

CABLE TELEVISION REGULATORY ORDINANCE

TOWN OF NEW SCANDIA, MINNESOTA

DECEMBER 2, 1997

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TABLE OF CONTENTS

SECTION 1.1. INTENT.....	1
SECTION 1.2. DEFINITIONS.....	1
SECTION 1.3. FRANCHISE TO INSTALL AND OPERATE.....	4
SECTION 1.4. FRANCHISE REQUIRED.....	4
SECTION 1.5. TERM OF THE FRANCHISE.....	4
SECTION 1.6. FRANCHISE TERRITORY.....	4
SECTION 1.7. FEDERAL, STATE AND TOWN JURISDICTION.....	4
SECTION 1.8. FRANCHISE NON-TRANSFERABLE.....	5
SECTION 1.9. TOWN'S RIGHT TO PURCHASE SYSTEM.....	6
SECTION 1.10. PURCHASE BY TOWN UPON EXPIRATION OR REVOCATION.....	7
SECTION 1.11. EMERGENCY USE.....	7
SECTION 1.12. GEOGRAPHICAL COVERAGE.....	7
SECTION 1.13. NONEXCLUSIVE FRANCHISE.....	7
SECTION 1.14. MULTIPLE FRANCHISES.....	8
SECTION 1.15. FRANCHISE APPLICATIONS.....	8
SECTION 1.16. CONSIDERATION OF INITIAL APPLICATIONS.....	9
SECTION 1.17. FRANCHISE RENEWAL.....	9
SECTION 1.18. CONSUMER PROTECTION AND SERVICE STANDARDS.....	9
SECTION 1.19. RATE REGULATION.....	11
SECTION 1.20. FRANCHISE FEE.....	11
SECTION 1.21. DESIGN AND CONSTRUCTION REQUIREMENTS.....	12
SECTION 1.22. TECHNICAL STANDARDS.....	13
SECTION 1.23. TRIMMING OF TREES.....	14
SECTION 1.24. USE OF GRANTEE FACILITIES.....	14
SECTION 1.25. PROGRAMMING DECISIONS.....	14
SECTION 1.26. INDEMNIFICATION.....	15
SECTION 1.27. INSURANCE.....	15
SECTION 1.28. RECORDS REQUIRED AND GRANTOR'S RIGHT TO INSPECT.....	16
SECTION 1.29. ANNUAL REPORTS.....	17
SECTION 1.30. FRANCHISE VIOLATION.....	17
SECTION 1.31. FORCE MAJEURE; GRANTEE'S INABILITY TO PERFORM.....	17
SECTION 1.32. ABANDONMENT OR REMOVAL OF FRANCHISE PROPERTY.....	18
SECTION 1.33. EXTENDED OPERATION AND CONTINUITY OF SERVICES.....	19
SECTION 1.34. RECEIVERSHIP AND FORECLOSURE.....	19
SECTION 1.35. RIGHTS RESERVED TO GRANTOR.....	19
SECTION 1.36. RIGHTS OF INDIVIDUALS.....	20
SECTION 1.37. CONFLICTS.....	21
SECTION 1.38. SEVERABILITY.....	21

NEW SCANDIA TOWNSHIP

Ordinance Number 59

An ordinance providing for the granting and regulation of Cable Television Franchise within the Town of New Scandia.

The Town Board of the Town of New Scandia, Minnesota does hereby ordain as follows:

SECTION 1.1. INTENT.

a. The Town of New Scandia, Minnesota, pursuant to Applicable Laws, is authorized to grant one or more nonexclusive Franchises to construct, operate, maintain and reconstruct Cable Television Systems within the Town limits.

b. The Town Board finds that the development of Cable Television Systems has the potential of having great benefit and impact upon the residents of the Town. Because of the complex and rapidly changing technology associated with cable television, the Town Board further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the Town or such Persons as the Town shall designate. It is the intent of this Ordinance and subsequent amendments to provide for and specify the means to attain the best possible cable television service to the public and any Franchises issued pursuant to this Ordinance shall be deemed to include this finding as an integral part thereof.

SECTION 1.2. DEFINITIONS.

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. Words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in this Section. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

a. "Applicable Laws" means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any Governmental Authority.

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

c. "Board" means the Town Board of the Town of New Scandia, Minnesota.

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

e. "Cable Television System", "System" or "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and

control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include:

1. A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
2. A facility that serves subscribers without using any public rights-of-way;
3. A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541) to the extent such facility is used in the transmission of video programming directly to subscribers; unless the extent of such use is solely to provide interactive on-demand services;
4. An open video system that complies with Section 653 of the Cable Act; or
5. Any facilities of any electric utility used solely for operating its electric utility system.

f. "Cable Service" means:

1. The one-way transmission to Subscribers of (i) video programming, or (ii) other programming service; and
2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

g. "Channel" or "Cable Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel as defined by the Federal Communications Commission.

h. "Franchise" means an initial authorization, or renewal thereof, issued by the Town, whether such authorization is designated as a Franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorizes the construction or operation of a Cable System over publicly owned rights-of-way.

i. "Franchise Agreement" means a Franchise granted pursuant to this Ordinance containing the specific provisions of the Franchise granted, including references, specifications, requirements and other related matters.

j. "Franchise Fee" means any tax, fee or assessment of any kind imposed by the Town or any other Governmental Authority on a Grantee or cable Subscriber, or both, solely because of their status as such. The term "Franchise Fee" does not include: (i) any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers); (ii) capital costs which are required by the Franchise Agreement to be incurred by the Grantee for PEG Access Facilities; (iii) requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.

k. "Governmental Authority" means any Court or other federal, state, county, municipal or other governmental department, commission, board, agency or instrumentality.

l. "Grantee" means any Person receiving a Franchise pursuant to this Ordinance and its agents, officers, designees, or any lawful successor, transferee or assignee.

m. "Grantor" or "Town" means the Town of New Scandia, Minnesota as represented by the Board. The Town Clerk shall be responsible for the continuing administration of the franchise.

n. "Gross Revenues" means any and all revenues received by the Grantee, its affiliates, subsidiaries, parents, or any Person in which Grantee has a financial interest of five percent (5%) or more, arising from or attributable, to the sale or exchange of Cable Service by the Grantee within the Town including, but not limited to, monthly fees charged to Subscribers for Basic Cable Service; monthly fees charged to Subscribers for any optional service; monthly fees charged to Subscribers for any tier of service other than Basic Cable Service; Installation, disconnection and reconnection fees; leased Channel fees; converter and remote revenues; advertising revenues; and revenues from home shopping Channels. Gross Revenues shall be the basis for computing the Franchise Fees imposed pursuant to Section 1.20 hereof. Grantee shall not be required to pay a franchise fee on gross revenues derived from any Person receiving free Cable Service pursuant to a Franchise Agreement. Gross Revenues shall not include any Access Operating Funds or Access Capital Grants required in any franchise which are collected by Grantee on behalf of the Town.

o. "Initial Service Area" means the area of the Town which will receive Cable Service initially, as set forth in any Franchise Agreement.

p. "Installation" means the connection of the System from feeder cable to the point of connectivity

q. "Normal Business Hours" means those hours during which most similar businesses in the Town are open to serve customers. In all cases, "Normal Business Hours" must include some evening hours at least one night per week and/or some weekend hours.

r. "Normal Operating Conditions" means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the System.

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

t. "Public, Educational or Government Access Facilities" or "PEG Access Facilities" means:

1. Channel capacity designated for public, educational or governmental use;

and

2. Facilities and equipment for the use of such Channel capacity.

u. "Section" means any Section, subsection or provision of this Ordinance.

v. "Service Area" or "Franchise Area" means the entire geographic area within the Town as it is now constituted or may in the future be constituted, unless otherwise specified in the Franchise Agreement.

w. "Service Interruption" means the loss of picture or sound on one or more Cable Channels.

x. "State" means the State of Minnesota.

y. "Street" or "publicly owned right of way" means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the Town limits: streets, roadways, highways, avenues,

lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas that the Grantor shall permit to be included within the definition of Street from time to time.

z. "Subscriber" means any Person who or which lawfully elects to subscribe to Cable Service whether or not a fee is paid for such service.

SECTION 1.3. FRANCHISE TO INSTALL AND OPERATE.

a. A Franchise granted by the Town under the provisions of this Ordinance shall encompass the following purposes:

1. To engage in the business of providing Cable Service, and such other lawful services as may be permitted by the Town, to Subscribers within the Service Area.

2. To erect, install, construct, repair, rebuild, reconstruct, replace, maintain and retain cables, lines, related electronic equipment, supporting structures, appurtenances and other property in connection with the operation of a Cable System in, on, over, under, upon, along and across Streets within the Service Area.

3. To maintain and operate said Franchise properties for the origination, reception, transmission, amplification and distribution of television and radio signals for the delivery of Cable Services.

4. To set forth the obligations of a Grantee under the Franchise Agreement.

b. Nothing contained in this Ordinance relieves a Person from liability arising out of failure to exercise reasonable care to avoid injuring Grantee's facilities while performing work connected with grading, regarding or changing the line of a Street or public place or with the construction or reconstruction of a sewer or water system.

SECTION 1.4. FRANCHISE REQUIRED.

It shall be unlawful for any Person, other than the Town, to construct, install or operate a Cable Television System in the Town in, on, over, under, upon, along or across any Street or publicly owned right of way without a Franchise properly granted pursuant to the provisions of this Ordinance.

SECTION 1.5. TERM OF THE FRANCHISE.

a. A Franchise granted hereunder shall be for the term established in the Franchise Agreement and shall not exceed fifteen (15) years.

b. A Franchise granted hereunder may be renewed upon application by the Grantee pursuant to the provisions of this Ordinance and Applicable Laws.

SECTION 1.6. FRANCHISE TERRITORY.

Any Franchise granted pursuant to this Ordinance shall be valid within the Service Area.

SECTION 1.7. FEDERAL, STATE AND TOWN JURISDICTION.

a. This Ordinance shall be construed in a manner consistent with Applicable Laws.

b. This Ordinance shall apply to all Franchises granted or renewed after the effective date of this Ordinance. This Ordinance shall further apply to the extent permitted by Applicable Laws to all existing Franchises granted prior to the effective date of this Ordinance.

c. The rights of all Grantees are subject to the policing powers of the Town to adopt and enforce ordinances necessary to the health, safety and welfare of the public. All Grantees shall comply with all Applicable Laws enacted by the Town pursuant to that power.

d. No Grantee shall be relieved of its obligation to comply with any of the provisions of this Ordinance or any Franchise granted pursuant to this Ordinance by reason of any failure of the Town to enforce prompt compliance.

e. This Ordinance and any Franchise granted pursuant to this Ordinance shall be construed and enforced in accordance with the substantive laws of the Town, State of Minnesota and applicable federal laws, including the Cable Act.

f. This Ordinance together with any Franchise granted hereunder shall comply with the Minnesota franchise standards contained in Minnesota Statutes Section 238.084.

g. Grantee and the Town shall conform to state laws and rules regarding cable communications not later than one year after they become effective, unless otherwise stated, and shall conform to federal laws and regulations regarding cable communications as they become effective.

SECTION 1.8. FRANCHISE NON-TRANSFERABLE.

a. Grantee shall not voluntarily, by operation of law or otherwise, sell, assign, transfer, lease, sublet or otherwise dispose of, in whole or in part, the Franchise and/or Cable System, without the prior written consent of the Board and then only upon such reasonable terms and conditions as allowed under Applicable Laws, which consent shall not be unreasonably denied or delayed. Failure to comply with this Section 1.8 shall be grounds for termination of Grantee's Franchise pursuant to Section 1.30 hereof and the applicable provisions of any Franchise granted hereunder.

b. Without limiting the nature of the events requiring the Board's approval under this Section, the following events shall be deemed to be a sale, assignment or other transfer of the Franchise and/or Cable System requiring compliance with this Section: (i) the sale, assignment or other transfer of all or a majority of Grantee's assets or the assets comprising the Cable System to any Person; (ii) the merger of the Grantee or any of its parents with or into another Person (including the merger of Grantee or any parent with or into any parent or subsidiary corporation or other Person); (iii) the consolidation of the Grantee or any of its parents with any other Person; (iv) the creation of a subsidiary corporation or other entity to which the Franchise and/or Cable System is transferred or assigned; (v) the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in Grantee or any of its parents by one or more of its existing shareholders, partners, members or other equity owners so as to create a new Controlling Interest in Grantee; and (vi) the issuance of additional capital stock or partnership, membership or other equity interest by Grantee or any of its parents so as to create a new Controlling Interest in Grantee. The term "Controlling Interest" as used herein is not limited to majority equity ownership of the Grantee, but also includes actual working control over the Grantee, any parent of Grantee and/or the System in whatever manner exercised.

c. Grantee shall notify Grantor in writing of any foreclosure or any other judicial sale of all or a substantial part of the property and assets comprising the Cable System of the Grantee

or upon the termination of any lease or interest covering all or a substantial part of said property and assets. Such notification shall be considered by Grantor as notice that a change in control or ownership of the Franchise has taken place and the provisions under this Section governing the consent of Grantor to such change in control or ownership shall apply.

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

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

f. In addition to the aforementioned requirements in this Section 1.8, the Town and Grantee shall, at all times, comply with the requirements of Minnesota Statutes Section 238.083 regarding the sale or transfer of a franchise and with all other Applicable Laws.

SECTION 1.9. TOWN'S RIGHT TO PURCHASE SYSTEM.

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

SECTION 1.10. PURCHASE BY TOWN UPON EXPIRATION OR REVOCATION.

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

SECTION 1.11. EMERGENCY USE.

In the case of any emergency or disaster, Grantee shall, upon request of the Town or emergency management personnel, make its Cable System and related facilities available to the Town to provide emergency alert services consistent with Applicable Laws.

SECTION 1.12. GEOGRAPHICAL COVERAGE.

a. Grantee shall design, construct and maintain the Cable Television System to have the capability to pass every dwelling unit in the Service Area, subject to any Service Area line extension requirements of the Franchise Agreement.

b. After service has been established by activating trunk and/or distribution cables for any Service Area, Grantee shall provide Cable Service to any requesting Subscriber within that Service Area within thirty (30) days from the date of request, provided that the Grantee is able to secure all rights-of-way necessary to extend service to such Subscriber within such thirty (30) day period on reasonable terms and conditions.

c. No Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a Subscriber's request to locate his cable drop underground, existence of more than 150 feet of distance from distribution cable to connection of service to Subscribers, or a density equivalent of less than 10 homes per 1/4 cable mile, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and Subscribers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet or its trunks or distribution cable, and whose denominator equals 10 residences. Subscribers who request service hereunder, will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential subscribers be paid in advance.

SECTION 1.13. NONEXCLUSIVE FRANCHISE.

Any Franchise granted under this Ordinance shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional Franchises for a Cable Television System as it deems appropriate subject to Applicable Laws. The Grantor also specifically reserves the right to operate a municipal Cable Television System pursuant to Applicable Laws.

SECTION 1.14. MULTIPLE FRANCHISES.

a. Grantor may grant one or more Franchises for a Service Area. Grantor may, in its sole discretion, limit the number of Franchises granted, based upon, but not necessarily limited to, the requirements of Applicable Laws and specific local considerations; such as:

1. The capacity of the public rights-of-way to accommodate multiple coaxial cables in addition to the cables, conduits and pipes of the utility systems, such as electrical power, telephone, gas and sewage.

2. The impact on the Town of having multiple Franchises.

3. The disadvantages that may result from Cable System competition, such as the requirement for multiple pedestals on residents' property, and the disruption arising from numerous excavations of the rights-of-way.

4. The financial capabilities of the applicant and its guaranteed commitment to make necessary investment to erect, maintain and operate the proposed System for the duration of the Franchise term.

b. Each Grantee awarded a Franchise to serve the entire Town shall offer service to all residences in the Town, in accordance with construction and service schedules mutually agreed upon between Grantor and Grantee, and consistent with Applicable Laws. Any Franchise granted pursuant to this Ordinance shall contain terms and provisions no less burdensome nor more favorable than those contained in any Franchise already granted pursuant to this Ordinance.

c. The Town may, in its sole discretion, require developers of new residential housing with underground utilities to provide conduit to accommodate cables for a minimum of two (2) Cable Systems in accordance with the provisions of Section 1.21(d).

d. Grantor may require that any new Grantee be responsible for its own underground trenching and the costs associated therewith, if, in Grantor's opinion, the rights-of-way in any particular area cannot feasibly and reasonably accommodate additional cables.

e. Any additional Franchise granted by the Town to provide Cable Service in a part of the Town in which a Franchise has already been granted and where an existing Grantee is providing service shall require the new Grantee to provide service throughout its Service Area within a reasonable time and in a sequence which does not discriminate against lower income residents.

SECTION 1.15. FRANCHISE APPLICATIONS.

Any Person other than the Town, desiring an initial Franchise for a Cable Television System shall file an application with the Town. A reasonable nonrefundable application fee in an amount established by the Town shall accompany the initial application. Such application fee shall not be deemed to be "franchise fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. § 542), and such payments shall not be deemed to be (i) "payments in kind" or any involuntary payments chargeable against the Franchise Fees to be paid to the Town by Grantee pursuant to Section 1.20 hereof and applicable provisions of a Franchise Agreement, or (ii) part of the Franchise Fees to be paid to the Town by Grantee pursuant to Section 1.20 hereof and applicable provisions of a Franchise Agreement.

An application for an initial Franchise for a Cable Television System shall be in a form reasonably acceptable to Grantor and shall contain, where applicable:

a. A statement as to the proposed Service Area.

- b. A resume of prior history of applicant, including the legal, technical and financial expertise of applicant in the cable television field.
- c. A list of the general and limited partners of the applicant, if a partnership, or the shareholders, if a corporation.
- d. The percentage ownership of the applicant of each of its partners, shareholders or other equity owners;
- e. A list of officers, directors and managing employees of applicant or its general partner, as applicable, together with a description of the background of each such Person;
- f. The names and addresses of any parent or subsidiary of applicant or any other business entity owning or controlling applicant in whole or in part, or owned or controlled in whole or in part by applicant;
- g. A current financial statement of applicant verified by an audit or otherwise certified to be true, complete and correct to the reasonable satisfaction of the Town;
- h. Proposed construction and service schedule.
- i. Any additional information that the Town deems applicable.

SECTION 1.16. CONSIDERATION OF INITIAL APPLICATIONS.

- a. Upon receipt of any application for an initial Franchise, the Town Administrator shall prepare a report and make his or her recommendations respecting such application to the Town Board.
- b. A public hearing shall be set prior to any initial Franchise grant, at a time and date approved by the Board. Within thirty (30) days after the close of the hearing, the Board shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise(s) should be granted, and, if granted subject to what conditions. The Board may grant one (1) or more initial Franchises, or may decline to grant any Franchise.

SECTION 1.17. FRANCHISE RENEWAL.

Franchise renewals shall be in accordance with Applicable Laws. Grantor and Grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the Franchise. To the extent consistent with Applicable Laws, a reasonable non-refundable renewal application fee in an amount established by the Town may be required to accompany any renewal application.

SECTION 1.18. CONSUMER PROTECTION AND SERVICE STANDARDS.

Except as otherwise provided in the Franchise Agreement, Grantee shall maintain one or more customer service and bill payment offices at convenient locations within the Service Area to provide the necessary facilities, equipment and personnel to comply with the following consumer protection standards under Normal Operating Conditions:

- a. Cable System office hours and telephone availability:
 - 1. Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers 24 hours a day, seven (7) days a week.
 - (i) Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.

(ii) After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.

2. Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90%) percent of the time under Normal Operating Conditions, measured on a quarterly basis.

3. The Grantee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

4. Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.

5. Customer service center and bill payment locations will be open at least during Normal Business Hours.

b. Installations, outages and service calls. Under Normal Operating Conditions, each of the following four standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

1. Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to 125 feet from the existing distribution system.

2. Excluding conditions beyond the control of Grantee, Grantee will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The Grantee must begin actions to correct other service problems the next business day after notification of the service problem.

3. The "appointment window" alternatives for Installations, service calls, and other Installation activities will be either a specific time or, at maximum, a four-hour time block during Normal Business Hours. (The Grantee may schedule service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)

4. Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

5. If Grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted prior to the time of the scheduled appointment. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

c. Communications between Grantee and Subscribers:

1. Notifications to Subscribers:

(i) The Grantee shall provide written information on each of the following areas at the time of Installation of service, at least annually to all Subscribers, and at any time upon request:

- (A) Products and services offered;
- (B) Prices and options for programming services and conditions of subscription to programming and other services;
- (C) Installation and service maintenance policies;

- (D) Instructions on how to use the Cable Service;
- (E) Channel positions of the programming carried on the System; and
- (F) Billing and complaint procedures, including the address and telephone number of the Grantee's office within the Service Area.

(ii) Customers will be notified of any changes in rates, programming services or Channel positions as soon as possible through announcements on the Cable System and in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by Section 1.18(c)(1)(i).

2. Billing:

(i) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(ii) In case of a billing dispute, the Grantee must respond to a written complaint from a Subscriber within thirty (30) days.

(iii) Grantee shall be allowed to itemized franchise fees payments on subscriber bills to the extent expressly permitted by Section 622 of the Cable Act, but in no event shall Grantee be allowed to refer to the franchise fee as a "tax."

3. Refunds: Refund checks will be issued promptly, but no later than either:

(i) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(ii) The return of the equipment supplied by the Grantee if service is terminated.

4. Credits: Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

SECTION 1.19. RATE REGULATION.

The Town reserves the right to regulate rates for Basic Cable Service and any other services offered over the Cable System, to the extent not prohibited by Applicable Laws. The Grantee shall be subject to the rate regulation provisions provided for herein, and those of the Federal Communications Commission (FCC) at 47 C.F.R., Part 76, Subpart N, as the same may be amended from time to time. The Town shall follow the rules relating to cable rate regulation promulgated by the FCC at 47 C.F.R., Part 76, Subpart N, as the same may be amended from time to time.

SECTION 1.20. FRANCHISE FEE.

a. Following the issuance and acceptance of a Franchise, the Grantee shall pay to the Grantor a Franchise Fee in the amount set forth in the Franchise Agreement.

b. The Grantor, on an annual basis, shall be furnished a statement within ninety (90) days of the close of the calendar year, certified by a Financial Officer of the Grantee, reflecting the

total amounts of Gross Revenues and all payments, and computations of the Franchise Fee for the previous calendar year. Upon ten (10) days prior written notice, Grantor shall have the right to conduct an independent audit of Grantee's records. If such audit indicates a Franchise Fee underpayment of ten percent (10%) or more, the Grantee shall assume all reasonable out-of-pocket costs of such an audit and shall remit to Grantor all applicable Franchise Fees due and payable together with interest thereon at the lesser of the maximum rate permitted by Applicable Laws or 18% per annum.

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

d. In the event that any Franchise Fee payment or recomputed amount is not made on or before the dates specified in the Franchise Agreement, Grantee shall pay as additional compensation an interest charge, computed from such due date, at an annual rate equal to the lesser of the maximum rate permitted by Applicable Laws or 18% per annum during the period for which payment was due.

e. Franchise Fee payments shall be made in accordance with the schedule indicated in the Franchise Agreement and shall be deemed to include fees imposed by the Grantor only to the extent expressly provided under state law.

SECTION 1.21. DESIGN AND CONSTRUCTION REQUIREMENTS.

a. Grantee shall not construct any Cable System facilities until Grantee has secured the necessary permits from Grantor, or other applicable Governmental Authorities.

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

c. In those areas of the Town where Grantee's cables are located on the above-ground transmission or distribution facilities of the public utility providing telephone or electric power service, and in the event that the facilities of both such public utilities subsequently are placed underground, then the Grantee likewise shall construct, operate and maintain its transmission and distribution facilities underground, at Grantee's cost. Certain of Grantee's equipment, such as pedestals, amplifiers and power supplies, which normally are placed above ground, may continue to remain in above-ground closures.

d. In new residential developments in which all the electric power and telephone utilities are underground, the Town may, in its sole discretion, require that the following procedure apply with respect to access to and utilization of underground easements:

1. The developer shall be responsible for contacting and surveying all Grantees to ascertain which Grantees desire (or, pursuant to the terms and provisions of this Ordinance and any Franchise Agreement, may be required) to provide Cable Service to that development. The developer may establish a reasonable deadline to receive responses from Grantees. The final development map shall indicate the Grantees which have agreed to serve the development.

2. If one (1) or more Grantees wish to provide service within all or part of the development, they shall be accommodated in the joint utilities trench on a

nondiscriminatory shared basis. If fewer than two (2) Grantees indicate interest, the developer shall provide conduit to accommodate a minimum of two (2) sets of cable television cables and dedicate to the Town any initially unoccupied conduit. The developer shall be entitled to recover the cost of such initially unoccupied conduit in the event that Grantor subsequently leases or sells occupancy or use rights to any Grantee.

3. The developer shall provide at least ten (10) business days notice of the date that utility trenches will be open to the Grantees that have agreed to serve the development. When the trenches are open, such Grantees shall have two (2) business days to begin the Installation of their cables, and five (5) business days after beginning Installation to complete Installation.

4. The final development map shall not be approved until the developer submits evidence that:

A. It has notified each Grantee that underground utility trenches are to open as of an estimated date, and that each Grantee will be allowed access to such trenches, including trenches from proposed Streets to individual homes or home sites, on specified nondiscriminatory terms and conditions; and

B. It has received a written notification from each Grantee that the Grantee intends to install its facilities during the open trench period on the specified terms and conditions, or such other terms and conditions as are mutually agreeable to the developer and Grantee, or has received no reply from a Grantee within ten (10) days after its notification to such Grantee, in which case the Grantee will be deemed to have waived its opportunity to install its facilities during the open trench period.

5. Sharing the joint utilities trench shall be subject to compliance with State regulatory agency and utility standards. If such compliance is not possible, the developer shall provide a separate trench for the cable television cables, with the entire cost shared among the participating Grantee(s). With the concurrence of the developer, the affected utilities and the Grantees, alternative Installation procedures, such as the use of deeper trenches, may be utilized, subject to the requirements of Applicable Laws.

6. Any Grantee wishing to serve an area where the trenches have been closed shall be responsible for its own trenching and associated costs and shall repair all property to the condition which existed prior to such trenching.

7. In the event that more than one Franchise is awarded, the Town reserves the right to limit the number of drop cables and/or pedestals per residence, or to require that the drop cable(s) and/or pedestals(s) be utilized only by the Grantee selected by the resident to provide service with compensation and/or rent on commercially reasonable terms to the Grantee who owns the facilities.

SECTION 1.22. TECHNICAL STANDARDS.

a. The Grantee shall construct, install, operate and maintain its System in a manner consistent with all Applicable Laws and the Federal Communications Commission technical standards, and any standards set forth in its Franchise Agreement. In addition, the Grantee shall provide to the Grantor, upon request, a written report of the results of the Grantee's periodic proof of performance tests conducted pursuant to Federal Communications Commission standards and guidelines.

b. Repeated and verified failure to maintain specified technical standards shall constitute a material breach of the Franchise entitling the Town to utilize the procedures of Section 1.30 hereof subject to Section 1.31 hereof.

c. All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended, as well as all other Applicable Laws.

d. All Installation of electronic equipment at the time of installation shall be of a permanent nature, durable and installed in accordance with the provisions of the National Electrical and Safety Code and National Electrical Code, as amended, and as said code may from time to time be amended.

e. Antennae and their supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other Applicable Laws.

f. All of Grantee's plant and equipment, including, but not limited to, the antenna site, headend and distribution system, towers, house connections, structures, poles, wire, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with improvements the Town may deem appropriate to make or to interfere in any manner with the rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.

g. Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

SECTION 1.23. TRIMMING OF TREES.

Grantee shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over Streets and public places of the Town so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee. Town representatives shall have authority to supervise and approve all trimming of trees conducted by Grantee except in cases of emergency where advance notification of required tree trimming may not be possible.

SECTION 1.24. USE OF GRANTEE FACILITIES.

The Town shall, at its own expense, have the right to install and maintain upon the poles and within the underground pipes and conduits of Grantee, any wires and fixtures, to be used for noncommercial purposes only, desired by the Town to the extent that such installation and maintenance does not interfere with existing operations of Grantee.

SECTION 1.25. PROGRAMMING DECISIONS.

All programming decisions shall be at the sole discretion of Grantee; provided, however, that any change in the mix, quality or level of service pursuant to 47 U.S.C. § 545(a) shall require the prior approval of the Town. Such approval by the Town shall not be unreasonably withheld.

SECTION 1.26. INDEMNIFICATION.

Grantee shall indemnify, defend and hold the Town, its officers, boards, commissions, agents and employees (collectively the "Indemnified Parties") harmless from and against any and all lawsuits, claims, causes of action, actions, liability, demands, damages, judgments, settlements, losses, expenses (including reasonable attorneys' fees) and costs of any nature that any of the Indemnified Parties may at any time, directly or indirectly, suffer, sustain or incur arising out of, based upon or in any way connected with the grant of a Franchise to Grantee, the operation of Grantee's System and/or the acts and/or omissions of Grantee or its agents or employees, whether or not pursuant to the Franchise. This indemnity shall apply, without limitation, to any action or cause of action for invasion of privacy, defamation, antitrust, errors and omissions, theft, fire, violation or infringement of any copyright, trademark, trade names, service mark, patent, or any other right of any Person, whether or not any act or omission complained of is authorized, allowed or prohibited by this Ordinance or any Franchise Agreement, but shall exclude any claim or action arising out of the acts or omissions of the Indemnified Parties or related to any Town programming or other access programming for which the Grantee is not legally responsible or any assertion of a franchise violation by Town.

Town shall promptly notify Grantee in writing of any claim or legal proceeding which gives rise to Grantee's indemnification obligations. Grantee shall be afforded the right to participate in and control any compromise, settlement or other resolution or disposition of any claim or proceeding. Town and Grantee shall fully cooperate with one another regarding such matters. Grantee shall promptly notify the Town of any pending or threatened litigation that would be likely to adversely affect Town.

SECTION 1.27. INSURANCE.

Within sixty (60) days following the grant of a Franchise, the Grantee shall obtain, pay all premiums for and make available to the Town at its request copies of the following insurance policies:

a. A general comprehensive liability insurance policy insuring, indemnifying, defending and saving harmless the Indemnified Parties from any and all claims by any Person whatsoever on account of injury to or death of a Person or Persons occasioned by the operations of the Grantee under any Franchise granted hereunder, or alleged to have been so caused or occurred with a minimum coverage of One Million Dollars (\$1,000,000) for personal injury or death of one Person, and Two Million Dollars (\$2,000,000) for personal injury or death of any two (2) or more Persons in any one occurrence. The policy limits provided for in this Section 1.27(a) shall be reviewed and adjusted by the Town as necessary not more than once every three (3) years.

b. Property damage insurance for property damage occasioned by the operation of Grantee under any Franchise granted pursuant to this Ordinance, or alleged to have been so caused or occurred, with minimum coverage of One Million Dollars (\$1,000,000) for property damage to the property of any one Person and Two Million Dollars (\$2,000,000) for property damage to the property of two or more Persons in any one occurrence. The policy limits provided for in this Section 1.27(b) shall be reviewed and adjusted by the Town as necessary not more than once every three (3) years.

c. Workers Compensation Insurance as provided by Applicable Laws.

d. All insurance policies called for herein shall be in a form satisfactory to the Town with a company licensed to do business in the State of Minnesota with a rating by A.M. Best & Co. of not less than "A," and shall require thirty (30) days written notice of any cancellation to

both the Town and the Grantee. The Grantee shall, in the event of any such cancellation notice, obtain, pay all premiums for, and file with the Town, written evidence of the issuance of replacement policies within thirty (30) days following receipt by the Town or the Grantee of any notice of cancellation.

e. If Grantee sells or transfers the Cable System, or in the event of expiration, termination or revocation of a Franchise, insurance tail coverage shall be purchased and filed with the Town for the then applicable amounts, providing coverage for the time periods according to applicable statutes of limitation, insurance for any issues attributable to the period Grantee held its Franchise.

f. It shall be the obligation of Grantee to promptly notify the Town of any pending or threatened litigation that would be likely to affect the Indemnified Parties.

SECTION 1.28. RECORDS REQUIRED AND GRANTOR'S RIGHT TO INSPECT.

a. Grantee shall at all times maintain:

1. A full and complete set of plans, records and "as-built" maps showing the location of the Cable Television System installed or in use in the Town, exclusive of Subscriber service drops and equipment provided in Subscribers' homes.

2. If requested by Grantor, a summary of service calls, identifying the number, general nature and disposition of such calls, on a monthly basis. A summary of such service calls shall be submitted to the Grantor within thirty (30) days following its request in a form reasonably acceptable to the Grantor.

b. Upon reasonable notice, and during Normal Business Hours, Grantee shall permit examination by any duly authorized representative of the Grantor, of all Franchise property and facilities, together with any appurtenant property and facilities of Grantee situated within or without the Town, and all records relating to the Franchise, provided they are necessary to enable the Grantor to carry out its regulatory responsibilities under Applicable Laws, this Ordinance and the Franchise Agreement. Grantee shall have the right to be present at any such examination.

c. The Town shall also have the right to inspect, upon twenty-four (24) hours written notice, at any time during Normal Business Hours at Grantee's office, all books, records, maps, plans, financial statements, service complaint logs, performance test results, records of request for service, and other like materials of Grantee.

d. Copies of all petitions, applications, communications and reports submitted by Grantee or on behalf of or relating to Grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other Governmental Authority having jurisdiction with respect to any matters affecting the Cable System authorized pursuant to this Ordinance and any Franchise shall, upon request, be submitted, upon request to the Town. Copies of responses from the Governmental Authority to Grantee shall likewise be furnished to the Town.

e. Grantee shall have all rights under Applicable Laws to withhold confidential trade secret and privileged information.

f. To the extent permitted by Applicable Law, Town shall notify Grantee if any person requests to inspect or copy any documents provided by Grantee at least three (3) business days prior to complying with said request.

SECTION 1.29. ANNUAL REPORTS.

a. Grantee shall, upon request, within ninety (90) days of each calendar year end, submit a written end of the year report to Grantor with respect to the preceding calendar year containing the following information:

1. A Summary of the previous year's (or in the case of the initial reporting year, the initial year's) activities in development of the Cable System, including but not limited to, services commenced or discontinued during the reporting year;
2. A list of Grantee's ownership structure including officers and members of its board of directors; and
3. Information as to the number of Subscribers, additional television outlets, and the number of basic and pay service Subscribers.

b. All reports required under this Ordinance, except those required by law to be kept confidential, shall be available for public inspection in the Grantee's offices during Normal Business Hours.

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

SECTION 1.30. FRANCHISE VIOLATION.

In the event Grantor believes that Grantee has breached or violated any material provision of this Ordinance or a Franchise granted hereunder, Grantor may act in accordance with the following procedures:

Grantor may notify in writing Grantee of the alleged violation or breach and demand that Grantee cure the same within a reasonable time, which shall not be less than ten (10) days in the case of an alleged failure of the Grantee to pay any sum or other amount due the Grantor under this Ordinance or the Grantee's Franchise and thirty (30) days in all other cases. If Grantee fails either to cure the alleged violation or breach within the time prescribed or to commence correction of the violation or breach within the time prescribed and thereafter diligently pursue correction of such alleged violation or breach, the Grantor shall then give written notice of not less than fourteen (14) days of a public hearing to be held before the Board. Said notice shall specify the violations or breaches alleged to have occurred. At the public hearing, the Board shall hear and consider relevant evidence and thereafter render findings and its decision. In the event the Board finds that a material violation or breach exists and that Grantee has not cured the same in a satisfactory manner or has not diligently commenced to cure of such violation or breach after notice thereof from Grantor and is not diligently proceeding to fully cure such violation or breach, the Board may revoke and terminate the Franchise or impose any other remedy permitted by the Franchise Agreement or Applicable Laws. Grantee may appeal such action to any court and/or regulatory agency of competent jurisdiction and the Franchise shall remain in effect during the pendency of such appeal(s).

SECTION 1.31. FORCE MAJEURE; GRANTEE'S INABILITY TO PERFORM.

In the event Grantee's performance of any of the terms, conditions or obligations required by this Ordinance or a Franchise granted hereunder is prevented by a cause or event not within

Grantee's control, such inability to perform shall be deemed excused for the period of such inability and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this Section, causes or events not within the control of Grantee shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, equipment availability, unseasonal and/or unusual weather conditions, restraints imposed by order of a governmental agency or court, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides and fires.

SECTION 1.32. ABANDONMENT OR REMOVAL OF FRANCHISE PROPERTY.

a. In the event that the use of any property of Grantee within the Franchise Area or a portion thereof is discontinued for a continuous period of twelve (12) months, Grantee shall be deemed to have abandoned that property.

b. Grantor, upon such terms as Grantor may impose, may give Grantee permission to abandon, without removing, any System facility or equipment laid, directly constructed, operated or maintained in, on, under or over the Franchise Area. Unless such permission is granted or unless otherwise provided in this Ordinance, the Grantee shall remove all abandoned facilities and equipment upon receipt of written notice from Grantor and shall restore any affected Street to its former state at the time such facilities and equipment were installed, so as not to impair its usefulness. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation made by or on behalf of Grantee and shall leave all streets and other public ways and places in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. Grantor shall have the right to inspect and approve the condition of the streets, public ways, public places, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this Ordinance and any security fund provided for in the Franchise Agreement shall continue in full force and effect during the period of removal and until full compliance by Grantee with the terms and conditions of this Section.

c. Upon abandonment of any Franchise property in place, the Grantee, if required by the Grantor, shall submit to Grantor a bill of sale and/or other instrument, satisfactory in form and content to the Grantor, transferring to the Grantor the ownership of the Franchise property abandoned.

d. At the expiration of the term for which the Franchise is granted, or upon its earlier revocation or termination, as provided for herein and/or in the Franchise Agreement, in any such case without renewal, extension or transfer, the Grantor shall have the right to require Grantee to remove, at its own expense, all above-ground portions of the Cable Television System from all Streets and public ways within the Town within a reasonable period of time, which shall not be less than one hundred eighty (180) days provided, however, that if Grantee is legally providing services other than Cable Services over its Cable System, Town shall comply with all Applicable Laws pertaining to Grantees rights to continue using its Cable System to provide non-Cable Services.

e. Notwithstanding anything to the contrary set forth in this Ordinance, the Grantee may, with the consent of the Grantor, abandon any underground Franchise property in place so long as it does not materially interfere with the use of the Street or public rights-of-way in which such property is located or with the use thereof by any public utility or other cable Grantee.

SECTION 1.33. EXTENDED OPERATION AND CONTINUITY OF SERVICES.

Upon the expiration, revocation or termination of the Franchise, the Grantor and Grantee may, to the extent not prohibited by Applicable Laws, agree to permit Grantee to continue to operate the Cable Television System for a period of time not to exceed six (6) months from the date of such expiration, revocation or termination.

SECTION 1.34. RECEIVERSHIP AND FORECLOSURE.

a. A Franchise granted hereunder shall, at the option of Grantor, cease and terminate one hundred twenty (120) days after appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of Grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless: (1) such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Ordinance and the Franchise granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all the defaults and violations under the Franchise and/or this Ordinance or provided a plan for the remedy of such defaults and violations which is satisfactory to the Grantor; and (2) such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the Franchise and this Ordinance.

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

SECTION 1.35. RIGHTS RESERVED TO GRANTOR.

a. In addition to any rights specifically reserved to the Grantor by this Ordinance, the Grantor reserves to itself every right and power which is required to be reserved by a provision of any ordinance or under the Franchise.

b. The Grantor shall have the right to waive any provision of the Franchise, except those required by Applicable Laws, if the Grantor, in its sole opinion, determines (1) that it is in the public interest to do so, and (2) that the enforcement of such provision will impose an undue hardship on the Grantee or the Subscribers in all cases subject to Section 1.14(b) herein. Waiver of any provision in one instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of the Franchise unless the statement so recites.

SECTION 1.36. RIGHTS OF INDIVIDUALS.

a. Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, Channel users, or general citizens on the basis of race, color, religion, disability, national origin, age, gender or sexual preference. Grantee shall comply at all times with all other Applicable Laws, relating to nondiscrimination.

b. Grantee shall adhere to the applicable equal employment opportunity requirements of Applicable Laws, as now written or as amended from time to time.

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

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

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

f. No signals of a class IV cable communications channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of a Subscriber. The request for permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. The written permission must be for a limited period of time not to exceed one year which is renewable at the option of the Subscriber. No penalty may be invoked for a Subscriber's failure to provide or renew the authorization. The authorization is revocable at any time by the Subscriber without penalty of any kind. The permission must be required for each type or classification or class IV cable communications activity planned.

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

2. Written permission from the Subscriber shall not be required for the systems conducting system wide or individually addressed electronic sweeps for the purpose of

verifying system integrity or monitoring for the purpose of billing. Confidentiality of this information is subject to paragraph 1 above.

3. For purposes of this Section 136, a "class IV cable communications channel" means a signaling path provided by a System to transmit signals of any type from a Subscriber terminal to another point in the System.

SECTION 1.37. CONFLICTS.

In the event of a direct conflict between any provision of this Ordinance and a Franchise Agreement, the provisions of the Franchise Agreement shall control.

SECTION 1.38. SEVERABILITY.

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

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 1997.

THE TOWN OF NEW SCANDIA, MINNESOTA

By: _____

Its: _____

ATTEST

By: _____

Its: Town Clerk