monday through Friday, with the exception of legal holidays, and payments shall be posted to Subscribers' accounts within forty-eight (48) hours of pick-up. Subscribers shall not be charged a late fee or otherwise penalized for any failure by the Grantee to empty a drop box as specified herein, or to properly credit a Subscriber for a payment timely made.
- b. The location of the customer service center(s) serving the Burnsville/Eagan System shall only be changed to a location mutually acceptable to the Grantee and the City. Notwithstanding the foregoing, any relocation of the customer service center(s) serving the Burnsville/Eagan System within the Burnsville/Eagan franchise area or to the Burnsville/Eagan franchise area shall not require the prior consent or acceptance of the City.
- c. After consultation with the Commission, the Grantee shall provide Subscribers with at least sixty (60) days' prior notice of any change in the location of the customer service center(s) serving the Burnsville/Eagan System, which notice shall apprise Subscribers of the customer service center's new address, and the date the changeover will take place.

SECTION 6.

ACCESS CHANNEL(S) PROVISIONS

1. Public, Educational and Government Access.

- a. The City is hereby designated to operate, administer, promote, and manage PEG access programming on the Cable System.
- b. The Grantee shall continue to dedicate and make available six (6) 6 MHz analog video channels for public, educational, and governmental use. The six (6) 6 MHz PEG Access Channels shall be allocated as follows:
 - i. one (1) full-time 6MHz analog video channel for Noncommercial City Government Access Channel use, designed constructed and activated for discrete transmissions as described in Section 4(1)(e);
 - ii. one (1) full-time 6 MHz analog video channel for Noncommercial Educational Access Channel use, designed, constructed and activated for discrete transmissions by each School District, to the extent feasible, as described in Section 4(1)(e);
 - iii. three (3) full-time 6 MHz analog video channels for Noncommercial Public Access Channel use. One 6 MHz Public Access Channel shall have the discretionary ability to transmit signals to each member city independently of the other; and
 - iv. one (1) full-time 6 MHz analog video channel for Noncommercial Government Access Channel use, and/or library access, and/or Educational Access Channel use.

Nothing herein shall diminish any rights of the City to secure additional PEG channels pursuant to Minn. Stat. § 238.084, which is expressly incorporated herein by reference.

- c. Public Access Channel 15 and Government Access Channel 16 shall not be relocated without the mutual consent of the Commission and the Grantee. If the Grantee and the Commission agree to change the channel designation for Public Access Channel 15 and/or Government Access Channel 16, the Grantee must provide at least three (3) months notice to the City prior to implementing the change, and shall reimburse the City, the Commission

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 Commission reasonably determines is necessary; (iii) logo changes; and (iv) promoting, marketing and advertising the channel location of the affected PEG channel(s) during the twelve-month period preceding the effective date of the channel change. Alternatively, the Grantee may choose to supply necessary equipment itself, provided such equipment is satisfactory to the City, the Commission or PEG entity.

- d. Prior to the completion of the System Upgrade, the Grantee shall have the right to relocate each of the PEG channels (other than Public Access Channel 15 and Government Access Channel 16), one time without the Commission's consent, and without reimbursing the Commission for any costs it incurs as a result of the relocation. If a qualified PEG channel has been relocated once without Commission approval, that channel may not be moved again unless: (i) the Commission has consented to the move; and (ii) the Grantee reimburses the Commission or a PEG entity for all reasonable costs of such move, as described below, and provides at least three (3) months notice to the Commission before making the change in channel designation. After the System Upgrade is completed, no PEG channel shall be relocated without the mutual consent of the Commission and the Grantee. If the Grantee and the Commission agree to change the channel designation for a 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, the Commission 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 Commission reasonably determines is necessary; (iii) logo changes; and (iv) promoting, marketing and advertising the channel location of the affected PEG channel(s) during the twelve-month period preceding the effective date of the channel change. Alternatively, the Grantee may choose to supply necessary equipment itself, provided such equipment is satisfactory to the City, the Commission or PEG entity. Notwithstanding anything to the contrary, the Grantee shall not be required to repay the City, the Commission or a PEG entity for any on-premises school expenses that arise out of any PEG channel relocation.
- e. 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. If the Grantee opts to carry PEG channels in a digital format, it shall assume the cost of replacing all equipment necessary to ensure that PEG signals can be transmitted on the Grantee's digital service tier.

- f. 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, transmission equipment and training of PEG personnel, and in addition, provide necessary 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.
- g. 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.
- h. The City shall be responsible for switching PEG signals and Institutional Network transmissions.

2. PEG Support Obligations.

- a. Effective January 1, 2000, the Grantee shall pay to the City \$1.40 per Subscriber per month (the "PEG Fee") from all Subscribers receiving and paying for Basic Cable Service. To the extent permitted by applicable law, the PEG Fee may be itemized on Subscriber billing statements. The Grantee shall pay one PEG Fee on the master account for services delivered to non-dwelling bulk accounts, such as hotels, motels or hospitals. The Grantee shall calculate PEG Fees on a pro rata basis for bulk accounts in residential multiple dwelling unit ("MDU") buildings in the following manner: if the bulk rate for Basic Cable Service is one third (1/3) of the current residential rate, then a pro rated PEG Fee shall be added to the bulk bill for an MDU building in an amount equal to one third (1/3) of the current PEG Fee. If the bulk rate for Basic Cable Service is raised in any MDU building, the pro-rated PEG Fee in that building shall be recalculated and set based on the foregoing formula, regardless of any cap on per Subscriber PEG Fee amounts. The City may increase the amount of the PEG Fee at any time, provided that in no event shall the PEG Fee exceed \$1.50 (the "PEG Fee Cap"). The PEG Fee Cap shall be adjusted on an annual basis by the CPI, beginning on the Effective Date of this Franchise. An estimated PEG Fee

shall be prepaid to the City on a quarterly basis, no later than thirty (30) days prior to the beginning of each calendar quarter. The estimated PEG Fee shall be reconciled annually to reflect actual PEG Fee receipts by the Grantee, subject to more frequent reconciliation ordered by the Commission. Any amounts due to the City as a result of a reconciliation shall be paid by the Grantee to the City within thirty (30) days following written notice to the Grantee by the City of the underpayment. If reconciliation discloses an overpayment by the Grantee, the Grantee may credit the amount of any overpayment against its next quarterly PEG Fee payment.

- b. In the event any payment required by paragraph 6(2)(a) is not made on or before the required date, the Grantee shall pay, during the period such unpaid amount is owed, additional compensation and interest charges computed from such due date, at an annual rate of ten percent (10%). The Grantee waives any right to claim that any interest or penalties imposed hereunder constitute franchise fees within the meaning of 47 U.S.C. § 542. Failure to pay required PEG Fees shall also be a violation of this franchise, subject to all sanctions herein.
 - c. In connection with the System Upgrade, the Grantee shall, on an Actual Cost basis, provide and install state-of-the-art modulators and demodulators at City Hall, the high school located within the City and School District 191's administrative building. These modulators and demodulators shall be maintained and repaired by the Grantee, at its sole expense, until the Institutional Network upgrade is completed.
 - d. The Grantee shall, at all times provide, at its sole cost, the fiber-optic or other cabling, switching systems and other electronics, equipment, software and other materials necessary to route (i) PEG signals from their origination point through the Commission's master control to the appropriate subscriber network channel, including channels provided discretely, and (ii) I-Net signals to and from institutions and to and from institutions to Subscribers. The Grantee shall continue to have this obligation regardless of where the Commission's master control or the pertinent headend or hub is located.
3. **Regional Channel 6.** The Grantee shall designate standard VHF channel 6 for uniform regional channel usage to the extent required by State law.
 4. **PEG Access Capital Grant.** The Grantee shall make a one-time payment of One Hundred Fifty Thousand Dollars (\$150,000.00) to the Commission for the purchase of a DiTech switcher selected by the Commission (the "Capital Support Grant"). Payment of the Capital Support Grant shall be made to the Commission in one lump sum on the Effective Date of this Franchise.

5. **Leased Access Channels.** The Grantee shall provide Leased Access Channels as required by federal and State law.

6. **Universal PEG Tier.**
 - a. Upon completion of the System Upgrade and upon authorization of the Commission, the Grantee shall offer the following services and benefits to all current and potential Subscribers whose dwelling units are passed by cable plant: (i) the Universal PEG Tier, free of charge; (ii) free Installation of a service Drop; and (iii) one free cable television outlet.

 - b. The Universal PEG Tier shall be offered by the Grantee for the term of the Franchise, unless the Grantee (or its successors) and the City mutually agree to suspend or terminate the Universal PEG Tier program.

 - c. The Grantee agrees to provide, at no cost to Universal PEG Tier Subscribers, an A/B switch and all cable-related equipment necessary to allow reception of local broadcast stations on a Universal PEG Tier Subscriber's television receiver, provided said television receiver is capable of receiving broadcast television signals. For purposes of this provision the term "cable-related equipment" shall not include antennas, antenna wires, video cassette recorders or similar devices.

 - d. The Grantee and the City agree that the rates charged to Subscribers will not increase as a result of the Grantee's implementation of the Universal PEG Tier program, except that the Grantee may recover the expense of the Universal PEG Tier as part of the PEG Fee itemization on Subscribers' monthly billing statements. The amount recovered by the Grantee each month shall not exceed \$0.07 per Subscriber and shall not reduce the PEG Fee. Upon activation the Universal PEG Tier, and each year thereafter, the Grantee shall provide the Commission with a reconciliation of amounts collected and expended related to the provision of the Universal PEG Tier. The Grantee agrees to adjust the Universal PEG Tier fee for any overpayment or underpayment.

 - e. Notice of the availability of the Universal PEG Tier shall be provided in the informational package that is provided to Subscribers on an annual basis, and in promotional materials that shall be sent to potential Subscribers each year.

 - f. Should a Universal PEG Tier Subscriber require or request a set-top terminal device or other equipment not essential to the reception of the Universal PEG Tier, or should a Universal PEG Tier Subscriber require an additional outlet

or a Drop that exceeds 250 feet in length, the Universal PEG Tier Subscriber shall be responsible for paying the regulated charges for such equipment, and for the additional costs associated with installing a drop in excess of 250 feet. "Additional costs," as used in this paragraph, shall mean the Grantee's total Installation costs, less the Installation costs that the Grantee would incur by constructing a standard 250-foot Drop.

- g. For purposes of this Section 6(6), the following definitions shall apply:
 - i. "Universal PEG Tier" shall mean all PEG channels identified in this Franchise or subsequently added pursuant to the Franchise.
 - ii. "Drop" shall mean an aerial or underground cable, not to exceed 250 feet in length, that runs from the nearest connection point on a feeder cable to the point of connection in a Subscriber's dwelling unit.

- 7. **PEG Obligations.** Except as expressly provided in this Franchise, the Grantee shall not make any changes in PEG support or in the transmission, reception and carriage of PEG channels, and equipment associated therewith, without the consent of the City and/or the Commission.
- 8. **Costs and Payments not Franchise Fees.** The parties agree that any costs to the Grantee associated with the provision of support for PEG access or the Institutional Network pursuant to Sections 6 and 7 of this Franchise do not constitute and are not part of a franchise fee and fall within one or more of the exceptions to 47 U.S.C. § 542.

SECTION 7.

INSTITUTIONAL NETWORK (I-NET) PROVISIONS AND RELATED COMMITMENTS

- 1. **Institutional Network Facilities and Capacity.**
 - a. The Grantee shall construct an Institutional Network which consists of the following facilities: (i) bi-directional fiber optic lines to each Node, and in the quantity, identified in Exhibit A (the I-Net Site List); (ii) bi-directional fiber optic lines between each location, and in the quantity, listed in Exhibit A and the nearest I-Net Node; and (iii) bi-directional coaxial cable links between the sites (the "Coaxial I-Net Sites") listed in Exhibit A and the nearest I-Net Node. The Institutional Network shall have the capability to transmit any and all signals between the sites listed in Exhibit A. The City shall be responsible for directly reimbursing the Grantee for its Actual Cost

of constructing and maintaining the I-Net, to the extent provided in this Section 7. Therefore, the institutions listed in Exhibit A (the "I-Net Users") shall not be invoiced by the Grantee for use of the Institutional Network, but, at the City's discretion, will be liable for reimbursement of the Grantee's Actual Cost of construction and maintenance. I-Net Users may not sell or resell services or capacity to any third party. However, I-Net Users may provide services to themselves, including those which the Grantee otherwise sells to others (for example, an institution may provide Internet service to itself or to other institutions that the Grantee sells to others). The limitations of this paragraph shall not prevent the City or the Commission from subleasing, bartering, selling, reselling or giving away capacity on the Institutional Network to any other public or nonprofit entity for noncommercial purposes that do not directly compete with any products or services offered by the Grantee.

- b. All I-Net Nodes shall be connected via fiber optic lines to a hub located within the Burnsville/Eagan System. The I-Net shall be segmented to allow narrowcasting of signals within municipal boundaries. The Grantee shall provide and install all equipment necessary to achieve the required level of segmentation.
- c. The I-Net shall incorporate the fiber count specified in Exhibit A (I-Net Site List) to each I-Net Node, plus an additional four (4) count to each Node for future expansion.
- d. I-Net equipment at the hub(s) shall be connected to a gas powered generator capable of providing continuous electrical power, or equivalent, and to an uninterruptible power supply that both conditions commercial power and provides for zero transfer time between normal commercial power and hub back-up generators.

2. Hybrid Fiber-Coaxial Portions of the Institutional Network.

- a. The hybrid fiber-coaxial ("HFC") portion of the I-Net shall continue to provide 450 MHz of activated capacity with no less than 54 standard video (6 MHz) channels (25 upstream channels and 29 downstream channels) to the Coaxial I-Net Sites. The HFC I-Net shall have fiber introduced into it to limit amplifier cascades to no more than 10.
- b. All I-Net distribution system power supplies shall have the standby capability of providing at least three (3) hours of backup power and shall have status monitoring installed in them. Prior to battery failure, the Grantee shall connect I-Net Node power supplies to portable generators capable of

producing adequate electrical current until commercial power is restored.

- c. Pilot generators shall be installed at the end of mutually agreed upon I-Net cascades carrying any transmissions. Pilot generators shall be installed at the end of additional amplifier cascades when the Commission, in its sole discretion, determines that a particular cascade is not performing adequately.
- d. The Grantee shall connect all Coaxial I-Net Sites to the Institutional Network, at no cost to the City, the Commission or I-Net Users, unless otherwise provided in Exhibit A. Other governmental, public, or educational institutions subsequently designated by the City shall be connected to the I-Net via coaxial cable, free of charge, if such institutions are located 500 feet or less from the existing I-Net, or if such designated institutions agree to reimburse the Grantee for its Actual Costs in excess of the cost of the first 500 feet of such installation.

3. Fiber to the Institution Requirements.

- a. Beyond the portion of the I-Net that is constructed as an HFC network, the Grantee shall, on an Actual Cost basis, extend single mode fiber optic lines from the Node to the I-Net sites listed in Exhibit A (I-Net Site List) and such other sites as may from time to time be designated by the City or the Commission. No such extensions shall be made until the City or the Commission determines who shall pay the Grantee's Actual Cost. Any end-to-end fiber-optic lines required by this paragraph shall be passively terminated to connectors at the patch panel of the telephone equipment room of each site identified in this paragraph or at another designated location.
- b. I-Net Users connected to the I-Net via fiber shall be responsible for any end-user or interface equipment needed for transmission or reception of signals.

4. Grantee's Use of I-Net Capacity. The I-Net shall be for the exclusive use of the City, the Commission and I-Net Users throughout the term of the Franchise, or any renewal or extension thereof. Notwithstanding the foregoing, the Grantee may use capacity on the I-Net, including for lease or other commercial purposes, provided that the City, the Commission and I-Net Users are not using such capacity and further provided that the Grantee's use does not interfere with use of the I-Net by the City, the Commission or I-Net Users. Upon receiving oral or written notice from the Commission, the Grantee or a lessee shall immediately cease using the I-Net for any purpose that the Commission, in its sole discretion, determines is interfering with I-Net Users' communications. The Grantee or a lessee may appeal any determination concerning I-Net interference to the City within ten (10) days of the date that the requisite notice is received by the Grantee. Any such appeal shall: (i) be in writing;

(ii) list the reasons that the Commission's determination regarding interference with I-Net Users' communications is incorrect; and (iii) include any other information the Grantee or a lessee wishes the City to consider. Within forty-five (45) calendar days of receiving a written appeal under this paragraph, the City shall: (i) determine whether the Commission's conclusion that the Grantee or a lessee was interfering with I-Net Users' communications was justified; and (ii) inform the Grantee or a lessee in writing of its findings. Use of the I-Net by the City, the Commission and I-Net Users shall, at all times, have priority over any use(s) by the Grantee or any lessee. The Grantee or a lessee shall terminate its use of any channel capacity on the I-Net within six (6) months after receiving notice from the Commission that the City, the Commission, or any I-Net User has determined to use such capacity. Any agreement entered into by the Grantee and a third party for the lease of I-Net capacity shall be subject to the terms and conditions of this Franchise.

5. **I-Net Performance Standards.** The Grantee shall maintain the I-Net in accordance with technical and performance standards set forth in Exhibit B (I-Net Performance Standards), which is made a part hereof. The Grantee shall provide the City, or its designee, upon request, with reports of the performance of the I-Net and the Grantee's compliance with the aforementioned technical and performance standards.

6. **Completion of the Institutional Network.** Construction of the Institutional Network pursuant to this Section 7 shall be deemed completed upon satisfaction of the following:

a. The Grantee shall notify the City, or its designee, in writing at least ten (10) days in advance of completion of construction of each I-Net Node, I-Net site and HFC end-of-line. The notice shall include the date the Grantee is prepared to conduct an OTDR test at 1550 nm and 1310 nm end-to-end, RF noise, distortion and peak-to-valley tests according to FCC rules, NCTA Recommended Practices and other acceptable test methodologies and other applicable tests. The Commission, or its designee, shall have the option of attending any test conducted pursuant to this paragraph. All tests must be successfully completed. The fiber optic test shall be deemed successfully completed if the optical performance standards in Exhibit B are met or bettered. The coaxial tests shall also be deemed successfully completed if the specifications detailed in Exhibit B are met or exceeded.

b. The City, or its designee, shall also have the option of conducting a physical inspection of the construction and connections to each I-Net site and each I-Net Node. This inspection shall be conducted no later than the date of the test in paragraph (a).

c. After completing installation to each I-Net site or each I-Net Node, the

Grantee shall provide the following documentation to the City or its designee: splice locations, panel numbers, cable numbering schemes, location of splitters, location of all RF actives and passives, OTDR, other optical, RF and coaxial test results and documentation, and any other pertinent documentation.

7. **Institutional Network Security.** The Grantee and the City shall at all times use reasonable efforts to protect the security of the Institutional Network. For purposes of this paragraph, “to protect security” means to protect those physical elements of the Institutional Network under the party’s direct control from unauthorized intrusion, signal theft, tampering, wiretapping or other actions that might: (i) compromise the integrity of or degrade the signals carried over the Institutional Network; or (ii) result in the unauthorized interception and disclosure of information.

8. **Institutional Network Repair and Maintenance.**

- a. The Grantee shall maintain, repair, reconstruct and, as necessary, replace the end-to-end fiber optic portions of the I-Net and shall recover the Actual Cost for such activities from the City or the Commission.
- b. The Grantee shall maintain, repair, reconstruct, and, as necessary, replace HFC portions of the Institutional Network plant, as described in subsection (i) and (ii) below, at no cost to the City or the Commission during the term of this Franchise or any extension thereof:
 - i. preventative and routine maintenance of the I-Net shall be performed in the same timeframe and in the same fashion as routine and preventative maintenance are performed for the Grantee’s subscriber network. Actual or potential problems discovered during the course of preventative and routine maintenance shall be immediately reported to the Commission. After informing the Commission of an actual or potential problem, the Grantee shall, within a reasonable period of time, prepare and transmit a report to the Commission describing the corrective action, if any, that was or will be taken.
 - ii. within ten (10) minutes of receiving notice or otherwise learning of a maintenance or repair problem, the Grantee’s technicians shall begin actively working on the problem. The Grantee shall work on the problem continuously until it is resolved. Notwithstanding the above, the Grantee shall meet the network availability standard described in Exhibit B for each site on the I-Net.

9. **Subscriber Network Drops to Designated Buildings.**

- a. Grantee shall provide, free of charge, Installation and activation of one (1) subscriber network Drop, and one (1) cable outlet at those institutions currently receiving such facilities, and the institutions identified and designated for such facilities in Exhibit A, which is attached hereto and made a part hereof.
- b. The Grantee shall provide Basic Cable Service and any equipment necessary to receive such service, free of charge, to those institutions currently receiving Basic Cable Service, and the institutions identified and designated for such service in Exhibit A. Institutions currently receiving additional Cable Services from the Grantee shall continue to receive those same services, or comparable services, during the term of this Franchise, free of charge.
- c. Additional subscriber network Drops and/or outlets will be installed at designated institutions by the Grantee on an Actual Cost basis. Alternatively, said institution may add outlets at its own expense, as long as such Installation meets the Grantee's standards. The Grantee shall have three (3) months from the date of City designation of additional institution(s) to complete construction of the Drop and outlet, unless weather or other conditions beyond the control of the Grantee require more time.

SECTION 8.

OPERATION AND ADMINISTRATION PROVISIONS

1. **Administration of Franchise.** The City's designated cable television administrator, or his designee shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise. The City may issue such reasonable rules and regulations concerning the construction, operation and maintenance of the System as are consistent with the provisions of the Franchise and law.
2. **Delegated Authority.** The City may appoint a citizen advisory body or a Joint Powers Commission, or may delegate to any other body or Person authority to administer the Franchise and to monitor the performance of the Grantee pursuant to the Franchise. The Grantee shall cooperate with any such delegatee of the City.
3. **Franchise Fee.**
 - a. During the term of the Franchise, the Grantee shall pay quarterly to the City

or its delegatee a Franchise fee in an amount equal to five percent (5%) of its Gross Revenues.

- b. 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 showing the basis for the computation. The City or the Commission shall have the right to require further supporting information for each franchise fee payment.
- c. All amounts paid shall be subject to audit and recomputation by City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount. 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 discloses an overpayment or underpayment of franchise fees, the City shall notify the Grantee of such overpayment or underpayment. The City's audit expenses shall be borne by the City unless the audit 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 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 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 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 determines that there has been an overpayment by the Grantee, the Grantee may credit any overpayment against its next quarterly payment.
- d. In the event any franchise fee payment or recomputation amount is not made on or before the required date, the Grantee shall pay, during the period such unpaid amount is owed, the additional compensation and interest charges computed from such due date, at an annual rate of ten percent (10%).
- e. Nothing in this Franchise shall be construed to limit any authority of the City to impose any tax, fee or assessment of general applicability.
- f. 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.

4. **Access to Records.** The City shall have the right to inspect, upon reasonable notice and during Grantee's administrative office hours, or require Grantee to provide within a reasonable time, on a confidential and proprietary basis, copies of any records maintained by Grantee or its Affiliates, including specifically Gross Revenues worksheets, and accounting and financial records maintained by Grantee which relate to compliance of System operations with this Franchise or other applicable law.

5. **Reports and Maps to be Filed with City.**

- a. The Grantee shall file with the City, at the time of payment of the Franchise Fee, a report of all Gross Revenues in a form and substance as required by City.
- b. 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. The City shall use its best efforts to protect proprietary or trade secret information all consistent with state and federal law.
- c. 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.

6. **Periodic Evaluation.**

- a. The City may require evaluation sessions at any time during the term of this Franchise, upon fifteen (15) days written notice to the Grantee.
- b. Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System performance, programming offered, access channels, facilities and support, municipal uses

of cable, subscriber rates, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics the City deems relevant.

- c. As a result of a periodic review or evaluation session, upon notification from City, Grantee shall meet with City and undertake good faith efforts to reach agreement on changes and modifications to the terms and conditions of the Franchise which are both economically and technically feasible.

SECTION 9.

GENERAL FINANCIAL AND INSURANCE PROVISIONS

1. Performance Bond.

- a. At the time the Franchise becomes effective and at all times thereafter, until the Grantee has liquidated all of its obligations with the City and the Commission, the Grantee shall furnish a bond to the Commission in the amount of \$500,000.00 in a form and with such sureties as are reasonably acceptable to the Commission. 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 any damages or loss suffered by City or Commission 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 or the Commission which arise by reason of the construction, operation, or maintenance of the System. The rights reserved by the City or the Commission 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. 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 sole 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. In the event this Franchise is revoked by reason of default of Grantee, City shall be entitled to collect from the performance bond that amount which is attributable to any damages sustained by City as a result of said default or revocation.
- d. Grantee shall be entitled to the return of the performance bond, or portion thereof, as remains sixty (60) days after the expiration of the term of the Franchise or revocation for default thereof, provided City or Commission 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.
- e. The rights reserved to City or Commission, as applicable, with respect to the performance bond are in addition to all other rights of City or Commission 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 or Commission may have.

2. Letter of Credit.

- a. On the Effective Date of this Franchise, the Grantee shall deliver to the Commission an irrevocable and unconditional Letter of Credit, in a form and substance acceptable to the Commission, from a National or State bank approved by the Commission, in the amount of \$25,000.00.
- b. The Letter of Credit shall provide that funds will be paid to the City upon written demand of the City, and in an amount solely determined by the City in payment for penalties charged pursuant to this Section, in payment for any monies owed by the Grantee to the City or any Person pursuant to its obligations under this Franchise, or in payment for any damage incurred by the City or any person as a result of any acts or omissions by the Grantee pursuant to this Franchise.
- c. In addition to recovery of any monies owed by the Grantee to the City or any Person or damages to the City or any Person as a result of any acts or omissions by the Grantee pursuant to the Franchise, the City in its sole discretion may charge to and collect from the Letter of Credit the following penalties:
 - i. For failure to timely complete the System Upgrade including the Institutional Network upgrade as provided in this Franchise, unless the City or the Commission approves the delay, the penalty shall be

\$500.00 per day for each day, or part thereof, such failure occurs or continues.

- ii. For failure to provide data, documents, reports or information or to cooperate with City or Commission during an application process or system review or as otherwise provided herein, the penalty shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues.
 - iii. Fifteen (15) days following notice from City or Commission of a failure of Grantee to comply with construction, operation or maintenance standards, the penalty shall be \$500.00 per day for each day, or part thereof, such failure occurs or continues.
 - iv. For failure to provide the services and the payments required by this Franchise, including, but not limited to, the implementation and the utilization of the PEG Access Channels, the penalty shall be \$500.00 per day for each day, or part thereof, such failure occurs or continues.
 - v. For Grantee's breach of any written contract or agreement with or to the City, the penalty shall be \$500.00 per day for each day, or part thereof, such breach occurs or continues.
 - vi. For failure to comply with any of the provisions of this Franchise, or other City ordinance for which a penalty is not otherwise specifically provided pursuant to this paragraph (c), the penalty shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues.
- d. Each violation of any provision of this Franchise shall be considered a separate violation for which a separate penalty can be imposed.
 - e. Whenever the City or the Commission determines that the Grantee has violated one or more terms, conditions or provisions of this Franchise, or for any other violation contemplated in subparagraph (c) above, a written notice shall be given to Grantee informing it of such violation. At any time after thirty (30) days (or such longer reasonable time which, in the determination of the City or the Commission, is necessary to cure the alleged violation) following local receipt of notice, provided the Grantee remains in violation of one or more terms, conditions or provisions of this Franchise, in the sole opinion of the City, the City may draw from the Letter of Credit all penalties and other monies due the City from the date of the local receipt of notice.
 - f. Whenever the Letter of Credit is drawn upon, the Grantee may, within seven

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

- i. City or Commission shall hear Grantee's dispute within sixty (60) days and the City shall render a final decision within sixty (60) days thereafter.
 - ii. Upon the determination of the City that no violation has taken place, the City shall refund to Grantee, without interest, all monies drawn from the Letter of Credit by reason of the alleged violation.
- g. If said Letter of Credit or any subsequent Letter of Credit delivered pursuant thereto expires prior to thirty (30) months after the expiration of the term of this Franchise, it shall be renewed or replaced during the term of this Franchise to provide that it will not expire earlier than thirty (30) months after the expiration of this Franchise. The renewed or replaced Letter of Credit shall be of the same form and with a bank authorized herein and for the full amount stated in paragraph (a) of this Section.
- h. If the City draws upon the Letter of Credit or any subsequent Letter of Credit delivered pursuant hereto, in whole or in part, the Grantee shall replace or replenish to its full amount the same within ten (10) days and shall deliver to the City a like replacement Letter of Credit or certification of replenishment for the full amount stated in Section 9(2)(a) as a substitution of the previous Letter of Credit. This shall be a continuing obligation for any withdrawals from the Letter of Credit.
- i. If any Letter of Credit is not so replaced or replenished, the City may draw on said Letter of Credit for the whole amount thereof and use the proceeds as the 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 the Grantee under this Franchise. The drawing on the Letter of Credit by the City, and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of the Grantee which are in default, shall not be a waiver or release of such default.
- j. The collection by City of any damages, monies or penalties from the Letter of Credit shall not affect any other right or remedy available to it, nor shall any act, or failure to act, by the City pursuant to the Letter of Credit, be

deemed a waiver of any right of the City pursuant to this Franchise or otherwise.

3. Indemnification of City.

- a. The Commission, the City and its officers, boards, committees, commissions, 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. Grantee shall indemnify, defend, and hold harmless the Commission, the City and its officers, boards, committees, commissions, elected and appointed officials, employees, volunteers and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the City's or Commission's, as applicable, exercise, administration, or enforcement of the Franchise.
- c. Nothing in this Franchise relieves a Person, except the City, from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regrading, or changing the line of a Right-of-Way or public place or with the construction or reconstruction of a sewer or water system.
- d. Related only to PEG programming, the Grantee shall not be required to indemnify the City or the Commission for negligence or misconduct on the part of the City, the Commission or either of their officers, boards, committees, commissions, elected or appointed officials, employees, volunteers or agents, including any loss or claims.

4. Insurance.

- a. As a part of the indemnification provided in Section 9(3), but without limiting the foregoing, Grantee shall file with Commission 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 Commission, the City and its officers, elected and appointed officials, boards, commissions, commissioners, agents, employees and volunteers for any and all damages and penalties which may arise as a result of this Franchise. The policy or

policies shall list the City and Commission as additional insureds, and in their capacity as such, City and Commission officers, elected and appointed officials, boards, commissions, agents, employees and volunteers. The broadcaster's/cablecaster's liability coverage specified in this provision shall be subject to paragraph 9.3, above, regarding indemnification of the City and the Commission.

- 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 Commission.

SECTION 10.

SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE

1. City's Right to Revoke.

- a. In addition to all other rights which City has pursuant to law or equity, City reserves the right to commence proceedings to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if it is determined by City that:
 - i. Grantee has violated material provisions(s) of this Franchise; or
 - ii. Grantee has attempted to evade any of the provisions of the Franchise; or
 - iii. Grantee has practiced fraud or deceit upon City.

City may revoke this Franchise without the hearing required by Section 10(2)(b) herein if Grantee is adjudged a bankrupt.

2. Procedures for Revocation.

- a. The City shall provide the Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee thirty (30) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise. In the notice required herein, the City shall provide the Grantee with the basis for revocation.
 - b. 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 in subparagraph (a) above. The City shall provide the Grantee with written notice of its decision together with written findings of fact supplementing said decision.
 - c. Only after the public hearing and upon written notice of the determination by the City to revoke the Franchise may the Grantee appeal said decision with an appropriate state or federal court or agency.
 - d. During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the Franchise would endanger the health, safety and welfare of any person or the public.
3. **Abandonment of Service.** The Grantee may not abandon the System or any portion thereof without having first given three (3) months written notice to the City. The Grantee may not abandon the System or any portion thereof without compensating the City for damages resulting from the abandonment, including all costs incident to removal of the System, if required by the City pursuant to Section 10(4).
4. **Removal After Abandonment, Termination or Forfeiture.**
- a. In the event of termination or forfeiture of the Franchise or abandonment 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 for operation by it.

5. Sale or Transfer of Franchise.

- a. No sale or transfer of the Franchise, or sale, transfer, or fundamental corporate change of or in Grantee, including, but not limited to, a fundamental corporate change in Grantee's parent corporation or any entity having a controlling interest in Grantee, the sale of a controlling interest in the Grantee's assets, 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, or corporate change and such approval has been granted or deemed granted, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and/or assets to secure an indebtedness. Upon notice to Commission, 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 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 10(5). The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. In any event, as used herein, a new "controlling interest" shall be deemed to be created upon the acquisition through any transaction or related group of transactions of a legal or beneficial interest of fifteen percent (15%) or more by one Person. Acquisition by one Person of an interest of five percent (5%) or more in a single transaction shall require notice to the City.
- c. The Grantee shall file, in addition to all documents, forms and information required to be filed by applicable law, the following:
 - i. 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.
 - ii. A list detailing all documents filed with any state or federal agency related to the transaction including, but not limited to, the MPUC, the

FCC, the FTC, the FEC, the SEC or MnDOT. Upon request, Grantee shall provide City with a complete copy of any such document; and

- iii. Any other documents or information related to the transaction as may be specifically requested by the City.
- d. The City shall have such time as is permitted by federal law in which to review a transfer request.
- e. Grantee shall reimburse City for all the reasonable legal, administrative, 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.
- f. In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to subparagraph (a) or (b) of this Section be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations hereunder.
- g. In the event of any proposed sale, transfer, corporate change, or assignment pursuant to subparagraph (a) or (b) of this Section, the City shall have the right to purchase the System for the value of the consideration proposed in such transaction. The City's right to purchase shall arise upon City's receipt of notice of the material terms of an offer or proposal for sale, transfer, corporate change, or assignment, which Grantee has accepted. Notice of such offer or proposal must be conveyed to City in writing and separate from any general announcement of the transaction.
- h. The City shall be deemed to have waived its right to purchase the System pursuant to this Section only in the following circumstances:
 - i. If City does not indicate to Grantee in writing, within sixty (60) days of receipt of written notice of a proposed sale, transfer, corporate change, or assignment as contemplated in Section 10(5)(g) above, its intention to exercise its right of purchase; or
 - ii. It approves the assignment or sale of the Franchise as provided within this Section.
- i. No Franchise may be transferred if the City determines the Grantee is in noncompliance of the Franchise unless an acceptable compliance program

has been approved by City. The approval of any transfer of ownership pursuant to this Section shall not be deemed to waive any rights of City to subsequently enforce noncompliance issues relating to this Franchise.

- j. 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.

SECTION 11.

PROTECTION OF INDIVIDUAL RIGHTS

1. **Discriminatory Practices Prohibited.** Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, sex, age, status as to public assistance, affectional preference, or disability. Grantee shall comply at all times with all other applicable federal, State, and city laws.
2. **Subscriber Privacy.**
 - a. No signals including signals of a Class IV Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. 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 Channel activity planned for the purpose of monitoring individual viewing patterns or practices.
 - b. 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.

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

SECTION 12.

UNAUTHORIZED CONNECTIONS AND MODIFICATIONS

1. **Unauthorized Connections or Modifications Prohibited.** It shall be unlawful for any firm, Person, group, company, corporation, or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any unauthorized connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System or to receive services of the System without Grantee's authorization.
2. **Removal or Destruction Prohibited.** It shall be unlawful for any firm, Person, group, company, or corporation to willfully interfere, tamper 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.
3. **Penalty.** Any firm, Person, group, company, or corporation found guilty of violating this section may be fined not less than Twenty Dollars (\$20.00) and the costs of the action 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.

SECTION 13.

MISCELLANEOUS PROVISIONS

1. **Franchise Renewal.** Any renewal of this Franchise shall be performed in accordance with applicable federal, State and local laws and regulations. The term of any renewed Franchise shall be limited to a period not to exceed fifteen (15) years.
2. **Work Performed by Others.** All applicable obligations of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise, however, in no event shall any such subcontractor or

other performing work obtain any rights to maintain and operate a System or provide Cable Service. 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.

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 Section 8(6) 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.

4. **Compliance with Federal, State and Local Laws.**

- a. If any federal or State law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City shall conform to State laws and rules regarding cable communications not later than one 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 or the Commission.
- 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 City, Commission and Grantee shall, at all times during the term of this Franchise, including all extensions and renewals thereof, comply with applicable federal, State and local laws and regulations.
5. **Nonenforcement by City.** Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of City to enforce prompt compliance. City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.
6. **Rights Cumulative.** All rights and remedies given to City by this Franchise or retained by City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.
7. **Grantee Acknowledgment of Validity of Franchise.** 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 or arbitrary, and that Grantee believes City has the power to make the terms and conditions contained in this Franchise.
8. **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.

9. **Governing Law.** This Franchise shall be governed in all respects by the law of the State of Minnesota.

10. **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.

11. **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.

12. **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.

SECTION 14.

PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

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

2. **Acceptance.**
 - a. Grantee shall accept this Franchise within sixty (60) days of its enactment by the City Council and the enactment of a Franchise on substantially similar terms by the other member municipality of the Commission, 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:
 - i. This Franchise will be properly executed and acknowledged by Grantee and delivered to City.
 - ii. 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.

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 20th day of December, 1999.

ATTEST:

By: [Signature]
Its: City Clerk

CITY OF BURNSVILLE, MINNESOTA

By: [Signature]
Its: Mayor

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

Dated: January 24, 2000

MEDIAONE
By: [Signature]

EXHIBIT A

INSTITUTION	ADDRESS	CURRENT ACTIVE SUB NET	CURRENT ACTIVE I-NET	COST TO EXTEND COAXIAL I-NET (3)	HUB TO NODE COUNT TOTAL	COUNT PLUS 4 SPARE	NODE TO FACILITY COUNT	NODE TO SITE FOOTAGE	NODE TO SITE COST	FREE MONTHLY VIDEO SERVICE	FREE CABLE MODEM SERVICE
CITY OF BURNSVILLE											
NODE - City Hall											
City Hall	100 Civic Center Parkway	Yes	Yes		26	12	0			Yes	No
Old. Maint. Bldg	75 Civic Center Parkway	Yes	Yes			0	2		\$3,140	Yes	No
Water Treatment	50 River Ridge Blvd	No	No			0	2	6,500	\$40,820	No	No
Ice Arena	251 Civic Center Parkway	Yes	Yes			0	2	2,750	\$17,270	Yes	No
Dist. Adm. Building	19100 River Ridge Ct	Yes	Yes			4	4	7,800	\$49,140	Yes	No
Dakota County License	100 E. Hwy 13	Yes	Yes			2	2	5,250	\$32,970	No	No
Burnsville -- Diamondhead High	308 W. Burnsville Parkway	Yes	Yes			2	2	4,750	\$29,830	Yes	Yes
Gideon Pond Elementary	630 E. 130 th St	Yes	Yes			2	2	4,600	\$28,888	Yes	Yes
Nicolet Jr. High	400 E. 134 th Street	Yes	Yes			2	2	4,100	\$25,748	Yes	Yes
Sky Oak Elementary	100 E. 134 th St	Yes	Yes			2	2	3,000	\$18,940	Yes	Yes
NODE - Burnsville High											
Burnsville High	600 E. Hwy 13	Yes	Yes		8	4	0	0	0	Yes	Yes
Fire Station #2	12155 Parkwood Drive	Yes	Yes			2	2	6,000	\$37,680	Yes	No
Birnamwood Golf	12424 Parkwood Drive	Yes	No			2	2	6,800	\$42,704	Yes	No (2)
NODE --											
Maintenance Facility	13713 Frontier Ct	Yes	Yes		12	10	0	0	0	Yes	No
Echo Park Elementary	14100 Co. Rd. 11	Yes	Yes			2	2	6,000	\$37,680	Yes	Yes
NODE - Burnhaven Fire #1											
Burnhaven Fire #1	911 N. 140 th St.	Yes	Yes		8	2	0	0	0	Yes	No
Vista View Elementary	13109 Co. Rd. 5	Yes	Yes			2	2	10,700	\$67,196	Yes	Yes

EXHIBIT A

INSTITUTION	ADDRESS	CURRENT ACTIVE SUB NET	CURRENT ACTIVE FIBER NET	COUNT TOTAL	COUNT PLUS 4 SPARE	# of FIBERS	NODE TO SITE FOOTAGE	NODE TO SITE COST	FREE MONTHLY VIDEO SERVICE	FREE CABLE MODEM SERVICE
Edward Neill Elementary	13409 Upton Ave. South	Yes	Yes		2	2	13,154	\$82,607	Yes	Yes
Dakota County Library	1101 W. County Rd. 42	Yes	Yes		2	2	3,200	\$20,096	Yes	Yes
Alimagnet Park	1200 Alimagnet Parkway	Yes	No						Yes	No (2)
Headend										
Sioux Trail Elementary	2801 River Hillis Drive	Yes	Yes		0	2	3,300	\$20,724	Yes	Yes
William Byrne Elementary	11608 River Hillis Dr	Yes	Yes		0	2	7,250	\$45,530	Yes	Yes
CITY OF EAGAN										
NODE - City Hall				22						
City Hall	3830 Pilot Knob Rd	Yes	Yes		12	0			Yes	No
Police	3830 Pilot Knob Rd	Yes	Yes		0	0			Yes	No
Civic Center/Ice Arena	3850 Pilot Knob Rd	Yes	Yes		0	0			Yes	No
Fire Adm.	3795 Pilot Knob	Yes	Yes		0	0			Yes	No
Cascade Bay	1360 Civic Center Parkway	Yes	Yes		0	0			Yes	No
Blackhawk Middle School	1540 Deerwood Dr	Yes	Yes		2	2	5,750	\$36,110	Yes	Yes
Deerwood Elementary	1460 Deerwood Dr	Yes	Yes		2	2	5,300	\$33,284	Yes	Yes
Glacier Hills Elementary	3825 Glacier Dr	Yes	No		2	2	3,900	\$24,462	Yes	Yes
Woodland Elementary	945 Wescott Rd	Yes	No		2	2	11,250	\$70,650	Yes	Yes
Dakota County Library	1340 Wescott Rd	Yes	Yes		2	2	2,250	\$14,130	Yes	Yes

EXHIBIT B

BURNSVILLE/EAGAN I-NET PERFORMANCE STANDARDS

Upon completion of the Institutional Network upgrade specified in Section 7 of this Franchise, the Institutional Network shall at all times meet or exceed the following performance standards:

I. Analog Transmission

- A. Analog transmission shall comply with the following performance standards:
1. Carrier to noise ratio = 45 dB or better.
 2. Carrier to composite triple beat = minus 54 dB or better.
 3. Carrier to composite second order = minus 55 dB or better.
 4. Carrier to cross modulation = minus 55 dB or better.
 5. System signal variations (peak to valley) = $N/10+2$ or better for all coaxial cable portions of the I-Net (where N = the number of amplifiers in cascade).
- B. Testing shall occur, as follows, at least twice annually at the same time subscriber network distribution tests are performed:
1. from furthest institution to furthest institution related to the performance of interactive video; and
 2. from the furthest institution to the longest subscriber cascade.

All testing performed hereunder shall use existing I-Net carriers active at the time of the testing, which will subject them to service interruptions. The Grantee shall work with I-Net Users to minimize the impact of such service interruptions. Testing shall be completed at the mutually agreed upon entry demarcation point at the institution. The I-Net shall meet all the standards set forth herein under full loading and any combination of analog video, audio, and digital channels.

II. Digital Transmission

- A. For the I-Net that is 50% or more coaxial cable, a Bit Error Rate ("BER") of 1×10^{-8} at the demarcation point. This standard shall be met or exceeded under Normal Operating Conditions. Outage times shall not be considered for purposes of determining compliance with the BER prescribed in this paragraph.
- B. For the I-Net that is 50% or more fiber optic cable, a Bit Error Rate of 1×10^{-9} at the demarcation point. This standard shall be met or exceeded under Normal Operating Conditions. Outage times shall not be considered for purposes of determining compliance with the BER prescribed in this paragraph.
- C. Testing shall occur twice yearly, during the months of January/February and

July/August.

- D. The method used by the Grantee for testing BER must be approved by the Commission.
- E. The I-Net shall meet all BER standards under full loading and any combination of analog video, audio, and digital channels.

III. End-to-End Fiber Based Institutional Communications

- A. Optical System Noise Performance - Under worst-case link loss as measured for any voice, video or data service, the combined upstream and downstream performance of the I-Net shall meet or exceed a signal to noise of 60 dB or better.
- B. Optical Received Power Level at the Institution - The optical power level for any service delivered to the designated demarcation point at each I-Net User location shall meet or be better than 0 dBm and shall, in all cases, enable operation within the manufacturer's minimum specifications of all I-Net network transmission and reception equipment located within a facility connected to the I-Net.
- C. Optical Performance Testing - Testing for the above shall occur twice yearly for all links during the months of January/February and July/August.

IV. Network Availability

- A. For each user on the I-Net, network availability shall be equal to or better than 99.965% (no more than 184 minutes of network downtime per user) as measured on an annual basis.
- B. The I-Net shall be defined as "unavailable" under the standards herein when such user:
 - 1. cannot, because of a network problem, measured by SNMP software or other appropriate software and associated hardware, or through a failure of a Grantee-provided interconnect, transmit video, voice and/or data communications to, from and/or on the network. Such network problems shall be the result of a failure of one or more of the following: 1) the fiber optic and/or coaxial cabling, connections and transmission equipment, including RF transmission equipment, on the network; 2) the transmission equipment at Grantee's headend; 3) the transmission and network equipment at the customer's premise (if such equipment is provided by Grantee); 4) network powering systems; 5) the network equipment, connections and cabling, network management, hardware and software, and related equipment

provided by Grantee at Grantee's headend; and/or 6) any other Grantee-provided transmission or network component; and/or

2. experiences due to a network problem, video, voice and data transmissions that are below the standards set forth in this Exhibit and elsewhere in this Franchise; and/or
 3. experiences, due to a network problem, a data communications packet loss of greater than ten (10) percent.
- C. For purposes of this availability standard, I-Net problems shall not be defined as: infrequent scheduled preventative maintenance as long as I-Net Users are notified well in advance according to the provisions of this Exhibit and user contracts, according to the provisions of the Franchise and user contracts. Except as otherwise provided for herein, network availability is subject to the force majeure provisions of the Franchise and those conditions which are not with the control of the Grantee. However, network downtime shall include, but not be limited to, network failures caused by: third party actions; commercial power outages of a typical, non-catastrophic nature; and power failures and other disturbances caused by weather occurrences typical to the Burnsville/Eagan area. The Grantee shall comply with the requirements of the Franchise to restore service following any of these occurrences. The Grantee shall give the City, the Commission and affected I-Net Users notice in the event of any of the foregoing occurrences.

V. Repair and Maintenance

- A. The Grantee shall provide technical support on a 7 x 24 x 365 (24 hour a day) basis. The Grantee must respond during this time within 10 minutes (under Normal Operating Conditions the initial page to the technician on call for I-Net problems will be within the 10 minute time frame). The Grantee shall work on the problem continuously until it is resolved.
- B. Fiber shall be incorporated, where indicated, in the I-Net Site List to provide end-to-end fiber connectivity and to reduce amplifier cascades to meet performance standards. Where possible, fiber Nodes may be located within the building or facility of the I-Net User.
- C. I-Net Users shall be notified at least seven days in advance of any scheduled maintenance that will interrupt service on the I-Net, unless I-Net Users agree to waive such notice. Where possible, such maintenance shall be scheduled at times of low usage.

VI. Demarcation Point

The transition point where the I-Net cable interconnects between the Grantee's cable and the institutional facility's infrastructure shall be defined as the demarcation point. The transition point may vary upon each location, and as such, will be mutually agreed to by both parties.

U:\cable\Becco 51469\Exhibit I-Net Performance Standards.wpd

DARK FIBER SERVICE AGREEMENT

This Dark Fiber Service Agreement ("Agreement") is entered into this _____ day of _____, 2002, between _____ ("Institution") and MediaOne North Central Communications Corp., d/b/a AT&T Broadband ("MediaOne").

WHEREAS, MediaOne has entered into a renewed fifteen (15) year cable television Franchise with the cities of Burnsville and Eagan (each referred to herein as a "City" and collectively as "Cities") that provides MediaOne with access to the Cities' rights-of-way and that allows MediaOne to continue to provide cable services within the Cities; and

WHEREAS, the Cities have exercised their authority under Minnesota law to enter into a Joint and Cooperative Agreement and an Amended Joint and Cooperative Agreement among the Cities, and have delegated authority to the Burnsville/Eagan Telecommunications Commission ("Commission") to be responsible for ongoing administration of the Franchise; and

WHEREAS, in Section 7 of the Franchise MediaOne is required to upgrade the existing Institutional Network ("I-Net") linking a number of public and educational institutions within the Burnsville/Eagan franchise area ("I-Net Institutions") to a hybrid fiber-coaxial network; and

WHEREAS, Section 7.3 of the Franchise provides that beyond the portion of the I-Net constructed as an HFC network, MediaOne shall, on an Actual Cost basis, extend single mode fiber optic lines from the Node to a specified list of Institutions, the final list of which is identified on the document attached hereto as Exhibit 1 ("Dark Fiber"); and

WHEREAS Institution desires to obtain Dark Fiber connections to its i sites, and the list of sites of Institutions is identified on Exhibit 1.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Services Provided. Subject to the terms and conditions of this Agreement and Section 7 of the Franchise, MediaOne shall provide separate Dark Fiber to Institution, and the Dark Fiber will link together the facilities of Institutions identified on Exhibit 1 (each referred to herein as a "Site" and collectively as "Sites"). MediaOne shall provide the number of dark fibers running between Nodes and the Sites as specified on the map depicting the I-Net and Dark Fiber system in Exhibit 1. The separate Dark Fiber network shall be passively terminated to standard connectors at the patch panel of the telephone equipment room of each site or at

another designated location mutually agreed to by MediaOne and Institution. Institution shall be responsible for any end user or interface equipment needed for transmission or reception of signals.

2. Installation and Access. The parties acknowledge that, in order for MediaOne to perform hereunder and to maintain its equipment and property, it will from time to time require access to, and easements through, the Institution's facilities and property. The Institution shall provide, at no cost to MediaOne except for generally applicable permit fees, such access and easements as are reasonably requested by MediaOne. MediaOne shall not be responsible for a failure to perform hereunder if such failure is caused by the Institution's failure to provide MediaOne access.

Without limiting the generality of the foregoing, it is anticipated that MediaOne will require, and the Institution hereby grants to MediaOne, at no cost to MediaOne except for generally applicable permit fees, easements for the placement and maintenance of cables, ducts, poles, and other equipment incident to the construction and maintenance of the I-Net and/or Dark Fiber network and associated technology at each Site described in Exhibit 1.

3. Repair and Maintenance. MediaOne shall maintain and repair the Network in accordance with the technical specifications set forth in Franchise Exhibit B. MediaOne will not charge fees for preventative and routine network inspections and maintenance of the HFC portion of the I-Net. With respect to the Dark Fiber portions of the I-Net, Institution will pay the proportionate Actual Cost for demand maintenance and/or repairs requested, caused by, or which benefit the Institution. For example, if a single event causes damage to both the subscriber network and the Dark Fiber portion of the I-Net and the cost of the repair is shared, MediaOne will allocate the cost of the repair to the Dark Fiber portion of the I-Net based on the proportionate number of strands of fiber and/or coax that need to be repaired. The cost of I-Net and/or Dark Fiber repairs will be allocated among the I-Net Institutions affected by the repair.
4. Dark Fiber Security. MediaOne and the Institution shall at all times use reasonable efforts to protect the security of the Dark Fiber network. For purposes of this paragraph, "to protect security" means to protect those physical elements of the Dark Fiber network under the party's direct control from unauthorized intrusion, signal theft, tampering, wiretapping or other actions that might: (i) compromise the integrity of or degrade the signals carried over the Dark Fiber network; or (ii) result in the unauthorized interception and disclosure of information.
5. Term. The term of the Agreement for the Dark Fiber shall commence on the date of execution and shall expire on January 24, 2015, unless extended or sooner terminated hereunder. Upon expiration, Institution shall not acquire title to any of the facilities used in the I-Net or Dark Fiber network.

6. Payment for Dark Fiber. MediaOne has provided Institution a preconstruction estimate of the amount of Actual Cost anticipated for the Dark Fiber to be placed for Institution's sites. Within thirty (30) days after construction of the Dark Fiber is completed, MediaOne shall submit to Institution an invoice listing the Actual Cost of constructing the Dark Fiber to Institution's sites. Institution shall make full payment for the entire portion of the total cost attributable to Institution's Sites within thirty (30) days of submission of the invoice. Except as provided elsewhere in this Agreement or in Section 7 of the Franchise, the payments will be absolute and unconditional in all events and will not be subject to any set-off, defense, counterclaim or recoupment for any reason whatsoever. Late payments will be assessed a late charge from the scheduled payment date at a periodic monthly rate of 1.25%.
7. Default. If Institution fails to make payment for the Dark Fiber when due, MediaOne may, by written notice to Institution, terminate this Agreement and all sums due hereunder shall become immediately due and payable without further notice or demand. Within ten (10) days after giving of such notice, Institution shall cease all use of the Dark Fiber and lose all access to all Dark Fiber provided by MediaOne as required in the Franchise. All capacity on such Dark Fiber shall immediately revert to MediaOne's control and exclusive use. MediaOne may proceed by appropriate court action to enforce performance by Institution of the applicable covenants of this Agreement or to recover its loss for breach of the Agreement. MediaOne may exercise any other right or remedy available to it by law or by agreement. Nothing herein shall waive, and MediaOne retains, any rights it may have under applicable law or agreements to seek recovery of its Dark Fiber costs from other Institutions, the Cities or the Commission.
8. Additional Charges. Any sales, use, excise, gross receipts, Franchise or privileges taxes, duties, or similar charges, levied or assessed upon or against MediaOne because of the service furnished to the Institution hereunder shall be charged to and payable by the Institution. MediaOne will not charge the Institution sales tax on amounts payable hereunder if the Institution provides evidence of its exemption from such tax.
9. Availability of Dark Fiber. The Dark Fiber shall be completed on or before September 30, 2002. Acceptance testing will be conducted on the I-Net prior to its use by the I-Net User, in accordance with Section 7.6 of the Franchise.
10. MediaOne's Use of Capacity. MediaOne may use capacity on the I-Net, including Dark Fiber, as specified in Franchise Section 7.
11. Limitation of Liability. UNDER NO CIRCUMSTANCES SHALL EITHER MEDIAONE OR THE I-NET USER BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF BUSINESS, LOSS OF USE OR LOSS OF PROFITS) ARISING IN CONNECTION WITH THIS AGREEMENT. MEDIAONE'S AND THE INSTITUTION'S ONLY LIABILITY UNDER THIS AGREEMENT IS FOR DIRECT,

ACTUAL DAMAGES TO THE EXTENT EACH CAUSES THE OTHER SUCH DAMAGE. EACH PARTY'S REMEDIES AGAINST THE OTHER UNDER THIS AGREEMENT ARE EXCLUSIVE AND ARE LIMITED TO THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT AND IN THE FRANCHISE.

- 12. Subject to Laws.** This Agreement is subject to all applicable federal, state and local laws, and regulations, rulings and orders of governmental agencies, including, but not limited to, the Communications Act of 1934 as amended by the Telecommunications Act of 1996, the Rules and Regulations of the FCC and the obtaining and continuance of any required approval or authorization of the FCC, the Minnesota Public Utilities Commission or Department of Commerce, or any governmental body. MediaOne or Institution may terminate its obligations under this Agreement if ordered to do so by the order, decision or ruling of a court or other governmental agency or if such order, decision or ruling would prevent MediaOne or Institution from carrying out its obligations under this Agreement. In addition, if at any time during the term of this Agreement, the action of a state or federal governmental agency requires modification of MediaOne's services provided hereunder to meet legal requirements, the parties will enter into negotiations to achieve an equitable adjustment of any increased or decreased costs incurred by MediaOne.
- 13. Network Cost Modification.** In the event that unforeseen path obstructions or right-of-way restrictions materially affect construction so as to require significant modification of the network design and substantial additional cost, the parties will enter into negotiations to reach an equitable adjustment to reflect any increase in MediaOne's total Actual Cost incurred by reason of the modification.
- 14. Successors and Assigns.** This Agreement, and the terms, covenants, and conditions hereof, shall be binding upon the inure to the benefits of the parties hereto and their respective successors and assigns, but nothing in this Agreement is to be construed as an authorization or right of any party to assign its rights in or delegate its duties under this Agreement without the prior written consent of the other party.
- 15. Governing Law.** This Agreement shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the State of Minnesota.
- 16. Notices.** All notices and other communications required or permitted hereunder shall be given in writing and shall be: (a) personally delivered; (b) sent by telecopier, facsimile transmission or other electronic means of transmitting written document; or (c) sent to the parties at their respective addresses indicated herein by registered or certified U.S. mail, return receipt requested and postage prepaid, or by private overnight mail courier service.

If personally delivered, such communication shall be deemed delivered upon actual receipt, if electronically transmitted, such communication shall be deemed delivered the next business day after transmission (and sender shall bear the burden of proof of delivery); if sent by U.S. mail, such communication shall be deemed delivered as of the date of delivery indicated on the receipt issued by the relevant postal service; or, if the addressee fails or refuses to accept delivery, as of date of such failure or refusal. Any party to this Agreement may change its address for the purposes of this Agreement by giving notice thereof in accordance with this Section.

Unless written notice or a change in notice is provided, all notices and any other written and oral communications shall be delivered as follows:

a. If to MediaOne: Vice President - Engineering
MediaOne of St. Paul, Inc. d/b/a AT&T Broadband
10 River Park Plaza
St. Paul, MN 55107

b. If to Institution _____
Title of Contact Person

Name of User Entity

Street Address

City, State, Zip

17. Severability. In the event any one (1) or more of the provisions of this Agreement shall for any reason be held to be invalid or unenforceable, the remaining provisions of this Agreement shall be unimpaired, and shall remain in effect and binding upon the parties. The invalid or unenforceable provisions shall be replaced by a mutually acceptable provision that, being valid and enforceable, comes closest to the intention of the parties underlying the invalid or unenforceable provision.

18. Force Majeure. Neither party shall be liable for any failure of performance hereunder due to causes beyond its reasonable control including but not limited to, acts of God, fire explosion, vandalism, storm or other similar catastrophes; any law, order, regulation, direction, action or request of the United State Government or any other government including state and local governments (except for the Commission or the Cities) having jurisdiction over either of the parties or of any department, agency, commission, court, bureau, governments, or of any civil or military authorities; national emergencies; insurrection; riots; wars; or strikes, lockouts or work stoppages.

19. Title. MediaOne retains ownership of the I-Net and Dark Fiber network consistent with the terms of the Franchise. Institution, at its expense, will keep the Dark Fiber network free and clear from any and all claims, liens, encumbrances and legal

processes of Institution's creditors and other persons, with the exception of any creditors of MediaOne which are not creditors of Institution.

- 20. Nonwaiver.** The failure of either Party to give notice of default, or to enforce or insist upon compliance with any of the terms or conditions of this Agreement, the waiver of any term or condition of this Agreement, or the granting of any extension of time for performance, shall not constitute the permanent waiver of any term or condition of this Agreement, and this Agreement and each of its provisions shall remain at all times in full force and effect until modified by the parties in writing.
- 21. Amendments.** No amendment or modification of any provision of this Agreement shall be effective unless the same shall be in writing and signed by both of the parties hereto.
- 22. Entire Agreement.** This Agreement is intended to supplement and provide additional details in implementation of Section 7, Exhibit A and Exhibit B of the Franchise. Nothing in this Agreement supercedes or nullifies any part of the Franchise or its exhibits in any way.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

MEDIAONE NORTH CENTRAL
COMMUNICATIONS CORP., d/b/a AT&T
BROADBAND

By: _____

Title: _____

Attest: _____

INSTITUTION

By: _____

Title: _____

Attest: _____