

CABLE TELEVISION FRANCHISE ORDINANCE

FOR

CITY OF MARSHALL, MINNESOTA

AND

**SPECTRUM MID-AMERICA, LLC L/K/A/A CHARTER
COMMUNICATIONS**

(_____)

SUMMARY OF ORDINANCE NO. _____, SECOND SERIES FOR PUBLICATION

On _____, 2019, the City Council for the City of Marshall, Minnesota (“City”) adopted a new Cable Television Franchise Ordinance (“Ordinance”) for Charter Communications (“Charter”). The Ordinance serves three purposes. First, the new Ordinance eliminates the prior Cable Television Franchise Ordinance No. 495, Second Series and its extensions. Second, it is intended to provide for and specify the means to obtain cable television services for the public by providing requirements for cable television with respect to technical standards, customer service obligations and related matters. Third, the Ordinance grants a non-exclusive franchise to Charter to operate and maintain a cable television system within the City and contains specific requirements for Charter to do so.

The Ordinance includes the following: 1) requires Charter to maintain a 750 MHz capacity cable system; 2) imposes a franchise fee of five percent (5%) of annual gross revenues; 3) establishes a ten (10) year franchise term; 4) requires Charter to provide three (3) channels available for public, educational and governmental programming; 5) requires Charter to provide a subscriber network drop, free of charge, to specified public and educational institutions; 6) requires Charter to provide a letter of credit in the amount of \$10,000.

It is hereby determined that publication of this title and summary will clearly inform the public of the intent and effect of Ordinance No. _____, Second Series. A copy of the entire Ordinance shall be posted at the Marshall City Hall.

It is hereby directed that only the above title and Summary of Ordinance No. _____, Second Series be published, conforming to Minn. Stat. §331A.01, with the following:

NOTICE

Persons interested in reviewing a complete copy of the Ordinance may do so at the office of the City Clerk, City Hall, 344 West Main Street, Marshall, Minnesota 56258.

Passed this ____ day of _____, 2019.

By: Robert J. Byrnes, Mayor

ATTEST:

By: Kyle Box
Its: City Clerk

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ORDINANCE NO. _____, SECOND SERIES

AN ORDINANCE GRANTING A FRANCHISE TO SPECTRUM MID-AMERICALLC, L/K/ACHARTER COMMUNICATIONS, TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE COMMUNICATIONS SYSTEM IN THE CITY OF MARSHALL, MINNESOTA SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY IN CONJUNCTION WITH THE CITY'S RIGHT-OF-WAY ORDINANCE AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN;

The City Council of the City of Marshall, Minnesota ordains:

STATEMENT OF INTENT AND PURPOSE

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

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

FINDINGS

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

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

SECTION 1.
SHORT TITLE AND DEFINITIONS

1. Short Title. This Franchise Ordinance shall be known and cited as the Cable Television Franchise Ordinance.
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, and words in the plural number include the singular number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory. Words not defined shall have the meaning ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time (the “Cable Act”), or be given their common and ordinary meaning.
 - a. “Applicable Laws” means any valid, generally applicable law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority.
 - b. “Basic Cable Service” means any service tier which includes the 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).
 - c. “Cable Service” or “Service” means (A) the one-way transmission to Subscribers of (i) Video Programming or (ii) Other Programming Service, and (B) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service. Cable Service as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(6).
 - d. “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 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
- (5) any facilities of any electric utility used solely for operating its electric utility systems.

Cable System as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(7).

- e. “Channel” or “Cable Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel.
- f. “City” means City of Marshall, a municipal corporation, in the State of Minnesota, acting by and through its City Council, or its lawfully appointed designee.
- g. “City Council” means the governing body of the City of Marshall, Minnesota.
- h. “Class IV Cable Channel” means a signaling path provided by a Cable System to transmit signals of any type from a Subscriber terminal to another point in the System.
- 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. “Drop” means the connection between the Subscriber’s residence or institution to the nearest feeder cable of the System.
- k. “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- l. “Franchise” or “Cable Franchise” means this ordinance and the regulatory and contractual relationship established hereby.
- m. “Franchise Fee” includes any tax, fee, or assessment of any kind imposed by the City or other governmental entity on Grantee or Subscriber, or both, solely because of their status as such. It does not include 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); capital costs which are required by the Franchise to be incurred by Grantee for public, educational, or governmental access facilities; 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 any fee imposed under Title 17 of the United States Code. The definition of Franchise Fee shall not be inconsistent with the definition set forth in 47 USC § 542.

- n. “Grantee” is Spectrum Mid-America LLC, l/k/a Charter Communications, its lawful successors, transferees or assignees.
- o. “Gross Revenue” means all revenue derived directly or indirectly by Grantee, its affiliates, subsidiaries, parent, or Person in which Grantee has a controlling interest, from the operation of its Cable System to provide Cable Services within City as determined in accordance with Generally Accepted Accounting Principles (“GAAP”). Gross Revenue includes, but is not limited to, all Cable Service fees, Franchise Fees, late fees, Installation and reconnection fees, upgrade/construction and downgrade fees, advertising revenue, Converter rental fees and Lockout Device fees. The term Gross Revenue shall not include 1) any unrecovered bad debt; 2) credits, refunds and deposits paid to Subscribers; or 3) any taxes on services furnished by Grantee imposed by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit.
- p. “Installation” means the connection of the Cable System from feeder cable to the point of connection including Standard Installations and custom Installations with the Subscriber Converter or other terminal equipment.
- q. “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.
- r. “Normal Business Hours” means those hours during which most similar businesses in City are open to serve customers. Normal Business Hours as defined herein shall be the definition set forth in 47 C.F.R. 76.309 (d).
- s. “Normal Operating Conditions” means those Service conditions which are within the control of Grantee. Those conditions which are not within the control of 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 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/construction of the Cable System.
- t. “Other Programming Service” means information that a cable operator makes available to all Subscribers generally.
- u. “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.
- v. “PEG” means public, educational and governmental.

- w. “Person” is any person, firm, partnership, association, corporation, company, or other legal entity.
- x. “Right-of-Way” or “Rights-of-Way” means the area on, below, or above any real property in City in which the City has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area, or real property owned by or under the control of City, including other dedicated Rights-of-Way for travel purposes and utility easements.
- y. “Right-of-Way Ordinance” means any ordinance codifying requirements regarding regulation, management and use of Rights-of-Way in City, including registration and permitting requirements.
- z. “Service Area” or “Franchise Area” means the entire geographic area within the City as it is now constituted or may in the future be constituted.
- aa. “Service Interruption” means the loss of picture or sound on one or more Cable Channels.
- bb. “Standard Installation” means any residential Installation which can be completed using a Drop of one hundred twenty-five (125) feet or less.
- cc. “Subscriber” means any Person who lawfully elects to subscribe to Cable Service via the System. Except as stated in Appendix B, in the case of multiple office buildings or multiple dwelling units, the “Subscriber” means the lessee, tenant, or occupant.
- dd. “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. Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein.
- 2. Grant of Nonexclusive Authority.
 - a. The Grantee shall have the right and privilege, subject to the permitting and other lawful requirements of City ordinance, rule or procedure, to construct, erect, and maintain, in, upon, along, across, above, over and under the Rights-of-Way in City a Cable System and shall have the right and privilege to provide Cable Service. The System constructed and maintained by Grantee or its agents shall not interfere with other uses of the Rights-of-Way. Grantee shall make use of existing poles and other above and below facilities available to Grantee to the extent it is technically and economically feasible to do so.

- b. Notwithstanding the above grant to use Rights-of-Way, no Right-of-Way shall be used by Grantee if City determines that such use is inconsistent with the terms, conditions, or provisions by which such Right-of-Way was created or dedicated, or with the present use of the Right-of-Way. This standard shall be applied equally to all similarly situated Right-of-Way users.
 - c. This Franchise shall be nonexclusive, and City reserves the right to grant a use of said Rights-of-Way to any Person at any time during the period of this Franchise for the provision of Cable Service. The terms and conditions of any such grant of use of the Rights-of-Way shall be, when taken as a whole no less burdensome or more beneficial than those imposed upon Grantee pursuant to this Franchise.
3. Lease or Assignment Prohibited. No Person may lease Grantee's System for the purpose of providing Cable Service until and unless such Person shall have first obtained and shall currently hold a valid franchise or other lawful authorization containing substantially similar burdens and obligations to this Franchise. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 9.5. This provision shall not prevent Grantee from complying with any commercial leased access requirements or any other provision of Applicable Laws.
4. Franchise Term. This Franchise shall be in effect for a period of ten (10) years from the date of acceptance by Grantee, unless sooner renewed, revoked or terminated as herein provided. This Franchise will be automatically extended for an additional term of five (5) years, unless either party notifies the other in writing of its desire to not exercise this automatic extension (and enter renewal negotiations under the Cable Act) at least three (3) years before the expiration of this Franchise. If such a notice is given, the parties will then proceed under the federal Cable Act renewal procedures.
5. Previous Franchises. Upon acceptance by Grantee as required by Section 13 herein, this Franchise shall supersede and replace any previous ordinance granting a Franchise to Grantee. Ordinance No. 495, Second Series, and its extensions are hereby expressly repealed.
6. Compliance with Applicable Laws, Resolutions and Ordinances.
 - a. The terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of the System in City, and neither party may unilaterally amend its terms. This Franchise may also be modified or amended with the written consent of City and Grantee as provided in Section 12.3 herein.
 - b. Grantee shall at all times during the term of this Franchise be subject to Applicable Laws, and shall comply with the terms of any City ordinance or regulation of general applicability which addresses usage of the Rights-of-Way within City, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with

respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.

- c. In the event of any conflict between this Franchise and any City ordinance or regulation which addresses usage of the Rights-of-Way, the conflicting terms of this Franchise shall prevail.
 - d. In the event Grantee cannot determine how to comply with any Right-of-Way requirement of City, whether pursuant to this Franchise or other requirement, Grantee shall immediately provide written notice of such question, including Grantee's proposed interpretation, to City, in accordance with Section 2.9. City shall provide a written response within fourteen (14) days of receipt indicating how the requirements cited by Grantee apply. Grantee may proceed in accordance with its proposed interpretation in the event a written response is not received within seventeen (17) days of mailing or delivering such written question. City will use all reasonable best efforts to ensure that no Right-of-Way ordinance provisions unduly slow Grantee's System rebuild unless necessary to address health safety and welfare concerns.
7. Rules of Grantee. Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligations under this Franchise and 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 Applicable Laws.
8. Territorial Area Involved. This Franchise is granted for the corporate boundaries of City, as they exist from time to time. In the event of annexation by City, or as development occurs, any new territory shall become part of the territory for which this Franchise is granted; provided, however, that Grantee shall only be required to extend Cable Service beyond its present Cable System boundaries pursuant to Section 4.9 hereof. Access to Cable Service shall not be denied to any group of potential residential cable Subscribers because of the income of the residents of the area in which such group resides. Grantee shall be given a reasonable period of time to construct and activate cable plant to Cable Service annexed or newly developed areas but in no event to exceed twelve (12) months from notice thereof by City to Grantee.
9. Written Notice. All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of Grantee or City's manager 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 Administrator
 344 West Main Street
 Marshall, MN 56258-1313

If to Grantee: Director, Government Affairs
Charter Communications
16900 Cedar Ave S
Rosemount, MN 55068

Copy to: Charter Communications
Attn: Vice President, Government Affairs
12405 Powerscourt Drive
St. Louis, MO 63131

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

SECTION 3. CONSTRUCTION STANDARDS

1. Registration, Permits, Construction Codes, and Cooperation.
 - a. Grantee shall comply with the construction requirements of Minn. Stat. § 238.084(n).
 - b. Grantee agrees to obtain a permit as required by City prior to removing, abandoning, relocating or reconstructing, if necessary, any portion of its facilities located in the Rights of Way. Notwithstanding the foregoing, City understands and acknowledges there may be instances when Grantee is required to make repairs, in compliance with federal or state laws, that are of an emergency nature. Grantee will notify City prior to such repairs, if practicable, and will obtain the necessary permits in a reasonable time after notification to City.
 - c. Reimbursement paid through the permitting process is separate, and in addition to, any other fees included in the Franchise. Grantee, at the time of or prior to submitting construction plans, shall provide City with a description of the proposed construction in sufficient detail for City to determine compliance with the Franchise and Applicable Laws.
 - d. City may issue reasonable policy guidelines to all grantees to establish procedures for determining how to control issuance of engineering permits to multiple grantees for the use of the same Rights-of-Way for their facilities. Grantee shall cooperate with City in establishing such policy and comply with the procedures established by the City Administrator or his or her designee to coordinate the issuance of multiple engineering permits in the same Right-of-Way segments.
 - e. Failure to obtain permits or comply with permit requirements shall subject Grantee to all enforcement remedies available to City under Applicable Laws or this Franchise.

- f. Grantee shall, following receipt of reasonable notice, meet with developers and be present at pre-construction meetings to ensure that the newly constructed Cable System facilities are installed in new developments within City in a timely manner.
2. Ongoing Construction. Grantee shall notify City at least ten (10) days prior to the commencement of any construction in any Rights-of-Way. Except in the case of an emergency, Grantee shall not open or disturb the surface of any Rights-of-Way or public place for any purpose without first having obtained a permit to do so in the manner provided by law. All excavation shall be coordinated with other utility excavation or construction, when applicable, so as to minimize disruption to the public.
3. Use of existing poles or conduits.
 - a. Grantee shall utilize existing poles, conduits and other facilities whenever commercially reasonable and shall not construct or install any new, different or additional poles, conduits or other facilities on public property until the written approval of City is obtained. No location or any pole or wire-holding structure of Grantee shall be a vested interest, and such poles or structures shall be removed or modified by Grantee at its own expense whenever City determines that the public convenience would be enhanced thereby.
 - b. The facilities of Grantee shall be installed underground in those areas of City where existing telephone and electric services are both underground at the time of construction by Grantee. In areas where either telephone or electric utility facilities are installed aerially at the time of System construction, Grantee may install its facilities aerially; however, at such time as the existing aerial facilities are placed underground, Grantee shall likewise place its facilities underground at its sole cost. If City requires utilities to bury lines which are currently overhead, and the City financially participates in said undergrounding, then the City will provide the same cost sharing to the Grantee. In no case will the City provide financial reimbursement to one (1) franchised cable operator without providing the same benefit to any other franchised cable operator.
4. Minimum Interference.
 - a. Grantee shall use its best efforts to give reasonable prior notice to any adjacent private property owners who will be negatively affected or impacted by Grantee's work in the Rights-of-Way.
 - b. All transmission and distribution structures, lines and equipment erected by Grantee shall be located so as to cause minimum interference with the unencumbered use of Rights-of-Way and other public places and minimum interference with the rights and reasonable convenience of property owners who adjoin any of the Rights-of-Way and public places.
5. Disturbance or damage. Any and all Rights-of-Way or public property which are disturbed or damaged during the construction, repair, replacement, relocation, operation,

maintenance, expansion, extension or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to a condition reasonably as good as that prevailing prior to Grantee's work, as determined by the City. If Grantee shall fail to promptly perform the restoration required herein, after written request of City and reasonable opportunity to satisfy that request, City shall have the right to put the Rights-of-Way back into condition as good as that prevailing prior to Grantee's work. In the event City determines that Grantee is responsible for such disturbance or damage, Grantee shall be obligated to fully reimburse City for the reasonable, documented costs of such restoration within thirty (30) days after its receipt of City's invoice therefor.

6. Temporary Relocation.

- a. At any time during the period of the Franchise, Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate or remove any of its property when, in the opinion of City, (i) the same is required by reason of traffic conditions, public safety, Rights-of-Way vacation, freeway or Rights-of-Way construction, alteration to or establishment of any Rights-of-Way or any facility within the Rights-of-Way, sidewalk, or other public place, including but not limited to, installation of sewers, drains, waterlines, power lines, traffic signal lines or transportation facilities; or (ii) a City project or activity makes disconnection, removal, or relocation necessary. Grantee shall be given not less than ten (10) days advance notice to arrange such temporary wire alterations.
- b. Grantee shall, on request of any Person holding a permit to move a building, temporarily raise or lower its wires to permit the movement of such buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and Grantee shall have the authority to require such payment in advance. Grantee shall be given not less than ten (10) days advance notice to arrange such temporary wire alterations.

7. Emergency. Whenever, in case of fire or other emergency, it becomes necessary in the judgment of the City Administrator, police chief, fire chief, or their delegates, to remove or damage any of Grantee's facilities, no charge shall be made by Grantee against City for restoration, repair or damages.

8. Tree Trimming. Grantee shall have the authority to trim trees on public Rights-of-Way at its own expense as may be necessary to protect its wires and facilities, subject to supervision and direction by City. Trimming of trees on private property shall require consent of the property owner. Any trimming of trees by the Grantee in the Rights-of-Way and public ways shall be subject to such regulation as the City Administrator or other authorized official may establish to protect the public health, safety and convenience.

9. Protection of facilities. Nothing contained in this section shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid damaging Grantee's facilities while performing any work connected with grading, regrading or changing the

line of any Rights-of-Way or public place or the construction or reconstruction of any sewer or water system.

10. Facility location records. Each Grantee shall keep accurate records of the location of all facilities in the Rights-of-Way and public ways and make records available for inspection by City upon request.
11. Locating facilities.
 - a. If, during the design process for public improvements, City discovers a potential conflict with proposed construction, Grantee shall either: (a) locate and, if necessary, expose its facilities in conflict or (b) use a location service under contract with City to locate or expose its facilities. Grantee is obligated to furnish the location information in a timely manner, but in no case longer than thirty (30) days.
 - b. City reserves the prior and superior right to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade, widen, realign, or maintain any Rights-of-Way and public ways, aerial, surface, or subsurface improvement, including but not limited to water mains, traffic control conduits, cable and devices, sanitary or storm sewers, subways, tunnels, bridges, viaducts, or any other public construction within the Rights-of-Way of City limits.
12. City's rights.
 - a. Subject to Applicable Laws, when City uses its prior superior right to the Rights-of-Way and public ways, Grantee shall move its property that is located in the Rights-of-Way and public ways, at its own cost, to such a location as City directs. Notwithstanding the foregoing: (1) in the event the public project is paid for totally or in part by non-public funds, then Grantee's costs of moving its property shall be borne by the source of the non-public funds in the same ratio as the non-public funds bear to the total project costs; and (2) Grantee shall be required to relocate its facilities at the same time and under the same conditions as other utilities and wireline providers occupying the Rights of Way are required to move their facilities.
 - b. Nothing in this Franchise shall be construed to prevent City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Right-of-Way; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.
13. Facilities in conflict. If, during the course of a project, City determines Grantee's facilities are in conflict, the following shall apply:
 - a. Prior to City Notice to Proceed to Contractor: If Grantee has an obligation to relocate its facilities, it shall do so within a reasonable time, but in no event exceeding three (3) months. This time period shall begin running upon receipt by

Grantee of written notice from City. However, if both City and Grantee agree, the time frame may be extended based on the requirements of the project.

- b. Subsequent to City Notice to Proceed to Contractor: City and Grantee will immediately begin the coordination necessary to remove or relocate the facility. Removal or relocation is to begin no later than three (3) business days, if practicable, after written notification from City of the conflict.

14. Relocation delays.

- a. Subject to Grantee's compliance with Section 3.13 above, if Grantee has an obligation to relocate its facilities and Grantee's relocation effort so delays construction of a public project causing City to be liable for delay damages, Grantee shall reimburse City for those damages directly and proximately caused by Grantee's delay. In the event Grantee should dispute the amount of damages attributable to Grantee, the matter may be referred to the City engineer for a decision. In the event that Grantee disagrees with the City engineer's decision, the matter may be submitted to the City Administrator or the City Administrator's designee for determination, whose decision shall be final and binding upon Grantee as a matter of City review, but nothing herein waives any right of appeal to the courts, or Grantee's right to file at any time a legal action in the Federal District Court, Minneapolis, Minnesota, seeking resolution of the parties' dispute.
- b. In the event City becomes aware of a potential delay involving Grantee's facilities, City shall promptly notify Grantee of this potential delay.

15. Interference with City Facilities. The Installation, use and maintenance of the Grantee's facilities within the Rights-of-Way and public ways authorized herein shall be in such a manner as not to interfere with City's placement, construction, use and maintenance of its Rights-of-Way and public ways, Rights-of-Way lighting, water pipes, drains, sewers, traffic signal systems or other City systems that have been, or may be, installed, maintained, used or authorized by City.

16. Interference with Utility Facilities. Grantee agrees not to install, maintain or use any of its facilities in such a manner as to damage or interfere with any existing facilities of another utility located within the Rights-of-Way and public ways of City and agrees to relocate its facilities, if necessary, to accommodate another facility relocation. Nothing in this section is meant to limit any rights Grantee may have under Applicable Laws to be compensated for the cost of relocating its facilities from the utility that is requesting the relocation.

17. Collocation. To maximize public and employee safety, to minimize visual clutter of aerial plant, and to minimize the amount of trenching and excavation in and along City Rights-of-Way and sidewalks for underground plant, Grantee shall make every commercially reasonable effort to collocate compatible facilities within the Rights-of-Way subject to the engineering requirements of the owners of utility poles and other facilities.

18. Safety Requirements.

- a. 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 or injuries.
- b. Grantee shall install and maintain its System and other equipment in accordance with City's codes and the requirements of the National Electric Safety Code and all other applicable FCC, state and local regulations, and in such manner that they will not interfere with City communications technology related to health, safety and welfare of the residents.
- c. Cable System structures, and lines, equipment and connections in, over, under and upon the Rights-of-Way of City, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of City or any Person.

**SECTION 4.
DESIGN PROVISIONS**

1. System Construction: Minimum Channel Capacity.

- a. Grantee shall develop, construct and operate for the term of this Franchise a System providing a minimum of 750 MHz capacity.
 - b. All final programming decisions remain the discretion of Grantee in accordance with this Franchise, provided that Grantee notifies City and Subscribers in writing thirty (30) days prior to any Channel additions, deletions or realignments that are within Grantee's control, and further subject to Grantee's signal carriage obligations hereunder and pursuant to 47 U.S.C. § 531-536, and further subject to City's rights pursuant to 47 U.S.C. § 545. Location and relocation of the PEG Channels shall be governed by Section 6 and Exhibit B.
2. Emergency Alert Capability. Grantee shall comply with 47 U.S.C. 544(g) and all regulations issued pursuant thereto with respect to an Emergency Alert System ("EAS"). If the Grantee provides an EAS, then the Grantor shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. The Grantor shall hold the Grantee, its employees, officers and assigns harmless from any claims or costs arising out of use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.
3. Technical Standards. The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference.

4. Special Testing.
 - a. City shall have the right to inspect all construction or Installation work performed pursuant to the provisions of the Franchise. Subject to and without waiving Applicable Law, City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints regarding such construction or Installation work or 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. 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.
 - b. Before ordering such tests, 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. 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 at Grantee's expense by a qualified engineer selected by City and Grantee, and Grantee shall cooperate in such testing.
5. FCC Reports. The results of any tests required to be filed by Grantee for the System with the FCC shall upon request of City also be filed with City or its designee within ten (10) days of the filing of such tests.
6. Annexation. Upon the annexation of any additional land area by City, the annexed area shall thereafter be subject to all the terms of this Franchise upon sixty (60) days' written notification to Grantee of the annexation by City, subject to the line extension policies contained herein and provided that the annexed area is not already served by another cable operator. The City shall also notify Grantee in writing of all new street address assignments or changes within the annexed area. Grantee shall within ninety (90) days after receipt of the annexation notice, pay the City franchise fees on revenue received from the operation of the Cable System to provide Cable Services in any area annexed by the Grantor if the City has provided a written annexation notice that includes the addresses that will be moved into the Franchise Area in an Excel format or in a format that will allow Grantee to change its billing system. If the annexation notice does not include the addresses that will be moved into the Franchise Area, Grantee shall pay franchise fees within ninety (90) days after it receives the annexed addresses as set forth above. All notices due under this section shall be sent as set forth in Section 2(9) above. In any audit of franchise fees due under this Franchise, Grantee shall not be liable for franchise fees on annexed areas unless and until Grantee has received notification and information that meets the standards set forth in this section.
7. Line Extension.

- a. Grantee shall construct and operate its Cable System so as to provide Service to all parts of its Franchise area as provided in this Franchise and having a density equivalent of ten (10) residential units per one-quarter (1/4) cable mile of System, as measured from the closest technologically feasible tie-in point that is actively delivering Cable Service as of the date of the request.
 - b. Where the density is less than that specified above, Grantee shall inform Persons requesting Service of the possibility of paying for Installation or a line extension and shall offer to provide them with a free written estimate of the cost, which shall be provided within fifteen (15) working days of such a request. The charge for Installation or extension for each Person requesting Service shall not exceed a pro rata share of the actual cost of extending the Service.
 - c. Any residential and/or commercial unit located within one hundred twenty-five (125) feet of the nearest accessible tie-in point on Grantee's System shall be connected to the System at no charge other than the Standard Installation charge. Grantee shall, upon request by any potential Subscriber residing in City beyond the one hundred twenty-five (125) foot limit, extend Service to such Subscriber provided that the Subscriber shall pay the net additional Drop costs.
8. Lockout Device. Grantee will comply with federal law concerning parental control devices.

SECTION 5. SERVICE PROVISIONS

1. Regulation of Service Rates. City may regulate rates for the provision of Cable Service, equipment, or any other communications service provided over the System to the extent allowed under federal and state law(s). City reserves the right to regulate rates for any future Services to the extent permitted by law.
2. Consumer Protection and Service Standards. Grantee shall provide the necessary facilities, equipment and personnel to comply with the following consumer protection standards under Normal Operating Conditions:
 - a. Cable System office hours and telephone availability:
 - i. 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 Grantee 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 Grantee representative on the next business day.

- ii. 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 percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.
 - iii. Grantee shall acquire equipment and/or perform surveys to measure compliance with the telephone answering standards above.
 - iv. Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.
 - v. Grantee shall maintain a local or toll-free telephone Subscriber complaint line, available to its subscribers twenty-four (24) hours per day, seven days a week. In the event Grantee elects to close its local office, Grantee shall provide at least sixty (60) days prior written notice to the City.
- b. Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following four (4) standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:
- i. 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 one hundred twenty-five (125) feet from the existing distribution system and do not include the Installation of Other Programming Services at the same time.
 - ii. Excluding conditions beyond the control of Grantee, Grantee will begin working on “Service Interruptions” promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem. Grantee shall resolve all Service Interruptions within forty-eight (48) hours under Normal Operating Conditions.
 - iii. The “appointment window” alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Grantee may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)
 - iv. Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
 - v. If Grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted prior to the time of the scheduled appointment. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

- c. Communications between Grantee and Subscribers:
 - i. Notifications to Subscribers:
 - 1. Grantee shall provide written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers, and at any time upon request:
 - a. Products and Services offered;
 - b. Prices and options for programming services and conditions of subscription to programming and other services;
 - c. Installation and Service maintenance policies;
 - d. Instructions on how to use the Cable Service;
 - e. Channel positions of the programming carried on the System; and
 - f. Billing and complaint procedures, including the address and telephone number of the City.
 - 2. Subscribers 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 changes are 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 this Section 5.4(c)(i)(1). Grantee shall not be required to provide prior notice of any rate changes as a result of a regulatory fee, Franchise Fee, or other fees, tax, assessment or charge of any kind imposed by any federal agency, state or City on the transaction between the operator and the Subscriber.
 - ii. Billing:
 - 1. Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
 - 2. In case of a billing dispute, the Grantee must respond to a written complaint from a Subscriber within thirty (30) days.
 - iii. Refunds: Refund checks will be issued promptly, but no later than either:
 - 1. The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
 - 2. The return of the equipment supplied by Grantee if Service is terminated.

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

To the extent any of the foregoing obligations are identical or substantially similar to obligations set forth in 47 C.F.R. § 76.309, and the FCC amends or replaces this regulation, then Grantee's obligations under this franchise shall be interpreted consistent with the amended or replaced FCC regulation.

- 5. Subscriber Contracts. Upon request, Grantee shall provide the City with 1) current subscriber charges, and 2) the length and terms of residential subscriber contracts, if they exist.

SECTION 6. ACCESS CHANNEL(S) PROVISIONS

- 1. Grantee Support for PEG Access. Subject to Applicable Law, Grantee shall provide the following support for PEG access usage within the Service Area, provided the PEG access provisions of this Franchise shall be no less burdensome or more beneficial than those imposed in additional franchises for cable service:
 - a. Provision of the Channels designated in Exhibit B of this Agreement for local PEG programming and access use at no charge in accordance with the requirements of Exhibit B.
 - b. Support of PEG programming to the extent specified in Exhibit B of this Agreement.
 - c. Provision of free public building Installation and Cable Service and a fiber connection to City's network as more clearly specified in Exhibit B.
- 2. Compliance with Federal Law. Grantee and City agree that the PEG capital grant referenced in Exhibit B, paragraph 6 will be dedicated for and may be used only for the purchase, upgrade and construction of PEG access facilities, as defined by federal law. The Grantee and City further agree that the PEG capital grant will not be deemed to be "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. §542), as long as the City spends the PEG capital grant(s) in accordance with this Section and Applicable Law. The PEG access capital grant shall not be deemed to be (i) "payments in kind" or any involuntary payments chargeable against the Franchise Fees to be paid to the City by Grantee pursuant to Section 7.3 hereof or (ii) part of the Franchise Fees to be paid to City by Grantee pursuant to Section 7.3 hereof.

**SECTION 7.
OPERATION AND ADMINISTRATION PROVISIONS**

1. Administration of Franchise. The City Administrator or other designee shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise; provided, however, that the City Council shall retain the sole authority to take enforcement action pursuant to this Franchise.
2. Delegated-Authority. The City may appoint a citizen advisory body or may delegate to any other body or Person authority to monitor the performance of Grantee pursuant to the Franchise. Grantee shall cooperate with any such delegates of City.
3. Franchise Fee.
 - a. During the term of the Franchise, Grantee shall pay quarterly to City a Franchise Fee in an amount equal to five percent (5%) of its quarterly Gross Revenues, or such other amounts as are subsequently required by federal statute. The Franchise Fee imposed upon Grantee in this Franchise shall be no less burdensome or more beneficial than those imposed in additional franchises for cable service.
 - b. Any payments due under this provision shall be payable quarterly. The payment shall be made within forty-five (45) days of the end of each quarter together with a report showing the basis for the computation in form and substance substantially the same as Exhibit C attached hereto. In the event that a Franchise Fee payment or other sum due is not received by the City on or before the date due, or is underpaid, Grantee shall pay in addition to the payment, or sum due, interest from the due date at an annual rate equal to the maximum rate permitted under Minnesota law, or one percent (1%) per month, twelve percent (12%) per year, if no such rate is legally specified.
 - c. All amounts paid shall be subject to audit and recomputation by City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount.

Discounted Rates. The parties acknowledge that the Grantee may offer a bundle or package of Cable Services and non-Cable services at a discounted rate. In order to calculate Gross Revenues, the grantee will allocate revenues between Cable Services (which are subject to the Franchise Fee) and non-Cable Services (which are not subject to the franchise Fee but may be subject to other fees and/or taxes) included in the bundle or package of services. The Grantee shall apportion the revenues generated from bundled or package services on a proportionate pro rata basis among the services offered unless such allocation methodology is directly in conflict with GAAP, in which case Grantee shall allocated bundled revenues in accordance with GAAP, and in no even shall the Grantee allocate the revenues to evade its Franchise Fee obligations under this Franchise or disproportionately reduce Gross Revenues. In no event shall Grantee be permitted to

evade or reduce applicable franchise fee payments required to be made to City due to discounted bundled services.

4. Access to Records. The City shall have the right to inspect, upon reasonable notice and during Normal Business Hours, any records maintained by Grantee which relate to System operations including specifically Grantee's accounting and financial records. City acknowledges that some of the records which may be provided by Grantee may be classified as confidential and therefore may subject Grantee to competitive disadvantage if made public. City shall therefore maintain the confidentiality of any and all records provided to it by Grantee which are not required to be made public pursuant to Applicable Laws.
5. Reports to be Filed with City.
 - a. Grantee shall file with the City, at the time or payment of the Franchise Fee, a report of all Gross Revenues in form and substance as Exhibit D attached hereto.
 - b. City and Grantee shall mutually agree, at the times and in the form prescribed, to provide such other reasonable reports with respect to Grantee's operations pursuant to this Franchise.
 - c. Upon request and thirty (30) days' notice, the Grantee shall allow the City to inspect the maps, plats, and permanent records of the location of all facilities constructed, including underground facilities.
6. Amendments.

The Grantee and the City may agree, from time to time, to amend this Franchise. Any such amendments shall be made in writing and executed by both parties.

SECTION 8. GENERAL FINANCIAL AND INSURANCE PROVISIONS

1. Letter of Credit
 - a. At the time of acceptance of this Franchise, Grantee shall deliver to City a Letter of Credit in the amount of Ten Thousand Dollars (\$10,000.00).
 - b. Upon written demand of City, after compliance with the procedures set forth in this Section 8.1, City may draw on the Letter of Credit in payment for monies owed pursuant to this Franchise, or for any damage incurred as a result of any acts or omissions by Grantee pursuant to this Franchise.
 - i. For failure to meet the requirements of Section 7.5 herein the penalty shall be Fifty Dollars (\$50.00) per day for each day, or part thereof, such failure occurs or continues.
 - ii. For failure to meet the requirements of Section 5.2 herein, the penalty shall be One Hundred Fifty Dollars (\$150.00) per day for each day, or part thereof, such failure occurs or continues.

- iii. For failure to meet the requirements of Section 6 herein, the penalty shall be Two Hundred Dollars (\$200.00) per day for each day or part thereof, such failure occurs or continues.
- c. Whenever the City finds that Grantee has violated one or more terms, conditions or provisions of this Franchise, a written notice shall be given to Grantee informing it of such violation.
- d. Grantee may, within fifteen (15) days of receipt of such notice, notify the City in writing that there is a dispute as to whether a violation or failure has in fact occurred. Such written notice by Grantee to the City shall specify with particularity the matters disputed by Grantee and shall toll the time frame provided herein and the accrual of penalties.
 - i. The City shall hear Grantee's dispute at the next regularly scheduled meeting and provide Grantee with an opportunity to introduce evidence and examine witnesses
 - ii. Upon determination by the City that no violation has taken place, the City shall rescind the notice of violation.
 - iii. If after hearing the matter the City determines that a violation has taken place, or if Grantee has not disputed the notice or cured the violation within thirty (30) days following receipt of notice, City may draw from the Letter of Credit all monies due the City from the date of Grantee's receipt of notice.
- e. If the City draws upon the Letter of Credit, in whole or in part, City may request that Grantee replenish the same within ten (10) days up to a maximum of \$20,000.00 for the term of the franchise.
- f. The failure to replenish any Letter of Credit may also, at the option of the City, be deemed a material default by Grantee under this Franchise. The drawing on the Letter of Credit by the City and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of Grantee which are in default, shall not be a waiver or release of such default.
- g. The collection by the City of any damages or monies from the Letter of Credit shall not be deemed an exclusive remedy and shall not affect any other right or remedy available to the City.

2. Liability Insurance.

- a. Upon the effective date, Grantee shall, at its sole expense take out and maintain during the term of this Franchise public liability insurance with a company licensed to do business in the state of Minnesota with a rating by A.M. Best & Co. of not less than "A" that shall protect the Grantee, City and its officials, officers, directors, employees and agents from claims which may arise from operations

under this Franchise, whether such operations be by the Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee's vehicles, products and operations. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall not be less than Two Million Dollars (\$2,000,000.00). The following endorsements shall be attached to the liability policy:

- i. The policy shall provide coverage on an "occurrence" basis.
- ii. The policy shall cover personal injury as well as bodily injury.
- iii. The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
- iv. Broad form property damage liability shall be afforded.
- v. City shall be named as an additional insured on the policy.
- vi. An endorsement shall be provided which states that the coverage is primary insurance and that no other insurance maintained by the Grantor will be called upon to contribute to a loss under this coverage.
- vii. Standard form of cross-liability shall be afforded.
- viii. An endorsement stating that the policy shall not be canceled without thirty (30) days' notice of such cancellation given to City.
- ix. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.

3. Indemnification

- a. Grantee shall indemnify, defend and hold City, its officers, boards, commissions, agents and employees (collectively the "Indemnified Parties") harmless from and against any and all lawsuits, claims, causes of action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses and costs of any nature that any of the Indemnified Parties may at any time suffer, sustain or incur based upon or in any way connected with the Grantee's negligence with respect to its operations in the City, the exercise of the Franchise, the breach of Grantee of its obligations under this Franchise, and/or the activities of Grantee, its subcontractors, employees and agents hereunder. Grantor shall give the Grantee written notice of its obligation to indemnify the Grantor within ten (10) days of receipt of a claim or action pursuant to this section. In the event any such claim arises, the Grantor shall tender the defense thereof to the Grantee and the Grantee

shall have the right to defend, settle or compromise any claims arising hereunder and the Grantor shall cooperate fully herein. If the Grantor determines in good faith that its interests cannot be represented by the Grantee, the Grantor shall be permitted to assume the defense and select its own attorneys to defend said claim. In the event that Grantor elects to assume the defense, and it is determined at the conclusion of the action that Grantee has an obligation to indemnify Grantor, such indemnification shall include Grantor's reasonable expenses, including Grantor's reasonable attorney's fees. Grantee shall not be required to provide indemnification to City for programming cablecast over the educational and governmental access channels administered by City.

- b. The indemnification obligations of Grantee set forth in this Franchise are not limited in any way by the amount or type of damages or compensation payable by or for Grantee under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Franchise or the terms, applicability or limitations of any insurance held by Grantee.
- c. City does not, and shall not, waive any rights against Grantee which it may have by reason of the indemnification provided for in this Franchise, because of the acceptance by City, or the deposit with City by Grantee, of any of the insurance policies described in this Franchise.
- d. The indemnification of City by Grantee provided for in this Franchise shall apply to all damages and claims for damages of any kind regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.
- e. Grantee shall not be required to indemnify City for negligence or misconduct on the part of City or its officials, boards, commissions, agents, or employees. City shall hold Grantee harmless, subject to the limitations in Minnesota Statutes Chapter 466, for any damage resulting from the negligence or misconduct of the City or its officials, boards, commissions, agents, or employees in utilizing any PEG access channels, equipment, or facilities and for any such negligence or misconduct by City in connection with work performed by City and permitted by this Agreement, on or adjacent to the Cable System.

4. Grantee's Insurance.

Grantee shall not commence any Cable System reconstruction work or permit any subcontractor to commence work until all insurance required under this Franchise has been obtained. Said insurance shall be maintained in full force and effect until the expiration of this Franchise.

- a. In order for City to assert its rights to be indemnified, defended, and held harmless, City must with respect to each claim:
 - i. Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right;

- ii. Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
- iii. 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 2 above.

SECTION 9.
SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE

1. City's Right to Revoke.

- a. In addition to all other rights which City has pursuant to law or equity, City reserves the right to commence proceedings to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if it is determined by City that after notice and an opportunity to cure as reordered herein;
 - i. Grantee has violated material provisions(s) of this Franchise and has not cured; or
 - ii. Grantee has attempted to evade any of the provisions of the Franchise; or
 - iii. Grantee has practiced fraud or deceit upon City.

2. Procedures for Revocation.

- a. City shall provide Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee thirty (30) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise. In the notice required therein, City shall provide Grantee with the basis of the revocation.
- b. Grantee shall be provided the right to a public hearing affording due process before the City Council prior to the effective date of revocation, which public hearing shall follow the thirty (30) day notice provided in subparagraph (a) above. City shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.
- c. Nothing in this Franchise, including the revocation provisions set forth in this Section 9, shall prevent Grantee from filing at any time a legal action in the Federal District Court, Minneapolis, Minnesota seeking a declaration or enforcement of Grantee's rights or obligations under the Franchise.
- d. During the pendency of any legal action, the Franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the

Franchise would endanger the health, safety and welfare of any Person or the public.

3. Abandonment of Service. Grantee may not abandon the System or any portion thereof without having first given three (3) months written notice to City. Grantee may not abandon the System or any portion thereof without compensating City for damages resulting from the abandonment, including all costs incident to removal of the System.
4. Removal After Abandonment, Termination or Forfeiture.
 - a. In the event of termination or forfeiture of the Franchise or abandonment of the System, City shall have the right to require Grantee to remove all or any portion of the System from all Rights-of-Way and public property within City.
 - b. If Grantee has failed to commence removal of System, or such part thereof as was designated by City, within thirty (30) days after written notice of City's demand for removal is given, or if Grantee has failed to complete such removal within twenty-four(24) months after written notice of City's demand for removal is given, City shall have the right to apply funds secured by the Letter of Credit toward removal and/or declare all right, title, and interest to the System to be in City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it.
5. Sale or Transfer of Franchise.
 - a. No sale or transfer of the Franchise, or sale, transfer, or fundamental corporate change of or in Grantee, other than a sale or transfer to an entity controlling, controlled by, or under common control with Franchisee, shall take place until a written request has been filed with City requesting approval of the sale, transfer, or corporate change and such approval has been granted or deemed granted; provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and/or assets to secure an indebtedness.
 - b. The Grantee shall file, in addition to all documents, forms and information required to be filed by Applicable Laws, the following:
 - i. Information sufficient to describe the proposed transaction and such other reasonable information necessary or appropriate for the City to consider in connection with the transfer determination; and
 - ii. A list detailing all documents filed with any state or federal agency related to the transaction.
 - c. City shall have such time as is permitted by Applicable Laws in which to review a transfer request.
 - d. In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to subparagraph (a) or (b) of this section be approved without the

transferee becoming a signatory to this Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City.

- e. City shall be deemed to have waived its right to purchase the System pursuant to this section only in the following circumstances:
 - i. If City does not indicate to Grantee in writing, within sixty (60) days of receipt of written notice of a proposed sale, transfer, corporate change, or assignment as contemplated in Section 9.5 (g) above, its intention to exercise its right of purchase; or
 - ii. It approves the assignment or sale of the Franchise as provided within this Section.
 - f. No Franchise may be transferred if City determines Grantee is in noncompliance with a material obligation of the Franchise, following notice and an opportunity to cure, unless an acceptable compliance program has been approved by City. The approval of any transfer of ownership pursuant to this section shall not be deemed to waive any rights of City to subsequently enforce noncompliance issues relating to this Franchise even if such issues predated the approval, whether known or unknown to City.
 - g. In the event of any proposed sale or assignment pursuant to subparagraph (a) of this section City shall have the right of first refusal of any bona fide offer to purchase the System. Bona fide offer, as used in this section, means an offer received by the Grantee which it intends to accept to City's rights under this section. This written offer must be conveyed to City along with the Grantee's written acceptance of the offer contingent upon the rights of City provided for in this section. City shall be deemed to have waived its rights under this section in the following circumstances:
 - 1. If it does not indicate to Grantee in writing, within sixty (60) days of notice of a proposed sale or assignment, its intention to exercise its right of purchase; or
 - 2. It approves the assignment or sale of the Franchise as provided within this section.
6. Reservation of rights. City and Grantee reserve all rights that they may possess under Applicable Laws unless expressly waived herein.

SECTION 10. PROTECTION OF INDIVIDUAL RIGHTS

- 1. Discriminatory Practices Prohibited. Grantee shall not deny Service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color,

religion, national origin, sex, age, status as to public assistance, affectional preference, or disability. Grantee shall comply at all times with all other applicable federal, state, and City laws, and all executive and administrative orders relating to nondiscrimination.

2. Subscriber Privacy.

- a. No signals including signals of a Class IV Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber, pursuant to Minn. Stat. § 284.084 (s).
- b. No lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee or its agents for Grantee's service business use or to City for the purpose of Franchise administration, and also to the Subscriber subject of that information, unless Grantee has received specific written authorization from the Subscriber to make such data available, pursuant to Minn. Stat. § 284.084 (s)(1).
- c. Written permission from the Subscriber shall not be required for the conducting of system wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in subparagraph (b) of this section.

SECTION 11.

UNAUTHORIZED CONNECTIONS AND MODIFICATIONS

1. Unauthorized Connections or Modifications Prohibited. It shall be unlawful for any firm, Person, group, company, corporation, or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any unauthorized connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System or receive Services of the System without Grantee's authorization.
2. Removal or Destruction Prohibited. It shall be unlawful for any firm, Person, group, company, or corporation to willfully interfere, tamper, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any purpose whatsoever.

SECTION 12.

MISCELLANEOUS PROVISIONS

1. Franchise Renewal. Any renewal of this Franchise shall be performed in accordance with Applicable Laws. The term of any renewed Franchise shall be limited to a period not to exceed fifteen (15) years.
2. Work Performed by Others. All applicable obligations of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise, however, in no event shall any such subcontractor or other performing work obtain any rights to maintain and operate a System or provide Cable Service. Grantee shall provide notice to City of the name(s) and address(es) of any entity, other than Grantee, which performs substantial services pursuant to this Franchise.
3. Compliance with Federal, State and Local Laws.
 - a. If any federal or state law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City shall conform to state laws and rules regarding cable communications not later than one (1) year after they become effective, unless otherwise stated, and to conform to federal laws and regulations regarding cable as they become effective.
 - b. If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and City.
4. Nonenforcement by City. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of City to enforce prompt compliance. City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.
5. Rights Cumulative. All rights and remedies given to City by this Franchise or retained by City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to City, at law or in equity, and

such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

6. 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, and that Grantee believes City has the power to make the terms and conditions contained in this Franchise.
7. Force Majeure. Neither party shall be liable for any failure of performance hereunder due to causes beyond its reasonable control including but not limited to; acts of God, fire, explosion, vandalism, storm or other similar catastrophes; any law, order, regulation, direction, action or request of the United States Government or any other government including state and local governments having jurisdiction over either of the parties or of any department, agency, commission, court, bureau, governments, or of any civil or military authorities; national emergencies; insurrection; riots; wars; or strikes, lockouts or work stoppages.

SECTION 13.

PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

1. Publication, Effective Date. This Franchise shall be published in accordance with applicable local and Minnesota law. The effective date of this Franchise shall be the date of acceptance by Grantee in accordance with the provisions of Section 13.2.
2. Acceptance.
 - a. Grantee shall accept this Franchise within sixty (60) days of its enactment by the City Council, unless the time for acceptance is extended by City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes; provided, however, this Franchise shall not be effective until all City ordinance adoption procedures are complied with and all applicable timelines have run for the adoption of a City ordinance. In the event acceptance does not take place, or should all ordinance adoption procedures and timelines not be completed, this Franchise and any and all rights granted hereunder to Grantee shall be null and void.
 - b. Upon acceptance of this Franchise, Grantee and City shall be bound by all the terms and conditions contained herein.
 - c. Grantee shall accept this Franchise in the following manner:
 - i. This Franchise will be properly executed and acknowledged by Grantee and delivered to City.

- ii. With its acceptance, Grantee shall also deliver any grant payments, performance bond and insurance certificates, and guaranties, as required herein, that have not previously been delivered.

Passed and adopted by the City Council this _____ day of _____, 2019.

By: Robert J. Byrnes
Its: Mayor

ATTEST:

By: Kyle Box
Its: City Clerk

Accepted: This Franchise is accepted, and we agree to be bound by its terms and conditions:

Dated this 29 day of August, 2019.

Spectrum Mid-America, LLC
l/k/a Charter Communications



By: Paul Abbott
Its: VP, Local Government Affairs & Franchising

EXHIBIT B
GRANTEE COMMITMENT TO
PEG ACCESS FACILITIES AND EQUIPMENT

1. PUBLIC, EDUCATIONAL AND GOVERNMENT (PEG) ACCESS CHANNELS

Grantee shall make three (3) video Channels available exclusively for PEG use (“PEG Channels”). Initially the three (3) Channels shall be provided by Grantee for shared public, educational and governmental access use in accordance with Minnesota Statutes Section 238.084. The PEG Channels shall be dedicated for PEG use for the term of the Franchise, provided that Grantee may upon written request to City, utilize any PEG Channels for commercial or non-commercial programming when they are not scheduled for PEG use. City and Grantee shall establish rules and procedures for such scheduling in accordance with Section 611 of the Cable Act (47 U.S.C. § 531).

City may not request additional Channel capacity beyond the three (3) Channels for PEG use except in accordance with applicable State laws. City shall be responsible for all programming requirements, including but not limited to scheduling, playback, training, staffing, copyright clearances, and equipment, maintenance and repair. Grantee may share such public access equipment with other communities served from Grantee’s headend.

2. PEG OPERATIONS

City may, in its sole discretion, negotiate agreements with neighboring jurisdictions served by the same Cable System, educational institutions or others to share the expenses of supporting the PEG Channels.

3. TITLE TO PEG EQUIPMENT

City shall retain title to all PEG equipment currently in use for PEG purposes which was purchased by Grantee during the preceding franchise term.

4. RELOCATION OF PEG CHANNELS

Subject to and without waiving Applicable Law, Grantee shall not relocate any PEG access Channel to a different Channel number without sixty (60) days advanced notice to the City. Grantee shall reimburse the City for reasonable costs, up to \$2,000, caused by such relocation, including (1) logo, business card or signage changes, (2) equipment modifications necessary to effect the change at the programmer’s production or

receiving facility, or (3) reasonable constituency notification costs. Grantee shall provide City and all Subscribers with at least sixty (60) days prior written notice of any legally required relocation.

Other PEG access Channels may be relocated by providing the City and all Subscribers two (2) separate written notices and pursuant to above-mentioned reimbursement requirements.

5. PEG ACCESS SUPPORT

Commencing on the Effective Date and ending of the tenth (10th) anniversary of the Effective Date, Grantee shall collect, on behalf of City, a per Subscriber fee of up to One Dollar and 50/100 (\$1.50) per month, solely to fund public, educational and governmental access related expenditures (hereinafter "Access Fee"). In year five (5) of the Franchise term or anytime thereafter, at the request of the Grantee, the City will prepare an analysis of expenditures to date and a budget for PEG facilities and equipment needed for the remainder of the Franchise term, and within sixty (60) days of Grantee's request the City and Grantee will convene to review the analysis and budget and consider a reduction of the Access Fee. In the event the City has expended less than ninety (90) percent of the Access Fee revenue collected during the term of the Franchise, the City agrees to a reduction of the Access Fee as necessary so that the amount of the Access Fee for the remainder of the Franchise term does not exceed expenditures for PEG facilities and equipment. The Access Fee set forth in this Franchise shall be no less burdensome or more beneficial than those imposed in additional franchises for cable service.

6. TWO-WAY SERVICE TO PUBLIC BUILDINGS

Subject to Applicable Law, Grantee shall continue to provide a two-way connection to the City Hall, the public high school, the public middle school, Marshall Lyon County Public Library, and Southwest Minnesota State University to facilitate the exchange of programming, including live cablecast programming from those buildings on the Grantee's Cable System and the Grantor's network. Subject to Applicable Law, Grantee shall further continue to provide, all necessary interface equipment (modulator/demodulator) at the agreed-upon point of interconnection to allow the City to cablecast programming to Grantee's headend for cablecast on Grantee's Cable System. In addition to the foregoing, Grantee shall provide two-way connections to all Marshall public and private schools, but shall not be required to provide the interface equipment necessary for such point of interconnection. Nothing in this Franchise shall prevent Grantee from working cooperatively with any other franchised cable operator in the City to provide these two-way connections and associated equipment.

7. DROPS TO DESIGNATED BUILDINGS

- a. Subject to Applicable Law, Grantee shall provide throughout the term of this Franchise, Installation of one (1) Drop and one (1) cable outlet, and one (1)

Converter, if necessary, and Basic Cable Service offered by Grantee, excluding pay-per-view, pay-per-channel (premium) programming, high-speed data services or newly created non-video Cable Services, without charge to the institutions identified on **Exhibit B-1** attached hereto.

EXHIBIT B-1
SERVICE TO PUBLIC AND PRIVATE BUILDINGS

Lyon County Law Enforcement	611 West Main Street
Police Department – City of Marshall	611 ½ West Main Street
Studio 1 TV (SMSU)	1501 State Street
Municipal Building	344 W. Main Street
Marshall Lyon County Public Library	201 C Street
Marshall Fire Department	201 E. Saratoga Street
City of Marshall Street Department	901 Oak Street

**EXHIBIT C
FRANCHISE FEE PAYMENT WORKSHEET**

	Quarter/Year	Total
BASIC CABLE SERVICE		
INSTALLATION CHARGES		
BULK REVENUE		
EXPANDED BASIC SVC		
PAY SERVICE		
PAY PER VIEW		
FRANCHISE FEE REVENUE		
ADVERTISING REVENUE		
HOME SHOPPING REVENUE		
DIGITAL SERVICES		
INSIDE WIRING		
OTHER REVENUE		
EQUIPMENT RENTAL		
PROCESSING FEES		
BAD DEBT		
REVENUE		
FEE CALCULATED		
FEE		