

**NORTHWEST SUBURBS CABLE  
COMMUNICATIONS COMMISSION**

**MASTER ORDINANCE**

**Adopted November 21, 2002**

# TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1. STATEMENT OF INTENT AND PURPOSE, FINDINGS, AND AUTHORITY ...1	
1.1 Statement of Intent and Purpose. ....1	1
1.2 Authority. ....2	2
ARTICLE 2. SHORT TITLE .....3	3
ARTICLE 3. DEFINITIONS .....3	3
3.1 “Agreement” .....4	4
3.2 “Basic Cable Service” .....4	4
3.3 “Cable Act” .....4	4
3.4 “Cable Communications Service” or “Service” .....4	4
3.5 “Cable Communications System” or “System” .....5	5
3.6 “Channel” .....5	5
3.7 “Cities” .....5	5
3.8 “City” .....6	6
3.9 “Class IV Cable Communications Channel” .....6	6
3.10 “Community Access Corporation” or “CAC” .....6	6
3.11 “Complaint” .....6	6
3.12 “Converter” .....6	6
3.13 “Drop” .....6	6
3.14 “Effective Date” .....7	7
3.15 “FCC” .....7	7
3.16 “Franchise” .....7	7
3.17 “Franchise Area” .....7	7
3.18 “Franchise Fee” .....7	7
3.19 “Grantee” .....8	8
3.20 “Grantor” .....8	8
3.21 “Gross Revenues” .....8	8
3.22 “Local Origination Programming” .....9	9
3.23 “Lockout Device” .....10	10
3.24 “Member” .....10	10
3.25 “Normal Business Hours” .....10	10
3.26 “Normal Operating Conditions” .....10	10
3.27 “Northwest Suburbs Cable Communications Commission” or “NWSCCC” or “Grantor” .....10	10
3.28 “Other Programming Service” .....11	11
3.29 “Person” .....11	11
3.30 “Public, Educational or Government Access” or “PEG Access” .....11	11
3.31 “Public Property” .....11	11
3.32 “Resident” .....11	11
3.33 “Service Interruption” .....11	11

3.34	“Standard Installation”	11
3.35	“Street”	12
3.36	“Subscriber”	12
3.37	“System”	12
ARTICLE 4. GRANT OF AUTHORITY AND GENERAL PROVISIONS		12
4.1	Authority for Use of Streets	12
4.2	Unlawful to Operate Without a Franchise	13
4.3	Franchises Non-Exclusive	13
4.4	Terms of the Franchise	13
4.5	Federal, State, and City Jurisdiction	14
4.6	Rights Reserved to Grantor	15
4.7	Additional Franchises and Competition	15
4.8	Franchise	16
4.9	Initial Franchise Applications	17
4.10	Consideration of Initial Applications	19
4.11	Grant of Additional Franchise and Competing Service	19
4.12	Franchise Renewal	21
4.13	Use of Grantee Facilities	21
ARTICLE 5. DESIGN PROVISIONS		22
5.1	System Design	22
5.2	Home Subscriber Network	22
5.3	Home Subscriber Network Drops to Public Buildings and Accredited Educational Institutions	22
5.4	Construction of Home Subscriber Network	23
5.5	Institutional Communications Network “ICN”	23
ARTICLE 6. PUBLIC EDUCATIONAL AND GOVERNMENTAL ACCESS OR PEG ACCESS		23
6.1	PEG and Leased Access Channels	23
6.2	Additional Channels	24
6.3	Unused PEG Channels	24
6.4	Community Access Corporation or “CAC”	25
6.5	Participation in CAC by City after Withdrawal from Grantor	26
6.6	Grantee Support for Local PEG Access Programming	26
6.7	Regional Channel 6	27
6.8	Reservation of Channels	27
6.9	PEG Access Channel Designations	28
6.10	PEG Access Rules and Procedures	29
6.11	Assistance with Soliciting Contributions	29
6.12	Ad Avail Grants	30
6.13	Proof of Performance Testing	30
ARTICLE 7. SERVICE PROVISIONS		31
7.1	Provision of Service	31

7.2	Technical Standards.....	31
7.3	Test and Compliance Procedure.....	31
7.4	Emergency Requirements.....	31
7.5	Programming Decisions.....	32
7.6	System Office Hours and Telephone Availability.....	32
7.7	Installations, Outages and Service Calls.....	33
7.8	Communications Between Grantee and Subscribers.....	35
7.9	Complaint Log.....	37
7.10	Subscriber Contracts.....	38
7.11	Lockout Device.....	38
7.12	Periodic Subscriber Survey.....	38
7.13	Line Extension Policy.....	38
7.14	Disconnection/Denial of Service.....	39
7.15	Customer Service Reporting Requirements.....	40
ARTICLE 8. REQUIREMENTS FOR USE OF STREETS AND CONSTRUCTION		
	OF SYSTEM.....	41
8.1	Authority for Use of Streets and Related Conditions.....	41
ARTICLE 9. OPERATION AND MAINTENANCE.....		
9.1	Open Books and Records.....	53
9.2	Communications with Regulatory Agencies.....	53
9.3	Annual Reports.....	54
9.4	Monitoring and Compliance Reports.....	54
9.5	Additional Reports.....	55
9.6	Safety.....	55
9.7	Service Contract and Subscriber Information.....	55
9.8	Performance Review: Performance Monitoring.....	56
9.9	Modification.....	57
9.10	Grantee Cooperation.....	58
9.11	Refunds to Subscribers and Programmers.....	58
ARTICLE 10. GENERAL FINANCIAL AND INSURANCE PROVISIONS.....		
10.1	Franchise Fee.....	59
10.2	Security Fund.....	60
10.3	Penalties Procedure.....	61
10.4	Bonds.....	63
10.5	Indemnification Damages and Defense.....	64
10.6	Liability Insurance.....	65
ARTICLE 11. REVOCATION.....		
11.1	Grounds for Revocation.....	67
11.2	Procedure.....	68
ARTICLE 12. FORECLOSURE, RECEIVERSHIP AND ABANDONMENT.....		
12.1	Foreclosure.....	68
12.2	Receivership.....	68

ARTICLE 13. PURCHASE OF SYSTEM .....	69
13.1 Grantor’s Right to Purchase System upon Receipt By a Grantee of a Bona Fide Offer. ....	69
13.2 Procedures.....	69
13.3 Purchase By Grantor Upon Termination of Franchise Term or Revocation of a Franchise.....	69
ARTICLE 14. RIGHTS OF INDIVIDUALS PROTECTED .....	70
14.1 Discriminatory Practices Prohibited. ....	70
14.2 System Tapping Prohibited.....	70
ARTICLE 15. MISCELLANEOUS PROVISIONS.....	71
15.1 Sale or Transfer of a System and a Franchise.....	71
15.2 Amendment of a Franchise.....	73
15.3 Continuity of Service Mandatory. ....	74
15.4 Removal After Termination or Revocation. ....	74
15.5 Work Performed by Others.....	75
15.6 Duty to Grantees. ....	76
15.7 Interest Rate.....	76
15.8 Applicable Law and Court Decisions; Severability.....	76
15.9 Non-Enforcement by Grantor. ....	76
15.10 Administration of this Master Ordinance and a Franchise. ....	77
15.11 General Provision on Rights and Remedies. ....	77
15.12 Publication of Notices.....	78
15.13 Effectiveness of Franchise.....	78
15.14 Incorporation by Reference.....	79
15.15 Withdrawal.....	79
15.16 Dissolution of Grantor.....	80
15.17 Successor in Interest and Grantee Rights.....	81

## **ORDINANCE NO. 1-2002**

**AN ORDINANCE ESTABLISHING UNIFORM PROCEDURES FOR REGULATING CABLE COMMUNICATIONS SYSTEMS, INCLUDING REQUIREMENTS FOR THE GRANTING AND RENEWING OF FRANCHISES, REQUIREMENTS WITH REGARD TO THE OPERATION AND MAINTENANCE OF THE CABLE COMMUNICATIONS SYSTEM IN THE CITIES COMPRISING THE NORTHWEST SUBURBS CABLE COMMUNICATIONS COMMISSION; MAKING FINDINGS AND SETTING FORTH CONDITIONS AND REQUIREMENTS RELATING TO THE GRANT OF A FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM; PROVIDING CONSTRUCTION STANDARDS AND REQUIREMENTS WITHIN THE CITIES OF THE NORTHWEST SUBURBS CABLE COMMUNICATIONS COMMISSION; AND PRESCRIBING PENALTIES FOR THE VIOLATIONS OF THE PROVISIONS OF THE ORDINANCE AND A FRANCHISE GRANTED PURSUANT TO IT.**

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

#### 1.1 Statement of Intent and Purpose.

A. The Northwest Suburbs Cable Communications Commission (“Grantor”) intends, by adoption of this Ordinance, to establish the requirements for the issuance of cable communications franchises and to ensure that similar requirements are applicable for all Grantee’s but allowing for competition in cable services consistent with the intent and goals of the Federal Telecommunications Act of 1996 and to ensure that the needs and interests of the member communities served by the Grantor will be benefited through competition.

B. The Grantor, on behalf of Cities, pursuant to applicable federal and State law, is authorized to grant one or more non-exclusive Franchises to construct, operate, maintain, and reconstruct Cable Communications Systems within the Cities.

C. The Grantor finds that Cable Communications System service have become an integral part of its citizens' lives, and that evolving Communications Systems have the potential to play an even more dramatic role in the future, providing great benefits and advanced capabilities to residents of the Cities. At the same time, the rapidly emerging role of Cable Communications Systems as an integrated broadband communications platform necessitates a finding that the local government has a legitimate and vital role to play in regulating Cable Communications Systems in a manner that ensures high quality customer service while at the same time fostering competition to the extent permitted under law. The Grantor further finds that the public convenience, safety, and general welfare can best be served by establishing regulatory powers that are vested in the Cities or the designates of Cities.

D. In order to ensure that the Cities and its residents have available to them state-of-the-art capabilities, all franchises granted pursuant to this Ordinance will be subject to periodic review and may be subject to modifications consistent with the terms of a Franchise in order to remain current with changing law, technology, and services. It is the intent of this Ordinance to provide for and specify the means to attain the best possible Cable Communications Systems to the Cities.

## 1.2 Authority.

A. **Joint Powers Agreement.** The powers, rights and duties of Grantor are those provided to it pursuant to the Agreement entered into by each Member authorizing Grantor to serve as the Franchising Authority. The Joint Powers Agreement was adopted pursuant to Minnesota Statute 238.08 and this Ordinance is subject to the Agreement.

B. **Minnesota Law.** Minnesota law, Chapter 238 of the Minnesota Statutes relating to a Cable Communications Systems.

C. **Cable Act.** The federal law and regulation adopted by the Federal Communications Commission relating to the granting of franchises and the authority of local franchising authorities including Grantor.

D. **Additional Franchises.** Minnesota Statutes includes among its provisions Section 238.08 relating to the granting of additional franchises, including the requirement that a grant of an additional franchise for cable service for an area included in an existing franchise shall not be on terms and conditions more favorable or less burdensome than those in the existing franchise pertaining to:

- (1) The area served;
- (2) Public, educational, and governmental access requirements; or
- (3) Franchise fees.

Further, this Section allows, but does not require that, the provisions of an additional franchise may include additional terms and conditions on additional franchises and nothing in this Minnesota law should be construed to prevent franchise requirements in excess of those prescribed unless such requirement is inconsistent with Minnesota law.

## **ARTICLE 2. SHORT TITLE**

This Ordinance shall be known and cited as the “Northwest Suburbs Cable Communications Commission Master Ordinance.” Within this document it shall also be referred to as “Master Ordinance.”

## **ARTICLE 3. DEFINITIONS**

For the purpose of this Master Ordinance, and franchises granted pursuant to it, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, 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. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

3.1 “Agreement”

Agreement means the Joint and Cooperative Agreement dated March 31, 1994, re-establishing the Northwest Suburbs Cable Communications Commission.

3.2 “Basic Cable Service”

Basic Cable Service means any Cable Communications Service tier which includes the lawful retransmission of local television broadcast signals and any Public, Educational, and Governmental Access programming required by this Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b)(7) (1997).

3.3 “Cable Act”

Cable Act means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, (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. 104-104 (1996) as may, from time to time, be amended, and the regulation of the Federal Communications Commission adopted pursuant to the Cable Act .

3.4 “Cable Communications Service” or “Service”

Cable Communications Service or Service in this Ordinance means:

- A. The one-way transmission to Subscribers of video programming or Other Programming Service; and
- B. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- C. Open Video Service as defined in the Cable Act.

### 3.5 “Cable Communications System” or “System”

Cable Communications System or System means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Communications Service or Service, which is provided to multiple Subscribers within the Franchise Area, but such term does not include:

- A. A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
- B. A facility that serves Subscribers without using any Streets and Public Property;
- C. 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 System to the extent such facility, whether on a common carrier basis or otherwise, is used in the transmission of video programming directly to Subscribers; or
- D. Any facilities of any electric utility used solely for operating its electric utility system.

### 3.6 “Channel”

Channel means a portion of the electromagnetic spectrum which is capable of carrying either one standard video signal, a number of audio, digital or other non-video signals, or some combination of such signals.

### 3.7 “Cities”

Cities means the Cities of Brooklyn Center, Brooklyn Park, Crystal, Golden Valley, Maple Grove, New Hope, Osseo, Plymouth, and Robbinsdale, Minnesota, which are Members of Grantor pursuant to the Agreement. Upon withdrawal from Grantor, any former Member may become a Grantor pursuant to a Franchise and subject to the applicable withdrawal provisions of

the Agreement. A Franchise may then be administered separately by that City as to its territorial boundaries, except that in no event should a Grantee's cumulative Franchise burden be increased thereby.

3.8 “City”

City means any one of the Cities.

3.9 “Class IV Cable Communications Channel”

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.

3.10 “Community Access Corporation” or “CAC”

Community Access Corporation or CAC means Northwest Suburbs Community Access Corporation, its assignees or delegees, or any other entity designated by the Grantor whose duties shall include the financing, management, and programming of the PEG Access and Local Origination Programming Channels, and whatever other duties with respect to PEG Access and Local Origination Programming Channels which the Grantor from time to time shall delegate.

3.11 “Complaint”

Complaint means any written inquiry, allegation or assertion made by a Person.

3.12 “Converter”

Converter means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber, and through the use of an appropriate Channel selector, permits a Subscriber to view all authorized Subscriber signals delivered at designated converter dial locations.

3.13 “Drop”

Drop means the cable or cables which connect the users of the System to the distribution system.

3.14 “Effective Date”

Effective Date means the date a Franchise becomes effective, in accordance with the terms of a Franchise.

3.15 “FCC”

FCC means the Federal Communications Commission or a designated representative.

3.16 “Franchise”

Franchise means the rights and obligations extended by the Grantor to a Person to own, lease, construct, maintain or operate a System in the Streets and Public Property within the Franchise Area for the purpose of providing Cable Communications Services. Any such authorization, in whatever form granted, shall not mean or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the Cities required by the ordinances and laws of the Cities; (ii) any permit, agreement or authorization required in connection with operations on Streets and Public Property including, without limitation, permits and agreements for placing devices on or in poles, conduits or other structures, whether owned by the Cities or a private entity, or for excavating or performing other work in or along Streets and Public Property.

3.17 “Franchise Area”

Franchise Area means the entire geographic area within the Cities as it is now constituted or may in the future be constituted, or as otherwise provided in a Franchise.

3.18 “Franchise Fee”

Franchise Fee, including fees on the gross revenues of the operation within the meaning of Section 653 of the Cable Act, means any tax, fee or assessment of any kind imposed by the Grantor or other governmental entity on a Grantee solely because of their status as such. The term “Franchise Fee” does not include: (i) any tax, fee, or assessment of general applicability

(including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers); (ii) capital costs which are required by the Franchise to be incurred by the Grantee for PEG Access facilities; (iii) requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.

### 3.19 “Grantee”

Grantee means the Person awarded a Franchise pursuant to this Master Ordinance, including its agents, employees, lawful successors, transferees or assignees.

### 3.20 “Grantor”

Grantor means the Northwest Suburbs Cable Communications Commission and its successors or delegates.

### 3.21 “Gross Revenues”

Gross Revenues means any revenue received by the Grantee, or by any other entity that is a Cable Operator of the System including Grantee’s affiliates, from the operation of the Grantee’s System to provide Cable Communications Services. By way of illustration and not limitation, this definition would include revenue derived from pay cable fees, installation and reconnection fees, Franchise Fees collected from Subscribers, leased channel access fees; Converter rentals; revenue from Cable Internet Service, including IP telephony (unless in accordance with applicable law such service is not a Cable Communications Service); revenue from home shopping, sale of subscriber demographics, telemarketing services (i.e., “900” telephone number services, cross-selling offerings, etc.) to the extent conducted through a Cable Communications Service; all Cable Communications Service lease payments from the System;

launch fees, payments or other consideration received by the Grantee from programmers for carriage of programming on the System and accounted for as revenue under Generally Accepted Accounting Principles (GAAP); advertising revenues; revenues from data transmissions to the extent these transmissions are considered Cable Communications Services under federal law; payments or other consideration received by the Grantee for the use of the System to provide Cable Communications Service and accounted for as revenue under GAAP. Gross Revenues shall include revenue received by any entity other than the Grantee where necessary to prevent evasion or avoidance of the obligations under this Ordinance or a Franchise to pay the applicable Franchise Fees. Gross Revenues shall not include (i) to the extent consistent with GAAP, bad debt; provided, however, that all or part of any such bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (ii) amounts collected from Subscribers for public, educational and governmental access; (iii) any taxes on Services furnished by a Grantee which are imposed directly upon any Subscriber or user by the State, City or other governmental unit and which are collected by Grantee on behalf of said governmental unit; or (iv) fees and charges collected on behalf of any Internet Service provider, which is not an affiliate of Grantee, resulting from or attributable to such Internet Service providers provision of services to Subscriber using Grantee's System.

### 3.22 “Local Origination Programming”

Local Origination Programming means:

- A. Channel capacity designated for commercial video programming produced by the CAC; and
- B. Facilities and equipment necessary for the use of such channels.

3.23 “Lockout Device”

Lockout Device means a 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 System.

3.24 “Member”

Member means any municipality which is a party to or enters into the Agreement and is, at the time involved, a member in good standing.

3.25 “Normal Business Hours”

Normal Business Hours means those hours during which most similar businesses in the community are open to serve customers. In all cases, Normal Business Hours must include some evening hours, at least one (1) night per week, or some weekend hours.

3.26 “Normal Operating Conditions”

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 ordinarily are 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.

3.27 “Northwest Suburbs Cable Communications Commission” or “NWSCCC” or “Grantor”

Northwest Suburbs Cable Communications Commission or NWSCCC or Grantor means the joint powers commission established by the Cities.

3.28 “Other Programming Service”

Other Programming Service means information that Grantee makes available to all Subscribers generally.

3.29 “Person”

Person means any corporation, partnership, proprietorship, individual or organization authorized to do business in the State of Minnesota, or any natural person.

3.30 “Public, Educational or Government Access” or “PEG Access”

Public, Educational or Government Access or PEG Access means:

A. Channels specially designated for non-commercial public, educational, or governmental access programming use; and

B. Facilities, funding, and equipment necessary for the use of such Channels.

3.31 “Public Property”

Public Property means any real property owned by Cities or any other governmental unit, other than a Street.

3.32 “Resident”

Resident means any Person residing in the Cities as otherwise defined by applicable law.

3.33 “Service Interruption”

Service Interruption means the loss of picture or sound on one or more Channels on the System.

3.34 “Standard Installation”

Standard Installation means any residential installation which can be completed using a Drop of two hundred fifty (250) feet or less.

3.35 “Street”

Street means the surface of and the space above and below any public street, road, cartway, highway, freeway, lane, path, public way, alley, court, sidewalk, boulevard, parkway, drive or any easement or right-of-way now or hereafter owned or under control of the Cities.

3.36 “Subscriber”

Subscriber means any Person who or which lawfully subscribes to a Cable Communications Service provided by a Grantee by means of or in connection with the System, whether or not a fee is paid for such Service.

3.37 “System”

System shall mean a Grantee Cable Communications System operated pursuant to a Franchise within a Franchise Area.

3.39 “Yard”

Yard means any part of the land area surrounding a residential structure, including utility easement areas.

**ARTICLE 4. GRANT OF AUTHORITY AND GENERAL PROVISIONS**

4.1 Authority for Use of Streets.

A. For the purposes of operating and maintaining a System in the Cities, and in accordance with a Franchise, including Article 8 herein, a Grantee may be authorized to erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the Streets within each City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the System, provided that all applicable permits are applied for and granted, all fees paid and all other City codes and ordinances are otherwise complied with. Prior to construction or

alteration, a Grantee shall in each case make available plans to the Grantor, all appropriate City agencies and utility companies and receive written approval of such plans.

B. Notwithstanding a grant to use Streets, no Street shall be used by a Grantee if any City in its sole opinion determines that such use is inconsistent with the terms, conditions or provisions by which such Street was created or dedicated, or is presently used.

#### 4.2 Unlawful to Operate Without a Franchise.

It shall be unlawful for any Person to construct, operate or maintain a System or to use the Rights-of-Way in the Cities without a Franchise in a form made part of this ordinance and attached as Exhibit A and in compliance with this Ordinance. All such violators shall be subject to all applicable provisions of this Master Ordinance to the fullest extent allowed by law, including, but not limited to, the payment of a Franchise Fee. Further, violators may be subject to fines or penalties as applicable under federal and State law and the Ordinances of Cities.

#### 4.3 Franchises Non-Exclusive.

Any Franchise granted shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional Franchises for a Cable Television System or any component thereof, to any other Person, including itself, as it deems appropriate, subject to applicable federal and State law.

#### 4.4 Terms of the Franchise.

A Franchise granted hereunder shall be for a term established in the Franchise, provided that no Franchise shall have a term in excess of fifteen (15) years.

4.5 Federal, State, and City Jurisdiction.

A. This Master Ordinance shall be construed in a manner consistent with all applicable federal and State laws.

B. In the event that the federal or State government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, Grantor may, if it so elects, adopt rules and regulations in these areas to the extent permitted by law.

C. This Master Ordinance shall apply to all Franchises granted or renewed after the effective date of this Master Ordinance; and, it shall also apply to an existing Franchise if any provision of this Master Ordinance is not included within an existing Franchise. If an existing Franchise granted prior to the effective date of this Master Ordinance provides for terms or conditions that materially differ from those of this Master Ordinance, the terms of this Ordinance shall automatically apply to such Grantee once a new agreement with the Grantee becomes effective, unless otherwise mutually agreed to in a Franchise.

D. Grantee's rights are subject to the police powers of the Grantor and Cities to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Grantee shall comply with all applicable general laws and ordinances lawfully enacted by the Grantor and Cities pursuant to that power.

E. Grantees shall not be relieved of its obligation to comply with any of the provisions of this Master Ordinance or a Franchise by reason of any failure of the Grantor to enforce prompt compliance.

F. This Master Ordinance and all Franchises shall be construed and enforced in accordance with the substantive laws of the State of Minnesota.

#### 4.6 Rights Reserved to Grantor.

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

B. Grantor shall have the right to waive any provision of this Master Ordinance except those required by federal or State regulation, if the Grantor 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 a Grantee or the Subscribers. 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 this Ordinance unless the statement in its final form approved by the Grantor so recites.

#### 4.7 Additional Franchises and Competition.

Grantor encourages new and additional Systems that may provide competition and will benefit the residents of Member Cities. Accordingly, Grantor has determined that its requirements for a Franchise shall be reasonably uniform for all new applicants as well as the existing Grantee, but, also will include flexibility that will enable Grantor to permit variances to reduce barriers to competition due to differences in economic and other conditions.

The Grantor will encourage additional Systems when it is proposed that it will provide meaningful competition within the Franchise Area and may grant a Franchise(s) after review of an application in compliance with this Section 4.7, in addition to other terms and requirements in this Master Ordinance.

Meaningful competition may be found by the Grantor based on its consideration of an applicant's proposal to construct a System that will serve all the Franchise Area with a density of thirty-five (35) homes per mile, for construction completion in three (3) years from the effective date of a Franchise, except that Grantor may grant a variance based on the following:

A. Demonstrated financial necessity, as determined by Grantor, after review of financial pro forma furnished to it by an applicant including construction completion of three (3) years or more; or

B. Grantor, at the request of a Grantee, may modify the area service requirement to exempt an area already served by or about to be served by a second franchised competitor; or

C. Grantor, at the request of a Grantee, may modify the requirements in A of this Section 4.7, based on its review of requirements made part of changes in state or federal law.

#### 4.8 Franchise.

A. Every Grantee shall agree to execute a Franchise based on the form attached and made part of this Master Ordinance. If the Grantee seeks to modify and negotiate the terms of the Franchise, it shall be obligated to pay Grantor the amounts that Grantor's costs exceed its standard minimum application fee of ten thousand dollars (\$10,000) and must clearly state in writing all requested modifications and the basis for the modifications to the Franchise or Master Ordinance at the time it files its application with Grantor.

B. In addition to those matters required elsewhere in this Master Ordinance to be included in the Franchise, each new Franchise or Franchise Renewal Franchise must contain the following express representations by each Grantee:

(1) Unless otherwise set forth in the Franchise, Grantee accepts and agrees to all of the provisions of this Master Ordinance, and any supplementary specifications as to construction, operation, or maintenance of the System which the Grantor may include in the Franchise.

(2) Grantee has examined all of the provisions of this Master Ordinance and, unless otherwise set forth in the Franchise, agrees to the terms and conditions herein.

(3) Grantee recognizes the right of the Grantor and Cities to lawfully adopt additional regulations of general applicability as it shall find necessary in the exercise of its police power and in accordance with applicable law.

(4) Unless otherwise set forth in the Franchise, Grantee accepts and agrees to the Penalties Procedure specified in this Master Ordinance.

C. Unless a variance is granted by Grantor, a Franchise shall apply to the entire territorial area of the Cities.

D. Every Franchise may contain such further conditions or provisions as may be negotiated between the Grantor and a Grantee, except that no such conditions or provisions shall be such as to conflict with any applicable provisions of state or federal law, or limit the ability of the Grantor or Cities to modify the Franchise requirements through the proper exercise of its police authority.

#### 4.9 Initial Franchise Applications.

Any Person desiring an initial Franchise to construct and operate an additional System in Franchise Area shall file an application with the Grantor on a form provided by Grantor. The applicant for a Franchise shall pay to Grantor, with the filing of its application, an application fee of ten thousand dollars (\$10,000). If the applicant seeks to modify the terms of the Franchise

form made part of this Ordinance or this Master Ordinance, it shall be obligated to pay Grantor the amounts required by Grantor to reimburse it for costs exceeding the ten thousand dollars (\$10,000) application fee. All payments are not Franchise Fees. 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 compensation to be paid to the Grantor by Grantee, or (ii) part of the compensation to be paid to the Grantor by Grantee pursuant to this Master Ordinance or a Franchise.

An application for an initial Franchise for a System shall contain, where applicable:

- A. A statement as to the proposed Franchise 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 partners, general and limited, of the applicant, if a partnership, or the percentage of stock owned or controlled by each shareholder, if a corporation.
- D. A list of officers, directors, and managing employees of applicant, together with a description of the background of each such Person.
- E. 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.
- F. A current financial statement of applicant verified by a CPA and certified to be true, complete, and correct to the reasonable satisfaction of the Grantor.
- G. A proposed construction and service schedule.

H. A written list of all requested modifications to this Master Ordinance, if any, and to the Franchise Agreement form made part of this Master Ordinance, if any.

I. A financial pro forma which extend to time for completion of construction.

J. A variance request with documented support in compliance with Section 4.7 of this Master Ordinance.

K. Any additional information that the Grantor deems applicable.

#### 4.10 Consideration of Initial Applications.

A. Upon receipt of any application for an initial Franchise, the Executive Director of Grantor or his designee shall prepare a report and make his or her recommendations respecting such application to the Grantor Commission stating whether the applicant has the legal, technical and financial ability to operate the proposed System in an efficient manner.

B. A public hearing shall be set prior to any initial Franchise grant, at a time and date approved by the Grantor. Within thirty (30) days after the close of the hearing, the Grantor 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.

#### 4.11 Grant of Additional Franchise and Competing Service.

A. In addition to the requirements in Section 4.7 of this Master Ordinance, in considering whether to grant one or more additional Franchises, the Grantor shall specifically consider, and address in a written report, the following issues:

(1) The amount of time it will take the applicant to complete construction of the proposed System and activate Service in the entire Franchise

Area; and, whether the applicant can complete construction and activation of its System in a timely manner.

(2) The financial capabilities of the applicant and its guaranteed commitment to make the necessary investment to erect, maintain, and operate the proposed System for the duration of the Franchise Term. In order to ensure that any prospective Grantee does have the requisite current financial capabilities, the Grantor may request equity and debt financing commitment letters, current financial statements, bonds, letters of credit, or other documentation, including financial pro forma, to demonstrate to the Grantor's satisfaction that the requisite funds to construct and operate the proposed initial System are available.

(3) The quality and technical reliability of the proposed System, based upon the applicant's plan of construction and the method of distribution of signals, and the applicant's technical qualifications to construct and operate such System.

(4) The experience of the applicant in the erection, maintenance, and operation of a System.

(5) The capacity of the public Rights-of-Way to accommodate one or more additional Systems and the potential disruption of those public Rights-of-Way and private property that may occur if one or more additional Franchises are granted.

(6) The likelihood and ability of the applicant to continue to provide competing Cable Service to Subscribers within the entire Franchise Area for the duration of the Franchise.

(7) The need to provide the new entrant(s) with a degree of flexibility in the timing and enforcement of build-out requirements so as to allow for the provision of Service in stages.

(8) Such other information as the Grantor may deem appropriate to be considered prior to granting any competing or overlapping Franchise.

#### 4.12 Franchise Renewal.

Franchises may be renewed subject to all then existing applicable federal and state laws, including the renewal provisions of the Cable Act.

#### 4.13 Use of Grantee Facilities.

Grantor and Cities shall have the right to install and maintain, at no charge (but at no additional cost to a Grantee), upon the poles and within the underground pipes and conduits of Grantee, any wires and fixtures desired by Cities, only for the purposes of providing non-commercial, non-revenue generating services for each City's own use, provided, however, that a Grantee may deny use of its facilities if the Grantor's proposed installation or maintenance is not technically feasible, exceeds available space, would delay a Grantee's construction schedule such that liquidated damages would be payable as a result, would cause a violation of this Agreement, or otherwise interferes with the existing or future operations of the Grantee. The Grantor will indemnify and hold a Grantee harmless against and from all claims, demands, costs, or liabilities of any nature arising out of such use of poles or conduits, including, but not limited to, reasonable attorney's fees and costs.

## **ARTICLE 5. DESIGN PROVISIONS**

### 5.1 System Design.

Grantee shall construct and operate a System consisting of a Home Subscriber Network (“HSN”) and an Institutional Communications Network (“ICN”). The Systems shall be two-way capable and shall be capable of transmitting audio, video, and data signals.

### 5.2 Home Subscriber Network.

Unless otherwise provided in a Franchise, the HSN shall pass by every single-family dwelling unit and multiple-family dwelling unit within the Franchise Area having a density of thirty-five (35) homes per mile. Service shall be provided to Subscribers in accordance with the schedules and line extension policies specified in the Franchise.

### 5.3 Home Subscriber Network Drops to Public Buildings and Accredited Educational Institutions.

Grantees shall provide installation of one (1) cable Drop, one (1) cable outlet, provide monthly Basic Cable Service and the most widely subscribed to cable programming service tier, without charge, to the public buildings and accredited educational institutions in its Franchise Area, and shown in an Exhibit to a Franchise, or with coaxial cable Drop connections with the HSN. After the Effective Date of a Franchise, the Grantor may request a cable Drop, outlet and free Basic Cable Service to other public buildings and accredited educational institutions passed by the System in the Franchise Area, provided that the first two hundred fifty (250) feet of such HSN Drop shall be provided free of charge. To the extent such HSN Drops exceed two hundred fifty (250) feet, or require plant extensions, such excess Drop footage or plant extensions shall be provided by a Grantee at its cost of time and materials. Drops and outlets in addition to the one (1) free drop and outlet required by this Section 5.3 to any buildings described in this Section shall be provided by a Grantee at the cost of a Grantee’s time and material. Alternatively, at a Grantor or institution’s request, a Grantor or institution

may add outlets at its own expense, as long as such installation meets a Grantee's standards. Following a Grantor's designation of additional building(s) to receive Cable Communications Service, a Grantee shall complete construction of the Drop and outlet within thirty (30) days for existing facilities passed by the System, if a Grantor requires construction on such schedule.

5.4 Construction of Home Subscriber Network.

Grantees shall construct the HSN in accordance with the construction schedule as set forth below in a Franchise.

A. If a Grantee fails to meet its proposed construction schedule, Grantor may impose penalties pursuant to the Franchise.

B. Upon commencement of construction of the System, a Grantee shall provide a System construction progress report at every regularly scheduled Grantor meeting until completion of the System construction. Grantees shall notify the Grantor in writing within ten (10) days of completion of System construction.

5.5 Institutional Communications Network "ICN".

Every Grantee shall, to the extent required in its Franchise and subject to applicable law, make available for government and educational use an ICN equivalent to what is required in the franchises of other cable providers or a payment of an amount determined by Grantor to be equivalent to the cost or value of an existing ICN.

**ARTICLE 6. PUBLIC EDUCATIONAL AND GOVERNMENTAL  
ACCESS OR PEG ACCESS**

6.1 PEG and Leased Access Channels.

Every Grantee shall, to the extent required in its Franchise and subject to applicable law, offer to each of its Subscribers who receive all or any part of the Cable Services offered on the System, reception on one (1) specially designated public access Channel, one (1) specially designated local educational access Channel, one (1) specially designated local government

access Channel discreet and one (1) specially designated leased access Channel available for use by the general public on a first-come, non-discriminatory basis. If the Grantee provides only alarm system services or only data transmission services for computer operated functions to certain Subscribers, the Grantee need not provide the Channels required by this Section to such Subscribers. The VHF spectrum shall be used for at least one (1) of the specially designated noncommercial public access Channels required. No charges shall be made for Channel time or playback of prerecorded programming on at least one (1) of the specially designated noncommercial PEG Access Channels. However, personnel, equipment and production costs may be assessed for live studio presentations exceeding five (5) minutes in length. Charges for such production costs and any fees for use of other PEG Access Channels shall be consistent with the goal of affording the public a low cost means of PEG Access.

## 6.2 Additional Channels.

Whenever the PEG Channels required by Section 6.1 of a Franchise are in use during eighty percent (80%) of the weekdays (Monday-Friday), for eighty percent (80%) of the time during any consecutive three (3) hour period for six (6) consecutive weeks running, and there is demand for use of an additional Channel for the same purposes, Grantees shall, after written request of the Grantor, have six (6) months in which to provide a new, specifically designated, PEG Access Channel for the same purpose, provided the provision of such additional Channel(s) shall not require the Grantee to install Converters.

## 6.3 Unused PEG Channels.

If demand for use of the PEG Access Channels required in Section 6.1 does not warrant activation of all such Channels, such programming may be combined on one or more Channels. To the extent time is available, such PEG Access Channels may also be used for other broadcast and non-broadcast services, provided that such services are subject to immediate displacement if

there is demand to use the PEG Access Channel for its specially designated purpose under this Franchise.

#### 6.4 Community Access Corporation or "CAC".

Grantor may delegate to the CAC such authority and responsibility as it deems in the best interests of Cities with respect to services, facilities, and equipment to support the PEG Access Channels. The CAC shall be accountable to the Grantor and shall have at least the following functions:

- A. Responsibility for program production and management of the PEG Access and the Local Origination Programming Channels required under this Franchise.
- B. To assure that the Peg Access Channels are made available to all Subscribers of the Cities on a non-discriminatory, first-come first-serve basis.
- C. To assure that all PEG Access and Local Origination Programming decisions comply with the law.
- D. To devise, establish and administer all rules, regulations and procedures pertaining to the use and scheduling of the PEG Access and Local Origination Programming Channels required under this Franchise.
- E. To prepare such regular or special reports as may be required or desirable.
- F. To make all purchases of materials and equipment that may be required for the PEG Access Channels provided that the CAC obtains input from Grantee as to compatibility with the System.
- G. To develop additional sources of funding, such as ad revenue from Local Origination Programming Channels, foundations, federal or state grants, to further community programming.

H. To perform such other functions relevant to the PEG Access and Local Origination Programming Channels as may be appropriate.

6.5 Participation in CAC by City after Withdrawal from Grantor.

Upon withdrawal from the Grantor, any withdrawing City has the option of continuing participation in the CAC. To continue participation in the CAC, a withdrawing City shall contribute its pro-rata share of the costs of the CAC as determined by the Board of Directors of the CAC. In the event a withdrawing City elects not to participate in and contribute to the CAC, such withdrawing City shall forfeit its membership and right to assets realized or unrealized including gifts, grants, and surplus of the CAC.

6.6 Grantee Support for Local PEG Access Programming.

The CAC shall operate and manage existing Local Origination Programming, PEG Access requirements, functions, and responsibilities related to a Franchise. In performing its functions under a Franchise, the CAC shall adopt and apply the same rules and procedures with regard to a Grantee as it adopts and applies to other Grantees with regard to PEG Access and Local Origination Programming. All Grantees shall provide the following additional support for PEG Access and Local Origination Programming:

A. Reservation, dedication, and use of all PEG Access Channels required by this Franchise.

B. A PEG Access capital grant to Grantor or its designee in the form of payment to the Grantor of a capital grant to purchase, based on an amount comparable to that paid by the Grantee which held a Franchise at the time of adoption of this Master Ordinance, which Grantor has determined is twenty dollars (\$20) per subscriber, in the year 1998. This amount will increase six percent (6%) per year each year after 1998 beginning in January. This amount will increase six percent (6 %) per year after 1998,

beginning in January of each year. The terms and time for payment shall be included in a Franchise. The PEG Access capital grant for Open Video Service shall be determined by Grantee in accordance with applicable law.

C. On January 1, 2002, and each year thereafter, Grantees shall collect payment of a seventy-two cents (\$.72) per month per Subscriber ongoing pass-through local programming capital grant fee which shall be automatically increased by three percent (3%) each January 1 thereafter. The payments shall be used by the Grantor for the cost of program development, including the purchase of equipment and facilities. Payments pursuant to this subsection shall be payable monthly no later than the twenty-fifth (25th) day of the next succeeding month.

#### 6.7 Regional Channel 6.

The standard VHF Channel 6 shall remain designated for uniform regional channel usage as required in Minnesota Statutes Section 238.43.

#### 6.8 Reservation of Channels.

A. Except as otherwise described in a Franchise and notwithstanding the requirements in Section 6.1, Grantees shall provide eight (8) Channels for PEG Access (four (4) of which shall be the specially designated access Channels required by Section 6.1 of this Ordinance) and Local Origination Programming (not including Regional Channel 6). All Grantees shall provide and maintain its System so as to transmit high quality signals on PEG Access and Local Origination Programming Channels.

B. Upon six (6) months advanced written request by Grantor, and after the completion of construction pursuant to Article 5 of this Ordinance, a Grantee shall provide up to three (3) additional PEG Access or Local Origination Programming

Channels, provided other Grantees are subject to the same requirement, Channels 41-45 shall be made available pursuant to this Section.

C. Notwithstanding the requirements of Section 6.2, Grantor may request the dedication and activation of two (2) additional PEG Access or Local Origination Channels, whenever all of the PEG Access or Local Origination Programming Channels required by Sections 6.8(A) and (B) of this Ordinance are in use during eighty percent (80%) of the weekdays (Monday-Friday), for eighty percent (80%) of the time during any consecutive three (3) hour period for six (6) consecutive weeks running, and there is demand for use of an additional Channel for the same purposes. Grantees shall, after written request of the Grantor, have six (6) months in which to provide a new, specifically designated PEG Access or Local Origination Programming Channel. The use of repeat programming in excess of thirty percent (30%) of the amount of original programming on the existing PEG Access or Local Origination Programming Channels, as well as text or character-generated programming shall not be considered a “use” for the purposes of this subparagraph C.

#### 6.9 PEG Access Channel Designations.

Grantees must acknowledge and agree that on the Effective Date of its Franchise, the PEG Access and Local Origination Programming Channels activated and used by the Grantor have the same Channel designations as other Grantees:

- A. Channels 12 and 18 -- Local Origination Programming.
- B. Channels 19 and 20 -- Non-commercial public access programming.
- C. Channel 16 -- Government access programming.

D. Channel 14 -- Shared educational access programming between North Hennepin Community College, North Hennepin Technical College, and Hennepin County Library.

E. Channel 22 -- Shared educational access programming between Robbinsdale and Wayzata School Districts.

F. Channel 21 -- Educational access for Osseo School District.

Unless permitted by applicable law, a Grantee may not change the above-referenced PEG Access and Local Origination Programming Channel designations without Grantor's approval during the term of this Franchise except to the extent such Channel designations are changed by other Grantees. Further, Grantor reserves the right to require Local Origination Programming and PEG Access channels to change to be uniform among all providers of Cable Services that have a Franchise granted to it by Grantor. Grantees must agree to connect its System, at its own expense, to the facilities originating the PEG Access and Local Origination Channels to its System and provide these channels to all its Subscribers, as provided in 47 C.F.R. 12, § 76.1505. In the event a Grantee does not negotiate channel feeds with other Grantees, a Grantee shall connect to Grantor's facilities to enable carriage of the PEG Access Channels and programming and local origination channels and programming on its System.

#### 6.10 PEG Access Rules and Procedures.

The use of PEG Access or Local Origination Programming Channels by CAC, shall be in accordance with and subject to the rules and procedures adopted by the CAC as authorized under the Cable Act.

#### 6.11 Assistance with Soliciting Contributions.

Once per year at the Grantor's sole discretion and expense, a Grantee shall provide a bill insert prepared by Grantor for the purpose of mailing notices to Subscribers for the purpose of

soliciting voluntary contributions for community television. A Grantee shall also receive and collect such contributions on behalf of Subscribers for Grantor.

6.12 Ad Avail Grants.

Unless otherwise provided in a Franchise, Grantees will provide the CAC with up to thirty thousand dollars (\$30,000) worth of ad avails each year at the Grantee's lowest unit cost, at no cost to promote programming on Northwest Community Television's Local Origination News Channel. The ad avails will be produced at Grantor's cost and submitted to the Grantee in a format compatible with such advertising insertion equipment of a Grantee to be on a "run of schedule" basis and shall appear on Channels used by the Grantee for local advertising.

6.13 Proof of Performance Testing.

To ensure high quality service on PEG Access and Local Origination Programming Channels, proof of performance testing throughout the System and on all Channels will be made available to the Grantor throughout the term of this Ordinance. The Grantee will regularly monitor PEG Access Channels on a weekly basis throughout the System to determine the level of quality of PEG Access Channels and to ensure the same level of quality as on other Channels. A log shall be maintained for inspection by the Grantor or its engineer. However, in the event that a Complaint is made by a programmer of any PEG Access Channel, the Grantee shall immediately investigate the Complaint and determine whether the Grantee is in compliance with the technical standards set forth in Section 7.2 of this Master Ordinance. The procedures set forth in Section 7.3 of this Master Ordinance shall apply to technical testing of PEG Access Channels.

## **ARTICLE 7. SERVICE PROVISIONS**

### 7.1 Provision of Service.

After completion of construction of System, to the extent that a Grantee is required to provide Service under Section 7.13 of this Master Ordinance, a Grantee shall provide Service to any requesting Person within thirty (30) days from the date of request if the System passes requesting Person.

### 7.2 Technical Standards.

The technical standards used in the operation of the HSN shall comply, at minimum, with the technical standards promulgated by the FCC relating to Systems pursuant to the FCC's rules and regulations and found in Title 47, Sections 76.601 to 76.617, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference. The results of any tests required by the FCC or this Master Ordinance or a Franchise shall be made available to Grantor within ten (10) days of conducting such tests with Grantor.

### 7.3 Test and Compliance Procedure.

Tests for the HSN shall be performed periodically in a manner so as to conform with FCC specifications. The tests may be witnessed by representatives of Grantor and written test reports shall be made available to Grantor. If more than ten percent (10%) of the locations tested fail to meet the performance standards, a Grantee shall be required to indicate what corrective measures have been taken and the entire test shall be repeated in a manner so as to conform with FCC specifications.

### 7.4 Emergency Requirements.

Grantees shall provide emergency alert override capabilities in a manner consistent with the FCC's emergency alert system ("EAS") rules and consistent with any state and regional

emergency alert system plans adopted in response to the FCC's EAS rules which are applicable to the Franchise Area. A Franchise shall include specific terms and requirements.

#### 7.5 Programming Decisions.

All programming decisions remain within the sole discretion of a Grantee provided that a Grantee complies with federal law regarding notice to Grantor and Subscribers prior to any Channel additions, deletions, or realignments, and further subject to a Grantee's signal carriage obligations pursuant to 47 U.S.C. §§ 531-536, as may be amended and subject to the Grantor's rights pursuant to 47 U.S.C. § 545, as may be amended. A Grantee may conduct programming surveys from time to time to obtain input on programming decisions from Subscribers.

#### 7.6 System Office Hours and Telephone Availability.

A. Grantees shall maintain within the Franchise Area a customer service office that shall be open during Normal Business Hours. Grantees shall also maintain a publicly listed toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week. A written log available for Grantor inspection shall be maintained describing all Complaints and how each was resolved.

B. Trained Grantee representatives will be available to respond to Subscriber telephone inquiries during Normal Business Hours.

C. 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.

D. Under Normal Operating Conditions, telephone answer time by a customer service representative or automated response unit, including wait time, shall not

exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis. Notwithstanding the above, Grantor may not require a Grantee to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless Grantor receives a substantial number or pattern of verbal or written Subscriber complaints.

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

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

#### 7.7 Installations, Outages and Service Calls.

Under Normal Operating Conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

A. If the Grantee cannot perform Standard Installations within seven (7) business days of request by a Subscriber (provided that the schedule or preferences of the Person requesting the Standard Installation has not been responsible for the delay), the Subscriber may request and is entitled to receive a free Standard Installation. If the Grantee fails to provide this free Standard Installation and the request was made by the Subscriber within thirty (30) days of the Standard Installation request, the Grantor may direct the Grantee to issue a credit for the Standard Installation. Failure to comply with the Grantor directive will subject Grantee to appropriate enforcement actions. This Section does not apply to the introduction of new products and Services when Grantee is utilizing a phased introduction.

B. The Grantee will begin working on Service Interruptions promptly and in no event later than twenty-four (24) hours after the Service Interruption becomes known.

C. At the Subscriber's request, the "appointment window" alternatives for Standard Installations, Service calls, and other installation activities will be within a maximum four (4) 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 Subscriber.

D. The Grantee may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.

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

F. The Grantee shall begin action to correct Service problems the next business day after notification of the Service problem by the Subscriber.

G. At Subscriber's request, the Grantee shall provide a credit for one (1) day's Service for each Service Interruption exceeding four (4) hours in any twenty-four (24) hour period.

H. Under Normal Operating Conditions, all cabling required to be placed underground pursuant to this Franchise shall be completely buried and the ground properly restored no later than ten (10) calendar days following installation or repair. In the event of snow coverage or other severe ground conditions, the Grantee will make every reasonable effort to bury cabling and restore ground as soon as conditions permit.

I. Any vehicle used for the installation, construction, maintenance or repair of the System shall bear the identification of the contractor or the Grantee in a conspicuous place and manner.

J. All personnel of a Grantee or its subcontractor(s) shall have a photo identification badge on their person in a conspicuous place at all times when performing construction or system maintenance or otherwise acting on behalf of the Grantee on private property of others or in a public place or property.

K. Technicians employed by the Grantee and capable of performing service related emergency repairs and maintenance must be available twenty-four (24) hours a day, including weekends and holidays.

#### 7.8 Communications Between Grantee and Subscribers.

A. Notifications to Subscribers:

(1) The Grantee shall provide written information to Subscribers on each of the following topics at the time of installation, at least annually to all affected Subscribers, at any time upon request, and at least ten (10) days prior to making significant changes in the information required by this Section:

- (a) Products and Services offered.
- (b) Prices and options for programming services and conditions of subscription to programming and other services and facilities.
- (c) Installation and maintenance policies including, when applicable, information regarding the Subscriber's home wiring rights and information describing ownership of internal wiring during the period Service is provided.
- (d) Instructions on how to use the Service.

- (e) Channel positions of programming offered on the System.
- (f) Billing and Complaint procedures, including the name, address and telephone number of the Grantor.
- (g) The availability of a signal control device;
- (h) The Grantee's practices and procedures for protecting against invasions of privacy;
- (i) The address and telephone number of the Grantee's office to which Complaints may be reported; and when applicable, the Grantee's community unit identifier as specified by the FCC.

(2) Subscribers will be notified of any changes in rates, programming services or Channel positions as soon as possible through announcements on the System, if possible, 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 the preceding paragraph.

B. Billing:

(1) 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. If, on bills, a Grantee chooses to itemize as a separate line item Franchise Fees or other government imposed fees attributable to the total bill, such fees must be shown in accordance with any applicable law concerning the Grantee's ability to itemize such fees. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits. Nothing in this Subsection 7.8.B(1) prohibits or restricts Grantee from offering packages of programming to Subscribers and to identify such package on the Subscriber bill.

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

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

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

(2) The return of the equipment supplied by the Grantee if Service is terminated.

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

7.9 Complaint Log.

Subject to the privacy provisions of 47 U.S.C. § 521 et seq., Grantor and Grantees shall prepare and maintain written records of all written Complaints made to them and the resolution of such Complaints, including the date of such resolution. Such written records shall be on file

at the office of Grantor or Grantees. Grantees and Grantor shall make available to each other a written summary of such Complaints and their resolution upon request.

7.10 Subscriber Contracts.

Grantees shall submit the form(s) of Subscriber contract utilized to Grantor for review and information. If no written contract exists, Grantees shall file with the Grantor a written description completely and concisely stating the terms and conditions of residential Subscriber service offered. The length and terms of any Subscriber contract, or written description, shall be available for public inspection during Normal Business Hours.

7.11 Lockout Device.

Grantees shall provide, for sale or lease, to Subscribers upon request, a Lockout Device that permits inhibiting the video and audio portions of any Channels offered by a Grantee.

7.12 Periodic Subscriber Survey.

Grantees shall, on an annual basis, allow Grantor to insert into a Grantee's monthly Subscriber billing statements a written survey in a form and manner acceptable to the Grantor and a Grantee. Neither party's approval shall not be unreasonably withheld. The Grantor shall be responsible for any costs incurred by the Grantee related to the conduct of the survey. Upon the request of Grantor, and at Grantor's expense, a Grantee shall facilitate, no more than twice per year, utilization of its current Subscriber mailing list for the purpose of conducting additional Subscriber surveys.

7.13 Line Extension Policy.

Unless otherwise described in a Franchise, after completion of construction of the initial service area within the Franchise Area, for construction of the System, as approved by the Grantor, a Grantee shall extend construction of its System in accordance with a System extension construction plan approved by Grantor and shall offer Service to all areas within the

Franchise Area which contain thirty-five (35) or more dwelling units (which shall be interpreted to include businesses which have agreed to subscribe to Cable Communications Service) per cable mile, the cable mile(s) to be calculated from the point where existing distribution plant ends.

7.14 Disconnection/Denial of Service.

A. The Grantee shall not terminate residential Service for nonpayment of a delinquent account unless the Grantee provides initial notice of the delinquency and impending termination at least ten (10) days prior to the proposed termination. The notice shall be mailed, postage prepaid, to the Subscriber to whom the Service is billed. This notice shall not be sent until the twenty-eighth (28<sup>th</sup>) day after the initial bill for Services was mailed to the Subscriber. The notice of delinquency and impending termination may be part of a billing statement.

B. The Grantee shall only terminate Service on days when the Subscriber can reach a representative of the Grantee either in person or by telephone. Service terminated without good cause must be restored without charge for the Service restoration. Good cause includes, but is not limited to, signal leakage, failure to pay, payment by check for which there are insufficient funds, theft of Service, abuse of equipment or System personnel, or other similar Subscriber actions.

C. The Grantee shall furnish and maintain Services to each Person, in the Franchise Area, who qualifies for Service and makes a request to receive any programming service. Nothing in these standards shall limit the right of the Grantee to deny Service to any Person which has a negative credit or service history with the Grantee, which may include non-payment of bills, theft or damage to the Grantee's equipment, or who has threatened or assaulted employees of the Grantee in the course of

their employment. In the event Service is denied, the Grantee will give notice to the Subscriber of the right to contact the appropriate regulatory authority, providing the name, address, and phone number as directed by the Grantor.

D. Every notice of termination of Service shall include all of the following information: the name and address of the Subscriber whose account is delinquent; current account balance; the date by which payment is required in order to avoid termination of Service; and the telephone number of a representative of the Grantee who can provide additional information and handle Complaints or initiate an investigation concerning the Service and charges in question.

#### 7.15 Customer Service Reporting Requirements.

Based on a substantial number and a pattern of verbal or written Subscriber complaints received by Grantor, Grantor may require Grantee to prepare and furnish to Grantor reports and any other reasonable information relevant to the complaints, including, at minimum, the following:

A. A telephone report containing the following information relevant to the question of whether its telephone answering system continues to conform with this Franchise:

- (1) Total number of calls received for the total System.
- (2) Total number of calls abandoned for the total System.
- (3) Total percentage of calls abandoned.
- (4) Average time on hold before abandoned.
- (5) Average speed of calls answered.
- (6) Percentage of calls answered within thirty (30) seconds.
- (7) A description of significant events impacting the response times.

In addition to the above, the Grantor may request that reports contain graph(s) which depict the Grantee's performance with respect to the first six (6) items above for up to a three (3) year period prior to the date the report was requested.

B. Number of free Standard Installations that were issued for failure to arrive for Standard Installations or service calls by appointment within the four (4) hour scheduled time frame.

C. Significant Service Interruptions report which shall track information on a monthly basis to include:

- (1) Total number of Service Interruptions.
- (2) Time of all Service Interruptions.
- (3) Total hours that the System was out-of-service as related to planned maintenance or Channel line-up changes performed by a Grantee.

In addition to the above, the Grantee may request that Service Interruption reports contain graph(s) which depict the Grantee's performance with respect to the items above for up to a three (3) year period prior to the date the report was requested.

D. Subscriber churn report for the System.

E. The Grantee shall provide results of any technical testing on the System.

## **ARTICLE 8: REQUIREMENTS FOR USE OF STREETS AND CONSTRUCTION OF SYSTEM**

### 8.1 Authority for Use of Streets and Related Conditions.

A. Minnesota Law. Applicable provisions of Minnesota law shall be adhered to including M.S.A. § 238.084 relating to System construction. This Article of this Master Ordinance includes provisions in accordance with Minnesota laws. Further, the provisions of this Article will supplement City ordinances and procedures for

enforcement due to the potential impact of multiple Franchises and construction of multiple Systems in Streets or utility easements and property in a City. Notwithstanding the requirements in this Article and provisions in this Master Ordinance, a City may enforce provisions of its ordinances or procedures relating to construction in Streets or utility easements in accordance with the provisions in Section 8.1(C) of this Article. Further, a City may by ordinance or permit waive any provision of this Article as to construction in such City.

B. Description of System and Schedule for Construction. Article 5 of this Master Ordinance includes a requirement that a Franchise include a description of the System and a timetable for completion of construction. At a minimum, the Franchise shall include identification of planned construction and projected annual completion showing what portions of the Franchise Area will be served at the completion of construction each year after the Effective Date of the Franchise.

C. Use of Streets; Police Powers. Grantees shall construct and maintain Systems in accordance with all applicable federal, state, and local laws. This includes, in addition to the provisions of this Master Ordinance, all permit requirements, and fee payments, and all other City codes and ordinances in effect as of the date of a Franchise or thereafter adopted to the extent not in contravention of state or federal law and which are enforced in a competitively neutral manner with all Grantees. The grant of a Franchise pursuant to this Master Ordinance does not in any way impact the continuing authority of a City, through the proper exercise of its police powers, to adopt and enforce ordinances necessary to provide for the health, safety, and welfare of the public.

D. No Interference. Grantees shall construct and maintain Systems so as to minimize any adverse impact on public improvements or facilities of others in a Street

and which will not unnecessarily interfere with the usual and customary uses of the Street. Except as may otherwise be provided, a Grantee shall reasonably notify all businesses and residents that may be affected by the proposed work, prior to commencement of such work. Grantees shall provide the notice by mail, posted at a Minneapolis or St. Paul, Minnesota, greater metropolitan location, a minimum of five (5) business days before construction commences. The notice shall not include any advertising or promotional material, shall include a description of the work, estimated time for commencement of the work, the time estimated for completion, and a telephone number answerable by a responsible person seven (7) days a week, twenty-four (24) hours per day. All construction and maintenance by a Grantee or its subcontractors shall be performed in accordance with industry standards and the requirements of applicable laws and regulations.

E. Location, Type, and Design of a System Subject to Review.

(1) The location, system design, and use of Streets shall be in accordance with Sections 4.2.A and 4.2.B of this Master Ordinance and as otherwise described in this Article 8, the Franchise, and Ordinances and requirements of a City.

(2) Subject to the ordinances and requirements of a City, a Grantee may attach its System to an existing utility pole pursuant to a properly executed agreement with the pole owner, in accordance with applicable law, provided, however, that any necessary replacement of the pole in order to accommodate the attachment shall be subject to the proper exercise of a City's police powers, and in no instances shall a Grantee erect a new pole within an existing aerial pole line, or at any location, absent a City's prior authorization.

(3) Above-ground location of a System and related facilities shall generally be where reasonable and safe and in a manner that will not adversely affect a Street or other public or private property and shall be screened from public view, upon request. Pedestals, vaults, boxes, and other structures placed above-ground shall be of a size, design and appearance conforming to requirements of a City. Where a Yard has existing above-ground structures, a Grantee shall make a reasonable effort to limit the number of structures, and install its structures in a similar size and color to existing structures. To minimize the number of structures in any Yard, a Grantee shall make every effort possible to locate its above-ground structures in Yards that do not have existing above-ground structures of others or a minimal number of such structures.

(4) Where reasonable and appropriate and where adequate Street exist, a Grantee shall place above-ground Systems underground in conjunction with a City capital improvement project and/or at specific locations requested by the City and when such placement is required for all other utilities in such locations.

F. Advertising, Signs, or Extraneous Markings. Unless otherwise authorized by applicable law, a Grantee shall not place or cause to be placed any sort of signs, advertisements, or other extraneous markings, whether relating to a Grantee or any other person or entity on Street, except such necessary minimal markings as approved by a City or the designee as are reasonably necessary to identify the System for service, repair, maintenance, or emergency purposes, or as may be otherwise required to be affixed by applicable law or regulation.

G. Tree Protection. Grantees shall comply with a tree trimming ordinance of a City. In the absence of a City ordinance, during the attachment, installation, removal,

reattachment, reinstallation, relocation, or replacement or otherwise of the System, the Grantee shall neither remove, cut, nor damage any trees of over four (4) inches in diameter and along the streets, alleys and public places of a City except in compliance with this Franchise.

H. Joint Trench Coordination; Planned Infrastructure.

(1) Prior to trenching and/or constructing any new or additional undergrounding conduit which is in excess of four (4) inches in diameter, within a Street, a Grantee shall make inquiry with all existing utilities, including a City, cable operators or telecommunications operators and other entities possessing a right to occupy the Street as to the availability of existing or planned trenching and/or conduit that a Grantee could reasonably utilize to meet its needs, and has determined that no such trenching and/or conduit is available or planned by a City or any other entity on the time schedule reasonably needed by a Grantee.

(2) Whenever it is possible and reasonably practicable to joint trench or share bores or cuts or joint share conduit, a Grantee shall work with the City and other providers, licensees, permittees, and franchisees so as to reduce, as far as possible, the number of Street cuts within a City. Further, a Grantee shall provide notice to the City of its planned construction before commencement.

(3) When a Grantee installs any new trench and/or conduit, a Grantee shall, at the request of a City or its designee install sufficient additional space and/or conduit or other related facilities to meet the City's planned public improvement and infrastructure needs. A Grantee shall make such trench space and/or conduit available to a City on the basis of not more than the pro rata cost of that portion of the space in a trench and/or conduit determined by the total

labor and material cost of all Systems and facilities at that location. A City shall have the option to lay its own conduit or place other public improvements that do not cause significant cost, delay or redesign, including without limitation, wiring for traffic signals, street lights, etc., in a Grantee's open trenches during the initial construction and during any future rebuilds or repairs. Grantees shall provide written notice of the proposed construction to the City and the City will then have ten (10) days after receipt to indicate in writing to a Grantee as to its construction needs and request for additional facilities.

(4) No trench cut or portion thereof by a Grantee in any Street or other public or private property shall remain open and unfilled without approval of City or its designee, or for more than three (3) business days from the date of its initial opening. Reasonable signs or other markings shall be utilized by a Grantee to ensure safety to others. For purposes of this section, "open" shall mean and include any degree of refilling and/or restoration of the trench short of the final restoration of the pavement or the ground to its original grade. Moreover, a Grantee shall, at the close of each day, suitably cover, by plate or other means required by a City, (1) any unfilled trench or portion thereof, and (2) any open trench which traverses a driveway or other means of ingress and egress for any property owner in such a fashion as to allow full use of the driveway or other means of ingress and egress by the property owner during periods of non-construction.

(5) Grantees shall cooperate with and participate fully in Gopher One and other reputable underground facility locating services to insure that damage and/or interference with other underground facilities occupants is minimized.

(6) Grantees shall protect public and private property from damage. If damage occurs, the Grantee shall promptly notify the property owner within twenty-four (24) hours in writing. Whenever the Grantee disturbs or damages any Street, other public property or any private property, the Grantee shall promptly restore the Street or property to at least its prior condition, normal wear and tear excepted, at its own expense. In addition, if the Grantee is restoring a Street or public property, it shall do so in accordance with all applicable requirements. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the City may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the costs of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the cost of labor, materials and equipment, the Grantee shall pay the City. Upon completion of work which caused any disturbance or damage to private property, the Grantee shall promptly commence restoration and will use its best efforts to complete the restoration within seventy-two (72) hours, considering the nature of the work that must be performed. The Grantee shall also perform such restoration in accordance with any customer service standards required by this Franchise. When the Grantee excavates the surface of any Street, the Grantee shall be responsible for restoration of such excavation in accordance with all City ordinances, rules, regulations and standards. Throughout the term of a Franchise, in a Grantee's System and related facilities including above-ground pedestals, vaults, boxes, generators, power supplies or structures of any kind, a Grantee shall annually, or upon request of a City or its designee promptly straighten pedestals

and other structures and cover boxes as required for safety and the appearance of System and these facilities. Upon completion of construction in any area, a Grantee will provide, by reasonable means, information to residences and businesses surrounding or adjacent to the construction area informing them that construction and restoration is complete, including a phone number of a Grantee and person to contact if a construction or restoration complaint is not resolved.

(7) Grantees shall have the burden of proof as to the condition of the private property prior to the initiation of construction in any subsequent complaint resolution, arbitration or judicial procedure between a Grantee and the private property owner. If a Grantee enters private property for the purposes of construction where there is no dedicated public easement, a Grantee shall first secure the private property owner's written consent. The Grantee shall take pre-construction photography or videography of the condition of any private property upon which underground construction is to occur to provide a record of pre-construction conditions for comparison to post-construction conditions.

I. Permit Requirements. This Master Ordinance establishes the general rules and scope of authority for Grantees to construct and maintain Systems within the Street of a City. The Grantee shall designate a responsible contact person including a telephone number available seven (7) days a week, twenty-four (24) hours a day, with whom representatives of a City or its designee and/or Grantor can communicate with on all matters relating to System installation and maintenance.

(1) Prior to any excavation within the Street of a City, Grantees shall obtain all required permits of the affected City and pay all applicable fees, and perform such work in accordance with applicable provisions of this Master

Ordinance and a Franchise, and/or a City ordinance or regulations or that may be adopted by the City regarding excavation work.

(2) Grantees shall have complied with all requirements for acceptance of a Franchise and this Master Ordinance, including payment of required fees and charges, written acceptance, the security fund, bond and insurance in accordance with this Franchise.

J. As-Built Drawings. Grantees shall keep and maintain accurate records and as-built drawings, in both paper and electronic format, of Systems constructed, reconstructed, or relocated within Streets of a City. Grantees shall cooperate promptly and fully with a City and take all reasonable measures necessary to provide accurate and complete information regarding the nature and location of Systems located within Streets when requested by a City or its designee or its authorized agents for public improvements. Such location and identification shall be at the sole expense of a Grantee without expense to a City, its employees, agents, or authorized contractors.

K. Grantees Responsible for Costs. All earth, materials, sidewalks, pavings, crossings, utilities, public improvements, or improvements of any kind injured or removed by a Grantee in its activities under this Master Ordinance or a Franchise shall be fully repaired or replaced promptly by a Grantee at its sole expense and to the satisfaction of the City or owner thereof.

L. Relocation of Facilities.

(1) Upon receipt of reasonable advance notice, not to be less than five (5) business days, Grantees shall, at their own expense, protect, support, temporarily disconnect, relocate in the Streets, or remove from the Streets, any property of the Grantee when lawfully required by any City by reason of traffic

conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the City. Should a Grantee fail to remove or relocate any such facilities by the date established by the City, the City may effect such removal or relocation, and the expense thereof shall be paid by a Grantee. If a City requires to relocate its Facilities located within the public right-of-way, City utility easement, or Streets, the City shall make reasonable efforts to provide a Grantee with an alternate location therein. If funds are generally made available to providers of similar services, users of the public rights-of-way for such relocation, a Grantee shall be entitled to its pro rata share of such funds. Nothing in this paragraph shall be construed to prohibit a Grantee from charging its costs of material and labor to any private property owner who requested such activity and/or paid a City for such improvements.

(2) Grantees shall not be responsible for the expense of relocation to accommodate any private improvement initiated by a private development project. The expenses attributable for such a project shall be the responsibility of the third party based upon appropriate documentation of the Grantee expense. Before such expenses may be billed to the third party, a Grantee shall be required to coordinate with the third party and a City on the design and construction to ensure that the work required is necessary and done in a cost-effective manner. Eligible third parties may request to have a City specially assess those expenses billed to the Grantee under this Section. A City or its designee will use its best efforts, but is not required, to continue to provide a location in Street of a City for the Grantee's System as part of a public improvement project, provided that the

Grantee has cooperated promptly and fully with a City or its designee in the design and location of its System as part of public improvements.

(3) Grantees shall temporarily remove or raise or lower its wires or System upon request of any other person requesting relocation of a System and holding a validly issued building or moving permit of a City. The expense of such temporary removal, raising or lowering shall be paid by the party or parties requesting the same and a Grantee may request such payment in advance. Grantee shall be given not less than fifteen (15) days written notice from the permit holder detailing the time and location of the moving operations, and not less than twenty-four (24) hours advance notice from the permit holder advising of the actual operation. The City shall not be liable for any such expense or notice requirement for the moving of houses or structures by the City or its contractors.

M. Procedure for Enforcement and Administration Relating to Construction in Street. Grantor is a joint powers entity created pursuant to Minnesota law to grant a Franchise(s) on behalf of its Cities for Cable Communications Services. Each City has responsibility to manage and control use of Streets or utility easements within a City. The Cities may coordinate with one another and with Grantor to administer and enforce construction of a Grantee System within a City, including to collect fees, review plans, and enforce the provisions of this Master Ordinance and a Franchise and this Article for compliance with the ordinances and requirements of a City and, may utilize the assistance of qualified independent third parties. Reasonable costs relating to administration and enforcement, and management of construction and use of Streets shall be included in the permit fees of a City. Additionally, the following shall apply:

(1) Grantor and Cities reserve the right to develop procedures for administration and enforcement, including construction, inspection, complaint procedures, notice procedures, and related measures to ensure efficiency and timeliness as well as conformance by a Grantee.

(2) Grantor and Cities have the right to inspect all construction or installation work performed subject to the provisions of this Master Ordinance and a Franchise and ordinances and requirements of Cities; and to make such tests as they shall find necessary to ensure compliance with the terms of this Master Ordinance and a Franchise and ordinances and requirements of Cities; provided, however, a representative of a Grantee shall be present for all such testing of the System, which shall occur at time of minimum inconvenience to Subscribers (generally between the hours of midnight and 6:00 a.m.).

(3) Grantor or a City or its designees may withhold issuance of permits, when a Grantee is not in compliance with this Article, a Franchise, or the ordinances and requirements of a City. Other enforcement of non-compliance including imposition of penalties and liquidated damages may be accomplished according to the procedures of this Master Ordinance, a Franchise and/or applicable provisions of the ordinances and requirements of a City and other applicable law.

(4) Grantor and/or City may establish a reasonable escrow fund that may be drawn on by Grantor and/or a City or its designees, to defray costs that may be incurred by them relating to the requirements of this Article, and a Franchise.

(5) By entering into a Franchise, a Grantee acknowledges and agrees that all Street information provided or required, including all construction plans, shall be public.

## **ARTICLE 9. OPERATION AND MAINTENANCE**

### 9.1 Open Books and Records.

Grantees shall cooperate with Grantor with respect to Grantor's administration of this Master Ordinance, a Franchise, and ordinances of a City. Grantor and Cities shall have the right to inspect, at their sole cost and expense, at any time during Normal Business Hours all books, records, maps, plans, income tax returns, financial statements, service complaint logs, performance test results and other existing like materials of Grantees which relate to the operation of a System, and are necessary to Grantor's enforcement or administration of this Master Ordinance and a Franchise. Grantees must identify the records which may be inspected that should be classified as confidential or trade secrets and may subject a Grantee to competitive disadvantage if made public. Grantor shall therefore maintain the confidentiality of all records provided to it by a Grantee which are designated as confidential and which are not required to be made public pursuant to the provisions of the Minnesota Data Practice Act and other applicable laws. Grantees shall not be required to disclose any information regarding research and development or telecommunications services, notwithstanding the foregoing.

### 9.2 Communications with Regulatory Agencies.

Copies of all petitions, applications, communications and reports submitted by a Grantee to the FCC, Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting System operations authorized pursuant to this Master Ordinance and a Franchise shall also be made available contemporaneously to Grantor. Copies of responses from the regulatory agencies to a Grantee

shall likewise be made available contemporaneously to Grantor. Upon request of any affected City, Grantor or a Grantee shall provide the information requested.

### 9.3 Annual Reports.

A. Grantees shall make available to Grantor, at the end of each of its fiscal years during the term of a Franchise, the following:

(1) A revenue statement certified by an officer of a Grantee showing, in such detail as acceptable to Grantor, the Gross Revenues of the Grantee for the preceding fiscal year.

(2) Current list of names and addresses of each officer and director and other management personnel, as well as each shareholder of the Grantee.

(3) A copy of each document filed with all federal, state and local agencies during the preceding fiscal year and not previously filed with Grantor.

(4) A statement of a Grantee's current billing practices.

(5) A current copy of a Grantee's Subscriber Service contract.

B. Grantor, at Grantor's expense, and its agents and representatives shall have authority to arrange for, and conduct an audit of, and copy the books and records of a Grantee to verify franchise fee payments and sources of revenue. Grantees shall first be given five (5) business days notice of the audit request, the description of and purpose for the audit and description, to the best of Grantor's ability, of the books, records and documents it wants to review.

### 9.4 Monitoring and Compliance Reports.

No later than April 15 of each year, Grantees shall make available a written report of the FCC performance tests for the System required in Part 76 of the FCC's regulations.

9.5 Additional Reports.

Grantees shall prepare and furnish to Grantor, at the times and in the form prescribed, such additional reports with respect to its operations, affairs, transactions or property, which in the sole discretion of the Grantor are necessary. Any such reports shall be furnished to any Member upon request.

9.6 Safety.

A. Grantees shall at all times employ the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public or to employees of Grantees.

B. Grantees shall install and maintain its wires, cables, fixtures and other equipment in accordance with the requirements of all applicable codes and in such manner that they will not interfere with any installations of any Cities or any public utility.

C. All lines, equipment and connections in, over, under and upon the Streets, private property, and Public Property within the Cities, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair.

9.7 Service Contract and Subscriber Information.

A. Grantees shall have authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable a Grantee to exercise its rights and perform its obligations under this Master Ordinance and a Franchise and to assure uninterrupted Service to all of its Subscribers; provided such rules, regulations, terms and conditions shall not be in conflict with the

provisions of the Franchise, federal, state and local law, and all applicable rules and regulations.

B. Each Subscriber shall be provided with instructions on filing Complaints or otherwise obtaining information or assistance from a Grantee.

C. All items described in this Section shall be provided to each new Subscriber at the time a contract is entered or service begun, and to all existing Subscribers not less than once each year.

D. The term of a Subscriber contract shall not be for more than twelve (12) months duration unless after twelve (12) months the contract may be terminated at the Subscriber's option with no penalty to Subscriber. Nothing in this paragraph shall exclude Grantee from entering into Subscriber contracts, by reason of a line extension policy for a term longer than twelve (12) months.

#### 9.8 Performance Review: Performance Monitoring.

A. Any time after the Effective Date of a Franchise, the Grantor may commence a review of the Grantee's performance under a Franchise and this Master Ordinance, provided, however, there shall not be more than one (1) evaluation session during any five (5) year period. As part of this review, the Grantor may consider:

(1) Whether the Grantee has complied with its obligations under the Franchise and applicable law.

(2) Whether the System is state-of-the-art as defined pursuant to the following:

Grantees shall submit a report to the Grantor on or after the aforementioned date describing advances in cable technology nationwide, the results of any testing of such technology by Franchisee, the potential benefits and disadvantages of those advances for the System, its Subscribers and Residents, and its plan and timetable for

instituting any such advances in technology. Additionally, the report shall include an analysis of a Grantee's review of the status of local cable competition. To the extent permitted by law, any proprietary material contained in such report shall be protected from disclosure to competitors.

B. The Grantor shall conduct public hearings to provide the Grantee and the public the opportunity to comment on the Grantee's performance and other issues considered as part of the review. The Grantee and Grantor shall undertake good faith efforts to reach mutual agreement on changes or revisions to the Franchise which are both economically and technically feasible as measured over the remaining term of the Franchise.

C. Any revisions to this Master Ordinance and a Franchise that are made as a result of these reviews shall be proposed under the procedures established herein.

#### 9.9 Modification.

A. The Grantor or a Grantee may, at any time after the public hearing referenced in Section 9.08(B) above, provide the other with a full description of any changes it proposes, as well as the reasoning behind the proposal. If the Grantor is the party proposing the changes, the Grantees shall develop a thorough analysis of the impact of such changes upon its operations or its Subscribers, taking into consideration the acceptability of such changes and their cost, if any, to its Subscriber rates and a Grantee's return on investment. Grantees shall consider all the alternative means for recovering such costs.

B. Following receipt and analysis of a proposal, the Grantor and the Grantee shall negotiate the proposed changes in good faith. If the parties are unable to reach agreement within ninety (90) days, or whatever longer period may be mutually

acceptable, either party may call for arbitration of the disagreement pursuant to the then current arbitration rules of the American Arbitration Association.

C. The Grantor and a Grantee will indemnify, agree upon and designate a arbitrator, whose fees will be shared equally by the parties.

D. At the completion of the process outlined above, the Grantor may amend this Master Ordinance and a Franchise either: (a) as agreed upon by the parties; or (b) in the case of an impasse, as per the arbitrator's findings to allow for implementation of the changes, which findings shall take into account the submissions of the parties pursuant to Section 9.09(A) above.

#### 9.10 Grantee Cooperation.

The Grantee shall cooperate in the periodic review and modification process described in this Master Ordinance.

#### 9.11 Refunds to Subscribers and Programmers.

A. If a Grantee fails to provide Cable Communications Service requested by a Subscriber who is entitled to Cable Communications Service under a Franchise, a Grantee shall, after adequate notification and being afforded the opportunity to provide the Service, promptly refund all deposits or advance charges paid for the Service in question by said Subscriber.

B. If any Subscriber terminates any monthly Service during the first twelve (12) months of receiving Service because of the failure of a Grantee to render the Service in accordance with the standards set forth in this Master Ordinance and a Franchise, a Grantee shall refund to such Subscriber an amount equal to the installation charges paid by the Subscriber multiplied by the fraction of the twelve (12) month period for which the Subscriber will not be receiving Service. In the event that said Subscriber has made

an annual payment in advance, a similar portion of said payment shall be refunded by a Grantee.

C. If any Subscriber terminates, for any other reason, any monthly Cable Communications Service prior to the end of a prepaid period, a prorated portion of any prepaid Cable Communications Service fee, using the number of days as a basis, shall be refunded to the Subscriber by a Grantee.

D. The refund provisions provided for in this Section do not alter the Grantee's responsibility to Subscribers under any separate contractual agreement or relieve the Grantee of any other liability.

#### **ARTICLE 10. GENERAL FINANCIAL AND INSURANCE PROVISIONS**

##### 10.1 Franchise Fee.

A. As compensation for a Franchise and in consideration of permission to use the Streets and Public Property of the Cities for the construction, operation, maintenance and reconstruction of a System within the Cities, and to defray the costs of Franchise regulation, and to support community programming through the CAC, Grantees shall pay to Grantor an annual amount equal to five percent (5%) of the Grantee's Gross Revenues, which will be enforced in a manner that is competitively neutral and non-discriminatory as applied to a Grantee and other providers of Cable Communications Service granted a franchise by Grantor.

B. Payments due Grantor under this Section shall be computed quarterly, for the preceding quarter, as of March 31, June 30, September 30 and December 31. Each quarterly payment shall be due and payable no later than thirty (30) days after the dates listed in the previous sentence. Each payment shall be accompanied by a brief report in at least as much detail as that used by a Grantee on the most recent report provided to the

Grantor prior to the Effective Date showing the basis for the computation and such other relevant facts.

C. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim Grantor may have for further sums payable under the provisions of this Master Ordinance and a Franchise. All amounts paid shall be subject to audit and recompilation by Grantor.

D. Grantor shall collect all fees paid by a Grantee, provided that if a Member City withdraws from the Grantor pursuant to the Agreement and this Master Ordinance and a Franchise, the City shall collect directly from the Grantee.

#### 10.2 Security Fund.

A. Except as otherwise provided in a Franchise, Grantees shall deposit into a bank account established by Grantor and maintain on deposit through the term of a Franchise, the sum determined by Grantor as may be required to secure performance of the Franchise but shall not exceed fifty thousand dollars (\$50,000), as security for the faithful performance by it of all the provisions of this Master Ordinance and a Franchise, and compliance with all lawful orders, permits and directions of Grantor or any Cities having jurisdiction over its acts or defaults under this Master Ordinance and a Franchise, and the payment by a Grantee of any claim, liens and taxes due Grantor or any Cities which arise by reason of the construction, operation or maintenance of the System. Interest accrued on this deposit shall remain with the deposit as additional security unless, after periodic review, Grantor determines, in its reasonable discretion, to rebate all or part of the accrued interest or to reduce the required amount of the security fund. Provision shall be made to permit the Grantor to withdraw funds from the security fund.

Grantees shall not use the security fund for other purposes and shall not assign, pledge or otherwise use this security fund as security for any purpose. The amount of the Security Fund shall be reduced to twenty-five thousand dollars (\$25,000) upon completion of the System construction set forth in Article 5 of this Master Ordinance and a Franchise.

B. Within thirty (30) days after notice to it that any amount has been withdrawn by Grantor from the security fund pursuant to subdivision (A) of this Section, a Grantee shall deposit a sum of money sufficient to restore such security fund to the original amount.

### 10.3 Penalties Procedure.

A. Whenever Grantor is notified of an allegation that a Grantee has violated any provision of this Master Ordinance and a Franchise, Grantor shall first notify the Grantee of the violation in accordance with Section 4.8 of this Master Ordinance and a Franchise, and demand correction within a reasonable time, which shall not be less than twenty (20) days in the case of the failure of the Grantee to pay any sum or other amount due the Grantor under this Master Ordinance and a Franchise, and thirty (30) days in all other cases. If a Grantee fails to correct the violation within the time prescribed, or if a Grantee is unable to correct the violation and fails to commence corrective action within the time prescribed and to diligently remedy such violation thereafter, the Grantee shall then be given written notice of not less than twenty (20) days of a public hearing to be held before the Grantor. Said notice shall indicate with reasonable specificity the violation alleged to have occurred.

B. At the public hearing, the Grantor shall hear and consider all relevant evidence, and thereafter render findings and its decision based upon the evidence.

C. In the event the Grantor finds that a Grantee has corrected the violation or has diligently commenced correction of such violation after notice thereof from Grantor and is diligently proceeding to fully remedy such violation, or that no violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.

D. In the event the Grantor finds that a violation exists and that the Grantee has not corrected the same in a satisfactory manner or has not diligently commenced correction of such violation, the Grantor may impose liquidated damages, assessable from the security fund, as follows:

(1) For violations of Article 5 of this Master Ordinance, including, but not limited to, provisions relating to the construction and the construction schedule, one thousand five hundred dollars (\$1,500) per day of non-compliance with this Franchise.

(2) For all other violations of this Master Ordinance and a Franchise, one hundred dollars (\$100) per day per violation.

E. If Grantor elects to assess liquidated damages pursuant to the provisions of this Master Ordinance, then such election shall constitute Grantor's exclusive remedy for a period of sixty (60) days. Thereafter, if the Grantee remains in non-compliance with the requirements of this Master Ordinance or a Franchise, the Grantor may pursue any available remedy.

F. The security fund deposited pursuant to Section 10.2 of this Master Ordinance shall become the property of Grantor in the event that a Franchise is cancelled by reason of the default of a Grantee or revoked for cause. Grantees, however, shall be entitled to the return of such security fund, or portion thereof, as remains on deposit at the

expiration of the term of a Franchise, or upon termination of a Franchise at an earlier date, provided there is then no outstanding default on the part of a Grantee.

G. The rights reserved to Grantor with respect to the security fund are in addition to all other rights of Grantor and Cities, whether reserved by this Master Ordinance, a Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund shall affect any other right Grantor or Cities may have.

#### 10.4 Bonds.

A. Grantees shall maintain throughout the term of a Franchise with Grantor a bond in the sum as determined by the Grantor but not greater than five hundred thousand dollars (\$500,000) in such form and with such sureties as shall be acceptable to Grantor. This bond shall be in place of any bond that would otherwise be required by a City; and, a Grantee shall not be required to post any similar bonds with a City. All performance bonds shall be conditioned upon the faithful performance by a Grantee of this Master Ordinance and a Franchise and upon the further condition that in the event a Grantee shall fail to comply with any applicable law, ordinance or regulation, there shall be recoverable, jointly and severally, from the principal and surety of the bond, any damages or losses suffered by Grantor or the Cities as a result, including the full amount of any compensation, indemnification or cost of removal of any property of a Grantee, including a reasonable allowance for attorneys' fees and costs (with interest at two percent (2%) in excess of the then prime rate), up to the full amount of the bond. The bond shall further guarantee payment by a Grantee of all claims and liens against Grantor or Cities or any Streets and Public Property which arise by reason of the construction, operation, maintenance or use of the System.

B. The rights reserved by Grantor or Cities with respect to the bond are in addition to all other rights the Grantor or Cities may have under this Master Ordinance and a Franchise or any other law.

10.5 Indemnification Damages and Defense.

A. Grantees shall indemnify, hold harmless, and save and defend Grantor and Cities, and their officers, boards, commissions, elected officials, agents and employees (an “Indemnified Party”) at all times during the term of a Franchise against any costs, damages, penalties, expenses, claims, suits, actions, liability and legal or equitable judgments or other relief, as a result of the grant of a Franchise to a Grantee by Grantor and the Grantee’s exercise of a Franchise. Notwithstanding the foregoing, a Grantee shall not be required to provide indemnification or defense to an Indemnified Party for programming over the PEG Access Channels or for the negligent or willful misconduct of an Indemnified Party. Damages and penalties shall include, but shall not be limited to, damages caused by a Grantee arising out of copyright infringement, defamation and all other damages arising out of the construction, operation, maintenance or reconstruction of the System authorized herein, whether any act or omission complained of is authorized, allowed or prohibited by this Master Ordinance and a Franchise.

B. Grantees shall pay all expenses incurred by Grantor and Cities in defending itself with regard to all damages and penalties mentioned in Section (A) above. These expenses shall include all reasonable out-of-pocket expenses, such as attorneys’ fees.

C. Grantees shall not be required to indemnify or defend Grantor for negligence or misconduct on the part of Grantor or its officers, elected officials, boards, commissions, agents or employees. Grantor shall hold a Grantee harmless, subject to the

limitations in Minnesota Statutes Chapter 466, for any damage resulting from the negligence or misconduct of the Grantor, a City or its officers, elected officials, boards, commissions, agents or employees in utilizing any PEG Access Channels, equipment or facilities and for any such negligence or misconduct by Grantor or a City in connection with work performed by Grantor or a City and permitted by this Master Ordinance and a Franchise on or adjacent to a System of Grantee.

D. In order for an Indemnified Party to assert its rights to be indemnified, defended and held harmless, the Indemnified Party must, with respect to each claim:

(1) Promptly notify the Grantee in writing of any claim for legal proceeding which gives rise to such right.

(2) Afford the Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding.

(3) Fully cooperate with reasonable requests of the Grantee, at the Grantee's expense, in its participation in and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to Paragraph 2 above.

#### 10.6 Liability Insurance.

A. Grantees shall maintain general liability insurance covering the Grantor and Cities, and the Grantee (and shall maintain said insurance during the entire term of the Franchise) in the minimum amounts of:

(1) Five hundred thousand dollars (\$500,000) for property damage to any one person.

(2) Two million dollars (\$2,000,000) for property damage in any one act or occurrence.

(3) One million dollars (\$1,000,000) for personal injury to any one person.

(4) Two million dollars (\$2,000,000) for personal injury in any one act or occurrence.

B. During the term of a Franchise, the Grantee shall maintain insurance, as required by paragraph (A) above, issued by a carrier or carriers reasonably acceptable to Grantor. The Grantee shall maintain on file with the Grantor and Cities certificates of insurance together with written evidence of payment of required premiums throughout the term of a Franchise. The above minimum amounts may be changed from time to time by a Grantee as requested by the Grantor; provided, however, the Grantee shall not be required to provide insurance in excess of what is customarily provided by other cable communications system operators in the Twin Cities metropolitan area.

C. A Grantee shall immediately give notice to Grantor and Cities of any threatened or pending litigation likely to affect this insurance.

D. Neither the provisions of this Section nor any damages recovered by Grantor shall be construed to, or shall excuse the unfaithful performance by a Grantee or limit the liability of a Grantee.

E. No recovery by Grantor or Cities of any sum by reason of the security fund or bond required in this Franchise shall be any limitation upon the liability of a Grantee to Grantor or Cities under the terms of this Section, except that the sum so received by Grantor from such security fund or bond shall be deducted from a recovery under this Section, if for the same act or occurrence.

F. All insurance policies maintained pursuant to this Master Ordinance and a Franchise shall contain the following endorsement:

It is hereby understood and agreed that this insurance policy may not be cancelled nor the intention not to renew be stated until thirty (30) days after receipt by the Grantor and Cities, by registered mail, of written notice of such intention to cancel or not to renew.

G. Grantees shall provide worker's compensation insurance as required by state law.

H. All such insurance policies shall provide a thirty (30) day notice to the Grantor and Cities in the event of material alteration or cancellation of any coverage afforded in said policies prior to the date said material alteration or cancellation shall become effective.

## **ARTICLE 11. REVOCATION**

### 11.1 Grounds for Revocation.

In addition to any rights set out elsewhere in this Master Ordinance and a Franchise, Grantor reserves the right to commence proceedings and based on the results of such proceedings to revoke a Franchise, and all rights and privileges pertaining thereto, in the event it is determined by Grantor, after notice and an opportunity to cure and a hearing that:

- A. The Grantee substantially violates any material provision of this Master Ordinance and a Franchise.
- B. The Grantee attempts to evade any of the material provisions of this Master Ordinance and a Franchise.
- C. The Grantee practices an act of fraud or deceit upon the Grantor.
- D. The Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt.

## 11.2 Procedure.

A. In determining whether there are grounds for revocation of a Franchise, Grantor shall follow the same procedures set forth in Section 10.3A through C of this Master Ordinance .

B. A Grantee shall be provided reasonable notice by Grantor and the right to a public hearing before Grantor.

C. Upon termination, a Grantee shall have a period of thirty (30) days subsequent to the date of the public hearing at which termination of the Franchise is considered, within which to file an appeal with a court of competent jurisdiction.

D. During the appeal period, a Franchise shall remain in full force and effect.

## **ARTICLE 12. FORECLOSURE, RECEIVERSHIP AND ABANDONMENT**

### 12.1 Foreclosure.

Upon the foreclosure or other judicial sale of all or a part of a Grantee System, or upon the termination of any lease covering all or part of the System, a Grantee shall notify Grantor of such fact and such notification shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of this Master Ordinance governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

### 12.2 Receivership.

Grantor shall have the right to cancel a Franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of a Grantee, whether in 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:

A. Within one hundred twenty (120) days after its election or appointment, such receiver or trustee shall have fully complied with all the provisions of a Franchise and remedied all defaults thereunder; and

B. Such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by a court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Master Ordinance and a Franchise.

### **ARTICLE 13. PURCHASE OF SYSTEM**

#### 13.1 Grantor's Right to Purchase System upon Receipt By a Grantee of a Bona Fide Offer.

Grantor shall be entitled to a right of first refusal of any bona fide offer to purchase the System made to a Grantee. Bona fide offer as used in this Section means an offer received by a Grantee that it intends to accept subject to Grantor's rights under this Section. In the event Grantor decides to purchase pursuant to this Section, the price shall be the bona fide offer.

#### 13.2 Procedures.

In the event Grantor elects to exercise its right to purchase the System, as provided in Section 13.1. Grantor and a Grantee shall agree in writing all terms and conditions of the bona fide offer to purchase of the System within sixty (60) days or Grantor's right to purchase the System shall be deemed waived.

#### 13.3 Purchase By Grantor Upon Termination of Franchise Term or Revocation of a Franchise.

A. The Grantor may, upon the payment of a fair valuation, ascertain, purchase, condemn, acquire, take over and hold the property and plant of a Grantee System in whole or in part on the following conditions:

- (1) Upon revocation of a Franchise, such valuation shall not include any sum for the value of a Franchise and such plant and property shall be valued

according to its book value at the time of revocation, or initial cost less depreciation and salvage.

(2) At the expiration of a Franchise, such valuation shall be at fair market value, exclusive of the value attributed to a Franchise itself.

B. Notwithstanding the foregoing, Grantor shall not be entitled to purchase the System if a Grantee is authorized to provide telecommunications services pursuant to state or federal law.

#### **ARTICLE 14. RIGHTS OF INDIVIDUALS PROTECTED**

##### 14.1 Discriminatory Practices Prohibited.

Grantees shall not deny Service, deny access, or otherwise discriminate against Subscribers, programmers or general citizens on the basis of race, color, religion, national origin, sex or age. Grantees shall strictly adhere to the equal employment opportunity requirements of state and federal law. Grantees shall comply at all times with all other applicable federal, state and local laws, and all executive and administrative orders relating to non-discrimination.

##### 14.2 System Tapping Prohibited.

Neither a Grantee nor any other Person, agency or entity shall tap, or arrange for the tapping, of any cable, line, signal input device or Subscriber outlet or receiver for any purpose whatsoever, except as authorized by law, or as follows:

A. 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 the Subscriber. The request for such permission shall be contained in a separate document with a conspicuous statement that the Subscriber is authorizing the permission with knowledge of its provisions. 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. Such permission shall be required for each type or classification of Class IV activity planned for the purpose of monitoring individual viewing patterns or practices.

B. Written permission from the Subscriber shall not be required for conduit System-wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing.

### **ARTICLE 15. MISCELLANEOUS PROVISIONS**

#### 15.1 Sale or Transfer of a System and a Franchise.

A. Grantee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, a Franchise or System or any of the rights or privileges granted by a Franchise, without the prior consent of the Grantor, which consent shall not be unreasonably denied or delayed and may be denied only upon a good faith finding by the Grantor that the proposed transferee lacks the legal, technical, or financial qualifications to consummate the transaction and operate the System so as to perform its obligations under this Master Ordinance and a Franchise, given the obligation to complete the Construction as provided for in Article 5 and Article 8 of this Master Ordinance. This provision shall not apply to sales of property or equipment in the normal course of business. Consent from the Grantor shall not be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation, partnership or other entity controlling, controlled by or under common control with Grantee.

B. The following events shall be deemed to be a sale, assignment or other transfer of a Franchise or System requiring compliance with this Section: (i) the sale, assignment or other transfer of all or a majority of a Grantee's assets; (ii) the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in a Grantee by one (1) or more of its existing shareholders, partners, members or other equity owners so as to create a new controlling interest in a Grantee; (iii) the issuance of additional capital stock or partnership membership or other equity interest by a Grantee so as to create a new controlling interest in a Grantee; and (iv) the Grantee's agreement to transfer management or operation of a Grantee or the System to an unaffiliated entity. The term "controlling interest" as used herein means majority equity ownership of the Grantee; provided that, in no event shall a qualified public offering under the Securities laws of the United States, as the same now exist or may in the future be amended, be deemed to be a sale, assignment or other transfer of the Franchise or System.

C. In the case of any sale or transfer of ownership of a Franchise or System, the Grantor shall have one hundred twenty (120) days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with FCC Regulations, and the requirements of this Master Ordinance and a Franchise. If the Grantor fails to render a final decision on the request within one hundred twenty (120) days after receipt by the Grantor of all required information, such request shall be deemed granted unless the requesting party and the Grantor agree to an extension of time.

D. Grantees shall notify the Grantor in writing of any foreclosure or any other judicial sale of all or a substantial part of a Grantee's System, or upon the termination of

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

E. Any financial institution having a pledge of the Grantee or its assets for the advancement of money for the construction or operation of a Franchise shall have the right to notify the Grantor that it or its designee satisfactory to the Grantor, shall take control of and operate the System in the event of a Grantee default in its financial obligations. Further, said financial institution shall submit a plan for such operation within thirty (30) days of assuming such control that will ensure continued Service and compliance with all requirements of this Master Ordinance and a Franchise during the term the financial institution exercises control over the Grantee System. The financial institution shall not exercise control over the System for a period exceeding one (1) year unless such term is extended by the Grantor in its discretion. During this period of time the financial institution shall have the right to petition the Grantor to transfer a Franchise to another Grantee.

F. Grantor reserves any rights it may have to require a Grantee to pay all costs and expenses incurred by Grantor and Cities in connection with the sale, assignment or transfer of this Franchise, including, but not limited to, the Grantor's costs of reviewing the qualifications of any proposed transferees in accordance with applicable law. Grantor shall provide an itemized statement to a Grantee.

## 15.2 Amendment of a Franchise.

A Franchise shall only be amended: (1) pursuant to Section 9.8 of this Master Ordinance and (2) after published notice, public hearings and deliberations of the Grantor, a Franchise may

be amended upon a unanimous vote of the Cities voting and the written consent of Grantor directors and a Grantee.

15.3 Continuity of Service Mandatory.

It shall be the right of all Subscribers to receive all available Services insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify or sell the System, the Grantee shall do everything in its power to ensure that all Subscribers receive continuous, uninterrupted Service regardless of the circumstances during the lifetime of the Franchise.

15.4 Removal After Termination or Revocation.

A. At the expiration of the term for which a Franchise is granted, or upon the revocation or termination of the Franchise, as provided for herein, Grantor shall have the right to require the Grantee to remove, at the Grantee's expense, any portion of the System from all Streets and Public Property. The Grantee may not be required to remove if legally authorized to provide telecommunications or non-cable services with the System. In removing the System, the Grantee shall refill and compact at its own expense, any excavation that shall be made by it and shall leave all Streets and Public Property in equivalent to the condition as that prevailing prior to the Grantee's removal of the System, and without affecting, altering or disturbing in any way electric, telephone or other utility, cables, wires or attachments. Grantor, or its delegation, shall have the right to inspect and approve the condition of such Streets and Public Property after removal. The security fund, bonds, insurance, indemnity and penalty provisions of a Franchise shall remain in full force and effect during the entire term of removal.

B. If, in the reasonable discretion of Grantor, a Grantee has: (i) failed to commence removal of the System, or such part thereof as designated by Grantor, within

thirty (30) days after receiving written notice from Grantor; or (ii) if a Grantee has failed to complete such removal within one (1) year after receiving written notice from Grantor demanding removal; then Grantor may exercise one of the following options:

(1) Take ownership of the Grantee System and operate the System or transfer the System to another Person.

(2) Declare the System abandoned and order its removal at no cost to Grantor. The cost of removal shall be recoverable from the security fund, bonds, insurance, indemnification and penalties provided for in this Master Ordinance and a Franchise.

C. Upon revocation of a Franchise, any portion of the Grantee System designated by Grantor for removal but not removed within a reasonable time shall become the property of Grantor without payment to the Grantee and the Grantee shall execute and deliver such documents as Grantor shall request, in form and substance acceptable to Grantor, to evidence ownership by Grantor.

D. Grantees shall not abandon any portion of the System without having given three (3) months prior written notice to Grantor. Further, a Grantee shall not abandon any portion of the System without compensating Grantor or Cities for damages resulting from the abandonment. The amount of damages resulting from abandonment shall be determined by Grantor.

#### 15.5 Work Performed by Others.

A. Grantees shall make available to Grantor the names and addresses of any Person, other than Grantee, which performs services pursuant to a Franchise; provided however, that all provisions of a Franchise remain the responsibility of the Grantee.

B. All provisions of a Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of a Franchise.

15.6 Duty to Grantees.

Nothing contained in a Franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring the facilities of a Grantee while performing any work connected with grading, regarding or changing the line of any Street or Public Property or with the construction or reconstruction of any sewer or water system or utility system.

15.7 Interest Rate.

For purposes of this Master Ordinance and a Franchise, “prime rate” shall mean the interest charged from time to time by the US Bank of Minneapolis for ninety (90) day unsecured loans to commercial borrowers of the highest credit rating.

15.8 Applicable Law and Court Decisions; Severability.

A. Grantor and a Grantee shall, at all times, comply with all laws, ordinances and regulations of federal, state and local government.

B. If any term, condition or provision of this Master Ordinance and a Franchise or the application thereof to any Person shall be held invalid or unenforceable by a court having jurisdiction, FCC ruling or change in federal or state law preempting any provisions, the remaining provisions of this Master Ordinance and a Franchise shall, in all other respects, remain in full force and effect.

15.9 Non-Enforcement by Grantor.

Grantees shall not be relieved of its obligation to comply with any of the provisions of this Master Ordinance and a Franchise by reason of any failure of the Grantor to enforce prompt compliance.

15.10 Administration of this Master Ordinance and a Franchise.

The Grantor shall be responsible for the continued administration of this Master Ordinance and a Franchise, except as otherwise assumed by Cities pursuant to the Agreement.

15.11 General Provision on Rights and Remedies.

A. All rights and remedies given to Grantor by a Franchise shall be in addition to and cumulative of all other rights or remedies available to Grantor or Cities, at law or in equity. The rights and remedies provided by a Franchise are not exclusive and the exercise of any right or remedy hereunder shall not be deemed a waiver of the right to exercise any other right or remedy. No delay or omission of Grantor or Cities in the exercise of any right or remedy shall impair any such right or remedy, nor shall any such delay or omission be construed to be a waiver of or acquiescence to any default. The exercise of any such right or remedy by Grantor or Cities shall not release a Grantee from its obligations or any liability under a Franchise.

B. Grantees shall not claim that any condition or term of this Master Ordinance and a Franchise is unreasonable, arbitrary, void or that Grantor or Cities had no power or authority to make such term or condition, but accepts the validity of the terms and conditions of this Master Ordinance and a Franchise in its entirety.

C. Grantor reserves the right to delegate any of its rights or obligations under a Franchise to any Person. Any delegation by Grantor shall be effective upon written notice by Grantor to a Grantee of such delegation. Upon receipt of notice by a Grantee of Grantor's delegation, a Grantee shall be bound by all terms and conditions of the delegation not in conflict with a Franchise. Any such delegation shall not be deemed an amendment to this Master Ordinance and a Franchise or require any consent of a Grantee.

15.12 Publication of Notices.

All public notices or ordinances required to be published by Grantor or Cities, including this Master Ordinance and a Franchise or the title thereof, shall be published in the official newspaper of all Cities. Grantees shall pay the costs for publication of a Franchise and amendments to it, as such publication is required or authorized by law.

15.13 Effectiveness of Franchise.

A. After a Franchise is approved by Grantor, a copy of the Franchise shall be delivered to each City for a thirty (30) day review period.

B. Not later than fifteen (15) days after adoption of a Franchise, Grantor shall publish a Franchise or title thereof in the legal newspaper of each City.

C. A review period for Cities shall occur for thirty (30) days after delivery of a Franchise to each City. Upon review, any City shall have the opportunity to withdraw from the Grantor if done so at least five (5) days prior to the expiration of the thirty (30) day review period. A Franchise shall not become effective in such withdrawn City. If more than one City advises the Grantor of its intent to withdraw from the Grantor at least five (5) days prior to the expiration of the thirty (30) day review period pursuant to this paragraph, the approval of a Franchise shall be null and void and a Franchise shall have no effect.

D. Within thirty (30) days after review by Cities, the Grantee shall provide to Grantor its written acceptance of a Franchise in a form acceptable to Grantor, and execute, together with the Grantor, all such other documents required under this Master Ordinance and a Franchise, at which time a Franchise shall become effective and file with Grantor insurance, bonds and other requirements of this Master Ordinance and a

Franchise and to pay to Grantor any additional application fee reimbursements in excess of amounts required by Grantor upon a Grantee filing its application for a franchise.

E. Grantees shall have continuing responsibility for a Franchise, and if a Grantee is a subsidiary or wholly-owned corporate entity of a parent corporation, or another form of entity, performance of a Franchise shall be secured by guarantees of any such entity in form and substance acceptable to Grantor, which shall be delivered at the time of, and as part of, acceptance of a Franchise.

#### 15.14 Incorporation by Reference.

To obtain the power and obligation to enforce the applicable provisions as may be done by Cities and to prosecute for any violations within their territorial limits and to further insure that Cities may succeed the Grantor, as provided in this Article by reason of withdrawal or dissolution, each City shall, by ordinance authorized by Minnesota Statute 238.08, incorporate by reference into its code all of the provisions and subsequent amendments to a Franchise. To the extent any City withdraws as a City and has not validly incorporated a Franchise by reference, a Grantee, by acceptance of a Franchise, consents to and agrees to be bound by the requirements of this Master Ordinance Section providing for the separate administration and enforcement by that City in the event of withdrawal or dissolution. Grantees agree to execute acceptance of an ordinance of each City as they adopt the same to incorporate a Franchise.

#### 15.15 Withdrawal.

Any City may withdraw from the Grantor at any time later than five (5) days prior to the expiration of each City's thirty (30) day review period set forth in Section 15.13 by sending a written notice of withdrawal to the Grantor before October 15 of any year.

A. Any City withdrawing pursuant to this Section shall send to the Grantor and to a Grantee a written notice of withdrawal specifying the effective date of

withdrawal and containing a copy of the City's action approving its withdrawal. City's withdrawal shall be effective on December 31 of the year that City sends its notice of withdrawal, unless it specifies a later date in its notice. A notice of withdrawal may be rescinded prior to its effective date at any time by affected City.

B. This Master Ordinance and a Franchise shall be effective and enforceable within the territorial limits of a City which has withdrawn pursuant to this Section, and such City shall be bound by the terms of a Franchise and any amendments adopted by Grantor. A City which has withdrawn shall be the exclusive authority to administer and enforce a Franchise within the territorial limits of that City.

C. Any City withdrawing from membership at a time when such withdrawal does not result in dissolution of Grantor, shall forfeit its claim to any assets of Grantor except that such City shall have access, at a reasonable cost and under such conditions as Grantor may determine, to any cable communications programs, files or other materials developed for such City's use while it was a Member.

#### 15.16 Dissolution of Grantor.

A. Grantor shall continue for an indefinite term unless the number of Members shall become less than four (4). The Grantor may also be terminated by mutual agreement of all of the Members at any time.

B. Upon dissolution of the Grantor, all remaining assets of the Grantor, after payment of obligations, shall be distributed among the then existing Cities in proportion to their contributions and in accordance with procedures established by Grantor. Grantor shall continue to exist after dissolution for such period, no longer than six (6) months, as is necessary to wind up its affairs, but for no other purpose.

15.17 Successor in Interest and Grantee Rights.

A. In the event of withdrawal by a City or dissolution of the Grantor, affected Cities shall be deemed successor to the rights, duties and obligations of Grantor within the affected Cities' territorial limits. However, no new rights, duties and obligations of Grantee will be created thereby and a Grantee shall not be required to furnish additional services or be required to provide increased payments, or separate bonds, insurance or security funds. Such existing bonds, insurance, or security funds shall, however, afford equal protection to any affected City.

B. In the event of withdrawal of a City or dissolution of the Grantor, Grantor and a Grantee, together with Cities, shall make their best efforts to achieve an orderly and efficient transfer to any affected City of the administration and enforcement authority over a Franchise.

Passed and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

ATTEST:

By \_\_\_\_\_  
Secretary

By \_\_\_\_\_  
Daniel J. Donahue, Chairman  
Northwest Suburbs Cable  
Communications Commission

This Master Ordinance is accepted, and we agree to be bound by

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

By \_\_\_\_\_

Its \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

