

**W&M** - Your Committee, to whom was referred an ordinance amending Appendix H of the Minneapolis Code of Ordinances relating to Minneapolis Cable Communication Franchises and adopting and granting new Cable Franchise between the City of Minneapolis, Minnesota and Qwest Broadband Services, Inc., D/B/A CenturyLink, now recommends that said ordinance be given its second reading for amendment and passage.

Further, that the Findings of Fact and Recommendation as prepared by the City Attorney related to the CenturyLink Cable Franchise Application be adopted.

Certified as an official action of the City Council: *[Signature]*

RECORD OF COUNCIL VOTE (X INDICATES VOTE)													
COUNCIL MEMBER	AYE	NAY	ABSTAIN	ABSENT	VOTE TO OVERRIDE	VOTE TO SUSTAIN	COUNCIL MEMBER	AYE	NAY	ABSTAIN	ABSENT	VOTE TO OVERRIDE	VOTE TO SUSTAIN
Reich	X						Glidden		X				
Gordon	X						Cano	X					
Frey	X						Bender	X					
B Johnson	X						Quincy	X					
Yang	X						A Johnson	X					
Warsame	X						Palmisano	X					
Goodman	X												

ADOPTED MAY 15 2015 DATE

APPROVED  NOT APPROVED  VETOED

ATTEST *Jackie Hanson*  
*Interim Asst.* CITY CLERK

*[Signature]* MAY 21 2015  
MAYOR HODGES DATE

1st Reading

4/3/2015

Referred to (name of) Committee

W & M

Public Hearing

4/27/2015

2nd Reading and Final Passage

5/15/2015

2015-Or- 013

**AN ORDINANCE  
of the  
CITY OF  
MINNEAPOLIS**

By Quincy

**Amending Appendix H of the Minneapolis Code of Ordinances relating to the Minneapolis Cable Communication Franchises and adopting and granting new Cable Franchise between the City of Minneapolis, Minnesota and Qwest Broadband Services, Inc., D/B/A CenturyLink.**

The City Council of the City of Minneapolis do ordain as follows:

Section 1. That Appendix H of the Minneapolis Code of Ordinances be amended by adding a new Chapter 2 to read as follows:

**THIS CABLE FRANCHISE AGREEMENT** (the "Franchise Agreement") is entered into by and between the City of Minneapolis, Minnesota ("City"), a municipal corporation, and Qwest Broadband Services, Inc., d/b/a CenturyLink a wholly owned subsidiary of CenturyLink, Inc. (hereinafter, "Grantee").

**Section 1. Scope of Franchise**

**1.1 Grant of Franchise.** (a) The City hereby grants to Grantee, a Delaware corporation having its principal place of business in Minnesota in Minneapolis, a non-exclusive Franchise to install, construct, operate and maintain a cable communications system to provide cable service under such terms and conditions as are set forth in this Franchise. This franchise does not grant Grantee any right of eminent domain.

(b) Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable City ordinance existing as of the Effective Date.

(c) Each and every term, provision or condition herein is subject to the provisions of state law, federal law, the Charter of the City, and the ordinances and regulations enacted pursuant thereto. The Charter and Code of Ordinances of the City, as the same may be amended from time to time, are hereby expressly incorporated into this Franchise as if fully set out herein by this reference. Notwithstanding the foregoing, the City may not unilaterally alter the material rights and obligations of Grantee under this Franchise.

(d) This Franchise shall not be interpreted to prevent the City from imposing additional lawful conditions, including additional compensation conditions for use of the Rights-of-Way, should Grantee provide service other than cable service.

(e) The parties acknowledge that Grantee intends that Qwest Corporation ("QC"), an affiliate of Grantee, will be primarily responsible for the construction and installation of the facilities in the Rights-of-Way, constituting the cable communications system, which will be utilized by Grantee to provide cable service. Grantee promises, as a condition of exercising the privileges granted by this Franchise, that any affiliate of the Grantee, including QC, directly or indirectly involved in the construction, management, or operation of the cable communications system will comply with all applicable federal, state and local laws, rules and regulations regarding the use of the City's rights of way. The City agrees that to the extent QC violates any applicable laws, rules and regulations, the City shall first seek compliance directly from QC. In the event, the City cannot resolve these violations or disputes with QC, or any other affiliate of Grantee, then the City may look to Grantee to ensure such compliance. Failure by Grantee to ensure QC's or any other affiliate's compliance with applicable laws, rules and regulations shall be deemed a material breach of this Franchise by Grantee. To the extent Grantee constructs and installs facilities in the rights-of-way, such installation will be subject to the terms and conditions contained herein.

(f) No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;

(2) Any permit, agreement, or authorization required by the City for right-of-way users in connection with operations on or in rights-of-way or public property including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

(g) This Franchise is intended to convey limited rights and interests only as to those rights-of-way in which the City has an actual interest. It is not a warranty of title or interest in any right-of-Way; it does not provide the Grantee with any interest in any particular location within the right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

(h) This Franchise does not authorize Grantee to provide telecommunications service, or to construct, operate or maintain telecommunications facilities. This Franchise is not a bar to imposition of any lawful conditions on Grantee with respect to telecommunications, whether similar, different or the same as the conditions specified herein. This Franchise does not relieve Grantee of any obligation it may have to obtain from the City an authorization to provide telecommunications services, or to construct,

operate or maintain telecommunications facilities, or relieve Grantee of its obligation to comply with any such authorizations that may be lawfully required.

**1.2 Franchise Area.** This Franchise is granted for the entire corporate boundaries of the City as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means during the term of the Franchise.

(a) *Reasonable Build-Out of the Entire City.* The Parties recognize that Grantee, or its affiliate, has constructed a legacy communications system throughout the City that is capable of providing voice grade service. The Parties further recognize that Grantee or its affiliate must expend a significant amount of capital to upgrade its existing legacy communications system and to construct new facilities to make it capable of providing cable service. Further, there is no promise of revenues from cable service to offset these capital costs. The Parties agree that the following is a reasonable build-out schedule taking into consideration Grantee's market success and the requirements of Minnesota state law.

(1) Complete Equitable Build-Out. Grantee aspires to provide cable service to all households within the City by the end of the initial term of this Franchise. In addition, Grantee commits that a significant portion of its investment will be targeted to areas below the median income in the City.

(2) Initial Minimum Build-Out Commitment. Grantee agrees to be capable of serving a minimum of fifteen percent (15%) of the City's households with cable service during the first two (2) years of the initial Franchise term, provided, however that Grantee will make its best efforts to complete such deployment within a shorter period of time. This initial minimum build-out commitment shall include deployment to households in every Ward in the City and to a significant number of households below the medium income in the City. Nothing in this Franchise shall restrict Grantee from serving additional households in the City with cable service;

(3) Quarterly Meetings. Commencing January 1, 2016, and continuing throughout the term of this Franchise, Grantee shall meet quarterly with the Cable Officer of the City. At each quarterly meeting, Grantee shall present information acceptable to the City (to the reasonable satisfaction of the City) showing the number of households Grantee is presently capable of serving with cable service and the number of households that Grantee is actually serving with cable service. Grantee shall also present information acceptable to the City (to the reasonable satisfaction of the City) that Grantee is equitably serving all portions of the City in compliance with section 1.3 below. In order to permit the City to monitor and enforce the provisions of this section and other provisions of this Franchise, the Grantee shall promptly, upon reasonable demand, show to the City (to the City's reasonable satisfaction) maps and provide other documentation showing exactly where within the City the Grantee is currently providing cable service;

(4) Additional Build-Out Based on Market Success. If, at any quarterly meeting, Grantee is actually serving twenty seven and one-half percent (27.5%) of the households capable of receiving cable service, then Grantee agrees the minimum build-out commitment shall increase to include all of the households then capable of receiving cable service plus an additional fifteen (15%) of the total households in the City, which Grantee agrees to serve within two (2) years from the quarterly meeting; provided, however, the Grantee shall make its best efforts to complete such deployment within a shorter period of time. For example, if, at a quarterly meeting with the Cable Officer, Grantee shows that it is capable of serving sixty percent of the households in the City with cable service and is actually serving thirty percent of those households with cable service, then Grantee will agree to serve an additional fifteen percent of the total households in the City no later than 2 years after that quarterly meeting (a total of 75% of the total households). This additional build-out based on market success shall continue until every household in the City is served;

(5) Line Extension. Grantee shall not have a line extension obligation until the first date by which Grantee is providing Cable Service to more than fifty percent (50%) of all subscribers receiving facilities based cable service from both the Grantee and any other provider(s) of cable service within the City. At that time, the City, in its reasonable discretion and after meeting with Grantee, shall determine the timeframe to complete deployment to the remaining households in the City, including a density requirement that is the same or similar to the requirement of the incumbent franchised cable operator.

**1.3 Service Discrimination Prohibited.** Grantee is prohibited from denying access to cable service to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides. Grantee shall not discriminate among subscribers and potential subscribers to cable service.

**1.4 Reservation of City Right of Way Rights.** Nothing in this Franchise shall deprive the City of any rights or privilege to exercise its police powers in the regulation and control of the use of the rights-of-way. Nothing in this Franchise shall prevent the City from constructing, maintaining, or repairing any City rights-of-way, or public work or improvement in the City's rights-of-way. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System. However, if any of the Grantee's system will interfere with the construction, maintenance, or repair of any City rights-of-way or public work or improvement in the City's rights-of-way, at its own expense the Grantee shall remove or relocate its system as the City directs except that the City may not discriminate among telecommunication rights-of-way users. Grantee shall be entitled to reimbursement of its relocation costs if made available to other users of the rights-of-way for that project or projects. Should the Grantee fail to remove, adjust or relocate its facilities by the date established by the City Engineer's written notice to Grantee, the City may effect such removal, adjustment or relocation and recover the cost thereof from the Grantee, including all costs and expenses incurred by the City due to Grantee's delay. Throughout this Franchise Agreement, the term "public rights-of-way" or "rights-of-way"

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shall have the meaning set forth in Minn. Stat. § 237.163. If there is a conflict in language between this Franchise Agreement and a local ordinance regulating the use of public rights-of-way, the terms of this Franchise Agreement shall prevail.

**1.5 Competitive Equity.** Notwithstanding anything else in this Franchise, if, during this Franchise Agreement's term any laws, rules, regulations, or governmental authorization would allow a provider of multi-channel video programming or equivalent in the City's rights-of-way to provide multi-channel video programming or equivalent under less burdensome regulations or regulatory structure than Grantee is operating under, the franchise agreement shall be amended to reflect such changes, upon Grantee's written request.

**1.6 Non-Waiver.** Grantee shall not be relieved of its obligations to comply, promptly and completely, with any provision of the Franchise by reason of any failure of the City to promptly enforce compliance with this Franchise, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.

## **Section 2. State Mandated Franchise Terms**

### **2.1 General Provisions.**

(a) *Compliance with Minnesota Statutes.* This Franchise shall comply with all provisions contained in Minnesota Statutes Chapter 238, and as amended.

(b) *Conformance with State and Federal Laws and Rules.* The City and Grantee shall conform to state laws and rules regarding cable communications no later than one (1) year after they become effective, unless otherwise stated. The City and Grantee shall conform to federal laws and regulations regarding cable as they become effective.

(c) *Franchise Term.* This Franchise shall commence on the Effective Date and Terminate on June 30, 2020, unless terminated sooner as hereinafter provided. Any subsequent renewal term of the Franchise shall be limited to not more than fifteen (15) years each. The City shall approve this Franchise through the passage of an ordinance by the City Council and approval of the Mayor, which shall be published in accordance with applicable local and Minnesota law. Within thirty (30) days after enactment of the ordinance granting approval of the Franchise, Grantee shall signify its acceptance of this Franchise by executing a written acceptance of this Franchise. The Effective Date shall be the date of acceptance by Grantee.

(d) *Nonexclusive Franchise.* This Franchise shall be nonexclusive. The City may grant additional franchises consistent with Minnesota Statutes Section 238.08, subdivision 1(b) and 47 U.S.C. § 541.

(e) *Franchise Transfer.* No sale or transfer of the franchise or sale or transfer of stock so as to create a new controlling interest under Minnesota Statutes § 238.083 shall occur without the approval of the City, which will not be unreasonably withheld,

conditioned that the sale or transfer is completed consistent with Minnesota Statutes § 238.083. If allowed under state and federal law, Grantee shall pay all of City's reasonable costs in reviewing and acting upon a transfer application. If the cable communications system is offered for sale, the parties shall comply with any lawful requirements of applicable law regarding the City's right to purchase the cable communications system.

(f) *Audit.* The City shall have the right to audit the Grantee's accounting and financial records required to calculate the City's franchise fees upon reasonable notice; provided, however, that any such inspection shall take place within three (3) years from the date the City receives the payment, after which period any such payment shall be considered final. The Grantee shall file annual reports with the City detailing gross subscriber revenues and other information the City deems appropriate.

(g) *Public Inspection.* The Grantee shall make available for public inspection: (1) the length and terms of residential subscriber contracts; (2) the current subscriber charges; and (3) the procedure by which subscriber charges are established, unless such a provision is contrary to state or federal law.

(h) *Franchise Administration.* The City shall notify Grantee of the office or officer of the City responsible for the continuing administration of the Franchise.

(i) *Indemnification.* The Grantee shall indemnify, defend and hold harmless the City, its officers, boards, commissions, councils, elected officials, agents and employees (collectively the "Indemnitees") from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Grantee's construction, operation, maintenance or removal of the Cable System, including, but not limited to, reasonable attorneys' fees and costs, provided that the City shall give the Grantee written notice of its obligation to indemnify and defend the City within thirty (30) calendar days of receipt of a claim or action pursuant to this section, or within fifteen (15) calendar days upon receipt of a lawsuit. If the City determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the City.

(1) The Grantee's obligation to indemnify Indemnitees under this Franchise Agreement shall extend to claims, losses, and other matters covered hereunder that are caused or contributed to by the negligence of one or more Indemnitees. However, in such case the obligation to indemnify shall be reduced in proportion to the negligence of the Indemnitees. An example of such reduction is as follows:

a. Assume an incident occurs for which the Grantee is eighty-five percent (85%) at fault and Indemnitees are fifteen percent (15%) at fault. The total amount due and owing a third party from the resulting claim is one hundred thousand dollars (\$100,000). The Grantee's obligation to indemnify is eighty-five percent (85%) of \$100,000, or \$85,000.

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b. Grantee shall contemporaneously with this Franchise execute an Indemnity Agreement in a form acceptable to the City, which shall indemnify, defend and hold the City harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses arising out of the actions of the City in granting this Franchise. This obligation includes any claims by another franchised cable operator against the City that the terms and conditions of this Franchise are less burdensome than another franchise granted by the city or that this Franchise does not satisfy the requirements of applicable federal, state, or local law(s).

(j) *Insurance.* The Grantee shall carry insurance, and provide to the City certificates of insurance designating the City and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section, to protect the Grantee and the City from and against any and all claims, demands, actions, judgments, costs, expenses, and liabilities which may arise or result, directly or indirectly, from or by reason of the loss, injury, claim, or damage, in the following amounts:

(1) Commercial General Liability insurance with limits of at least one million dollars (\$1,000,000) general aggregate, one million dollars (\$1,000,000) products - completed operations one million dollars (\$1,000,000) personal and advertising injury, fifty thousand (\$50,000) each occurrence fire damage and five thousand (\$5,000) medical expense any one person. The policy shall be on an "occurrence" basis, shall include Contractual liability coverage and the City shall be named an additional insured.

(2) Commercial Automobile Liability insurance covering all owned, non-owned and hired automobiles with limits of at least five hundred thousand dollars (\$500,000) per accident.

The Grantee shall also carry insurance to protect it from all claims under workers' compensation laws in effect that may be applicable to it in the following amounts:

Workers Compensation insurance that meets the statutory obligations with Coverage B-Employers Liability limits of at least one hundred thousand (\$100,000) each accident, five hundred thousand (\$500,000) disease - policy limit and one hundred thousand (\$100,000) disease each employee.

Insurance required must remain in effect for the entire term of the agreement. Insurance secured by the Grantee shall be issued by insurance companies rated A or better by A.M. Best Company and admitted in Minnesota. If Grantee self-insures, Grantee shall certify annually that it has met all of the State of Minnesota requirements for self-insuring.

Acceptance of the insurance by the City shall not relieve, limit or decrease the liability of the Grantee. Any policy deductibles or retention shall be the responsibility of the Grantee. The Grantee shall control any special or unusual hazards and be responsible

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for any damages that result from those hazards. The City does not represent that the insurance requirements are sufficient to protect the Grantee's interest or provide adequate coverage. Evidence of coverage is to be provided on an industry standard Insurance Certificate. A thirty (30) day written notice is required if the policy is canceled, not renewed or materially changed. The Grantee shall require any of its subcontractors to comply with these provisions.

(k) *Security.* The Grantee shall furnish a performance bond, letter of credit or security fund ("Performance Bond"), acceptable to the City, in the amount of five hundred thousand dollars (\$500,000) for compensation for damages resulting from the Grantee's nonperformance as specified in this Franchise.

(l) *No Relief from Liability.* Nothing in the Franchise shall be construed so as to relieve 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.

(m) *Qualifications Reviewed.* The City considered and approved the Grantee's technical ability, financial condition and legal qualifications in a full public proceeding that afforded reasonable notice and a reasonable opportunity to be heard.

(n) *Reserved.*

(o) *Permits.* Pursuant to applicable local law, the Grantee shall obtain a permit from the proper municipal authority before commencing construction on its cable communications system, including the opening or disturbance of a street, sidewalk, driveway, or public place. In the event that Grantee fails to meet the conditions of such a permit, the City may seek remedies under this Franchise Agreement.

(p) *Compliance with Code.* Wires, conduits, cable and other property and facilities of the Grantee shall be located, constructed, installed and maintained in compliance with applicable local laws. The Grantee must keep and maintain its property so as not to unnecessarily interfere with the usual and customary trade, traffic, or travel upon the streets and public places of the franchise area or endanger the life or property of any person.

(q) *Removal and Relocation.* Unless otherwise provided for by local law, the City and the Grantee shall establish a procedure in the franchise for the relocation or removal of the franchisee's wires, conduits, cables, and other property located in the street, right-of-way, or public place whenever the City undertakes public improvements that affect the cable equipment except that the City may not discriminate among telecommunication rights-of-way users. Grantee shall be entitled to reimbursement of its relocation costs if made available to other users of the right-of-way for that project or projects.

(r) *Compliance with FCC Technical Standards.* The Grantee shall comply at a minimum with the technical standards promulgated by the Federal Communications Commission relating to cable communications systems contained in subpart K of part 76 of the Federal Communications Commission's rules and regulations relating to cable communications systems and found in Code of Federal Regulations, title 47, sections 76.601 to 76.617, as amended from time to time. The results of tests required by the Federal Communications Commission will be available for onsite review by the City within 10 days of filing such tests with the FCC.

(s) *Cost of Special Testing.* The City may require special testing of a location or locations within the System if there is a particular matter of unresolved complaints regarding System construction, operations, signal quality, or installation work pertaining to such location(s). Such tests shall be limited to the particular matter in controversy. The City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to the Grantee or to the subscribers of such testing.

Before ordering such test, Grantee shall be afforded thirty (30) days following receipt of written notice to investigate and, if necessary, correct problems or complaints upon which tests were ordered. The Grantee and City shall determine who is to bear the costs of required special testing.

(t) *Subscriber Privacy.* No signals of a 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 is renewable at the option of the subscriber. No penalty may be invoked for a subscriber's failure to provide or renew the authorization. The authorization is revocable at any time by the subscriber without penalty of any kind. Grantee shall further comply with 47 U.S.C. § 551, which is incorporated herein by reference.

(1) No information or data obtained by monitoring transmission of a signal from a subscriber terminal, including but not limited to lists of the names and addresses of the subscribers or lists that identify the viewing habits of subscribers, may be sold or otherwise made available to any person other than to the company and its employees for internal business use, or to the subscriber who is the subject of that information, unless the company has received specific written authorization from the subscriber to make the data available or unless said information is ordered by a court or subpoenaed;

(2) Written permission from the subscriber must not be required for the systems conducting system wide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing. Confidentiality of this information is subject to clause (t)(1); and

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(3) For purposes of this provision, a "cable communications channel" means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the communications system.

(u) *Complaint Resolution Procedure.* See Section 3.

(v) *Receipt of Complaints.* See Section 3. Also, Grantee shall immediately provide a consumer complaint telephone number at the City to subscribers that asks for a consumer complaint number.

(w) *Franchise Termination.* The City has the right to terminate and cancel the franchise and the rights and privileges of the franchise if the Grantee substantially violates a provision of the franchise ordinance or agreement, attempts to evade the provisions of the franchise ordinance or agreement, or practices fraud or deceit upon the City. The City shall provide the Grantee with a written notice of the cause for termination and its intention to terminate the Franchise and shall allow the Grantee a minimum of thirty (30) days after service of the notice in which to correct the violation. The Grantee must be provided with an opportunity to be heard at a public hearing before the governing body of the City before the termination of the franchise.

(x) *Abandonment.* No person operating a cable communications system, notwithstanding any provision in a franchise, may abandon a cable communications system or a portion of it without having given three (3) months prior written notice to the franchising authority. No person operating a cable communications system may abandon a cable communications system or a portion of it without compensating the City for damages resulting to it from the abandonment.

(y) *Removal of Facilities.* Upon termination or forfeiture of the Franchise, unless otherwise required by applicable law, the Grantee shall remove its cable, wires, and appliances from the streets, alleys, and other public places within the franchise area if the City so requests. In the event the Grantee fails to remove its cable, wires, and appliances from the streets, alleys, and other public places within the franchise area, the Grantee will be subject to the procedures of applicable local law.

(z) *Access Channels.* The Grantee shall provide nine (9) channels (the "Access Channels") to be used for Public, Educational or Government programming on the basic service tier. The City has the sole discretion to designate the use of each Access Channel. Grantee shall provide a technically reliable path for upstream and downstream transmission of the Access Channels, which will in no way degrade the technical quality of the Access Channels, from an agreed upon demarcation point at the City's Master Control Center at City Hall, and from the City's designated Access providers locations, to Grantee's headend, on which all Access Channels shall be transported for distribution on Grantee's subscriber network. The Access Channels shall be delivered without degradation to subscribers in the technical format (e.g. HD or SD) as delivered by the City and any designated Access provider to Grantee at each demarcation point at City Hall and at the designated Access providers' locations.

(1) All of the Access Channels will be made available through a multi-channel display (i.e. a picture in picture feed) on a single TV screen called a "mosaic" (the "Minneapolis Mosaic"), where a cable subscriber can access via an interactive video menu one of any of the nine PEG Access Channels. The Minneapolis Mosaic will be located on Channel 14. The nine Access Channels will be located at Channels 8001-8009. The Minneapolis Mosaic will be contain only Access Channels authorized by the City of Minneapolis.

(2) Grantee will make available to the City the ability to place Access Channel programming information on the interactive channel guide by putting the City in contact with the electronic programing guide vendor ("EPG provider") that provides the guide service. Grantee will be responsible for providing the designations and instructions necessary to ensure the Access Channels will appear on the programming guide throughout the City and any necessary headend costs associated therewith. The City shall be responsible for providing programming information to the EPG provider. Grantee shall pay any costs the EPG provider charges to programmers who participate in its service.

(3) For purposes of this Franchise, the term channel shall be as commonly understood and is not any specific bandwidth amount. The signal quality of the Access Channels shall be the same as the local broadcast channels, provided such signal quality is delivered to Grantee at the Access Channels' respective demarcation points.

(4) Grantee will provide, at no cost to the City, air time on non-Access channels during periods in which ample unsold/unused air time on such channels exists, in a manner consistent with past informal practice, for City public service announcements (PSAs). The City will provide a 30-second PSA prior to the start of each month on a mutually agreed-upon schedule.

(5) In the event Grantee makes any change in the Cable System and related equipment and facilities or in its signal delivery technology, which requires the City to obtain new equipment in order to be compatible with such change for purposes of transport and delivery of the Access Channels to the Grantee's headend, Grantee shall, at its own expense and free of charge to the City or its designated entities, purchase such equipment as may be necessary to facilitate the cablecasting of the Access Channels in accordance with the requirements of the Franchise.

(6) Neither the Grantee nor the officers, directors, or employees of the Grantee is liable for any penalties or damages arising from programming content not originating from or produced by the Grantee and shown on any public access channel, education access channel, government access channel, leased access channel, or regional channel.

(7) Within one hundred twenty (120) days of a written request from the City, Grantee shall make available as part of Basic Service to all Subscribers a Government Access Video-on Demand (GAVOD) Service and maintain a GAVOD system. The GAVOD system shall be connected by the Grantee such that:

a. Twenty-five (25) hours of programming per Access Channel, or such greater amount as may be mutually agreed to by the parties, as designated and supplied by the City or its Designated Access Provider to the Grantee may be electronically transmitted and/or transferred and stored on the GAVOD system; and

b. a database of that programming may be efficiently searched and a program requested and viewed over the GAVOD system by any Subscriber in the City; and

c. programming submitted for placement on the GAVOD system, shall be placed on and available for viewing from the GAVOD system within forty-eight (48) hours of receipt of said programming;

d. The hardware and software described in Subsection (8) below, shall be in all respects of the same or better technical quality as the hardware and software utilized by Grantee in the provision of any other video on demand services offered over the Cable System, and shall be upgraded at Grantee's cost, when new hardware or software is utilized on Grantee's Cable System for other video on demand services. Grantee shall provide reasonable technical assistance to allow for proper use and operation when encoding hardware or software is installed and/or upgraded at City's facilities.

(8) To ensure compatibility and interoperability, the Grantee shall supply and maintain all necessary hardware and software to encode, transmit and/or transfer Government Access programming from the City to the GAVOD system. The City shall be responsible for all monitoring of any equipment provided under this Section, and notifying Grantee of any problems. Grantee shall provide all technical support and maintenance for the equipment provided to the City by Grantee under this Section. After notification of any equipment problems, Grantee shall diagnose and resolve the problem within forty eight (48) hours. Major repairs which can't be repaired within the forty eight (48) hour timeframe shall be completed within seven (7) days of notice, unless, due to Force Majeure conditions, a longer time is required. "Major repairs" are those that require equipment to be specially obtained in order to facilitate the repairs. The quality of signal and the quality of service obtained by a Subscriber utilizing the GAVOD service shall meet or exceed the quality standards established for all other programming provided by the Grantee and as established elsewhere in this Franchise Agreement

*(aa) PEG Support.*

(1) The PEG fee, payable quarterly, shall be:

a. \$1.50/subscriber/month from the effective date until the franchise renews. Starting with the 2016 calendar year, the City may elect to increase this fee based on the

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Consumer Price Index. Any such election must be made in writing to the Franchisee no later than September 1<sup>st</sup> prior to the year in which the increase shall apply. In no event shall the fee be in an amount different from the incumbent cable provider or exceed \$1.75. In the event the incumbent agrees to a higher, or lower, PEG fee, Grantee will increase, or decrease, its PEG fee upon ninety (90) days written notice from the City. The PEG fee may be used for operational or capital support of PEG programming.

b. If any laws, rules, regulations or government authorizations would allow a provider of multi-channel video programming or equivalent in the City's rights-of-way to provide multi-channel video programming or equivalent under less burdensome regulations or regulatory structure than Grantee is operating under, the obligations of this section shall be modified to reflect such changes.

c. Grantee agrees that financial support for PEG arising from or relating to the obligations set forth in this Section shall in no way modify or otherwise affect Grantee's obligations to pay Franchise Fees to City. Grantee agrees that although the sum of Franchise Fees plus the payments set forth in this Section may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, the additional commitments shall not be offset or otherwise credited in any way against any Franchise Fee payments under this Franchise Agreement.

d. If the incumbent franchised cable operator agrees to provide any support of the Access Channels in excess of the amount identified in paragraph 2.1(aa)(1)(i) above or to any payment in support of an institutional network after the Effective Date of this Franchise, the City, in its reasonable discretion, after meeting with the Grantee, will determine the appropriate additional payment, in any, Grantee will make in support of the Access Channels or an institutional network.

(bb) *Regional Channel 6.* The VHF Channel 6 is designated for uniform regional channel usage as required in Minnesota Statutes § 238.02, subdivision 31(c), and Minnesota Statutes § 238.43.

(cc) *Cable Service to Public Buildings.* Grantee shall, at no cost to the City, provide basic service and expanded basic service and necessary reception equipment to all outlets at government buildings, schools and public libraries located in the City where Grantee provides Cable Service, so long as these government addresses are designated as a household and no other cable communications provider is providing complementary service at such location. For purposes of this subsection, "school" means all State-accredited K-12 public, the University of Minnesota, and private schools. Outlets of basic and expanded basic service provided in accordance with this subsection may be used to distribute cable services throughout such buildings; provided such distribution can be accomplished without causing cable system disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes.

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**2.2 Definitions.** The definitions contained in Minnesota Statutes Chapter 238 and Title VI of the Communications Act of 1934, as amended, and rules promulgated thereunder, are hereby incorporated herein by reference.

(a) Household means a distinct address in the QC network database, whether a residence or small business, subscribing to or being offered cable service. Grantee represents and warrants that it has access to the QC network database and shall demonstrate to the City's reasonable satisfaction how the data required in Sections 1.2 and 1.3 are calculated and reported using the QC network database.

### **Section 3. Customer Service Standards**

#### **3.1 Cable System Office Hours and Availability.**

(a) The Grantee will maintain a local, 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.

(1) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(2) 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 company representative on the next business day.

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

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

(d) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

(e) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(f) Grantee shall maintain a convenient local subscriber service and bill payment location in the City for matters such as receiving Subscriber payments, handling billing questions, equipment replacement and subscriber information.

**3.2 Installations, Outages and Service Calls.** Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:

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

(b) Excluding conditions beyond the control of the Grantee, the 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.

(c) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The Grantee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

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

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

**3.3 Communications Between Grantee and Cable Subscribers.**

(a) Refund checks will be issued promptly, but no later than either the customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or the return of the equipment supplied by the Grantee if service is terminated.

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

**3.4 Definitions.**

(a) *Normal Business Hours.* The term "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 and/or some weekend hours.

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

(c) *Service interruption.* The term "service interruption" means the loss of picture or sound on one or more cable channels.

### **3.5 Information to Subscribers.**

(a) Grantee shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Installation and service maintenance policies;
- (4) Instructions on how to use the cable services;
- (5) Channel positions of programming carried on the system;
- (6) Billing and complaint procedures, including the address and telephone number of the City's cable office; and
- (7) Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by the Grantee, including the address of the responsible officer of the City.

### **3.6 Rate and Service Changes.**

(a) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee. In addition, the Grantee shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by Section 3.5 above.

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(b) In addition to the requirement of paragraph (a) of this section regarding advance notification to customers of any changes in rates, programming services or channel positions, cable systems shall give thirty (30) days written notice to both subscribers and City before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the Grantee need only identify for subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

(1) Grantee shall provide written notice to a subscriber of any increase in the price to be charged for the basic service tier or associated equipment at least thirty (30) days before any proposed increase is effective. The notice should include the name and address of City Administrator.

(2) To the extent the Grantee is required to provide notice of service and rate changes to subscribers, the Grantee may provide such notice using any reasonable written means at its sole discretion.

(3) Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the Grantee and the subscriber.

**3.7 Rate Review.** The City reserves the right to regulate all rates and charges for cable service except to the extent it is prohibited from doing so by law.

**3.8 Broad Programming Categories.** Grantee shall provide or enable the provision of at least the following initial broad categories of programming to the extent such categories are reasonably available:

- (a) Educational programming;
- (b) Minnesota news, weather & information;
- (c) Sports;
- (d) General entertainment (including movies);
- (e) Children/family-oriented;
- (f) Arts, culture and performing arts;
- (g) Foreign language;
- (h) Science/documentary;
- (i) National news, weather and information;
- (j) Public, Educational and Government Access, to the extent required by this Franchise; and
- (k) Culturally diverse programming.

**Section 4. Compensation and Auditing**

**4.1 Amount of Compensation.** Grantee shall pay annually as a Franchise Fee in accordance with Section 622 of the Cable Act to the City, throughout the duration of this Franchise, of five percent (5%) of Grantee's Gross Revenues. If during the term of this Franchise, the FCC, federal or state government, or the courts effectively permit the City to impose a Franchise Fee greater than five percent (5%), the City shall have the right to increase the Franchise Fee to take full advantage thereof.

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

(a) "Gross Revenue" means all Cable Service revenue derived by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles. Cable Service revenue includes, but is not limited to, monthly basic, premium, pay-per-view and other video fees, advertising and home shopping revenue, installation fees and equipment rental fees, leased access, sales of programming guides and franchise fees. Gross Revenue shall not include refundable deposits, bad debt, late fees, investment income, programming launch support payments, advertising sales commissions, nor any taxes, fees or assessments imposed or assessed by any governmental authority.

**4.2 Payment of Franchise Fees on Bundled Services.**

(a) Grantee agrees that if it bundles, packages, or combines services subject to the franchise fee with services that are not subject to the franchise fee: 1) It will not do so for the purpose of avoiding franchise fees; and 2) Except as otherwise provided in this section, it will allocate revenues derived from the bundled, combined, or packaged services in a manner that attributes a fair and reasonable amount of the revenues to the Cable Services component. This section shall be subject to the City's rights to audit pursuant to sections 2.1(f) and 4.6.

(b) This section is not intended to apply to reduction in Franchise Fees that result from other causes such as changes in the law, Subscriber losses, Subscriber service downgrades, Force Majeure, or short-term promotional activities (i.e., premium channel discounts or sales).

**4.3 Payments and Quarterly Reports.**

(a) Payments. Grantee's Franchise Fee and PEG Fee payments to the City shall be computed quarterly following the Effective Date of this Franchise. Payments shall be due and payable within 30 days following the end of each quarter.

(b) Quarterly Reports. Each payment shall be accompanied by a written report to the City, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall be in form and substance satisfactory to the City and shall include revenue by product category.

**4.4 Interest on Late Payments.** All sums not paid when due, and after reasonable notice and opportunity to cure, shall bear interest at the rate of one percent (1%) per annum computed monthly, and if so paid with interest within thirty (30) days of due date, shall not constitute an event of default.

**4.5 Acceptance of Payment and Recomputation.** No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or any other claim or right. All amounts paid shall be subject to audit and recomputation by the City, provided that such audit and recomputation is completed within three (3) years of the date payment was due.

**4.6 Audits.**

(a) Upon reasonable prior written notice, during normal business hours at Grantee's principal business office, the City shall have the right to inspect the Grantee's financial records used to calculate the City's franchise fees; provided, however, that any such inspection shall take place within three (3) years from the date the City receives such payment, after which period any such payment shall be considered final.

(b) Upon the completion of any such audit by the City, the City shall provide to the Grantee a final report setting forth the City's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Grantee shall have thirty (30) days from the receipt of the report to provide the City with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a "Finally Settled Amount." For purposes of this section, the term "Finally Settled Amount(s)" shall mean the agreed upon underpayment, if any, to the City by the Grantee as a result of any such audit. If the parties cannot agree on a "Final Settlement Amount," the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.

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(c) Any "Finally Settled Amount(s)" due to the City as a result of such audit shall be paid to the City by the Grantee within thirty (30) days from the date the parties agree upon the "Finally Settled Amount." Once the parties agree upon a Finally Settled Amount and such amount is paid by the Grantee, the City shall have no further rights to audit or challenge the payment for that period. The City shall bear the expense of its audit of the Grantee's books and records.

## **Section 5. Enforcement and Penalties**

### ***5.1 Notice and Opportunity to Cure.***

In the event the City believes that the Grantee has not complied with the material terms of the Franchise, it shall notify the Grantee in writing with reasonably specific details regarding the nature of the alleged noncompliance or default. Prior to issuing the written notice of noncompliance or default, the City shall make a good faith effort to contact Grantee in an attempt to resolve the issue through good faith consultation in the ordinary course of business. The City delegates to the Cable Officer the authority to make initial determinations regarding noncompliance with the Franchise and to issue written notice of any alleged violations. Unless otherwise agreed upon by the parties in writing, Grantee shall have thirty (30) days from the date of the notice to cure the alleged noncompliance (the "Cure Period"). If Grantee intends to cure the alleged noncompliance, but is unable to within the Cure Period, Grantee may request an extension of the Cure Period (the "Extended Cure Period"), which shall not be unreasonably denied. The Extended Cure Period shall not exceed forty-five (45) days beyond the Cure Period. Provided the Grantee cures the alleged noncompliance within the Cure Period or any Extended Cure Period, the City agrees not to assess any liquidated damages for the alleged noncompliance.

### ***5.2 Informal Resolution.***

Following written notice of any alleged violation, the parties shall expeditiously schedule a meeting to discuss the dispute informally. In the event that the dispute is not resolved by the City's Cable Officer and Grantee's primary staff contact to the City within ten (10) days of Grantee's receipt of the City's written notice, either party may upon written notice to the other party request that the matter be referred to senior management officials within each respective organization for internal resolution. Senior management officials shall meet or confer at least once in good faith, to negotiate a mutually acceptable resolution within twenty (20) days of the receipt of the request for internal resolution. For the purposes of this paragraph, the designated senior management official for City shall be the City Coordinator; and for the Grantee shall be the Regional Vice President of the Grantee (or similar), unless otherwise changed through the mutual agreement of the parties. The senior management officials are required to meet once but may mutually agree to meet more than once if it appears that further meetings may successfully resolve the dispute. The period for informal discussions shall not exceed thirty (30) days from receipt of the written notice, unless it is extended by written agreement of the parties.

**5.3 Formal Resolution.**

If the matter is not resolved informally under section 5.2 (Informal Resolution), the matter shall be referred to the Ways and Means Committee of the Minneapolis City Council. In a meeting before the Ways and Means Committee, the Cable Officer of the City shall present information and make a brief oral presentation to the Ways and Means Committee demonstrating reasonable cause of a Franchise violation. Grantee may present information and make a brief oral presentation to the Ways and Means Committee. The Ways and Means Committee shall forward its recommendation on whether reasonable cause of a Franchise violation exists to the City Council. If the City Council determines there is reasonable cause that a Franchise violation has occurred, the matter shall be submitted to a mutually-selected mediator. If the Parties cannot agree upon a mutually-selected mediator within thirty (30) days of the end of the informal resolution period contained in Section 5.2, each Party shall within twenty (20) days provide a list of the names of three (3) mediators acceptable to that Party to the Chief Judge of the Hennepin County District Court who shall select a mediator for the Parties from the submitted names. If the Parties, with the assistance of the mediator, do not resolve the dispute within seventy-five (75) days of selection of the mediator, they may enforce their rights solely and exclusively in Hennepin County District Court. The court shall have jurisdiction to demand and compel compliance with this Agreement and to impose the remedies contained in section 5.4 (Remedies for Non-Compliance).

**5.4 Remedies for Non-Compliance**

The Hennepin County District Court shall, without limitation, have all rights and remedies provided for herein or otherwise available under the law, including termination of the Franchise, and the assessment of liquidated damages.

*(a) Liquidated Damages.*

(1) Amounts of Liquidated Damages. Because Grantee's failure to comply with provisions of the Franchise will result in injury to the City in amounts that will be difficult to quantify with reasonable certainty, the City and Grantee agree to the following Liquidated Damages for the following violations. These damages represent the Parties' best estimate of the damages resulting from the specified injury and Grantee acknowledges that the liquidated damages amounts herein are reasonable in light of the anticipated or actual harm caused by any breach or noncompliance of the Franchise. Recognizing the length of this Franchise, the Liquidated Damage amounts are in 2008 dollars and shall be increased January 1 of each year by the increase in the U.S. Consumer Price Index for the Minneapolis/St. Paul area. To the extent that the City elects to assess liquidated damages as provided in this Agreement, and such liquidated damages have been paid, such damages shall be the City's sole and exclusive remedy for the specific violation for which the liquidated damages were imposed. Nothing in this section, however, shall preclude the City from exercising any other right or remedy with respect to a breach that continues past the time the city stops assessing liquidated damages for such breach. Such damages shall not be a substitute for actual

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performance by Grantee of a financial obligation, but shall be in addition to any such actual performance.

(2) In the event the City assesses liquidated damages, Grantee shall have thirty (30) days to pay the damages assessed. If Grantee does not pay the damages assessed within thirty (30) days, the City in its sole discretion may collect the damages from the Performance Bond.

(3) Grantee's obligation to pay the liquidated damages assessed shall be stayed pending resolution of judicial proceedings, but shall continue to accrue until and unless the violation has been cured.

(4) Nothing in this section is intended to invalidate the Force Majeure provisions of Section 6.3.

(b) Liquidated damages shall be assessed commencing on the date Grantee received notice as provided for in paragraph 5.1 as follows:

(1) For violation of applicable subscriber service standards:

a. For failure to maintain a local, toll free or collect call line consistent with section 3.1: two hundred fifty dollars (\$250) per day for each day or part thereof that such violation continues;

b. For failure to operate available customer service centers and bill payment locations during normal business hours under Section 3.1(a): two hundred fifty (\$250) per day for each day or part thereof that such violation continues;

c. For failure to answer Subscriber calls as required by Section 3.1(b) of the Franchise, in any calendar quarter where Grantee fails to meet the applicable standard and meets the standard at eighty percent (80%) of the time under normal operating conditions or above, the Grantee shall pay the City two thousand five hundred dollars (\$2,500) each quarter; in any calendar quarter where the Grantee fails to meet the applicable standard and performs at less than 80% of the time under normal operating conditions, Grantee shall pay the City five thousand dollars (\$5,000) each quarter. Nothing in this Section is intended to increase or modify Grantee's reporting requirements under the Franchise;

d. For violations of subscriber privacy pursuant to Section 2.1(t): an amount to be determined by the City, but not to exceed five thousand dollars (\$5,000) per event or occurrence, irrespective of the number of subscribers affected;

e. For failure to issue credits or refunds in a manner consistent with Section 3.3: fifty dollars (\$50) per day for each day or part thereof that such violation continues;

f. For failure to provide written information consistent with Section 3.5: fifty dollars (\$50) per day for each day or part thereof that such violation continues;

g. For failure to provide written notice of changes in prices, channel locations or other items required by Section 3.6: fifty dollars (\$50) per day for each day or part thereof that such violation continues;

h. For failure to make certain information available for public inspection as required by Section 2.1(g): fifty dollars (\$50) per day for each day or part thereof that such violation occurs;

i. For failure to comply with the reasonable build-out provisions in section 1.2 and for economic redlining in violation of section 1.3 above and 47 U.S.C. § 541(a)(3): Five Hundred dollars (\$500) per day for each day or part thereof that such violation continues; and

j. For any other failure of subscriber service standards: one hundred dollars (\$100) per day for each day or part thereof that such violation occurs.

(2) For violation of applicable operational standards:

a. for transfer of the Cable System without first seeking the City's approval under Section 2.1(e) in a manner consistent with federal regulations: five hundred dollars (\$500) per day for each day or part thereof that such violation continues;

b. for failure to supply PEG Access Channels required by Section 2.1(z): five hundred dollars (\$500) per day for each day or part thereof that such violation continues; and

c. for failure to maintain insurance under Section 2.1(i) or security under Section 2.1(k): two hundred fifty (\$250) per day for each day or part thereof that such violation occurs.

(3) For violation of applicable technical standards:

a. for failure to bring the system into compliance with FCC Technical Standards within forty-five (45) days of identification of non compliance in reports filed with the FCC pursuant to 47 CFR 76.601 – 76.617: \$500 per day for each day or part thereof that such violation continues.

(4) For all other material violations of the Franchise: two hundred fifty dollars (\$250) per day for each day or part thereof that such failure occurs or continues.

The City reserves the right to pursue any non-monetary remedy, including but not limited to injunctive relief, in addition to or in lieu of any remedy available under this section. For purposes of this section, "material breach" means any substantial failure of Grantee to comply with the terms of this Franchise and any other rules, regulations and standards incorporated herein. A material breach for the purpose of assessing liquidated damages shall be deemed to have occurred for each day following the expiration of the period specified in Section 5.4(a)(B), that any material breach has not been cured by Grantee, irrespective of the number of subscribers affected.

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(c) Effect on Duty to Comply. The collection of Liquidated Damages by the City shall in no respect affect:

(1) Compensation owed to Subscribers; or

(2) The Grantee's obligation to comply with the provisions of this Franchise or applicable law.

(d) Accrual. Except as otherwise provided in Section 5.4(a)(B), Liquidated damages accrue from the date the City notifies the Grantee that there has been a violation.

(e) Relationship of Remedies.

(1) Non-Exclusivity of Remedies. Subject to applicable law and Section 5(A)(a) of this Franchise, the remedies provided for in this Franchise, are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another remedy, or the exercise of any rights of the City at law or equity.

(2) No Election of Remedies. Without limitation, the recovery of amounts under the insurance, indemnity, bonding or Liquidated Damages provisions of this Franchise shall not be construed as a limit on the liability of the Grantee under the Franchise or an excuse of faithful performance of any obligation of the Grantee.

(f) Non-Waiver. Grantee shall not be relieved of its obligations to comply, promptly and completely, with any provision of the Franchise by reason of any failure of the City to promptly enforce compliance with this Franchise, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.

(g) Cost Treatment of Liquidated Damages. No cost to Grantee arising from a breach or violation of the Franchise shall be recovered from Subscribers, shall form the basis for any adjustment to Subscriber rates or other Subscriber charges or shall be offset against any sums due the City as a tax, Franchise Fee or otherwise regardless of whether the combination of Franchise Fees and said costs exceeds five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period.

## **Section 6. Miscellaneous Provisions**

**6.1 Severability.** If any section, provision or clause of this Franchise is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state laws or regulations, the remainder of this Franchise shall not be affected, except as is otherwise provided in this Franchise.

**6.2 Choice of Forum.** Any litigation between the City and Grantee arising under or regarding this Franchise shall occur, if in the state courts, in Hennepin County District Court, and if in the federal courts, in the United States District Court for the District of Minnesota.

**6.3 Force Majeure.** Grantee shall have no liability to City for penalties or damages, nor shall City have the right to terminate this Franchise as a result of any failure or delay of Grantee to perform its obligations hereunder if such failure or delay is caused by factors beyond the control of Grantee, including without limitation, war, civil disturbance, flood or other Act of God, laws, regulations, rules or orders of any governmental agency, sabotage, work stoppages or strikes. In the event that delay in performance or failure to perform affects only part of Grantee's capacity to perform, then Grantee shall perform to the extent it is reasonably able to do so. In correcting any causes of non-performance or delay, and in effecting any partial performance, Grantee shall take all necessary corrective actions as expeditiously as possible without unduly endangering the health, safety and integrity of the Grantee's employees or property, or the health, safety and integrity of the public, the rights-of-way, public property or private property.

**6.4 Notice.** Unless otherwise agreed to by the parties, any notice provided for under this Franchise shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party specifies in writing:

(a) Notices to Grantee shall be mailed to:

Qwest Broadband Services, Inc. d/b/a CenturyLink  
1801 California St., 10<sup>th</sup> Flr.  
Denver, CO 80202  
Attn: Public Policy

with a copy to:

Qwest Broadband Services Inc., d/b/a CenturyLink  
200 S. 5<sup>th</sup> Street, 21<sup>st</sup> Flr.  
Minneapolis, MN 55402  
Attn: Public Policy

(b) Notices to the City shall be mailed to:

Director of the Department of Communications  
City of Minneapolis  
350 South Fifth Street  
Room 300M  
Minneapolis, MN 55415

with a copy to:

Office of the City Attorney  
350 South Fifth Street  
Room 210  
Minneapolis, MN 55415

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(c) Grantee shall at all times keep the City advised as to which individual(s) are authorized to act on behalf of Grantee and whose acts will be considered to bind Grantee.

**6.5 Binding Acceptance.** This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns.

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

**6.7 Captions and References.** The captions and headings of sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

Certified as an official action of the City Council: 

RECORD OF COUNCIL VOTE (X INDICATES VOTE)													
COUNCIL MEMBER	AYE	NAY	ABSTAIN	ABSENT	VOTE TO OVERRIDE	VOTE TO SUSTAIN	COUNCIL MEMBER	AYE	NAY	ABSTAIN	ABSENT	VOTE TO OVERRIDE	VOTE TO SUSTAIN
Reich	X						Glidden		X				
Gordon	X						Cano	X					
Frey	X						Bender	X					
B Johnson	X						Quincy	X					
Yang	X						A Johnson	X					
Warsame	X						Palmisano	X					
Goodman	X												

ADOPTED MAY 15 2015 DATE

APPROVED  NOT APPROVED  VETOED

ATTEST Jackie Hanson  
Interim Asst. CITY CLERK

 MAYOR HODGES  
DATE MAY 21 2015