

CITY OF BECKER

ORDINANCE # 212, 2nd Series

AN ORDINANCE GRANTING A FRANCHISE TO MIDCONTINENT COMMUNICATIONS TO MAINTAIN A CABLE COMMUNICATIONS SYSTEM IN THE CITY OF BECKER, MINNESOTA; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS

The City Council of the City of Becker, Minnesota (“City”) ordains:

FINDINGS

In the review of the application of Midcontinent Communications, ("Grantee"), and as a result of a public hearing, the City makes the following findings:

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

SECTION 1.

SHORT TITLE AND DEFINITIONS

- 1.) Short Title. This Cable Communications Ordinance shall be known and cited as the Franchise.
- 2.) Definitions. For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.
 - (a) “Actual Cost” means Grantee’s cost without any increase due to interest or profit.
 - (b) “Applicable Laws” means any local law, or federal or State statute, law, regulation, or other final legal authority governing any of the matters addressed in this Franchise.

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

(d) "Cable Programming Service" means any Video Programming provided over a Cable System, regardless of service tier, including installation or rental of equipment used for the receipt of such Video Programming, other than:

- (1) Video Programming carried on the Basic Service Tier;
- (2) Video Programming offered on a pay-per-channel or pay-per-program basis; or
- (3) A combination of multiple channels of pay-per-channel or pay-per-program Video Programming offered on a multiplexed or time-shifted basis so long as the combined service:
 - a. consists of commonly-identified Video Programming; and
 - b. is not bundled with any regulated tier of service.

Cable Programming Service as defined herein shall not be inconsistent with the definition as set forth in 47 U.S.C. §543(l)(2) and 47 C.F.R. 76.901(b) (1993).

(e) "Cable Service" means the one-way transmission to Subscribers of Video Programming, or other programming service, and Subscriber interaction, if any, which is required for the selection of such Video Programming or other programming service.

(f) "Cable System" or "System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include:

- (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (2) a facility that serves Subscribers without using any public right-of-way;
- (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. §541 (c) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless

the extent of such use is solely to provide interactive on-demand services;

- (4) an open video system that complies with 47 U.S.C. §573; or any facilities of any electric utility used solely for operating its electric utility systems.

(g) “City” means the City of Becker, a municipal corporation, in the State of Minnesota, acting by and through its City Council.

(h) “City Code” means the Municipal Code of Ordinances of Becker, Minnesota.

(i) “Converter” means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the service.

(j) “Class IV Cable Communications Channel” means a signaling path provided by a Cable System to transmit signals of any type from a Subscriber terminal to another point in the System.

(k) “Council” means the governing body of the City.

(l) “Drop” means the cable that connects the ground block on the Subscriber's residence to the nearest feeder cable of the System.

(m) “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

(n) “Franchise” means an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to 47 U.S.C. §546) issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System or an MVPD System.

(o) “Franchise Fee” means any tax, fee or assessment of any kind imposed by the City or any other Governmental Authority on a Grantee or cable Subscriber, or both, solely because of their status as such. The term “Franchise Fee” does not include: (i) any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers); (ii) 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 (iii) any fee imposed under Title 17 of the United States Code.

- (p) “Governmental Authority” means any court or other federal, state, county, municipal or other governmental department, commission, board, agency or instrumentality.
- (q) “Grantee” is Midcontinent Communications, its agents and employees, lawful successors, transferees or assignees.
- (r) “Gross Revenues” means all revenue derived directly or indirectly by Grantee, its affiliates, subsidiaries, parent, and any person in which Grantee has a financial interest of five percent (5%) or more from or in connection with the operation of the System, including by not limited to, fees for Basic Service, pay cable fees, installation and reconnection fees, leased channel fees, converter rentals, income earned from deposits (excluding deposits themselves), studio rental, production equipment and personnel fees, and advertising revenues. The term does not include any taxes on services furnished by Grantee and imposed directly upon any subscriber or user in the State, City or other governmental unit. Gross Revenues shall not include revenues for signals originating in or passing through the franchise area for transmission to a cable system or subscriber without the franchise area unless Grantee receives revenue for such signal which has not already otherwise been directly or indirectly subject to a franchise fee or similar tax, in which case said revenues will be considered Gross Revenues for the purpose of the franchise.
- (s) “Installation” means the connection of the System from feeder cable to the point of connection, including Standard Installations and custom installations.
- (t) “Lockout Device” means an optional mechanical or electrical accessory to a Subscriber's terminal which inhibits the viewing of a certain program, certain channel, or certain channels provided by way of the Cable System.
- (u) “Multichannel Video Program Distributor” or “MVPD” means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, an Open Video Services provider, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.
- (v) “Open Video Services or OVS” means any video programming Services provided to any person by a Person certified by the FCC to operate an Open Video System pursuant to Section 47 U.S.C. 573, as may be amended, regardless of the facilities used.
- (w) “Pay Television” means the delivery over the System of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or Cable Programming Services.
- (x) “PEG” means public, educational and governmental. Reference to “access channels” shall mean “PEG Access Channels.”

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

(z) "Standard Installation" means any residential installation which can be completed using a Drop of three hundred (300) feet or less.

(aa) "State" means the State of Minnesota.

(bb) "Service Area" means the entire geographic area within the City as it is now constituted or may in the future be constituted.

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

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

(ee) "Tap" means a device which connects a Drop to the Feeder Cable.

(ff) "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

SECTION 2.

GRANT OF AUTHORITY AND GENERAL PROVISIONS

1.) Franchise Required. It shall be unlawful for any Person to construct, operate or maintain a Cable System or to offer Cable Service in City unless such Person or the Person for whom such action is being taken shall have first obtained and shall currently hold a valid franchise. The City shall at all times comply with the Minnesota level playing field statute at Minn. Stat. Section 238.08 and any other applicable State or federal level playing field requirements.

2.) Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein.

3.) Grant of Nonexclusive Authority.

a) The Grantee shall have the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the Streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto in City poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the City of a Cable System as herein defined. The Cable System constructed and maintained by the Grantee or its agents shall not interfere with other uses of Streets. Grantee shall make use of existing poles and other facilities available to Grantee to the extent it is commercially reasonable to do so.

(b) Grantee shall have the authority to use City easements public rights-of-way, Streets and other conduits for the distribution of Grantee's System. The City may require all developers of future subdivisions to all and accommodate the construction of the System as part of any provisions for utilities to serve such subdivisions.

(c) This Franchise shall be nonexclusive, and City specifically reserves the right to grant at any time, such additional franchises for a Cable System as it deems appropriate subject to Applicable Laws. The City also specifically reserves the right to operate a municipal Cable System pursuant to Applicable Laws.

(d) Nothing in this Franchise shall (A) abrogate the right of the City to perform any public works or public improvements of any description (B) be construed as a waiver of any code or ordinances promulgated by the City, or (C) be construed as a waiver or release of the rights of the City in and to the streets.

(e) The terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provisions of Cable Service and of the Cable System in the City and may only be amended by the mutual consent of the City and the Grantee. The Grantee, through this Franchise, is granted the right to construct, maintain, and operate its Cable System using the Streets within the City compliance with City Code, ordinance or any regulation of the City, as may be amended periodically. The Grantee specifically agrees to comply with the lawful and nondiscriminatory provisions of the City Code, ordinance or any regulation of the City. Subject to the police power exception listed below, in the event of a conflict between A) the lawful, nondiscriminatory provisions of the City Code, ordinance, or applicable nondiscriminatory regulations of the City and B) this Franchise, the express provisions.

(f) Subject to express federal and State preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendments to the City Code, ordinances or any regulation of the City, except the lawful exercise of the City's police power.

(g) This Franchise complies with the Minnesota franchise standards set forth in Minn. Stat. 238.084. The City and Grantee shall conform to Minnesota laws promulgated subsequent to the date of this Franchise. The City and Grantee shall conform to federal laws and regulations as they become effective.

(h) Grantee shall have the right to conduct direct selling in Franchise Area, including door to door sales, notwithstanding any peddler or solicitor laws or regulations to the contrary, provided however that Grantees' agents or employees who are conducting any such door to door sales shall display appropriate identification badges identifying themselves as agents or employees of Grantee, and shall notify City at least 24 hours in advance of conducting any such door to door sales or solicitations.

4.) Franchise _____ Term.

(a) This Franchise shall be in effect for a period of fifteen (15) years from the date of acceptance by Grantee, unless renewed, revoked, or terminated sooner as herein provided.

5.) Previous Franchises. Upon acceptance by Grantee as required by Section 9 herein, this Franchise shall supersede and replace any previous Ordinance or Agreement granting a Franchise to Grantee to own, operate and maintain a Cable System within the City area.

6.) Rules of Grantee. The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligation under this Franchise, and to assure uninterrupted Service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with provisions hereto, the rules of the FCC, the laws of the State of Minnesota, City, or any other body having lawful jurisdiction thereof.

7.) Territorial Area Involved. This Franchise is granted for the corporate boundaries of the City, as it exists from time to time. It shall be the responsibility of the City to notify Grantee of the annexation of new territories into the corporate boundaries. In the event of annexation by the City, or as development occurs, any new territory shall become part of the area covered, provided, however, that Grantee shall not be required to extend service beyond its present System boundaries unless there is a minimum of twenty (20) homes per cable mile as measured from the last fiber node or terminating amplifier, or ten (10) per half mile, etc. Access to Cable Services shall not be denied to any group of potential residential cable Subscribers because of the income of the residents in the area in which such group resides. Grantee shall complete the installation as soon as possibility considering weather conditions. Grantee shall be given twelve (12) months to construct and activate cable plant to service annexed or newly developed areas which meet line extension criteria established in this section.

(a) Any residential unit located within three hundred (300) feet from the closest technically feasible Tap shall be connected to the Cable System at no charge other than the Standard Installation charge. After Service has been established by activating trunk and/or distribution cables which are within three hundred (300) feet from the closest technically feasible Tap for a requesting Subscriber, Grantee shall provide Cable Service to any requesting Subscriber within that Service Area within sixty (60) days from the date of request weather permitting, provided that the Grantee is able to secure all rights-of-

way necessary to extend Service to such Subscriber within such sixty (60) day period on reasonable terms and conditions.

(b) If a Subscriber requires a non-Standard Installation (*e.g.* a Drop in excess of three hundred (300) feet), Grantee shall, upon request, provide a quote for construction of the non-Standard Installation and shall establish a mutually acceptable payment schedule not to exceed one (1) calendar year. For residential Installations only, Grantee shall be responsible for all costs of the Standard Installation and the Subscriber shall be responsible for the Actual Cost of any construction required beyond the cost of the Standard Installation.

(c) Where the density equivalent is less than of six (6) dwelling units per one-quarter cable mile, as measured from the closest technically feasible Tap on the Cable System, the City may request that Grantee provide the City with a free written estimate of the Actual Cost of any required construction. Such written request will be provided to City within thirty (30) days of such request. If the City so elects in its sole discretion, the City and Grantee, on mutually agreeable terms, may agree that Grantee shall complete construction to a specified area where the density is below six (6) dwelling units per one quarter cable mile so long as the City is willing to be responsible for one half (1/2) of the Actual Cost of any construction. The City and Grantee agree to work cooperatively to share work orders and related written materials necessary to allow verification of the cost sharing set forth in this paragraph.

8.) Written Notice. All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of Grantee or the City's Administrator of this Franchise or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to City

City of Becker
Attn: City Administrator
12060 Sherburne Avenue
Becker, MN 55308
Ph. (763)-200-4244

If to Grantee:

Nancy Vogel
Director of Regulatory Finance
Midcontinent Communications
3901 North Louise Avenue
Sioux Falls, SD 57107
Ph. (605) 357-5485
notices@mimi.net

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

9.) Drops to Public Buildings. Grantee shall provide Standard Installation of one (1) cable Drop, one (1) cable outlet, and monthly Basic Cable Service and the next highest penetrated level of Service generally available to all Subscribers, and if applicable, Converters or similar terminal equipment necessary to receive such Cable Services without charge (“Complimentary Service”) to all City office buildings, libraries and all public and accredited private elementary and secondary schools, excluding home schools, located in the City, and such other public institutions which the City may designate in writing to Grantee in substitution thereof or addition thereto. The current list is attached hereto as Exhibit A.

Redistribution of Complimentary Service provided pursuant to this section shall be allowed within the building to which the service is provided and so long as the redistribution is not to another separate entity. Additional Drops and/or outlets in any of the above locations will be provided by Grantee at the cost of Grantee's time and material. Alternatively, at the institution's request, said institution may add outlets at its own expense, as long as such installation meets Grantee's technical standards. Nothing herein shall be construed as requiring Grantee to extend the System to serve additional institutions as may be designated by the City. Grantee shall have one (1) year from the date of City Council designation of additional institution(s) to complete construction of the Complimentary Service, subject to weather related issues and Grantee's access to any necessary rights of ways, easements, and the public building on reasonable terms and conditions.

10.) Public, Educational and Government (PEG) Access.

(a) Grantee shall offer to each of its Subscribers who receive all or any part of the Cable Services offered on the System, reception of two (2) PEG Access Channels, which shall be fully available to every Basic Cable Service tier Subscriber at no additional charge beyond the charge imposed for the Basic Cable Service tier.

(b) Grantee shall use its best efforts to limit any Public Access Channel location changes to times only when absolutely necessary. In those instances when an Access Channel is moved, Grantee shall provide adequate notice to the public at least Ninety (90) days before and after any change of location advising the public of the new location for the programming.

(c) Whenever the PEG Access Channels, are in use during eighty percent (80%) of the weekdays, Monday to Friday, for eighty percent (80%) of the time during any consecutive three (3) hour period for six (6) weeks running, and there is demand for use of an additional channel for the same purpose, the Grantee shall then have six (6) months in which to provide a new specially designated PEG Access Channel for the same purpose, provided that provision of the additional channel or channels must not require the cable system to install converters.

(d) PEG Access Operating Support. Within one-hundred twenty (120) days after the City notifies Grantee of its election to institute a PEG Access Fee, Grantee shall pay

the City the amount the City has elected as the total fee to be used solely to support PEG Access in a manner consistent with Applicable Law (“PEG Fee”). Grantee shall be authorized to collect a monthly amount not to exceed Two Dollars (\$2.00) per month per subscriber to be reimbursed for the amount of the PEG Fee provided to the City by Grantee. This monthly reimbursement shall cease at such time as Grantee is made whole for the full PEG Fee amount. The City need not expend the PEG Fees immediately but rather may place them in a designated account to be used for PEG capital purchases over the term of the Franchise. Grantee agrees that it will not offset or reduce its payment of past, present or future Franchise Fees required as a result of its obligation to remit the PEG Access support. The PEG Fee shall not be deemed “Franchise Fee” as defined in 47 U.S.C. § 542. The PEG Fee may be categorized, itemized, and passed through to Subscribers as permissible, in accordance with 47 U.S.C. §542 or other Applicable Laws.

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

11.) Emergency Alert System. At all times during the term of this Franchise, the Grantee shall provide and maintain an Emergency Alert System (EAS) consistent with applicable Federal law and regulation including 47 C.F.R., Part 11.

SECTION 3.

CONSTRUCTION STANDARDS

1.) Construction Codes and Permits.

(a) Grantee shall obtain and pay for all necessary permits from City before commencing any construction upgrade or extension of the System, including the opening or disturbance of any Street, or private or public property within City but excluding any permit fees for Drops. Grantee shall strictly adhere to all State and local laws, the City Code, ordinance or any regulation of City, and building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the System in City and give due consideration at all times to the aesthetics of the property.

(b) The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise and to make such tests at its own expense as it shall find necessary to ensure compliance with the terms of the Franchise and applicable provisions of local, state and federal law.

2.) Repair of Streets and Property. Any and all Streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee's work, consistent with applicable City Code. If Grantee shall fail to promptly perform the restoration

required herein, the City shall have the right to pursue such remedies as are provided for in its City Code.

3.) Conditions on Street Use.

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

(b) Consistent with applicable City Code, all System transmission and distribution structures, lines and equipment erected by the Grantee within City shall be located within the City's corporate limits shall be located so as not to obstruct or interfere with the proper use of Streets, alleys, and other public ways and places, and to cause minimum interference with the rights of property owners who abut any of the said Streets, alleys, and other public ways and places, and not to interfere with existing public utility installations. The Grantee shall also file updates of such maps, plats, and permanent records annually if changes have been made in the System.

(c) Consistent with applicable City Code, if at any time during the period of this Franchise, the City shall elect to alter, or change the grade or location of any Street, alley or other public way, the Grantee shall, at its own expense, upon reasonable notice by the City, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System, and in each instance comply with the standards and specifications of the City. If public funds are available to any company using such Street, easement, or right of way for purposes of defraying the cost of any of the foregoing, such funds shall be also made available to the Grantee on a proportional basis.

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

(e) The Grantee shall, on request of any Person holding a moving permit issued by the City, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid in advance by the Person requesting the same, and the Grantee shall be given not less than ten (10) days advance notice to arrange for such temporary changes.

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

4.) Undergrounding of Cable.

- (a) Grantee shall be granted access to any easements granted to a public utility, municipal utility, or utility district in any areas annexed by the City or new developments.
 - (b) In those areas of the City where transmission or distribution facilities of all the public utilities providing telephone and electric power service are underground, the Grantee likewise shall construct, operate, and maintain its transmission and distribution facilities therein underground.
- 5.) Erection, Removal and Joint Use of Poles. No poles, conduits, or other wire-holding structures shall be erected or installed by the Grantee without prior approval of the City with regard to location, height, type and other pertinent aspects.
- 6.) Trimming of Trees. Grantee shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over Streets any public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee. Franchise Authority representatives shall have authority to supervise and reasonably approve all trimming conducted by Grantee except in cases of emergency where advance notification of required tree trimming may not be possible.
- 7.) Safety Requirements. The Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

SECTION 4.

SYSTEM PROVISIONS

- 1.) Operation and Maintenance of System. The Grantee shall render effective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. The System shall be capable of providing at least 80 downstream video channels. Grantee shall construct, install, operate, and maintain its System in a manner consistent with all Applicable Laws and the FCC technical standards. In addition, Grantee shall make available to the City, upon request, a written report of the results of the Grantee's periodic proof of performance tests conducted pursuant to FCC standards and guidelines.
- (c) Repeated and verified failure to maintain specified technical standards shall constitute a material breach of the Franchise.
 - (d) All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended, as well as all other Applicable Laws.
 - (e) All installation of electronic equipments at the time of installation shall be of permanent nature, durable and installed in accordance with the provisions of the National Electrical Safety Code and National Electric Code, as amended, and as said code may be amended from time to time.

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

(g) All programming decisions remain the sole discretion of Grantee subject to the City's rights pursuant to 47 U.S.C. § 545. Grantee shall comply with federal law regarding notice to City and Subscribers prior to any Channel additions, deletions, or realignments, subject to City's rights pursuant to 47 U.S.C. § 545.

2.) Technical Standards. The System shall comply, at minimum, with the technical standards promulgated by the FCC's rules and regulations and found in Title 47, Section 76.601 to 76.617, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference.

3.) Special Testing. City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. The City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing. Before ordering such tests, Grantee shall be afforded thirty (30) days to correct problems or complaints upon which tests were ordered. The City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, City wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted by a qualified engineer selected by City. In the event that special testing is required by City to determine the source of technical difficulties, the cost of said testing shall be borne by the Grantee if the testing reveals the System does not meet FCC technical specifications. If the testing reveals the System does meet FCC technical standards, then the cost of said test shall be borne by City.

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

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

6.) FCC Reports. Upon request, the results of tests required to be filed by Grantee with the FCC shall also be copied to the City and located in the Grantee's public file.

SECTION 5.

SERVICE PROVISIONS

- 1.) Regulation of Rates. The City reserves the right to Petition the FCC to allow it to regulate rates for Basic Cable Service and any other services offered over the Cable System, to the extent not prohibited by Applicable Laws.
- 2.) Sales Procedures. Grantee shall not exercise deceptive sales procedures when marketing its Cable Services within City. Grantee shall have the right to market its Cable Services door-to-door during reasonable hours consistent with local ordinances and regulation.
- 3.) Disconnection. There shall be no charge for disconnection of an installation, service or outlet. If any Subscriber fails to pay a properly due monthly Subscriber Fee, or any other properly due fee or charge, Grantee may disconnect the Subscriber's service outlet, provided, however, that such disconnection shall not be effected until after the later of (i) 30 days after the due date of said delinquent fee or charge, or (ii) five days after delivery to Subscriber written notice of intent to disconnect. If a Subscriber pays before expiration of the later of (i) or (ii), Grantee shall not disconnect. After disconnection, upon payment in full of the delinquent fee or charge and the payment of a reconnection charge, Grantee shall promptly reinstate the Subscriber's cable service.
- 4.) Subscriber Inquiry and Complaint Procedures. Subject to the privacy provisions of 47 U.S.C. § 521 et seq. (1993), the City and Grantee shall prepare and maintain written records of all 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 Grantee. Grantee shall upon request by City provide the City with a written summary of such complaints and their resolution on a bi-annual basis.
- 5.) Grantee to Maintain Toll Free Telephone Contact. Grantee shall have a publicly listed toll-free telephone number and be operated so as to receive Subscriber complaints and requests on a twenty-four (24) hour-a-day, seven (7) days-a-week basis. Excluding conditions beyond the control of the Grantee, Grantee will begin working on service interruptions promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The Grantee must begin actions to correct other service problems the next business day after notification of the service problem.
- 6.) Refund Policy. In the event a Subscriber established or terminates service and receives less than a full month's service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which service was rendered to the number of days in the billing.
- 7.) Continuity of Service. Grantee shall credit Subscribers on a pro rata basis for an interruption of Cable Services of more than twenty-four hours except for those causes deemed a force majeure.

SECTION 6.

OPERATION AND ADMINISTRATION PROVISIONS

1.) Indemnification of City.

(a) Grantee shall indemnify, defend and hold the City, and their officers, boards, commissions, agents and employees (collectively the “Indemnified Parties”) harmless from and against any and all lawsuits, claims, causes of action, actions, liability, demands, damages, judgments, settlements, losses, expenses (including reasonable attorneys’ fees) and costs of any nature that any of the Indemnified Parties may at any time, directly or indirectly, suffer, sustain or incur arising out of, based upon or in any way connected with the grant of this Franchise to Grantee, the operation of Grantee’s System and/or the acts and/or omissions of Grantee or its agents or employees, whether or not pursuant to the Franchise. This indemnity shall apply, without limitation, to any action or cause of action for invasion of privacy, defamation, antitrust, errors and omissions, theft, fire, violation or infringement of any copyright, trademark, trade names, service mark, patent, or any other right of any Person, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise, but shall exclude any claim or action arising out of the negligence, or willful misconduct of the Indemnified Parties or related to any City programming or other access programming for which the Grantee is not legally responsible or any assertion of a Franchise violation by City. Nothing in this Franchise relieves a Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regarding, or changing the line of a Street or public place or with the construction or reconstruction of a sewer or water system.

(b) City or Indemnified Parties as applicable shall:

- (1) Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right;
- (2) Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
- (3) Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to paragraph two (2) above.

2.) Insurance. Grantee shall maintain in full force and effect at its sole expense a comprehensive general liability insurance policy, including contractual liability coverage. As a part of the indemnification provided in Section 6.1, but without limiting the foregoing, Grantee shall file within sixty (60) days of its acceptance of this Franchise, and at all times thereafter maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including contractual liability coverage, in protection of the City in its capacity as such.

The policies of insurance shall be in the sum of not less than One Million Dollars (\$1,000,000) for personal injury or death of any one Person, and Two Million Dollars (\$2,000,000) for personal injury or death of two or more Persons in any one occurrence, One Million (\$1,000,000) for property damage to any one Person and Two Million Dollars (\$2,000,000) for property damage resulting from any one act or occurrence, or upon written notice from Grantor to Grantee, such greater amount as may be specified as the maximum tort liability limit for political subdivisions pursuant to Minnesota Statutes Section 466.04, as the same may be amended from time to time. Grantee shall also obtain and provide evidence of workers compensation insurance as provided by Applicable Laws.

All insurance policies called for herein shall be in a form satisfactory to the City with a company licensed to do business in the State of Minnesota, and shall require thirty (30) days written notice of any cancellation to both the City and the Grantee. The Grantee shall, in the event of any such cancellation notice, obtain, pay all premiums for, and file with the City, written evidence of the issuance of replacement policies within thirty (30) days following receipt by the City or the Grantee of any notice of cancellation.

3.) Franchise Fee.

(a) Grantee will pay the City an annual franchise fee in the amount of (5%) five percent of Grantee's annual Gross Revenues.

(b) The franchise fee shall be payable monthly. The payment shall be made within thirty (30) days of the end of each of Grantee's fiscal month, together with a brief report accurately setting forth the basis for computation including an accurate listing of the number of subscribers served.

The City shall have the right to audit, at the City's expense, any or all reports provided by the Grantee at any time. In the event of any underpayment Grantee shall promptly pay to the City such deficiency, plus interest on the amount of such underpayment calculated at the rate of twelve (12%) per annum.

(c) The City reserves the right upon 90 days written notice to the Grantee, to raise the franchise fee to no more than the maximum amount permitted under applicable state or federal laws in the event that such laws in the future permit a franchise fee greater than 5% of Grantee's annual gross revenues. Pursuant to Federal and State regulations and laws, the Becker City Council shall consider any franchise increase at a public hearing after which it shall take a public vote on the issue of the proposed franchise fee increase.

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

SECTION 7.

REVOCATION, ABANDONMENT, AND SALE OR TRANSFER

1.) Security Fund.

(a) Within fourteen (14) days of receipt of a Notice of Finding from City of an alleged breach of this Franchise, Grantee shall provide, from a financial institution mutually acceptable to the parties, and in a form and substance mutually acceptable to the City, one (1) irrevocable and unconditional Letter of Credit or a Performance Bond in the sum of Twenty Thousand and No/100 Dollars (\$20,000.00) for the benefit of the City to ensure compliance by Grantee with all terms of the Franchise and the payment by Grantee of any claim, penalties, damages, liens and taxes due the City under the Franchise (“Security Fund”). The Letter of Credit shall be provided by Grantee regardless of whether Grantee disputes the alleged violation. Any failure by Grantee to provide the Security as required herein shall constitute a separate breach of this Franchise. Any interest on this deposit shall be paid to the Grantee. Once the proceeding addressing the alleged violation has been completed the Grantee shall be relieved of maintaining the Security Fund until such time as another alleged violation notification is received by Grantee at which time the process shall begin again.

(b) The Security Fund shall provide that funds will be paid to City, upon written demand of City, and after the procedures of this Section have been complied with in payment for liquidated damages charged pursuant to this Section or in payment for any monies owed by Grantee pursuant to its obligations under this Franchise.

(c) City, in its sole discretion may charge to and collect from the Security Fund the following mutually agreed upon liquidated damages:

(1) For failure to timely complete system upgrades or line extensions as provided in this Franchise unless the City has approved delays, failure to meet the customer service standards and requirements as set forth in this Franchise and the exhibits hereto the penalty shall be Two Hundred Fifty and No/100 Dollars (\$250) daily fine per day for each day, or part thereof, such failure occurs or continues.

(2) For failure to comply with the terms and conditions of the Franchises with the exception of those terms as outlined in Section 7.1(c), the penalty shall be One Hundred and No/100 Dollars (\$100) daily fine per day for each day, or part thereof, such failure occurs or continues.

(d) City shall follow the procedures outlined below:

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

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

(2) Whenever notice of an alleged violation has been received by Grantee, Grantee may, within thirty (30) days of local receipt of notice, notify the issuer of the notice that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee shall toll the running of the time frames for cure and the accrual of any penalties herein and shall specify with particularity the matters disputed by Grantee. City shall hear Grantee's dispute at its next regularly scheduled meeting or as soon thereafter as possible. Grantee shall be afforded a reasonable notice of the meeting and afforded a reasonable opportunity to participate in and be heard at the meeting. City shall supplement its decision with a written order sustaining or overruling the decision, and shall specify with particularity the basis for its decision.

(3) Upon determination that no violation has taken place, City shall withdraw the notice alleging a violation. Upon determination that a violation has occurred, Grantee shall have the balance of its initial thirty (30) day cure period, measured from the date the Grantee disputed the notice of violation to cure said violation before penalties shall accrue.

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

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

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

2.) Franchise Violation and City's Right to Revoke.

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

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

(b) Whenever notice of an alleged violation has been received by Grantee, Grantee may, within thirty (30) days of local receipt of notice, notify City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee to City shall toll the running of the time frames and the accrual of penalties herein and shall specify with particularity the matters disputed by Grantee. City shall hear Grantee's dispute at the next regularly scheduled Council meeting. City shall supplement the Council decision with written findings of fact.

(c) If Grantee fails either to cure the alleged violation or breach within the time prescribed or to commence correction of the violation or breach within the time prescribed and thereafter diligently pursue correction of such alleged violation or breach, the City shall then give written notice of not less than fourteen (14) days of a public hearing to be held before the Council. Said notice shall specify the violations or breaches alleged to have occurred.

(d) At the public hearing, the Council shall hear and consider relevant evidence and thereafter render findings and its decision.

(e) In the event the Council finds that a material violation or breach exists and that Grantee has not cured the same in a satisfactory manner or has not diligently commenced to cure of such violation or breach after notice thereof from City and is not diligently proceeding to fully cure such violation or breach, the Council may revoke and terminate the Franchise or impose liquidated damages assessable from the security fund in accordance with Section 7.1(c). Grantee may appeal such action to any court and/or regulatory agency of competent jurisdiction and the Franchise shall remain in effect during the pendency of such appeal(s).

(f) To avoid confusion, the same procedure set forth in Section 7.1(d) and Section 7.2 of this Franchise need not be duplicated.

3). Franchise Non-Transferable.

(a) Grantee shall not voluntarily, by operation of law or otherwise, sell, assign, transfer, lease, sublet or otherwise dispose of, in whole or in part, the Franchise and/or Cable System, without the prior written consent of the Council and then only upon such reasonable terms and conditions as allowed under Applicable Laws, which consent shall not be unreasonably denied or delayed. Failure to comply with this Section 7.3 shall be grounds for termination of this Franchise.

(b) Without limiting the nature of the events requiring the Council's approval under this Section, the following events shall be deemed to be a sale, assignment or other transfer of the Franchise and/or Cable System requiring compliance with this section: (i) the sale,

assignment or other transfer of all or a majority of Grantee's assets or the assets comprising the Cable System to any Person; (ii) the merger of the Grantee or any of its parents with or into another Person (including the merger of Grantee or any parent with or into any parent or subsidiary corporation or other Person); (iii) the consolidation of the Grantee or any of its parents with any other Person; (iv) the creation of a subsidiary corporation or other entity to which the Franchise and/or Cable System is transferred or assigned; (v) the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in Grantee or any of its parents by one (1) or more of its existing shareholders, partners, members or other equity owners so as to create a new controlling interest in Grantee; and (vi) the issuance of additional capital stock or partnership, membership or other equity interest by Grantee or any of its parents so as to create a new controlling interest in Grantee. The term "controlling interest" as used herein is not limited to majority equity ownership of the Grantee, but also includes actual working control over the Grantee, any parent of Grantee and/or the System in whatever manner exercised.

(c) Grantee shall notify City in writing of any foreclosure or any other judicial sale of all or a substantial part of the property and assets comprising the Cable System of the Grantee or upon the termination of any lease or interest covering all or a substantial part of said property and assets.

(d) For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, Grantee agrees to provide FCC Form 394 as part of any request for transfer or change of control under this Franchise. If, after considering the legal, financial, character and technical qualities of the transferee and determining that they are satisfactory, the City finds that such transfer is acceptable, the City shall permit such transfer and assignment of the rights and obligations of such Franchise. The consent of the City to such transfer shall not be unreasonably denied.

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

(f) In addition to the aforementioned requirements in this Section 7.3 the City and Grantee shall, at all times, comply with the requirements of Minnesota Statutes Section 238.083 regarding the sale or transfer of a franchise and with all other Applicable Laws.

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

5.) Abandonment or Removal of Franchise Property.

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

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

(c) Upon abandonment of Grantee's property in place, the Grantee, if required by the City, shall submit to City a bill of sale and/or other instrument, satisfactory in form and content to the City, transferring to the City the ownership of Grantee's property abandoned.

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

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

6.) Receivership and Foreclosure.

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

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

SECTION 8.

MISCELLANEOUS PROVISIONS

1.) Franchise Renewal. Any renewal of this Franchise shall be done in accordance with applicable federal, state and local laws and regulations.

2.) Franchise Extension. Nothing in this Franchise shall be construed to prohibit an extension or extensions of the Franchise for any length of time, in the sole discretion of the City.

3.) Work Performed by Others. All provisions of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise. Grantee shall provide notice to the Member Cities of the name(s) and address of any entity, other than Grantee, which performs substantial services pursuant to this Franchise.

4.) Amendment of Franchise Ordinance. Grantee and the City may agree, from time to time, to amend this Franchise. Such written amendments may be made at any time if the City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws. The City shall act pursuant to local law pertaining to the ordinance amendment process. Grantee expressly acknowledges and agrees that the City hereby retains all of its police powers and the City may unilaterally amend the Franchise in the exercise of its police powers and Grantee shall comply with said Franchise as may be amended; provided, however, that the City hereby agrees to use reasonable efforts to address public health, welfare, and safety needs without resorting to amending the Franchise and in all cases shall not act in a manner which materially impairs the rights and/or privileges granted to the Grantee pursuant to the Franchise.

5.) Subscriber Privacy. Grantee shall comply with the terms of 47 U.S.C. §551 relating to the protection of Subscriber privacy.

(c) 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 permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. The written permission must be for a limited period of time not to exceed one (1) year which renewable at the option of the Subscriber. No penalty may be invoked for a Subscriber's failure to provide or renew the authorization. The authorization is revocable at any time by the Subscriber without penalty of any kind. The permission must be required for each type or classification of cable communications activity planned.

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

(e) Written permission from the Subscriber shall not be required for the systems conducting system wide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purposes of billing. Confidentiality of this information is subject to paragraph (a) above.

6.) Rights of Individuals.

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

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

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

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

7.) Compliance with Applicable Laws. If any Applicable Law shall require or permit City or Grantee to perform any service or act to shall prohibit City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof; either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City shall conform to State laws and rules regarding cable communications to later than one (1) year after they become effective, unless otherwise stated, and to conform to federal laws and regulations regarding cable as they become effective.

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

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

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

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

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

9.) Grantee Acknowledgment of Validity of Franchise. Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary.

10.) Rights Reserved to City.

(a) In addition to any rights specifically reserved to the City by this Franchise, the City reserves to itself every right and power which is required to be reserved by a provision of the Franchise.

(b) The City shall have the right to waive any provision of the Franchise, except those required by Applicable Laws, if the City, in its sole opinion, determines (1) that it is in the public interest to do so, and (2) that the enforcement of such provision will impose an undue hardship on the Grantee or the Subscribers in all cases subject to Section 8.11 herein. Waiver of any provision in one (1) instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of the Franchise unless the statement so recites.

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

12.) Force Majeure; Grantee's Inability To Perform. In the event Grantee's performance of any of the terms, conditions or obligations required by this Franchise is prevented by a cause or event not within Grantee's control, such inability to perform shall be deemed excused for the period of such inability and no penalties or sanctions shall be imposed as a result thereof. For the

purpose of this Section, causes or events not within the control of the Grantee shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, equipment availability, unseasonal and/or unusual weather conditions, restraints imposed by order of a governmental agency or court, failure or loss of utilities, explosions, damage to the System such as fiber cuts, acts of public enemies, and natural disasters such as floods, earthquakes, landslides and fires.

13.) Equal Opportunity. Grantee is an Equal Opportunity/Affirmative Action employer.

SECTION 9.

PUBLICATION, EFFECTIVE DATE AND ACCEPTANCE

1.) Publication; Effective Date. This Franchise shall be published in accordance with applicable Minnesota law. The effective date of this Franchise shall be the date of acceptance by Grantee in accordance with the provisions of Section 9.2 (“Effective Date”).

2.) Acceptance.

(c) Grantee shall accept this Franchise by executing same. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes. With its acceptance, Grantee shall also deliver any insurance certificates required herein that have not been previously delivered. In the event acceptance does not take place, this Franchise and any and all rights previously granted to Grantee shall be null and void.

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

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

- (1) This Franchise will be properly executed and acknowledged by Grantee and delivered to the City.
- (2) With its acceptance, Grantee shall also deliver any insurance certificates required herein that have not previously been delivered.

Passed and adopted this ____ day of _____, 2019.

ATTEST:

CITY OF BECKER, MINNESOTA

By: _____

By: _____

Its: _____

Its: _____

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

MIDCONTINENT COMMUNICATIONS
BY: Midcontinent Communications Investor, LLC
ITS: Managing Partner

Dated: _____

By: _____

Its: _____

*By Midcontinent Communications Investor, LLC,
Managing Partner of Midcontinent Communications*