

**Central St. Croix Valley**

Joint Cable Commission

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of )  
Implementation of Section 621(a)(1) of )  
the Cable Communications Policy Act of 1984 )  
as amended by the Cable Television Consumer )  
Protection and Competition Act of 1992 )

MB Docket No. 05-311

**COMMENTS OF the Central St. Croix Valley Joint Cable Communications Commission,  
representing the Cities of Stillwater, Oak Park Heights, Bayport and the townships of  
Stillwater and Baytown, all in the state of Minnesota.**

These Comments are filed by the Central St. Croix Valley Joint Cable Communications Commission in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the Central St. Croix Valley Joint Cable Communications Commission believes that local governments/Cable Commissions can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

**Cable Franchising in Our Community**

**Community Information**

The Central St. Croix Valley Joint Cable Communications Commission is a joint powers entity representing the Cities of Stillwater, Oak Park Heights, Bayport, Baytown Township and Stillwater Township, all located in Minnesota, with a population of approximately 30,000 for the area. Our franchised cable provider is Comcast. Our community has negotiated cable franchises since 1984. We are in the midst of our second franchise. Cable franchises are 15 years in duration.

**Our Current Franchise**

Our current franchise began on June 8, 1999 and expires on June 8, 2014. (to see complete franchise agreement see Appendix A) Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

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### **Cable Franchising in our Community - Page 3**

amplifier cascades to no more than 13 amplifiers and migrating the network to a hybrid fiber-coax system. The cable company granted us 21 six MHz analog channels downstream and 12 six MHz analog channels upstream for video and data uses. Additional sites can be connected to the network on a cost-sharing basis, with the cable company providing the first 500 feet of construction free of charge. There are provisions for interconnecting our institutional network with adjacent networks as well. There are no provisions for special funds.

We use our I-Net facilities in the following ways: The Central St. Croix Valley Cable Commission uses the institutional network in order to provide live coverage of local city council meetings, county board meetings, school board meetings and an occasional special event in the community. The local libraries utilize their institutional network connection for data purposes (at least that is my understanding) and to link with other libraries in the County.

Regarding emergency alerts requirements: Our current franchise does not address emergency alerts but I know that our first franchise did. I believe that the County currently takes care of emergency alerts in our community. I have seen alerts on television before and it tells viewers what channel to turn to for information.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms agreed upon in the franchise: The cable company shall maintain an office in at least one of the member Cities which shall be open during normal business hours where payments can be brought and where equipment can be picked up or dropped off. The cable company must also supply a drop box in each of our Cities for purposes of depositing payments. The cable commission's phone number is on subscriber's bills for any problems that seem to be unable to be resolved with the cable company; therefore the Cable Commission assists our subscribers with any customer service issues if needed. In the event that the local office closes, the cable company has to be willing to pick up defective equipment or equipment no longer wanted, by appointment with the subscriber, at no charge. The Cable Company is currently doing this.

Because we are in our second franchise period, I have chosen not to discuss the original construction phase, but rather our upgrade which occurred shortly after our renewal in 1999. Our franchise contains the following language for the upgrade of the subscriber network: The system upgrade shall give us a capacity of at least 750 MHz and will provide a minimum of up to 80 video programmed channels. A hybrid fiber-coaxial architecture which incorporates fiber optic cables from our headend to nodes located throughout the community will serve approximately 500 homes per node. The upgrade will also provide the capability to transmit return signals upstream in the 5-40 MHz spectrum. The construction shall be completed on or before December 31, 2000 (it was actually completed a couple of months earlier!).

Our franchise requires that the cable operator currently provide service to the following areas of our community: The franchise is granted for the corporate boundaries of our member

## *Cable Franchising in Our Community – Page 4*

cities. The cable company will extend its trunk and distribution system to provide cable service to subscribers where the density is 35 or more dwelling units per mile in areas passed by overhead cable and 50 or more dwelling units per mile in areas passed by underground cable. When the density requirement is not met, the cable company shall cover the first \$1,000 of installation cost, with the remaining being paid by the customer or developer.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements: That was discussed 2 paragraphs earlier. We are able to get the newest technologies, which includes the high speed internet and telephone service over the subscriber network. Digital receivers have replaced the analog boxes and enable the subscriber to get more services. More and more new services are being offered by the Cable Company (Comcast).

With regards to a level playing field for possible competitive providers, the franchise does indicate that the franchise is not exclusive and that it does not, explicitly or implicitly, preclude issuance of other franchises or similar authorization to operate Cable Systems within a Member City. The Grantor shall not authorize or permit another party to construct, operate or maintain a Cable System on material terms and conditions which, taken as a whole, are not more favorable or less burdensome than those that are applied to the Grantee. (see entire franchise language in Appendix A, page 5) Our cable attorney came up with some policies/guidelines concerning this issue and procedures to follow when we are approached by competitive providers. We would definitely give another provider the same opportunities as the current cable provider. We have been approached only once for a brief overview. Nothing else has happened. We are a small community and we haven't been approached the same as the large franchise areas have been. We would welcome competitive providers but need for them to go through our local governments and cable commission and follow the same procedures as the current cable company if our rights-of-ways are used to deliver their services.

Our franchise contains the following insurance and bonding requirements: Initially a performance bond of \$100,000 was issued; it was reduced to \$10,000 once the system was upgraded. The cable company has also issued a security/performance sum of \$5,000 which is held by the Cable Commission to use in the event that a franchise violation occurs and is not corrected in a timely basis.

The Cable Company carries an insurance policy of \$1,000,000 for personal injury or death of any one person and \$2,000,000 for personal injury or death of two or more persons. There is also an insurance policy of \$500,000 for property damage to any one person and \$2,000,000 for property damage resulting from any one act or occurrence.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way. In our franchise there is no mention of fees

## **Cable Franchising in Our Community – Page 5**

for a permit. What the franchise does have is rules that say that the Cable Company shall adhere to all state & local laws, building & zoning codes and that the location, construction, installation and operation or maintenance of the system is done with consideration of the aesthetics of the property. Repairs to the right-of-ways and property must be done and fully restored to the same condition as prevailed prior to the provider's work. There are other considerations mentioned in the franchise as well, such as 1) Conditions of right-of-ways use, 2) Undergrounding of cable, installation of facilities and safety requirements. The franchise also states that usage of the rights-of-ways by providers shall not be exclusive and that it does not explicitly or implicitly, preclude the issuance of other franchises or similar authorization to operate within a member City.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: The Cable Commission office gets calls of complaint from residents and government offices if there are problems with services (which sometimes gets into the area of franchise compliance) and as time goes by, the Commission and/or the Administrator looks into the franchise on different issues and asks for reports as needed. The Cable Commission reserves the right for periodic evaluation sessions upon written request. Customer service is handled at both the Cable Company and Cable Commission levels.

### **The Franchising Process**

Under the law, a cable franchise functions as a contract between the local government/cable commission (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: Our franchise states that if any state or federal regulation results in a conflict with our franchise agreements that either party (Commission/Cable Company) will notify the other and that both entities must confirm to state and federal laws regarding cable communications not later than one year after they become effective.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. The Cable Commission is a joint powers entity so it is this Commission who deals with franchising and franchise compliance. We held a public hearing before the final draft of the new franchise, we held a public hearing when Comcast was going to be the new

## ***Cable Franchising in Our Community – Page 6***

cable company and we ask a representative of the Cable Company to be present at our meetings in order to keep in touch with each other about developments.

### **Competitive Cable Systems**

Our community was approached once by a company from Denver called “Wide Open West” but the provider chose not to enter into any formal discussions. This was in the spring of 2000 and a representative from the Wide Open West came and visited with the Cable Commission chairperson and myself (administrator) just to introduce their company. We didn’t get into franchising procedures at all. There have been no other contacts with Wide Open West or anyone else.

### **Conclusions**

The local cable franchising process functions well for the Central St. Croix Valley Joint Cable Communications Commission (representing the Cities of Stillwater, Bayport, Oak Park Heights, Baytown Township and Stillwater Township). As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

**Cable Franchising in Our Community – Page 7**

The Central St. Croix Valley Joint Cable Communications Commission therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,



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Central St. Croix Valley Cable Commission Members

Appendix A  
MB Docket #05-311

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CENTRAL ST. CROIX VALLEY  
JOINT CABLE COMMUNICATIONS COMMISSION

CABLE TELEVISION FRANCHISE  
ORDINANCE NO. 7

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## ORDINANCE NO. 7

**AN ORDINANCE GRANTING A FRANCHISE TO MEDIAONE OF THE UPPER MIDWEST, INC. TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE COMMUNICATIONS SYSTEM IN THE CITIES OF BAYPORT, BAYTOWN TOWNSHIP, OAK PARK HEIGHTS, STILLWATER, AND STILLWATER TOWNSHIP, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE.**

The Central St. Croix Valley Cable Communications Commission ordains:

### STATEMENT OF INTENT AND PURPOSE

The Commission 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 communications needs and desires of the residents and citizens of the Member Cities and the public generally. Further, the Member Cities 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 Commission, in the best interests of the Commission, its Member Cities and its residents.

### FINDINGS

In the review of the request and proposal for renewal by Grantee and as a result of a public hearing, the Commission makes the following findings:

1. The Grantee's technical ability, financial condition, and legal qualifications, 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 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 the Grantor 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 shall be known and cited as the Central St. Croix Valley Cable Communications 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. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.
  - a. **"Basic Cable Service"** means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational or governmental access channels. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7).
  - b. **"Member Cities"** means the Municipalities of Bayport, Baytown Township, Oak Park Heights, Stillwater, Stillwater Township, all governmental entities, in the State of Minnesota.
  - c. **"Cable Service"** or **"Service"** means (i) the one-way transmission to Subscribers of video programming or other programming services; and (ii) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming, including cable modem service, to the extent consistent with federal and state law.
  - d. **"Cable System"** or **"System"** means a facility consisting of antennas, fiber optic cables, transmitters and receivers, cables and amplifiers, towers, microwave or other wireless transmission links, cablecasting studios, power supplies, pedestals, and any other conductors, converters, equipment or facilities, designed and constructed for the purpose of distributing video programming to subscribers and/or producing, receiving, amplifying, storing, processing, switching, or distributing audio, video, or data signals including digital or other forms of electronic signals sold or distributed to subscribers, which is provided to customers within the Member Cities. 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 customers without using any Public Right-of-Way, including streets or easements; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that such facility shall be considered a Cable System if such facility is used in the transmission of video programming, whether on a common carrier or non-common carrier basis, directly to customers,

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.

- e. **“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.
- f. **“Commercial Need”** or **“Marketplace Need”** means such need or market demand which Grantor and Grantee may jointly determine requires action or performance by Grantee as specifically set forth in this Franchise. Such determination shall be reasonable based on the level of demand and the cost of implementing services or technology to meet such demand.
- g. **“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.
- h. **“Drop”** means the cable that connects the ground block on the Subscriber’s residence or institution to the nearest feeder cable of the System.
- i. **“FCC”** means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- j. **“Franchise”** or **“Cable Franchise”** means this Central St. Croix Valley Cable Communications Franchise Ordinance and the regulatory and contractual relationship established hereby.
- k. **“Grantee”** is MediaOne of The Upper Midwest, Inc., its lawful successors, transferees or assignees.
- l. **“Grantor”** is the Central St. Croix Valley Cable Communications Commission, its lawful successors, transferees or assignees.
- m. **“Gross Revenues”** means all revenue received directly or indirectly by the Grantee, from the operation of System to provide Cable Services within Member Cities. This shall include all Cable Service fees (including cable modem service fees, to the extent consistent with Federal and State laws), and Franchise Fees, PEG Fees, late fees, Installation and reconnection fees, upgrade and downgrade fees, Converter rental fees, Lockout Device fees, and fees related to I-Net Services. The term Gross Revenues shall not include any taxes (FCC, regulatory fees) on services furnished by Grantee imposed by any municipality, state, or other governmental unit and collected

by Grantee for such governmental unit, advertising revenues, bad debt, or subscriber deposits.

- n. **“Installation”** means the connection of the System from feeder cable to the point of connection with the Subscriber Converter or other terminal equipment.
- o. **“Institutional Network”** or **“I-Net”** means the discrete communications network and services related to such network provided by Grantee to identified institutions as required by this Franchise.
- p. **“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 System.
- q. **“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 tier of cable programming services.
- r. **“Person”** is any person, firm, partnership, association, corporation, company, or other legal entity.
- s. **“Right-of-Way”** or **“Rights-of-Way”** means the surface, air space above the surface, and the area below any public street, road, highway, freeway, lane, path, public way, alley, court, sidewalk, boulevard, parkway, drive, bridge, tunnel, park, parkway, waterway, easement or right-of-way now or hereafter held by the Member Cities, or dedicated for use by the Member Cities, use by the general public, or use compatible with cable system operations.
- t. **“Standard Installation”** means any residential installation which can be completed using a Drop of 200 feet or less.
- u. **“Subscriber”** means any Person who lawfully receives service via the System. In the case of multiple office buildings or multiple dwelling units, the “Subscriber” means the lessee, tenant or occupant.

## SECTION 2.

### GRANT OF AUTHORITY AND GENERAL PROVISIONS

1. **Grant of Franchise.** For the purposes of constructing, operating, rebuilding and maintaining a Cable System serving the Member Cities, Grantee may erect, install, construct, operate, upgrade, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the Rights-of-Way in the Member Cities such lines, cables, fiber optics, conductors,

ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, enclosures, attachments and other property and equipment as are necessary or appropriate to the operation of the Cable System.

2. **Nonexclusive Authority.**

- a. This Franchise and the right it grants to use and occupy the Public Rights-of-Way shall not be exclusive and this Franchise does not, explicitly or implicitly, preclude the issuance of other franchises or similar authorization to operate Cable Systems within a Member City. Provided, however, that Grantor shall not authorize or permit another Person to construct, operate or maintain a Cable System on material terms and conditions which are, taken as a whole, more favorable or less burdensome than those applied to Grantee.
- b. In the event another Person operates a Cable System authorized by Grantor on terms and conditions that are, taken as a whole, more favorable or less burdensome than the terms and conditions applicable to Grantee under this Franchise, the Grantor shall adjust any such terms and conditions in any other provider's authorization or this Franchise so that the terms and conditions under which such other Person operates, taken as a whole, are not more favorable or less burdensome than those that are applied to Grantee.

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 those set forth in this Franchise.

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

5. **Previous Franchises.** Upon acceptance by Grantee as required by Section 14 herein, this Franchise shall supersede and replace any previous Ordinance, Permit or Agreement, granting a Franchise to Grantee, or any proposal or other document submitted to Grantor with respect to this Franchise.

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 Member Cities. This Franchise may be modified or amended only with the written consent of Grantee as provided in Section 13.3 herein. However, and notwithstanding the above, the Grantee shall at all times during the term of this

Franchise be subject to all lawful exercise of the police power and eminent domain rights of any Member City and the Grantor, to the extent applicable.

- b. Grantee shall not, through the application of this Franchise and any Member City ordinance or regulation of Rights of Way, be subject to multiple burdens with respect to usage of Rights of Way. In the event any Member City ordinance or regulation of Rights of Way exceeds any corresponding requirement herein, the Member City's requirement shall prevail.
  - c. In the event Grantee cannot determine how to comply with any Right-of-Way requirement of Grantor or any Member City, whether pursuant to this Franchise or other requirement, Grantee shall immediately provide written notice of such question, including Grantee's proposed interpretation, to the City with copy to the Grantor. The Member City or Grantor 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.
7. **Rules of Grantee.** The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its 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 provisions hereto, the rules of the FCC, the laws of the State of Minnesota, any Member City, or any other body having lawful jurisdiction.
8. **Territorial Area Involved.** This Franchise is granted for the corporate boundaries of Member Cities, as may exist from time to time. In the event of annexation by any Member City, any new territory shall become part of the territory for which this Franchise is granted. Grantee shall be given a reasonable period of time to construct and activate cable plant to service annexed or newly developed areas but in no event not to exceed twelve (12) months from notice thereof by Grantor to Grantee and qualification pursuant to the requirements of this Subsection 8. Grantor will extend its trunk and distribution system to provide cable service to subscribers where the density is 35 or more dwelling units per mile in areas passed by overhead cable or 50 or more dwelling units per mile in the areas passed by underground cable. As an alternative to the above-referenced density standards, Grantee, when the density requirement is not met, shall cover costs of installation up to \$1,000 per passing provided that Grantee receives notice thirty (30) days prior to closing any affected utility trench. Anything over \$1,000 shall be paid by the subscriber or developer. It is anticipated that each Member City may require, by ordinance, that all developers notify Grantee at least 30 days prior to closing a utility trench in order to facilitate Grantor placement of facilities in the ground at the same time as electronic and telephone lines. 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.

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 designated officer of Grantee or Grantor 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 Grantor: Chair  
Central St. Croix Valley Cable Communications Commission  
1941 Greeley Street South  
Stillwater, MN 55082

With copies to: Thomas D. Creighton, Esq.  
Bernick and Lifson, P.A.  
Suite 1200 The Colonnade  
5500 Wayzata Boulevard  
Minneapolis, MN 55416

If to Grantee: Vice President and General Manager  
MediaOne  
10 River Park Plaza  
St. Paul, MN 55107

With copies to: John F. Gibbs, Esq.  
Robins, Kaplan, Miller & Ciresi L.L.P.  
2800 LaSalle Plaza  
800 LaSalle Avenue South  
Minneapolis, Minnesota 55402

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 and Construction Codes.** Grantee shall strictly adhere to all state and local laws and building and zoning codes currently or hereafter applicable to location, construction, installation, operation or maintenance of the System in Member Cities and give due consideration at all times to the aesthetics of the property.

2. **Repair of Rights-of-Way and Property.** Any and all Rights-of-Way, or public or private 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 the same condition as that prevailing prior to Grantee's work, consistent with applicable state statutes and rules. If Grantee shall fail to promptly perform the restoration required herein, after written request of Grantor or Member City and reasonable opportunity to satisfy that request, Member City shall have the right to put the Rights-of-Way, public, or private property back into good condition. In the event Member City determines that Grantee is responsible for such disturbance or damage, Grantee shall be obligated to fully reimburse Member City for such restoration.

3. **Conditions on Right-of-Way Use.**

- a. Nothing in this Franchise shall be construed to prevent any Member 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.
- b. All System transmission and distribution structures, lines and equipment erected by the Grantee within any Member City shall be located so as not to obstruct or interfere with the use of Rights-of-Way except for normal and reasonable obstruction and interference which might occur during construction and to cause minimum interference with the rights of property owners who abut any of said Rights-of-Way and not to interfere with existing public utility installations.
- c. If at any time during the period of this Franchise any Member City shall elect to alter or change the grade or location of any Right-of-Way, the Grantee shall, at its own expense, upon reasonable notice by City, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System, and in each instance comply with the reasonable and lawful standards and specifications of Member City.
- d. The Grantee shall not place poles, conduits, or other fixtures of System above or below ground where the same will interfere with any gas, electric, telephone, water or other utility fixtures and all such poles, conduits, or other fixtures placed in any Right-of-Way shall be so placed as to comply with all reasonable and lawful requirements of Member City.
- e. The Grantee shall, upon request of any Person holding a moving permit issued by City, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same,

and the Grantee shall be given not less than ten (10) days advance written notice to arrange for such temporary changes.

- f. The Grantee shall have the authority to trim any trees upon and overhanging the *Rights-of-Way of Member City* so as to prevent the branches of such trees from coming in contact with the wires and cables or other facilities of the Grantee.
  - g. 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.
4. **Undergrounding of Cable.** Grantee must place System facilities underground where all other utility facilities are placed underground and may place System facilities on poles using aerial construction techniques where existing System facilities or other utility facilities are on poles or otherwise of aerial construction. Amplifier boxes and pedestal mounted terminal boxes may be placed above ground if existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe.
5. **Installation of Facilities.** No poles, conduits, amplifier boxes, pedestal mounted terminal boxes, similar structures, or other wire-holding structures shall be erected or installed by the Grantee without any lawfully required permit of Member City.
6. **Safety Requirements.**
- a. The Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injuries.
  - b. The Grantee shall install and maintain its System and other equipment in accordance with the requirements of the National Electric Safety Code and all other applicable FCC, state and local safety codes or regulations, and in such manner that they will not interfere with any Member City communications technology related to health, safety and welfare of the residents.
  - c. All System structures, and lines, equipment and connections in, over, under and upon the Rights-of-Way of any Member 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 Member City or any Person.

## SECTION 4.

### *DESIGN PROVISIONS*

#### 1. System Upgrade

- a. Grantee shall upgrade its System consistent with Exhibit A hereto so as to develop and upgrade to a System with at least 750 MHZ capacity and which is activated upon upgrade so as to have the capability of delivering to all Subscribers (capable of receiving them) a minimum of up to 80 video programmed channels.
- b. The System upgrade will utilize a hybrid fiber-coaxial architecture which incorporates fiber optic cables from Grantee's headend to nodes located throughout the communities which serve an average of approximately five hundred (500) homes per node. The upgrade will be designed with the capability to transmit return signals upstream in the 5 - 40 MHZ spectrum upon upgrade.
- c. Grantee shall develop, construct and operate a System upon completion of upgrade which is capable of providing non-video cable modem services such as high-speed Internet service and other competitive services which shall be activated as Marketplace Need dictates.
- d. All final programming decisions remain the discretion of Grantee, provided that Grantee notifies Grantor and Subscribers in writing thirty (30) days prior to any channel additions, deletions, or realignments, if Grantee has such advance notice, and further subject to Grantee's signal carriage obligations hereunder and pursuant to 47 U.S.C. § 531-536, and further subject to Grantor's rights pursuant to 47 U.S.C. § 545.

#### 2. Construction Timetable.

- a. Grantee shall complete all construction related to the System upgrade required by Section 4 herein on or before December 31, 2000. Failure to timely complete such construction shall be a violation of this Franchise.
- b. Within ninety (90) days after the commencement of the renewal term of this Franchise, Grantee shall commence application for such necessary permits, licenses, certificates and authorizations which are required in the conduct of its business.

#### 3. Interruption of Service. The Grantee shall interrupt service only for good cause and for the shortest time possible. Such interruption shall occur during periods of minimum use of the System. If service is interrupted for a total period of more than forty eight (48) hours in any

thirty (30) day period, Subscribers shall be credited pro rata for such interruption upon request or in the event Grantee receives a complaint and has notice that such subscriber's outage was of sufficient duration to require such credit.

4. **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 76.601 to 76.617, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference.*
5. **EAS Requirements.** *Grantee will implement emergency alert override capability consistent with all applicable federal and state regulations and will enable System specific messages to be delivered by Grantor. Such capability shall include Grantor's ability to override all video channels with a brief audio and/or video message directing viewers to a selected PEG channel for further information provided by Grantor. Grantee shall ensure that Grantor can provide such messaging upon demand in the event of a local emergency. Grantee shall not be liable for any damages to any party as a result of the exercise of Grantee's obligations under this section.*
6. **Testing.** *Grantor or Member Cities shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise and all applicable Codes. In addition, the Grantor may test a location or locations within the System if there are unresolved complaints regarding such System location(s) or System performance. Grantee shall have a right to advance notice and may accompany Grantor on any such test.*
7. **Drop Testing and Replacement.** *Grantee will insert a 750 MHZ carrier at a level 10db below the video carriers that will be measured by Grantee as a normal procedure during service calls. In addition, the Drops and related passive equipment will be inspected during Installations to assure that the Drop and passive equipment can pass the full 750 MHZ System capacity. In the event measurement of the carrier or the inspection demonstrate that a Drop or associated passive equipment does not pass the full 750 MHZ, the Subscriber address will be recorded by Grantee and Grantee will provide Grantor, or its designee, upon request a report indicating the addresses where Drops or associated passive equipment have failed. Grantee will replace failing Drops and/or associated passive equipment at the time the address upgrades service to a level which requires a signal above the 550 MHZ spectrum at no separate charge to the individual subscriber.*
8. **FCC Reports.** *The results of any tests required to be filed by Grantee with the FCC shall upon request of Grantor also be filed with the Grantor or its designee within ten (10) days of the conduct of such tests.*
9. **Nonvoice Return Capability.** *Grantee will use cable and associated electronics having the technical capacity for nonvoice return communications.*

10. **Lockout Device.** Upon the request of a Subscriber, Grantee shall make available a Lockout Device at no additional charge to Subscribers.

## SECTION 5.

### SERVICE PROVISIONS

1. **Regulation of Service Rates.**

- a. Grantor or Member Cities may regulate rates for the provision of Cable Service or allotted equipment provided over the System to the extent allowed under federal or state law(s).
- b. A list of Grantee's current Subscriber rates and charges shall be maintained on file with Grantor and shall be available for public inspection. Grantee shall give Grantor and Subscribers written notice of any change in a rate or charge at least one billing cycle prior to the effective date of the change. Bills must be clear, concise, and understandable, with itemization of all charges.
- c. Grantor acknowledges that Grantee has represented that it is permitted by applicable law and regulation to include franchise-related costs required under this Franchise in its calculation of rates, and that Grantee may include these costs in future rates.

2. **Non-Standard Installations.** Grantee shall install and provide Cable Service to any Person requesting other than a Standard Installation provided that said Cable Service can meet FCC technical specifications and all payment and policy obligations are met. In such case, Grantee may charge for the incremental increase in material and labor costs incurred beyond the Standard Installation.

3. **Sales Procedures.** Grantee shall not exercise deceptive sales procedures when marketing any of its services within Member Cities. Grantee shall have the right to market door-to-door during reasonable hours consistent with local ordinances and regulation.

4. **Subscriber Inquiry and Complaint Procedures.**

- a. Grantee shall maintain an office in at least one of the Member Cities which shall be open during normal business hours or, in the event such office is not maintained, Grantee shall, at a minimum, maintain one location or drop box in Bayport and Oak Park Heights and two drop boxes in Stillwater at which payments can be deposited and also, by appointment, free of charge, pick up and deliver from subscriber's premises to facilitate any exchange of defective or inoperable video equipment of Grantee required to receive service. The response times for such pickup or delivery of defective or inoperable video equipment shall be consistent with applicable federal